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OUTLINE OF PROVISIONS
of Title I of
H.R. 6915
"Criminal Code Revision Act of 1980"

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Introduction

Structure of the Bill

H.R. 6915, the "Criminal Code Revision Act of 1980," is divided into 3 Titles.

Title I of the bill repeals all of present Title 18 of the United States Code and replaces it with a new, comprehensive and uniform criminal code. Title II of the bill contains provisions reenacting certain provisions of present Title 18 of the United States Code and making conforming and other changes in criminal provisions outside of Title 18. Title III of the bill contains the effective date for the legislation.

The proposed new Title 18 of the United States Code established by the first Title of the bill is divided into 5 subtitles: Subtitle I—"Provisions of General Applicability"; Subtitle II—"Offenses"; Subtitle III—"Sentencing and Corrections"; Subtitle IV—"Administration and Procedure"; Subtitle V—"Ancillary Civil Proceedings."

Subtitle I of the proposed criminal code contains general provisions. It defines terms used throughout the proposal code, sets forth bars and defenses applicable to criminal offenses, defines the culpable states of mind used in the description of the crimes, and sets forth principles of accomplice liability.

Subtitle II of the proposed code defines criminal offenses. A common format is used. The initial subsection defines and classifies the offense. If the classification of the offense is complex, the second subsection will contain the classification. Special defenses and bars are set forth in separate subsections, and the final subsection will contain jurisdiction provisions that describes those situations in which the Federal government can prosecute the offense. (If there is no separate jurisdiction subsection, a provision in Subtitle I defines when there is Federal jurisdiction over the offense.)

Subtitle III of the proposed code deals with sentencing. It sets forth the sentences that judges are authorized to impose and defines the maximum prison term and maximum fine for each class of offense. Subtitle IV of the proposed code contains matters relating to administration and procedure, such as the Interstate Agreement on Detainers and the method by which a court order authorizing a wiretap may be obtained. Subtitle V of the proposed code contains provisions relating to forfeiture of property, civil actions to restrain racketeering activities, and the imposition of civil disabilities upon convicted defendants.

Cross-referenced offenses

The proposed revision of title 18 of the United States Code represents an effort to consolidate in one title of the United States Code all felony offenses in the Federal criminal law. A number of felonies currently outside title 18, however, have complicated legislative and judicial histories that do not easily lend themselves to preservation through the language and conventions of the proposed revision. As a result, many of these offenses are incorporated into title 18 by cross-reference. The definitions of those offenses remain where they are currently located, in other titles and laws.

The Subcommittee does not intend to alter the substance of the offenses to which it cross-references, nor does it intend to change any judicial interpretations of those offenses. It should be noted that the application of such matters as the rules concerning states of mind is limited by the proposed code to offenses described in title 18 (see, *e.g.*, §§ 101, 301). In addition, cross-references use the term "to violate," which is defined in § 101 so as to incorporate the elements and states of mind required by the provision outside of title 18.

CHAPTER 1—GENERAL DEFINITIONS AND OTHER GENERAL RULES

SUBCHAPTER I—DEFINITIONS

§ 101—General definitions

Section 101 sets forth definitions for several terms used throughout the proposed code.

SUBCHAPTER II—FEDERAL CRIMINAL JURISDICTION

Introduction

Traditionally, jurisdiction means the power of the Federal government to make and enforce laws. As used in this subchapter, jurisdiction means the nature and extent of that power, and how it is exercised. Sections 111–113 outline the nature of territorial, special, extraterritorial and Indian Country jurisdiction. Section 115 establishes rules for the exercise of jurisdiction when both the Federal and State authorities have the right to investigate and prosecute. Section 116 states that factual determinations relating to the existence or nonexistence of Federal jurisdiction are to be made by the trier of fact, unless both parties otherwise agree. Finally, § 117 establishes the rule that the existence of Federal jurisdiction does not generally preempt the right of a State to exercise criminal jurisdiction.

§ 111—Federal jurisdiction

Section 111(a) provides that if a separate subsection of an offense sets forth one or more circumstances that will give rise to Federal jurisdiction, there is Federal jurisdiction over the offense when such

a circumstance exists or has occurred and the offense is committed within (i) the general jurisdiction of the United States, or (ii) the special jurisdiction or Indian Country jurisdiction of the United States (to the extent that either of such jurisdictions is specified as a circumstance in the separate subsection).

Section 111(b) provides that if there is no separate subsection specifying circumstances that give rise to Federal jurisdiction, there is Federal jurisdiction over the offense when it is committed within (a) the general jurisdiction of the United States, or (b) the special jurisdiction of the United States. Thus, if nothing is said in a section defining an offense (other than a cross-referenced offense), there is Federal jurisdiction anywhere within the territory of the United States or its special jurisdiction.

Section 111(c) defines extraterritorial jurisdiction of the United States. Using generally accepted concepts of international law, the Subcommittee determined whether to apply extraterritorial jurisdiction on an offense by offense basis. With only 4 exceptions, the description of each offense indicates whether or not there is such jurisdiction. The exceptions are set forth in paragraphs (2), (3), and (4) of subsection (c). The exceptions are: (1) offenses perpetrated by or against a citizen or national of the United States at any place outside the jurisdiction of any nation; (2) crimes committed by Federal public servants and their families (including attempts to commit a Federal offense within the United States); (3) an offense constituting a conspiracy to commit a Federal offense; and (4) an offense constituting an attempt to commit a Federal offense within the United States.

§ *122—General jurisdiction of the United States*

This section provides that an offense is committed within the general jurisdiction of the United States if it is committed within the geographic United States, which includes all of the States.

§ *113—Special jurisdiction of the United States*

This section provides that there is jurisdiction over an offense committed within the special jurisdiction of the United States if the offense occurs within (1) the special territorial jurisdiction of the United States; (2) the special maritime jurisdiction of the United States; or (3) the special aircraft jurisdiction of the United States.

The special territorial jurisdiction encompasses: (1) real property over which the United States has exclusive or concurrent jurisdiction (e.g., the land used for the National Institutes of Health); (2) unorganized territories or unorganized possessions of the United States; (3) islands, rocks, or keys containing guano, which the President designates as pertaining to the United States; and (4) a facility for exploration of natural resources operated on or above the outer continental shelf.

The special maritime jurisdiction encompasses: (1) the high seas; (2) any other waters within the admiralty or maritime jurisdiction of the United States and outside the jurisdiction of any State; (3) a vessel within the admiralty or maritime jurisdiction of the United States and outside of the jurisdiction of any state, where that vessel belongs, in whole or part, to the United States, a citizen of the United States, or a corporation created by or under the laws of the United States or a State.

The special aircraft jurisdiction of the United States encompasses: (1) an aircraft owned by the United States, a state or locality, or a corporation organized under the laws of the United States or a state; (2) a civil aircraft of the United States; (3) any other aircraft within the United States; and (4) any other aircraft outside the United States (a) that has its next scheduled destination or last port of departure in the United States, and that next lands in the United States, or (b) that has an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) committed aboard and that lands in the United States with the alleged offender still aboard.

§ 114—Indian country jurisdiction

Section 114 brings forward the provisions of present law which define Indian country (18 U.S.C. §§ 1151, 1152, 1162, 3243).

§ 115—Concurrent jurisdiction

This section creates standards for determining whether Federal authorities should exercise jurisdiction when a state also has jurisdiction. It is new to Federal law, but is derived from the recommendations of the National Commission on Reform of Federal Criminal Laws. The Subcommittee recognized that in numerous instances there will be both state and Federal jurisdiction over certain conduct and that Federal jurisdiction ordinarily should not be exercised unless a substantial Federal interest can be shown.

Section 115(b) directs the Attorney General to promulgate guidelines for the exercise of Federal jurisdiction which are based upon (1) the severity of the offense; (2) the nature and extent of the Federal interest; and (3) the availability of Federal, state and local resources. Section 115(d) directs Federal authorities to consider these guidelines when deciding whether to exercise Federal jurisdiction in instances where there is concurrent state jurisdiction.

Section 115(e) directs the Attorney General periodically to consult with state and local law enforcement officials about the exercise of Federal jurisdiction when the states have concurrent jurisdiction. The Attorney General is also directed to report annually to Congress on the exercise of concurrent Federal jurisdiction.

§ 116—Determination of Federal jurisdiction by trier of fact

This section provides that the existence of Federal jurisdiction is a matter to be determined by the trier of fact.

§ 117—Federal jurisdiction not generally preemptive

Section 117(a) establishes that Federal jurisdiction over an area of criminal conduct does not necessarily preclude states, Indian communities, or the military from exercising concurrent jurisdiction.

Section 117(b) provides that the Attorney General may, by order, preempt state jurisdiction in certain types of cases.

SUBCHAPTER III—OTHER GENERAL RULES

§ 121—Effect of question of law

This section restates the general principle of law that issues involving the application of the law to a given set of facts (i.e., questions of law) are to be resolved by the court. Where, however, there is a dispute

regarding the underlying facts to which the law is to apply, the decision regarding the underlying facts must be made by the trier of fact.

§ 122—Proof as to bars and defenses

Section 122(a) provides that the existence of a "bar to prosecution" is a question of law. Section 122(b) provides that the defendant carries the burden of producing evidence (not the burden of proof) with regard to a matter of exculpation which is denominated a "defense." Once the defendant introduces evidence that supports a reasonable belief as to the existence of the defense, the prosecution has the burden of disproving the existence of the defense beyond a reasonable doubt. Section 122(c) specifies that a defendant has the burden of proving a matter of exculpation which is denominated an "affirmative defense" by a preponderance of the evidence.

§ 123—Civil remedies and powers unimpaired

This section clarifies that the revision of Title 18 is not intended to affect civil proceedings or the civil authority of the courts, except where explicitly provided.

Chapter 3—States of Mind

The proposed code adopts a structure for defining offenses which is derived from the American Law Institute's Model Penal Code and the recommendations of the Brown Commission. This structure is a departure from the format used in present criminal statutes and is, in the Subcommittee's judgment, an important change that will make Federal criminal statutes easier to understand.

It is generally stated that there are 2 components of a crime, conduct and intent. To violate the criminal law, the actor must engage in the prohibited conduct (*actus reus*) with the requisite state of mind (*mens rea*). See, e.g., R. M. Perkins, Criminal Law 743 (2d ed. 1969).

The traditional analysis that a crime consists of 2 components, conduct and intent, is somewhat misleading. First, there are components to the *actus reus* other than conduct. For example, a typical burglary offense is defined as the entry of the dwelling of another in the nighttime with intent to commit a felony. The conduct component of the offense is the entry. In order to establish the *actus reus*, however, the prosecution must show more than an entry. The prosecution must also show that the building entered was a dwelling, that the dwelling belonged to someone other than the actor, and that the entry took place at night. These factors are circumstances that must exist at the time of conduct.

In addition to circumstances, a criminal statute may also require certain results of the proscribed conduct. For example, the offense of false pretenses typically proscribes the obtaining of the property of another by means of untrue representations of fact with intent to defraud. The conduct component is the representation of fact. However, proof of the *actus reus* is not established by showing representation of fact. It must also be shown that the representation was false (a circumstance), that property was obtained (a result), and that the property obtained was property of another (a circumstance).

Thus, in analyzing the *actus reus* of an offense, it is helpful to speak of conduct, the circumstances (if any) which must attend that conduct, and the results (if any) which must attend that conduct. This is the approach of the American Law Institute's Model Penal Code (see § 1.13(9)) and of the National Commission on Reform of Federal Criminal Laws (see Final Report § 103(1)). It is also the approach taken in the Senate recodification proposals.

The traditional analysis is also somewhat misleading because the *mens rea* requirement of traditional law is not a unitary concept. Traditional criminal law uses two terms to refer to mental state requirements: general intent and specific intent. Each term has been given a number of different meanings. However, in most cases general intent has been interpreted as a requirement that one know the nature of one's conduct and the circumstances under which that conduct ocurs. Thus, in order to be convicted of common law battery, one need only be aware that one is using force against another. Specific intent has had two generally acknowledged meanings: (1) any mental state more stringent than general intent (e.g., the malice aforethought required for common-law murder); and (2) a particular motive or purpose (e.g., the intent to commit a felony discussed above with respect to burglary, and the intent to defraud discussed above with respect to false pretenses). Current Federal law utilizes both general and specific intent, but has added over 70 variants of these mental state requirements.

Most modern criminal codes adopt a structure derived from the Model Penal Code and endorsed by the Brown Commission. Mental states are assigned to each component of the *actus reus*, including (1) the conduct involved, (2) the results, if any, that must be caused by the conduct, and (3) the circumstances, if any, under which the conduct must occur. Modern codes also supplement these components and companion mental states, when appropriate, with additional requirements involving purpose or motive. These additional requirements reflect the matters traditionally denominated specific intent, when that term is used to mean a particular motive or purpose.

§ *301—Definitions of states of mind*

Section 301(a) defines the term "states of mind" as (1) any mental state required to be proved with respect to a component of a crime (conduct, circumstances, and results) and (2) any specific intent (purpose) or motive that is required to be proved.

Section 301(b) provides that one's state of mind is intentional as to one's conduct or the result of one's conduct if such conduct or result is one's conscious objective. The intentional state of mind is applicable only to conduct and results. Since one has no control over the existence of circumstances, but only over the decision whether to act under those circumstances, one cannot "intend" circumstances.

Section 301(c) defines a knowing state of mind as (1) an awareness of the nature of the conduct, (2) an awareness of or a firm belief in the existence of the circumstance and (3) an awareness of or a firm belief in the substantial certainty of the result. By including "firm belief" in the definition of knowledge, the subcommittee intends to incorporate the concept of "willful blindness", that is, a reckless disregard for the truth coupled with a conscious purpose to avoid learning the truth.

It should be noted that willful blindness is not equivalent to "recklessness" as used in the proposed code. Willful blindness requires an awareness of a high probability of the existence of the circumstance. Further, willful blindness can be obviated by an actual belief that the circumstance does not exist which is not possible where the standard is recklessness.

Section 301(d) provides that one's state of mind is reckless concerning a circumstance or a result if one is aware of and disregards, a risk that the circumstance exists or that the result will occur, where the risk is of such a magnitude that to disregard the risk constitutes a gross deviation from a reasonable standard of care. The reckless state of mind does not apply to conduct since one who is not asleep or unconscious is always at least aware of the nature of one's conduct.

Section 301(e) provides that one's state of mind is negligent concerning a circumstance or a result if one ought to be aware of a risk that the circumstance exists or the result will occur, and the risk is of such magnitude that to fail to perceive the risk constitutes a gross deviation from a reasonable standard of care. The negligent state of mind, for reasons set forth above with respect to reckless, is applied only to circumstances and results.

It should be noted that although recklessness and negligence are terms drawn from the civil law, the definitions in the proposed code are different from those of civil law. Two features in particular distinguish these concepts in the proposed code from the civil law: (1) recklessness in the proposed code requires a subjective awareness of the risk; and (2) to constitute either negligence or recklessness, the deviation from a reasonable standard of care must be gross.

§ 302—State of mind requirement for offenses described in this title

This section sets forth general rules for determining the states of mind required to prove an offense.

Section 302(a) provides that, unless otherwise specified, the state of mind required for conduct is knowing.

Section 302(b) provides that the state of mind required for conduct will apply to circumstances and results unless otherwise specified.

Section 302(c) provides that the rules regarding states of mind apply to conduct, results and circumstances which are specified in provisions classifying offenses, unless otherwise provided.

Section 302(d) provides that, unless a law explicitly states otherwise, no state of mind must be proved for other matters involved in a criminal offense, such as bars to prosecution, defenses, affirmative defenses, and the existence of Federal jurisdiction and venue.

§ 303—Satisfaction of state of mind requirement by proof of other state of mind

This section provides that a requirement that a particular state of mind be proved with respect to conduct, a result, or a circumstance may be met by proof of a "higher" state of mind. Proof of an intentional state of mind will therefore satisfy a requirement of knowing state of mind; proof of a knowing or intentional state of mind suffices to prove a reckless state of mind; and proof of a reckless, knowing, or intentional state of mind satisfies a requirement of a negligent state of mind.

Chapter 5—Complicity

§ 501—Accomplices

This section sets forth the principles by which an individual may be convicted of an offense based on the conduct of another.

Section 501(a)(1)(A) provides that an individual is criminally liable for an offense committed by another if that individual, with the intent that an offense be committed, commands, induces, procures or aids the other to commit the offense. Section 501(a)(1)(B) provides that a law enforcement officer is liable for an offense committed by another if the law enforcement officer has a legal duty to prevent the crime and fails to take reasonable steps to do so.

Section 501(a)(2) provides that an individual who causes a third party to engage in criminal activity is criminally liable for that activity.

Section 501(b) provides that an individual is not criminally liable for the criminal conduct of another if that individual was the victim of the offense or was a person whose conduct was a necessary part of the definition of the offense. Thus, for example, an under-age female who consents to sexual intercourse with a man cannot be convicted as an accomplice to the sexual offense proscribing any sexual conduct with under-age females.

Section 501(c) restates the rule that ignorance of the law is no excuse by providing that an "intent that the offense be committed" does not require that the defendant realize that the conduct is prohibited.

§ 502—Liability of organizations for conduct of agents

This section provides that an organization is criminally liable for the conduct of an agent acting within the scope of the agent's employment or range of authority, where the agent intends the conduct to benefit the organization. The section also provides that an organization will be criminally liable for an agent's conduct if the organization ratifies the agent's conduct after that conduct has occurred.

§ 503—Liability of an agent for conduct of an organization

This section allows an agent to be held criminally responsible for conduct in which the agent engaged on behalf of an organization.

§ 504—Certain defenses precluded

Section 504(a) provides that the mere fact that a person is incapable of committing the offense in question does not prevent that person from being liable as an accomplice to the offense.

Section 504(b) provides that conviction of the perpetrator is not necessary for conviction of another person as an accomplice.

§ 505—Bar to prosecution

This section bars prosecuting a defendant as an accomplice if all of the persons for whose conduct the defendant is being held criminally liable have been acquitted for lack of evidence. This bar does not apply when the lack of evidence is due to an order of suppression or when the acquittal is due to something other than a lack of evidence (e.g., the successful assertion of the entrapment defense).

Chapter 7—Bars and Defenses

SUBCHAPTER I—BARS TO PROSECUTION

§ 701—Nature of bars

This section provides that the codification of a bar to prosecution in the proposed code does not preclude the courts from developing other bars. This section does, however, preclude the courts from modifying those bars that are codified, unless a modification is constitutionally compelled.

§ 702—Immaturity

Section 702(a) bars Federal prosecution of a juvenile under the age of 18 at the time the alleged offense was committed.

Section 702(b) provides 2 exceptions to this bar. First, the juvenile may be treated as an adult if the prosecution so moves the court and: (1) the juvenile was 16 or 17 at the time the offense was committed; (2) the alleged offense is a class A, B or C felony; and (3) the court determines under § 6101 of the proposed code that it is in the interests of justice to treat the juvenile as an adult. Second, a juvenile may waive juvenile proceedings and be treated as an adult.

§ 703—Statute of limitations

Section 703(a) provides that the statute of limitations for felonies and misdemeanors is 5 years, with no statute of limitations for murder. Section 703(b) provides that the statute of limitations stops running for any period when the actor is a fugitive for justice.

Section 703(e) provides that the statute of limitations commences to run from the day the last remaining conduct or result required for the offense occurs, with 3 exceptions. First, where the offense is a conspiracy, the statute commences to run at the time the last relevant event in the conspiracy occurs. Second, where the offense involves a "failure to register", the statute commences to run on the last day the duty to register ceases. Third, where the offense is a continuing offense (e.g., possession of contraband) the statute commences to run on the day the course of conduct ends.

Section 703(d) extends the time period for offenses in which a material element is either fraud or a breach of fiduciary duty, for offenses involving official misconduct, and for bankruptcy offenses. The time period is extended one year from the date the offense was discovered or should have been discovered, if the offense is discovered within 3 years after the statute of limitations would otherwise have expired.

Section 703(f) provides that the filing of an indictment or an information commences a prosecution and thereby stops the running of the statute of limitations. Section 703(c) provides that indictments and informations may supersede dismissals occurring both before and after the applicable statute of limitation has run, but only within certain time limits.

SUBCHAPTER II—DEFENSES

§ 721—Nature and effect of defenses

This section provides that the codification of a defense in the proposed code does not preclude the courts from developing new defenses.

The section does, however, preclude the courts from modifying, other than for constitutional reasons, those particular defenses that have been codified.

§ *722—Insanity*

Section 722(a) provides that a defendant is legally insane if, as a result of a mental disease or defect, the defendant lacks substantial capacity to appreciate the wrongfulness of the alleged conduct or to conform the conduct to the law's requirements.

Section 722(b) provides that an abnormality manifested primarily by repeated criminal or otherwise antisocial conduct does not constitute a "mental disease or defect."

§ *723—Intoxication*

Section 723(a) provides that self-induced intoxication is a defense if it negates an intentional or knowing state of mind or a specific intent or motive required for the offense. Self-induced intoxication is not a defense to a general intent crime.

Section 723(b) treats involuntary intoxication in the same manner as insanity. Section 723(e) defines "self-induced intoxication."

§ *724—Mistake of fact or law*

This section provides a defense where the defendant, as a result of ignorance or a mistake concerning a matter of fact or law, lacked any state of mind required for the offense.

§ *725—Reliance upon official misstatement*

Section 725 provides that it is an affirmative defense to a criminal prosecution that (1) the defendant in good faith believed that his or her conduct did not constitute a violation of law and (2) the defendant engaged in the prohibited conduct in reasonable reliance upon an official statement of the law made by Congress, a United States court or agency, or a public body with responsibility for the interpretation, administration, enforcement of the law that prohibits the defendant's conduct.

§ *726—Duress*

Section 726(a)(1) provides that it is an affirmative defense to a felony prosecution that the defendant was compelled to act by threat of imminent death or serious bodily injury to the defendant or a third person. This affirmative defense is not available, however, where the prosecution is for murder or manslaughter. Section 726(a)(2) provides that duress amounting only to force or threat of force is an affirmative defense to a prosecution for a misdemeanor or infraction. Section 726(a)(3) requires that the force or threat involved be such as to render a person of reasonable firmness incapable of resisting it.

Section 726(b)(1) makes the duress affirmative defense unavailable to a defendant charged with a crime requiring a state of mind other than negligence, where that defendant knowingly entered the situation where the compulsion was exerted and recklessly disregarded the risk that he or she would be compelled to do the act charged. Section 726(b)(2) provides that the affirmative defense is also unavailable to a defendant charged with a crime requiring a negligent state of mind, where that defendant knowingly entered the situation and negligently disregarded such a risk.

§ 727—Protection of persons

Section 727(a) provides that a person may use or threaten nondeadly force if circumstances require it in order to protect the actor from the danger of imminent use of unlawful force by another person.

Section 727(b) permits an actor to use deadly force as protection from the risk of death or serious bodily injury.

Section 727(c) permits someone to defend a third person by using or threatening any level of force if the third person would have been permitted to use such force or threat.

Section 727(d)(1) provides that an individual may not use force or threats to resist arrest or other performance of duty by a law enforcement officer acting under color of law. However, section 727(d)(1) provides as an exception that one may use nondeadly force or threats, to resist an arrest by an officer using excessive force.

Section 727(d)(2) provides that the defense is unavailable if the actor was the aggressor or voluntarily entered into mutual combat. However, section 727(d)(2) also provides that someone who is the initial aggressor may use force or threats in 2 circumstances: (1) to resist another's clearly excessive use of force in return; and (2) where the person has withdrawn from the confrontation and has taken steps which would reasonably notify the other of the withdrawal, and the other person continues to use or threaten unlawful force.

Section 727(d)(3) provides that the defense of protection of persons is unavailable if the defendant erroneously believes that another's force or conduct is unlawful, and that belief is the result of the defendant's ignorance or mistake about the proposed code or any other criminal law.

Section 727(e) provides that words alone are not enough to provoke an attack. Provocation occurs only with conduct that is reasonably calculated to produce combat likely to result in death or bodily injury, and such conduct causes an attack by another person.

§ 728—Protection of property

Section 728(a) provides that one can use such nondeadly force or threats as are required under the circumstances to protect real or personal property against trespass, unlawful taking, or damage, if the actor has custody or possession of the property.

Section 728(b) provides that one may use deadly force to protect property when: (1) the actor was in possession or control of, or privileged to be in, a dwelling or place of work; (2) the deadly force was necessary to protect against arson, burglary, or robbery, or to prevent the perpetrator from fleeing with the fruits of the crime after committing a robbery or burglary; and (3) the use of nondeadly force would have exposed anyone other than the perpetrator to a substantial danger of serious bodily injury.

§ 729—Special rule for mistakes relating to certain defenses

Section 729(a) provides that the existence of the defenses of duress, protection of persons, and protection of property is to be determined on the basis of the facts as the defendant believed them to be, even though that belief may be mistaken.

Section 729(b) provides that if the offense for which the defendant is being prosecuted requires only recklessness as to a result, and

if the actor is reckless regarding the facts which if true would give rise to the defense, then the defense is to be determined according to the facts as they actually were, and not as the defendant believed those facts to be. Further, if the offense requires only negligence as to a result, and if the defendant is negligent (or reckless) regarding the facts which if true would give rise to the defense, then the defense is to be determined according to the facts as they actually were, and not as the defendant believed those facts to be.

§ *730—Definitions for subchapter*

This section defines "force", "deadly force", and "serious bodily injury" for the purposes of the subchapter on defenses.

Chapter II—Attempt and Conspiracy

SUBTITILE II—OFFENSES

§ *1101—Attempt*

The proposed code continues the current law practice of punishing an attempt only where an attempt is specifically mentioned in the description of the offense, and § 1101 defines what constitute attempt. Section 1101(a) provides that a person may be convicted of an attempt (where attempt is made a crime) if that person (1) has a specific intent that the crime be committed, and (2) intentionally takes a substantial step toward the commission of the crime.

Section 1101(b) provides an affirmative defense of abandonment. A defendant may avoid liability for an attempted crime by withdrawing from the criminal effort early enough to avoid completion of the crime, or by withdrawing at any point and preventing commision of the crime. Such a withdrawal, moreover, must demontrate a "voluntary and complete renunciation" of the criminal intent—i.e., it is insufficient if the defendant abandoned the attempt because of outside interference, or merely as part of a plan to delay the crime or substitute objectives.

Section 1101(c) provides that legal or factual impossibility is not a defense to an attempted crime. Section 1101(d), restating the rule that ignorance of the law is no excuse, provides that an "intent that the offense be committed" does not require that the defendant realize that the conduct is prohibited.

§ *1102—Conspiracy*

Section 1102(a) restates the current-law elements of conspiracy: (1) an agreement between at least two people to commit a crime; (2) a specific intent on the part of each that the crime be committed; and (3) an "overt act" on the part of at least one person in furtherance of the agreement. Conspiracy is classified at one level below the most serious offense which the parties conspired to commit.

Section 1102(b) provides an affirmative defense that the actor voluntarily and completely renounced the conspiracy and prevented the achievement of all of the objects of the conspiracy.

Section 1102(c), restating the rule that ignorance of the law is no excuse, provides that an "intent that a crime be committed" does not require that the defendant realize that the conduct is prohibited.

Section 1102(d) provides for certain exclusions from the application of conspiracy law. These exclusions fall into four categories:

crimes that themselves constitute conspiracies (§§ 1502, 1702); crimes that reach the constitutional limits on the prohibition of speech, thus raising serious constitutional questions concerning punishment of a conspiracy to engage in such conduct (§§ 1316(a)(1), 1317(a)(1) and 2731(a)(1)); crimes where conspiracies are most likely not punishable under current law (§ 1711); and crimes where punishment of conspiracy might punish trivial, harmless conduct (§ 1743).

Section 1102(e) provides that there is Federal jurisdiction over a conspiracy where there would be Federal jurisdiction over the object crime.

§ 1103—Definitions for chapter

This section provides that the term "voluntary and complete renunciation" does not include decisions merely to postpone or delay the intended crime, or to substitute an object or victim of the crime.

Chapter 13—Offenses Involving National Defense

SUBCHAPTER I—TREASON AND RELATED OFFENSES

§ 1301—Treason

Section 1301(a) makes it a class A felony for someone who owes allegiance to the United States to (1) adhere to the enemies of the United States and intentionally gives them aid and comfort, or (2) levy war against the United States with intent to overthrow the government.

Section 1301(b) restates the proof requirement of the treason clause of the Constitution.

Section 1301(c) provides for extraterritorial jurisdiction over the crime of treason.

§ 1302—Armed rebellion or insurrection

Section 1302 makes it an offense knowingly to engage in armed rebellion or insurrection against the United States with intent to: (1) overthrow, destroy, supplant or change the form of government of the United States; (2) sever a State's relationship with the United States; or (3) oppose the execution of any law of the United States.

Section 1302(b) classifies the offense under (1) above as a B felony and the offense under (2) above as a C felony.

Section 1302(c) provides for extraterritorial jurisdiction if the actor owes allegiance to the United States.

SUBCHAPTER II—SABOTAGE AND RELATED OFFENSES

§ 1311—Sabotage

Section 1311(a) makes it an offense for someone, acting with intent to impair the ability of the United States or an associate nation to engage in war, knowingly to damage certain property or to deliver certain property that has been damaged. The property involved is described in subsections (a)(1)(A) through (C).

Section 1311(b) classifies the offense as an A felony if the conduct occurs during wartime and causes a significant impairment of a major weapons system or means of defense. The offense is classified as a B

felony if: (1) the conduct occurs during wartime and less significant damage results; or (2) the conduct occurs during a time of national defense emergency. Finally, the offense is classified as a C felony if the conduct occurs at a time other than wartime or a time of national defense emergency.

§ 1312—Impairing military effectiveness

Section 1312(a) prohibits conduct described in § 1311 that the actor knows will impair the United States' ability to defend itself (§ 1311 requires a specific intent to injure the United States). Section 1312(b) classifies the offense at one felony level below § 1311. Section 1312(c) provides for Federal jurisdiction if the offense is committed within the general, special or extraterritorial jurisdiction of the United States.

§ 1313—Violation of anchorage regulations during war or national emergency

Section 1311 makes it a class D felony to violate 50 U.S.C. § 192, which prohibits certain conduct regarding movement of vessels in times of war or national emergency.

§ 1314—Avoiding military or alternative service

This section makes it an offense for someone who has a duty to register or report for military service, be inducted into military service, or perform alternative service to fail to perform such duty with the intent to avoid military or alternative service.

Section 1314(b) makes the offense a class D felony during war and a class E felony at other times.

Section 1314(c) provides a defense for persons who have registered for military service and who have been found qualified for alternative service, but who refuse to perform such service because of bona fide religious belief.

Section 1314(d) provides for Federal jurisdiction over this offense wherever it occurs, so long as the actor is a citizen or resident of the United States.

§ 1315—Fraud with respect to military or alternative service

This section makes it an offense for someone to use fraud with intent to: (1) avoid or delay the performance of alternative service; or (2) impair a proper determination of the existence or nature of a person's military or alternative service obligation.

This section parallels section 1314 with respect to grading and jurisdiction.

§ 1316—Wartime impairment of military service obligations

Section 1316 makes it a class D felony to engage in certain conduct which, during a war or national defense emergency, impairs military service obligations. The conduct includes: (1) the use of force or violence to obstruct military recruitment or induction; (2) the use of force, threats, intimidation or fraud with intent to influence a public official concerning that official's duties pertaining to military recruitment or induction; and (3) intentionally incites others to engage in conduct that violates § 1314 in circumstances rendering it likely that such violation will occur.

§ 1317—Inciting or aiding mutiny, insubordination, or desertion

Section 1317(a) makes it an offense for someone, with the intent to bring about mutiny or desertion by a member of the armed forces, knowingly (1) to incite others to engage in mutiny, desertion, or refusal of duty, or (2) to aid others to mutiny or desert.

Section 1317(b) provides that the offense is a class C felony if committed during a war; a class D felony if it involves an insubordination of 10 or more, or a mutiny; and a class E felony in any other case.

§ 1318—Hindering apprehension of deserters

Section 1318 makes it a class E felony intentionally to try to prevent the discovery, apprehension, prosecution, conviction, or punishment of persons charged with, or being sought for, desertion from the armed forces.

Section 1318(b)(1) provides a bar to prosecution when the person who allegedly deserted has been acquitted of the charge. Section 1318(b)(2) provides a defense when the person alleged to be, or sought as, a deserter did not actually desert. Section 1318(d) provides an affirmative defense when the actor warned the alleged deserter solely in an effort to bring such person into compliance with the law.

Section 1318(e) provides that it is not a defense that any record or document altered or destroyed will have been legally privileged or inadmissible in evidence.

Section 1318(f) provides for extraterritorial jurisdiction where the conduct was that of a United States national.

This section parallels § 1711 (hindering law enforcement).

§ 1319—Aiding escape or hindering apprehension of a prisoner of war or an enemy alien

Section 1319(a)(1) makes it a class D felony intentionally to aid the escape of a prisoner of war or an interned enemy alien. Section 1319(a)(2) makes it a class D felony to harbor or conceal an escaped prisoner of war or an interned enemy alien and thereby intentionally interfere with or hinder discovery of the escaped prisoner of war or enemy alien.

Section 1319(e)(1) provides an affirmative defense where the actor warned the prisoner or enemy alien solely in an effort to bring that prisoner or enemy alien into compliance with the law. Section 1319(c)(2) provides a bar to prosecution where the person aided was not a prisoner of war or enemy alien. Section 1319(d) provides that it is not a defense to prosecution that any record or document altered or destroyed would have been legally privileged or inadmissible.

Section 1319(e) provides for extraterritorial jurisdiction where a United States national commits the offense.

§ 1320—Definitions for Subchapter

Section 1320 defines "associate nation" and "national defense emergency" for the purposes of the sabotage subchapter.

SUBCHAPTER III—ESPIONAGE AND RELATED OFFENSES

§ 1321—Espionage

Section 1321(a) makes it an offense to violate 18 U.S.C. § 794 (§ 201 of the Espionage and Sabotage Act of 1954), which is reenacted in

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Title II of the bill. Section 1321(b) makes it a class A felony to violate §§ 224a and 225 of the Atomic Energy Act of 1954 (42 U.S.C. §§ 2274(a) and 2275) (relating to communication or receipt of "Restricted Data").

§ 1322—Disseminating national defense information

Section 1322 makes it a class C felony to violate; (1) 18 U.S.C. § 793 (§ 18 of the Subversive Activities Control Act of 1950) which is reenacted in Title II of the bill, or (2) § 224(b) or the Atomic Energy Act of 1954, which penalizes the communication of restricted data.

§ 1323—Disseminating classified information

Section 1323 makes it a class C felony to violate: (1) 18 U.S.C. § 798, which is reenacted in Title II of the bill, or (2) § 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)).

§ 1324—Receiving classified information

This section makes it a class C felony to violate § 4(c) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(c)).

§ 1325—Failing to register as a person trained in a foreign espionage system

This section makes it a class D felony to violate § 2, or a rule issued pursuant to § 5, of "An Act to require the registration of certain persons who have knowledge of or have received instruction or assignment in the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party, and for other purposes.

§ 1326—Failing to register as, or acting as, a foreign agent

Section 1326(a) makes it an offense: (1) for an agent of a foreign principal to fail to register with the Attorney General; (2) for a Federal or District of Columbia public servant to act as an agent of a foreign principal; (3) for anyone to violate §§ 4(a) or 5 of the Foreign Agents Registration Act of 1938; or (4) for anyone to act as an agent of a foreign government (other than as a diplomatic or consular officer or attaché) without previously notifying the Secretary of State.

Section 1326(b) defines "agent of a foreign principal" and "foreign principal" for the purposes of the section.

Section 1326(c) makes the offense a class D felony in instances (1), (3) and (4) above, and a class E felony in instance (2) above.

Section 1326(d) provides an exception for the employment of special government employees.

SUBCHAPTER IV—MISCELLANEOUS NATIONAL DEFENSE RELATED OFFENSES

§ 1331—Atomic energy offenses

This section makes it an offense to violate §§ 57, 92, 101, 108, 223, or 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et. seq.).

Section 1331(b) provides that an offense under subsections (a)(1), (2), (3), or (4) is a class A felony if committed with intent to injure the United States (a class C felony otherwise). An offense under subsection (a)(5) is a class B felony if committed with intent to injure the United States (a class E felony otherwise), and an offense under subsection (a)(6) is a class A felony.

CHAPTER 15—OFFENSES INVOLVING INTERNATIONAL AFFAIRS

SUBCHAPTER I—OFFENSES INVOLVING FOREIGN RELATIONS

§ 1501—Attacking a foreign power

Section 1501(a) makes it a class E felony to launch or carry on a military venture against a nation with which the United States is not at war. Section 1501(b) defines "military venture against a foreign power" for the purposes of this section. Section 1501(c) provides for Federal jurisdiction if the venture is launched from or organized in the United States.

§ 1502—Conspiracy against a foreign power

Section 1502(a) and makes it a class E felony for someone, when the United States is not at war with a foreign country, to conspire to damage a public facility of that foreign county (such as a railroad, canal, bridge or public utility) or to kill, injure or kidnap a foreign official. Section 1502(b) provides an affirmative defense of renunciation identical to that in § 1102(b). Section 1502(c) defines the term "voluntary and complete renunciation" for the purposes of § 1502(b).

§ 1503—Entering or recruiting for a foreign armed force

Section 1503(a) makes it a class E felony for someone in the United States to enlist in, or agree to enter, a foreign power's armed forces. It also prohibits someone in the United States from inducing another person to enter or agree to enter the armed forces of a foreign power.

Section 1503(b)(1) provides an affirmative defense to citizens of a foreign power at war with a country with which the United States is also at war. Section 1503(b)(2) provides a defense where the actor is a citizen of the foreign power and is recruiting persons who are not United States citizens.

Section 1503(c) provides an affirmative defense where both the recruit and the recruiter are citizens of the foreign power whose military the recruit has joined, if that foreign power is not at war with the United States.

§ 1504—Disclosing a foreign diplomatic code or communication

Section 1504(a) makes it a class E felony to communicate a code, information prepared in code, or information intercepted while being transmitted between a foreign government and its diplomatic mission in the United States, if the access to the code or information was obtained by a Federal public servant. Section 1504(b) provides for extraterritorial Federal jurisdiction.

§ 1505—Engaging in an unlawful international transaction

Section 1505(a) makes it a class E felony to violate: § 5(b) of the United Nations Participation Act of 1945 (relating to economic and communications sanctions of the United Nations Security Council); § 7(c) of the Neutrality Act of 1939 (relating to transactions involving securities of nations declared by the President to be at war with each other); § 38(c) of the Arms Export Control Act (relating to export and import of defense articles and services); § 5(b) of the Trading with the Enemy Act (relating to trade with an enemy of the

United States); § 16 of the Trading with the Enemy Act (relating to offenses); and § 6(b) of the Export Administration Act of 1969 (relating to export of prohibited goods and technology to certain nations).

Section 1505(b) makes it a class C felony for someone to violate § 206(b) of the International Emergency Economic Powers Act.

§ 1506—Violating neutrality by causing departure of a vessel or aircraft

This section makes it a class D felony for someone, during a war in which the United States is neutral, to cause a vessel or an aircraft to depart the United States; (1) if that vessel or aircraft is subject to a detention order issued under, or has no clearance order required by, Federal law controlling the delivery of military materials to belligerent foreign powers, or (2) if that vessel or aircraft is capable of service as a warship or warplane and may be used by a belligerent foreign power.

§ 1507—Definition for subchapter

This section defines the term "foreign power" as used in subchapter I.

SUBCHAPTER II—OFFENSES INVOLVING IMMIGRATION, NATURALIZATION, AND PASSPORTS

§ 1511—Unlawfully entering the United States as an alien

Section 1511(a) prohibits aliens from intentionally entering the United States at times and places other than those designated for entry, intentionally avoiding examination by an immigration officer, knowingly misrepresenting a material fact to obtain entry to the United States, knowingly entering the United States after having been previously deported, or knowingly using a forged or counterfeit document to enter the United States.

Section 1511(b) classifies the offense as: (1) a class D felony if the actor uses an immigrant or nonimmigrant visa, alien registration receipt card, or other document prescribed by law for entry into, or as evidence of an authorized stay in, the United States, if such document is counterfeited or forged or has been issued to another individual; (2) a class E felony in the case of an offense under subsection (a)(4) and in the case of a second or subsequent offense under subsection (a)(1), (2), or (3); and (3) a class B misdemeanor in any other instance.

Section 115(c) provides a defense to a prosecution under subsection (a)(4) that (1) the Attorney General, before the alien's reembarkation at a place outside of the United States or before the alien's application for admission from foreign contiguous territory, expressly consented to the alien's reapplying for admission to the United States; or (2) the alien had previously been deported under an order of exclusion and was not required by Federal law to obtain the advance consent of the Attorney General.

§ 1512—Smuggling an alien into the United States

Section 1512(a) punishes a person who brings into the United States an alien not admitted for entry or not lawfully entitled to enter the

United States. Section 1512(b) makes the offense a class C felony if the offsense is committed because of the payment of, or an agreement to pay, anything of value or if the alien intends to engage in felonious conduct in the United States. The offense is a class E felony in all other instances.

§ 1513—Hindering discovery of an alien unlawfully in the United States

Section 1513(a) prohibits (1) harboring or shielding from detection an alien who is unlawfully within the United States, or (2) transporting an alien unlawfully in the United States, if done with reckless disregard for the fact that the alien has been in the United States less than 3 years. Section 1513(b) classifies the offense as: (1) a D felony if committed because of payment of, or an agreement to pay, anything of value, or if the alien intends to engage in felonious conduct within the United States; (2) an E felony if committed with intent to aid the alien's employment; and (3) an A misdemeanor in all other instances. Section 1513(c) provides that merely employing an alien does not constitute harboring under this section.

§ 1514—Unlawfully employing an alien

This section makes it a class E felony for a farm labor contractor, someone who has failed to obtain a certification under the Farm Labor Contractor Registration Act of 1963, or someone whose certificate under that Act has been revoked, to violate § 6(f) of that Act (relating to obligations and prohibitions).

§ 1515—Fraudulently acquiring or improperly using evidence of citizenship

Section 1515(a) makes it a class D felony: (1) to use fraud to obtain naturalization, the documents necessary to provide permanent residence in the United States, or evidence of naturalization or citizenship; (2) to use written evidence of United States naturalization or citizenship that was unlawfully obtained; (3) to use written evidence of United States naturalization or citizenship that was issued to someone else; (4) to fail to surrender within 60 days a cancelled certificate of naturalization or citizenship; or (5) to sell or dispose of a declaration of intention to become a citizen or a certificate or other documentary evidence of naturalization or citizenship.

Section 1515(b) provides for extraterritorial jurisdiction.

§ 1516—Fraudulently acquiring or improperly using a passport

This section makes it a class D felony knowingly: (1) to use fraud to obtain the issuance of a passport; (2) to use a passport that was unlawfully obtained; or (3) to use a passport issued for another person's use. Section 1516(b) provides for extraterritorial jurisdiction over the offense.

§ 1517—Definitions for subchapter

This section defines "United States", "passport", "nonimmigrant visa", "immigration officer", "immigrant visa", "entry", "border crossing identification cards", "application for admission", "alien", and "citizen" for the purposes of subchapter II.

Chapter 17—Offenses Involving Government Processes

SUBCHAPTER I—OBSTRUCTION OF GOVERNMENT

§ 1701—Obstructing a government function by force

Section 1701(a) makes it a class A misdemeanor knowingly to use physical interference and thereby intentionally obstruct or impair: (1) the service or execution of process or a writ; (2) the performance of duties by an extradition agent; (3) the exercise of rights or the performance of duties under a court order; (4) the passage of the mail; (5) the execution of an arrest by a law enforcement officer; or (6) the performance of protection duties by the Secret Service.

Section 1701(b) defines the term "protection duties" for the purposes of the section.

Section 1701(c) provides a defense to interference with the making of an arrest where the arrest is illegal and in bad faith, and where the interference poses no significant risk of harm to any person.

Section 1701(d)(1) provides for Federal jurisdiction (1) where the process or order is that of a Federal court; (2) where the law enforcement officer is a Federal law enforcement officer; and (3) if a United States extradition agent, the United States mail, or the Secret Service is involved, anywhere within the general jurisdiction of the United States. Section 1701(d)(2) provides for extraterritorial jurisdiction when the actor is a United States national.

§ 1702—Impersonating an official

Section 1702 makes it a class E felony to impersonate a Federal public servant, or a foreign official, and assert the authority of such official or public servant, with the intent to alter the course of conduct of the person to whom the impersonation is made. Section 1702(b) provides that it is not a defense that the pretended capacity or authority did not, or could not, exist.

Section 1702(c)(1) provides for Federal jurisdiction where the official impersonated is a Federal official (as defined in § 101 of the proposed code). Section 1702(c)(2) provides for extraterritorial jurisdiction where the official impersonated is a Federal official.

§ 1703—Obstructing a Government inspection by fraud

Section 1703(a) makes it a class E felony to use fraud and thereby obstruct or impair the performance of duty by a government inspector. Section 1703(b) provides that no state of mind need be proved about the circumstance that the inspector's duty is imposed by law. Section 1703(c) provides for Federal jurisdiction where the inspector's duty is imposed by Federal law.

§ 1704—Obtaining a Government license by fraud

Section 1704(a) makes it a class E felony to use fraud and thereby obtain a license required by law for operating a business or profession. Section 1704(b) provides that no state of mind need be proved about the circumstance that the license is required by law. Section 1704(c) provides for Federal jurisdiction (including extraterritorial jurisdiction) where the license is required by Federal law.

§ 1705—Conspiracy to fraudulently obstruct a Government function

Section 1705(a) makes it a class D felony for 2 or more persons, with intent to obstruct or impair a government function, to agree to use fraud, if one of those persons intentionally engages in any conduct in furtherance of the intended obstruction or impairment.

Section 1705(b) provides for Federal jurisdiction if the government function involved is a Federal government function.

SUBCHAPTER II—OBSTRUCTION OF LAW ENFORCEMENT

§ 1711—Hindering law enforcement

Section 1711(a) prohibits intentionally hindering the apprehension of someone charged with a crime by means of (1) harboring or concealing that person, (2) providing that person with a weapon, disguise or other means of avoiding capture, (3) warning that person of impending apprehension, or (4) altering or destroying a record or other document. Section 1711(b) grades the offense on the basis of the seriousness of the crime for which the person is sought. The offense is classified as (1) a D felony if the other person's crime is a class A, B, or C felony and the actor knows the general nature of the crime, or is reckless with regard to its general nature; (2) and E felony if the other person's crime is a class D felony and (a) the actor knows, or is reckless with regard to, the general nature of the crime, or (b) the defendant committed the offense as consideration for the receipt, or in expectation of the receipt of, anything of pecuniary value; and (3) an A misdemeanor in any other instance.

Section 1711(f) provides that it is not a defense that a concealed object would have been privileged or otherwise inadmissible as evidence. Section 1711(b) provides that an express refusal to relinquish an object, or to reveal its contents, does not constitute concealment. Thus, while a person may not destroy, alter, or conceal the existence of a piece of evidence, the person need not relinquish it except when required to do so by a warrant or subpoena (in which case a failure to relinquish would constitute a contempt or other crime).

Section 1711(e) provides an affirmative defense where the person sought for the crime was warned solely to induce the person to comply with the law.

Section 1711(g) provides for Federal jurisdiction, including extraterritorial jurisdiction, where the crime for which the person is being sought is a Federal crime.

§ 1712—Misprison of a felony

This section prohibits any acts which result in the concealment of the commission of a felony from appropriate authorities. Section 1712(b) grades the offense according to the seriousness of the felony concealed.

Section 1712(d) provides an affirmative defense where the defendant learned of the commission of a felony through a privileged communication (e.g., an attorney through privileged communication with a client). Section 1712(e) provides for Federal jurisdiction, including extraterritorial jurisdiction, whenever the felony concealed is a Federal offense.

§ 1713—Aiding consummation of an offense

Section 1713(a) prohibits assisting another to dispose of the fruits of a crime and classifies the offense at one level below the class of the crime assisted. Section 1713(b) provides for Federal jurisdiction when the crime assisted is a Federal crime.

§ 1714—False implication of another

Section 1714(a) makes it a class A misdemeanor to make a statement falsely accusing another of a crime, when that statement is given under circumstances that render taking a written or recorded statement impracticable. Section 1714(b) provides that it is not necessary to prove a state of mind about the existence of circumstances that make taking a written or recorded statement impractical.

Section 1714(c) defines "recorded" for the purposes of the section, and § 1714(d) provides for Federal juridiction, including extraterritorial jurisdiction, when the law enforcement officer is a Federal law enforcement officer.

§ 1715—Failing to appear as a defendant

This section prohibits (1) a person on bail from failing to appear when required to do so by the conditions of release, and (2) a convicted defendant from failing to surrender for service of sentence.

Section 1715(b) grades the offense according to the offense with which the defendant is charged, and to whether the defendant has been convicted. The offense is classified as (1) a D felony if the person was released in connection with a charge of a class A, B, C, or D felony or while awaiting sentence, pending surrender for service of sentence, or pending review of sentence after conviction of any crime; (2) an E felony if the person was released in connection with a charge of a class E felony; and (3) an A misdemeanor in any other instance. Section 1715(c) provides an affirmative defense that the defendant's failure to appear was due to uncontrollable circumstances not caused by the defendant's own behavior.

§ 1716—Escape

Section 1716(a) makes it an offense to knowingly escape from official detention or to fail to return to official detention following temporary leave. Section 1716(b) classifies the offense as (1) a D felony if the actor was in detention as a result of an arrest for a felony or pursuant to a conviction for an offense, and (2) an A misdemeanor in any other instance.

Section 1716(c)(1) provides a defense for escape from custody (other than custody in a detention facility) where the custody was illegal and in bad faith, and where no substantial risk of harm was created by the escape. Section 1716(c)(2) provides an affirmative defense, which is new, where the "escape" constitutes a failure to return from leave, if the failure is due to circumstances beyond the defendant's control and the defendant did not contribute to the creation of those circumstances.

Section 1716(d) provides for Federal jurisdiction, including extraterritorial jurisdiction, when the escape is from Federal custody.

§ 1717—Providing or possessing contraband in prison

Section 1717(a)(1) prohibits providing an inmate of a detention facility with contraband or introducing contraband into a detention facility. Section 1717(a)(2) prohibits an inmate of a detention facility from possessing contraband.

Section 1717(b) grades the offense according to the nature of the contraband involved ranging from a class C felony if the contraband is a firearm to a class B misdemeanor if the contraband is an object prohibited by a rule. Section 1717(c) provides for Federal jurisdiction, including extraterritorial jurisdiction, when the detention facility is a Federal detention facility.

§ 1718—Flight to avoid prosecution or appearance as a witness

This section prohibits interstate flight to avoid prosecution for a state felony or appearance as a witness. Section 1718(b) classifies the offense as a D felony where the defendant has already been convicted of the State crime, and an E felony otherwise.

Section 1718(d) requires certification by the Attorney General for certain prosecutions under this section, and § 1718(e) provides for Federal jurisdiction if a State or United States boundary is crossed in the commission of the offense.

§ 1719—Definitions for subchapter

This section defines the term "official detention" as used in subchapter II.

SUBCHAPTER III—OBSTRUCTION OF JUSTICE

§ 1721—Witness bribery and graft

Section 1721(a)(1) makes it a class C felony to offer or give anything of value to a person in order to influence or reward that person for various forms of conduct that affect the person's testifying as a witness. Section 1721(a)(2) makes it a class C felony to accept or solicit anything of value with the motive to be so rewarded or influenced, or with the knowledge that the gift is intended to so reward or influence.

Section 1721(b) precludes 2 defenses: (1) that proceedings were not pending; and (2) that the testimony or evidence to have been presented would have been privileged or otherwise inadmissible.

Section 1721(c) provides for Federal jurisdiction, including extraterritorial jurisdiction, when the witness was to testify at a Federal official proceeding.

§ 1722—Informant bribery and graft

Section 1722(a)(1) makes it a class C felony to offer or give anything of value to a person in order to influence or reward that person with regard to hindering, delaying, or preventing the communication to a law enforcement officer of information regarding an offense. Section 1722(a)(2) makes it a class C felony to accept or solicit anything of value with the motive of so hindering, delaying or preventing, or with the knowledge that it is given with the intent to reward or influence the person with regard to so hindering, delaying or preventing.

Section 1722(b) provides for Federal jurisdiction when the information is to be conveyed to a Federal public servant and involves a Federal offense.

§ 1723—Tampering with a witness or informant

Section 1723(a) makes it a class D felony to use force, threats or fraud with intent to (1) influence another person's testimony in an official proceeding; (2) cause another person to withhold testimony or a document from such a proceeding or to engage in conduct constituting tampering with physical evidence (§ 1725), failure to appear as a witness (§ 1732), refusing to produce information (§ 1733), or refusing to testify (§ 1734), or to evade legal process; or (3) hinder or delay the communication to a law enforcement officer of information about a possible offense.

Section 1723(b) provides an affirmative defense to a prosecution for seeking to influence another's testimony if the actor engaged solely in lawful conduct, and the actor's purpose was to induce the witness to testify truthfully.

Section 1723(c) provides Federal jurisdiction, including extraterritorial jurisdiction, when (1) the official proceeding in which the testimony is to occur is a Federal official proceeding or (2) the offense to which the information relates is a Federal offense and the information is to be communicated to a Federal law enforcement officer.

§ 1724—Retaliating against a witness or informant

Section 1724(a)(1) prohibits intentionally injuring a person or damaging a person's property with the intent to punish any person for acting as a witness in an official proceeding or for giving information regarding a crime to a law enforcement officer. Section 1724(a)(2) parallels § 1724(a)(1) where the injury was not damage to tangible property but instead was economic loss to a person or a person's business or profession. However, conduct consisting of public criticism is exempted from § 1724(a)(2).

Section 1724(b) classified the offense as an E felony when the injury is to a person or tangible property and as an A misdemeanor otherwise. Section 1724(c) provides for Federal jurisdiction, in the case of witnesses, when the official proceeding is a Federal official proceeding, and in the case of informants, when the information concerns a Federal crime and was given to a Federal law enforcement officer.

§ 1725—Tampering with physical evidence

This section makes it a class E felony to alter, destroy, or mutilate any object, or to engage in conduct (other than possessing something or omitting an act) which results in an object being concealed, if done with intent to interfere with the object's use in an official proceeding.

Section 1725(b) provides an affirmative defense when the object destroyed would not have been material to the official proceeding. Inadmissibility, however, is not otherwise a defense (§ 1725(c)).

Section 1725(d) defines the meaning of the term "conceals" for the purpose of the section, and § 1725(e) defines "material" for the purposes of the section.

Section 1725(f) provides for Federal jurisdiction when the official proceeding is a Federal official proceeding.

§ 1726—Communicating with a juror

This section makes it a class B misdemeanor to communicate with a juror with the intent to influence that juror. Section 1726(b) provides an affirmative defense where the communication is a request to appear before a grand jury. Section 1726(c) provides Federal jurisdiction when the juror is a Federal juror.

§ 1727—Monitoring jury deliberations

This section makes it a class B misdemeanor for anyone to record deliberations of a jury or for a nonjuror to listen to such deliberations. Section 1727(b) provides a defense where a juror is taking notes in order to assist in the performance of his or her duties as a juror. Section 1727(c) provides for Federal jurisdiction when the jury is a Federal jury.

§ 1728—Demonstrating to influence a judicial proceeding

Section 1728(a) makes it a class B misdemeanor for someone, with intent to influence a judge, juror, or witness in the performance of that person's duties in an official proceeding, knowingly to picket or demonstrate (1) in a courthouse, (2) on the grounds of, or within 30 meters of a courthouse, after being advised that such conduct is unlawful, or (3) in or on the grounds of a building used by a judge, juror or witness, or within 30 meters of such a building (after being advised that such conduct is an offense).

Section 1728(b) provides a defense for demonstrations near a courthouse when they are peaceable and nondisruptive and occur more than one-half hour before or after the proceedings in question. Section 1728(c) provides for Federal jurisdiction when the judicial proceeding is a Federal judicial proceeding.

§ 1729—Obstruction of official proceeding by fraud

Section 1729(a) makes it a class D felony to interfere by fraud with the due administration of justice, the due administration of a law under which an official proceeding is being conducted, or the Congressional power of inquiry.

Section 1729(b) provides a defense where the actor was asserting constitutional rights, or where the actor was an attorney ethically representing a cilent's interests. Section 1729(c) provides for Federal jurisdiction, including extraterritorial jurisdiction, when the proceeding is a Federal proceeding.

§ 1730—Definition for subchapter

This section defines "anything of value" for the purposes of subchapter III.

SUBCHAPTER IV—CONTEMPT OFFENSES

Introduction

Current law does not punish contempt as a crime, and a contemnor suffers none of the collateral consequences of a conviction for a crime. Although contempt proceedings have on occasion been instituted by indictment, the power to punish contempt lies essentially with the court. Subchapter IV divides the current contempt power of the courts into two categories. First, § 1731 continues the courts' power over

criminal contempt. Second, §§ 1732, 1733, 1734, and 1735 make into criminal offenses certain conduct that the Subcommittee considered to be particularly harmful to the administration of justice, and which is currently punishable as contempt.

§ 1731—Criminal contempt

Section 1731(a) restates the types of contempt punishable with criminal sanctions: misbehavior in the court's presence or so near as to be disruptive; misbehavior of an officer of the court in an official transaction; and disobedience of a lawful writ, process, or order. Section 1731(a) provides that a punishment for contempt under this section does not bar subsequent prosecution for a crime (other than a contempt defined in this subchapter) based on the same conduct.

Section 1731(b) provides bars to prosecution when the order disobeyed was (1) a constitutionally invalid order; or (2) an otherwise invalid order, and the alleged contemnor was unable to obtain the order within a reasonable period of time. Section 1731(a) provides that the court may not impose upon a contemnor a prison sentence of more than five days, or a fine of more than $500, or both.

§ 1732—Failing to appear as a witness

Section 1732(a) makes it a class A misdemeanor to disobey an order by failing to appear at a specified time and place, by failing to remain at a specified place where the actor is to appear as a witness, and by refusing to be sworn as a witness, when conduct is connected with an official proceeding.

Section 1732(b) provides a defense (1) when the failure to appear was due to circumstances beyond the actor's control, and to which the actor did not contribute, or (2) when the actor complies with the order before the proceedings are substantially affected by the actor's noncompliance. Section 1732(c) provides for Federal jurisdiction, including extraterritorial jurisdiction, where the official proceeding is a Federal official proceeding.

§ 1733—Refusing to produce information

Section 1733(a) makes it a class A misdemeanor to fail to comply with an order to produce pertinent information in a Congressional inquiry, or with an order to produce any information at any other official proceeding.

Section 1733(b) (1) and (2) provide affirmative defenses where the actor was privileged to refuse to produce the evidence, or where the evidence was immaterial to the proceeding. Section 1733(b)(3) provides defenses identical to those discussed in connection with § 1732.

Section 1733(c) provides for Federal jurisdiction, including extraterritorial jurisdiction, when the official proceeding is a Federal official proceeding.

§ 1734—Refusing to testify

Section 1734(a) prohibits failing to comply with an order to testify regarding a matter pertinent to a Congressional inquiry, or with an order to testify regarding any matter at any other official proceedings. Section 1734(b) classifies the offense as an E felony if committed after a grant of immunity, and as a A misdemeanor in any other case.

Section 1734(c) sets forth defenses and affirmative defenses that are identical with those discussed in § 1733. Section 1734(e) provides for Federal jurisdiction, including extraterritorial jurisdiction, when the official proceeding is a Federal official proceeding.

§ 1735—Disobeying a judicial order

This section prohibits disobeying or resisting a temporary restraining order, preliminary injunction, or final order other than an order for the payment of a fine. The offense is a class A misdemeanor, except that the court may assess any fine deemed appropriate.

Section 1735(b) provides a defense when the order in question was constitutionally invalid, or was otherwise invalid and the actor did not have a reasonable opportunity to seek review of the order. Section 1735(c) provides for Federal jurisdiction when the order is of a court of the United States.

§ 1736—Certification for prosecution of offenses under §§ 1732 through 1735

Current law requires certification by Congress prior to a prosecution for contempt of Congress. Although it appears that criminal contempts of court have on occasion been prosecuted by indictment, Rule 42 of the Federal Rules of Criminal Procedure requires notice and an order to show cause from the court. Thus, contempt proceedings under current law appear to be largely in the control of the court. Since the conduct proscribed by all of the offenses in subchapter IV would be considered contempt under current law, the Subcommittee believes it appropriate to apply the certification requirement to all subchapter IV offenses.

Section 1736(e) provides that a failure to comply with the certification requirement is a bar to prosecution.

§ 1737—General provisions for subchapter

Section 1737(a) defines "official proceeding" for the purposes of subchapter IV. Section 1737(b) sets forth for the purposes of subchapter IV rules to determine whether a particular matter was material to the official proceeding. Section 1737(c) provides that questions of materiality and privilege are questions of law.

SUBCHAPTER V—PERJURY, FALSE STATEMENTS, AND RELATED OFFENSES

§ 1741—Perjury

Section 1741(a) makes it a class D felony to make, under oath or equivalent affirmation, a material false statement, or to affirm a previously made material false statement.

Section 1741(b) provides for Federal jurisdiction, including extraterritorial jurisdiction, when the statement is made in a Federal official proceeding.

§ 1742—Making a false statement

Section 1742(a)(1) makes it a class A misdemeanor for someone, in a government matter, to: (1) make a false material written or recorded statement; (2) omit information from such a statement and thereby cause a material portion of that statement to be misleading or conceal a material fact and thereby intentionally create a false impres-

sion in that statement; (3) submit, with intent to mislead, a material writing or recording that is false, forged, or lacking in authenticity; (4) submit, with intent to mislead, a specimen or other object that is misleading in a material respect; or (5) use a trick, scheme or device with intent to mislead in a material respect.

Section 1742(a)(2) makes it a class A misdemeanor for an agent of a credit institution to engage in any of the above conduct with intent to deceive or harm the government or a person. Section 1742(a)(3) makes it a class A misdemeanor for someone to engage in any of the foregoing conduct with respect to a statement intended to influence the action of a credit institution.

Section 1742(b) provides that no state of mind need be proved regarding the materiality of the false statement, and § 1742(c) defines "recording" for the purposes of the section.

Section 1742(d) provides Federal jurisdiction (1) when the government matter is a Federal government matter; (2) when the government matter is not Federal, but the statement is that the declarant is a United States citizen; and (3) where the credit institution is a national credit institution.

§ 1743—Tampering with a government record

Section 1743(a) makes it a class E felony to alter, destroy, mutilate, conceal or remove a government record with the intent to impair the ability of the government to use the information contained in the record. Section 1743(b) permits the court to disqualify from Federal office for up to 5 years anyone convicted of committing this offense while a Federal public servant.

Section 1743(c) provides for Federal jurisdiction, including extraterritorial jurisdiction, when the government record is a Federal government record.

§ 1744—False statements about emergencies

Section 1744(a) makes it a class A misdemeanor to cause a false alarm of emergency to be transmitted to an organization that deals with such an emergency. Section 1744(b)(1) provides for Federal jurisdiction when the offense occurs in the special jurisdiction of the United States, or where the organization is a Federal organization. Section 1744(b)(2) provides for extraterritorial jurisdiction when the organization is a Federal organization and the actor is a United States national.

§ 1745—General provisions for subchapter

Section 1745(a) defines "national credit institution", "credit institution record", "government matter", "government record", "statement", and "official proceeding" for the purposes of subchapter V.

Section 1745(b) sets forth various proof rules regarding prosecutions under the subchapter. Section 1745(b)(1) provides that the testimony of one person, absent corroboration, is insufficient proof of falsity. Section 1746(b)(2) sets forth rules for determining materiality. Section 1746(b)(3) provides that a perjury conviction may not be based on the making of 2 irreconciably inconsistent statements. Section 1746(b)(4) makes the determination of the materiality of a statement a question of law.

Section 1746(c) provides a defense to a prosecution for perjury that the actor retracted the false statement before the statement substantially affected the proceeding, and before it became apparent to the actor that the falsity would be exposed.

Section 1746(d) provides that it is not a defense to a prosecution for perjury that the oath was administered or taken in an irregular manner, or that the declarant was making a statement beyond the declarant's authority.

SUBCHAPTER VI—OFFICIAL CORRUPTION AND INTIMIDATION

Introduction

Official corruption is currently prosecuted under a number of different sections of current law. For example, 18 U.S.C. 201 prohibits bribery and the exchange of "illegal gratuities" involving Federal public servants. The Travel Act (18 U.S.C. § 1952) has been used to prosecute bribery involving State and local public servants. These sections of current law are replaced entirely by this subchapter and other proposed new offenses. A number of other current law offenses prohibit specific types of official corruption. See, e.g., 18 U.S.C. §§ 203–211. The most serious behavior proscribed by these offenses is covered by various sections in this subchapter, but many of these offenses are reenacted in Title II of the bill in order to continue the proscription of minor forms of official corruption.

§ *1751—Bribery*

Section 1751(a) makes it a class C felony to: (1) offer anything of pecuniary value to a public servant with intent to influence that public servant regarding a particular official action or the violation of a particular legal duty; or (2) solicit or receive a gift because of an official action to be taken, or a public duty to be violated, or to solicit or receive a gift that the recipient knows is being given in order to influence the recipient.

Section 1751(b) requires that, prior to a prosecution of a State or local public servant, the Attorney General (or an Assistant Attorney General designated by the Attorney General) certify that (1) there is no pending State prosecution and the state has indicated an unwillingness or lack of interest in instituting such prosecution; or (2) the state has requested Federal prosecution.

Section 1751(c)(1) provides for Federal jurisdiction when the offence is committed within the special jurisdiction of the United States, or when the official duties involved are those of a Federal, State or local public servant. Section 1751(c)(2) provides for extraterritorial jurisdiction when the official duties involved are those of a Federal public servant.

§ *1752—Graft*

Section 1752(a) makes it a class E felony to (1) offer anything of pecuniary value to a public servant with intent to reward that public servant regarding a particular official action or the violation of a particular duty, or (2) solicit or receive a gift because of action taken, or an official duty violated, or to solicit or receive a gift that the recipient knows is being given in order to reward the recipient.

Section 1752(b) requires a certification in order to bring certain prosecutions and is identical to § 1751(b). Section 1752(c) provides for Federal jurisdiction in the same manner as § 1751(c).

§ 1753—Trading in Government assistance

Section 1753(a) makes it a class E felony to offer or give a public servant anything of pecuniary value with intent to obtain advice or other forms of assistance concerning a matter which is to become subject to the public servant's official duties. It does not require any intent to influence the public servant in the performance of those duties. The section also prohibits public servants from receiving anything of value given in the circumstances described above.

Section 1753(b) provides for Federal jurisdiction when the public servant is a Federal public servant.

§ 1754—Trading in special influence

Section 1754(a) makes it a class E felony to offer or pay anything of pecuniary value to another person in order to cause the second person to exercise "special influence" on a public servant. It also prohibits a person from soliciting or receiving a payment of anything of pecuniary value when motivated by a desire to cause that person to exercise "special influence" on a public servant. Section 1754(b) defines "special influence" as influence due to marriage, kinship, or position as a public servant or party official.

Section 1754(c) requires a certification in order to bring certain prosecutions and is identical to § 1751(b).

Section 1754(d)(1) provides for Federal jurisdiction when the public servant is a Federal, State or local public servant. Section 1754(d)(2) provides for extraterritorial jurisdiction when the public servant is a Federal public servant.

§ 1755—Trading in public office

This section makes it a class E felony to offer or pay anything of pecuniary value to another person in order to obtain assistance by a public servant in securing employment as a public servant. It also prohibits any person from soliciting or receiving a payment of anything of pecuniary value, if that person knows that the payment is motivated by a desire to obtain assistance from a public servant in securing employment as a public servant.

Section 1755(b) provides for Federal jurisdiction, including extraterritorial jurisdiction, when the employment sought is that of a Federal public servant.

§ 1756—Speculating on official action or information

Section 1756(a) makes it a class A misdemeanor for a public servant, for a period of up to one year after termination of public service, to use "inside information" (i.e., information obtained solely because of the actor's capacity as a public servant) in an effort to gain pecuniarily by acquiring an interest in property or in an enterprise that would be affected by the inside information. It also prohibits such persons from supplying the information to someone else with intent to aid that person to use it in such circumstances.

Section 1756(b) provides for Federal jurisdiction, including extraterritorial jurisdiction, if the public servant is a Federal public servant

or the agency from which the information is obtained is a Federal agency.

§ *1757—Tampering with a public servant*

Section 1757(a)(1) makes it a class E felony to use force, a threat, or intimidation with intent to influence a public servant in the performance of an official action or legal duty.

Section 1757(a)(2) makes it a class E felony to communicate (1) threats of violence against the President or Vice-President under circumstances in which the threat may reasonably be understood as an expression of serious purpose; or (2) false information that such an act of violence is imminent.

Section 1757(b) provides an affirmative defense to a prosecution under subsection (a)(1) when the actor was threatening lawful conduct with intent to compel the public servant to act properly.

Section 1757(c) provides Federal jurisdiction for subsecton (a)(1) when the pubic servant is a Federal public servant and for subsection (a)(2) when the offense occurs within the general or special jurisdiction of the United States. Section 1757(d) provides for extraterritorial jurisdiction when the public servant is a Federal public servant.

§ *1758—Retaliating against a public servant*

This section makes it a class E felony to cause bodily injury to any person, or to damage any person's property, as punishment for the actions of a public servant or for such public servant's status as a public servant.

Section 1758(b) provides for Federal jurisdiction, including extraterritorial jurisdiction, when the public servant is a Federal public servant.

§ *1759—Acts affecting personal financial interest*

Section 1759(a) makes it a class E felony for a public servant or a Federal Reserve Bank director, officer, or employee personally and substantially to participate in an official action relating to a matter in which that person, or a "related person", has a financal interest. Section 1759(b) defines "related person" for the purposes of the section.

Section 1759(c)(1) provides a bar to prosecution where the actor notified the appropriate officials, made a full disclosure of the actor's financial interest, and received in advance a written determination that the actor's financial interest was not so substantial as to be likely to affect the integrity of the actor's services. Section 1759(c)(2) provides a bar to prosecution where a general rule published in the Federal Register exempts the financial interest involved from the bar because the interest is too remote or inconsequential to affect the integrity of the actor's services.

Section 1759(e)(1) provides for Federal jurisdiction where the actor is a Federal public servant in the Executive Branch or an independent agency or a District of Columbia public servant. Section 1759(e)(2) provides for federal jurisdiction where the actor is a Federal Reserve Bank director, officer, or employee and the offense is committed within the general or special jurisdiction of the United States.

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§ 1760—Compensation to Federal public officials and others in matters affecting the Government

Section 1760(a) makes to a class E felony for a public servant to receive compensation for any services rendered in connection with any matter in which the United States is a party or has a substantial interest. It also prohibits any person from offering compensation for that purpose.

Section 1760(b) provides a bar to prosecution for special government employees, unless (1) the special government employee is personally and substantially involved in the disposition of the matters, or (2) the matter is pending before the department or agency in which the special government employee is serving and the special government employee has been so serving for more than 60 days.

Section 1760(c) provides for Federal jurisdiction when the public servant is a Federal or District of Columbia public servant.

§ 1761—Foreign corrupt practices offense

This section makes it a class D felony for someone to violate section 104(b) of the Foreign Corrupt Practices Act of 1978, which relates to foreign corrupt practices by domestic concerns.

§ 1762—General provisions for subchapter

Section 1762(a) defines "anything of pecuniary value", "political party official", and "official action" for the purposes of subchapter VI.

Section 1762(b) provides that it is not a defense to a prosecution for an offense set forth in subchapter VI that the recipient of a bribe or illegal gift lacked the authority to perform the official action in question.

SUBCHAPTER VII—POSSE COMITATUS OFFENSE

§ 1771—Use of armed services as posse comitatus

Section 1771(a) makes it a class E felony intentionally to use the Army, Navy, Air Force or Marine Corps as a posse comitatus or otherwise to execute the law.

Section 1771(b) permits the Attorney General to request assistance from the armed services for the purpose of investigating a specified offense whose victim is the President, Vice President or the person next in order of succession, President-elect, Vice President-elect, or a federally protected foreign individual (a term defined in § 101 of the proposed code). The offenses specified are those in subchapter I (homicide offenses), II (assault offenses), or III (kidnapping and related offenses) of chapter 23 of the proposed code.

CHAPTER 19—OFFENSES INVOLVING REVENUE

SUBCHAPTER I—INTERNAL REVENUE OFFENSES

§ 1901—Tax evasion

Section 1901(a)(1) makes it a class D felony to violate the following sections of the Internal Revenue Code of 1954: 7201 (relating to attempt to evade or defeat tax), 7202 (relating to willful failure to collect or pay over tax), or 7214 (relating to offenses by officers and employees of the United States).

Section 1901(b) covers less serious tax evasions. Section 1901(b)(1)(A) makes it an offense to violate the following sections of the Internal Revenue Code of 1954: 7206 (relating to fraud and false statements), and 1902(b)(2)(A) makes this offense a class E felony. Section 1901(b)(1)(B) makes it an offense to violate § 7212 of the Internal Revenue Code of 1954 (relating to attempts to interfere with administration of the Internal Revenue laws). Section 1901(b)(2)(B) makes this offense a class A misdemeanor if only threats of force are used and a class E felony otherwise.

§ 1902—Disregarding a tax obligation

Section 1902(a) makes it a class A misdemeanor to violate § 7203 (relating to willful failure to file a return, supply information, or pay a tax) or § 7204 (relating to fraudulent statement or failing to make a statement to employees) of the Internal Revenue Code of 1954.

Section 1902(b) makes it a class B misdemeanor to violate § 7205 of the Internal Revenue Code of 1954 (relating to fraudulent withholding exemption certificate or failure to supply information).

Section 1902(c) makes it a class A misdemeanor to violate § 7215 of the Internal Revenue Code of 1954 (relating to offenses with respect to collected taxes).

§ 1903—Alcohol and tobacco tax offenses

Section 1903(a) makes it a class D felony to violate any of the following sections of the Internal Revenue Code of 1954: § 5601(a) (relating to criminal penalties with respect to distilling, rectifying, and distilled and rectified products), § 5602 (relating to penalty for tax fraud by distiller), § 5603(a) (relating to penalty relating to records, returns, and reports), § 5607 (relating to penalty and forfeiture for unlawful use, recovery, or concealment of denatured distilled spirits, or articles), § 5661(a) (relating to penalty and forfeiture for violation of laws and regulations relating to wine), § 5671 (relating to penalty and forfeiture for evasion of beer tax and fraudulent noncompliance with requirements), or § 5604(a) (relating to penalties relating to stamps, marks, brands, and containers).

Section 1903(b) makes it a class E felony to violate any of the following sections of the Internal Revenue Code of 1954: § 5605 (relating to penalty relating to return of materials used in the manufacture of distilled spirits, or from which distilled spirits may be recovered), § 5608 (relating to penalty and forfeiture for fraudulent claims for export drawback or unlawful relanding), § 5682 (relating to penalty for breaking locks or gaining of access), § 5691(a) (relating to penalties for nonpayment of special taxes relating to liquor), or § 5762(a) (relating to criminal penalties with respect to cigars, cigarettes, and cigarette papers and tubes).

SUBCHAPTER II—SMUGGLING

§ 1911—Smuggling

Section 1911(a)(1) punishes a person who knowingly introduces into the United States an object whose introduction is prohibited absolutely, or is prohibited conditionally and all the conditions have not been met. Section 1911(a)(2) prohibits evading the assessment or

payment of a customs duty, and section 1911(a)(3) prohibits evading the examination by the Government of an object being introduced into the United States.

Section 1911(b) classifies the offense as a D felony if the value of the smuggled object or the duty owed exceeds $500; as an E felony if the object, regardless of its value or the duty owed upon it, is prohibited because it may cause, or may be used to cause, bodily injury or property damage; as an A misdemeanor if the value of the object or the duty owed is between $100 and $500; as a B misdemeanor in any other case in which duty would have been owed; and as a C misdemeanor in any other instance.

§ 1912—Trafficking in smuggled property

Section 1912 makes it an offense to traffic in an object which the actor knows was smuggled into the United States. The offense is graded using the grading scheme of § 1911(b).

§ 1913—Receiving smuggled property

Section 1913(a) prohibits the purchase, receipt or possession of property which the actor knows was smuggled into the United States. A violation of § 1913 is graded at one level below a violation of § 1911 involving objects of the same nature or value.

Section 1913(b) provides a defense to prosecution where the defendant acted with intent to transfer the object to the Customs Service or to another law enforcement agency.

§ 1914—General provisions for subchapter

This section defines "customs territory of the United States", "introduce", "object", and "value" for the purposes of subchapter II.

SUBCHAPTER III—CONTRABAND CIGARETTES

§ 1921—Trafficking in contraband cigarettes

This section makes the sale, possession, or distribution of cigarettes that are declared contraband by Public Law 95–575 a class D felony.

§ 1922—Unlawful conduct relating to contraband cigarettes

This section makes it a class E felony to make a false statement in records and documents required to be kept by 18 U.S.C. § 2343 (as reenacted in Title II of the bill), or to violate a regulation issued under 18 U.S.C. §§ 2343 and 2346 (as reenacted in Title II of the bill).

CHAPTER 21—OFFENSES INVOLVING INDIVIDUAL RIGHTS

SUBCHAPTER I—OFFENSES INVOLVING CIVIL RIGHTS

§ 2101—Interfering with civil rights

Section 2101(a)(1) prohibits a person acting under color of law from intentionally engaging in any conduct and thereby recklessly depriving another person of a right or privilege secured by the Constitution or laws of the United States. Section 2101(a)(2) makes it a crime for someone intentionally to injure or threaten another person in the free exercise or enjoyment of, or because that person has exercised, a right, privilege or immunity secured by the Constitution or laws of the United States.

Section 2101(b) classifies the offense as: (1) a class A felony if the actor intends to produce bodily injury and recklessly causes the death of another; (2) a class C felony if the actor intentionally causes bodily injury to another; and (3) a class A misdemeanor in any other instance.

§ *2102—Interfering with civil rights under color of law*

Section 2102 makes it an offense for someone acting under color of law to violate certain specified sections of the proposed code. The punishment under § 2102 will be the same as that provided by the referenced section involved. Thus, for example, § 2102 would make it an offense for someone acting under color of law to engage in conduct constituting murder as defined in § 2301 of the proposed code. If convicted, that person would be punished as provided in § 2301.

§ *2103—Interfering with a Federal benefit*

Section 2103(a) makes it an offense to use force or threats and thereby to injure or interfere with another person because that person is or has been, or with intent to intimidate any person from, engaging in 6 specified activities. The activities specified are:

(1) Applying for, participating in, or enjoying a benefit, service, facility, or activity provided by, administered by, or wholly or partly financed by the United States;

(2) Applying for or enjoying employment, or a perquisite of employment, by a federal agency;

(3) Serving as a juror in Federal court;

(4) Voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher or other election official, in a primary, general, or special election;

(5) Affording others the opportunity to participate, or protection in order to participate, in any of the above activities; and

(6) Aiding or encouraging others to participate in any of the above activities.

Section 2103(b) provides that the offense is a class A felony if the actor intends to produce bodily injury and recklessly causes the death of another person, a class C felony if the actor intentionally causes bodily injury, and a class A misdemeanor in any other instance.

§ *2104—Unlawful discrimination*

Section 2104(a) makes it an offense to use force or threats of force and thereby intentionally to interfere with another person: (1) because of that person's race, color, sex, religion, or national origin and because that person is or has been, or with intent to intimidate any person from, engaging in certain specified activities; or (2) because that person is or has been, or with intent to intimidate any person from, affording another person the opportunity to participate in such activities on a nondiscriminatory basis or aiding another person to participate in the specified activities on a nondiscriminatory basis. The specified activities are:

(1) Applying for, participating in, or enjoying a benefit, service, facility, or activity provided or administered by a State or locality;

(2) Applying for or enjoying employment, or a perquisite of employment, by a State or local government agency;

(3) Serving as a juror in a State or locality;
(4) Enrolling in or attending a public school or college;
(5) Applying for or enjoying the goods, services, privileges, facilities or accommodations of:

(*a*) An establishment providing lodging to transient guests;

(*b*) A restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility that serves the public and that is principally engaged in selling food or beverages for consumption on the premises;

(*c*) A gasoline station;

(*d*) A motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment that serves the public; or

(*e*) Any other establishment that serves the public, that is located within the premises of an establishment described in (5) or that has located within its premises such an establishment, and that holds itself out as serving patrons of such an establishment;

(6) applying for or enjoying the services, privileges, facilities, or accommodations of a common carrier utilizing any kind of vehicle;
(7) traveling in or using a facility of interstate commerce;
(8) applying for or enjoying employment, or a perquisite of employment, by a private employer, or joining or using the services or advantages of a labor organization, hiring hall, or employment agency; and
(9) selling, purchasing, renting, financing, or occupying a dwelling; contracting or negotiating for the sale, purchase, rental financing or occupation of dwelling; or applying for or participating in a service, organization or facility relating to the business of selling or renting dwellings.

Section 2104(b) classifies the offense as an A felony if the actor intends to produce bodily injury and recklessly causes the death of another person, a C felony if the actor intentionally causes bodily injury, and an A misdemeanor in any other instance.

Section 2104(c) provides a defense to a prosecution where the specified activity relates to the use of an establishment that provides lodging to transient guests and: (1) the defendant is the proprietor, or an agent of the proprietor, of the establishment involved; (2) the establishment is located within a building which contains not more than 5 rooms for rent or hire; and (3) the building is occupied by the proprietor as the proprietor's residence.

§ 2105—Interfering with speech or assembly related to civil rights activities

Section 2105(a) makes it an offense for someone knowingly to use force or threats and thereby intentionally to interfere with another person because that person is or has been, or with intent to intimidate that person or any person from, participating in speech or assembly opposing a denial of the opportunity to participate in certain specified activities. The specified activities are those described in §§ 2103 and 2104 of the proposed code.

Section 2105(b) classifies the offense as an A felony if the actor intends to produce bodily injury and recklessly causes the death of another person, a C felony if the actor intentionally causes bodily injury, and an A misdemeanor in any other instance.

§ *2106—Deprivation of relief benefit*

Section 2106(a) makes it a class A misdemeanor for someone to deprive or threaten to deprive another person of any employment, compensation, or other benefit because of political affiliation, race, color, sex, religion or national origin. Section 2106(b) provides for Federal jurisdiction if the employment, compensation, or other benefit is made possible, in whole or part, by Federal funds.

§ *2107—Strikebreaking*

This section makes it a class A misdemeanor for someone intentionally to obstruct or interfere with peaceful picketing or with collective bargaining rights of employees by means of force or threats. Section 2106(b) provides for Federal jurisdiction when a person moves across a State or United States boundary in the commission of the offense.

SUBCHAPTER II—OFFENSES INVOLVING POLITICAL RIGHTS

§ *2111—Obstructing an election*

Section 2111 makes it a class E felony for someone to: (1) obstruct or attempt to obstruct the lawful conduct of a Federal election; (2) offer, make or agree to make a "significant payment" (as defined in § 2118) to or on behalf of another, with intent to influence the other's vote in a Federal election; and (3) solicit, accept, or agree to accept a "significant payment" because of the actor's vote in a Federal election.

§ *2112—Obstructing registration*

Section 2112 makes it a class E felony for someone to: (1) offer, make, or agree to make a "significant payment" (as defined in § 2118) to or on behalf of another, with intent to influence the other's registering to vote in a Federal election; (2) solicit, accept, or agree to accept a "significant payment" because of the actor's registering to vote in a Federal election; and (3) give false information with intent to establish eligibility to vote in a Federal election.

§ *2113—Manipulating a Federal benefit for a political purpose*

Section 2113(a) makes it a class E felony for someone to grant, withhold, or deprive a person of the benefit of a government program or contract, or threaten to do so, with intent to interfere with another person's right to vote in an election. Section 2113(b) provides for Federal jurisdiction if the program is a Federal, or federally-supported, program, or if the contract is a Federal government contract.

§ *2114—Manipulating employment or other benefit for political contribution*

Section 2114(a) makes it a class A misdemeanor for someone to grant, withhold, or deprive another of any government work, payment or benefit, or threaten to do so, and thereby cause the other person to make a political contribution. Section 2114(c) provides for Federal

jurisdiction when the government work, payment or benefit is Federal or federally-supported.

§ 2115—Misusing authority over personnel for a political purpose

This section makes it a class A misdemeanor for a Federal public servant to use authority over personnel to manipulate the employment of another person in order to obtain a political contribution, or to reward or punish a person for a political contribution.

§ 2116—Soliciting a political contribution as a Federal public servant

Section 2116(a) makes it a class A misdemeanor for a Federal public servant to (1) solicit a "significant political contribution" (as defined in § 2118) from another Federal public servant or (2) make a "significant political contribution" in response to a solicitation. Section 2116(b) provides that this section does not apply if the public servants involved are Members of Congress, Members-elect, or candidates for Congress.

§ 2117—Excess campaign expenditures and contributions

This section makes it a class E felony for someone to violate §§ 9012 or 9042 of the Internal Revenue Code of 1954, which prohibit certain campaign contributions.

§ 2118—Definitions for subchapter

This section defines "election", "Federal election", "candidate", "political contribution", "significant political contribution", and "significant payment" for the purposes of subchapter II.

SUBCHAPTER III—OFFENSES INVOLVING PRIVACY

§ 2121—Eavesdropping

Section 2121(a)(1) makes it a class D felony for someone intentionally to intercept a private communication by means of an eavesdropping device when no party to the communication has consented to the interception. Section 2121(a)(2) makes it a class D felony for someone to disclose the contents of a private communication, knowing that the contents were obtained in violation of § 2121(a)(1).

Section 2121(b) provides a bar to prosecution when (1) the interception is made by a communications common carrier as a necessary incident to the rendition of services; or for the purpose of a mechanical or service quality control check; (2) the actor is a communications common carrier, or an agent of such a carrier, who is assisting a law enforcement officer whose conduct is authorized by a court order obtained under subchapter II of chapter 65; or (3) the interception is of a radio transmission and was made by an employee of the Federal Communications Commission, in the course of monitoring responsibilities in enforcing Chapter 5 of Title 47, United States Code.

§ 2122—Trafficking in an eavesdropping device

Section 2122(a) makes it a class E felony for someone intentionally (1) to produce, manufacture, import, or traffic in an eavesdropping device, knowing that the design of the device renders that device primarily useful for surreptitious interception of private communication; or (2) to advertise an eavesdropping device, knowing that the design of that device renders the device primarily useful for surreptitious interception, or knowing that the advertising promotes the use of the device for surreptitious interception of private communication.

Section 2122(b) provides a bar to prosecution when (1) the conduct was that of a communications common carrier, or an officer or employee of such a carrier, and occurred in the normal course of such carrier's business, or (2) the actor is acting under a Federal, state, or local government contract.

Section 2122(d) provides for Federal jurisdiction where (1) the offense takes place within the special jurisdiction of the United States; (2) the eavesdropping device is sent through the mail, or is moved across a State or United States boundary in the commission of the offense; or (3) the advertisement is sent through the mail, is moved across a State or United States boundary, or is transmitted by a communications facility that operates in interstate or foreign commerce, in the commission of the offense.

§ 2123—Possessing an eavesdropping device

Section 2123(a) makes it a class A misdemeanor to possess an eavesdropping device with intent that the device be used to commit an offense under §§ 2121 or 2122 of the proposed code.

Section 2123(b) provides a bar to prosecution where the actor possessed the eavesdropping device pursuant to a Federal, State, or local government contract.

Section 2123(c) provides a defense where the defendant possessed the eavesdropping device within the scope of a Federal, state, or local government contract.

Section 2123(d) provides for Federal jurisdiction where (1) the offense occurs within the special jurisdiction of the United States; or (2) the eavesdropping device is sent through the mails, or is moved across a State or United States boundary, in the commission of the offense.

§ 2124—Intercepting correspondence

Section 2124(a)(1) makes it a class E felony for someone intentionally to intercept private correspondence, knowing that neither the sender nor the intended recipient has consented to the interception. Section 2124(a)(2) makes it a class E felony for someone intentionally to use, or to disclose, the contents of private correspondence, knowing that the contents were obtained in violation of subsection (a)(1).

Section 2124(b) provides a bar to prosecution where (1) the private correspondence is transmitted over a facility of a communications common carirer, and (2) the actor is the carrier, or an agent of the carrier, and is engaged in a mechanical or service quality control check, supervisory service observing, or any other activity necessarily incident to the rendition of service by such carrier or relating to the discovery of theft of such carrier's services.

Section 2124(c) provides for Federal jurisdiction if the private correspondence is mail.

§ 2125—Revealing private information submitted for a Government purpose

Section 2125(a) makes it a class E felony for someone to violate any of the following statutes: § 10(g) of the Agricultural Adjustment Act (relating to administration); § 361 of the Agricultural Adjustment Act of 1938 (relating to application of subpart); § 15(c) (relating to miscellaneous provisions) or § 15(d) (relating to miscellaneous provisions) of the Agricultural Marketing Act; § 214 of Title 13

(relating to wrongful disclosure of information); § 16 of the Small Business Act (relating to offenses and penalties); § 8 of the Bretton Woods Agreement Act (relating to penalty for unlawful disclosures); § 7240 (relating to officials investing or speculating in sugar) of the Internal Revenue Code of 1954; § 1302 of the Second War Powers Act, 1941 (relating to penalty for unlawful disclosure); or § 571 of title 18 (relating to speculation in stocks or commodities affecting crop insurance), which is reenacted in Title II of the bill.

Section 2125(b) makes it a class D felony for someone to violate § 7213(a) of the Internal Revenue Code of 1954 (relating to Federal employees and other persons).

Section 2125(c) makes it a class C felony for someone to violate § 570 of title 18 (relating to disclosure of crop information and speculation thereon), which is reenacted in Title II of the bill,

§ 2126—General provisions for subchapter

Section 2126(a) defines "communications common carrier", "contents", "eavesdropping device", "intercept", "private correspondence", and "private communication" for the purposes of subchapter III.

Section 2126(b) provides a bar to prosecution where (1) the actor's conduct was in conformity with a court order obtained pursuant to subchapter II of Chapter 65 of the proposed code; (2) the actor is an employee or agent of a communications common carrier whose facility was used in the transmission of private communication, and the interception or disclosure was in the normal course of employment and was (a) an activity necessarily incident to the rendition of the carrier's services, (b) an activity relating to the discovery of theft of such carrier's services, or (c) an activity whose purpose was a mechanical or service quality control check; (3) the actor is an employee or agent of a communications common carrier who was assisting a law enforcement officer conducting an interception pursuant to a court order obtained under subchapter II of chapter 65; or (4) the interception was by an employee or agent of the Federal Communications Commission acting in the normal course of employment and in discharge of monitoring responsibilities exercised by the Federal Communications Commission under chapter 5 of title 47.

Chapter 23—Offenses Involving the Person

subchapter I—homicide offenses

§ 2301—Murder

Section 2301(a) makes it an offense for someone (1) knowingly to engage in conduct that causes the death of another; (2) under circumstances manifesting extreme indifference to human life, to engage in conduct that recklessly causes the death of another; or (3) during the commission of specified felonies, knowingly to engage in conduct and thereby cause the death of someone other than one of the participants in the underlying offense (the "felony-murder" rule). The specified offenses are: aggravated criminal sexual conduct (§ 2331); arson (§ 2501); criminal entry, if committed with reckless disregard for the fact that the property is a dwelling in which an individual is present (§ 2511); and robbery (§ 2521). A violation of § 2301 is a class B felony if the offense is committed under circum-

stances that would give rise to a duress defense under § 726 but for the exception for murder in that section. In all other situations, a violation of this section is a class A felony.

Section 2301(c) provides a defense where the death of the other was caused under circumstances, for which the defendant was not responsible, that caused the defendant to lose self-control and that would be likely to cause an ordinary person to lose self-control to the same extent. Section 2301(d) provides a defense to prosecution under subsection (a)(3) (the felony-murder rule) that the death was not a reasonably forseeable consequence of the underlying offense or the particular circumstances in which the underlying offense was committed.

Section 2301(e)(1) provides for Federal jurisdiction where:

(1) the offense occurs within the special jurisdiction of the United States;

(2) the victim is:

(*a*) a Member or Member-elect of Congress,

(*b*) the President, the Vice-President or person next in order of succession, the President-elect, the Vice President-elect, or any person serving as President under the Constitution and laws of the United States;

(*c*) a Federal judge, juror, law enforcement officer, probation officer, or employee of an official detention facility, if such person was engaged in the performance of official duties; or

(*d*) a Federally protected foreign individual (defined in § 101 of the proposed code);

(3) the offense is committed by transmitting a dangerous weapon (defined in § 2725 of the proposed code)

(4) the offense is committed in Indian country by or against an Indian.

Section 2301(e)(2) provides for extraterritorial jurisdiction if the victim is a person described in (2) (a), (b), or (d) above.

§ 2302—Manslaughter

Section 2302(a) makes it an offense for someone: (1) knowingly to engage in conduct that recklessly causes the death of another, or (2) knowingly to engage in conduct that causes the death of another under circumstances that would constitute murder but for the existence of circumstances giving rise to the "heat of passion" defense in § 2301(c).

Section 2302(b) provides that the offense in (1) above is a D felony and the offense in (2) above is a B felony. However, if the actor committed the offense because of a threat of imminent death or serious bodily harm to the actor or another person, then the offense in (1) above becomes an E felony and the offense in (2) above becomes a C felony.

Section 2302(d) provides for Federal jurisdiction over manslaughter to the same extent as § 2301(e) provides for Federal jurisdiction over murder.

§ 2303—Definition for subchapter

Section 2303 defines the term "law enforcement officer" for the purposes of the subchapter I.

SUBCHAPTER II—ASSAULT OFFENSES

§ 2311—Maiming

Section 2311(a) makes it a class C felony for someone intentionally to inflict "permanent serious bodily injury" upon another. Section 2311(b) defines "permanent serious bodily injury".

Section 2311(c)(1) provides for Federal jurisdiction when (1) the offense occurs in the special jurisdiction of the United States; (2) the victim is a Member of Congress, the President, the Vice-President, or a person elected to such office; (3) the victim is a specified Federal public servant engaged in the performance of duties; (4) the victim is a "federally protected foreign individual" (a term defined in § 101); (5) the offense is committed by transmitting a dangerous weapon through the mail; and (6) the offense is committed by or against an Indian in Indian country. Section 2311(c)(2) provides for extra-territorial jurisdiction when the victim is a Member of Congress, the President, the Vice President, or a Federally protected foreign individual.

§ 2312—Aggravated battery

Section 2312(a) makes it a class D felony for someone to inflict serious bodily injury upon another through physical force or use of a dangerous weapon.

Section 2312(b) provides for Federal jurisdiction over this offense in the same circumstances as § 2311(c) provides for Federal jurisdiction over maiming.

§ 2313—Battery

Section 2313(a) prohibits the reckless infliction of bodily injury upon another through physical force and any attempt to do so. Section 2313(b) provides that the offense is a class C misdemeanor if committed during the course of mutual combat and a class A misdemeanor otherwise.

Section 2313(c) provides for Federal jurisdiction over battery in the same circumstances as § 2311(c) provides for Federal jurisdiction over maiming.

§ 2314—Aggravated assault

Section 2314(a) makes it a class D felony recklessly to create a substantial risk of serious bodily injury to another person through the use of physical force or a dangerous weapon. Section 2314(b) provides for Federal jurisdiction over aggravated assault in the same circumstances as § 2311 provides for Federal jurisdiction for maiming.

§ 2315—Terrorizing

Section 2315(a) prohibits (1) threats to commit a crime of violence or other unlawful conduct endangering the life of an individual and (2) the communication of false information that such a crime or conduct is imminent, where such threat or communication causes sustained fear in any person or an evacuation or any other serious public disruption.

Section 2315(b) makes the offense a class D felony where the threat causes a person to be in sustained fear that any person will be killed, sexually assaulted, kidnapped, or subjected to serious bodily injury, and a class E felony in all other cases.

Section 2315(c)(1) provides for Federal jurisdiction where: (1) the offense occurs within the special jurisdiction of the United States; (2) the threat is communicated to a "federally protected foreign individual" (defined in § 101); (3) the threat is communicated through the mail or in interstate commerce, and is a threat to kidnap or injure any person; (4) the threat is transmitted through a communication system and is to injure a person or destroy property by a destructive device; (5) the threat is to damage a motor vehicle or aircraft used in interstate commerce; or (6) the offense is committed by or against an Indian in Indian country. Section 2315(c)(2) provides for extraterritorial jurisdiction where the threat is communicated to a federally protected foreign individual.

§ 2316—Communicating a threat

Section 2316(a) prohibits the same types of threats and communications as § 2315 when done with intent to alarm or harass another person. Section 2315(b) classifies the offense as an A misdemeanor when the threat or information concerns a matter dangerous to the life of an individual, and a class B misdemeanor in all other cases.

Section 2316 provides for Federal jurisdiction in the same circumstances that § 2315(c) provides for Federal jurisdiction over terrorizing.

§ 2317—General provisions for subchapter

Section 2317(a)(1) provides an affirmative defense of consent to simple battery (§ 2313). Section 2317(a)(2) provides an affirmative defense of consent to maiming (§ 2311), aggravated battery (§ 2312), and aggravated assault (§ 2314), if the conduct and injury were reasonably foreseeable hazards of either (1) an athletic contest; or (2) a business or profession, or medical treatment, if the person giving the consent was made aware of the risks involved prior to giving consent.

Section 2317(b) "dangerous weapon", "serious bodily injury", and "physical force" for the purposes of subchapter II.

SUBCHAPTER III—KIDNAPING AND RELATED OFFENSES

§ 2321—Kidnaping

Section 2321(a) makes it an offense to restrain another person with intent to (1) hold that person for ransom or reward; (2) use that person as a shield; or (3) secure compliance with a demand upon a government or a third person. Section 2321(b) classifies the offense as an A felony if the person restrained is not released voluntarily and in a safe place before trial, and as a B felony in all other instances.

Section 2321(c)(1)(A) provides for Federal jurisdiction when the person restrained is: (1) a Member of Congress, the President, the Vice President, or a person elected to those positions; (2) a Federal public servant who is a judge, juror, law enforcement officer, probation officer, or an employee of a federal detention facility engaged in the performance of official duties; or (3) a "Federally protected foreign individual" (defined in § 101). Section 2321(c)(1)(B) provides for Federal jurisdiction where the person restrained is taken across a State or United States boundary and § 2321(c)(1)(C) provides for Federal jurisdiction when the offense is committed by or against an Indian in Indian country. Section 2321(c)(2) provides for extrater-

ritorial jurisdiction where the victim is the President, Vice President, a Member of Congress or a "federally protected foreign individual".

§ 2322—Aggravated criminal restraint

Section 2322(a) makes it a class D felony to restrain another (1) with reckless disregard for a risk of serious bodily injury to the other person; (2) by secreting or holding the other person in a place where that person is not likely to be found; or (3) by holding the other person in involuntary servitude. Section 2322(b) makes it a class D felony to restrain a person by threatening the safety of another person.

Section 2322(c) provides for Federal jurisdiction in the same circumstances that § 2321 provides for Federal jurisdiction over kidnaping.

§ 2323—Criminal restraint

Section 2323(a) makes it a class A misdemeanor to restrain a person against that person's will.

Section 2323(b) provides for Federal jurisdiction in the same circumstances that §2321 provides for Federal jurisdiction over kidnaping.

§ 2324—General provisions for subchapter

Section 2324(a) defines "consent" and "to restrain" for the purposes of subchapter III. Section 2324(b) provides a defense to criminal restraint (§ 2323) and to aggravated criminal restraint involving the secreting of the person (§ 2322(a)(2)) where the restraining person was a parent or guardian of the person restrained, and the person restrained was under 18 years of age.

Section 2324(c) permits a Federal investigation for an offense under §§ 2321 (kidnaping), 2322 (aggravated criminal restraint), or 2323 (criminal restraint) if the victim is not released within 24 hours.

SUBCHAPTER IV—SEX OFFENSES

§ 2331—Aggravated criminal sexual conduct

Section 2331(a) makes it a class B felony for someone to use force, or to threaten or place another person in fear of death, serious bodily injury or kipnaping, and thereby to engage in a sexual act (defined in § 2335) with another person. Section 2331(a)(2) makes it a class B felony for someone: (1) without the knowledge or consent of another person, to use a drug or intoxicant, or to engage in any other conduct, and thereby substantially to impair the ability of the other person to appraise or control conduct; and (2) thereby intentionally to engage in a sexual act with the other person. Section 2331(a)(3) makes it a class B felony for someone to engage in a sexual act with another person who has not attained the age of 12 years. Section 2331(a)(3)(B) provides that no state of mind need be proved regarding the victim's age, and thus a defendant is guilty of an offense under § 2331(a)(3) if the victim's actual age is, for example, 11 years, even though the victim reasonably appeared to be older than that.

Section 2331(b) provides for Federal jurisdiction when: (1) the offense is committed within the special jurisdiction of the United States, and (2) the offense is committed in Indian country by or against an Indian.

§ 2332—Criminal sexual conduct

Section 2332(a)(1) makes it a class C felony to engage in a sexual act with someone who is not the actor's spouse, if the other person: (1) is incapable of understanding the nature of the conduct; (2) is physically incapable of resisting, or of declining consent to, the sexual act; (3) is unaware that a sexual act is being committed; or (4) participates in the sexual act because of a mistaken belief that the actor is married to the other person. Section 2332(a)(2) makes it a class C felony for someone to threaten another, or to place another person in fear, and thereby to cause the other person to engage in a sexual act with the actor.

Section 2332(b) provides for Federal jurisdiction if the offense is committed within the special jurisdiction of the United States or within Indian country by or against an Indian.

§ 2333—Sexual abuse of a minor

Section 2333(a) makes it an offense for someone to engage in a sexual act with another person who is not the actor's spouse, if that other person has not attained the age of 16 years and is at least 5 years younger than the actor. Section 2333(b) classifies the offense as a D felony if the actor has attained the age of 21 years and as an A misdemeanor in any other case.

Section 2333(c) provides an affirmative defense where the actor reasonably believed the other person to have attained the age of 16 years. Section 2333(e) provides for Federal jurisdiction if the offense is committed within the special jurisdiction of the United States or if the offense is committed in Indian country by or against an Indian.

§ 2334—Sexual abuse of a ward

Section 2334(a) makes it a class A misdemeanor for someone to engage in a sexual act with another person who is not the actor's spouse, if that other person is in official detention and if the actor has custodial, supervisory or disciplinary authority over that person. Section 2334(b) provides for Federal jurisdiction if the offense is committed within the special jurisdiction of the United States or if the offical detention is Federal official detention.

§ 2335—Definitions for subchapter

This section defines the terms "sexual act" and "spouse" as used in subchapter IV.

Chapter 25—Offenses Involving Property

SUBCHAPTER I—ARSON AND OTHER PROPERTY DESTRUCTION OFFENSES

§ 2501—Arson

Section 2501 prohibits knowingly causing damage by starting a fire or setting off an explosion in the following types of property: a public facility (defined in § 2504); a building or public structure (defined in § 2504); or a civil aircraft, railroad vehicle, motor vehicle, or vessel that is not a public facility, and equipment used to support the operation of such aircraft, railroad vehicle, or motor vehicle.

Section 2501(b) classifies the offense as an A felony if the actor recklessly causes the death of another, as a B felony if a dwelling or public facility is damaged, and as a C felony in any other case.

Section 2501 provides for Federal jurisdiction where

(1) The offense is committed within the special jurisdiction of the United States;

(2) The property involved belongs to the United States, a foreign power, or a "federally protected foreign individual" (defined in § 101);

(3) the property involved is part of an interstate shipment;

(4) the property involved is used in an activity affecting interstate or foreign commerce and is damaged by a destructive device (defined in § 2725);

(5) the property is under the control of an organization receiving financial assistance from the United States and is damaged by a destructive device;

(6) the property is a motor vehicle used for commercial purposes and the offense recklessly endangers human life;

(7) the property is a civil aircraft or railroad vehicle used in interstate or foreign commerce;

(8) the public facility is used for national defense; and

(9) the offense is committed by or against an Indian in Indian country.

Section 2501(d) provides for extraterritorial jurisdiction when the property belongs to the United States.

§ 2502—Aggravated property destruction

Section 2502 prohibits knowingly causing damage to (1) a public facility, (2) property, which damage causes significant interruption of a function of a public facility, and (3) property with a value of more than $500. Section 2502(b)(1) classifies the offenses as a D felony in instances (1) and (2) above. In instance (3) above, § 2502(b)(2) classifies the offense as a D felony if the damage exceeds $100,000, and as an E felony in any other instance.

Section 2502(d) provides for Federal jurisdiction in those situations where § 2501 provides for Federal jurisdiction over arson, as well as where the property is mail, a submarine cable used for telegraphic or telephone communication or a radio, telegraph, telephone, or cable line or system, or similar means of communication, used or intended to be used for military or civil defense functions. Section 2502(e) provides for extraterritorial jurisdiction if the property involved belongs to the United States.

§ 2503—Property destruction

Section 2503(a) prohibits knowingly causing damage to property. Section 2503(b) classifies the offense as an A misdemeanor if the property is mail other than mass circulated mail (e.g., magazines) or if the damage exceeds $100, and as a class B misdemeanor in any other case.

Section 2503(d) provides for Federal jurisdiction over the offense in the same circumstances as those described in §§ 2501(c)(1)–(9) and 2502(d)(2)–(4) of the proposed code.

Section 2503(e) provides for extraterritorial jurisdiction if the property belongs to the United States.

§ 2504—General provisions for subchapter

Subsection 2504(a)(1) provides a defense to prosecution for an offense under subchapter I where the actor's conduct was consented to

by all holders of a legal interest in all property damaged, or where the actor reasonably believed that such content existed. Section 2504(a)(2) provides a defense to a prosecution under § 2501(c)(10) where the conduct occurred in the course of peaceful strike or collective bargaining activity, the property damaged was not operated or controlled by the United States, and any line or system used or intended to be used for military or civil defense was not damaged or destroyed.

Section 2504(b) defines the terms "public facility", "public structure", "civil aircraft", and "commercial purposes" as they are used in subchapter I.

SUBCHAPTER II—CRIMINAL INTRUSION OFFENSES

§ *2511—Criminal entry*

Section 2511(a) makes it an offense for someone, with intent to commit a Federal felony or theft, to enter or remain surreptitiously within a building or vehicle if that person (1) knows that the building or vehicle is the property of another and (2) recklessly disregards the fact that he or she was not privileged to enter or remain upon the property. Section 2511(b) classifies the offense as a C felony if committed with reckless disregard for the fact that the property is a dwelling in which an individual is present, and as a D felony in any other instance.

Section 2511(c) provides for Federal jurisdiction where (1) the offense is committed within the special jurisdiction of the United States; (2) the building is owned by or is under the care, custody or control of the United States; (3) the building contains a facility of a Federal government agency (or, if the actor's entering or remaining was in a part of the building other than that in which the facility was located, the conduct intended would have affected the facility itself); (4) the building contains a national credit institution (or, if the entering or remaining was in another part of the building, the conduct intended would have affected the credit institution); (5) the vehicle contains mail or property that is moving in interstate or foreign commerce or is part of an interstate or foreign shipment and the intent is to commit theft; and (6) the offense is committed by or against an Indian in Indian country.

§ *2512—Criminal trespass*

Section 2512(a) makes it an offense knowingly to enter or remain within premises that are the property of another: (1) if the premises are a building or are enclosed or secured so as manifestly to exclude intruders; (2) if notice prohibiting trespass has been communicated to the actor by an authorized person or has been posted in a manner reasonably likely to come to the attention of intruders; or (3) with intent to engage in conduct which would constitute a Federal or state offense.

Section 2512(b)(1) classifies the offense under (1) above as an A misdemeanor if the premises are a dwelling or highly secured government premises, and as a B misdemeanor in all other instances. Section 2512(b)(2) classifies the offense under (2) above as a C misdemeanor, and § 2512(b)(3) classifies the offense under (3) above as a B misdemeanor.

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Section 2512(c) provides for Federal jurisdiction if: (1) the offense is committed within the special jurisdiction of the United States; (2) the premises are owned by, or are under the care, custody or control of, the United States; or (3) the premises consist of a vehicle that contains mail, property that is moving in interstate or foreign commerce, or property that is a part of an interstate or foreign shipment.

§ 2513—Stowing away

Section 2513(a) makes it a class A misdemeanor for someone, without privilege and with intent to obtain transportation, to secrete oneself aboard a vessel or aircraft of another when that vessel or aircraft leaves the point of embarkation.

Section 2513(b) provides a defense to prosecution where the actor had the consent of the owner, master or other person in command of the vessel or aircraft.

Section 2513(c) provides for Federal jurisdiction where the offense is committed within the special jurisdiction of the United States, or where the actor, in the commission of the offense, moves across a State or United States boundary.

§ 2514—Definitions for criminal intrusion subchapter

Section 2514 defines "premises" and "dwelling" for the purposes of subchapter II.

SUBCHAPTER III—ROBBERY, EXTORTION, AND BLACKMAIL

§ 2521—Robbery

Section 2521(a) prohibits the taking of property from the person or presence of another by means of force or by threatening the other person that anyone (other than the actor) will imminently be subject to bodily injury. Section 2521(b) classifies the offense as an A felony if the actor recklessly causes the death of another person or forces another person to accompany the actor against that person's will, and as a B felony otherwise.

Section 2521(c) provides for Federal jurisdiction where: (1) the offense is committed within the special jurisdiction of the United States; (2) the property is owned by the United States, or is being manufactured or stored for the United States; (3) the property is owned by a national credit institution; (4) the property is mail; (5) the property is part of an interstate or foreign shipment; (6) the victim is a "federally protected foreign individual" (defined in § 101); or (7) the offense is committed by or against an Indian in Indian country. Section 2521(c)(2) provides for extraterritorial jurisdiction where the victim is a federally protected foreign individual.

§ 2522—Extortion

Section 2522(a) makes it a class C felony for someone wrongfully to obtain property from another (1) by threatening that person, or placing that person in fear that any person will be subjected to bodily injury or kidnapping, or that any property will be damaged.

Section 2522(b) makes it a class D felony for someone to act under color of official right and thereby obtain the property of another.

Section 2522(c)(1) provides that it is not a defense to a prosecution for extortion that the conduct was in furtherance of a legitimate objective or activity. Section 2522(c)(2) requires that, before a state or local official can be prosecuted under this section, the Attorney General (or an Assistant Attorney General designated by the Attorney General) certify that (1) there is no pending state prosecution against the official and the state has indicated an unwillingness or lack of interest in instituting a prosecution, or (2) the state has requested Federal prosecution.

Section 2522(d) provides for Federal jurisdiction in the same circumstances that § 2521(c) provides for Federal jurisdiction over robbery. In addition, § 2522(d) provides for Federal jurisdiction where: (1) the offense is committed by a Federal public servant acting under color of office; (2) the offense is committed by a person pretending to be a Federal public servant or a "foreign official" (defined in § 101); (3) the offense is committed to collect an extension of credit (defined in § 2706); or (4) the offense in any way affects, delays, or obstructs interstate or foreign commerce. Where the threat involved is a threat of kidnapping or bodily injury, § 2522(d)(2) provides for Federal jurisdiction where the threat is communicated through the mail or interstate commerce.

§§ *2523—Blackmail*

Section 2523(a) prohibits intentionally obtaining the property of another by means of threats to: (1) engage in a crime; (2) accuse someone of a crime; (3) procure the dismissal of someone from employment; (4) cause economic loss or injury to someone's business or profession through unlawful conduct; (5) expose a secret or publicize an asserted fact with intent to injure a person's reputation; or (6) take or withhold action as a public servant.

Section 2523(b) classifies the offense primarily according to the value of the property obtained. The offense is (1) a class C felony if the value exceeds $100,000; (2) a class D felony if the value is between $5,000 and $100,000 or if the property is a firearm, a destructive device, a vehicle, a document belonging to the United States, an implement designed for counterfeiting or forging a written instrument of the United States, or mail (other than newspapers, magazines and circulars); (3) a class E felony if the value is between $500 and $5,000; (4) a class A misdemeanor if the value is between $100 and $500; and (5) a class B misdemeanor in any other instance.

Section 2523(e) requires that, where the prosecution is a state or local public servant acting under color of office or is based upon threatening to take or withhold state or local official action, the Attorney General (or an Assistant Attorney General designated by the Attorney General) must certify that (1) there is no pending state prosecution and the state is unwilling or lacks interest in commencing a prosecution, or (2) the state has asked for Federal prosecution.

Section 2523(f) provides for Federal jurisdiction in the same circumstances that § 2521(c) and § 2522(d)(1)(B)–(E) and (d)(2) provide for Federal jurisdiction over robbery and extortion. Section 2523(f) also provides for Federal jurisdiction when (1) the crime

which the actor threatens to engage in, or to accuse the victim of, is a a Federal crime; (2) the threat is in regard to the person's employment under a grant or contract pursuant to the Economic Opportunity Act of 1964 or the Comprehensive Employment and Training Act of 1973; (3) the threat is to take or withhold Federal official action; or (4) the property consists of any part of the compensation of someone employed in work on a Federal public building or a building wholly or partly financied by a Federal loan or grant.

§ 2524—Definitions for subchapter

This section defines the terms "counterfeiting or forging implement" and "written instrument" for the purposes of subchapter III.

SUBCHAPTER IV—THEFT AND RELATED OFFENSES

§ 2531—Theft

Section 2531(a) makes it an offense for someone, with intent "to deprive" another of property, to: (1) take and carry away that property; (2) make an unauthorized use, disposition, or transfer of that property; or (3) obtain that property by fraud. The terms "to deprive" and "property" are defined in subsection (c)(2).

Section 2531(b) classifies the offense primarily on the basis of the value of the property obtained. The offense is a:

(1) class C felony if the value exceeds $100,000;

(2) class D felony if the value is between $3,000 and $100,000 or is a firearm or destructive device, a vehicle, a document belonging to the United States, an implement designed for making a written instrument of the United States, or mail (other than newspapers, magazines and circulars);

(3) class E felony if the value is between $500 and $3,000;

(4) class A misdemeanor if the value is between $100 and $500 and

(5) class B misdemeanor if the value if $100 or less.

Section 2531(d) provides a defense where the property was lost or misdelivered and the actor took any readily available and reasonable steps to return the property.

Section 2531(e) provides for Federal jurisdiction where: (1) the offense is committed within the special jurisdiction of the United States; (2) the property belongs to the United States; (3) the offense is committed by a Federal public servant acting under color of office; (3) the offense is committed by someone who pretends to be a Federal public servant or a foreign official; (5) the value of the property exceeds $1,000 and was obtained through the use of a counterfeited, altered, lost or stolen credit card in a transaction affecting interstate or foreign commerce; (6) the property is mail; (7) the property is part of an interstate or foreign shipment; (8) the property moved across a state or United States boundary in the commission of the offense and (A) has a value of $5,000 or more, or (B) is an explosive, a firearm, or a vehicle; (9) the property belongs to a national credit institution; (10) the property belongs to an Indian tribe; (11) the property belongs to an employee benefit plan subject to title I of the

Employment Retirement Income Security Act of 1974 or a trust fund as defined in § 3(4) of that Act; (12) the property belongs to a labor organization and the offense is committed by an officer, member, or employee of that labor organization; (13) the offense is committed by someone connected in any capacity with a small business investment company as defined in § 103 of the Small Business Investment Act of 1958; (14) the property belongs to a registered investment company (as defined in § 3(a) of the Investment Company Act of 1940); (15) the offense is committed by a futures commission merchant (as defined in § 2(a) of the Commodity Exchange Act), or by an agent thereof, and (A) the property is that of a customer and is received by such futures commission merchant to margin, guarantee, or secure trades or contracts of any customer, or (B) the property has accrued to a customer as the result of trades or contracts; (16) the offense is committed by an agent of a common carrier that is moving in interstate commerce, or by a president, director, officer, or manager of a common carrier, and the property (A) belongs to such common carrier, and (B) is issued in, or derived from, such common carrier's operation in interstate commerce; (17) the offense is committed by a trustee, custodian, marshal, or other court officer and the property consists of a part of the estate of a debtor by or against whom a petition has been filed under title 11; (18) the property consists of a part of a grant, contract, or other form of assistance received, directly or indirectly, from the Law Enforcement Assistance Administration under title I of the Omnibus Crime Control and Safe Streets Act of 1968; (19) the property (A) consists of a coupon, or an authorization card (as defined in § 3 of the Food Stamp Act of 1964) or (B) is obtained by the use of such a coupon that has been obtained in violation of the rules governing the issuance of such coupon; (20) the property consists of agricultural products stored or to be stored in a warehouse licensed under the United States Warehouse Act, and licensed receipts have been or are to be issued for such products; (21) the property consists of money paid under a law administered by the Veterans Administration for the benefit of a minor, an incompetent, or another beneficiary, and the offense is committed by a fiduciary of such beneficiary; (22) the property consists of money, a security, or another asset of the Securities Investor Protection Corporation; (23) the property is provided or insured under part B of title IV of the Higher Education Act of 1965; (24) the offense is committed by an Indian in Indian country; (25) the property consists of a payment or benefit provided pursuant to title XVII or XIX of the Social Security Act; (26) the property (A) consists of a debit instrument (as defined in § 916(c) of the Electronic Fund Transfer Act), (B) is obtained by the use of a debit instrument that has been obtained in violation of this section, or that has been counterfeited in violation of § 2541 (counterfeiting) or forged in violation of § 2542 (forgery); (27) the property is the subject of a grant or other form of assistance under the National School Lunch Act or the Child Nutrition Act of 1966; (28) the property consists of a grant, contract, insurance, guarantee, subsidy, loan, or other form of benefit provided by a Federal or federally supported program, and the actor is an applicant for, or a recipient

of, such benefit; (29) the property has a value of $5,000 or more and is property of an organization or a unit of State or local government receiving benefits in excess of $10,000 per calendar year pursuant to a program under the laws of the United States involving a grant, contract, insurance, guarantee, subsidy, loan, or other form of Federal assistance, and the offense is committed by an agent of, or by a person connected in any capacity with, such organization or unit of State or local government; (30) the property is taken from a vehicle operated by a common carrier and moving in interstate commerce, or from a passenger on such a vehicle; (31) the property is obtained through a misrepresentation that it is for the use of the United States; (32) the property has a value of $10,000 or more and the offense is committed in connection with the marketing of livestock in interstate or foreign commerce; (33) the property consists of a note, stock certificate, treasury stock certificate, bond, treasury bond, debenture, certificate of deposit, interest coupon, or any form of debt instrument, bearing interest, and is owned by or under the care, custody, or control of (A) a member of, or organization insured by, the Securities Investor Protection Corporation; (B) a broker-dealer registered with the Securities and Exchange Commission pursuant to § 15(a)(1) of the Securities Exchange Act of 1934; (C) an insurance company registered under the law of a State, or a foreign insurance company, doing business with the United States; or (34) the offense is committed by an agent of, or a person connected in any capacity with, an agency receiving financial assistance under the Economic Opportunity Act of 1964 or the Comprehensive Employment and Training Act of 1973, and the property is the subject of a grant or contract of assistance under that Act.

Section 2531(f) provides for Federal jurisdiction if the property consists of (1) any part of the compensation of a person employed in the construction, completion, repair, or refurbishing of a Federal public building, Federal public work, or building financed in whole or in part by a loan or grant from the United States, and is obtained or retained by fraud in relation to that person's employment; or (2) funds under Railroad Retirement Act of 1974.

Section 2531(g) provides for extraterritorial jurisdiction in the case of United States property, if the actor is a United States national or resident.

§ 2532—Trafficking in stolen property

Section 2532(a) prohibits trafficking in the property of another. The offense is classified in the same way that the theft offense (§ 2531) is classified. Section 2532(b) defines the term "traffic" to mean transfer, or otherwise dispose of, to another as consideration for anything of value.

Section 2532(c) provides for Federal jurisdiction: (1) in the same circumstances that § 2531(e) and (f) provide for Federal jurisdiction over theft; (2) where the property is an interest-bearing obligation of the United States; or (3) where the property has a value of $5,000 or more or is ammunition, a firearm or a vehicle, and after having been stolen is moved across a State or United States boundary in connection with the offense.

Section 2532(d) provides for extraterritorial jurisdiction if the property belongs to the United States and the actor is a United States citizen or resident.

§ 2533—Receiving stolen property

Section 2533(a) prohibits buying, receiving, possessing, or obtaining control of property of another which has been stolen by someone other than the actor. The offense is classified according to the nature and value of the stolen property at one class below that set forth in § 2531(b) (theft) for the same type of property.

Section 2533(b) provides a defense where the defendant bought, received, possessed, or obtained control of the property with intent to return the property to a person entitled to have that property.

Section 2533(c) provides for Federal jursidiction where circumstance specified in § 2531(e) or (f) (theft) or § 2532(c)(2) or (3) (trafficking in stolen property) exists. Section 2533(d) provides for a extraterritorial jurisdiction where the property belongs to the United States and the actor is a United States citizen or resident.

§ 2534—Executing a fraudulent scheme

Section 2534(a)(1) prohibits scheming to use fraud with intent to: (1) obtain the property of another person or a government, (2) cause economic loss to another person, or (3) deprive the citizens of a State or locality of the honest and faithful services of a public servant. Section 2534(a)(2) prohibits transferring or receiving anything of value for a right to participate in a pyramid sales scheme or receiving compensation from a pyramid sales scheme.

Section 2534(b) classifies the offense as a D felony in the circumstances described in subsection (a)(1) and as an E felony in the circumstances described in subsection (a)(2).

Section 2534(c) defines "anything of value", "compensation," and "pyramid sales scheme" for the purposes of the section.

Section 2534(d) provides for Federal jurisdiction where the actor, in furtherance of the scheme: (1) uses the mail; (2) transmits a communication through wire, radio or television in interstate or foreign commerce; or (3) causes any person to travel in interstate or foreign commerce.

§ 2535—Bankruptcy related offenses

Section 2535(a) makes it an offense for someone, with intent to deceive a court or to deceive or harm a creditor, to: (1) transfer or conceal property belonging to a debtor's estate; (2) receive a material amount of property from a debtor after the filing of a title 11 case; (3) transfer or conceal, in contemplation of a title 11 case, the property of the actor or of another; (4) alter, destroy, mutilate, or make a false entry in a document relating to the property of a debtor, or withhold such a document from an officer of the court who is entitled to possession of the document; or (5) offer, give or agree to give, or solicit, accept or agree to accept, anything of value because of acting or forbearing to act, or having acted or forborne to act, in a title 11 case.

Section 2535(b) classifies the offense as a D felony if the value of the property exceeds $500 and as a class E felony in any other instance.

Section 2535(c) defines "debtor", "bankruptcy case", and "harm" for the purposes of this section.

§ 2536—Fraud in a regulated industry

Section 2536(a) makes it a class E felony to violate § 912 of the Housing and Urban Development Act of 1970 or § 239(b) of the National Housing Act, which prohibit the practice known as "equity skimming." Section 2536 makes it a class D felony to violate § 1418 of the Interstate Land Sales Full Disclosure Act (relating to the sale or lease of lots in real estate subdivisions).

§ 2537—Criminal infringement of a copyright

Section 2537(a) makes it an offense to violate § 506(a) of title 17. Section 2537(b) classifies the offense as: (1) a D felony if the offense (a) involves the reproduction or distribution, during any 180 day perid, of at least 1,000 phonorecords or copies infringing the copyright in one or more sound recordings; (b) involves the reproduction or distribution, during any 180 day period, of at least 65 copies of motion pictures or audiovisual works, infringing the copyright in one or more motion pictures or audiovisual works, or (c) is a second or subsequent offense under § 2537 involving a sound recording, motion picture, or audiovisual work; (2) an E felony if the offense (a) involves the reproduction or distribution, during any 180 day period, of more than 100 but less than 1,000 phonorecords or copies infringing the copyrght in one or more sound recordings, or (b) involves the reproduction or distribution, during any 180 day period, of more than 7 but less than 65 copies of motion pictures or audiovisual works; infringing the copyright in one or more motion pictures or audiovisual works; and (3) an A misdemeanor in any other instance.

Section 2537(c) defines the terms "sound recording," "motion picture", "audiovisual work," "phonorecord," "copies," "reproduce," and "distribute" for the purposes of this section.

§ 2538—Commandeering a vessel

Section 2538(a) prohibits someone from using force, threats, or fraud and thereby seizing or exercising control over a vessel. The offense is classified as a D felony if the defendant is a crew member or if the offense occurs on the high seas, and as an E felony in all other cases.

Section 2538(b) provides for extraterritorial jurisdiction if the vessel is of United States registry.

§ 2539—Unauthorized use of a vehicle

Section 2539(a) makes it an offense for someone to operate a vehicle belonging to another person or to a government, knowing that the other person or the government has not consented to the operation of the vehicle. Section 2539(b) classifies the offense as an E felony if the vehicle involved is an aircraft or if the value of the use of the vehicle and the cost of restoration exceed $500, and as an A misdemeanor in any other instance.

Section 2539(c) provides a defense where the actor knows that consent is lacking but reasonably believed that the vehicle's owner would have consented had the owner known of the conduct upon which the prosecution is based, at or before the time the actor engaged in such conduct.

Section 2539(d) provides for Federal jurisdiction when the offense occurs within the special jurisdiction of the United States or the vehicle involved is the property of the United States.

§ 2540—Definitions for subchapter

Section 2540(a) defines the terms "written instrument", "value", and "stolen" for the purposes of subchapter IV.

Section 2540(b) provides a defense to a prosecution for theft (§ 2531), trafficking in stolen property (§ 2532), and receiving stolen property (§ 2533) where: (1) the property is a government record or information (other than a written instrument; information that is submitted by persons other than public servants and that is protected by law from disclosure; and books and other publications prepared for commercial dissemination); (2) the defendant obtained the property primarily for the purpose of dissemination to the public; and (3) the property was not obtained by means of conduct violating §§ 2121 (eavesdropping), 2124 (intercepting correspondence), 2511 (criminal entry), or 2512 (criminal trespass).

SUBCHAPTER V—COUNTERFEITING, FORGERY, AND RELATED OFFENSES

§ 2541—Counterfeiting

Section 2541(a) makes it an offense for someone, with intent to defraud another person or a government, to make, conceal, utter, or pssess a countefeit writtten instrument.

Section 2541(b)(1) classifies the offense as: (1) a C felony if the counterfeited written instrument is or purports to be a likeness of a United States security or has an aggregate face value in excess of $100,000; (2) a D felony if the counterfeited written instrument is or purports to be a written instrument (other than a security) of the United States, a security of a national credit institution, has an aggregate face value between $3,000 and $100,000, or is made, concealed, uttered or possessed under circumstances that evince a capacity for making multiple copies; (3) an E felony if the counterfeited written instrument has an aggregate face value between $500 and $3,000; and (4) an A misdemeanor in any other instance. Section 2541(b)(2) provides that no state of mind need be proved as to any value relevant to the classification of the offense.

Section 2541(c) provides for Federal jurisdiction where:

(1) the offense occurs within the special jurisdiction of the United States;

(2) the written instrument is or purports to be a likeness of a written instrument—

(A) that is issued by or under the authority of, or guaranted by the United States;

(B) that is issued by or under the authority of a foreign government, bank, or corporation;

(C) that is a security of a State or locality, or of a person (other than an individual), and such security has been shipped or is moving in interstate or foreign commerce;

(D) that is a security of a federally-chartered corporation whose charter has expired; or

(E) that is a security or circulating note of a national credit institution; or

(3) the government intended to be defrauded is the United States Government.

Section 2541(d) provides for extraterritorial jurisdiction where the written instrument is or purports to be a likeness of a written instrument issued by or under the authority of, or guaranteed by, the United States.

§ 2542—Forgery

Section 2542 makes it an offense for someone, with intent to defraud another person or a government, to make, conceal, utter, or possess a forged written instrument.

Section 2542(b)(1) classifies the offense as (1) a C felony if the forged written instrument is or purports to be a likeness of a United States security or has an aggregate face value in excess of $100,000; (2) a D felony if the forged written instrument is or purports to be a written instrument (other than a security) of the United States, a security of a national credit institution, has an aggregate face value between $3,000 and $100,000, or is made, concealed, uttered or possessed under circumstances that evince a capacity for making multiple copies; (3) an E felony if the forged written instrument has an aggregate face value between $300 and $3,000; and (4) an A misdemeanor in any other instance. Section 2542(b)(2) provides that no state of mind need be proved as to any value relevant to the classification of the offense.

Section 2542(c) provides for Federal jurisdiction where:

(1) the offense occurs within the special jurisdiction of the United States;

(2) the written instrument is or purports to be a likeness of a written instrument

(A) that is issued by or under the authority of, or guaranteed by, the United States;

(B) that is issued by or under the authority of a foreign government, bank, or corporation;

(C) that is a security of a state or locality, or of a person (other than an individual) and such security has been shipped or is moving in interstate or foreign commerce;

(D) that is a security of a federally-chartered corporation whose charter has expired; or

(E) that is a security or circulating note of a national credit institution; or

(3) the government intended to be defrauded is the United States Government.

Section 2542(d) provides for extraterritorial jurisdiction where the written instrument is or purports to be a likeness of a written instrument issued by or under the authority of, or guaranteed by, the United States.

§ 2543—Making, trafficking in, or possessing a counterfeiting or forging implement

Section 2543(a) prohibits making, concealing, trafficking in or possessing a counterfeiting or forging implement with the intent that the

implement be used to make a false written instrument or another counterfeiting or forging implement.

Section 2543(b) classifies the offense as: (1) a C felony where the implement is designed to make securities of the United States or to make false written instruments of an aggregate value of more than $100,000; (2) a D felony where the implement can be used to make 3 or more copies of a written instrument or is designed to make false instruments of an aggregate value between $3,000 and $100,000; and (3) an E felony in any other case.

Section 2543 provides for Federal jurisdiction where: (1) the offense is committed within the special jurisdiction of the United States; or (2) the written instrument that the implement is designed to make is, or purports to be (a) made or issued by the United States, or by or under the authority of a foreign government, bank, or corporation, or (b) a security of a state or locality, or of a person other than an individual, and the implement has moved in interstate or foreign commerce.

§ 2544—Trafficking in counterfeit labels for phonorecords, and copies of motion pictures and audiovisual works

Section 2544(a) makes it a class D felony to traffic in counterfeit labels which are affixed, or designed to be affixed, to a phonorecord or a copy of a motion picture or audiovisual work. Section 2544(b) defines the terms "counterfeit label", "phonorecord", "motion pictures", and "audiovisual work for the purposes of this section.

Section 2544(c) provides for Federal jurisdiction where: (1) the offense is committed within the special jurisdiction of the United States; (2) the mail or a facility of interstate or foreign commerce is used in the commission of the offense; or (3) the counterfeit label is affixed to or encloses, or is designed to be affixed to or to enclose, a copyrighted audiovisual work or motion picture, or a phonorecord of a copyrighted sound recording.

§ 2545—Definitions for subchapter

Section 2545 defines the following terms for the purposes of subchapter V: "counterfeit written instrument", "counterfeiting or forging implement", "forged written instrument", "obligation of the United States", "security", "tax stamp", "utter", "written instrument", and "written instrument issued under the authority of the United States".

SUBCHAPTER VI—NONGOVERNMENTAL BRIBERY

§ 2551—Bribery of government contractors

This section makes it a class E felony to violate section 54 of title 41, which prohibits certain forms of bribery and kickbacks in relation to government contracts.

§ 2552—Labor bribery

Section 2552(a)(1) makes it a class E felony for an employer to offer or give anything of pecuniary value to a labor organization, or to a representative of a labor organization, with the intent to influence or reward the recipient with regard to the affairs of the labor organization. Section 2552(a)(2) makes it a class E felony for any person to

offer or give anything of pecuniary value to someone connected with an employee benefit plan with intent to influence or reward the recipient with regard to any matter concerning the plan. Section 2552(a)(3) makes it a class E felony for any person to offer or give a representative of a labor organization anything of value with the intent to influence or reward the recipient regarding the granting of union membership, work placement of the union, or transactions involving union funds. Section 2552(a)(4) makes it a class E felony for anyone to solicit or receive a gift given with the intent or motive described in subsection (a)(1), (2) or (3).

Section 2552(b) defines several terms used in the section.

§ 2553—Sports bribery

Section 2553(a) makes it a class D felony (1) for anyone to give anything of pecuniary value to a participant in a publicly exhibited sporting contest with intent to influence the outcome of the contest, or (2) for a participant to accept any such gift. Section 2553(b) defines "publicly exhibited sporting contest" and "anything of pecuniary value" for the purposes of the section.

Section 2553(c) provides for Federal jurisdiction when a transportation or communication facility is used in interstate commerce in the commission of the offense.

§ 2554—Certain medical assistance program offenses

This section makes it a class D felony to violate § 1877(b) of title XVIII or § 1909(b) of title XIX of the Social Security Act, which prohibit various forms of bribery and kickbacks in medical assistance programs.

§ 2555—Commercial bribery

Section 2555(a)(1) prohibits any person from offering or giving anything of pecuniary value to an agent or fiduciary of a third person with the intent to influence the agent or fiduciary's handling of the affairs of the third person. Section 2555(a)(2) prohibits an agent or fiduciary of a person from soliciting or receiving anything of pecuniary value because of being influenced in the handling of the affairs of the employer, principal, or beneficiary, or knowing that the value is given with the intent to so influence the agent or fiduciary.

Section 2555(b) classifies the offense as a D felony if the value of the payment is greater than $1,000, an E felony if the value is between $100 and $1,000, and an A misdemeanor in any other case.

Section 2555(d) provides for Federal jurisdiction when (1) the employer, principal or beneficiary is a national credit institution, or a Small Business Investment Company, or (2) the actor travels in interstate commerce or uses the mail or a facility in interstate commerce, and the conduct violates a bribery law within the state in which the conduct occurs.

§ 2556—Government program bribery

Section 2556(a) makes it a class E felony (1) for anyone to offer or give anything of pecuniary value to a person involved with administering funds under a government program, with the intent to influence

that person in the administration of the program, or (2) for someone involved in the administration of a government program to solicit or accept anything of pecuniary value with the motive of being influenced in the administration of the program, or knowing that it is given with the intent of influencing that person.

Section 2556(b) defines the term "anything of pecuniary value" as used in the section.

Section 2556(c) provides for Federal jurisdiction when the government program is a Federal Government program.

SUBCHAPTER VII—INVESTMENT, MONETARY AND ANTITRUST OFFENSES

§ 2561—Securities offenses

Section 2561(1) makes it a class D felony to violate § 24 (relating to penalties) of the Securities Act of 1933, § 325 (relating to penalties) of the Trust Indenture Act of 1939, § 32 (relating to penalties) of the Securities & Exchange Act of 1934, § 29 (relating to penalties) of the Public Utility Holding Company Act of 1935, § 49 (relating to penalties) of the Investment Company Act of 1940, or § 217 (relating to penalties) of the Investment Advisers Act of 1940.

§ 2562—Monetary offenses

Section 2562 makes it an offense to violate 2 sections of current law that penalize failures to keep required records and to report certain monetary transactions to the Secretary of the Treasury or the Secretary's designate (§ 1957 of title 12 and § 1059 of title 31).

Section 2562(b) provides that the offense is a class D felony if committed in furtherance of another Federal offense or if more than $100,000 in any 12 month period is involved. The offense is a class E felony in any other instance.

§ 2563—Commodities exchange offenses

Section 2563 makes it a class D felony to violate § 9(b), (d) or (e) of the Commodity Exchange Act, which prohibits (1) embezzlement, larceny or other misappropriation by a futures commission merchant or any agent or employee thereof; (2) manipulating or attempting to manipulate the price of any commodity or commodity future; (3) cornering or attempting to corner any commodity; and (4) knowingly communicating false, misleading or inaccurate reports concerning crop or market information. The section also makes it a class D felony to violate § 25(a) of the Federal Reserve Act, which prohibits corporations organized to engage international banking from trading in commodities or, either directly or indirectly, controlling or fixing, or attempting to control, prices of any commodities.

CHAPTER 27—MISCELLANEOUS OFFENSES

SUBCHAPTER I—RACKETEERING

§ 2701—Racketeering

Section 2701(a)(1) makes it a class B felony for someone to organize, control, finance, or participate in a supervisory capacity in a

"racketeering syndicate" (a term defined in § 2707). Section 2701(a)(2) makes it a class B felony for someone to engage in a pattern of "racketeering activity" and thereby to acquire, maintain an interest in, or control an "enterprise" (a term defined in § 2707) or to conduct or participate in the conduct of an enterprise.

Section 2701(b) provides for Federal jurisdiction if the activities of the racketeering syndicate or enterprise affect interstate or foreign commerce.

§ 2702—Laundering racketeering proceeds

Section 2702(a) makes it a class C felony to use or invest proceeds from a pattern of "racketeering activity" (defined in § 2707) and thereby to establish, conduct, acquire, or maintain an interest in an "enterprise" (defined in § 2707).

Section 2702(b) provides a defense where the illegally obtained income is used to purchase securities of the enterprise on the open market without intent to control the enterprise, or to assist someone else to do so, if the securities held by the purchaser or members of the purchaser's family do not aggregate one percent or more of the outstanding securities of any one class and do not confer the power to elect a member of the board of directors.

§ 2703—Loansharking

Section 2703(a)(1) prohibits the making or financing of an "extortionate extension of credit" (defined in § 2707). Section 2703(a)(2) prohibits the making of an "extension of credit" (defined in § 2707) of more than $100, if the annual percent rate exceeds 45% and if the agreement involved is not enforceable civilly. Section 2703(a)(3) prohibits the collection of an extension of credit that violates § 2703(a)(1) or (2) by using or threatening violence or other criminal conduct that injures the person, property or reputation of another. Section 2703(a)(4) prohibits retaliation against someone who fails to repay an extension of credit that violates § 2703(a)(1) or (2).

Section 2703(b) classifies the offense as a C felony if subsection (a)(1) or (4) is violated, and as a D felony if subsection (a)(2) or (3) is violated.

§ 2704—Travel or transportation in aid of racketeering

Section 2704(a) makes it a class D felony for someone, with intent to further an "unlawful activity", to travel in or use interstate or foreign commerce and to: (1) commit a specified offense or (2) further an "unlawful activity". The specified offenses are murder (§ 2301), manslaughter (§ 2302), maiming (§ 2311), aggravated battery (§ 2312), battery (§ 2313), aggravated assault (§ 2314), terrorizing (§ 2315), and communicating a threat (§ 2316).

Section 2704(b) defines the term "unlawful activity" to mean (1) a violation of § 2741 (operating a gambling business) or a provision of subchapter II of Chapter 27 (relating to drug offenses); (2) a violation of state drug and prostitution laws; or (3) conduct that constitutes extortion, bribery or arson.

§ 2705—Criminal conduct in aid of racketeering

Section 2705, in essence, provides an additional jurisdictional base for the racketeering offense (§ 2701). It prohibits certain conduct that would be a specified Federal offense, except for a lack of Federal

jurisdiction, when such conduct is undertaken with reckless disregard for the fact that such conduct is in connection with the racketeering offense described in § 2701 of the proposed code. The specified Federal offense are §§ 1721 (witness bribery and graft), 1722 (informant bribery and graft), 1751 (bribery and graft), 2501 (arson), and 2521 (robbery), and the offenses set forth in subchapter VI of Chapter 25 (relating to nongovernmental bribery).

The offense is classified at the same level as the offense of which the actor would have been guilty had Federal jurisdiction otherwise existed.

§ 2706—Order of criminal forfeiture

Section 2706(a) requires a judge, when imposing sentence upon someone convicted of racketeering (§ 2701) or laundering racketeering proceeds (§ 2702), to order in addition to any other sentence imposed, that the defendant forfeit to the United States any property that is part of the defendant's interest in the "enterprise" or "racketeering syndicate" (defined in § 101).

Section 2706(b) authorizes a judge, at any time after someone is arrested for, or charged with, a violation of § 2701 or § 2702, to take appropriate action to safeguard forfeitable property.

Section 2706(c) authorizes the Attorney General to seize property ordered forfeited and to dispose of that property when commercially feasible.

Section 2706(d) provides that all provisions of law relating to the remission or mitigation of civil forfeitures of property for violation of the customs laws shall apply to a criminal forfeiture ordered under this section.

§ 2707—Definitions for subchapter

Section 2707 defines the following terms used in subchapter I; "creditor", "debtor", "enterprise", "extension of credit", "extortionate extension of credit", "pattern of racketeering activity", "racketeering activity", "racketeering syndicate" and "repayment".

SUBCHAPTER II—DRUG OFFENSES

§ 2711—Trafficking in an opiate

Section 2711(a) punishes someone who (1) manufactures or traffics in an opiate or PCP; (2) creates or traffics in a "counterfeit substance" (defined in § 2715) containing an opiate or PCP; (3) imports or exports an opiate or PCP, or possesses an opiate or PCP aboard a vehicle arriving in or departing from the customs territory of the United States; or (4) manufactures or traffics in an opiate or PCP for import into the United States.

Section 2711(b) classifies the offense as a B felony if (1) the opiate or PCP weighs 100 grams or more, (2) the opiate or PCP was delivered to a person who has not attained the age of 18 and who is at least 5 years younger than the defendant, or (3) the defendant had previously been convicted of a Federal felony relating to an opiate or PCP. The offense is a class C felony in any other instance.

Section 2711(c) provides for extraterritorial jurisdiction if the actor knows or intends that the substance will be imported into the United States.

§ 2712—Trafficking in drugs

Section 2712(a) makes it an offense to (1) manufacture or traffic in a controlled substance (other than an opiate or PCP), (2) create or traffic in a counterfeit substance other than such a substance containing an opiate or PCP, (3) import or export a controlled substance other than an opiate or PCP, or (4) manufacture or traffic in, for import into the United States, a controlled substance other than an opiate, PCP or a substance listed in Schedule III, IV or V (as established by § 202 of the Controlled Substances Act).

Section 2712(b)(1) classifies the offense as a C felony if the controlled substance is a Schedule I or II substance and is a narcotic drug other than an opiate or PCP or 454 kilograms (1,000 pounds) or more of marihuana. Section 2712(b)(2) classifies the offense as a D felony if the controlled substance is (1) a Schedule I or II controlled substance (but not a narcotic drug or marihuana in an amount between 300 grams and 454 kilograms); (2) a Schedule III controlled substance; or (3) piperidine (a remote precursor of PCP). Section 2712(b)(3) classifies the offense as an E felony if the controlled substance is a Schedule IV substance. Section 2712(b)(4) classifies the offense as an A misdemeanor if the controlled substance is listed in Schedule V or is between 150 and 300 grams of marihuana. Section 2712(b)(5) classifies the offense as a B misdemeanor if the controlled substance is less than 150 grams of marihuana.

Section 2712(b) also raises the penalty for the offense by one level where the offenses involve distributing the controlled substance to someone who is less than 18 years old and who is at least 5 years younger than the defendant.

Section 2712(c) provides for extraterritorial jurisdiction if the actor knows or intends that the substance will be imported into the United States.

§ 2713—Possessing drugs

Section 2713(a) prohibits the knowing possession of a controlled substance.

Section 2713(b) classifies the offense as: (1) a D felony if the substance is 100 grams or more of an opiate or PCP; (2) an misdemeanor if the substance is (a) less than 100 grams of an opiate or PCP, (b) more than 300 grams of marihuana, or (c) a substance other than an opiate or PCP; (3) a B misdemeanor if the substance consists of between of 150 and 300 grams of marihuana; (4) a C misdemeanor if the substance consists of between 30 and 150 grams of marihuana; and (5) an infraction if the substance consists of 30 grams or less of marihuana.

Section 2713(c) provides a defense where the substance was obtained by the defendant from, or pursuant to a valid prescription or order issued by, a practitioner acting in the course of professional practice.

Section 2713(d) provides that a person who commits an infraction under the section shall be issued a summons and not be arrested.

Section 2713(e)(1) permits the sentencing judge, with the consent of the person found guilty, to defer further proceedings and place that person on probation for up to 12 months. Section 2713(e)(3) provides that if the person successfully completes the term of probation, the sentencing judge shall dismiss the prosecution. Section 2713(e)(4) provides that there shall be no adjudication of guilty and no convic-

tion for the purpose of disqualifications or disabilities. Section 2713(e)(4) also provides that the Justice Department must keep a nonpublic record for the purpose of determining whether a person is eligible for deferral under this subsection. Section 2713(e)(2) provides that someone is not eligible for deferral if that person has a previous conviction under subchapter II (drug offenses) of chapter 27, has a previous conviction for any Federal offense relating to naroctics, marihuana, or depressant or stimulant drugs, or has a previous deferral under the subsection.

§ 2714—Violating a drug regulation

Section 2714(a) makes it a class A misdemeanor to violate § 402(a) or (b) of the Controlled Substances Act or § 1004 of the Controlled Substances Import and Export Act, which prohibit certain conduct pertaining to the dispensing and manufacturer of controlled substances by registered manufacturers, distributors or dispensors of controlled substance and to the importation of controlled substances.

Section 2714(a)(2) makes it a class E felony to violate § 403(a)(1, (2), (3) or (5) of the Controlled Substances Act, which prohibits certain conduct pertaining to the distribution of controlled substances by registrants and to the use of labeling implements to render a drug a "counterfeit substance" (defined in § 2715).

§ 2715—General provisions for subchapter

Section 2715(a) defines the following terms for the purposes of subchapter II: "import", "customs territory of the United States", "traffic", "dispense", "manufacture", "Schedule", "controlled substance", "counterfeit substance", "marihuana", "narcotic drug", "opiate", "practitioner", "production", and "immediate precursor".

Section 2715(b) provides a defense to a prosecution for trafficking in an opiate (§ 2711), trafficking in drug (§ 2712), and possessing drugs (§ 2713) where the actor's conduct was authorized by the Controlled Substances Act or the Controlled Substances Import and Export Act.

SUBCHAPTER III—EXPLOSIVES AND WEAPONS OFFENSES

§ 2721—Explosives offenses

Section 2721(a)(1)(A) prohibits receiving, transporting or possessing an explosive with intent that it be used in the commission of a State or Federal felony, Section 2721(a)(1)(B) provides that the offense is a Class A felony if the actor recklessly causes the death of another, a class B felony if the actor recklessly causes bodily injury to another and a class C felony in any other instance.

Section 2721(a)(2)(A) makes it a class C felony to violate § 844(a) of present title 18, which is reenacted in titled II of the bill, and § 2721(a)(2)(B) makes the offense a class A misdemeanor.

Section 2721(a)(3)(A) penalizes the violation of § 4472(14) of the Revised Statutes of the United States Code (46 U.S.C. § 170(14)), which relates to regulating the carriage of explosives. The offense is a class C felony if the actor recklessly causes the death of another and a class E felony in any other instance. Section 2721(a)(3)(B) makes it

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a class E felony to violate § 902(h)(2) of the Federal Aviation Act of 1958 (relating to criminal penalties), and § 2721(a)(3)(C) makes it a class D felony to violate § 110(b) of the Hazardous Materials Transportation Act (relating to criminal penalties).

Section 2721(a)(4) makes it a class A misdemeanor knowingly to possess an explosive (1) in a building with reckless disregard for the fact that the building is a Federal building or (2) in, or on the grounds of, the United States Capitol Building.

Section 2721(b) provides a defense under subsection (a)(4) where the actor's conduct was in conformity with the written consent of the government agency or person managing the building or grounds.

Section 2721(c) provides for Federal jurisdiction under subsections (a)(1) and (4) where the explosive is moving in interstate or foreign commerce and under subsection (a)(4) where the building is owned by or is under the control of the Federal government.

Section 2721(d) provides for extraterritorial jurisdiction where the building is owned by or is under the control of the Federal government.

§ *2722—Firearms offenses*

Section 2722(a)(1) makes it an offense knowingly to receive, transport or possess a firearm or ammunition with intent that such firearm or ammunition be used (or with reasonable cause to believe that such firearm or ammunition is to be used) to commit a Federal or state felony.

Section 2722(a)(2) makes it a class D felony to violate §§ 922 or 923 of present title 18 (relating to the regulation and licensing of importers, dealers, and manufacturers of firearms and ammunition), which are reenacted in title II of the bill.

Section 2722(a)(3) makes it a class C felony to violate Chapter 53 of the Internal Revenue Code of 1954, which relates to machine guns, destructive devices and certain other firearms.

Section 2722(a)(4) makes it a class E felony to violate § 1202 of title VII of the Omnibus Crime Control and Safe Streets Act of 1968, which relates to the receipt, possession or transportation of firearms by persons prohibited from engaging in such conduct.

Section 2722(b) provides for Federal jurisdiction under subsection (a)(1) where the receipt, transportation or possession is in interstate or foreign commerce.

§ *2723—Use of a firearm or explosive in the course of a crime*

Section 2723(a) punishes the carrying or use of a real or imitation firearm or explosive during a felony.

Section 2723(b)(1) classifies the offense as a C felony for first offenders and as a B felony for second and subsequent offenders. Section 2723(b)(2) requires that, where the firearm involved was capable of causing serious bodily injury, the judge must sentence a first offender to a minimum sentence of one year in prison and a second or subsequent offender to a minimum of 2 years in prison.

Section 2723(c) provides for Federal jurisdiction if there is Federal jurisdiction over the underlying felony.

§ *2724—Possessing a weapon or explosive aboard an aircraft*

Section 2724(a) makes it an offense to violate section 902(l) of the Federal Aviation Act of 1958, which prohibits the possession of certain

dangerous materials aboard an aircraft. Section 2724(b) classifies the offense as a D felony if the defendant acted with reckless disregard for the safety of human life, and as an A misdemeanor in any other instance.

§ *2725—Definitions for subchapter*

Section 2725 defines the following terms for the purposes of subchapter III: "explosive", "firearm", "destructive device", "dangerous weapon", and "serious bodily injury."

SUBCHAPTER IV—RIOT OFFENSES

§ *2731—Inciting or leading a riot*

Section 2731(a)(1) prohibits intentionally causing a riot by inciting others to engage immediately in a riot, under circumstances rendering it likely that the incitement will imminently cause a riot. Section 2731(a)(2) punishes someone who, during a riot, intentionally furthers that riot by urging others to participate in the riot, by leading the riot, or by giving commands, instructions or directions.

Section 2731(b) classifies the offense as a C felony if the offense occurs in a Federal prison, and as a D felony in any other instance.

Section 2731(c) provides for Federal jurisdiction if the offense is committed within the special jurisdiction of the United States or within a Federal prison.

§ *2732—Providing arms for a riot*

Section 2732(a) prohibits supplying, or teaching the use of, a "dangerous weapon" or a "destructive device" (terms defined in § 2725) with the intent that the weapon or device be used in a riot. Section 2732(b) classifies the offense as a D felony where the conduct is supplying and as an E felony where the conduct is teaching.

Section 2732(c) provides for Federal jurisdiction if the riot affects interstate or foreign commerce or affects a Federal function, operation or action.

§ *2733—Engaging in a riot*

Section 2733(a) punishes someone who, with intent to further a riot, engages in violent and tumultuous conduct. Section 2733(b) classifies the offense as an E felony if committed in a detention facility and as an A misdemeanor in any other case.

Section 2733(c) provides for Federal jurisdiction when the offense is committed within the special jurisdiction of the United States or where committed in a Federal detention facility.

§ *2734—Definitions for subchapter*

Section 2734 defines the term "riot" for purposes of subchapter IV.

SUBCHAPTER V—GAMBLING, SEXUAL EXPLOITATION OF CHILDREN AND OBSCENITY

§ *2741—Operating a gambling business*

Section 2741(a)(1) makes it an offense to control, manage, or finance a "gambling business." Section 2741(a)(2) makes it an offense to carry or send, to any place within a state from any place outside

that state, a "gambling device," "gambling information" or gambling proceeds. Section 2741(a)(3) makes it an offense otherwise to engage in or promote a gambling business.

Section 2741(b)(1) classifies an offense under subsection (a)(1), or subsection (a)(3) (where the actor received layoffs or otherwise provided reinsurance for others engaged in a gambling business), as a D felony. Section 2741(b)(2) classifies an offense under subsection (a)(2), or under subsection (a)(3) in an instance not covered by subsection (b)(1), as an E felony.

Section 2741(c) provides for Federal jurisdiction for an offense under subsection (a)(1) where the offense affects interstate or foreign commerce, and for an offense under subsection (a)(2) or (a)(3) where (1) the mail or a facility of interstate or foreign commerce is used, (2) a person moves across a state or United States boundary during the commission of the offense, or (3) the offense occurs within the special jurisdiction of the United States.

Section 2741(d) provides that, for the purpose of obtaining an arrest warrant or a wiretap order, there is probable cause to believe that an enterprise has taken in $2,000 or more in a single day if 5 or more individuals are involved and if the enterprise operates for 2 or more successive days.

Section 2741(e)(1) provides a defense to a prosecution under subsection (a)(3) where the gambling business was legal in all places in which the business was conducted. Section 2741(b)(2) provides a defense to a prosecution under subsection (a)(2) where (1) a gambling device was sent into a state or locality where such device is legal; (2) the defendant was a common or public contract carrier and was carrying the device in the usual course of business; (3) the defendant was a player or bettor and the device was a ticket or other embodiment of the defendant's claim; (4) the gambling information was transmitted in connection with news or sports reporting or editorial commentary; (5) the gambling information was transmitted from a place where such gambling is legal to a place where such gambling is legal; (6) the transmission of the gambling offense would violate any of §§ 471–74 of the bill but for the exception in § 477 of the bill; or (7) the gambling proceeds were obtained by lawful participation in gambling that was legal in all places in which it was carried on.

Section 2741(e)(2) provides a bar to prosecution where the gambling business is legal in all places in which the business is carried on.

Section 2741(f) defines the following terms for the purposes of this section: "gambling", "gambling business", "gambling device", and "gambling information."

§ 2742—Sexual exploitation of children

Section 2742(a)(1) makes it an offense to employ, use, induce, or coerce any minor to engage in "sexually explict conduct" for the purpose of "producing" any "visual or print medium" depicting that conduct. Section 2742(a)(2) makes it an offense to have a minor assist another person to engage in sexually expicit conduct for the purpose of producing any visual or print medium depicting that conduct. Section 2742(a)(3) makes it an offense for someone who has custody

or control of a minor to permit that minor to engage in, or to assist another person to engage in, sexually explicit conduct for the purpose of producing any visual or print medium depicting that conduct.

Section 2742(b) classifies the offense as a C felony if committed after the defendant has previously been convicted of an offense under § 2742, and as a D felony in any other instance.

Section 2742(c) defines these terms for the purposes of the section: "minor", "sexually explicit conduct", "producing", and "visual or print medium."

Section 2742(d) provides for Federal jurisdiction where the visual or print medium is transported in interstate or foreign commerce or in the mail, or where the offense is committed within the special jurisdiction of the United States.

§ 2743—Transferring or exhibiting obscene material

Section 2743(a)(1) makes it an offense to transfer or exhibit "obscene material" (or to possess such material with intent to transfer or exhibit it) to a minor or to an adult who has no immediately effective opportunity to avoid exposure to the material. Section 2743(a)(2) makes it an offense commercially to transfer or exhibit obscene material (or to possess such material with intent commercially to transfer or exhibit it) to any person, regardless of the person's age or opportunity to avoid exposure to the material.

Section 2743(b)(1) classifies the offense as a C felony if (1) the obscene material is "visual or print medium" (defined in § 2742), (2) the producing of that visual or print medium involves the use of a minor engaging in "sexually explicit conduct" (defined in § 2742), and (3) the visual or print medium depicts that sexually explicit conduct. Section 2743(b)(2) classifies the offense as a D felony in any other instance.

Section 2743(c) provides a defense where (1) the material was transferred to a person associated with an institution of higher learning, either as a faculty member or as an enrolled student, teaching or pursuing a bona fide course of study or conducting or engaging in a bona fide research program, to which such material is pertinent, or (2) the material was transferred to a person whose receipt of the material was authorized in writing by a licensed or certified psychiatrist, psychologist, or medical practitioner.

Section 2743(d) defines the terms "obscene material" and "minor" for the purposes of the section.

Section 2743(e) provides for Federal jurisdiction where (1) the offense is committed within the special jurisdiction of the United States, (2) the mail or a facility of interstate or foreign commerce is used in the commission of the offense, or (3) the material is moved across a State or United States boundary in the planning, execution, or concealment of the offense.

§ 2744—Prohibited conduct involving minors

Section 2744(a)(1) makes it a class C felony intentionally to cause a minor to engage in "prohibited sexual conduct" as consideration for anything of pecuniary value, and § 2744(a)(2) makes it a class C

felony intentionally to assist a minor to participate in prohibited sexual conduct with reckless disregard for the fact that such conduct will be "commercially exploited" by any person. Section 2744(b) defines the terms "prohibited sexual conduct", "minor", and "commercial exploitation" for the purposes of the section.

Section 2744(c) provides for Federal jurisdiction if the offense is committed within the special jurisdiction of the United States or if the minor moved across a State or United States boundary, or was transported in interstate or foreign commerce, in the commission of the offense.

SUBCHAPTER VI—PUBLIC HEALTH AND SAFETY OFFENSES

§ *2751—Fraud in a health related industry*

Section 2751 makes it a class E felony for someone, with intent to defraud, to violate (1) §§ 9, 10, 11, 14 or 17 of the Poultry Products Inspection Act; (2) §§ 10, 11, 19, 20, 24, 201, 202, 203, or 204 of the Federal Meat Inspection Act; (3) § 8 of the Egg Products Inspection Act; or (4) § 301 of the Federal Food, Drug, and Cosmetic Act.

§ *2752—Distributing adulterated food*

Section 2752 makes it an offense to violate (1) §§ 9, 10, 11, 14 or 17 of the Poultry Products Inspection Act; (2) §§ 10, 11, 19, 20, 24, 201, 202, 203, or 204 of the Federal Meat Inspection Act; or (3) § 8 of the Egg Products Inspection Act.

Section 2752(b) classifies the offense as an E felony where an adulterated substance is distributed, and as an A misdemeanor in any other instance.

§ *2753—Environmental pollution*

Section 2753(a) makes it an offense to violate (1) § 309(c)(1) or § 404(s)(4)(A) of the Federal Water Pollution Control Act; (2) § 113(c)(1) of the Clean Air Act; (3) § 11(a) of the Noise Control Act of 1972; or (4) § 3008(d) of the Solid Waste Disposal Act.

Section 2753(b) classifies the first offense as an A misdemeanor and a subsequent offense as an E felony. Section 2753(b) also provides that, notwithstanding other provisions in the proposed code pertaining to fines, the maximum fine for a class A misdemeanor under this section is $25,000 per day and for a class E felony is $50,000 per day.

§ *2754—Pipeline safety offenses*

Section 2754 makes it a class D felony to violate § 11(c) of the Natural Gas Pipeline Safety Act of 1968 or § 208(c) of the Hazardous Liquid Pipeline Safety Act of 1979.

SUBCHAPTER VII—ASSIMILATIVE CRIMES OFFENSES

§ *2761—Violating State or local law in an enclave*

Section 2761(a) makes it an offense to violate, on a Federal enclave, a law of the State or locality in which that enclave is located, if the conduct does not otherwise constitute a Federal offense, and if, in light of other Federal law relating to similar conduct, the conduct was not intended to be excluded from Federal criminal sanctions.

Section 2761(b)(1) classifies the offense as: (1) an A misdemeanor if the maximum term of imprisonment under the State or local law is one year or more; (2) a misdemeanor of the lowest class for which Chapter 37 of the proposed code authorizes a term of imprisonment equal to or exceeding the maximum prison term authorized by the State or local law, if such maximum is less than one year; and (3) an infraction if the only penalty authorized by State or local law is a criminal fine. Section 2761(b)(2) provides that a term of imprisonment and fine imposed by a Federal judge under this section may not exceed the maximum authorized by the State or local law involved. For example, a State misdemeanor may carry a maximum jail term of 90 days. Section 2761(b)(1) would classify the offense as a class B misdemeanor, for which § 3702 of the proposed code provides a maximum term of imprisonment of 6 months. However, the maximum prison term that could be imposed is limited by § 2761(b)(2) to 90 days, the maximum authorized by the State law involved.

Section 2761(c)(1)(A) provides that it is a question of law (1) whether a State law is in force, and (2) whether a circumstance described in subsection (a)(1) and (2) exists. Section 2761(c)(1)(B) provides that no state of mind need be proved with respect to the facts that: (1) the place where the alleged violation took place was a Federal enclave; (2) the state law was then in force; and (3) a circumstance described in subsections (a)(1) and (2) exists.

SUBTITLE III—SENTENCING AND CORRECTIONS

Chapter 31—General Provisions

§ *3101—Purposes of Sentencing*

Section 3101 sets forth 8 purposes for sentencing persons convicted of criminal offenses:

(1) assure that the punishment is commensurate with the harm done and with the offender's culpability;
(2) assure similar punishment for similarly-situated offenders;
(3) promote respect for the law;
(4) deter other criminal conduct;
(5) protect the public from further crimes of the offender;
(6) provide needed education, vocational training, medical care, or other correctional treatment to the offender;
(7) provide restitution to crime victims; and
(8) reconcile the victim, community, and the offender.

§ *3102—Factors to be considered in sentencing*

This section directs judges, when sentencing a convicted offender, to consider (1) the nature and circumstances of the offense and the defendant's history and characteristics; (2) the purposes of sentencing set forth in § 3101; (3) the kinds of sentences available, including alternatives to prison; and (4) applicable sentence guidelines promulgated pursuant to Chapter 43 of the proposed code.

§ *3103—Imposition of Sentence*

Section 3103(a) requires that sentence be imposed without unreasonable delay. Section 3103(b) provides that the defendant and the government shall have an opportunity to address the court prior to the imposition of sentence.

Section 3103(c) requires the sentencing judge to do the following when imposing sentence: (1) resolve any material factual disputes that may affect the sentence; (2) make whatever findings are necessary in order to determine the applicable sentence guideline; (3) specify the applicable sentence guideline; and (4) state on the record the reasons for the particular sentence imposed (specifying reasons for imposing a sentence different from that called for by the sentence guideline, if that is done).

Section 3103(d) requires the sentence judge, in imposing a particular sentence, to use the sentencing guidelines unless aggravating or mitigating circumstances require imposition of another sentence.

§ *3104—Presentence report*

Section 3104(a)(1) requires the probation service to prepare and submit a presentence report prior to the imposition of sentence, unless the defendant (with the court's permission) waives such a report and the court finds that the record contains sufficient information to permit imposition of sentence. Section 3104(a)(2) requires that the presentence report contain the defendant's record of prior convictions, the applicable sentence guideline, and any other information that may aid the court in imposing sentence. Section 3104(a)(3) provides that the presentence report shall not be submited to the court until after the defendant has pleaded guilty or nolo contendere or has been found guilty, but permits the court to inspect the report at any time if the defendant consents in writing to such inspection.

Section 3104(b)(1)(A) requires that the court provide to the defendant and defense counsel, at least 5 days prior to the imposition of sentence, a copy of the presentence report. The defendant and defense counsel must be given an opportunity to comment upon the report, and the parties may waive the requirement of this subsection.

Section 3104(b)(1)(B) permits the court, in lieu of providing a complete report, to state, orally or in writing, in open court or in camera, a summary of specified matter. The matter specified is (1) diagnostic opinion that might seriously disrupt a program of rehabilitation, (2) sources of information obtained upon a promise of confidentiality, and (3) any other information that, if disclosed, could result in harm to the defendant or another person.

Section 3104(b)(2) provides that any information disclosed to the defendant or defense counsel shall also be disclosed to the attorney for the government, and section 3104(b)(3) provides that any copy of a presentence report made available to any party or attorney must be returned to the probation service of the court. Section 3104(b)(4) directs the court to require that any erroneous information in a presentence report to be corrected in the report, and section 3104(b)(5) specifies that reports of studies (and recommendations contained in those studies) made by the Director of the Bureau of Prisons under § 4704(c) or 6106(c) of the proposed code are to be treated as presentence reports for the purposes of this section.

§ *3105—Presentence hearing*

Section 3105(a)(1) requires the sentencing judge to conduct, at least 5 days after disclosure of the presentence report, a hearing to determine any unresolved issue of fact that is essential to the sentencing decision. The judge is also permitted to conduct such a hearing

if the judge finds that it will in any way assist in the sentencing decision. Section 3105(a)(2) requires that the sentencing judge make specific findings on any issue of fact that is essential to the sentencing decision.

Section 3105(b) provides that: (1) a party raising an issue of fact not based on information in the presentence report must give notice to the other parties in such form and manner as the court shall direct; and (2) the parties may subpoena, call, and cross-examine witnesses, if the court so permits.

Section 3105(c)(1) requires that a party alleging a fact has the burden of proving that fact by a preponderance of the evidence. Section 3105(c)(2) provides that: (A) no fact proved at trial or established by a guilt or nolo contendere plea may be disputed by any party; (B) the Government must prove beyond a reasonable doubt the existence of any previous conviction of the defendant which the Government is relying upon; (C) any factual statement in the presentence report (other than a statement of the defendant's previous criminal convictions) is presumed to be true, but if the defendant offers credible evidence to controvert such a statement, then the Government must prove the fact involved by a preponderance of the evidence; (D) the court may consider any information about the defendant's history, characteristics, and conduct that is relevant to the sentencing decision, unless consideration of that information is otherwise prohibited by law; and (E) the court shall see to it that any finding of fact made by the court which negates a factual statement in the presentence report, is made a part of that report.

§ 3106—Sentencing classification of offenses outside this title

Section 3106(a)(1) provides that an offense outside of title 18 that is not classified shall be treated for all purposes as:

(1) an infraction, if the maximum imprisonment authorized is 5 days or less or if no imprisonment is authorized;

(2) a class C misdemeanor, if the maximum imprisonment authorized is between 5 and 30 days;

(3) a class B misdemeanor, if the maximum imprisonment authorized is between 30 days and 6 months;

(4) a class A misdemeanor if the maximum imprisonment authorized is between 6 months and one year; and

(5) a class E felony, if the maximum imprisonment authorized is more than one year.

Section 3106(a)(2) provides that where the maximum penalty is life imprisonment or a more severe penalty, the unclassified offense shall be treated as a class A felony.

Section 3106(b) provides that, with respect to unclassified offenses outside of title 18, the maximum penalty that may be imposed is that which is set forth in the unclassified, nontitle 18 offenses.

Chapter 33—Conditional Discharge, Probation, and Restitution

SUBCHAPTER I—CONDITIONAL DISCHARGE

§ 3301—Applicability of conditional discharge

Section 3301 permits the imposition of a sentence of conditional discharge unless the offense involved is a class A felony and the de-

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fendant is an individual or unless the defendant is sentenced at the same time to probation or imprisonment for the same or a different offense.

§ *3302—Term of sentence of conditional discharge*

Section 3302 provides that a term of conditional discharge shall run for not more than (1) 60 months, if the offense is a felony, (2) 24 months, if the offense is a misdemeanor, and (3) 12 months, if the offense is an infraction.

§ *3303—Considerations in sentencing to conditional discharge*

Section 3303 directs the sentencing judge, in deciding whether to impose a sentence of conditional discharge, to consider the factors set forth in § 3102 and to give primary consideration to the purposes of sentencing set forth in § 3101(a)(3), (4), (6), (7), and (8).

§ *3304—Conditions of conditional discharge*

Section 3304(a)(1) mandates the sentencing judge to require as a condition of a conditionally discharged sentence that the defendant not commit another offense during the term of the sentence. Section 3304(a)(2) permits the court to impose any additional conditions that are reasonably related to the factors set forth in § 3102 and that involve no greater deprivation of liberty than is reasonably necessary.

Section 3304(b)(1) specifies some conditions that a sentencing judge may impose pursuant to subsection (a)(2): make restitution to a victim of the offense; meet family responsibilities; and pay a fine. Section 3304(b)(2) provides that a term of confinement may not be imposed as a condition of a conditionally discharged sentence.

§ *3305—Monitoring compliance with conditions*

Section 3305(a) permits the court to make whatever orders it deems necessary in order to monitor the defendant's compliance with the conditions of the sentence. Section 3305(b) authorizes the probation service of the court to perform whatever duties are reasonably necessary to monitor compliance with the conditions of a conditionally discharged sentence.

SUBCHAPTER II—PROBATION

§ *3321—Applicability of probation*

Section 3321 permits a judge to impose a sentence of probation unless the offense is a class A felony or unless the defendant is sentenced at the same time to conditional discharge or imprisonment (other than under § 3324(b)(8)) for the same or a different offense.

§ *3322—Term of sentence of probation*

Section 3322 provides that a term of probation shall run for not more than (1) 60 months, if the offense is a felony, (2) 24 months, if the offense is a misdemeanor, and (3) 12 months, if the offense is an infraction.

§ *3323—Considerations in sentencing to probation*

Section 3323 provides that, in deciding whether to impose probation, the sentencing judge shall consider the factors set forth in § 3102 and shall give primary consideration to the purposes of sentencing set forth in § 3101(a) (1), (2), (3), (5), (6), (7), and (8).

§ 3324—Conditions of probation

Section 3324(a)(1) mandates the sentence judge to require, as a condition of probation, that the defendant (1) not commit any offense during the term of probation; and (2) make restitution under subchapter III of chapter 33, unless the court determines that restitution is impractical. Section 3324(a)(2) permits the judge to impose additional conditions if those conditions are reasonably related to the factors set forth in § 3102 and if those conditions do not involve a greater deprivation of liberty than is reasonably necessary.

Section 3324(b) specifies conditions that the judge may impose pursuant to subsection (a)(2): meet family responsibilities; work conscientiously at suitable employment; pay a fine; refrain from frequenting specified places or from associating unnecessarily with specified persons; refrain from excessive use of alcohol or from use of a controlled substance without a prescription; refrain from possessing a firearm or dangerous weapon; undergo medical or psychiatric treatment; serve a term of imprisonment of up to the lesser of 180 days or the maximum prison term authorized for the offense, which term of confinement must be served during the first year of the term of probation; work in community service; reside in, or refrain from residing in, a specified place; remain within the jurisdiction of the court; report to a probation officer; permit a probation officer to visit at reasonable times, at home or elsewhere; answer truthfully the inquiries of a probation officer which are relevant to the conditions of probation; notify the probation officer promptly of any change in address or employment; notify the probation officer promptly if arrested; or authorize disclosure to a probation officer of financial records under § 1104 of the Right to Financial Privacy Act of 1978.

SUBCHAPTER III—RESTITUTION

§ 3331—Applicability of restitution

Section 3331 permits a sentencing judge to order a convicted defendant to make restitution to a victim of the offense unless the offense is a violation of subchapter VII of chapter 25 or § 2536(b) of the proposed code.

§ 3332—Nature of sentence of restitution

Section 3332(a) specifies the nature of the restitutionary obligation that may be imposed upon a convicted defendant. Section 3332(a)(1) permits the court to order a defendant, where the offense results in bodily injury, to pay necessary medical expenses attributable to the bodily injury. Section 3332(a)(2) permits the court, where the offense results in loss or damage to property, to require a defendant (1) to return the property, or (2) to pay an amount equal to the greater of the value of the property on the date of the loss or the value on the date of sentencing minus the value of any returned property.

Section 3332(b) prohibits the judge from imposing a sentence of restitution if to do so would unduly complicate or prolong the sentencing process.

Section 3332(c)(1) prohibits a judge from ordering the making of restitution to victim who is a party to any judgment, settlement, or agreement under which such victim has received, or is to receive, com-

pensation for the injury, loss or damage caused by the offense for which the defendant has been convicted. Section 3332(c)(2) provides that any amount paid to a victim as restitution must later be set off against any amount recovered by the victim as compensatory damages in any federal or state civil proceeding.

§ 3333—Considerations in sentencing to restitution

Section 3333 requires a sentencing judge, in deciding whether to impose a sentence of restitution, to consider the factors set forth in § 3102 and to give primary consideration to the purposes of sentencing set forth in § 3101(a)(1), (2), (3), (4), (5), (7), and (8).

§ 3334—Conditions of sentence of restitution

Section 3334(a) permits the sentencing judge to require, as a condition of a sentence of restitution, that the restitution be made within a specified time period or in specified installments, but the time period specified may be no greater than the greatest of the maximum term of conditional discharge, probation, or imprisonment authorized for the offense. Unless specified otherwise, restitution must be made immediately.

Section 3334(b) prohibits the court from imposing any condition as part of a sentence of restitution that is not set forth in subsection (a).

§ 3335—Making of restitution relating to organizations

Section 3335 provides that when a sentence of restitution is imposed upon an organization, every individual authorized to transfer property on behalf of the organization or to make disbursements on behalf of the organization has the duty to comply with the sentence of restitution on behalf of the organization.

§ 3336—Enforcement of sentence of restitution

Section 3336 provides that the United States may enforce a sentence of restitution in the same manner as it may enforce a judgment in a civil action.

SUBCHAPTER IV—GENERAL PROVISIONS FOR CHAPTER

§ 3341—Commencement of term of sentence of conditional discharge or probation

Section 3341 provides that a sentence of conditional discharge or probation begins on the date when the sentence is imposed unless the court orders otherwise.

§ 3342—Finality of judgment involving conditional discharge, probation, or restitution

Section 3342 provides that a judgment of conviction which includes a sentence of conditional discharge, of probation, or of restitution is a final judgment, even though such a sentence may later be modified or revoked.

§ 3343—Multiple sentences of conditional discharge or probation

Section 3343 (a) provides that multiple sentences of conditional discharge or of probation, whether imposed at the same or at different times, run concurrently. Section 3342(b) provides that a term of con-

ditional discharge or of probation runs concurrently with the term of any other federal or state sentence to which the defendant becomes subject during the term of the sentence of conditional discharge or of probation, except that such term does not run concurrently with a term of imprisonment.

§ 3344—Termination of sentence of conditional discharge, probation, or restitution

Section 3344 permits the sentencing judge, at any time before a sentence of conditional discharge, probation, or restitution has been completed, and on its own motion or the motion of the defendant or the Government, to terminate the sentence if the judge is satisfied that the defendant's conduct and the interests of justice warrant the termination.

§ 3345—Modification of term or conditions of sentence of conditional discharge, probation, or restitution

Section 3345 permits the sentencing judge, at any time before a sentence of conditional discharge, probation, or restitution has expired, and after a hearing at which the defendant is entitled to representation by counsel, to modify the terms and conditions of the sentence.

§ 3346—Written statement of conditions of sentence of conditional discharge, restitution, or probation

Section 3346 requires the sentencing judge to direct a probation officer to give the defendant a written statement of all of the conditions of a sentence of conditional discharge, probation, or restitution with sufficient specificity to serve as a guide for the defendant's conduct.

§ 3347—Summons and warrant for violation of condition of conditional discharge, probation, or restitution

Section 3347(a) provides that when a defendant is alleged to have violated, in material respect, a condition of a sentence of conditional discharge, probation, or restitution: (1) a probation officer may issue a summons for the defendant to appear at a preliminary hearing under § 3348, or (2) with respect to a sentence of probation, the court may issue a warrant to retake the defendant.

Section 3347(b)(1) requires that the summons or warrant authorized by this section issue as soon as practicable after the discovery of the alleged violation. Section 3347(b)(2) provides that a warrant or summons authorized by this section operates as a detainer with respect to a defendant serving a term of imprisonment for a Federal or state offense.

Section 3347(c) requires that a summons or warrant issued under this section be accompanied by a written statement setting forth (1) the conditions allegedly violated, (2) the time, place and purpose of the preliminary hearing, (3) the defendant's rights under § 3348, and (4) the action the court is authorized to take by § 3349.

§ 3348—Preliminary hearing and revocation hearing with respect to alleged violation of sentence of conditional discharge, probation, or restitution

Section 3348(a) requires that, when a defendant has been alleged to have violated a condition of a sentence of conditional discharge, pro-

bation or restitution, the court with jurisdiction over the defendant (or a court reasonably near the place of the alleged violation, if the court of jurisdiction so orders) conduct a preliminary hearing, without unreasonable delay, for the purpose of determining whether there is reasonable cause to believe that such violation occurred. If the court finds probable cause, the court may: (1) revoke the sentence and order the defendant confined pending a hearing under subsection (b); (2) permit the defendant to remain at liberty, if the court determines that confinement is not warranted by the frequency or seriousness of the alleged violation, that the defendant is likely to appear for future proceedings, and that the defendant is not a danger to himself or others; or (3) terminate the proceedings against the defendant, if such action is in the interest of justice. Section 3348(a)(2) provides that convicion for any offense committed after the sentence was imposed constitutes probable cause under this section.

Section 3348(b) requires the court to hold a revocation hearing no later than 60 days after a finding of probable cause.

Section 3348(c) provides that at preliminary and revocation hearings the defendant has the right to be represented by counsel, to be apprised of the adverse evidence, to confront and cross-examine adverse witnesses, and to appear, testify, and present witnesses and relevant evidence.

Section 3348(d) permits a defendant to waive a preliminary hearing and a revocation hearing.

§ *3349—Action concerning violation of condition of conditional discharge, probation, or restitution*

Section 3349(a) provides that if, after a revocation hearing, the court determines by a preponderance of the evidence that a defendant has violated a condition of a sentence of conditional discharge, probation, or restitution, the court may take the following action: (1) continue the sentence unchanged; (2) reprimand the defendant; (3) modify the conditions of the sentence; or (4) revoke the sentence and impose any sentence available to the court at the time of initial sentencing. However, where the sentence revoked is a sentence of conditional discharge or restitution, the court may impose a sentence involving imprisonment only if the court finds that the defendant engaged in conduct constituting a violation of a condition of the sentence and constituting a Federal or State felony.

Section 3349(b) directs the court, in carrying out its responsibilities under subsection (a), to consider: (1) if the defendant has been convicted of a Federal or State offense, the seriousness of the offense; and (2) the frequency and seriousness of other violations of the conditions of the sentence.

Section 3349(c) provides that where the court modifies or revokes the sentence and the new or modified sentence imposes a new or increased financial burden upon the defendant, then any money previously paid by the defendant shall be credited towards the new or modified monetary obligation of the defendant.

Section 3349(d) provides that if the court revokes a sentence of probation and imposes a sentence of imprisonment, then any time served in confinement during the period of probation shall be credited towards the term of imprisonment, and any time served under proba-

tion without a violation of the conditions of probation may be counted towards the term of imprisonment.

Section 3349(e) provides that if the court modifies a sentence of probation by extending the term of the sentence or by increasing a period of confinement imposed as a condition of the sentence, then any time served in confinement during the sentence of probation shall be counted towards the modified period of confinement and any time served under probation without violating a condition of the sentence may be counted towards the modified term of the sentence.

Section 3349(f) requires that the court render a decision under this section within 21 days from the date of the revocation hearing, and the court's decision must include a statement of the reasons for its decision.

Section 3349(g) provides that the court's power to revoke a sentence of conditional discharge or probation and to impose a new sentence extends for a reasonable period beyond the expiration of the term of such sentence if before the expiration a summons or warrant under § 3347 was issued.

Chapter 35—Fines

§ 3501—Applicability of fine

Section 3501 authorizes a court to impose a fine upon a defendant who is convicted of an offense.

§ 3502—Amount of sentence of fine

Section 3502 provides that the maximum amount of a fine, unless otherwise provided by Act of Congress, is:

(1) for a felony, $250,000 if the defendant is an individual and $1,000,000 if the defendant is an organization;

(2) whether the defendant is an individual or an organization:

(a) $25,000 for a class A misdemeanor,

(b) $15,000 for a class B misdemeanor,

(c) $5,000 for a class C misdemeanor, and

(d) $1,000 for an infraction.

§ 3503—Considerations in sentencing to fine

Section 3503 requires the sentencing judge, in determining whether to impose a fine and the amount and method of payment of a fine, to consider (1) the factors set forth in § 3102; (2) the defendant's income, earning capacity, and financial resources, including the burden that the payment of the fine will impose upon the defendant and the defendant's dependents; (3) the proof concerning any pecuniary gain derived by the defendant; and (4) any other equitable consideration that is pertinent. Section 3503 also requires the court to give primary consideration to the purposes of sentencing set forth in § 3101(a)(1), (2), (3), and (4) and to the need to deprive the defendant of illegally obtained gains from the offense for which the defendant has been convicted.

§ 3505—Conditions of fine

Section 3505(a) permits the court to require that a fine be paid within a specified time (but the time period cannot exceed the greater of the maximum term or probation or imprisonment authorized for the offense). Unless specified otherwise, a fine must be paid immediately.

Section 3505(b) prohibits a court from imposing any other condition as a part of a sentence of fine.

§ *3506—Modification or remission of fine*

Section 3506(a)(1) permits a defendant who has been sentenced to pay a fine to petition the court for an extension of the time for payment, for a modification in the method of payment, or for a remission of all or a part of the unpaid portion. Section 3506(a)(2) permits the court to grant the defendant's petition and enter an appropriate order if the court finds that (1) the circumstances that originally warranted the amount of the fine or the method or time for payment no longer exist, or (2) it would be otherwise unjust to require payment in the amount imposed or in the manner or within the time specified.

§ *3507—Enforcement of sentence of fine*

Section 3507 permits the United States to enforce a fine in the same way that it can enforce a civil judgment.

Chapter 37—Imprisonment

§ *3701—Applicability of imprisonment*

Section 3701 authorizes the court to sentence a convicted defendant to imprisonment.

§ *3702—Term of sentence of imprisonment*

Section 3702 provides that the maximum term of imprisonment is:

(1) life for a class A felony;
(2) 160 months for a class B felony;
(3) 80 months for a class C felony;
(4) 40 months for a class D felony;
(5) 18 months for a class E felony;
(6) 12 months for a class A misdemeanor;
(7) 6 months for a class B misdemeanor; and
(8) 30 days for a class C misdemeanor.

§ *3703—Considerations in sentencing to imprisonment*

Section 3703(a) directs the court, in determining whether to impose a term of imprisonment and the length of such term, to consider the factors set forth in § 3102 and to give primary consideration to the purposes of sentencing set forth in § 3101(a) (1), (2), (3), (4), and (5). Section 3703(b) prohibits the court from considering the defendant's need for correctional treatment as a justification for imposing a term of imprisonment or in determining the length of a term of imprisonment.

§ *3704—Modification of term of imprisonment*

Section 3704 provides that the sentencing judge may not modify a term of imprisonment after the term is imposed, except that: (1) the judge, upon motion of the Director of the Bureau of Prisons or of the United States Parole Commission and notice to the defendant and the attorney for the Government, may reduce the term of imprisonment if the judge finds that extraordinary and compelling reasons warrant the reduction; and (2) the judge may modify the term to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure.

§ *3705—Multiple sentences of imprisonment*

Section 3705(a) provides that multiple sentences of imprisonment imposed on a defendant at the same time run concurrently and that a sentence of imprisonment imposed upon a defendant who at the time of imposition of the sentence is subject to a previously-imposed Federal or state term of imprisonment runs concurrently with the previously-imposed sentence. Section 3705(a) permits the judge to impose consecutive sentences in such cases, however, if the judge finds that the imposition of a consecutive sentence is appropriate and states the reasons for that finding on the record.

Section 3705(b) provides that a judge may not order that multiple sentences of imprisonment run consecutively if (1) the sentences are for an offense described in §§ 1101 (attempt) or 1102 (conspiracy) and an offense that was the objective of such attempt or conspiracy; or (2) the sentences are for offenses which differ only in that one offense prohibits a kind of conduct generally and the other offense prohibits a specific type of such general conduct.

§ *3706—Commencement of term of imprisonment and credit for time served*

Section 3706(a) provides that a term of imprisonment commences on the day the defendant is received in custody for the service of the sentence.

Section 3706(b) provides that a defendant be given credit toward the service of a term of imprisonment for any time spent in confinement before the commencement of the sentence of imprisonment if that time has not been credited against another sentence and if the time spent in confinement was the result of (1) the offense for which the sentence is imposed, or (2) any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed.

Section 3706(c) requires the Bureau of Prisons to credit against the term of imprisonment of a federal sentence all time served in a state or local detention facility after the commission of the Federal offense, if such time was served solely as the result of a federal detainer.

§ *3707—Youthful offenders*

Section 3707 authorizes the sentencing judge to designate someone sentenced to imprisonment as a "youthful offender" if (1) the defendant is less than 21 years old on the date of the offense and the date of sentencing, and (2) the judge finds that the defendant will benefit from placement in a separate facility or institution under § 3907(c) of the proposed code.

Chapter 39—Prison Administration

SUBCHAPTER I—PRISONS

The 25 sections in this subchapter deal with the operation of the Federal prison and correctional system.

Section 3901 prohibits the detention of any citizen except pursuant to Act of Congress. This section makes the Attorney General responsible for operating Federal penal institutions (except for military correctional facilities).

Section 3902 establishes the Bureau of Prisons, and authorizes the appointment of its Director.

Section 3903 provides that duties of the Bureau of Prisons include managment of all Federal penal and correctional institutions (except military facilities), establishment of rehabilitation programs for prisoners, and providing technical assistance to the States.

Section 3904 authorizes a Bureau of Prisons officer or employee to make arrests without warrant for violation of §§ 1713 (aiding consummation of an offense), 1714 (false implication of another), and 2731 (inciting or leading a riot), if the Bureau of Prisons officer or employee has reasonable grounds to believe that the person arrested is guilty and if there is a likelihood that such person will escape before an arrest warrant can be obtained. The section also authorizes Bureau of Prisons officers and employees to carry firearms pursuant to rules issued by the Attorney General.

Section 3905 authorizes the Secretary of Health and Human Services to appoint certain medical personnel to serve offenders held by the Bureau of Prisons.

Section 3906 provides that the Federal correctional system shall be planned in such a way as to create an integrated system that will assure the proper classification and segregation of prisoners.

Section 3907 deals with the placement of prisoners. Subsection (a) provides that the Attorney General shall designate the place of confinement of all persons sentenced to a term of imprisonment. Subsection (b)(1) permits the Attorney General to designate a nonfederal facility as a place of confinement, and subsection (b)(2) requires that the Attorney General, within 6 months of the effective date of the legislation, promulgate rules concerning minimum standards for the care and housing of prisoners in a nonfederal facility. Subsection (c) requires the Attorney General to place "youthful offenders" (see § 3707) in a facility or institution separate from a facility or institution used for other prisoners. Subsection (d) permits the Attorney General to furlough prisoners for up to 30 days at a time and to place prisoners in work release programs.

Section 3908 provides that offenders convicted of felonies may be confined in any penitentiary. Where the offender is convicted of a misdemeanor, the section provides that the offender cannot be confined in a penitentiary unless the offender consents.

Section 3909 requires that a commitment order accompany the prisoner to the place of confinement.

Section 3910 authorizes the Attorney General, at the request of the Governor of a State, to house a Federal offender who has also been convicted of a State felony, in a State prison.

Section 3911 gives United States Marshals supervisory authority over someone arrested or held pending commitment to an institution.

Section 3912 authorizes the Attorney General to arrange to house Federal prisoners in State penal institutions for periods of up to 3 years. Inmates who are housed under this program may not be employed in a State prison industry which competes with private enterprises.

Section 3913 authorizes the construction of Federal institutions when no appropriate State facilities are available to house Federal prisoners.

Section 3914 authorizes the Attorney General to pay the subsistence costs of an inmate in the custody of a United States Marshal.

Section 3915 authorizes payment of the transportation costs of an inmate who travels somewhere away from a penal or correctional institution, as well as such costs for the person guarding the inmate.

Section 3916 authorizes the planning of new correctional facilities.

Section 3917 authorizes the acquisition of land by the United States to use for prison construction.

Section 3918 authorizes the Attorney General to house in Federal prison system offenders who have been sentenced by a State court. The section also requires that the United States be fully reimbursed for the expenses of such housing.

Section 3919 requires the Bureau of Prisons to pay the transportation costs for released inmates and to give them "gate money" of up to $100.

Section 3920 authorizes the payment of the travel expenses of someone who is held as a material witness.

Section 3921 establishes the rules for setting a prisoner's release date when the statutory release date would fall on a Saturday, Sunday or holiday.

Section 3922 provides that the Attorney General shall, without charge, bring a prisoner to a United States court.

Section 3923 establishes the Advisory Corrections Council to make recommendations to improve the administration of justice and to assure a coordinated and integrated correctional policy.

Sections 3924 and 3925 establish, within the Bureau of Prisons, the National Institute of Corrections to be a research and clearing house organization on such topics as corrections, recidivism, probation, parole, and sentencing.

SUBCHAPTER II—EMPLOYMENT OF PRISONERS

The 8 sections of this subchapter restate without substantive change the parallel sections of current law (18 U.S.C. §§ 4121–28).

Chapter 41—Appeal of Sentence

§ *4101—Appeal of sentence by defendant*

Section 4101(a) permits a defendant to appeal a sentence on the ground that the sentence was not authorized by law.

Section 4101(b)(1) permits a defendant to appeal a sentence (other than a sentence imposed for an infraction) on the ground that the sentence (1) is based upon an inapplicable sentence guideline, (2) is more severe than the most severe sentence provided in the sentence guideline and is unreasonable, or (3) is a sentence for which no sentence guideline has been promulgated and is unreasonable. Section 4101(b)(2) permits a defendant whose sentence for a felony is within the applicable sentence guideline to petition for leave to appeal on the ground that the sentence is clearly unreasonable.

Section 4101(c) precludes a defendant from appealing a sentence imposed pursuant to a plea agreement accepted by the court if the sentence is (1) no greater than the sentence which the attorney for

the government recommended or agreed not to oppose, or (2) the sentence agreed to by the defendant and the attorney for the government.

§ 4102—Procedure for appeal of sentence

Section 4102(a) requires the defendant to file a notice of appeal under § 4101 (a) or (b)(1), or a petition for leave to appeal under § 4101(b)(2), within 30 days after the imposition of sentence. The notice or petition is filed with the clerk of the district court.

Section 4102(b) requires the clerk of the district court to transmit to the court of appeals those portions of the record relevant to the sentence.

Section 4102(c) directs the court of appeals to consider: (1) those portions of the trial record transmitted under subsection (b); (2) the applicable sentence guideline; (3) the district court's opportunity to observe the defendant; (4) the purposes of sentencing set forth in § 3102; and (5) the factors to be considered at time of sentencing set forth in § 3103.

Section 4103(d)(1) authorizes the court of appeals (1) to vacate the sentence and resentence the defendant or (2) to remand the case to the district court for sentencing, but in neither instance can any new sentence be more severe than the sentence being appealed. In order to take either course of action, § 4102(d)(1) requires that the court of appeals determine:

(1) in an appeal under § 4101(a), that the sentence is not authorized by law;

(2) in an appeal under § 4101(b)(1)(A), that the sentence is based upon an inapplicable sentence guideline;

(3) in an appeal under § 4101(b)(1)(B), that the sentence is more severe than the most severe sentence provided in the sentence guideline and is unreasonable;

(4) in an appeal under § 4101(b)(1)(C), that the sentence is one for which no sentence guideline has been prescribed and is unreasonable; or

(5) in an appeal under § 4102(b)(2), that the sentence is within the sentence guideline and is clearly unreasonable.

Section 4102(d)(2) requires that the court of appeals give reasons in writing for any decision to vacate sentence and impose a lesser sentence or remand to the district court.

Section 4102(e) permits a defendant to join an appeal of sentence with an appeal on any other issue.

Section 4102(f) authorizes the court of appeals to permit or to require the attorney for the Government to file an answer. The appeal is to be decided on the basis of the appeal and the answer, unless the court of appeals otherwise directs.

Chapter 43—Sentencing Guidelines

§ 4301—Sentencing guidelines

Section 4301(a)(1) directs the Judicial Conference of the United States to prescribe sentencing guidelines for Federal judges, in order to promote fairness and certainty in sentencing, eliminate unwar-

ranted disparity in sentencing, and improve the administration of justice. Section 4301(a)(2) provides that these guidelines be submitted to Congress by May 1st of the year in which they are to take effect and that the guidelines take effect 180 days after submission, unless Congress by law provides otherwise.

Section 4301(b) requires that the Judicial Conference transmit a statement concerning the expected impact of the guidelines on Federal prisons, Federal courts, and Federal expenditures.

Section 4301(c) provides that an amendment to an existing sentence guideline becomes effective in the same way as a sentence guideline.

§ 4302—Content of sentencing guidelines

Section 4302(a) requires that the sentence guidelines be based upon (1) categories of offenders derived from relevant history and characteristics of defendants in Federal court, and (2) categories of offenses derived from the nature and circumstances of the offenses for which such defendants are convicted. Section 4302(b) requires that each sentence guideline indicate the appropriate disposition of a case within each offender category and each offense category.

Section 4302(c)(1) requires that a guideline calling for a fine (1) indicate a range in dollars for the amount of the fine and (2) take into consideration the need to avoid unreasonable aggregation of fines imposed for 2 or more convictions that are based on the same criminal conduct or that arise from the same criminal episode.

Section 4302(c)(2) requires that a guideline calling for a prison term (1) indicate a range in time for the term, and (2) indicate that the aggregate of consecutive terms of imprisonment to which a defendant may be sentenced at one time may not exceed the maximum term of imprisonment for an offense one class higher than the most serious offense for which the defendant is sentenced.

§ 4303—Committee on sentencing

Section 4303(a) establishes a Committee on Sentencing within the Judicial Conference whose purpose is to collect relevant data and recommend sentence guidelines to Judicial Conference.

Section 4303(b) deems the Committee to be an agency for the purposes of certain provisions of title 5 of the United States Code.

§ 4304—Membership and organization of the Committee on Sentencing

Section 4304(a) provides that the Committee on Sentencing shall have 7 members. Section 4304(b) requires that the Committee's membership reflect a diverse background, as well as an interest and participation in the Federal criminal justice system. Three of the members must be people who are not Federal judges or former Federal judges.

Section 4304(c) sets a 4 year term for Committee members, and limits to 8 years the length of time one person may serve on the Committee.

Section 4304(d) provides that members of the Committee who are officers of the United States shall receive no additional pay and the members who are not Federal officers shall receive only travel and subsistence allowances for their work on the Committee.

Section 4304(e) provides that the Committee shall choose its own chair.

§ *4305—Hearings by Committee on Sentencing*

This section authorizes the Committee to hold hearings and take testimony.

§ *4306—Cooperation of Federal agencies*

This section authorizes the Committee to seek assistance from other Federal agencies, and authorizes those agencies to provide such assistance.

Chapter 45—Post-Sentence Administration

§ *4501—Assistance in conditional discharge, probation, or parole*

This section requires that a probation officer assist someone who is sentenced to conditional discharge or is on parole, to the degree warranted by the conditions of such sentence or parole.

§ *4502—Appointment of probation officers*

Section 4502(a) authorizes a district court to appoint probation officers to serve with or without compensation. The court may remove a compensated probation officer for cause and may remove a non-compensated probation officer at its discretion.

Section 4502(b) requires that the appointment of a probation officer be entered on the court's records, and § 4502(c) provides for the designation of a chief probation officer in a district where there is more than one probation officer.

§ *4503—Duties of probation officers*

This section requires probation officers to perform certain specified duties, as well as those duties directed by the court.

§ *4504—Transportation of persons assisted by probation officers*

This section authorizes a judge, after imposing a sentence of conditional discharge or probation, to direct a United States Marshal to provide a defendant with transportation to the place where the defendant is required to be as a condition of the sentence, as well as a subsistence allowance while traveling to that place.

§ *4505—Transfer of jurisdiction over persons assisted by probation officers*

This section authorizes a judge imposing a sentence of conditional discharge or probation to transfer jurisdiction over the defendant to the district court for any district to which the defendant is required or permitted to proceed (with that district court's concurrence).

§ *4506—Arrest of persons assisted by probation officers*

This section authorizes a probation officer to arrest a defendant sentenced to a term of conditional discharge or probation if during that term the defendant violates a condition of the sentence, the violation occurs in the presence of the probation officer, and the violation constitutes a crime.

§ *4507—Searches by probation officers*

This section authorizes a court, at the request of a probation officer, to issue a search warrant for evidence that a person being assisted

by the probation officer has (1) violated a condition of a sentence of conditional discharge or probation, or of parole, or (2) has committed a crime. To get the warrant, the probation officer must establish reasonable and articulable grounds to believe that the person has violated a condition or committed the crime.

Chapter 47—Parole

Section 4701 establishes the United States Parole Commission as a 9 member, independent agency within the Department of Justice.

Section 4702 provides that the primary functions of the Commission are to (1) determine whether, and when, to release Prisoners on parole; (2) impose conditions upon the parolee's release; (3) modify or revoke the parole of parole violators; and (4) decide on the length of reimprisonment of persons found in serious violation of their parole conditions.

Section 4703 sets forth the powers and duties of the Chairman of the Parole Commission, who serves as the chief executive officer of the agency.

Section 4704 (*a*) makes a Federal prisoner eligible for parole consideration after serving one-half of the maximum sentence, or after ten years of a life sentence or a sentence in excess of 20 years. *Section 4704*(*b*) permits the sentencing court, where imposing a prison term in excess of one year: (1) to direct that the prisoner be eligible for parole at any time up to one-half of the maximum sentence, or (2) to specify that the Parole Commission shall decide when the prisoner shall be considered for parole. *Section 4704*(*c*) permits the court to commit the defendant to the custody of the Attorney General for the maximum prison term authorized by law, in order to obtain more detailed information for use in determining the appropriate sentence. The Director of the Bureau of Prisons must report to the court within 3 months (which can be extended for an additional 3 months), at which time the court must act to affirm or modify the sentence. *Section 4704*(*d*) authorizes the Director of the Bureau of Prisons to conduct a study of someone committed to the custody of the Attorney General under § 4704(c). *Section 4704*(*e*) requires that the sentencing court furnish a copy of the complete presentence report, plus a copy of the court's findings and reasons for sentence, to the Parole Commission. (*Section 4704*(*f*) provides that nothing in Chapter 47 of the proposed code shall be construed to make eligible for release or parole someone who is made ineligible by any other provision of law.

Section 4705 sets forth the criteria to be used by the Parole Commission in determining whether and when to release a prisoner on parole. *Section 4705*(*a*) authorizes the Parole Commission to release a prisoner on parole if the Commission determines that (1) the prisoner has observed prison rules, and (2) release of the prisoner will not depreciate the seriousness of the offense, promote disrespect for the law, or jeopardize the public welfare. In making such determinations, the Commission is to use parole guidelines which the Commission, consulting with the Committee on Sentencing of the Judicial Conference, is to draft. *Section 4705*(*b*) requires that the Commission notify a prisoner of its decision within 21 days, stating with particularity why

parole was denied if such is the case. *Section 4705(c)* authorizes the Parole Commission to make decisions outside of the parole guidelines if the Commission determines that there is good cause for doing so.

Section 4706 specifies the information which the Parole Commission is to consider when making parole release determinations. The information includes reports from the prisons, the prisoner's prior criminal history, the presentence reports and recommendations of the sentencing judge, and the findings of fact made by the sentencing court. The prisoner is entitled to submit information on his or her own behalf.

Section 4707 sets forth the procedures followed in setting parole release dates. An inmate whose date of parole eligibility is set by the court must be seen by the Parole Commission at least 30 days before date of parole eligibility. An inmate whose date of parole eligibility is not set by the court must, within 120 days after entering prison, receive a "presumptive release date." *Section 4707(i)* establishes procedures for changing "presumptive release date". If the Bureau of Prisons determines that the prisoner seriously violated a prison rule or committed a Federal or state crime after the presumptive release date was set, then the presumptive release date can be postponed for up to 60 days. If after a recission hearing the Parole Commission makes such a determination, the Commission may postpone the presumptive release date for any period of time.

Section 4708 authorizes the Parole Commission to impose conditions on the parolee. *Section 4708(a)* requires that the Commission impose as a condition that the parolee not commit another crime. Other conditions must be reasonably related to the nature and circumstances of the parolee's offense and the parolee's history and characteristics. *Section 4708(d)* permits the Commission to modify a condition on its own motion or on motion of a probation officer or the parolee.

Section 4709 provides that the parolee remains in the legal custody of Attorney General until the parolee's sentence expires.

Section 4710 provides that the Parole Commission may, for good cause, terminate parole supervision early. *Section 4710(c)* requires that the Parole Commission terminate parole supervision of a parolee after 5 years unless the Commission finds that there is a need for such supervision because the parolee is likely to engage in criminal conduct.

Section 4711 authorizes the Parole Commission to authorize parole release of a deportable alien on the condition that the alien be deported.

Section 4712 and 4713 set forth the method and procedures for policing the conditions of parole. In general, these procedures parallel those which are applicable to the revocation of probation (see §§ 3347–48 of the proposed code).

Section 4714 deals with administrative appeal of parole release decisions. *Section 4714(a)* permits an aggrieved individual to appeal an adverse decision to the National Appeals Board. Notice of such appeal must be given in writing within 30 days of the decision. The National Appeals Board must decide the appeal within 60 days after receipt of the appeal. *Section 4714(b)* permits an individual who has appealed under § 4714(a) to ask the National Appeals Board to reconsider a decision that is adverse to the individual. *Section 4714(c)* authorizes the National Appeal Board to review the decision of a regional Commissioner upon the written request of the Attorney General.

Section 4715 exempts certain ministerial acts from the purview of the Administrative Procedure Act.

Section 4716 requires the Judicial Conference and the United States Parole Commission to report to the Congress on the effectiveness of the operation of the new sentencing system within 5 years after the first sentence guidelines take effect.

Section 4717 defines the following terms for the purposes of Chapter 47: "Commission", "Commissioner", "Director", "eligible prisoner", "parolee", and "rules".

Chapter 51—General Provisions

Section 5101 provides for the representation of indigent defendants private counsel representing such defendants are to be compensated at a rate of $30 per hour of court time and $20 per hour of noncourt time with a maximum payment of $1,000 for a felony and $400 for a misdemeanor. A district in which at least 200 persons annually require the appointment of counsel may establish a Federal Public Defender Organization headed by a Federal Public Defender appointed by the circuit judicial council or a Community Defender Organization; a non-profit privately-administered defense counsel service.

Section 5102 authorizes the government to appeal from a judgment or order dismissing an indictment or information within 30 days after the judgment or order. The government is also authorized to appeal from a decision or order suppressing or excluding evidence made before jeopardy has attached, if the United States attorney certifies that the appeal is not taken for the purpose of delay and that the evidence is substantial proof of a material fact.

Section 5103 authorizes the Supreme Court to prescribe rules of practice and procedure for criminal trials through verdict. Such rules must be submitted to Congress by May 1, and they take effect 90 days after submission unless Congress by law directs otherwise.

Section 5104 authorizes the Supreme Court to prescribe rules of postverdict practice and procedure. Such rules take effect in the manner set forth in § 5103.

Section 5105 gives a defendant the right to appeal to the district court a conviction by a magistrate.

Chapter 53—Arrest, Law Enforcement, and Other Preliminary Matters

Section 5301–16 are derived from various sections of present title 18 as follows:

Proposed Code H.R. 9615:	*Present Title 18:*	*Proposed Code H.R. 9615:*	*Present Title 18:*
§ 5301	§ 3432	§ 5309	§ 3054
§ 5302	§ 3500	§ 5310	§ 3056
§ 5303	§ 3041	§ 5311	§ 3057
§ 5304	§ 3042	§ 5312	§ 3058
§ 5305	§ 3043	§ 5313	§ 3059
§ 5306	§ 3049	§ 5314	§ 3061
§ 5307	§ 3052	§ 5315	§ 3060
§ 5308	§ 3053	§ 5316	§ 5001

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Section 5317 authorizes the Attorney General to delegate Federal investigative or law enforcement functions to railroad police to the extent that such functions are necessary for the protection of the railroad's employees, passengers, or patrons, or the property, equipment or facilities of the railroad.

CHAPTER 55—EXTRADITION, TRANSFER AND INTERSTATE AGREEMENT ON DETAINERS

SUBCHAPTER I—EXTRADITION

Sections 5501–15 restate the provisions of 18 U.S.C. §§ 3181–95.

SUBCHAPTER II—TRANSFER

Section 5541–56 restate the provisions of 18 U.S.C. §§ 4100–15.

SUBCHAPTER III—INTERSTATE AGREEMENT ON DETAINERS

Sections 5561–63 restate the provisions of 18 U.S.C. App. §§ 2–7.

CHAPTER 57—IMMUNITY OF WITNESSES

CHAPTER 59—JURISDICTION AND VENUE

Sections 5901–10 restate the provisions of 18 U.S.C. §§ 3231 and 3235–42.

CHAPTER 61—DISPOSITION OF JUVENILE OR INCOMPETENT OFFENDERS

SUBCHAPTER I—JUVENILE DELINQUENCY

§ 6101—Delinquency proceedings in district courts; transfer for criminal prosecution

Section 6101 (a) and (b) provides that a juvenile charged with a Federal offense must be transferred to the appropriate state official unless the Attorney General certifies, after investigation, that (1) the State does not have, or refuses to assume, jurisdiction over the juvenile or (2) the State does not have programs and services adequate to serve the needs of juveniles.

Section 6101(c) provides that a juvenile not surrendered to the State must be tried as a juvenile in Federal court. Section 6101(d) provides that a juvenile may be tried as an adult if (1) the juvenile waives the right to be proceeded against as a juvenile, or (2) in the case of a juvenile charged with a class A, B, or C felony, the Attorney General establishes that trial as an adult is in the public interest. Section 6101(e) sets forth factors to be considered in determining whether to treat a juvenile charged with a serious crime as an adult. These factors are: (1) the nature and circumstances of the offense; (2) the juvenile's age and social background; (3) the nature and extent of the juvenile's prior delinquency record; (4) the likelihood of reform of the juvenile prior to the juvenile's reaching majority; (5) the juvenile's intellectual development and psychological maturity; (6) the availability of programs designed to treat the juvenile's behavior

problems; and (7) whether juvenile disposition will reflect the seriousness of the juvenile's conduct, promote respect for the law, and provide a just response to the juvenile's conduct.

§ *6102—Custody prior to appearance before magistrate*

Section 6102(a) requires that juveniles and their parents or guardians be advised of the juvenile's legal rights. Section 6102(b) requires that the juvenile be arraigned promptly after arrest.

§ *6103—Duties of magistrate*

This section requires Federal magistrates to assure a juvenile of counsel at critical stages of the proceedings and to release the juvenile to a parent or guardian unless detention is required to secure the juvenile's timely appearance before the appropriate court, or ensure the juvenile's safety or the safety of others.

§ *6104—Detention prior to disposition*

This section requires the Attorney General to house juveniles awaiting disposition separately from adults.

§ *6105—Speedy trial*

This section requires that juveniles in detention be tried within 30 days of the beginning of detention, unless extraordinary circumstances are present. A delay based on court congestion is impermissible, but a delay caused by the juvenile or the juvenile's counsel tolls the provisions of § 6105.

§ *6106—Dispositional hearing*

Section 6106(a) requires the court to hold a separate dispositional hearing within 20 court days after a juvenile has been adjudged delinquent. Both the attorney for the delinquent and the attorney for the government may have access to the presentence report.

Section 6106(b) prohibits a juvenile from being punished more severely than an adult convicted of an offense involving the same conduct. Section 6106(c) permits the court to commit a juvenile to the custody of the Attorney General for observation and study prior to sentencing.

§ *6107—Use of juvenile records*

This section requires courts, throughout any juvenile delinquency proceeding, to prevent disclosure of the record to unauthorized persons. After completion of the proceedings, the entire record is to be sealed. Thereafter, information concerning the proceeding may be released only as necessary to comply with an inquiry from another court, an agency preparing a presentence report for another court, a treatment agency or facility to which the juvenile has been committed, a law enforcement agency investigating the commission of an offense, or agencies investigating the person for a law enforcement or national security position.

§ *6108—Commitment*

This section parallels § 6104 and provides that juveniles be housed separately from adults after an adjudication of delinquency.

§ *6109—Support*

This section authorizes the Attorney General to contract for housing and services for juveniles committed to the custody of the Attorney General.

§ *6110—Parole*

This section provides that juveniles may be released on parole under such terms as are provided for in the regulations of the United States Parole Commission.

§ *6111—Revocation of parole or probation*

This section provides that juveniles shall be accorded notice and a hearing with counsel before parole or probation is revoked.

§ *6112—Definitions for subchapter*

This section defines "juvenile" and "juvenile delinquency" for the purposes of subchapter I.

SUBCHAPTER II—MENTAL INCOMPETENCE

§ *6121—Screening examination*

This section permits the court, on its own motion or the motion of the defendant or the attorney for the government, to order a screening examination for the defendant if the court determines that there is reasonable cause to believe that the defendant lacks competence. Section 6121(c) provides that a finding of competence does not preclude a later order that the defendant undergo a screening examination. Section 6121(d) requires that the screening examination be carried out by a qualified mental mental health examiner at the place of confinement, if the defendant is in custody, or on an outpatient basis, if the defendant is not in custody. The person conducting the screening examination must report to the court within 3 days (excluding weekends and holidays).

§ *6122—Mental competence examination*

Section 6122(a) requires the court, after receipt of the screening examination report, to determine whether the results indicate that the defendant is competent, or that more information is necessary in order to determine competency. Section 6122(b) permits a defendant to challenge a finding of competence by requesting a hearing, which must be held within 48 hours. Section 6122(b) provides that if the defendant is found competent, with or without the hearing, trial will proceed.

Section 6122(c) provides that if the court determines that more information is necessary, the court must order a mental competence examination. Such an examination must be conducted by a qualified mental health examiner who is not on the staff of any institution to which the defendant may be sent if found incompetent. The examination must be conducted on an outpatient basis unless the court finds that:

(1) the nature of the examination is such that an inpatient examination is necessary;

(2) the defendant's past behavior demonstrates an unwillingness or inability to appear for outpatient examination;

(3) the defendant presents a substantial probability of serious bodily injury to any person or of substantial damage to the property of another; or

(4) the defendant is already in custody.

Section 6122(e) requires that the report of the mental competency examination be filed with the court, with copies to the attorneys for both parties, within 15 days after the order for the examination. The court may extend the time period (1) for a reasonable time if the examination is to take place at a nonlocal facility and the additional time is necessary to transport the defendant; or (2) for up to 30 days if the court finds, upon motion of either party, that specific additional examination procedures are necessary and cannot be completed within the 15 day period.

Section 6122(e)(3) requires that the report contain:

(1) a description of the defendant's social background;

(2) a complete explanation of the procedures used to evaluate the defendant, including the results of any tests and the assumptions made in performing such tests;

(3) a description of any symptoms of mental disorder displayed by the defendant;

(4) the conclusions of the mental health examiner regarding the psychological condition of the defendant, including the bases of those conclusions and the likelihood that the defendant's condition will improve, with or without treatment; and

(5) all records involved in the examination.

Section 6122(e)(4) provides that any statements resulting from the mental competence examination, and any evidence derived from such examination, are inadmissible in any criminal trial of the defendant on the issue of whether the defendant engaged in prohibited conduct. Moreover, such evidence is admissible on issues of insanity or state of mind only if first offered by the defendant.

§ 6123—Report on examination and hearing on competence

Section 6123(a) requires the court, within 10 days after receipt of the report from the mental health examiner, to hold a hearing to determine the defendant's competence. However, if the defendant requests an additional examination, the court must continue the hearing an additional 15 days and appoint an examiner of the defendant's choice.

Section 6123(b) provides that following the hearing, the court must determine, by a preponderance of the evidence standard, whether the defendant is competent. If the defendant is found competent, trial must proceed. If the defendant is not found competent, the court must hold an additional hearing, without unnecessary delay, to determine whether the defendant is likely to be restored to competence within 8 months (the maximum treatment period), and if so, what treatment is most likely to restore the defendant to competence. If the court decides that it is unlikely that the defendant will recover, and if the defendant does not request treatment, the court must release the defendant, and dismiss any charges other than class A or B felonies. If the court determines that there is a likelihood that the defendant will recover, and if the defendant does not request treatment, the court may release the defendant and dismiss any charges other than class A or B felonies, if the court determines that to require treatment would be unduly oppressive in the light of:

(1) the likelihood that the defendant will be restored to competence;

(2) the nature of the treatment required;
(3) the seriousness of the crimes the defendant allegedly committed;
(4) the likelihood of conviction of the defendant; and
(5) the potential sentence that the defendant would receive if convicted.

Finally, if the defendant requests treatment, the court may order treatment pursuant to § 6124.

This section also applies upon receipt of a report on the results of treatment made pursuant to § 6124.

§ 6124—Treatment to restore incompetent defendant

Section 6124(a) requires the court to specify the facility where the defendant is to be treated. Section 6124(b) requires that treatment be on an outpatient basis unless the court finds:

(1) the nature of the treatment is such that inpatient treatment is necessary;
(2) the defendant's past behavior demonstrates an unwillingness or inability to appear for outpatient treatment;
(3) there is a substantial probability of serious bodily injury to any person or of substantial damage to the property of another; or
(4) the defendant is already in custody.

Section 6124(c) authorizes the court to issue such orders as are necessary to assure prompt and effective treatment of the defendant. Section 6124(d) regulates the use of certain forms of treatment: psychosurgery (e.g., lobotomies); electric shock therapy (e.g., electroconvulsive therapy); and protracted use of psychotropic drugs (e.g. thorazine). The Secretary of the Department of Health and Human Services is directed to issue regulations regarding such treatment. The regulations must require that a person capable of consenting be given an oral explanation of the treatment at least 24 hours prior to it. The patient must also sign a written consent form containing the explanation. Both explanations must take place before an impartial witness and must include the reason for the treatment, the nature of the treatment, the likelihood of recovery with and without the treatment, the possible side-effects of the treatment, possible alternatives, and the right of the patient to refuse treatment. If the patient is not capable of informed consent, such treatment can only occur with the permission of the court and the patient's guardian.

Section 6124(e) provides that the director of the treatment facility must report to the court if at any time the director determines that the defendant has recovered, or that further treatment would be useless, and in no event later than 110 days after the order of treatment. In addition, a second report must always be made to the court at the end of 230 days of treatment, if the defendant still remains in treatment. The report to the court must including the following:

(1) the treatment provided the defendant;
(2) any change in the defendant's condition with respect to competence to stand trial;
(3) any recommendations for future treatment;
(4) any differences from earlier reports regarding the likelihood of the defendant recovering; and

(5) the likelihood that additional treatment will restore the defendant's competence.

The court, upon receiving the director's report, must proceed according to the procedures set out in § 6123.

Section 6124(f) provides that motions which may be resolved without the defendant's participation can be raised and litigated even though the defendant has not been restored to competence. However, those issues may not be raised following the restoration of competency unless the defendant is able to demonstrate that there is additional information that was previously unavailable because of the defendant's incompetence.

Section 6124(g) provides that a defendant may proceed to trial if he or she maintains competence because of the administration of psychotropic medication. In such a case, all parties must be informed of the nature of the medication, and the defendant may require that the jury be informed of the medication and its side-effects upon the defendant's demeanor and behavior. In addition, even if the defendant maintains competence because of medication, the court may require that the defendant undergo treatment if the court believes that competence without the aid of medication is likely to be restored.

§ 6125—Delivery to State officials of certain persons suffering from mental disease or defect

Section 6125(a) provides that, where a defendant is found:

(1) not guilty by reason of insanity,

(2) incompetent with no substantial probability of improvement, or

(3) incompetent and not recovered after treatment,

the court may cause the defendant to be delivered to the appropriate State officials if the court determines that the person's release would create a substantial likelihood of serious injury to any person or substantial damage to property of others. Section 6125(c) permits the court to take similar action when a Federal inmate's prison term is about to expire, if that inmate suffers from a mental disease or defect creating a substantial likelihood of serious injury to any person or substantial damage to property of others.

§ 6126—Board of examiners

This section establishes a Board of Examiners and procedures that the Board is to follow to examine any person alleged to be suffering from a psychological disorder. The Board is to report its findings to the Attorney General.

§ 6127—Incompetence undisclosed at trial

Section 6127(a) provides that whenever the Director of the Bureau of Prisons certifies to the Attorney General that the Board of Examiners has found reasonable cause to believe that a prisoner was incompetent at the time of trial, the Attorney General shall submit the certification and the report of the Board of Examiners to the clerk of the district court in which the defendant was convicted, unless the question of competence was determined at the time of trial.

Section 6127(b) provides that, upon receipt of the certification and report, or at any time if the court otherwise has reason to believe that

the defendant lacked competence at the time of trial, the court must proceed in the same manner as if the issue of competence had been raised during trial, except that no screening examination is required.

Section 6127(c) provides that the report of the Board of Examiners is sufficient to establish a *prima facie* case of incompetence, and § 6127 (d) authorizes the court to vacate the conviction and grant a new trial if it finds that the prisoner was incompetent at the time of trial.

§ 6128—Transfer for treatment

Section 6128(a) provides that a person serving a sentence of imprisonment may object in writing to a transfer to a facility for care or treatment, and the written objection stays the transfer. The attorney for the Government must then file a motion with the court in which the facility is located requesting a hearing on the transfer. The court must grant the motion if the court finds reasonable cause to believe that the prisoner is suffering from a mental disease or defect that requires treatment.

Section 6128(b) provides that if a hearing is ordered, the court shall follow the procedures used to determine competence to stand trial.

Section 6128(c) provides that if, following the hearing, the court determines by clear and convincing evidence that the prisoner is in need of treatment, it shall order such treatment at a facility it designates. Such treatment shall last until the termination of the person's sentence, or until no longer necessary, whichever period is shorter.

Section 6128(d) provides that if the director of the designated facility finds that the defendant has recovered, the director must promptly notify the court. At that point, if an unserved term of imprisonment remains, the court must order the person reimprisoned.

§ 6129—Definitions for § 6121 through § 6124 and general provisions for subchapter

Section 6129(a) defines "competence" and "qualified mental health examiner" for the purposes of subchapter II.

Section 6129(b) provides that nothing in subchapter II is intended to alter the availability of a writ of habeas corpus as a means for challenging confinement pursuant to the provisions of the subchapter.

Chapter 63—Release

Subchapter I—Release Generally

§ 6301—Power of courts and magistrates

This section provides that courts and magistrates have the authority to set bail or order release in noncapital cases. It also provides that only the court with original jurisdiction over the capital offense has the authority to admit to bail or to otherwise release the person.

§ 6302—Surrender by bail

This section allows a surety to arrest a defendant released on bail if that defendant has failed to comply with the conditions of bail. The

section also authorizes a court to hold such a bail violator in detention and to release the surety from his or her obligation.

§ *6303—Additional bail*

This section provides that a court, having previously set bail, may impose additional security if the defendant is about to abscond.

§ *6304—Cases removed from State courts*

This section provides that a defendant subject to a judgment of conviction from a State court shall not be released from custody until a final judgment upon such review or, if the offense is bailable, until a bond with reasonable sureties is filed.

§ *6305—Contempt*

Section 6305 provides that nothing in this chapter deprives the court of its ability to punish a person for contempt of court.

§ *6306—Release in general prior to trial*

This section sets forth circumstances under which a defendant is to be released pending trial. Section 6306(a) provides that a person charged with an offense, other than one punishable by death, shall be released—either on recognizance or with an unsecured appearance bond—unless the court determines that such a release will not reasonably secure the defendant's appearance at trial. If the court determines that unsecured release is inappropriate, it may impose any one or more of the following conditions:

(1) third party custody;
(2) restrictions on travel, association, or place of abode.
(3) 10 percent bond;
(4) a bail bond with sufficient surety, or a cash deposit;
(5) any other condition deemed reasonably necessary to assure appearance, including a condition that the person return to custody after specified hours.

Section 6306(b) authorizes the court, in determining the conditions of release, to consider: (1) the nature of the offense; (2) the weight of the evidence; (3) the defendant's family ties, financial resources, character and mental condition, communities ties, and criminal history; and (4) any previous record of appearances.

Section 6306(c) requires the court to specify any conditions of release which are set. Section 6306(d) and (e) authorize judicial review of any detention or other condition which may be ordered. Section 6306(f) provides that the Federal Rules of Evidence do not apply to release hearings and proceedings.

§ *6307—Release in certain serious cases or after conviction*

This section establishes the procedure for releasing persons charged with serious offenses or convicted but who have an appeal pending. Generally, such defendants shall be treated in the manner provided by § 6306 unless the court has reason to believe that conditional release will not reasonably assure that the person will not flee or pose a danger to any other person. The section also provides that the court is authorized to order the person detained if the court finds a risk of flight or

danger or if it appears to the court that an appeal is frivolous or taken for delay.

§ *6308—Release of material witnesses*

This section provides that conditions may be imposed upon the release of a material witness and provides for certain safeguards for material witnesses.

§ *6309—Appeal from conditions of release*

This section permits the defendant a right to appeal from certain release decisions. The lower court's determination shall be upheld if it is "supported by the proceedings below."

§ *6310—Definitions for sections 6306 through 6310*

This section defines "judicial officer" and "offense" for the purposes of subchapter I.

SUBCHAPTER II—PRETRIAL SERVICES AGENCIES

Sections 6331–35 restate the provisions of 18 U.S.C. §§ 3152–56, which establish pretrial services agencies.

CHAPTER 65—SEARCH AND SEIZURE

SUBCHAPTER I—SEARCH WARRANTS

Sections 6501–05 restates the provisions of 18 U.S.C. §§ 3103(a), 3105, 3107, 3109, and 3112.

SUBCHAPTER II—INTERCEPTION OF COMMUNICATIONS

Sections 6511–17 provide that order authorizing the interception of private communications may be obtained from Federal or state courts. A Federal law enforcement officer may apply to a Federal court for an order authorizing the interception of private communication. To issue such an order, the court must find that the Attorney General (or an Assistant Attorney General specially designated by the Attorney General) has authorized the filing of the application, that normal investigative procedures have been tried and have failed (or have not been tried because such procedures reasonably appear to be too dangerous or unlikely to succeed), and that there is probable cause to believe that: (1) a person is committing, has committed, or is about to commit an offense enumerated in § 6512(a) of the proposed code; (2) a particular communication concerning the offense will be obtained by the interception; and (3) a facility from which, or the place where, the communication is to be intercepted is being used in connection with the commission of the offense, or is leased to, listed in the name of, or commonly used by a person who is committing, has committed, or is about to commit the offense.

An order issued pursuant to Subchapter II of Chapter 65 may authorize the interception of private communication for a period of up to 30 days, which can be extended for up to 30 days at a time. The order must direct that the interception be conducted in such a way as to minimize the interception of communications not otherwise subject to interception.

A similar procedure is set forth for state and local prosecutors to follow to obtain state court authorization for the interception of private communications.

SUBCHAPTER III—PEN REGISTERS

§ 6541—Authorization for pen register

Section 6541 provides that no federal authority may install or use a pen register without first obtaining a court order, unless such installation or use is in connection with an emergency, as provided for in § 6544.

§ 6542—Application for an order for a pen register

Section 6542 requires that an application for use of a pen register shall be made under oath and in writing and shall include the identity of the law enforcement officer making the application and a statement of the facts and circumstances relied upon to justify the applicant's belief that an order should issue.

§ 6543—Issuance of an order for a pen register

Section 6543(a) provides that the court shall issue an order authorizing the installation or use of a pen register if the court determines, on the basis of the facts submitted by the applicant, that there is reason to believe that the information likely to be obtained by the pen register is relevant to a legitimate criminal investigation.

Section 6543(b) requires that an order issued pursuant to this section specify: (1) the identity, if known, of the person to whose phone the pen register will be attached; (2) the identity, if known, of the person who is the subject of the investigation; (3) the number of the telephone to which the pen register will be attached; (4) a statement about the nature of the criminal investigation to which the information likely to be derived from the pen register relates; (5) the identity of the agency authorized to install and use the pen register; and (6) the time period during which the use of the pen register is authorized. The order must also direct, if the applicant so requests, that a communications common carrier, landlord, or other specified person assist in the installation and use of the pen register.

Section 6543(c) provides that the order may authorize the use of the pen register only for the lesser of 30 days or the time necessary to accomplish the objective of the authorization. The time period may be extended for an additional period not to exceed 30 days.

Section 6543(d) requires that an order authorizing the installation and use of a pen register direct a communications common carrier from whom the phone is leased not to disclose the existence of the pen register for at least 60 days after the removal of the pen register. The nondisclosure requirement can be extended for periods of up to 60 days if the court finds that disclosing the existence of the pen register would (1) endanger the safety of anyone, (2) result in flight from prosecution, (3) result in tampering with or the destruction of evidence, (4) result in the intimidation of potential witnesses, or (5) otherwise seriously jeopardize an investigation or official proceeding.

§ 6544—Emergency use of pen register without prior authorization

This section permits the installation and use of a pen register without a court order if a law enforcement officer specially designated by

the Attorney General reasonably determines that (1) an emergency situation exists with respect to criminal activities threatening to life or to conspiratorial activities characteristic of organized crime, necessitating the installation and use of a pen register before a court order can be obtained, and (2) there are grounds for obtaining a court order. In addition, an application for a court order must be made as soon as practicable after the pen register is installed, but in no event more than 48 hours after the installation. The use of the pen register must cease when the information sought is obtained or when the application for an order is denied, whichever first occurs.

§ 6545—Assistance in installation and use of a pen register

Section 6545(a) authorizes a communications common carrier, a landlord, or other person to assist in the installation and use of a pen register when so required by a court order or when there is an emergency and the law enforcement officer is proceeding under § 6544. Section 6545(b) authorizes the compensation of a communications common carrier, landlord, or other person.

§ 6546—Definitions for subchapter

This section defines the following terms for the purposes of subchapter III: "communications common carrier", "court of competent jurisdiction", "federal authority", "legitimate criminal investigation", and "pen register".

Chapter 67—Special Grand Jury

Sections 6701–04 restate the provisions of 18 U.S.C. §§ 3331–34.

Chapter 69—Speedy Trial

Sections 6901–07 restate the provisions of the Speedy Trial Act (18 U.S.C. 3161–74).

Chapter 71—Trial by United States Magistrates

Section 7101 restates the provisions of 18 U.S.C. 3401.

Chapter 73—Witnesses and Evidence

Sections 7301–11 restate the provisions of 18 U.S.C §§ 3487, 3491–96, 3501–04.

SUBTITLE V—ANCILLARY CIVIL PROCEEDINGS

Chapter 81—Ancillary Public Civil Proceedings

SUBCHAPTER I—FORFEITURE

Sections 8101–03

This subchapter consolidatets a number of provisions of current Federal law relating to the forfeiture of property involved in criminal offenses. The subchapter affects several important changes, however, by: (1) establishing a procedure for the seizure of property; (2) creating a standard for evaluating whether the property is forfeitable; (3) developing procedures to protect the rights of innocent

third parties; and (4) providing for a right to a jury trial and appellate review. The forfeiture provisions of titles 19 and 21, relating to customs violations and drug offenses, will remain unaffected.

Section 8101 authorizes an appropriate government agency to seize property in accordance with subchapter I. Section 8101(c) specifies the type of property that can be seized.

Sections 8101 and 8102 authorize a summary seizure of specified property if done during the course of an arrest or search. Otherwise, a court order is required.

Section 8103(a) requires that a Federal government agency seeking to seize property institute a forfeiture proceeding and make reasonable efforts to give actual notice to all persons having an interest in the property. *Section 8103(b)* requires the court to hold a hearing on the matter, and § *8103(c)* authorizes the court to order the property forfeited if the court finds, by a preponderance of the evidence, that the property was significantly involved in the offense that was the basis for the seizure. *Section 8103(d)* permits a person who has an interest in the property to obtain an order requiring that the property be disposed of in a way that does equity to the person's interest in the property, if the person establishes by a preponderance of the evidence that the person's interest in the property was innocent. *Section 8103(e)* requires the destruction of forfeited property that is a phonorecord, film, or audiovisual work and is used in an offense under § 2537 (criminal infringement of a copyright) or § 2544 (trafficking in counterfeit labels for phonorecords, and copies of motion pictures and audiovisual works).

SUBCHAPTER II—CIVIL RESTRAINT OF RACKETEERING

Section 8111 gives district courts jurisdiction to prevent and restrain violations of subchapter I (racketeering) of Chapter 27 and authorizes them to issue appropriate orders (such as an order divesting someone of any interest in an enterprise). *Section 8111(b)* authorizes the Attorney General to institute a proceeding under this section, and *section 8111(c)* authorizes a person whose business or property has been injured by a subchapter I violation to sue for treble damages and the cost of the suit. *Section 8111(d)* provides that a judgment for the Government in an action under subchapter II estops the defendant from denying the essential allegations of the criminal offense in any subsequent civil suit brought by the Government.

Section 8112 provides for venue in any district in which the defendant resides, does business, has an agent, or is found. Process may be served anywhere in the United States, although a subpoena for persons residing more than 100 miles outside the judicial district must be judicially approved.

Section 8113 requires that actions under subchapter II be heard expeditiously. *Section 8114* allows the court to close to the public any proceedings brought under subchapter II.

Section 8115 permits the government to issue civil investigative demands to persons allegedly involved in racketeering activities.

Section 8116 defines "enterprise", "pattern of racketeering activity", and "racketeering activity" for the purposes of subchapter II.

SUBCHAPTER III—RESTRICTION ON IMPOSITION OF CIVIL DISABILITIES

§ 8121—Limitation on restriction of eligibility for certain Federal activities because of Federal conviction

Section 8121(a) prohibits restricting the eligibility of an individual for (1) a Federal benefit, privilege, or activity, (2) Federal jury duty, or (3) voting in a Federal election because that person has been convicted of a Federal offense.

Section 8121(b)(1) permits imposing a restriction if the restriction is specifically authorized by a Federal law enacted after the proposed code takes effect or if there is a direct relationship between the conduct constituting the offense and the activity involved. Section 8121(b)(2) provides that a restriction imposed under subsection (b)(1) shall be effective for: (1) 5 years after the last day of the term of a sentence of conditional discharge, probation or imprisonment; (2) 5 years after the date on which the payment of a fine is completed, in the case of a sentence of fine; (3) 5 years after the date on which restitution is completed, in the case of a sentence of restitution and (4) the last applicable date under (1), (2), or (3), in the case of multiple sentences.

Section 8121(c) permits a sentencing court to impose a restriction that is otherwise within the sentencing power of the court (e.g., a forfeiture of office under § 1744).

Section 8121(d) defines "convicted person" for the purposes of the section. Section 8121(e) authorizes the Attorney General to proscribe rules to implement this section.

§ 8122—Limitation on restriction of eligibility for certain government employment because of certain convictions

Section 8122(a) provides that the eligibility of a person for employment, or a perquisite of employment, by a Federal or State agency may not be restricted because that person has been convicted of a Federal crime. Section 8122(b) provides that the eligibility of a person for Federal employment, or a perquisite thereof, cannot be restricted because that person has been convicted of a State crime.

Section 8122(c)(1) permits imposing a restriction if: (1) the restriction is (a) specifically authorized by a Federal law enacted after the proposed code takes effect; (b) authorized by the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or § 8a(2) of the Commodity Exchange Act; (c) imposed by the President with respect to employment for which appointment is made by the President; or (d) specifically authorized by law with respect to employment as a law enforcement officer; or (2) there is a direct relationship between the conduct constituting the offense and the activity involved. Section 8122(c)(2) provides that a restriction imposed under subsection (c)(1) shall be effective for: (1) 5 years after the last day of the term of a sentence of conditional discharge, probation or imprisonment; (2) 5 years after the date on which the payment of a fine is completed, in the case of a sentence of fine; (3) 5 years after the date on which restitution is completed, in the case of a sentence of restitution; and (4) the last applicable date under (1), (2), or (3), in the case of multiple sentences.

Section 8122(d) provides that a sentencing court is not prohibited from imposing a restriction that is otherwise within the sentencing power of the court, and § 8122(e) directs the Equal Employment Opportunity Commission, after consulting with the Department of Justice, to prescribe rules to implement the section.

§ 8123—Relief from certain collateral results of convictions of certain first offenses

Section 8123(a) provides that someone convicted of a Federal offense (excluding military offenses), other than a class A felony, may apply for relief after the expiration of the required period of time. A person who has a prior Federal or State felony conviction or who faces pending criminal charges is ineligible for relief. The court may grant relief only after a hearing and only if the court determines that the relief is in the public interest.

Section 8123(b) establishes the required waiting time before a person may apply for relief under this section. The person must wait: (1) 3 years after the last day of a term of a sentence of conditional discharge, probation or imprisonment for a felony; (2) 3 years after the date on which the payment of a fine is completed, in the case of a sentence of fine for a felony; (3) 3 years after the date on which the payment of restitution is completed, in the case of a sentence of restitution for a felony; (4) one year after the last day of a term of a sentence of conditional discharge, probation or imprisonment for a misdemeanor; (5) one year after the date on which the payment of a fine is completed, in the case of a sentence of fine for a misdemeanor; (6) one year after the date on which the payment of restitution is completed, in the case of a sentence of restitution for a misdemeanor; and (7) the latest applicable date under (1) through (6) in the case of multiple sentences.

Section 8123(c) provides that upon the granting of relief under this section Federal, State and local public officials may not disclose information relating to a person's conviction, with 4 exceptions—

(1) the information is admissible in a criminal proceeding;

(2) the information may be given to a court with jurisdiction over the subject matter;

(3) the information may be given to a Federal agency for national security reasons; and

(4) the information may be made available to a law enforcement agency for employment screening and for criminal investigation purposes.

Section 8123(c)(1) also provides that the effect of an order of relief ends upon the conviction of the person for a Federal or State felony.

Section 8123(c)(2) provides that someone who has obtained relief under this section is not guilty of a criminal offense for failure to admit or acknowledge the conviction. Section 8123(c)(3) restores the civil rights of a person who obtains relief under this section.

Section 8123(d) treats as a single conviction 2 or more convictions that are based on the same conduct or arise from the same criminal episode.

Section 8123(e) applies this section to convictions occurring before the effective date of the legislation.

Chapter 83—Ancillary Private Civil Proceedings

§ 8301—Civil action against an eavesdropping offender

Section 8301(a) permits the victim of an eavesdropping offense (§ 2121) to sue the offender for (1) actual damages, but not less than liquidated damages of the greater of $1,000 or $100 per day for each day of violation; (2) punitive damages; and (3) reasonable attorney's fees and other costs of litigation.

Section 8301(b) provides a defense to such an action that the defendant acted in reasonable reliance upon a court order or legislative authorization.

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