107TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
107–685

21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

SEPTEMBER 25, 2002.—Ordered to be printed

Mr. SENSENBRENNER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2215]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2215), to authorize appropriations for the Department of Justice for fiscal year 2002, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "21st Century Department of Justice Appropriations Authorization Act".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

DIVISION A—21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 2002 AND 2003

SEC. 101. SPECIFIC SUMS AUTHORIZED TO BE APPROPRIATED FOR FISCAL YEAR 2002.

There are authorized to be appropriated for fiscal year 2002, to carry out the activities of the Department of Justice (including any

bureau, office, board, division, commission, subdivision, unit, or other component thereof), the following sums:

(1) GENERAL ADMINISTRATION.—For General Administration: $92,668,000.

(2) ADMINISTRATIVE REVIEW AND APPEALS.—For Administrative Review and Appeals: $173,647,000 for administration of pardon and clemency petitions and for immigration-related activities.

(3) OFFICE OF INSPECTOR GENERAL.—For the Office of Inspector General: $50,735,000, which shall include for each such fiscal year, not to exceed $10,000 to meet unforeseen emergencies of a confidential character.

(4) GENERAL LEGAL ACTIVITIES.—For General Legal Activities: $549,176,000, which shall include for each such fiscal year—

(A) not less than $4,000,000 for the investigation and prosecution of denaturalization and deportation cases involving alleged Nazi war criminals; and

(B) not to exceed $20,000 to meet unforeseen emergencies of a confidential character.

(5) ANTITRUST DIVISION.—For the Antitrust Division: $130,791,000.

(6) UNITED STATES ATTORNEYS.—For United States Attorneys: $1,353,968,000, which shall include not less than $10,000,000 for the investigation and prosecution of intellectual property crimes, including software counterfeiting crimes and crimes identified in the No Electronic Theft (NET) Act (Public Law 105–147): Provided, That such amounts in the appropriations account "General Legal Services" as may be expended for such investigations or prosecutions shall count towards this minimum as though expended from this appropriations account.

(7) FEDERAL BUREAU OF INVESTIGATION.—For the Federal Bureau of Investigation: $3,524,864,000, which shall include for each such fiscal year—

(A) not to exceed $33,791,000 for construction, to remain available until expended; and

(B) not to exceed $70,000 to meet unforeseen emergencies of a confidential character.

(8) UNITED STATES MARSHALS SERVICE.—For the United States Marshals Service: $648,696,000, which shall include for each such fiscal year not to exceed $15,000,000 for construction, to remain available until expended.

(9) FEDERAL PRISON SYSTEM.—For the Federal Prison System, including the National Institute of Corrections: $4,622,152,000.

(10) FEDERAL PRISONER DETENTION.—For the support of United States prisoners in non-Federal institutions, as authorized by section 4013(a) of title 18 of the United States Code: $706,182,000, to remain available until expended.

(11) DRUG ENFORCEMENT ADMINISTRATION.—For the Drug Enforcement Administration: $1,481,783,000, which shall include not to exceed $70,000 to meet unforeseen emergencies of a confidential character.

(12) IMMIGRATION AND NATURALIZATION SERVICE.—For the Immigration and Naturalization Service: $3,499,854,000, which shall include—

(A) not to exceed $2,739,695,000 for salaries and expenses of enforcement and border affairs (i.e., the Border Patrol, deportation, intelligence, investigations, and inspection programs, and the detention program);

(B) not to exceed $631,745,000 for salaries and expenses of citizenship and benefits (i.e., programs not included under subparagraph (A));

(C) for each such fiscal year, not to exceed $128,454,000 for construction, to remain available until expended; and

(D) not to exceed $50,000 to meet unforeseen emergencies of a confidential character.

(13) FEES AND EXPENSES OF WITNESSES.—For Fees and Expenses of Witnesses: $156,145,000 to remain available until expended, which shall include for each such fiscal year not to exceed $6,000,000 for construction of protected witness safesites.

(14) INTERAGENCY CRIME AND DRUG ENFORCEMENT.—For Interagency Crime and Drug Enforcement: $338,577,000, for expenses not otherwise provided for, for the investigation and prosecution of persons involved in organized crime drug trafficking, except that any funds obligated from appropriations authorized by this paragraph may be used under authorities available to the organizations reimbursed from such funds.

(15) FOREIGN CLAIMS SETTLEMENT COMMISSION.—For the Foreign Claims Settlement Commission: $1,136,000.

(16) COMMUNITY RELATIONS SERVICE.—For the Community Relations Service: $9,269,000.

(17) ASSETS FORFEITURE FUND.—For the Assets Forfeiture Fund: $22,949,000 for expenses authorized by section 524 of title 28, United States Code.

(18) UNITED STATES PAROLE COMMISSION.—For the United States Parole Commission: $9,876,000.

(19) FEDERAL DETENTION TRUSTEE.—For the necessary expenses of the Federal Detention Trustee: $1,000,000.

(20) JOINT AUTOMATED BOOKING SYSTEM.—For expenses necessary for the operation of the Joint Automated Booking System: $1,000,000.

(21) NARROWBAND COMMUNICATIONS.—For the costs of conversion to narrowband communications, including the cost for operation and maintenance of Land Mobile Radio legacy systems: $94,615,000.

(22) RADIATION EXPOSURE COMPENSATION.—For administrative expenses in accordance with the Radiation Exposure Compensation Act: such sums as necessary.

(23) COUNTERTERRORISM FUND.—For the Counterterrorism Fund for necessary expenses, as determined by the Attorney General: $4,989,000.

(24) OFFICE OF JUSTICE PROGRAMS.—For administrative expenses not otherwise provided for, of the Office of Justice Programs: $132,862,000.

SEC. 102. SPECIFIC SUMS AUTHORIZED TO BE APPROPRIATED FOR FISCAL YEAR 2003.

There are authorized to be appropriated for fiscal year 2003, to carry out the activities of the Department of Justice (including any bureau, office, board, division, commission, subdivision, unit, or other component thereof), the following sums:

(1) GENERAL ADMINISTRATION.—For General Administration: $121,079,000.

(2) ADMINISTRATIVE REVIEW AND APPEALS.—For Administrative Review and Appeals: $198,869,000 for administration of pardon and clemency petitions and for immigration-related activities.

(3) OFFICE OF INSPECTOR GENERAL.—For the Office of Inspector General: $66,288,000, which shall include for each such fiscal year, not to exceed $10,000 to meet unforeseen emergencies of a confidential character.

(4) GENERAL LEGAL ACTIVITIES.—For General Legal Activities: $659,181,000, which shall include for each such fiscal year—

(A) not less than $4,000,000 for the investigation and prosecution of denaturalization and deportation cases involving alleged Nazi war criminals; and

(B) not to exceed $20,000 to meet unforeseen emergencies of a confidential character.

(5) ANTITRUST DIVISION.—For the Antitrust Division: $141,855,000.

(6) UNITED STATES ATTORNEYS.—For United States Attorneys: $1,550,948,000, which shall include not less than $10,000,000 for the investigation and prosecution of intellectual property crimes, including software counterfeiting crimes and crimes identified in the No Electronic Theft (NET) Act (Public Law 105–147): Provided, That such amounts in the appropriations account "General Legal Services" as may be expended for such investigations or prosecutions shall count towards this minimum as though expended from this appropriations account.

(7) FEDERAL BUREAU OF INVESTIGATION.—For the Federal Bureau of Investigation: $4,323,912,000, which shall include for each such fiscal year—

(A) not to exceed $1,250,000 for construction, to remain available until expended; and

(B) not to exceed $70,000 to meet unforeseen emergencies of a confidential character.

(8) UNITED STATES MARSHALS SERVICE.—For the United States Marshals Service: $737,346,000, which shall include for each such fiscal year not to exceed $15,153,000 for construction, to remain available until expended.

(9) FEDERAL PRISON SYSTEM.—For the Federal Prison System, including the National Institute of Corrections: $4,605,068,000.

(10) DRUG ENFORCEMENT ADMINISTRATION.—For the Drug Enforcement Administration: $1,582,044,000, which shall include not to exceed $70,000 to meet unforeseen emergencies of a confidential character.

(11) IMMIGRATION AND NATURALIZATION SERVICE.—For the Immigration and Naturalization Service: $4,131,811,000, which shall include—

(A) not to exceed $3,253,561,000 for salaries and expenses of Border Patrol, detention and removals, intelligence, investigations, inspections, and international enforcement, including not to exceed $50,000 to meet unforeseen emergencies of a confidential character;

(B) not to exceed $88,598,000 for salaries and expenses of immigration services, including international services; and

(C) not to exceed $789,652,000 for salaries and expenses for support and administration (i.e., data and communications, information and records management, construction, etc.).

(12) FEES AND EXPENSES OF WITNESSES.—For Fees and Expenses of Witnesses: $156,145,000 to remain available until expended, which shall include for each such fiscal year not to exceed $6,000,000 for construction of protected witness safesites.

(13) INTERAGENCY CRIME AND DRUG ENFORCEMENT.—For Interagency Crime and Drug Enforcement: $362,131,000, for expenses not otherwise provided for, for the investigation and prosecution of persons involved in organized crime drug trafficking, except that any funds obligated from appropriations authorized by this paragraph may be used under authorities available to the organizations reimbursed from such funds.

(14) FOREIGN CLAIMS SETTLEMENT COMMISSION.—For the Foreign Claims Settlement Commission: $1,194,000.

(15) COMMUNITY RELATIONS SERVICE.—For the Community Relations Service: $10,732,000.

(16) ASSETS FORFEITURE FUND.—For the Assets Forfeiture Fund: $22,949,000 for expenses authorized by section 524 of title 28, United States Code.

(17) UNITED STATES PAROLE COMMISSION.—For the United States Parole Commission: $11,355,000.

(18) FEDERAL DETENTION TRUSTEE.—For the necessary expenses of the Federal Detention Trustee: $1,388,583,000.

(19) IDENTIFICATION SYSTEM INTEGRATION.—For expenses necessary for the operation of the Identification System Integration: $24,505,000.

(20) NARROWBAND COMMUNICATIONS.—For the costs of conversion to narrowband communications, including the cost for operation and maintenance of Land Mobile Radio legacy systems: $149,292,000.

(21) RADIATION EXPOSURE COMPENSATION.—For administrative expenses in accordance with the Radiation Exposure Compensation Act: such sums as necessary.

(22) COUNTERTERRORISM FUND.—For the Counterterrorism Fund for necessary expenses, as determined by the Attorney General: $35,000,000.

(23) OFFICE OF JUSTICE PROGRAMS.—For administrative expenses not otherwise provided for, of the Office of Justice Programs: $215,811,000.

(24) LEGAL ACTIVITIES OFFICE.—For necessary expenses related to office automation: $15,942,000.

SEC. 103. APPOINTMENT OF ADDITIONAL ASSISTANT UNITED STATES ATTORNEYS; REDUCTION OF CERTAIN LITIGATION POSITIONS.

(a) APPOINTMENTS.—Not later than September 30, 2003, the Attorney General may exercise authority under section 542 of title 28, United States Code, to appoint 200 assistant United States attorneys in addition to the number of assistant United States attorneys serving on the date of the enactment of this Act.

(b) SELECTION OF APPOINTEES.—Individuals first appointed under subsection (a) shall be appointed from among attorneys who are incumbents of 200 full-time litigation positions in divisions of the Department of Justice and whose official duty station is at the seat of Government.

(c) TERMINATION OF POSITIONS.—Each of the 200 litigation positions that become vacant by reason of an appointment made in accordance with subsections (a) and (b) shall be terminated at the time the vacancy arises.

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

SEC. 104. AUTHORIZATION FOR ADDITIONAL ASSISTANT UNITED STATES ATTORNEYS FOR PROJECT SAFE NEIGHBORHOODS.

(a) IN GENERAL.—The Attorney General shall establish a program for each United States Attorney to provide for coordination with State and local law enforcement officials in the identification and prosecution of violations of Federal firearms laws including school gun violence and juvenile gun offenses.

(b) AUTHORIZATION FOR HIRING 94 ADDITIONAL ASSISTANT UNITED STATES ATTORNEYS.—There are authorized to be appropriated to carry out this section $9,000,000 for fiscal year 2002 to hire an additional Assistant United States Attorney in each United States Attorney Office.

TITLE II—PERMANENT ENABLING PROVISIONS

SEC. 201. PERMANENT AUTHORITY.

(a) IN GENERAL.—Chapter 31 of title 28, United States Code, is amended by adding at the end the following:

"§ 530C. Authority to use available funds

"(a) IN GENERAL.—Except to the extent provided otherwise by law, the activities of the Department of Justice (including any bureau, office, board, division, commission, subdivision, unit, or other component thereof) may, in the reasonable discretion of the Attorney General, be carried out through any means, including—

"(1) through the Department's own personnel, acting within, from, or through the Department itself;

"(2) by sending or receiving details of personnel to other branches or agencies of the Federal Government, on a reimbursable, partially-reimbursable, or nonreimbursable basis;

"(3) through reimbursable agreements with other Federal agencies for work, materials, or equipment;

"(4) through contracts, grants, or cooperative agreements with non-Federal parties; and

"(5) as provided in subsection (b), in section 524, and in any other provision of law consistent herewith, including, without limitation, section 102(b) of Public Law 102–395 (106 Stat. 1838), as incorporated by section 815(d) of Public Law 104–132 (110 Stat. 1315).

"(b) PERMITTED USES.—

"(1) GENERAL PERMITTED USES.—Funds available to the Attorney General (i.e., all funds available to carry out the activities described in subsection (a)) may be used, without limitation, for the following:

"(A) The purchase, lease, maintenance, and operation of passenger motor vehicles, or police-type motor vehicles for law enforcement purposes, without regard to general purchase price limitation for the then-current fiscal year.

"(B) The purchase of insurance for motor vehicles, boats, and aircraft operated in official Government business in foreign countries.

"(C) Services of experts and consultants, including private counsel, as authorized by section 3109 of title 5, and at rates of pay for individuals not to exceed the maximum daily rate payable from time to time under section 5332 of title 5.

"(D) Official reception and representation expenses (i.e., official expenses of a social nature intended in whole or in predominant part to promote goodwill toward the Department or its missions, but excluding expenses of public tours of facilities of the Department of Justice), in accordance with distributions and procedures established, and rules issued, by the Attorney General, and expenses of public tours of facilities of the Department of Justice.

"(E) Unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General and accounted for solely on the certificate of the Attorney General.

"(F) Miscellaneous and emergency expenses authorized or approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Assistant Attorney General for Administration.

"(G) In accordance with procedures established and rules issued by the Attorney General—

"(i) attendance at meetings and seminars;

"(ii) conferences and training; and

"(iii) advances of public moneys under section 3324 of title 31: Provided, That travel advances of such moneys to law enforcement personnel engaged in undercover activity shall be considered to be public money for purposes of section 3527 of title 31.

"(H) Contracting with individuals for personal services abroad, except that such individuals shall not be regarded as employees of the United States for the purpose of any law administered by the Office of Personnel Management.

"(I) Payment of interpreters and translators who are not citizens of the United States, in accordance with procedures established and rules issued by the Attorney General.

"(J) Expenses or allowances for uniforms as authorized by section 5901 of title 5, but without regard to the general purchase price limitation for the then-current fiscal year.

"(K) Expenses of—

"(i) primary and secondary schooling for dependents of personnel stationed outside the United States at cost not in excess of those authorized by the Department of Defense for the same area, when it is determined by the Attorney General that schools available in the locality are unable to provide adequately for the education of such dependents; and

"(ii) transportation of those dependents between their place of residence and schools serving the area which those dependents would normally attend when the Attorney General, under such regulations as he may prescribe, determines that such schools are not accessible by public means of transportation.

"(L) payment of rewards (i.e., payments pursuant to public advertisements for assistance to the Department of Justice), in accordance with procedures and regulations established or issued by the Attorney General: Provided, That—

"(i) no such reward shall exceed $2,000,000, unless—

"(I) the reward is to combat domestic terrorism or international terrorism (as defined in section 2331 of title 18); or

"(II) a statute should authorize a higher amount;

"(ii) no such reward of $250,000 or more may be made or offered without the personal approval of either the Attorney General or the President;

"(iii) the Attorney General shall give written notice to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives not later than 30 days after the approval of a reward under clause (ii);

"(iv) any executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5) may provide the Attorney General with funds for the payment of rewards; and

"(v) neither the failure of the Attorney General to authorize a payment nor the amount authorized shall be subject to judicial review.

"(2) SPECIFIC PERMITTED USES.—

"(A) AIRCRAFT AND BOATS.—Funds available to the Attorney General for United States Attorneys, for the Federal Bureau of Investigation, for the United States Marshals Service, for the Drug Enforcement Administration, and for the Immigration and Naturalization Service may be used

for the purchase, lease, maintenance, and operation of aircraft and boats, for law enforcement purposes.

"(B) PURCHASE OF AMMUNITION AND FIREARMS; FIREARMS COMPETITIONS.—Funds available to the Attorney General for United States Attorneys, for the Federal Bureau of Investigation, for the United States Marshals Service, for the Drug Enforcement Administration, for the Federal Prison System, for the Office of the Inspector General, and for the Immigration and Naturalization Service may be used for—

"(i) the purchase of ammunition and firearms; and

"(ii) participation in firearms competitions.

"(C) CONSTRUCTION.—Funds available to the Attorney General for construction may be used for expenses of planning, designing, acquiring, building, constructing, activating, renovating, converting, expanding, extending, remodeling, equipping, repairing, or maintaining buildings or facilities, including the expenses of acquisition of sites therefor, and all necessary expenses incident or related thereto; but the foregoing shall not be construed to mean that funds generally available for salaries and expenses are not also available for certain incidental or minor construction, activation, remodeling, maintenance, and other related construction costs.

"(3) FEES AND EXPENSES OF WITNESSES.—Funds available to the Attorney General for fees and expenses of witnesses may be used for—

"(A) expenses, mileage, compensation, protection, and per diem in lieu of subsistence, of witnesses (including advances of public money) and as authorized by section 1821 or other law, except that no witness may be paid more than 1 attendance fee for any 1 calendar day;

"(B) fees and expenses of neutrals in alternative dispute resolution proceedings, where the Department of Justice is a party; and

"(C) construction of protected witness safesites.

"(4) FEDERAL BUREAU OF INVESTIGATION.—Funds available to the Attorney General for the Federal Bureau of Investigation for the detection, investigation, and prosecution of crimes against the United States may be used for the conduct of all its authorized activities.

"(5) IMMIGRATION AND NATURALIZATION SERVICE.—Funds available to the Attorney General for the Immigration and Naturalization Service may be used for—

"(A) acquisition of land as sites for enforcement fences, and construction incident to such fences;

"(B) cash advances to aliens for meals and lodging en route;

"(C) refunds of maintenance bills, immigration fines, and other items properly returnable, except deposits of aliens who become public charges and deposits to secure payment of fines and passage money; and

"(D) expenses and allowances incurred in tracking lost persons, as required by public exigencies, in aid of State or local law enforcement agencies.

"(6) FEDERAL PRISON SYSTEM.—Funds available to the Attorney General for the Federal Prison System may be used for—

"(A) inmate medical services and inmate legal services, within the Federal prison system;

"(B) the purchase and exchange of farm products and livestock;

"(C) the acquisition of land as provided in section 4010 of title 18; and

"(D) the construction of buildings and facilities for penal and correctional institutions (including prison camps), by contract or force account, including the payment of United States prisoners for their work performed in any such construction;

except that no funds may be used to distribute or make available to a prisoner any commercially published information or material that is sexually explicit or features nudity.

"(7) DETENTION TRUSTEE.—Funds available to the Attorney General for the Detention Trustee may be used for all the activities of such Trustee in the exercise of all power and functions authorized by law relating to the detention of Federal prisoners in non-Federal institutions or otherwise in the custody of the United States Marshals Service and to the detention of aliens in the custody of the Immigration and Naturalization Service, including the overseeing of construction of detention facilities or for housing related to such detention, the management of funds appropriated to the Department for the exercise of detention functions, and the direction of the United States Marshals Service and Immigration Service with respect to the exercise of detention policy setting and operations for the Department of Justice.

"(c) RELATED PROVISIONS.—

"(1) LIMITATION OF COMPENSATION OF INDIVIDUALS EMPLOYED AS ATTORNEYS.—No funds available to the Attorney General may be used to pay compensation for services provided by an individual employed as an attorney (other than an individual employed to provide services as a foreign attorney in special cases) unless such individual is duly licensed and authorized to practice as an attorney under the law of a State, a territory of the United States, or the District of Columbia.

"(2) REIMBURSEMENTS PAID TO GOVERNMENTAL ENTITIES.—Funds available to the Attorney General that are paid as reimbursement to a governmental unit of the Department of Justice, to another Federal entity, or to a unit of State or local government, may be used under authorities available to the unit or entity receiving such reimbursement.

"(d) FOREIGN REIMBURSEMENTS.—Whenever the Department of Justice or any component participates in a cooperative project to improve law enforcement or national security operations or services with a friendly foreign country on a cost-sharing basis, any reimbursements or contributions received from that foreign country to meet its share of the project may be credited to appropriate current appropriations accounts of the Department of Justice or any component. The amount of a reimbursement or contribution credited shall be available only for payment of the share of the project expenses allocated to the participating foreign country.

"(e) RAILROAD POLICE TRAINING FEES.—The Attorney General is authorized to establish and collect a fee to defray the costs of railroad police officers participating in a Federal Bureau of Investigation law enforcement training program authorized by Public Law 106–110, and to credit such fees to the appropriation account 'Federal Bureau of Investigation, Salaries and Expenses', to be available until expended for salaries and expenses incurred in providing such services.

"(f) WARRANTY WORK.—In instances where the Attorney General determines that law enforcement-, security-, or mission-related considerations mitigate against obtaining maintenance or repair services from private sector entities for equipment under warranty, the Attorney General is authorized to seek reimbursement from such entities for warranty work performed at Department of Justice facilities, and to credit any payment made for such work to any appropriation charged therefor.".

(b) CONFORMING AMENDMENT.—The table of sections of chapter 31 of title 28, United States Code, is amended by adding at the end the following:

"530C. Authority to use available funds.".

SEC. 202. PERMANENT AUTHORITY RELATING TO ENFORCEMENT OF LAWS.

(a) IN GENERAL.—Chapter 31 of title 28, United States Code (as amended by section 201), is amended by adding at the end the following:

"§ 530D. Report on enforcement of laws

"(a) REPORT.—

"(1) IN GENERAL.—The Attorney General shall submit to the Congress a report of any instance in which the Attorney General or any officer of the Department of Justice—

"(A) establishes or implements a formal or informal policy to refrain—

"(i) from enforcing, applying, or administering any provision of any Federal statute, rule, regulation, program, policy, or other law whose enforcement, application, or administration is within the responsibility of the Attorney General or such officer on the grounds that such provision is unconstitutional; or

"(ii) within any judicial jurisdiction of or within the United States, from adhering to, enforcing, applying, or complying with, any standing rule of decision (binding upon courts of, or inferior to those of, that jurisdiction) established by a final decision of any court of, or superior to those of, that jurisdiction, respecting the interpretation, construction, or application of the Constitution, any statute, rule, regulation, program, policy, or other law whose enforcement, application, or administration is within the responsibility of the Attorney General or such officer;

"(B) determines—

"(i) to contest affirmatively, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law; or

"(ii) to refrain (on the grounds that the provision is unconstitutional) from defending or asserting, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law, or not to appeal or request review of any judicial, administrative, or other determination adversely affecting the constitutionality of any such provision; or

"(C) approves (other than in circumstances in which a report is submitted to the Joint Committee on Taxation, pursuant to section 6405 of the Internal Revenue Code of 1986) the settlement or compromise (other than in bankruptcy) of any claim, suit, or other action—

"(i) against the United States (including any agency or instrumentality thereof) for a sum that exceeds, or is likely to exceed, $2,000,000, excluding prejudgment interest; or

"(ii) by the United States (including any agency or instrumentality thereof) pursuant to an agreement, consent decree, or order (or pursuant to any modification of an agreement, consent decree, or order) that provides injunctive or other nonmonetary relief that exceeds, or is likely to exceed, 3 years in duration: Provided, That for purposes of this clause, the term "injunctive or other nonmonetary relief" shall not be understood to include the following, where the same are a matter of public record—

"(I) debarments, suspensions, or other exclusions from Government contracts or grants;

"(II) mere reporting requirements or agreements (including sanctions for failure to report);

"(III) requirements or agreements merely to comply with statutes or regulations;

"(IV) requirements or agreements to surrender professional licenses or to cease the practice of professions, occupations, or industries;

"(V) any criminal sentence or any requirements or agreements to perform community service, to serve probation, or to participate in supervised release from detention, confinement, or prison; or

"(VI) agreements to cooperate with the government in investigations or prosecutions (whether or not the agreement is a matter of public record).

"(2) SUBMISSION OF REPORT TO THE CONGRESS.—For the purposes of paragraph (1), a report shall be considered to be submitted to the Congress if the report is submitted to—

"(A) the majority leader and minority leader of the Senate;

"(B) the Speaker, majority leader, and minority leader of the House of Representatives;

"(C) the chairman and ranking minority member of the Committee on the Judiciary of the House of Representatives and the chairman and ranking minority member of the Committee on the Judiciary of the Senate; and

"(D) the Senate Legal Counsel and the General Counsel of the House of Representatives.

"(b) DEADLINE.—A report shall be submitted—

"(1) under subsection (a)(1)(A), not later than 30 days after the establishment or implementation of each policy;

"(2) under subsection (a)(1)(B), within such time as will reasonably enable the House of Representatives and the Senate to take action, separately or jointly, to intervene in timely fashion in the proceeding, but in no event later than 30 days after the making of each determination; and

"(3) under subsection (a)(1)(C), not later than 30 days after the conclusion of each fiscal-year quarter, with respect to all approvals occurring in such quarter.

"(c) CONTENTS.—A report required by subsection (a) shall—

"(1) specify the date of the establishment or implementation of the policy described in subsection (a)(1)(A), of the making of the determination described in subsection (a)(1)(B), or of each approval described in subsection (a)(1)(C);

"(2) include a complete and detailed statement of the relevant issues and background (including a complete and detailed statement of the reasons for the policy or determination, and the identity of the officer responsible for establishing or implementing such policy, making such determination, or approving such settlement or compromise), except that—

"(A) such details may be omitted as may be absolutely necessary to prevent improper disclosure of national-security- or classified information, of any information subject to the deliberative-process-, executive-, attorney-work-product,- or attorney-client privileges, or of any information the disclosure of which is prohibited by section 6103 of the Internal Revenue Code of 1986, or other law or any court order if the fact of each such omission (and the precise ground or grounds therefor) is clearly noted in the statement: Provided, That this subparagraph shall not be construed to deny to the Congress (including any House, Committee, or agency thereof) any such omitted details (or related information) that it lawfully may seek, subsequent to the submission of the report; and

"(B) the requirements of this paragraph shall be deemed satisfied—

"(i) in the case of an approval described in subsection (a)(1)(C)(i), if an unredacted copy of the entire settlement agreement and consent decree or order (if any) is provided, along with a statement indicating the legal and factual basis or bases for the settlement or compromise (if not apparent on the face of documents provided); and

"(ii) in the case of an approval described in subsection (a)(1)(C)(ii), if an unredacted copy of the entire settlement agreement and consent decree or order (if any) is provided, along with a statement indicating the injunctive or other nonmonetary relief (if not apparent on the face of documents provided); and

"(3) in the case of a determination described in subsection (a)(1)(B) or an approval described in subsection (a)(1)(C), indi-

cate the nature, tribunal, identifying information, and status of the proceeding, suit, or action.

"(d) DECLARATION.—In the case of a determination described in subsection (a)(1)(B), the representative of the United States participating in the proceeding shall make a clear declaration in the proceeding that any position expressed as to the constitutionality of the provision involved is the position of the executive branch of the Federal Government (or, as applicable, of the President or of any executive agency or military department).

"(e) APPLICABILITY TO THE PRESIDENT AND TO EXECUTIVE AGENCIES AND MILITARY DEPARTMENTS.—The reporting, declaration, and other provisions of this section relating to the Attorney General and other officers of the Department of Justice shall apply to the President (but only with respect to the promulgation of any unclassified Executive order or similar memorandum or order), to the head of each executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) that establishes or implements a policy described in subsection (a)(1)(A) or is authorized to conduct litigation, and to the officers of such executive agency.".

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 31 of title 28, United States Code (as amended by section 201), is amended by adding at the end the following:

"530D. Report on enforcement of laws.".

(2) Section 712 of Public Law 95–521 (92 Stat. 1883) is amended by striking subsection (b) and inserting:

"(b) The Attorney General shall notify Counsel as required by section 530D of title 28.".

(3) Not later than 30 days after the date of the enactment of this Act, the President shall advise the head of each executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) of the enactment of this section.

(4)(A) Not later than 90 days after the date of the enactment of this Act, the Attorney General (and, as applicable, the President, and the head of any executive agency or military department described in subsection (e) of section 530D of title 28, United States Code, as added by subsection (a)) shall submit to Congress a report (in accordance with subsections (a), (c), and (e) of such section) on—

(i) all policies of which the Attorney General and applicable official are aware described in subsection (a)(1)(A) of such section that were established or implemented before the date of the enactment of this Act and were in effect on such date; and

(ii) all determinations of which the Attorney General and applicable official are aware described in subsection (a)(1)(B) of such section that were made before the date of the enactment of this Act and were in effect on such date.

(B) If a determination described in subparagraph (A)(ii) relates to any judicial, administrative, or other proceeding that is pending in the 90-day period beginning on the date of the enactment of this Act, with respect to any such determination, then

the report required by this paragraph shall be submitted within such time as will reasonably enable the House of Representatives and the Senate to take action, separately or jointly, to intervene in timely fashion in the proceeding, but not later than 30 days after the date of the enactment of this Act.

(5) Section 101 of Public Law 106–57 (113 Stat. 414) is amended by striking subsection (b).

SEC. 203. MISCELLANEOUS USES OF FUNDS; TECHNICAL AMENDMENTS.

(a) BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) in section 504(a) by striking "502" and inserting "501(b)";

(2) in section 506(a)(1) by striking "participating";

(3) in section 510(a)(3) by striking "502" and inserting "501(b)";

(4) in section 510 by adding at the end the following:

"(d) No grants or contracts under subsection (b) may be made, entered into, or used, directly or indirectly, to provide any security enhancements or any equipment to any non-governmental entity that is not engaged in law enforcement or law enforcement support, criminal or juvenile justice, or delinquency prevention."; and

(5) in section 511 by striking "503" and inserting "501(b)".

(b) ATTORNEYS SPECIALLY RETAINED BY THE ATTORNEY GENERAL.—The 3d sentence of section 515(b) of title 28, United States Code, is amended by striking "at not more than $12,000".

SEC. 204. TECHNICAL AND MISCELLANEOUS AMENDMENTS TO DEPARTMENT OF JUSTICE AUTHORITIES; AUTHORITY TO TRANSFER PROPERTY OF MARGINAL VALUE; RECORDKEEPING; PROTECTION OF THE ATTORNEY GENERAL.

(a) Section 524 of title 28, United States Code, is amended—

(1) in subsection (a) by inserting "to the Attorney General" after "available";

(2) in subsection (c)(1)—

(A) by striking the semicolon at the end of the 1st subparagraph (I) and inserting a period;

(B) by striking the 2d subparagraph (I);

(C) by striking "(A)(iv), (B), (F), (G), and (H)" in the first sentence following the second subparagraph (I) and inserting "(B), (F), and (G)"; and

(D) by striking "fund" in the 3d sentence following the 2d subparagraph (I) and inserting "Fund";

(3) in subsection (c)(2)—

(A) by inserting before the period in the last sentence ", without both the personal approval of the Attorney General and written notice within 30 days thereof to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives";

(B) by striking "for information" each place it appears; and

(C) by striking "$250,000" the 2d and 3d places it appears and inserting "$500,000";

(4) in subsection (c)(3) by striking "(F)" and inserting "(G)";

(5) in subsection (c)(5) by striking "Fund which" and inserting "Fund, that";

(6) in subsection (c)(8)(A), by striking "(A)(iv), (B), (F), (G), and (H)" and inserting "(B), (F), and (G)"; and

(7) in subsection (c)(9)(B)—

(A) by striking "year 1997" and inserting "years 2002 and 2003"; and

(B) by striking "Such transfer shall not" and inserting "Each such transfer shall be subject to satisfaction by the recipient involved of any outstanding lien against the property transferred, but no such transfer shall".

(b) Section 522 of title 28, United States Code, is amended by inserting "(a)" before "The", and by inserting at the end the following:

"(b) With respect to any data, records, or other information acquired, collected, classified, preserved, or published by the Attorney General for any statistical, research, or other aggregate reporting purpose beginning not later than 1 year after the date of enactment of 21st Century Department of Justice Appropriations Authorization Act and continuing thereafter, and notwithstanding any other provision of law, the same criteria shall be used (and shall be required to be used, as applicable) to classify or categorize offenders and victims (in the criminal context), and to classify or categorize actors and acted upon (in the noncriminal context).".

(c) Section 534(a)(3) of title 28, United States Code, is amended by adding "and" after the semicolon.

(d) Section 509(3) of title 28, United States Code, is amended by striking the 2d period.

(e) Section 533 of title 28, United States Code, is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by adding after paragraph (2) a new paragraph as follows:

"(3) to assist in the protection of the person of the Attorney General.".

(f) No compensation or reimbursement paid pursuant to section 501(a) of Public Law 99–603 (100 Stat. 3443) or section 241(i) of the Act of June 27, 1952 (ch. 477) shall be subject to section 6503(d) of title 31, United States Code, and no funds available to the Attorney General may be used to pay any assessment made pursuant to such section 6503 with respect to any such compensation or reimbursement.

(g) Section 108 of Public Law 103–121 (107 Stat. 1164) is amended by replacing "three" with "six", by replacing "only" with ", first,", and by replacing "litigation." with "litigation, and, thereafter, for financial systems, and other personnel, administrative, and litigation expenses of debt collection activities.".

SEC. 205. OVERSIGHT; WASTE, FRAUD, AND ABUSE WITHIN THE DEPARTMENT OF JUSTICE.

(a) Section 529 of title 28, United States Code, is amended by inserting "(a)" before "Beginning", and by adding at the end the following:

"(b) Notwithstanding any provision of law limiting the amount of management or administrative expenses, the Attorney General shall, not later than May 2, 2003, and of every year thereafter, prepare and provide to the Committees on the Judiciary and Appro-

priations of each House of the Congress using funds available for the underlying programs—

"(1) a report identifying and describing every grant (other than one made to a governmental entity, pursuant to a statutory formula), cooperative agreement, or programmatic services contract that was made, entered into, awarded, or, for which additional or supplemental funds were provided in the immediately preceding fiscal year, by or on behalf of the Office of Justice Programs (including any component or unit thereof, and the Office of Community Oriented Policing Services), and including, without limitation, for each such grant, cooperative agreement, or contract: the term, the dollar amount or value, a description of its specific purpose or purposes, the names of all grantees or parties, the names of each unsuccessful applicant or bidder, and a description of the specific purpose or purposes proposed in each unsuccessful application or bid, and of the reason or reasons for rejection or denial of the same; and

"(2) a report identifying and reviewing every grant (other than one made to a governmental entity, pursuant to a statutory formula), cooperative agreement, or programmatic services contract over $5,000,000 made, entered into, awarded, or for which additional or supplemental funds were provided, after October 1, 2002, by or on behalf of the Office of Justice Programs (including any component or unit thereof, and the Office of Community Oriented Policing Services) that was programmatically and financially closed out or that otherwise ended in the immediately preceding fiscal year (or even if not yet closed out, was terminated or otherwise ended in the fiscal year that ended 2 years before the end of such immediately preceding fiscal year), and including, without limitation, for each such grant, cooperative agreement, or contract: a description of how the appropriated funds involved actually were spent, statistics relating to its performance, its specific purpose or purposes, and its effectiveness, and a written declaration by each non-Federal grantee and each non-Federal party to such agreement or to such contract, that—

"(A) the appropriated funds were spent for such purpose or purposes, and only such purpose or purposes;

"(B) the terms of the grant, cooperative agreement, or contract were complied with; and

"(C) all documentation necessary for conducting a full and proper audit under generally accepted accounting principles, and any (additional) documentation that may have been required under the grant, cooperative agreement, or contract, have been kept in orderly fashion and will be preserved for not less than 3 years from the date of such close out, termination, or end;

except that the requirement of this paragraph shall be deemed satisfied with respect to any such description, statistics, or declaration if such non-Federal grantee or such non-Federal party shall have failed to provide the same to the Attorney General, and the Attorney General notes the fact of such failure and the name of such grantee or such party in the report.".

(b) Section 1913 of title 18, United States Code, is amended by striking "to favor" and inserting "a jurisdiction, or an official of any

government, to favor, adopt,", by inserting ", law, ratification, policy," after "legislation" every place it appears, by striking "by Congress" the 2d place it appears, by inserting "or such official" before ", through the proper", by inserting ", measure," before "or resolution", by striking "Members of Congress on the request of any Member" and inserting "any such Member or official, at his request,", by striking "for legislation" and inserting "for any legislation", and by striking the period and the paragraph following "business" and inserting ", or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.".

(c) Section 1516(a) of title 18, United States Code, is amended by inserting ", entity, or program" after "person", and by inserting "grant, or cooperative agreement," after "subcontract,".

(d) Section 112 of title I of section 101(b) of division A of Public Law 105–277 (112 Stat. 2681–67) is amended by striking "fiscal year" and all that follows through "Justice—", and inserting "any fiscal year the Attorney General—".

(e) Section 2320(f) of title 18, United States Code, is amended—

(1) by striking "title 18" each place it appears and inserting "this title"; and

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively;

(3) by inserting "(1)" after "(f)"; and

(4) by adding at the end the following:

"(2)(A) The report under paragraph (1), with respect to criminal infringement of copyright, shall include the following:

"(i) The number of infringement cases in these categories: audiovisual (videos and films); audio (sound recordings); literary works (books and musical compositions); computer programs; video games; and, others.

"(ii) The number of online infringement cases.

"(iii) The number and dollar amounts of fines assessed in specific categories of dollar amounts. These categories shall be: no fines ordered; fines under $500; fines from $500 to $1,000; fines from $1,000 to $5,000; fines from $5,000 to $10,000; and fines over $10,000.

"(iv) The total amount of restitution ordered in all copyright infringement cases.

"(B) In this paragraph, the term 'online infringement cases' as used in paragraph (2) means those cases where the infringer—

"(i) advertised or publicized the infringing work on the Internet; or

"(ii) made the infringing work available on the Internet for download, reproduction, performance, or distribution by other persons.

"(C) The information required under subparagraph (A) shall be submitted in the report required in fiscal year 2005 and thereafter.".

SEC. 206. ENFORCEMENT OF FEDERAL CRIMINAL LAWS BY ATTORNEY GENERAL.

Section 535 of title 28, United States Code, is amended in subsections (a) and (b), by replacing "title 18" with "Federal criminal

law", and in subsection (b), by replacing "or complaint" with "matter, or complaint witnessed, discovered, or", and by inserting "or the witness, discoverer, or recipient, as appropriate," after "agency,".

SEC. 207. STRENGTHENING LAW ENFORCEMENT IN UNITED STATES TERRITORIES, COMMONWEALTHS, AND POSSESSIONS.

(a) EXTENDED ASSIGNMENT INCENTIVE.—Chapter 57 of title 5, United States Code, is amended—

(1) in subchapter IV, by inserting at the end the following:

"§ 5757. Extended assignment incentive

"(a) The head of an Executive agency may pay an extended assignment incentive to an employee if—

"(1) the employee has completed at least 2 years of continuous service in 1 or more civil service positions located in a territory or possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands;

"(2) the agency determines that replacing the employee with another employee possessing the required qualifications and experience would be difficult; and

"(3) the agency determines it is in the best interest of the Government to encourage the employee to complete a specified additional period of employment with the agency in the territory or possession, the Commonwealth of Puerto Rico or Commonwealth of the Northern Mariana Islands, except that the total amount of service performed in a particular territory, commonwealth, or possession under 1 or more agreements established under this section may not exceed 5 years.

"(b) The sum of extended assignment incentive payments for a service period may not exceed the greater of—

"(1) an amount equal to 25 percent of the annual rate of basic pay of the employee at the beginning of the service period, times the number of years in the service period; or

"(2) $15,000 per year in the service period.

"(c)(1) Payment of an extended assignment incentive shall be contingent upon the employee entering into a written agreement with the agency specifying the period of service and other terms and conditions under which the extended assignment incentive is payable.

"(2) The agreement shall set forth the method of payment, including any use of an initial lump-sum payment, installment payments, or a final lump-sum payment upon completion of the entire period of service.

"(3) The agreement shall describe the conditions under which the extended assignment incentive may be canceled prior to the completion of agreed-upon service period and the effect of the cancellation. The agreement shall require that if, at the time of cancellation of the incentive, the employee has received incentive payments which exceed the amount which bears the same relationship to the total amount to be paid under the agreement as the completed service period bears to the agreed-upon service period, the employee shall repay that excess amount, at a minimum, except that an employee who is involuntarily reassigned to a position stationed outside the territory, commonwealth, or possession or involuntarily separated

(not for cause on charges of misconduct, delinquency, or inefficiency) may not be required to repay any excess amounts.

"(d) An agency may not put an extended assignment incentive into effect during a period in which the employee is fulfilling a recruitment or relocation bonus service agreement under section 5753 or for which an employee is receiving a retention allowance under section 5754.

"(e) Extended assignment incentive payments may not be considered part of the basic pay of an employee.

"(f) The Office of Personnel Management may prescribe regulations for the administration of this section, including regulations on an employee's entitlement to retain or receive incentive payments when an agreement is canceled. Neither this section nor implementing regulations may impair any agency's independent authority to administratively determine compensation for a class of its employees."; and

(2) in the analysis by adding at the end the following:

"5757. Extended assignment incentive.".

(b) CONFORMING AMENDMENT.—Section 5307(a)(2)(B) of title 5, United States Code, is amended by striking "or 5755" and inserting "5755, or 5757".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first applicable pay period beginning on or after 6 months after the date of enactment of this Act.

(d) REPORT.—No later than 3 years after the effective date of this section, the Office of Personnel Management, after consultation with affected agencies, shall submit a report to Congress assessing the effectiveness of the extended assignment incentive authority as a human resources management tool and making recommendations for any changes necessary to improve the effectiveness of the incentive authority. Each agency shall maintain such records and report such information, including the number and size of incentive offers made and accepted or declined by geographic location and occupation, in such format and at such times as the Office of Personnel Management may prescribe, for use in preparing the report.

TITLE III—MISCELLANEOUS

SEC. 301. REPEALERS.

(a) OPEN-ENDED AUTHORIZATION OF APPROPRIATIONS FOR NATIONAL INSTITUTE OF CORRECTIONS.—Chapter 319 of title 18, United States Code, is amended by striking section 4353.

(b) OPEN-ENDED AUTHORIZATION OF APPROPRIATIONS FOR UNITED STATES MARSHALS SERVICE.—Section 561 of title 28, United States Code, is amended by striking subsection (i).

(c) REDUNDANT AUTHORIZATIONS OF PAYMENTS FOR REWARDS.—

(1) Public Law 107–56 is amended by striking section 501.

(2) Chapter 203 of title 18, United States Code, is amended by striking sections 3059, 3059A, 3059B, 3075, and all the matter after the first sentence of 3072.

(3) Public Law 101–647 is amended in section 2565, by replacing all the matter after "2561" in subsection (c)(1) with "the

Attorney General may, in his discretion, pay a reward to the declarant" and by striking subsection (e); and by striking section 2569.

SEC. 302. TECHNICAL AMENDMENTS TO TITLE 18 OF THE UNITED STATES CODE.

Title 18 of the United States Code is amended—

(1) in section 4041 by striking "at a salary of $10,000 a year";

(2) in section 4013—

(A) in subsection (a)—

(i) by replacing "the support of United States prisoners" with "Federal prisoner detention";

(ii) in paragraph (2) by adding "and" after "hire;";

(iii) in paragraph (3) by replacing "entities; and" with "entities."; and

(iv) in paragraph (4) by inserting "The Attorney General, in support of Federal prisoner detainees in non-Federal institutions, is authorized to make payments, from funds appropriated for State and local law enforcement assistance, for" before "entering"; and

(B) by redesignating—

(i) subsections (b) and (c) as subsections (c) and (d); and

(ii) paragraph (a)(4) as subsection (b), and subparagraphs (A), (B), and (C), of such paragraph (a)(4) as paragraphs (1), (2), and (3) of such subsection (b); and

(3) in section 209(a)—

(A) by striking "or makes" and inserting "makes"; and

(B) by striking "supplements the salary of, any" and inserting "supplements, the salary of any".

SEC. 303. REQUIRED SUBMISSION OF PROPOSED AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF JUSTICE FOR FISCAL YEARS 2004 AND 2005.

When the President submits to the Congress the budget of the United States Government for fiscal year 2004, the President shall simultaneously submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate such proposed legislation authorizing appropriations for the Department of Justice for fiscal years 2004 and 2005 as the President may judge necessary and expedient.

SEC. 304. STUDY OF UNTESTED RAPE EXAMINATION KITS.

Not later than 6 months after the date of enactment of this Act, the Attorney General shall conduct a study to assess and report to Congress the number of untested rape examination kits that currently exist nationwide and shall submit to the Congress a report containing a summary of the results of such study. For the purpose of carrying out such study, the Attorney General shall attempt to collect information from all law enforcement jurisdictions in the United States.

SEC. 305. REPORTS ON USE OF DCS 1000 (CARNIVORE).

(a) REPORT ON USE OF DCS 1000 (CARNIVORE) TO IMPLEMENT ORDERS UNDER 18 U.S.C. 3123.—At the same time that the Attorney General submits to Congress the annual reports required by sec-

tion 3126 of title 18, United States Code, that are respectively next due after the end of each of the fiscal years 2002 and 2003, the Attorney General shall also submit to the Chairmen and ranking minority members of the Committees on the Judiciary of the Senate and of the House of Representatives a report, covering the same respective time period, on the number of orders under section 3123 applied for by law enforcement agencies of the Department of Justice whose implementation involved the use of the DCS 1000 program (or any subsequent version of such program), which report shall include information concerning—

(1) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(2) the offense specified in the order or application, or extension of an order;

(3) the number of investigations involved;

(4) the number and nature of the facilities affected;

(5) the identity of the applying investigative or law enforcement agency making the application for an order; and

(6) the specific persons authorizing the use of the DCS 1000 program (or any subsequent version of such program) in the implementation of such order.

(b) REPORT ON USE OF DCS 1000 (CARNIVORE) TO IMPLEMENT ORDERS UNDER 18 U.S.C. 2518.—At the same time that the Attorney General, or Assistant Attorney General specially designated by the Attorney General, submits to the Administrative Office of the United States Courts the annual report required by section 2519(2) of title 18, United States Code, that is respectively next due after the end of each of the fiscal years 2002 and 2003, the Attorney General shall also submit to the Chairmen and ranking minority members of the Committees on the Judiciary of the Senate and of the House of Representatives a report, covering the same respective time period, that contains the following information with respect to those orders described in that annual report that were applied for by law enforcement agencies of the Department of Justice and whose implementation involved the use of the DCS 1000 program (or any subsequent version of such program)—

(1) the kind of order or extension applied for (including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of title 18, United States Code, did not apply by reason of section 2518 (11) of title 18);

(2) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(3) the offense specified in the order or application, or extension of an order;

(4) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application;

(5) the nature of the facilities from which or place where communications were to be intercepted;

(6) a general description of the interceptions made under such order or extension, including—

(A) the approximate nature and frequency of incriminating communications intercepted;

(B) the approximate nature and frequency of other communications intercepted;

(C) the approximate number of persons whose communications were intercepted;

(D) the number of orders in which encryption was encountered and whether such encryption prevented law enforcement from obtaining the plain text of communications intercepted pursuant to such order; and

(E) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(7) the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(8) the number of trials resulting from such interceptions;

(9) the number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(10) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(11) the specific persons authorizing the use of the DCS 1000 program (or any subsequent version of such program) in the implementation of such order.

SEC. 306. STUDY OF ALLOCATION OF LITIGATING ATTORNEYS.

Not later than 180 days after the date of the enactment of this Act, the Attorney General shall submit a report to the chairman and ranking minority member of the Committees on the Judiciary of the House of Representatives and Committee on the Judiciary of the Senate, detailing the distribution or allocation of appropriated funds, attorneys and other personnel, and per-attorney workloads, for each Office of United States Attorney and each division of the Department of Justice except the Justice Management Division.

SEC. 307. USE OF TRUTH-IN-SENTENCING AND VIOLENT OFFENDER INCARCERATION GRANTS.

Section 20105(b) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13705(b)) is amended to read as follows:

"(b) USE OF TRUTH-IN-SENTENCING AND VIOLENT OFFENDER INCARCERATION GRANTS.—Funds provided under section 20103 or 20104 may be applied to the cost of—

"(1) altering existing correctional facilities to provide separate facilities for juveniles under the jurisdiction of an adult criminal court who are detained or are serving sentences in adult prisons or jails;

"(2) providing correctional staff who are responsible for supervising juveniles who are detained or serving sentences under the jurisdiction of an adult criminal court with orientation and ongoing training regarding the unique needs of such offenders; and

"(3) providing ombudsmen to monitor the treatment of juveniles who are detained or serving sentences under the jurisdiction of an adult criminal court in adult facilities, consistent with guidelines issued by the Assistant Attorney General.

SEC. 308. AUTHORITY OF THE DEPARTMENT OF JUSTICE INSPECTOR GENERAL.

Section 8E of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (b), by striking paragraphs (2) and (3) and inserting the following:

"(2) except as specified in subsection (a) and paragraph (3), may investigate allegations of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice, or may, in the discretion of the Inspector General, refer such allegations to the Office of Professional Responsibility or the internal affairs office of the appropriate component of the Department of Justice;

"(3) shall refer to the Counsel, Office of Professional Responsibility of the Department of Justice, allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice, except that no such referral shall be made if the attorney is employed in the Office of Professional Responsibility;

"(4) may investigate allegations of criminal wrongdoing or administrative misconduct by a person who is the head of any agency or component of the Department of Justice; and

"(5) shall forward the results of any investigation conducted under paragraph (4), along with any appropriate recommendation for disciplinary action, to the Attorney General."; and

(2) by adding at the end the following:

"(d) The Attorney General shall ensure by regulation that any component of the Department of Justice receiving a nonfrivolous allegation of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice, except with respect to allegations described in subsection (b)(3), shall report that information to the Inspector General.".

SEC. 309. REVIEW OF THE DEPARTMENT OF JUSTICE.

(a) APPOINTMENT OF OVERSIGHT OFFICIAL WITHIN THE OFFICE OF INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General of the Department of Justice shall direct that 1 official from the office of the Inspector General be responsible for supervising and coordinating independent oversight of programs and operations of the Federal Bureau of Investigation until September 30, 2004.

(2) CONTINUATION OF OVERSIGHT.—The Inspector General may continue individual oversight in accordance with paragraph (1) after September 30, 2004, at the discretion of the Inspector General.

(b) INSPECTOR GENERAL OVERSIGHT PLAN FOR THE FEDERAL BUREAU OF INVESTIGATION.—Not later than 30 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall submit to the Chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives, a plan for oversight of the Federal Bureau of Investigation, which plan may include—

(1) an audit of the financial systems, information technology systems, and computer security systems of the Federal Bureau of Investigation;

(2) an audit and evaluation of programs and processes of the Federal Bureau of Investigation to identify systemic weaknesses or implementation failures and to recommend corrective action;

(3) a review of the activities of internal affairs offices of the Federal Bureau of Investigation, including the Inspections Division and the Office of Professional Responsibility;

(4) an investigation of allegations of serious misconduct by personnel of the Federal Bureau of Investigation;

(5) a review of matters relating to any other program or operation of the Federal Bureau of Investigation that the Inspector General determines requires review; and

(6) an identification of resources needed by the Inspector General to implement a plan for oversight of the Federal Bureau of Investigation.

(c) REPORT ON INSPECTOR GENERAL FOR FEDERAL BUREAU OF INVESTIGATION.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall submit a report and recommendation to the Chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives concerning—

(1) whether there should be established, within the Department of Justice, a separate office of the Inspector General for the Federal Bureau of Investigation that shall be responsible for supervising independent oversight of programs and operations of the Federal Bureau of Investigation;

(2) what changes have been or should be made to the rules, regulations, policies, or practices governing the Federal Bureau of Investigation in order to assist the Office of the Inspector General in effectively exercising its authority to investigate the conduct of employees of the Federal Bureau of Investigation;

(3) what differences exist between the methods and practices used by different Department of Justice components in the investigation and adjudication of alleged misconduct by Department of Justice personnel;

(4) what steps should be or are being taken to make the methods and practices described in paragraph (3) uniform throughout the Department of Justice; and

(5) whether a set of recommended guidelines relating to the discipline of Department of Justice personnel for misconduct should be developed, and what factors, such as the nature and seriousness of the misconduct, the prior history of the employee, and the rank and seniority of the employee at the time of the misconduct, should be taken into account in establishing such recommended disciplinary guidelines.

SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF JUSTICE.—There is authorized to be appropriated $2,000,000 to the Department of Justice for fiscal year 2003—

(1) for salary, pay, retirement, and other costs associated with increasing the staffing level of the Office of Inspector General by 25 full-time employees who shall conduct an increased

number of audits, inspections, and investigations of alleged misconduct by employees of the Federal Bureau of Investigation;

(2) to fund expanded audit coverage of the grant programs administered by the Office of Justice Programs of the Department of Justice; and

(3) to conduct special reviews of efforts by the Federal Bureau of Investigation to implement recommendations made by the Office of Inspector General in reports on alleged misconduct by the Bureau.

(b) FEDERAL BUREAU OF INVESTIGATION.—There is authorized to be appropriated $1,700,000 to the Federal Bureau of Investigation for fiscal year 2003 for salary, pay, retirement, and other costs associated with increasing the staffing level of the Office of Professional Responsibility by 10 full-time special agents and 4 full-time support employees.

SEC. 311. REPORT ON THREATS AND ASSAULTS AGAINST FEDERAL LAW ENFORCEMENT OFFICERS, UNITED STATES JUDGES, UNITED STATES OFFICIALS AND THEIR FAMILIES.

(a) REPEAL OF COMPILATION OF STATISTICS RELATING TO INTIMIDATION OF GOVERNMENT EMPLOYEES.—Section 808 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132; 110 Stat. 1310) is repealed.

(b) REPORT ON THREATS AND ASSAULTS AGAINST FEDERAL LAW ENFORCEMENT OFFICERS, UNITED STATES JUDGES, UNITED STATES OFFICIALS AND THEIR FAMILIES.—Not later than 45 days after the end of fiscal year 2002, the Attorney General shall submit to the Chairmen and ranking minority members of the Committees on the Judiciary of the Senate and of the House of Representatives a report on the number of investigations and prosecutions under section 111 of title 18, United States Code, and section 115 of title 18, United States Code, for the fiscal year 2002.

SEC. 312. ADDITIONAL FEDERAL JUDGESHIPS.

(a) PERMANENT DISTRICT JUDGES FOR THE DISTRICT COURTS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 5 additional district judges for the southern district of California;

(B) 1 additional district judge for the western district of North Carolina; and

(C) 2 additional district judges for the western district of Texas.

(2) TABLES.—In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of paragraph (1) of this subsection, such table is amended—

(A) by striking the item relating to California and inserting the following:

"California:
Northern 14
Eastern 6
Central 27
Southern ..... 13";

(B) by striking the item relating to North Carolina and inserting the following:

"North Carolina:
Eastern 4
Middle 4
Western ..... 4";

and

(C) by striking the item relating to Texas and inserting the following:

"Texas:
Northern 12
Southern 19
Eastern 7
Western ..... 13".

(3) EFFECTIVE DATE.—This subsection shall take effect on July 15, 2003.

(b) DISTRICT JUDGESHIPS FOR THE CENTRAL AND SOUTHERN DISTRICTS OF ILLINOIS, THE NORTHERN DISTRICT OF NEW YORK, AND THE EASTERN DISTRICT OF VIRGINIA.—

(1) CONVERSION OF TEMPORARY JUDGESHIPS TO PERMANENT JUDGESHIPS.—The existing district judgeships for the central district and the southern district of Illinois, the northern district of New York, and the eastern district of Virginia authorized by section 203(c) (3), (4), (9), and (12) of the Judicial Improvements Act of 1990 (Public Law 101–650, 28 U.S.C. 133 note) shall be authorized under section 133 of title 28, United States Code, and the incumbents in such offices shall hold the offices under section 133 of title 28, United States Code (as amended by this section).

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table contained in section 133(a) of title 28, United States Code, is amended—

(A) by striking the item relating to Illinois and inserting the following:

"Illinois:
Northern 22
Central 4
Southern ..... 4";

(B) by striking the item relating to New York and inserting the following:

"New York:
Northern 5
Southern 28
Eastern 15
Western ..... 4";

and

(C) by striking the item relating to Virginia and inserting the following:

"Virginia:
Eastern 11
Western ..... 4".

(3) EFFECTIVE DATE.—With respect to the central or southern district of Illinois, the northern district of New York, or the eastern district of Virginia, this subsection shall take effect on the earlier of—

(A) the date on which the first vacancy in the office of district judge occurs in such district; or

(B) July 15, 2003.

(c) TEMPORARY JUDGESHIPS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 1 additional district judge for the northern district of Alabama;

(B) 1 additional judge for the district of Arizona;

(C) 1 additional judge for the central district of California;

(D) 1 additional judge for the southern district of Florida;

(E) 1 additional district judge for the district of New Mexico;

(F) 1 additional district judge for the western district of North Carolina; and

(G) 1 additional district judge for the eastern district of Texas.

(2) VACANCIES NOT FILLED.—The first vacancy in the office of district judge in each of the offices of district judge authorized by this subsection, occurring 10 years or more after the confirmation date of the judge named to fill the temporary district judgeship created in the applicable district by this subsection, shall not be filled.

(3) EFFECTIVE DATE.—This subsection shall take effect on July 15, 2003.

(d) EXTENSION OF TEMPORARY FEDERAL DISTRICT COURT JUDGESHIP FOR THE NORTHERN DISTRICT OF OHIO.—

(1) IN GENERAL.—Section 203(c) of the Judicial Improvement Act of 1990 (28 U.S.C. 133 note) is amended—

(A) in the first sentence following paragraph (12), by striking "and the eastern district of Pennsylvania" and inserting ", the eastern district of Pennsylvania, and the northern district of Ohio"; and

(B) by inserting after the third sentence following paragraph (12) "The first vacancy in the office of district judge in the northern district of Ohio occurring 15 years or more after the confirmation date of the judge named to fill the temporary judgeship created under this subsection shall not be filled.".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of enactment of this Act.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this section.

TITLE IV—VIOLENCE AGAINST WOMEN

SEC. 401. SHORT TITLE.

This title may be cited as the "Violence Against Women Office Act".

SEC. 402. ESTABLISHMENT OF VIOLENCE AGAINST WOMEN OFFICE.

Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg et seq.) is amended—

(1) in section 2002(d)—

(A) in paragraph (2), by striking "section 2005" and inserting "section 2010"; and

(B) in paragraph (3), by striking "section 2006" and inserting "section 2011";

(2) by redesignating sections 2002 through 2006 as sections 2006 through 2011, respectively; and

(3) by inserting after section 2001 the following:

"SEC. 2002. ESTABLISHMENT OF VIOLENCE AGAINST WOMEN OFFICE.

"(a) IN GENERAL.—There is hereby established within the Department of Justice, under the general authority of the Attorney General, a Violence Against Women Office (in this part referred to as the "Office").

"(b) SEPARATE OFFICE.—The Office shall be a separate and distinct office within the Department of Justice, headed by a Director, who shall report to the Attorney General and serve as Counsel to the Attorney General on the subject of violence against women, and who shall have final authority over all grants, cooperative agreements, and contracts awarded by the Office.

"(c) JURISDICTION.—Under the general authority of the Attorney General, the Office—

"(1) shall have sole jurisdiction over all duties and functions described in section 2004; and

"(2) shall be solely responsible for coordination with other departments, agencies, or offices of all activities authorized or undertaken under the Violence Against Women Act of 1994 (title VI of Public 103–322) and the Violence Against Women Act of 2000 (Division B of Public Law 106–386).

"SEC. 2003. DIRECTOR OF VIOLENCE AGAINST WOMEN OFFICE.

"(a) APPOINTMENT.—The President, by and with the advice and consent of the Senate, shall appoint a Director for the Violence Against Women Office (in this title referred to as the 'Director') to be responsible, under the general authority of the Attorney General, for the administration, coordination, and implementation of the programs and activities of the Office.

"(b) OTHER EMPLOYMENT.—The Director shall not—

"(1) engage in any employment other than that of serving as Director; or

"(2) hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other agreement under the Violence Against Women Act of 1994 (title IV of Public Law 103–322) or the Violence Against Women Act of 2000 (division B of Public Law 106–386).

"(c) VACANCY.—In the case of a vacancy, the President may designate an officer or employee who shall act as Director during the vacancy.

"(d) COMPENSATION.—The Director shall be compensated at a rate of pay not to exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

"SEC. 2004. DUTIES AND FUNCTIONS OF DIRECTOR OF VIOLENCE AGAINST WOMEN OFFICE.

The Director shall have the following duties:

"(1) Maintaining liaison with the judicial branches of the Federal and State Governments on matters relating to violence against women.

"(2) Providing information to the President, the Congress, the judiciary, State, local, and tribal governments, and the general public on matters relating to violence against women.

"(3) Serving, at the request of the Attorney General, as the representative of the Department of Justice on domestic task forces, committees, or commissions addressing policy or issues relating to violence against women.

"(4) Serving, at the request of the President, acting through the Attorney General, as the representative of the United States Government on human rights and economic justice matters related to violence against women in international fora, including, but not limited to, the United Nations.

"(5) Carrying out the functions of the Department of Justice under the Violence Against Women Act of 1994 (title IV of Public Law 103–322) and the Violence Against Women Act of 2000 (division B of Public Law 106–386), including with respect to those functions—

"(A) the development of policy, protocols, and guidelines;

"(B) the development and management of grant programs and other programs, and the provision of technical assistance under such programs; and

"(C) the award and termination of grants, cooperative agreements, and contracts.

"(6) Providing technical assistance, coordination, and support to—

"(A) other components of the Department of Justice, in efforts to develop policy and to enforce Federal laws relating to violence against women, including the litigation of civil and criminal actions relating to enforcing such laws;

"(B) other Federal, State, local, and tribal agencies, in efforts to develop policy, provide technical assistance, and improve coordination among agencies carrying out efforts to eliminate violence against women, including Indian or indigenous women; and

"(C) grantees, in efforts to combat violence against women and to provide support and assistance to victims of such violence.

"(7) Exercising such other powers and functions as may be vested in the Director pursuant to this part or by delegation of the Attorney General.

"(8) Establishing such rules, regulations, guidelines, and procedures as are necessary to carry out any function of the Office.

"SEC. 2005. STAFF OF VIOLENCE AGAINST WOMEN OFFICE.

"The Attorney General shall ensure that the Director has adequate staff to support the Director in carrying out the Director's responsibilities under this part.".

"SEC. 2006. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated such sums as are necessary to carry out this part for each fiscal year until fiscal year 2005.".

SEC. 403. EFFECTIVE DATE.

This title shall take effect 90 days after this bill becomes law.

DIVISION B—MISCELLANEOUS DIVISION

TITLE I—BOYS AND GIRLS CLUBS OF AMERICA

SEC. 1101. BOYS AND GIRLS CLUBS OF AMERICA.

Section 401 of the Economic Espionage Act of 1996 (42 U.S.C. 13751 note) is amended—

(1) in subsection (a)(2)—

(A) by striking "1,000" and inserting "1,200";

(B) by striking "2,500" and inserting "4,000"; and

(C) by striking "December 31, 1999" and inserting "December 31, 2005, serving not less than 5,000,000 young people";

(2) in subsection (c)—

(A) in paragraph (1), by striking "1997, 1998, 1999, 2000, and 2001" and inserting "2002, 2003, 2004, 2005, and 2006"; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking "1,000" and inserting "1,200"; and

(ii) in subparagraph (B), by striking "2,500 Boys and Girls Clubs of America facilities in operation before January 1, 2000" and inserting "4,000 Boys and Girls Clubs of America facilities in operation before January 1, 2007"; and

(3) in subsection (e), by striking paragraph (1) and paragraph (2) and inserting the following:

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

"(A) $70,000,000 for fiscal year 2002;

"(B) $80,000,000 for fiscal year 2003;

"(C) $80,000,000 for fiscal year 2004; and

"(D) $80,000,000 for fiscal year 2005.".

TITLE II—DRUG ABUSE EDUCATION, PREVENTION, AND TREATMENT ACT OF 2002

SEC. 2001. SHORT TITLE.

This title may be cited as the "Drug Abuse Education, Prevention, and Treatment Act of 2002".

Subtitle A—Drug-Free Prisons and Jails

SEC. 2101. USE OF RESIDENTIAL SUBSTANCE ABUSE TREATMENT GRANTS TO PROVIDE FOR SERVICES DURING AND AFTER INCARCERATION.

Section 1901 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff) is amended by adding at the end the following:

"(c) ADDITIONAL USE OF FUNDS.—States that demonstrate that they have existing in-prison drug treatment programs that are in compliance with Federal requirements may use funds awarded under this part for treatment and sanctions both during incarceration and after release.".

SEC. 2102. JAIL-BASED SUBSTANCE ABUSE TREATMENT PROGRAMS.

Part S of the Omnibus Crime Control and Safe Streets Act of 1968 is amended—

(1) in section 1901(a)—

(A) by striking "purpose of developing" and inserting the following: "purpose of—

"(1) developing"; and

(B) striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(2) encouraging the establishment and maintenance of drug-free prisons and jails.";

(2) in section 1902, by adding at the end the following:

"(f) USE OF GRANT AMOUNTS FOR NONRESIDENTIAL AFTERCARE SERVICES.—A State may use amounts received under this part to provide nonresidential substance abuse treatment aftercare services for inmates or former inmates that meet the requirements of subsection (c), if the chief executive officer of the State certifies to the Attorney General that the State is providing, and will continue to provide, an adequate level of residential treatment services."; and

(3) in section 1904, by adding at the end the following:

"(c) LOCAL ALLOCATION.—At least 10 percent of the total amount made available to a State under section 1904(a) for any fiscal year shall be used by the State to make grants to local correctional and detention facilities in the State (provided such facilities exist therein), for the purpose of assisting jail-based substance abuse treatment programs that are effective and science-based established by those local correctional facilities.".

SEC. 2103. MANDATORY REVOCATION OF PROBATION AND SUPERVISED RELEASE FOR FAILING A DRUG TEST.

(a) REVOCATION OF PROBATION.—Section 3565(b) of title 18, United States Code, is amended—

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

(2) in paragraph (3), by striking "(4)," and inserting "(4); or"; and

(3) by adding after paragraph (3) the following:

"(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;".

(b) REVOCATION OF SUPERVISED RELEASE.—Section 3583(g) of title 18, United States Code, is amended—

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

(2) in paragraph (3), by inserting "or" after the semicolon; and

(3) by adding after paragraph (3) the following:

"(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;".

Subtitle B—Treatment and Prevention

SEC. 2201. REPORT ON DRUG-TESTING TECHNOLOGIES.

(a) REQUIREMENT.—The National Institute of Justice shall conduct a study of drug-testing technologies in order to identify and assess the efficacy, accuracy, and usefulness for purposes of the National effort to detect the use of illicit drugs of any drug-testing technologies (including the testing of hair) that may be used as alternatives or complements to urinalysis as a means of detecting the use of such drugs.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Institute shall submit to Congress a report on the results of the study conducted under subsection (a).

SEC. 2202. DRUG AND SUBSTANCE ABUSE TREATMENT, PREVENTION, EDUCATION, AND RESEARCH STUDY.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the President, after consultation with the Attorney General, Secretary of Health and Human Services, Secretary of Education, and other appropriate Federal officers, shall—

(1) conduct a thorough review of all Federal drug and substance abuse treatment, prevention, education, and research programs; and

(2) make such recommendations to Congress as the President may judge necessary and expedient to streamline, consolidate, coordinate, simplify, and more effectively conduct and deliver drug and substance abuse treatment, prevention, and education.

(b) REPORT TO CONGRESS.—The report to Congress shall—

(1) contain a survey of all Federal drug and substance abuse treatment, prevention, education, and research programs;

(2) indicate the legal authority for each program, the amount of funding in the last 2 fiscal years for each program, and a brief description of the program; and

(3) identify authorized programs that were not funded in fiscal year 2002 or 2003.

SEC. 2203. DRUG ABUSE AND ADDICTION RESEARCH.

Section 464N of the Public Health Service Act (42 U.S.C. 285o–2) is amended by striking subsection (c) and inserting the following:

"(c) DRUG ABUSE AND ADDITION RESEARCH.—

"(1) GRANTS OR COOPERATIVE AGREEMENTS.—The Director of the Institute may make grants or enter into cooperative agreements to expand the current and ongoing interdisciplinary research and clinical trials with treatment centers of the National Drug Abuse Treatment Clinical Trials Network relating to drug abuse and addiction, including related biomedical, behavioral, and social issues.

"(2) USE OF FUNDS.—Amounts made available under a grant or cooperative agreement under paragraph (1) for drug

abuse and addiction may be used for research and clinical trials relating to—

"(A) the effects of drug abuse on the human body, including the brain;

"(B) the addictive nature of drugs and how such effects differ with respect to different individuals;

"(C) the connection between drug abuse and mental health;

"(D) the identification and evaluation of the most effective methods of prevention of drug abuse and addiction;

"(E) the identification and development of the most effective methods of treatment of drug addiction, including pharmacological treatments;

"(F) risk factors for drug abuse;

"(G) effects of drug abuse and addiction on pregnant women and their fetuses; and

"(H) cultural, social, behavioral, neurological, and psychological reasons that individuals abuse drugs, or refrain from abusing drugs.

"(3) RESEARCH RESULTS.—The Director shall promptly disseminate research results under this subsection to Federal, State, and local entities involved in combating drug abuse and addiction.

"(4) AUTHORIZATION OF APPROPRIATIONS.—

"(A) IN GENERAL.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary for each fiscal year.

"(B) SUPPLEMENT NOT SUPPLANT.—Amounts appropriated pursuant to the authorization of appropriations in subparagraph (A) for a fiscal year shall supplement and not supplant any other amounts appropriated in such fiscal year for research on drug abuse and addiction.".

Subtitle C—Drug Courts

SEC. 2301. DRUG COURTS.

(a) DRUG COURTS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after part DD the following new part:

"PART EE—DRUG COURTS

"SEC. 2951. GRANT AUTHORITY.

"(a) IN GENERAL.—The Attorney General may make grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, for adult drug courts, juvenile drug courts, family drug courts, and tribal drug courts that involve—

"(1) continuing judicial supervision over offenders with substance abuse problems who are not violent offenders;

"(2) coordination with the appropriate State or local prosecutor; and

"(3) the integrated administration of other sanctions and services, which shall include—

"(A) mandatory periodic testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant;

"(B) substance abuse treatment for each participant;

"(C) diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress;

"(D) offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services for each participant who requires such services;

"(E) payment, in whole or part, by the offender of treatment costs, to the extent practicable, such as costs for urinalysis or counseling; and

"(F) payment, in whole or part, by the offender of restitution, to the extent practicable, to either a victim of the offender's offense or to a restitution or similar victim support fund.

"(b) LIMITATION.—Economic sanctions imposed on an offender pursuant to this section shall not be at a level that would interfere with the offender's rehabilitation.

"SEC. 2952. PROHIBITION OF PARTICIPATION BY VIOLENT OFFENDERS.

"The Attorney General shall—

"(1) issue regulations or guidelines to ensure that the programs authorized in this part do not permit participation by violent offenders; and

"(2) immediately suspend funding for any grant under this part, pending compliance, if the Attorney General finds that violent offenders are participating in any program funded under this part.

"SEC. 2953. DEFINITION.

"(a) IN GENERAL.—Except as provided in subsection (b), in this part, the term 'violent offender' means a person who—

"(1) is charged with or convicted of an offense, during the course of which offense or conduct—

"(A) the person carried, possessed, or used a firearm or dangerous weapon;

"(B) there occurred the death of or serious bodily injury to any person; or

"(C) there occurred the use of force against the person of another, without regard to whether any of the circumstances described in subparagraph (A) or (B) is an element of the offense or conduct of which or for which the person is charged or convicted; or

"(2) has 1 or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.

"(b) DEFINITION FOR PURPOSES OF JUVENILE DRUG COURTS.—For purposes of juvenile drug courts, the term 'violent offender'

means a juvenile who has been convicted of, or adjudicated delinquent for, an offense that—

"(1) has as an element, the use, attempted use, or threatened use of physical force against the person or property of another, or the possession or use of a firearm; or

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

"SEC. 2954. ADMINISTRATION.

"(a) CONSULTATION.—The Attorney General shall consult with the Secretary of Health and Human Services and any other appropriate officials in carrying out this part.

"(b) USE OF COMPONENTS.—The Attorney General may utilize any component or components of the Department of Justice in carrying out this part.

"(c) REGULATORY AUTHORITY.—The Attorney General may issue regulations and guidelines necessary to carry out this part.

"(d) APPLICATIONS.—In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this part shall—

"(1) include a long-term strategy and detailed implementation plan that shall provide for the consultation and coordination with appropriate State and local prosecutors, particularly when program participants fail to comply with program requirements;

"(2) explain the applicant's inability to fund the program adequately without Federal assistance;

"(3) certify that the Federal support provided will be used to supplement, and not supplant, State, Indian tribal, and local sources of funding that would otherwise be available;

"(4) identify related governmental or community initiatives which complement or will be coordinated with the proposal;

"(5) certify that there has been appropriate consultation with all affected agencies and that there will be appropriate coordination with all affected agencies in the implementation of the program;

"(6) certify that participating offenders will be supervised by 1 or more designated judges with responsibility for the drug court program;

"(7) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support; and

"(8) describe the methodology that will be used in evaluating the program.

"SEC. 2955. APPLICATIONS.

"To request funds under this part, the chief executive or the chief justice of a State or the chief executive or judge of a unit of local government or Indian tribal government, or the chief judge of a State court or the judge of a local court or Indian tribal court shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

"SEC. 2956. FEDERAL SHARE.

"(a) IN GENERAL.—The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the program described in the application submitted under section 2955 for the fiscal year for which the program receives assistance under this part, unless the Attorney General waives, wholly or in part, the requirement of a matching contribution under this section.

"(b) IN-KIND CONTRIBUTIONS.—In-kind contributions may constitute a portion of the non-Federal share of a grant.

"SEC. 2957. DISTRIBUTION AND ALLOCATION.

"(a) GEOGRAPHIC DISTRIBUTION.—The Attorney General shall ensure that, to the extent practicable, an equitable geographic distribution of grant awards is made.

"(b) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this part have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this part not less than 0.50 percent of the total amount appropriated in the fiscal year for grants pursuant to this part.

"SEC. 2958. REPORT.

"A State, Indian tribal government, or unit of local government that receives funds under this part during a fiscal year shall submit to the Attorney General a description and an evaluation report on a date specified by the Attorney General regarding the effectiveness of this part.

"SEC. 2959. TECHNICAL ASSISTANCE, TRAINING, AND EVALUATION.

"(a) TECHNICAL ASSISTANCE AND TRAINING.—The Attorney General may provide technical assistance and training in furtherance of the purposes of this part.

"(b) EVALUATIONS.—In addition to any evaluation requirements that may be prescribed for grantees (including uniform data collection standards and reporting requirements), the Attorney General shall carry out or make arrangements for evaluations of programs that receive support under this part.

"(c) ADMINISTRATION.—The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, in collaboration with the Secretary of Health and Human Services, or through grants, contracts, or other cooperative arrangements with other entities.".

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the matter relating to part DD the following:

"PART EE—DRUG COURTS

(c) IMPLEMENTATION OF RECOMMENDATIONS.—Not later than 120 days after the date of enactment of this Act, the Attorney General shall—

(1) devise a plan to implement recommendations of the General Accounting Office to—

(A) develop and implement a management information system that is able to track and readily identify the universe of drug court programs funded by the Drug Court Program Office of the Department of Justice;

(B) take steps to ensure and sustain an adequate grantee response rate to the Drug Court Program Office's data collection efforts by improving efforts to notify and remind grantees of their reporting requirements;

(C) take corrective action toward grantees that do not comply with the data collection reporting requirement of the Department of Justice;

(D) reinstate the collection of post-program data in the Drug Court Program Office's data collection effort, selectively spot checking grantee responses to ensure accurate reporting;

(E) analyze performance and outcome data collected from grantees and report annually on the results;

(F) consolidate the multiple Department of Justice-funded drug court program-related data collection efforts to better ensure that the primary focus is on the collection and reporting of data on Drug Court Program Office-funded drug court programs;

(G) conduct a methodologically sound national impact evaluation of Drug Court Program Office-funded drug court programs; and

(H) consider ways to reduce the time needed to provide information on the overall impact of Federally-funded drug court programs; and

(2) submit a report on the plan to the Committees on the Judiciary of the Senate and the House of Representatives.

SEC. 2302. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended—

(1) in paragraph (3), by inserting before the period at the end the following: "or EE"; and

(2) by adding at the end the following:

"(25)(A) Except as provided in subparagraph (C), there are authorized to be appropriated to carry out part EE—

"(i) $50,000,000 for fiscal year 2002;

"(ii) $54,000,000 for fiscal year 2003;

"(iii) $58,000,000 for fiscal year 2004; and

"(iv) $60,000,000 for fiscal year 2005.

"(B) The Attorney General shall reserve not less than 1 percent and not more than 4.5 percent of the sums appropriated for this program in each fiscal year for research and evaluation of this program.

"(C) No funds made available to carry out part EE shall be expended if the Attorney General fails to submit the report required to be submitted under section 2401(c) of title II of Divi-

sion B of the 21st Century Department of Justice Appropriations Authorization Act.".

SEC. 2303. STUDY BY THE GENERAL ACCOUNTING OFFICE.

(a) IN GENERAL.—The Comptroller General of the United States shall study and assess the effectiveness and impact of grants authorized by part EE of title I of the Omnibus Crime Control and Safe Streets Act of 1968 as added by section 2401 and report to Congress the results of the study on or before January 1, 2005.

(b) DOCUMENTS AND INFORMATION.—The Attorney General and grant recipients shall provide the Comptroller General with all relevant documents and information that the Comptroller General deems necessary to conduct the study under subsection (a), including the identities and criminal records of program participants.

(c) CRITERIA.—In assessing the effectiveness of the grants made under programs authorized by part EE of the Omnibus Crime Control and Safe Streets Act of 1968, the Comptroller General shall consider, among other things—

(1) recidivism rates of program participants;

(2) completion rates among program participants;

(3) drug use by program participants; and

(4) the costs of the program to the criminal justice system.

Subtitle D—Program for Successful Reentry of Criminal Offenders Into Local Communities

CHAPTER 1—POST INCARCERATION VOCATIONAL AND REMEDIAL EDUCATIONAL OPPORTUNITIES FOR INMATES

SEC. 2411. POST INCARCERATION VOCATIONAL AND REMEDIAL EDUCATIONAL OPPORTUNITIES FOR INMATES.

(a) FEDERAL REENTRY CENTER DEMONSTRATION.—

(1) AUTHORITY AND ESTABLISHMENT OF DEMONSTRATION PROJECT.—The Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, shall establish the Federal Reentry Center Demonstration project. The project shall involve appropriate prisoners from the Federal prison population and shall utilize community corrections facilities, home confinement, and a coordinated response by Federal agencies to assist participating prisoners in preparing for and adjusting to reentry into the community.

(2) PROJECT ELEMENTS.—The project authorized by paragraph (1) shall include the following core elements:

(A) A Reentry Review Team for each prisoner, consisting of a representative from the Bureau of Prisons, the United States Probation System, the United States Parole Commission, and the relevant community corrections facility, who shall initially meet with the prisoner to develop a reentry plan tailored to the needs of the prisoner.

(B) A system of graduated levels of supervision with the community corrections facility to promote community safety, provide incentives for prisoners to complete the reentry plan, including victim restitution, and provide a rea-

sonable method for imposing sanctions for a prisoner's violation of the conditions of participation in the project.

(C) Substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and educational training, life skills instruction, conflict resolution skills training, batterer intervention programs, assistance obtaining suitable affordable housing, and other programming to promote effective reintegration into the community as needed.

(3) PROBATION OFFICERS.—From funds made available to carry out this section, the Director of the Administrative Office of the United States Courts shall assign 1 or more probation officers from each participating judicial district to the Reentry Demonstration project. Such officers shall be assigned to and stationed at the community corrections facility and shall serve on the Reentry Review Teams.

(4) PROJECT DURATION.—The Reentry Center Demonstration project shall begin not later than 6 months following the availability of funds to carry out this subsection, and shall last 3 years.

(b) DEFINITIONS.—In this section, the term "appropriate prisoner" shall mean a person who is considered by prison authorities—

(1) to pose a medium to high risk of committing a criminal act upon reentering the community; and

(2) to lack the skills and family support network that facilitate successful reintegration into the community.

(c) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated, to remain available until expended—

(1) to the Federal Bureau of Prisons—

(A) $1,375,000 for fiscal year 2003;

(B) $1,110,000 for fiscal year 2004;

(C) $1,130,000 for fiscal year 2005;

(D) $1,155,000 for fiscal year 2006; and

(E) $1,230,000 for fiscal year 2007; and

(2) to the Federal Judiciary—

(A) $3,380,000 for fiscal year 2003;

(B) $3,540,000 for fiscal year 2004;

(C) $3,720,000 for fiscal year 2005;

(D) $3,910,000 for fiscal year 2006; and

(E) $4,100,000 for fiscal year 2007.

CHAPTER 2—STATE REENTRY GRANT PROGRAMS

SEC. 2421. AMENDMENTS TO THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended, is amended by inserting after part EE the following new part:

"PART FF—OFFENDER REENTRY AND COMMUNITY SAFETY

"SEC. 2976. ADULT AND JUVENILE OFFENDER STATE AND LOCAL REENTRY DEMONSTRATION PROJECTS.

"(a) GRANT AUTHORIZATION.—The Attorney General shall make grants of up to $1,000,000 to States, Territories, and Indian tribes, in partnership with units of local government and nonprofit organi-

zations, for the purpose of establishing adult and juvenile offender reentry demonstration projects.

"(b) ADULT OFFENDER REENTRY DEMONSTRATION PROJECTS.—Funds for adult offender demonstration projects may be expended for—

"(1) oversight/monitoring of released offenders;

"(2) substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and basic educational training, and other programming to promote effective reintegration into the community as needed;

"(3) convening community impact panels, victim impact panels or victim impact educational classes; and

"(4) establishing and implementing graduated sanctions and incentives.

"(c) JUVENILE OFFENDER REENTRY DEMONSTRATION PROJECTS.—Funds for the juvenile offender reentry demonstration projects may be expended for—

"(1) providing returning juvenile offenders with drug and alcohol testing and treatment and mental and medical health assessment and services;

"(2) convening victim impact panels, restorative justice panels, or victim impact educational classes for juvenile offenders;

"(3) oversight/monitoring of released juvenile offenders; and

"(4) providing for the planning of reentry services when the youth is initially incarcerated and coordinating the delivery of community-based services, such as education, family involvement and support, and other services as needed.

"(d) SUBMISSION OF APPLICATION.—In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this subpart shall—

"(1) describe a long-term strategy and detailed implementation plan, including how the jurisdiction plans to pay for the program after the Federal funding ends;

"(2) identify the governmental and community agencies that will be coordinated by this project;

"(3) certify that there has been appropriate consultation with all affected agencies and there will be appropriate coordination with all affected agencies in the implementation of the program, including existing community corrections and parole; and

"(4) describe the methodology and outcome measures that will be used in evaluating the program.

"(e) APPLICANTS.—The applicants as designated under 2601(a)—

"(1) shall prepare the application as required under subsection 2601(b); and

"(2) shall administer grant funds in accordance with the guidelines, regulations, and procedures promulgated by the Attorney General, as necessary to carry out the purposes of this part.

"(f) MATCHING FUNDS.—The Federal share of a grant received under this title may not exceed 75 percent of the costs of the project funded under this title unless the Attorney General waives, wholly or in part, the requirements of this section.

"(g) REPORTS.—Each entity that receives a grant under this part shall submit to the Attorney General, for each year in which funds from a grant received under this part is expended, a description and an evaluation report at such time and in such manner as the Attorney General may reasonably require that contains—

"(1) a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application funded under this part; and

"(2) such other information as the Attorney General may require.

"(h) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—To carry out this section, there are authorized to be appropriated $15,000,000 for fiscal year 2003, $15,500,000 for fiscal year 2004, and $16,000,000 for fiscal year 2005.

"(2) LIMITATIONS.—Of the amount made available to carry out this section in any fiscal year—

"(A) not more than 2 percent or less than 1 percent may be used by the Attorney General for salaries and administrative expenses; and

"(B) not more than 3 percent or less than 2 percent may be used for technical assistance and training.

"SEC. 2977. STATE REENTRY PROJECT EVALUATION.

(a) EVALUATION.—The Attorney General shall evaluate the demonstration projects authorized by section 2976 to determine their effectiveness.

(b) REPORT.—Not later than April 30, 2005, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate containing—

(1) the findings of the evaluation required by subsection (a); and

(2) any recommendations the Attorney General has with regard to expanding, changing, or eliminating the demonstration projects

"PART FF—OFFENDER REENTRY AND COMMUNITY SAFETY ACT

"Sec. 2976. Adult Offender State and Local Reentry Demonstration Projects.
"Sec. 2977. State reentry project evaluation.".

Subtitle E—Other Matters

SEC. 2501. AMENDMENT TO CONTROLLED SUBSTANCES ACT.

Section 303(g)(2)(I) of the Controlled Substances Act is amended by striking "on the date of enactment" and all that follows through "such drugs," and inserting "on the date of approval by the Food and Drug Administration of a drug in schedule III, IV, or V, a State may not preclude a practitioner from dispensing or prescribed such drug, or combination of such drugs".

SEC. 2502. STUDY OF METHAMPHETAMINE TREATMENT.

Section 3633 of the Methamphetamine Anti-Proliferation Act of 2000 (114 Stat. 1236) is amended by striking "the Institute of Medicine of the National Academy of Sciences" and inserting "the National Institute on Drug Abuse".

SEC. 2503. AUTHORIZATION OF FUNDS FOR DEA POLICE TRAINING IN SOUTH AND CENTRAL ASIA.

There is authorized to be appropriated to the Attorney General not less than $5,000,000 for fiscal year 2003 for regional antidrug training by the Drug Enforcement Administration for law enforcement entities (including police, border control, and other entities engaged in drug interdiction and narcotics control efforts), as well as increased precursor chemical control efforts in the South and Central Asia region.

SEC. 2504. UNITED STATES-THAILAND DRUG PROSECUTOR EXCHANGE PROGRAM.

(a) PROGRAM AUTHORIZATION.—The Attorney General shall establish an exchange program in which prosecutors, judges, or policy makers from the Kingdom of Thailand participate in an exchange program to observe Federal prosecutors in an effort to learn about the various rules and procedures used to prosecute violations of federal criminal narcotics laws.

(b) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated $75,000 for fiscal year 2003 and $75,000 for fiscal year 2004.

TITLE III—SAFEGUARDING THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM

SEC. 3001. INCREASING THE PENALTY FOR USING PHYSICAL FORCE TO TAMPER WITH WITNESSES, VICTIMS, OR INFORMANTS.

(a) IN GENERAL.—Section 1512 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking "as provided in paragraph (2)" and inserting "as provided in paragraph (3)";

(B) by redesignating paragraph (2) as paragraph (3);

(C) by inserting after paragraph (1) the following:

"(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—

"(A) influence, delay, or prevent the testimony of any person in an official proceeding;

"(B) cause or induce any person to—

"(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

"(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

"(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

"(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

"(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).''; and

(D) in paragraph (3), as redesignated—

(i) by striking ''and'' at the end of subparagraph (A); and

(ii) by striking subparagraph (B) and inserting the following:

''(B) in the case of—

''(i) an attempt to murder; or

''(ii) the use or attempted use of physical force against any person;

imprisonment for not more than 20 years; and

''(C) in the case of the threat of use of physical force against any person, imprisonment for not more than 10 years.'';

(2) in subsection (b), by striking ''or physical force''; and

(3) by adding at the end the following:

''(j) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.''.

(b) RETALIATING AGAINST A WITNESS.—Section 1513 of title 18, United States Code, is amended by adding at the end the following:

''(e) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.''.

(c) CONFORMING AMENDMENTS.—

(1) WITNESS TAMPERING.—Section 1512 of title 18, United States Code, is amended in subsections (b)(3) and (c)(2) by inserting ''supervised release,'' after ''probation''.

(2) RETALIATION AGAINST A WITNESS.—Section 1513 of title 18, United States Code, is amended in subsections (a)(1)(B) and (b)(2) by inserting ''supervised release,'' after ''probation''.

(d) RESTORATION.—Section 1402(c) of the Victims of Crime Act of 1984 is amended to read as it did on November 27, 2001.

SEC. 3002. CORRECTION OF ABERRANT STATUTES TO PERMIT IMPOSITION OF BOTH A FINE AND IMPRISONMENT.

(a) IN GENERAL.—Title 18 of the United States Code is amended—

(1) in section 401, by inserting ''or both,'' after ''fine or imprisonment,'';

(2) in section 1705, by inserting '', or both'' after ''years''; and

(3) in sections 1916, 2234, and 2235, by inserting '', or both'' after ''year''.

(b) IMPOSITION BY MAGISTRATE.—Section 636 of title 28, United States Code, is amended—

(1) in subsection (e)(2), by inserting '', or both,'' after ''fine or imprisonment''; and

(2) in subsection (e)(3), by inserting ''or both,'' after ''fine or imprisonment,''.

SEC. 3003. REINSTATEMENT OF COUNTS DISMISSED PURSUANT TO A PLEA AGREEMENT.

(a) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

"§ 3296. Counts dismissed pursuant to a plea agreement

"(a) IN GENERAL.—Notwithstanding any other provision of this chapter, any counts of an indictment or information that are dismissed pursuant to a plea agreement shall be reinstated by the District Court if—

"(1) the counts sought to be reinstated were originally filed within the applicable limitations period;

"(2) the counts were dismissed pursuant to a plea agreement approved by the District Court under which the defendant pled guilty to other charges;

"(3) the guilty plea was subsequently vacated on the motion of the defendant; and

"(4) the United States moves to reinstate the dismissed counts within 60 days of the date on which the order vacating the plea becomes final.

"(b) DEFENSES; OBJECTIONS.—Nothing in this section shall preclude the District Court from considering any defense or objection, other than statute of limitations, to the prosecution of the counts reinstated under subsection (a).".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Chapter 213 of title 18, United States Code, is amended in the table of sections by adding at the end the following new item:

"3296. Counts dismissed pursuant to a plea agreement.".

SEC. 3004. APPEALS FROM CERTAIN DISMISSALS.

Section 3731 of title 18, United States Code, is amended by inserting ", or any part thereof" after "as to any one or more counts".

SEC. 3005. CLARIFICATION OF LENGTH OF SUPERVISED RELEASE TERMS IN CONTROLLED SUBSTANCE CASES.

(a) DRUG ABUSE PENALTIES.—Subparagraphs (A), (B), (C), and (D) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) are amended by striking "Any sentence" and inserting "Notwithstanding section 3583 of title 18, any sentence".

(b) PENALTIES FOR DRUG IMPORT AND EXPORT.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) in paragraphs (1), (2), and (3), by striking "Any sentence" and inserting "Notwithstanding section 3583 of title 18, any sentence"; and

(2) in paragraph (4), by inserting "notwithstanding section 3583 of title 18," before "in addition to such term of imprisonment".

SEC. 3006. AUTHORITY OF COURT TO IMPOSE A SENTENCE OF PROBATION OR SUPERVISED RELEASE WHEN REDUCING A SENTENCE OF IMPRISONMENT IN CERTAIN CASES.

Section 3582(c)(1)(A) of title 18, United States Code, is amended by inserting "(and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment)" after "may reduce the term of imprisonment".

SEC. 3007. CLARIFICATION THAT MAKING RESTITUTION IS A PROPER CONDITION OF SUPERVISED RELEASE.

Subsections (c) and (e) of section 3583 of title 18, United States Code, are amended by striking "and (a)(6) and inserting "(a)(6), and (a)(7)".

TITLE IV—CRIMINAL LAW TECHNICAL AMENDMENTS ACT OF 2002

SEC. 4001. SHORT TITLE.

This title may be cited as the "Criminal Law Technical Amendments Act of 2002".

SEC. 4002. TECHNICAL AMENDMENTS RELATING TO CRIMINAL LAW AND PROCEDURE.

(a) MISSING AND INCORRECT WORDS.—

(1) CORRECTION OF GARBLED SENTENCE.—Section 510(c) of title 18, United States Code, is amended by striking "fine of under this title" and inserting "fine under this title".

(2) INSERTION OF MISSING WORDS.—Section 981(d) of title 18, United States Code, is amended by striking "proceeds from the sale of this section" and inserting "proceeds from the sale of such property under this section".

(3) CORRECTION OF INCORRECT WORD.—Sections 1425 through 1427, 1541 through 1544 and 1546(a) of title 18, United States Code, are each amended by striking "to facility" and inserting "to facilitate".

(4) CORRECTING ERRONEOUS AMENDATORY LANGUAGE ON EXECUTED AMENDMENT.—Effective on the date of the enactment of Public Law 103–322, section 60003(a)(13) of such public law is amended by striking "$1,000,000 or imprisonment" and inserting "$1,000,000 and imprisonment".

(5) CORRECTION OF REFERENCE TO SHORT TITLE OF LAW.—That section 2332d(a) of title 18, United States Code, which relates to financial transactions is amended by inserting "of 1979" after "Export Administration Act".

(6) ELIMINATION OF TYPOGRAPHICAL ERROR.—Section 1992(b) of title 18, United States Code, is amended by striking "term or years" and inserting "term of years".

(7) SPELLING CORRECTION.—Section 2339A(a) of title 18, United States Code, is amended by striking "or an escape" and inserting "of an escape".

(8) SECTION 3553.—Section 3553(e) of title 18, United States Code, is amended by inserting "a" before "minimum".

(9) MISSPELLING IN SECTION 205.—Section 205(d)(1)(B) of title 18, United States Code, is amended by striking "groups's" and inserting "group's".

(10) CONFORMING CHANGE AND INSERTING MISSING WORD IN SECTION 709.—The paragraph in section 709 of title 18, United States Code, that begins with "A person who" is amended—

(A) by striking "A person who" and inserting "Whoever"; and

(B) by inserting "or" after the semicolon at the end.

(11) ERROR IN LANGUAGE BEING STRICKEN.—Effective on the date of its enactment, section 726(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) is amended—

(A) in subparagraphs (C) and (E), by striking "section" the first place it appears; and

(B) in subparagraph (G), by striking "relating to" the first place it appears.

(b) MARGINS, PUNCTUATION, AND SIMILAR ERRORS.—

(1) MARGIN ERROR.—Section 1030(c)(2) of title 18, United States Code, is amended so that the margins of subparagraph (B) and each of its clauses, are moved 2 ems to the left.

(2) CORRECTING CAPITALIZATION IN LANGUAGE TO BE STRICKEN.—Effective on the date of its enactment, section 607(g)(2) of the Economic Espionage Act of 1996 is amended by striking "territory" and inserting "Territory".

(3) CORRECTING PARAGRAPHING.—The material added to section 521(a) of title 18, United States Code, by section 607(q) of the Economic Espionage Act of 1996 is amended to appear as a paragraph indented 2 ems from the left margin.

(4) SUBSECTION PLACEMENT CORRECTION.—Section 1513 of title 18, United States Code, is amended by transferring subsection (d) so that it appears following subsection (c).

(5) CORRECTION TO ALLOW FOR INSERTION OF NEW SUBPARAGRAPH AND CORRECTION OF ERRONEOUS INDENTATION.—Section 1956(c)(7) of title 18, United States Code, is amended—

(A) in subparagraph (B)(ii), by moving the margin 2 ems to the right;

(B) by striking "or" at the end of subparagraph (D);

(C) by striking the period at the end of subparagraph (E) and inserting "; or"; and

(D) in subparagraph (F)—

(i) by striking "Any" and inserting "any"; and

(ii) by striking the period at the end and inserting a semicolon.

(6) CORRECTION OF CONFUSING SUBDIVISION DESIGNATION.—Section 1716 of title 18, United States Code, is amended—

(A) in the first undesignated paragraph, by inserting "(j)(1)" before "Whoever";

(B) in the second undesignated paragraph—

(i) by striking "not more than $10,000" and inserting "under this title"; and

(ii) by inserting "(2)" at the beginning of that paragraph;

(C) by inserting "(3)" at the beginning of the third undesignated paragraph; and

(D) by redesignating subsection (j) as subsection (k).

(7) PUNCTUATION CORRECTION IN SECTION 1091.—Section 1091(b)(1) of title 18, United States Code, is amended by striking "subsection (a)(1)," and inserting "subsection (a)(1)".

(8) PUNCTUATION CORRECTION IN SECTION 2311.—Section 2311 of title 18, United States Code, is amended by striking the period after "carcasses thereof" the second place that term appears and inserting a semicolon.

(9) SYNTAX CORRECTION.—Section 115(b)(2) of title 18, United States Code, is amended by striking ", attempted kidnapping, or conspiracy to kidnap of a person" and inserting "or attempted kidnapping of, or a conspiracy to kidnap, a person".

(10) CORRECTING CAPITALIZATION IN SECTION 982.—Section 982(a)(8) of title 18, United States Code, is amended by striking "Court" and inserting "court".

(11) PUNCTUATION CORRECTIONS IN SECTION 1029.—Section 1029 of title 18, United States Code, is amended—

(A) in subsection (c)(1)(A)(ii), by striking "(9)," and inserting "(9)"; and

(B) in subsection (e), by adding a semicolon at the end of paragraph (8).

(12) CORRECTIONS OF CONNECTORS AND PUNCTUATION IN SECTION 1030.—Section 1030 of title 18, United States Code, is amended—

(A) by inserting "and" at the end of subsection (c)(2)(B)(iii); and

(B) by striking the period at the end of subsection (e)(4)(I) and inserting a semicolon.

(13) CORRECTION OF PUNCTUATION IN SECTION 1032.—Section 1032(1) of title 18, United States Code, is amended by striking "13," and inserting "13".

(14) CORRECTION OF PUNCTUATION IN SECTION 1345.—Section 1345(a)(1) of title 18, United States Code, is amended—

(A) in subparagraph (B), by striking ", or" and inserting "; or"; and

(B) in subparagraph (C), by striking the period and inserting a semicolon.

(15) CORRECTION OF PUNCTUATION IN SECTION 3612.—Section 3612(f)(2)(B) of title 18, United States Code, is amended by striking "preceding." and inserting "preceding".

(16) CORRECTION OF INDENTATION IN CONTROLLED SUBSTANCES ACT.—Section 402(c)(2) of the Controlled Substances Act (21 U.S.C. 842(c)(2)) is amended by moving the margin of subparagraph (C) 2 ems to the left.

(c) ELIMINATION OF REDUNDANCIES.—

(1) ELIMINATION OF DUPLICATE AMENDMENTS.—Effective on the date of its enactment, paragraphs (1), (2), and (4) of section 601(b), paragraph (2) of section 601(d), paragraph (2) of section 601(f), paragraphs (1) and (2)(A) of section 601(j), paragraphs (1) and (2) of section 601(k), subsection (d) of section 602, paragraph (4) of section 604(b), subsection (r) of section 605, and paragraph (2) of section 607(j) of the Economic Espionage Act of 1996 are repealed.

(2) ELIMINATION OF EXTRA COMMA.—Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(A) by striking "Code,," and inserting "Code,"; and

(B) by striking "services),," and inserting "services),".

(3) REPEAL OF SECTION GRANTING DUPLICATIVE AUTHORITY.—

(A) Section 3503 of title 18, United States Code, is repealed.

(B) The table of sections at the beginning of chapter 223 of title 18, United States Code, is amended by striking the item relating to section 3503.

(4) ELIMINATION OF OUTMODED REFERENCE TO PAROLE.—Section 929(b) of title 18, United States Code, is amended by striking the last sentence.

(d) CORRECTION OF OUTMODED FINE AMOUNTS.—

(1) IN TITLE 18, UNITED STATES CODE.—

(A) IN SECTION 492.—Section 492 of title 18, United States Code, is amended by striking "not more than $100" and inserting "under this title".

(B) IN SECTION 665.—Section 665(c) of title 18, United States Code, is amended by striking "a fine of not more than $5,000" and inserting "a fine under this title".

(C) IN SECTIONS 1924, 2075, 2113(b), AND 2236.—

(i) Section 1924(a) of title 18, United States Code, is amended by striking "not more than $1,000," and inserting "under this title".

(ii) Sections 2075 and 2113(b) of title 18, United States Code, are each amended by striking "not more than $1,000" and inserting "under this title".

(iii) Section 2236 of title 18, United States Code, is amended by inserting "under this title" after "warrant, shall be fined", and by striking "not more than $1,000".

(D) IN SECTION 372 AND 752.—Sections 372 and 752(a) of title 18, United States Code, are each amended by striking "not more than $5,000" and inserting "under this title".

(E) IN SECTION 924(e)(1).—Section 924(e)(1) of title 18, United States Code, is amended by striking "not more than $25,000" and inserting "under this title".

(2) IN THE CONTROLLED SUBSTANCES ACT.—

(A) IN SECTION 401.—Section 401(d) of the Controlled Substances Act (21 U.S.C. 841(d)) is amended—

(i) in paragraph (1), by striking "and shall be fined not more than $10,000" and inserting "or fined under title 18, United States Code, or both"; and

(ii) in paragraph (2), by striking "and shall be fined not more than $20,000" and inserting "or fined under title 18, United States Code, or both".

(B) IN SECTION 402.—Section 402(c)(2) of the Controlled Substances Act (21 U.S.C. 842(c)) is amended—

(i) in subparagraph (A), by striking "of not more than $25,000" and inserting "under title 18, United States Code"; and

(ii) in subparagraph (B), by striking "of $50,000" and inserting "under title 18, United States Code".

(C) IN SECTION 403.—Section 403(d) of the Controlled Substances Act (21 U.S.C. 843(d)) is amended—

(i) by striking "of not more than $30,000" each place that term appears and inserting "under title 18, United States Code"; and

(ii) by striking "of not more than $60,000" each place it appears and inserting "under title 18, United States Code".

(e) CROSS REFERENCE CORRECTIONS.—

(1) SECTION 3664.—Section 3664(o)(1)(C) of title 18, United States Code, is amended by striking "section 3664(d)(3)" and inserting "subsection (d)(5)".

(2) CHAPTER 228.—Section 3592(c)(1) of title 18, United States Code, is amended by striking "section 36" and inserting "section 37".

(3) CORRECTING ERRONEOUS CROSS REFERENCE IN CONTROLLED SUBSTANCES ACT.—Section 511(a)(10) of the Controlled Substances Act (21 U.S.C. 881(a)(10)) is amended by striking "1822 of the Mail Order Drug Paraphernalia Control Act" and inserting "422".

(4) CORRECTION TO REFLECT CROSS REFERENCE CHANGE MADE BY OTHER LAW.—Effective on the date of its enactment, section 601(c)(3) of the Economic Espionage Act of 1996 is amended by striking "247(d)" and inserting "247(e)".

(5) TYPOGRAPHICAL AND TYPEFACE ERROR IN TABLE OF CHAPTERS.—The item relating to chapter 123 in the table of chapters at the beginning of part I of title 18, United States Code, is amended—

(A) by striking "2271" and inserting "2721"; and

(B) so that the item appears in bold face type.

(6) SECTION 4104.—Section 4104(d) of title 18, United States Code, is amended by striking "section 3653 of this title and rule 32(f) of" and inserting "section 3565 of this title and the applicable provisions of".

(7) ERROR IN AMENDATORY LANGUAGE.—Effective on the date of its enactment, section 583 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (111 Stat. 2436) is amended by striking "Section 2401" and inserting "Section 2441".

(8) ERROR IN CROSS REFERENCE TO COURT RULES.—The first sentence of section 3593(c) of title 18, United States Code, is amended by striking "rule 32(c)" and inserting "rule 32".

(9) SECTION 1836.—Section 1836 of title 18, United States Code, is amended—

(A) in subsection (a), by striking "this section" and inserting "this chapter"; and

(B) in subsection (b), by striking "this subsection" and inserting "this section".

(10) CORRECTION OF ERRONEOUS CITE IN CHAPTER 119.—Section 2510(10) of title 18, United States Code, is amended by striking "shall have" and all that follows through "United States Code;" and inserting "has the meaning given that term in section 3 of the Communications Act of 1934;".

(11) ELIMINATION OF OUTMODED CITE IN SECTION 2339A.—Section 2339A(a) of title 18, United States Code, is amended by striking "2332c,".

(12) CORRECTION OF REFERENCES IN AMENDATORY LANGUAGE.—Effective the date of its enactment, section 115(a)(8)(B) of Public Law 105–119 is amended—

(A) in clause (i)—

(i) by striking "at the end of" and inserting "following"; and

(ii) by striking "paragraph" the second place it appears and inserting "subsection"; and

(B) in clause (ii), by striking "subparagraph (A)" and inserting "clause (i)".

(f) TABLES OF SECTIONS CORRECTIONS.—

(1) CONFORMING TABLE OF SECTIONS TO HEADING OF SECTION.—The item relating to section 1837 in the table of sections at the beginning of chapter 90 of title 18, United States Code,

is amended by striking "Conduct" and inserting "Applicability to conduct".

*(2) CONFORMING HEADING TO TABLE OF SECTIONS ENTRY.—The heading of section 1920 of title 18, United States Code, is amended by striking "**Employee's**" and inserting "**Employees**".*

SEC. 4003. ADDITIONAL TECHNICALS.

(a) TITLE 18.—Title 18, United States Code, is amended—

(1) in section 922(t)(1)(C), by striking "1028(d)(1)" and inserting "1028(d)";

(2) in section 1005—

(A) in the first undesignated paragraph, by striking "Act,," and inserting "Act,"; and

(B) by inserting "or" at the end of the third undesignated paragraph;

(3) in section 1071, by striking "fine of under this title" and inserting "fine under this title";

(4) in section 1368(a), by inserting "to" after "serious bodily injury";

(5) in subsections (b)(1) and (c) of section 2252A, by striking "paragraphs" and inserting "paragraph"; and

(6) in section 2254(a)(3), by striking the comma before the period at the end.

(b) TITLE 28.—Title 28, United States Code, is amended—

(1) in section 509(3), by striking the second period;

(2) in section 526—

*(A) in the heading, by striking "**AND**" before "**TRUSTEES**"; and*

(B) in subsection (a)(1), by striking the second comma after "marshals";

(3) in section 529(b)(2), as hereinbefore added, by striking the matter between "services contract" and "made," and inserting "services contract made,";

(4) in section 534(a)(3), by inserting "and" after the semicolon;

(5) in the item relating to section 526 in the table of sections at the beginning of chapter 31, by striking "and" before "trustees";

(6) in the item relating to chapter 37 in the table of chapters at the beginning of part II, by inserting "Service" after "Marshals";

(7) in the item relating to section 532 in the table of sections at the beginning of chapter 33, by inserting "the" after "of"; and

(8) in the item relating to section 537 in the table of sections at the beginning of chapter 33, by striking "nature" and inserting "character".

SEC. 4004. REPEAL OF OUTMODED PROVISIONS.

(a) Section 14 of title 18, United States Code, and the item relating thereto in the table of sections at the beginning of chapter 1 of title 18, United States Code, are repealed.

(b) Section 1261 of such title is amended—

(1) by striking "(a) The Secretary" and inserting "The Secretary"; and

(2) by striking subsection (b).

(c) Section 1821 of such title is amended by striking ", the Canal Zone".

(d) Section 3183 of such title is amended by striking "or the Panama Canal Zone,".

(e) Section 3241 of such title is amended by striking "United States District Court for the Canal Zone and the".

(f) Any section of any Act enacted on the antepenultimate day of November 2001, which section provides for any amendment to chapter 31 of title 28, United States Code, is hereby repealed.

SEC. 4005. AMENDMENTS RESULTING FROM PUBLIC LAW 107–56.

(a) MARGIN CORRECTIONS.—

(1) Section 2516(1) of title 18, United States Code, is amended by moving the left margin for subsection (q) 2 ems to the right.

(2) Section 2703(c)(1) of title 18, United States Code, is amended by moving the left margin of subparagraph (E) 2 ems to the left.

(3) Section 1030(a)(5) of title 18, United States Code, is amended by moving the left margin of subparagraph (B) 2 ems to the left.

(b) CORRECTION OF WRONGLY WORDED CLERICAL AMENDMENT.—Effective on the date of its enactment, section 223(c)(2) of Public Law 107–56 is amended to read as follows:

"(2) The table of sections at the beginning of chapter 121 of title 18, United States Code, is amended by adding at the end the following new item:

"2712. Civil actions against the United States.".

(c) CORRECTION OF ERRONEOUS PLACEMENT OF AMENDMENT LANGUAGE.—Effective on the date of its enactment, section 225 of Public Law 107–56 is amended—

(1) by striking "after subsection (g)" and inserting "after subsection (h)"; and

(2) by redesignating the subsection added to section 105 of section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) as subsection (i).

(d) PUNCTUATION CORRECTIONS.—

(1) Section 1956(c)(6)(B) of title 18, United States Code, is amended by striking the period and inserting a semicolon.

(2) Effective on the date of its enactment, section 803(a) of Public Law 107–56 is amended by striking the close quotation mark and period that follows at the end of subsection (a) in the matter proposed to be inserted in title 18, United States Code, as a new section 2339.

(3) Section 1030(c)(3)(B) of title 18, United States Code, is amended by inserting a comma after "(a)(4)".

(e) ELIMINATION OF DUPLICATE AMENDMENT.—Effective on the date of its enactment, section 805 of Public Law 107–56 is amended by striking subsection (b).

(f) CORRECTION OF UNEXECUTABLE AMENDMENTS.—

(1) Effective on the date of its enactment, section 813(2) of Public Law 107–56 is amended by striking "semicolon" and inserting "period".

(2) Effective on the date of its enactment, section 815 of Public Law 107–56 is amended by inserting "a" before "statutory authorization".

(g) CORRECTION OF HEADING STYLE.—The heading for section 175b of title 18, United States Code, is amended to read as follows:

"§ 175b. Possession by restricted persons".

SEC. 4006. CROSS REFERENCE CORRECTION.

Section 2339C(a)(1) of title 18, United States Code, is amended by striking "described in subsection (c)" and inserting "described in subsection (b)".

TITLE V—PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANTS

SEC. 5001. PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANTS.

(a) STATE APPLICATIONS.—Section 503(a)(13)(A)(iii) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)(13)(A)(iii)) is amended by striking "or the National Association of Medical Examiners," and inserting ", the National Association of Medical Examiners, or any other nonprofit, professional organization that may be recognized within the forensic science community as competent to award such accreditation,".

(b) FORENSIC SCIENCES IMPROVEMENT GRANTS.—Part BB of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797j et seq.) is amended—

(1) in section 2801, by inserting after "States" the following: " and units of local government";

(2) in section 2802—

(A) in the matter before paragraph (1), by inserting "or unit of local government" after "State";

(B) in paragraph (1), to read as follows:

"(1) a certification that the State or unit of local government has developed a plan for forensic science laboratories under a program described in section 2804(a), and a specific description of the manner in which the grant will be used to carry out that plan;";

(C) in paragraph (2), by inserting "or appropriate certifying bodies" before the semicolon; and

(D) in paragraph (3), by inserting "for a State or local plan" after "program";

(3) in section 2803(a)(2), by striking "to States with" and all that follows through the period and inserting "for competitive awards to States and units of local government. In making awards under this part, the Attorney General shall consider the average annual number of part 1 violent crimes reported by each State to the Federal Bureau of Investigation for the 3 most recent calendar years for which data is available and consider the existing resources and current needs of the potential grant recipient.";

(4) in section 2804—

(A) in subsection (a), by inserting "or unit of local government" after "A State"; and

(B) in subsection (c)(1), by inserting "(including grants received by units of local government within a State)" after "under this part"; and

(5) in section 2806(a)—

(A) in the matter before paragraph (1), by inserting "or unit of local government" after "each State"; and

(B) in paragraph (1), by inserting before the semicolon the following: ", which shall include a comparison of pre-grant and post-grant forensic science capabilities"

(C) in paragraph (2), by striking "and" at the end;

(D) by redesignating paragraph (3) as paragraph (4); and

(E) by inserting after paragraph (2) the following:

"(3) an identification of the number and type of cases currently accepted by the laboratory; and".

SEC. 5002. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of fiscal years 2002 through 2007—

(1) such sums as may be necessary for the Center for Domestic Preparedness of the Department of Justice in Anniston, Alabama;

(2) such sums as may be necessary for the Texas Engineering Extension Service of Texas A&M University;

(3) such sums as may be necessary for the Energetic Materials Research and Test Center of the New Mexico Institute of Mining and Technology;

(4) such sums as may be necessary for the Academy of Counterterrorist Education at Louisiana State University;

(5) such sums as may be necessary for the National Exercise, Test, and Training Center of the Department of Energy, located at the Nevada test site;

(6) such sums as may be necessary for the National Center for the Study of Counter-Terrorism and Cyber-Crime at Norwich University; and

(7) such sums as may be necessary for the Northeast Counterdrug Training Center at Fort Indiantown Gap, Pennsylvania.

DIVISION C—IMPROVEMENTS TO CRIMINAL JUSTICE, CIVIL JUSTICE, IMMIGRATION, JUVENILE JUSTICE, AND INTELLECTUAL PROPERTY AND ANTITRUST LAWS

TITLE I—CRIMINAL JUSTICE, CIVIL JUSTICE, AND IMMIGRATION

Subtitle A—General Improvements

SEC. 11001. LAW ENFORCEMENT TRIBUTE ACT.

(a) SHORT TITLE.—This section may be cited as the "Law Enforcement Tribute Act".

(b) FINDINGS.—Congress finds the following:

(1) The well-being of all citizens of the United States is preserved and enhanced as a direct result of the vigilance and dedication of law enforcement and public safety personnel.

(2) More than 700,000 law enforcement officers, both men and women, at great risk to their personal safety, serve their fellow citizens as guardians of peace.

(3) Nationwide, 51 law enforcement officers were killed in the line of duty in 2000, according to statistics released by the Federal Bureau of Investigation. This number is an increase of 9 from the 1999 total of 42.

(4) In 1999, 112 firefighters died while on duty, an increase of 21 deaths from the previous year.

(5) Every year, 1 in 9 peace officers is assaulted, 1 in 25 is injured, and 1 in 4,400 is killed in the line of duty.

(6) In addition, recent statistics indicate that 83 officers were accidentally killed in the performance of their duties in 2000, an increase of 18 from the 65 accidental deaths in 1999.

(7) A permanent tribute is a powerful means of honoring the men and women who have served our Nation with distinction. However, many law enforcement and public safety agencies lack the resources to honor their fallen colleagues.

(c) PROGRAM AUTHORIZED.—From amounts made available to carry out this section, the Attorney General may make grants to States, units of local government, and Indian tribes to carry out programs to honor, through permanent tributes, men and women of the United States who were killed or disabled while serving as law enforcement or public safety officers.

(d) USES OF FUNDS.—Grants awarded under this section shall be distributed directly to the State, unit of local government, or Indian tribe, and shall be used for the purposes specified in subsection (c).

(e) $150,000 LIMITATION.—A grant under this section may not exceed $150,000 to any single recipient.

(f) MATCHING FUNDS.—

(1) The Federal portion of the costs of a program provided by a grant under this section may not exceed 50 percent.

(2) Any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement or public safety functions on any Indian lands may be used to provide the non-Federal share of a matching requirement funded under this subsection.

(g) APPLICATIONS.—To request a grant under this section, the chief executive of a State, unit of local government, or Indian tribe shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may require.

(h) ANNUAL REPORT TO CONGRESS.—Not later than November 30 of each year, the Attorney General shall submit a report to the Congress regarding the activities carried out under this section. Each such report shall include, for the preceding fiscal year, the number of grants funded under this section, the amount of funds provided under those grants, and the activities for which those funds were used.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $3,000,000 for each of fiscal years 2002 through 2006.

SEC. 11002. DISCLOSURE OF GRAND JURY MATTERS RELATING TO MONEY LAUNDERING OFFENSES.

Section 3322(d)(1) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking "or 1344; or" and inserting "1344, 1956, or 1957;";

(2) in subparagraph (B), by inserting "or" after the semicolon; and

(3) by adding at the end the following:

"(C) any provision of subchapter II of chapter 53 of title 31, United States Code;".

SEC. 11003. GRANT PROGRAM FOR STATE AND LOCAL DOMESTIC PREPAREDNESS SUPPORT.

(a) TECHNICAL CORRECTIONS.—

(1) OFFICE.—Section 1014(a) of the USA PATRIOT Act (Public Law 107–56) is amended by striking "Office of State and Local Domestic Preparedness Support" and inserting "Office for Domestic Preparedness".

(2) PERCENT.—Section 1014(c)(3) of the USA PATRIOT Act (Public Law 107–56) is amended by inserting "not less than" before "0.25 percent".

(b) ADDITIONAL USE OF GRANT AMOUNTS.—Section 1014(b) of the USA PATRIOT Act (Public Law 107–56) is amended by inserting at the end the following: "In addition, grants under this section may be used to construct, develop, expand, modify, operate, or improve facilities to provide training or assistance to State and local first responders.".

SEC. 11004. UNITED STATES SENTENCING COMMISSION ACCESS TO NCIC TERMINAL.

Section 534(a) of title 28, United States Code, is amended by striking paragraph (4) and inserting the following:

"(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Govern-

ment, including the United States Sentencing Commission, the States, cities, and penal and other institutions.".

SEC. 11005. DANGER PAY FOR FBI AGENTS.

Section 151 of the Foreign Relations Act, fiscal years 1990 and 1991 (5 U.S.C. 5928 note), is amended by inserting "or Federal Bureau of Investigation" after "Drug Enforcement Administration".

SEC. 11006. POLICE CORPS.

Subtitle A of title XX of the Violent Crime Control and Law Enforcement Act of 1994, the Police Corps Act (42 U.S.C. 14091 et seq.), is amended—

(1) in section 200106—

(A) in subsection (a)(2)—

(i) in subparagraph (A), by striking "$7,500" and inserting "$10,000";

(ii) in subparagraph (B), by striking "$10,000" and inserting "$13,333"; and

(iii) in subparagraph (C), by striking "$30,000" and inserting "$40,000"; and

(B) in subsection (b)(2)—

(i) in subparagraph (A), by striking "$7,500" and inserting "$10,000";

(ii) in subparagraph (B), by striking "$10,000" and inserting "$13,333"; and

(iii) in subparagraph (C), by striking "$30,000" and inserting "$40,000";

(2) in section 200108, by striking "$250" and inserting "$400";

(3) in section 20110(2), by striking "no more than 10 percent" and inserting "except with permission of the Director, no more than 25 percent"

(4) by striking section 200111; and

(5) in section 200112, by striking "fiscal year 2002" and inserting "each of fiscal years 2002 through 2005".

SEC. 11007. RADIATION EXPOSURE COMPENSATION TECHNICAL AMENDMENTS.

(a) IN GENERAL.—The Radiation Exposure Compensation Act (42 U.S.C. 2210 note) is amended—

(1) in section 4(b)(1)(C), by inserting ", and that part of Arizona that is north of the Grand Canyon" after "Gila";

(2) in section 4(b)(2)—

(A) by striking "lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam),"; and

(B) by striking "or liver (except if cirrhosis or hepatitis B is indicated)." and inserting "liver (except if cirrhosis or hepatitis B is indicated), or lung.";

(3) in section 5(a)(1)(A)(ii)(I), by inserting "or worked for at least 1 year during the period described under clause (i)" after "months of radiation";

(4) in section 5(a)(2)(A), by striking "an Atomic Energy Commission" and inserting "a";

(5) in section 5(b)(5), by striking "or lung cancer";

(6) in section 5(c)(1)(B)(i), by striking "or lung cancer";

(7) in section 5(c)(2)(B)(i), by striking "or lung cancer";

(8) in section 6(e)—

(A) by striking "The" and inserting "Except as otherwise authorized by law, the"; and

(B) by inserting ", mill, or while employed in the transport of uranium ore or vanadium-uranium ore from such mine or mill" after "radiation in a uranium mine";

(9) in section 6(i), by striking the second sentence;

(10) in section 6(k), by adding at the end the following: "Not later than 180 days after the date of enactment of the Radiation Exposure Compensation Act Amendments of 2000, the Attorney General shall issue revised regulations to carry out this Act.";

(11) in section 7, by amending subsection (b) to read as follows:

"(b) CHOICE OF REMEDIES.—No individual may receive more than 1 payment under this Act."; and

(12) by adding at the end the following:

"SEC. 14. GAO REPORTS.

"(a) IN GENERAL.—Not later than 18 months after the date of enactment of the Radiation Exposure Compensation Act Amendments of 2000, and every 18 months thereafter, the General Accounting Office shall submit a report to Congress containing a detailed accounting of the administration of this Act by the Department of Justice.

"(b) CONTENTS.—Each report submitted under this section shall include an analysis of—

"(1) claims, awards, and administrative costs under this Act; and

"(2) the budget of the Department of Justice relating to this Act.".

(b) CONFORMING AMENDMENTS.—Section 3 of the Radiation Exposure Compensation Act Amendments of 2000 (Public Law 106–245) is amended by striking subsection (i).

SEC. 11008. FEDERAL JUDICIARY PROTECTION ACT OF 2002.

(a) SHORT TITLE.—This section may be cited as the "Federal Judiciary Protection Act of 2002.".

(b) ASSAULTING, RESISTING, OR IMPEDING CERTAIN OFFICERS OR EMPLOYEES.—Section 111 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "three" and inserting "8"; and

(2) in subsection (b), by striking "ten" and inserting "20".

(c) INFLUENCING, IMPEDING, OR RETALIATING AGAINST A FEDERAL OFFICIAL BY THREATENING OR INJURING A FAMILY MEMBER.—Section 115(b)(4) of title 18, United States Code, is amended—

(1) by striking "five" and inserting "10"; and

(2) by striking "three" and inserting "6".

(d) MAILING THREATENING COMMUNICATIONS.—Section 876 of title 18, United States Code, is amended—

(1) by designating the first 4 undesignated paragraphs as subsections (a) through (d), respectively;

(2) in subsection (c), as redesignated by paragraph (1), by adding at the end the following: "If such a communication is addressed to a United States judge, a Federal law enforcement

officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both."; and

(3) in subsection (d), as redesignated by paragraph (1), by adding at the end the following: "If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both.".

(e) AMENDMENT OF THE SENTENCING GUIDELINES FOR ASSAULTS AND THREATS AGAINST FEDERAL JUDGES AND CERTAIN OTHER FEDERAL OFFICIALS AND EMPLOYEES.—

(1) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the commission, if appropriate, to provide an appropriate sentencing enhancement for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in section 111 or 115 of title 18, United States Code.

(2) FACTORS FOR CONSIDERATION.—In carrying out this section, the United States Sentencing Commission shall consider, with respect to each offense described in paragraph (1)—

(A) any expression of congressional intent regarding the appropriate penalties for the offense;

(B) the range of conduct covered by the offense;

(C) the existing sentences for the offense;

(D) the extent to which sentencing enhancements within the Federal sentencing guidelines and the authority of the court to impose a sentence in excess of the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offense;

(E) the extent to which the Federal sentencing guideline sentences for the offense have been constrained by statutory maximum penalties;

(F) the extent to which the Federal sentencing guidelines for the offense adequately achieve the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(G) the relationship of the Federal sentencing guidelines for the offense to the Federal sentencing guidelines for other offenses of comparable seriousness; and

(H) any other factors that the Commission considers to be appropriate.

SEC. 11009. JAMES GUELFF AND CHRIS McCURLEY BODY ARMOR ACT OF 2002.

(a) SHORT TITLE.—This section may be cited as the "James Guelff and Chris McCurley Body Armor Act of 2002".

(b) FINDINGS.—Congress finds that—

(1) nationally, police officers and ordinary citizens are facing increased danger as criminals use more deadly weaponry, body armor, and other sophisticated assault gear;

(2) crime at the local level is exacerbated by the interstate movement of body armor and other assault gear;

(3) there is a traffic in body armor moving in or otherwise affecting interstate commerce, and existing Federal controls over such traffic do not adequately enable the States to control this traffic within their own borders through the exercise of their police power;

(4) recent incidents, such as the murder of San Francisco Police Officer James Guelff by an assailant wearing 2 layers of body armor, a 1997 bank shoot out in north Hollywood, California, between police and 2 heavily armed suspects outfitted in body armor, and the 1997 murder of Captain Chris McCurley of the Etowah County, Alabama Drug Task Force by a drug dealer shielded by protective body armor, demonstrate the serious threat to community safety posed by criminals who wear body armor during the commission of a violent crime;

(5) of the approximately 7,200 officers killed in the line of duty since 1980, more than 30 percent could have been saved by body armor, and the risk of dying from gunfire is 14 times higher for an officer without a bulletproof vest;

(6) the Department of Justice has estimated that 25 percent of State and local police are not issued body armor;

(7) the Federal Government is well-equipped to grant local police departments access to body armor that is no longer needed by Federal agencies; and

(8) Congress has the power, under the interstate commerce clause and other provisions of the Constitution of the United States, to enact legislation to regulate interstate commerce that affects the integrity and safety of our communities.

(c) DEFINITIONS.—In this section:

(1) BODY ARMOR.—The term "body armor" means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.

(2) LAW ENFORCEMENT AGENCY.—The term "law enforcement agency" means an agency of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

(3) LAW ENFORCEMENT OFFICER.—The term "law enforcement officer" means any officer, agent, or employee of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

(d) AMENDMENT OF SENTENCING GUIDELINES WITH RESPECT TO BODY ARMOR.—

(1) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the Commission, as appropriate, to provide an appropriate sentencing enhancement for any crime of violence (as defined in section 16 of title

18, United States Code) or drug trafficking crime (as defined in section 924(c) of title 18, United States Code) (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) in which the defendant used body armor.

(2) SENSE OF CONGRESS.—It is the sense of Congress that any sentencing enhancement under this subsection should be at least 2 levels.

(e) PROHIBITION OF PURCHASE, USE, OR POSSESSION OF BODY ARMOR BY VIOLENT FELONS.—

(1) DEFINITION OF BODY ARMOR.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(35) The term 'body armor' means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.".

(2) PROHIBITION.—

(A) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by adding at the end the following:

"§ 931. Prohibition on purchase, ownership, or possession of body armor by violent felons

"(a) IN GENERAL.—Except as provided in subsection (b), it shall be unlawful for a person to purchase, own, or possess body armor, if that person has been convicted of a felony that is—

"(1) a crime of violence (as defined in section 16); or

"(2) an offense under State law that would constitute a crime of violence under paragraph (1) if it occurred within the special maritime and territorial jurisdiction of the United States.

"(b) AFFIRMATIVE DEFENSE.—

"(1) IN GENERAL.—It shall be an affirmative defense under this section that—

"(A) the defendant obtained prior written certification from his or her employer that the defendant's purchase, use, or possession of body armor was necessary for the safe performance of lawful business activity; and

"(B) the use and possession by the defendant were limited to the course of such performance.

"(2) EMPLOYER.—In this subsection, the term 'employer' means any other individual employed by the defendant's business that supervises defendant's activity. If that defendant has no supervisor, prior written certification is acceptable from any other employee of the business.".

(B) CLERICAL AMENDMENT.—The analysis for chapter 44 of title 18, United States Code, is amended by adding at the end the following:

"931. Prohibition on purchase, ownership, or possession of body armor by violent felons.".

SEC. 11010. PERSONS AUTHORIZED TO SERVE SEARCH WARRANT.

Section 2703 of title 18, United States Code, is amended by adding at the end the following:

"(g) PRESENCE OF OFFICER NOT REQUIRED.—Notwithstanding section 3105 of this title, the presence of an officer shall not be required for service or execution of a search warrant issued in accordance with this chapter requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.".

SEC. 11011. STUDY ON REENTRY, MENTAL ILLNESS, AND PUBLIC SAFETY.

(a) STUDY.—The Attorney General shall commission a study of offenders, or a sampling of such offenders, with mental illness released from prison or jail in 2 or more jurisdictions, including at least 1 State or local and 1 Federal, to determine the extent to which participation in public benefit programs correlates with successful reentry and improved public safety.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives—

(1) a report detailing the results of the study conducted under subsection (a) with findings that address—

(A) the number of offenders with mental illness released from the prison or jail who qualify for medicaid, SSI, or SSDI;

(B) the number of offenders with mental illness who qualify for medicaid, SSI, or SSDI benefits and who are enrolled in these programs upon release from prison or jail; and

(C) how enrollment in medicaid, SSI, or SSDI affects—

(i) rearrest;

(ii) violation of condition(s) of release;

(iii) reincarceration;

(iv) rehospitalization;

(v) the length of time upon release from prison or jail time to the first contact with a mental health or substance abuse service; and

(vi) the number of contacts with a mental health or substance abuse services within the first 90 days of release; and

(2) any recommendations.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized such sums as necessary to conduct the study and issue the report required by this section.

SEC. 11012. TECHNICAL AMENDMENT TO OMNIBUS CRIME CONTROL ACT.

Section 802(b) of the Omnibus Crime Control and Safe Streets Act of 1968 is amended in the first sentence by striking "U," and inserting "T,".

SEC. 11013. DEBT COLLECTION IMPROVEMENT.

(a) IN GENERAL.—Notwithstanding section 3302 of title 31, United States Code, or any other statute affecting the crediting of collections, the Attorney General may credit, as an offsetting collection, to the Department of Justice Working Capital Fund up to 3 percent of all amounts collected pursuant to civil debt collection litigation activities of the Department of Justice. Such amounts in the

Working Capital Fund shall remain available until expended and shall be subject to the terms and conditions of that fund, and shall be used first, for paying the costs of processing and tracking civil and criminal debt-collection litigation, and, thereafter, for financial systems and for debt-collection-related personnel, administrative, and litigation expenses.

(b) CONFORMING AMENDMENT.—Section 108 of Public Law 103–121 is repealed.

SEC. 11014. SCAAP AUTHORIZATION.

Section 241(i)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(5)) is amended by striking ", of which" and all that follows through "2000" and inserting "in fiscal years 2003 and 2004".

SEC. 11015. USE OF ANNUITY BROKERS IN STRUCTURED SETTLEMENTS.

(a) ESTABLISHMENT AND TRANSMISSION OF LIST OF APPROVED ANNUITY BROKERS.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall establish a list of annuity brokers who meet minimum qualifications for providing annuity brokerage services in connection with structured settlements entered by the United States. This list shall be updated upon request by any annuity broker that meets the minimum qualifications for inclusion on the list. The Attorney General shall transmit such list, and any updates to such list, to all United States Attorneys.

(b) AUTHORITY TO SELECT ANNUITY BROKER FOR STRUCTURED SETTLEMENTS.—In any structured settlement that is not negotiated exclusively through the Civil Division of the Department of Justice, the United States Attorney (or his designee) involved in any settlement negotiations shall have the exclusive authority to select an annuity broker from the list of such brokers established by the Attorney General, provided that all documents related to any settlement comply with Department of Justice requirements.

SEC. 11016. INS PROCESSING FEES.

The Immigration and Nationality Act of 1953 is amended—

(1) in section 344(c) (8 U.S.C. 1455(c)), by striking "All" and inserting "Except as provided by section 286(q)(2) or any other law, all"; and

(2) in section 286(q)(2) (8 U.S.C. 1356(q)(2)), by inserting ", including receipts for services performed in processing forms I–94, I–94W, and I–68, and other similar applications processed at land border ports of entry," after "subsection".

SEC. 11017. UNITED STATES PAROLE COMMISSION EXTENSION.

(a) EXTENSION OF THE PAROLE COMMISSION.—For purposes of section 235(b) of the Sentencing Reform Act of 1984 (98 Stat. 2032) as such section relates to chapter 311 of title 18, United States Code, and the Parole Commission, each reference in such section to "fifteen years" or "fifteen-year period" shall be deemed to be a reference to "eighteen years" or "eighteen-year period", respectively.

(b) STUDY BY ATTORNEY GENERAL.—The Attorney General, not later than 60 days after the enactment of this Act, should establish a committee within the Department of Justice to evaluate the merits and feasibility of transferring the United States Parole Commission's functions regarding the supervised release of District of Columbia offenders to another entity or entities outside the Depart-

ment of Justice. This committee should consult with the District of Columbia Superior Court and the District of Columbia Court Services and Offender Supervision Agency, and should report its findings and recommendations to the Attorney General. The Attorney General, in turn, should submit to Congress, not later than 18 months after the enactment of this Act, a long-term plan for the most effective and cost-efficient assignment of responsibilities relating to the supervised release of District of Columbia offenders.

(c) SERVICE AS COMMISSIONER.—Notwithstanding section 1 of this legislation, the final clause of the fourth sentence of section 4202 of title 18, United States Code, which begins "except that", shall not apply to a person serving as a Commissioner of the United States Parole Commission when this Act takes effect.

SEC. 11018. WAIVER OF FOREIGN COUNTRY RESIDENCE REQUIREMENT WITH RESPECT TO INTERNATIONAL MEDICAL GRADUATES.

(a) INCREASE IN NUMERICAL LIMITATION ON WAIVERS REQUESTED BY STATES.—Section 214(l)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(B)) is amended by striking "20;" and inserting "30;".

(b) EXTENSION OF DEADLINE.—Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (8 U.S.C. 1182 note) is amended by striking "2002." and inserting "2004.".

(c) TECHNICAL CORRECTION.—Section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)) is amended by striking "214(k):" and inserting "214(l):".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if this Act were enacted on May 31, 2002.

SEC. 11019. PRETRIAL DISCLOSURE OF EXPERT TESTIMONY RELATING TO DEFENDANT'S MENTAL CONDITION.

(a) MODIFICATION OF PROPOSED AMENDMENTS.—The proposed amendments to the Federal Rules of Criminal Procedure that are embraced by an order entered by the Supreme Court of the United States on April 29, 2002, shall take effect on December 1, 2002, as otherwise provided by law, but with the amendments made in subsection (b).

(b) PRETRIAL DISCLOSURE OF EXPERT TESTIMONY.—Rule 16 of the Federal Rules of Criminal Procedure is amended—

(1) in subdivision (a)(1), by amending subparagraph (G) to read as follows:

"(G) EXPERT WITNESSES.—At the defendant's request, the Government shall give to the defendant a written summary of any testimony that the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence during its case-in-chief at trial. If the Government requests discovery under subdivision (b)(1)(C)(ii) and the defendant complies, the Government shall, at the defendant's request, give to the defendant a written summary of testimony that the Government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial on the issue of the defendant's medical condition. The summary provided under this subparagraph shall describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications."; and

(2) in subdivision (b)(1), by amending subparagraph (C) to read as follows:

"(C) EXPERT WITNESSES.—The defendant shall, at the Government's request, give to the Government a written summary of any testimony that the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial, if—

"(i) the defendant requests disclosure under subdivision (a)(1)(G) and the government complies; or

"(ii) the defendant has given notice under Rule 12.2(b) of an intent to present expert testimony on the defendant's mental condition.

This summary shall describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications".

(c) EFFECTIVE DATE.—The amendments made by subsection (b) shall take effect on December 1, 2002.

SEC. 11020. MULTIPARTY, MULTIFORUM TRIAL JURISDICTION ACT OF 2002.

(a) SHORT TITLE.—This section may be cited as the "Multiparty, Multiforum Trial Jurisdiction Act of 2002".

(b) MULTIPARTY, MULTIFORUM JURISDICTION OF DISTRICT COURTS.—

(1) BASIS OF JURISDICTION.—

(A) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 1369. Multiparty, multiforum jurisdiction

"(a) IN GENERAL.—The district courts shall have original jurisdiction of any civil action involving minimal diversity between adverse parties that arises from a single accident, where at least 75 natural persons have died in the accident at a discrete location, if—

"(1) a defendant resides in a State and a substantial part of the accident took place in another State or other location, regardless of whether that defendant is also a resident of the State where a substantial part of the accident took place;

"(2) any two defendants reside in different States, regardless of whether such defendants are also residents of the same State or States; or

"(3) substantial parts of the accident took place in different States.

"(b) LIMITATION OF JURISDICTION OF DISTRICT COURTS.—The district court shall abstain from hearing any civil action described in subsection (a) in which—

"(1) the substantial majority of all plaintiffs are citizens of a single State of which the primary defendants are also citizens; and

"(2) the claims asserted will be governed primarily by the laws of that State.

"(c) SPECIAL RULES AND DEFINITIONS.—For purposes of this section—

"(1) minimal diversity exists between adverse parties if any party is a citizen of a State and any adverse party is a citizen

of another State, a citizen or subject of a foreign state, or a foreign state as defined in section 1603(a) of this title;

"(2) a corporation is deemed to be a citizen of any State, and a citizen or subject of any foreign state, in which it is incorporated or has its principal place of business, and is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business;

"(3) the term 'injury' means—

"(A) physical harm to a natural person; and

"(B) physical damage to or destruction of tangible property, but only if physical harm described in subparagraph (A) exists;

"(4) the term 'accident' means a sudden accident, or a natural event culminating in an accident, that results in death incurred at a discrete location by at least 75 natural persons; and

"(5) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(d) INTERVENING PARTIES.—In any action in a district court which is or could have been brought, in whole or in part, under this section, any person with a claim arising from the accident described in subsection (a) shall be permitted to intervene as a party plaintiff in the action, even if that person could not have brought an action in a district court as an original matter.

"(e) NOTIFICATION OF JUDICIAL PANEL ON MULTIDISTRICT LITIGATION.—A district court in which an action under this section is pending shall promptly notify the judicial panel on multidistrict litigation of the pendency of the action.".

(B) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 85 of title 28, United States Code, is amended by adding at the end the following new item:

"1369. Multiparty, multiforum jurisdiction.".

(2) VENUE.—Section 1391 of title 28, United States Code, is amended by adding at the end the following:

"(g) A civil action in which jurisdiction of the district court is based upon section 1369 of this title may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.".

(3) REMOVAL OF ACTIONS.—Section 1441 of title 28, United States Code, is amended—

(A) in subsection (e) by striking "(e) The court to which such civil action is removed" and inserting "(f) The court to which a civil action is removed under this section"; and

(B) by inserting after subsection (d) the following new subsection:

"(e)(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—

"(A) the action could have been brought in a United States district court under section 1369 of this title; or

"(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident

as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

"(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j) has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

"(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.

"(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

"(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.

"(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.".

(4) SERVICE OF PROCESS.—

(A) OTHER THAN SUBPOENAS.—(i) Chapter 113 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 1697. Service in multiparty, multiforum actions

"When the jurisdiction of the district court is based in whole or in part upon section 1369 of this title, process, other than subpoenas, may be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.".

(ii) The table of sections at the beginning of chapter 113 of title 28, United States Code, is amended by adding at the end the following new item:

"1697. Service in multiparty, multiforum actions.".

(B) SERVICE OF SUBPOENAS.—(i) Chapter 117 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 1785. Subpoenas in multiparty, multiforum actions

"When the jurisdiction of the district court is based in whole or in part upon section 1369 of this title, a subpoena for attendance at a hearing or trial may, if authorized by the court upon motion for good cause shown, and upon such terms and conditions as the court may impose, be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.".

(ii) The table of sections at the beginning of chapter 117 of title 28, United States Code, is amended by adding at the end the following new item:

"1785. Subpoenas in multiparty, multiforum actions.".

(c) EFFECTIVE DATE.—The amendments made by subsection (b) shall apply to a civil action if the accident giving rise to the cause of action occurred on or after the 90th day after the date of the enactment of this Act.

SEC. 11021. ADDITIONAL PLACE OF HOLDING COURT IN THE SOUTHERN DISTRICT OF OHIO.

Section 115(b)(2) of title 28, United States Code, is amended by inserting "St. Clairsville," after "Columbus,".

SEC. 11022. DIRECT SHIPMENT OF WINE.

(a) CONDITIONS FOR TRANSPORTING CERTAIN WINE.—During any period in which the Federal Aviation Administration has in effect restrictions on airline passengers to ensure safety, the direct shipment of wine shall be permitted from States where wine is purchased from a winery, to another State or the District of Columbia, if—

(1) the wine was purchased while the purchaser was physically present at the winery;

(2) the purchaser of the wine provided the winery verification of legal age to purchase alcohol;

(3) the shipping container in which the wine is shipped is marked to require an adult's signature upon delivery;

(4) the wine is for personal use only and not for resale; and

(5) the purchaser could have carried the wine lawfully into the State or the District of Columbia to which the wine is shipped.

(b) VIOLATIONS.—If any person fails to meet any of the conditions under subsection (a), the attorney general of any State may bring a civil action under the same terms as those set out in section 2 of the Act entitled "An Act divesting intoxicating liquors of their interstate character in certain cases", approved March 1, 1913 (commonly known as the "Webb-Kenyon Act") (27 U.S.C. 122a).

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, and at 2-year intervals thereafter, the Attorney General of the United States, in consultation with the Administrator of the Federal Aviation Administration, shall prepare and submit to the Committee on the Judiciary of the Senate and to the Committee on the Judiciary of the House of Representatives a report on the implementation of this section.

SEC. 11023. WEBSTER COMMISSION IMPLEMENTATION REPORT.

(a) IMPLEMENTATION PLAN.—Not later than 6 months after the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the appropriate Committees of Congress a plan for implementation of the recommendations of the Commission for Review of FBI Security Programs, dated March 31, 2002, including the costs of such implementation.

(b) ANNUAL REPORTS.—On the date that is 1 year after the submission of the plan described in subsection (a), and for 2 years thereafter, the Director of the Federal Bureau of Investigation shall submit to the appropriate Committees of Congress a report on the implementation of such plan.

(c) APPROPRIATE COMMITTEES OF CONGRESS.—For purposes of this section, the term "appropriate Committees of Congress" means—

(1) the Committees on the Judiciary of the Senate and the House of Representatives;

(2) the Committees on Appropriations of the Senate and the House of Representatives;

(3) the Select Committee on Intelligence of the Senate; and

(4) the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 11024. FBI POLICE.

(a) IN GENERAL.—Chapter 33 of title 28, United States Code, is amended by adding at the end the following:

"§ 540C. FBI Police

"(a) DEFINITIONS.—In this section:

"(1) DIRECTOR.—The term "Director" means the Director of the Federal Bureau of Investigation.

"(2) FBI BUILDINGS AND GROUNDS.—

"(A) IN GENERAL.—The term "FBI buildings and grounds" means—

"(i) the whole or any part of any building or structure which is occupied under a lease or otherwise by the Federal Bureau of Investigation and is subject to supervision and control by the Federal Bureau of Investigation;

"(ii) the land upon which there is situated any building or structure which is occupied wholly by the Federal Bureau of Investigation; and

"(iii) any enclosed passageway connecting 2 or more buildings or structures occupied in whole or in part by the Federal Bureau of Investigation.

"(B) INCLUSION.—The term "FBI buildings and grounds" includes adjacent streets and sidewalks not to exceed 500 feet from such property.

"(3) FBI POLICE.—The term "FBI police" means the permanent police force established under subsection (b).

"(b) ESTABLISHMENT OF FBI POLICE; DUTIES.—

"(1) IN GENERAL.—Subject to the supervision of the Attorney General, the Director may establish a permanent police force, to be known as the FBI police.

"(2) DUTIES.—The FBI police shall perform such duties as the Director may prescribe in connection with the protection of persons and property within FBI buildings and grounds.

"(3) UNIFORMED REPRESENTATIVE.—The Director, or designated representative duly authorized by the Attorney General, may appoint uniformed representatives of the Federal Bureau of Investigation as FBI police for duty in connection with the policing of all FBI buildings and grounds.

"(4) AUTHORITY.—

"(A) IN GENERAL.—In accordance with regulations prescribed by the Director and approved by the Attorney General, the FBI police may—

"(i) police the FBI buildings and grounds for the purpose of protecting persons and property;

"(ii) in the performance of duties necessary for carrying out subparagraph (A), make arrests and otherwise enforce the laws of the United States, including the laws of the District of Columbia;

"(iii) carry firearms as may be required for the performance of duties;

"(iv) prevent breaches of the peace and suppress affrays and unlawful assemblies; and

"(v) hold the same powers as sheriffs and constables when policing FBI buildings and grounds.

"(B) EXCEPTION.—The authority and policing powers of FBI police under this paragraph shall not include the service of civil process.

"(5) PAY AND BENEFITS.—

"(A) IN GENERAL.—The rates of basic pay, salary schedule, pay provisions, and benefits for members of the FBI police shall be equivalent to the rates of basic pay, salary schedule, pay provisions, and benefits applicable to members of the United States Secret Service Uniformed Division.

"(B) APPLICATION.—Pay and benefits for the FBI police under subparagraph (A)—

"(i) shall be established by regulation;

"(ii) shall apply with respect to pay periods beginning after January 1, 2003; and

"(iii) shall not result in any decrease in the rates of pay or benefits of any individual.

"(c) AUTHORITY OF METROPOLITAN POLICE FORCE.—This section does not affect the authority of the Metropolitan Police Force of the District of Columbia with respect to FBI buildings and grounds.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 33 of title 28, United States Code, is amended by adding at the end the following new item:

"540C. FBI police.".

SEC. 11025. REPORT ON FBI INFORMATION MANAGEMENT AND TECHNOLOGY.

(a) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the Director of the Federal Bureau of Investigation, with appropriate comments from other components of the Department of Justice, shall submit to Congress a report on the information management and technology programs of the Federal Bu-

reau of Investigation including recommendations for any legislation that may be necessary to enhance the effectiveness of those programs.

(b) CONTENTS OF REPORT.—The report submitted under subsection (a) shall provide—

(1) an analysis and evaluation of whether authority for waiver of any provision of procurement law (including any regulation implementing such a law) is necessary to expeditiously and cost-effectively acquire information technology to meet the unique needs of the Federal Bureau of Investigation to improve its investigative operations in order to respond better to national law enforcement, intelligence, and counterintelligence requirements;

(2) the results of the studies and audits conducted by the Strategic Management Council and the Inspector General of the Department of Justice to evaluate the information management and technology programs of the Federal Bureau of Investigation, including systems, policies, procedures, practices, and operations; and

(3) a plan for improving the information management and technology programs of the Federal Bureau of Investigation.

(c) RESULTS.—The results provided under subsection (b)(2) shall include an evaluation of—

(1) information technology procedures and practices regarding procurement, training, and systems maintenance;

(2) recordkeeping policies, procedures, and practices of the Federal Bureau of Investigation, focusing particularly on how information is inputted, stored, managed, utilized, and shared within the Federal Bureau of Investigation;

(3) how information in a given database is related or compared to, or integrated with, information in other technology databases within the Federal Bureau of Investigation;

(4) the effectiveness of the existing information technology infrastructure of the Federal Bureau of Investigation in supporting and accomplishing the overall mission of the Federal Bureau of Investigation;

(5) the management of information technology projects of the Federal Bureau of Investigation, focusing on how the Federal Bureau of Investigation—

(A) selects its information technology projects;

(B) ensures that projects under development deliver benefits; and

(C) ensures that completed projects deliver the expected results; and

(6) the security and access control techniques for classified and sensitive but unclassified information systems in the Federal Bureau of Investigation.

(d) CONTENTS OF PLAN.—The plan provided under subsection (b)(3) shall include consideration of, among other things—

(1) to what extent appropriate key technology management positions in the Federal Bureau of Investigation should be filled by personnel with experience in the commercial sector;

(2) how access to the most sensitive information can be audited in such a manner that suspicious activity is subject to near contemporaneous security review;

(3) how critical information systems can employ a public key infrastructure to validate both users and recipients of messages or records;

(4) how security features can be tested to meet national information systems security standards;

(5) which employees in the Federal Bureau of Investigation should receive instruction in records and information management policies and procedures relevant to their positions and how frequently they should receive that instruction;

(6) whether and to what extent a reserve should be established for research and development to guide strategic information management and technology investment decisions;

(7) whether administrative requirements for software purchases under $2,000,000 are necessary and could be eliminated;

(8) whether the Federal Bureau of Investigation should contract with an expert technology partner to provide technical support for the information technology procurement for the Federal Bureau of Investigation;

(9) whether procedures should be implemented to permit procurement of products and services through contracts of other agencies, as necessary; and

(10) whether a systems integration and test center should be established, with the participation of field personnel, to test each series of information systems upgrades or application changes before their operational deployment to confirm that they meet proper requirements.

SEC. 11026. GAO REPORT ON CRIME STATISTICS REPORTING.

(a) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the issue of how statistics are reported and used by Federal law enforcement agencies.

(b) CONTENTS.—The report submitted under subsection (a) shall—

(1) identify the current regulations, procedures, internal policies, or other conditions that allow the investigation or arrest of an individual to be claimed or reported by more than 1 Federal or State agency charged with law enforcement responsibility;

(2) identify and examine the conditions that allow the investigation or arrest of an individual to be claimed or reported by the Offices of Inspectors General and any other Federal agency charged with law enforcement responsibility;

(3) examine the statistics reported by Federal law enforcement agencies, and document those instances in which more than 1 agency, bureau, or office claimed or reported the same investigation or arrest during the years 1998 through 2001;

(4) examine the issue of Federal agencies simultaneously claiming arrest credit for in-custody situations that have already occurred pursuant to a State or local agency arrest situation during the years 1998 through 2001;

(5) examine the issue of how such statistics are used for administrative and management purposes;

(6) set forth a comprehensive definition of the terms "investigation" and "arrest" as those terms apply to Federal agencies charged with law enforcement responsibilities; and

(7) include recommendations, that when implemented, would eliminate unwarranted and duplicative reporting of investigation and arrest statistics by all Federal agencies charged with law enforcement responsibilities.

(c) FEDERAL AGENCY COMPLIANCE.—Federal law enforcement agencies shall comply with requests made by the General Accounting Office for information that is necessary to assist in preparing the report required by this section.

SEC. 11027. CRIME-FREE RURAL STATES GRANTS.

(a) SHORT TITLE.—This section may be cited as the "Crime-Free Rural States Act of 2002".

(b) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended, is amended by inserting after part FF the following new part:

"PART GG—CRIME FREE RURAL STATE GRANTS

"SEC. 2985. GRANT AUTHORITY.

"The Attorney General shall award grants to rural State criminal justice agencies, Byrne agencies, or other agencies as designated by the Governor of that State and approved by the Attorney General, to develop rural States' capacity to assist local communities in the prevention and reduction of crime, violence, and substance abuse.

"SEC. 2986. USE OF FUNDS.

"(a) IN GENERAL.—A capacity building grant shall be used to develop a statewide strategic plan as described in section 2987 to prevent and reduce crime, violence, and substance abuse.

"(b) PERMISSIVE USE.—A rural State may also use its grant to provide training and technical assistance to communities and promote innovation in the development of policies, technologies, and programs to prevent and reduce crime.

"(c) DATA COLLECTION.—A rural State may use up to 5 percent of the grant to assist grant recipients in collecting statewide data related to the costs of crime, violence, and substance abuse for purposes of supporting the statewide strategic plan.

"SEC. 2987. STATEWIDE STRATEGIC PREVENTION PLAN.

"(a) IN GENERAL.—A statewide strategic prevention plan shall be used by the rural State to assist local communities, both directly and through existing State programs and services, in building comprehensive, strategic, and innovative approaches to reducing crime, violence, and substance abuse based on local conditions and needs.

"(b) GOALS.—The plan must contain statewide long-term goals and measurable annual objectives for reducing crime, violence, and substance abuse.

"(c) ACCOUNTABILITY.—The rural State shall be required to develop and report in its plan relevant performance targets and measures for the goals and objectives to track changes in crime, violence, and substance abuse.

"(d) CONSULTATION.—The rural State shall form a State crime free communities commission that includes representatives of State and local government, and community leaders who will provide advice and recommendations on relevant community goals and objectives, and performance targets and measures.

"SEC. 2988. REQUIREMENTS.

"(a) TRAINING AND TECHNICAL ASSISTANCE.—The rural State shall provide training and technical assistance, including through such groups as the National Crime Prevention Council, to assist local communities in developing Crime Prevention Plans that reflect statewide strategic goals and objectives, and performance targets and measures.

"(b) REPORTS.—The rural State shall provide a report on its statewide strategic plan to the Attorney General, including information about—

"(1) involvement of relevant State-level agencies to assist communities in the development and implementation of their Crime Prevention Plans;

"(2) support for local applications for Community Grants; and

"(3) community progress toward reducing crime, violence, and substance abuse.

"(c) CERTIFICATION.—Beginning in the third year of the program, States must certify that the local grantee's project funded under the community grant is generally consistent with statewide strategic goals and objectives, and performance targets and measures.

"SEC. 2989. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated $10,000,000 to carry out this part for each of fiscal years 2003, 2004, and 2005.".

(c) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the matter relating to part FF the following:

"PART GG—CRIME FREE RURAL STATE GRANTS

"Sec. 2985. Grant authority.
"Sec. 2986. Use of funds.
"Sec. 2987. Statewide strategic prevention plan.
"Sec. 2988. Requirements.
"Sec. 2989. Authorization of appropriations.".

SEC. 11028. MOTOR VEHICLE FRANCHISE CONTRACT DISPUTE RESOLUTION PROCESS.

(a) ELECTION OF ARBITRATION.—

(1) DEFINITIONS.—For purposes of this subsection—

(A) the term "motor vehicle" has the meaning given such term in section 30102(6) of title 49 of the United States Code; and

(B) the term "motor vehicle franchise contract" means a contract under which a motor vehicle manufacturer, importer, or distributor sells motor vehicles to any other person for resale to an ultimate purchaser and authorizes such other person to repair and service the manufacturer's motor vehicles.

(2) CONSENT REQUIRED.—Notwithstanding any other provision of law, whenever a motor vehicle franchise contract provides for the use of arbitration to resolve a controversy arising out of or relating to such contract, arbitration may be used to settle such controversy only if after such controversy arises all parties to such controversy consent in writing to use arbitration to settle such controversy.

(3) EXPLANATION REQUIRED.—Notwithstanding any other provision of law, whenever arbitration is elected to settle a dispute under a motor vehicle franchise contract, the arbitrator shall provide the parties to such contract with a written explanation of the factual and legal basis for the award.

(b) APPLICATION.—Subsection (a) shall apply to contracts entered into, amended, altered, modified, renewed, or extended after the date of the enactment of this Act.

SEC. 11029. HOLDING COURT FOR THE SOUTHERN DISTRICT OF IOWA.

Notwithstanding any other provision of law, during the period beginning on January 1, 2003, through July 1, 2005, the United States District Court for the Southern District of Iowa may—

(1) with the consent of the parties in any case filed in the Eastern Division or the Davenport Division of the Southern District of Iowa, hold court on that case in Rock Island, Illinois; and

(2) summon jurors from the Southern District of Iowa to serve in any case described under paragraph (1).

SEC. 11030. POSTHUMOUS CITIZENSHIP RESTORATION.

(a) SHORT TITLE.—This section may be cited as the "Posthumous Citizenship Restoration Act of 2002".

(b) DEADLINE EXTENSION.—Section 329A(c)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1440–1(c)(1)(A)) is amended by striking "this section," and inserting "the Posthumous Citizenship Restoration Act of 2002,".

SEC. 11030A. EXTENSION OF H–1B STATUS FOR ALIENS WITH LENGTHY ADJUDICATIONS.

(a) EXEMPTION FROM LIMITATION.—Section 106(a) of American Competitiveness in the Twenty-first Century Act of 2000 (8 U.S.C. 1184 note) is amended to read as follows:

"(a) EXEMPTION FROM LIMITATION.—The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act (8 U.S.C.1101(a)(15)(H)(i)(b)), if 365 days or more have elapsed since the filing of any of the following:

"(1) Any application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. 1182(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act (8 U.S.C. 1153(b)).

"(2) A petition described in section 204(b) of such Act (3 U. S.C. 1154(b)) to accord the alien a status under section 203(b) of such Act.".

(b) EXTENSION OF H–1B WORKER STATUS.—Section 106(b) of American Competitiveness in the Twenty-first Century Act of 2000 (8 U.S.C. 1184 note) is amended to read as follows:

"(b) EXTENSION OF H–1B WORKER STATUS.—The Attorney General shall extend the stay of an alien who qualifies for an exemption under subsection (a) in one-year increments until such time as a final decision is made—

"(1) to deny the application described in subsection (a)(1), or, in a case in which such application is granted, to deny a petition described in subsection (a)(2) filed on behalf of the alien pursuant to such grant;

"(2) to deny the petition described in subsection (a)(2); or

"(3) to grant or deny the alien's application for an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence.".

SEC. 11030B. APPLICATION FOR NATURALIZATION BY ALTERNATIVE APPLICANT IF CITIZEN PARENT HAS DIED.

Section 322(a) of the Immigration and Nationality Act (8 U.S.C. 1433(a)) is amended—

(1) in the matter preceding paragraph (1)—

(A) by inserting "(or, if the citizen parent has died during the preceding 5 years, a citizen grandparent or citizen legal guardian)" after "citizen of the United States"; and

(B) by striking "such parent" and inserting "such applicant";

(2) in paragraph (1), by inserting "(or, at the time of his or her death, was)" after "parent";

(3) in paragraph (2)—

(A) in subparagraph (A), by inserting "(or, at the time of his or her death, had)" after "has"; and

(B) in subparagraph (B), by inserting "(or, at the time of his or her death, had)" after "has" the first place such term appears;

(4) by amending paragraph (4), to read as follows:

"(4) The child is residing outside of the United States in the legal and physical custody of the applicant (or, if the citizen parent is deceased, an individual who does not object to the application).'; and

(5) by adding at the end the following:

"(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.".

Subtitle B—EB–5 Amendments

CHAPTER 1—IMMIGRATION BENEFITS

SEC. 11031. REMOVAL OF CONDITIONAL BASIS OF PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.

(a) IN GENERAL.—In lieu of the provisions of section 216A(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)), subsection (c) shall apply in the case of an eligible alien described in subsection (b)(1).

(b) ELIGIBLE ALIENS DESCRIBED.—

(1) IN GENERAL.—An alien is an eligible alien described in this subsection if the alien—

(A) filed, under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;

(B) pursuant to such approval, obtained the status of an alien entrepreneur with permanent resident status on a conditional basis described in section 216A of such Act (8 U.S.C. 1186b); and

(C) timely filed, in accordance with section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) and before the date of the enactment of this Act, a petition requesting the removal of such conditional basis.

(2) REOPENING PETITIONS PREVIOUSLY DENIED.—

(A) IN GENERAL.—In the case of a petition described in paragraph (1)(C) that was denied under section 216A(c)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)(C)) before the date of the enactment of this Act, upon a motion to reopen such petition filed by the eligible alien not later than 60 days after such date, the Attorney General shall make determinations on such petition pursuant to subsection (c).

(B) PETITIONERS ABROAD.—In the case of such an eligible alien who is no longer physically present in the United States, the Attorney General shall establish a process under which the alien may be paroled into the United States if necessary in order to obtain the determinations under subsection (c), unless the Attorney General finds that—

(i) the alien is inadmissible or deportable on any ground; or

(ii) the petition described in paragraph (1)(C) was denied on the ground that it contains a material misrepresentation in the facts and information described in section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) and alleged in the petition with respect to a commercial enterprise.

(C) DEPORTATION OR REMOVAL PROCEEDINGS.—In the case of such an eligible alien who was placed in deportation or removal proceedings by reason of the denial of the petition described in paragraph (1)(C), a motion to reopen filed under subparagraph (A) shall be treated as a motion to reopen such proceedings. The Attorney General shall grant such motion notwithstanding any time and number limitations imposed by law on motions to reopen such proceedings, except that the scope of any proceeding reopened on this basis shall be limited to whether any order of deportation or removal should be vacated, and the alien granted the status of an alien lawfully admitted for permanent residence (unconditionally or on a conditional basis), by reason of the determinations made under subsection (c). An alien who is inadmissible or deportable on any ground shall not be granted such status, except that this prohibition shall not apply to an alien who has been paroled into the United States under subparagraph (B).

(c) DETERMINATIONS ON PETITIONS.—

(1) INITIAL DETERMINATION.—

(A) IN GENERAL.—With respect to each eligible alien described in subsection (b)(1), the Attorney General shall make a determination, not later than 180 days after the date of the enactment of this Act, whether—

(i) the petition described in subsection (b)(1)(C) contains any material misrepresentation in the facts and information described in section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) and alleged in the petition with respect to a commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation);

(ii) subject to subparagraphs (B) and (C), such enterprise created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the eligible alien and the alien's spouse, sons, or daughters), and those jobs exist or existed on any of the dates described in subparagraph (D); and

(iii) on any of the dates described in subparagraph (D), the alien is in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)).

(B) INVESTMENT UNDER PILOT IMMIGRATION PROGRAM.—For purposes of subparagraph (A)(ii), an investment that satisfies the requirements of section 610(c) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note), as in effect on the date of the enactment of this Act, shall be deemed to satisfy the requirements of such subparagraph.

(C) EXCEPTION FOR TROUBLED BUSINESSES.—In the case of an eligible alien who has made a capital investment in a troubled business (as defined in 8 CFR 204.6(e), as in effect on the date of the enactment of this Act), in lieu of the determination under subparagraph (A)(ii), the Attorney General shall determine whether the number of employees of the business, as measured on any of the dates described in subparagraph (D), is at no less than the pre-investment level.

(D) DATES.—The dates described in this subparagraph are the following:

(i) The date on which the petition described in subsection (b)(1)(C) is filed.

(ii) 6 months after the date described in clause (i).

(iii) The date on which the determination under subparagraph (A) or (C) is made.

(E) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General renders an affirmative determination with respect to clauses (ii) and (iii) of

subparagraph (A), and if the Attorney General renders a negative determination with respect to clause (i) of such subparagraph, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the alien's lawful admission for permanent residence.

(F) REQUIREMENTS RELATING TO ADVERSE DETERMINATIONS.—

(i) NOTICE.—If the Attorney General renders an adverse determination with respect to clause (i), (ii), or (iii) of subparagraph (A), the Attorney General shall so notify the alien involved. The notice shall be in writing and shall state the factual basis for any adverse determination. The Attorney General shall provide the alien with an opportunity to submit evidence to rebut any adverse determination. If the Attorney General reverses all adverse determinations pursuant to such rebuttal, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the alien's lawful admission for permanent residence.

(ii) CONTINUATION OF CONDITIONAL BASIS IF CERTAIN ADVERSE DETERMINATIONS.—If the Attorney General renders an adverse determination with respect to clause (ii) or (iii) of subparagraph (A), and the eligible alien's rebuttal does not cause the Attorney General to reverse such determination, the Attorney General shall continue the conditional basis of the alien's permanent resident status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) for a 2-year period.

(iii) TERMINATION IF ADVERSE DETERMINATION.—If the Attorney General renders an adverse determination with respect to subparagraph (A)(i), and the eligible alien's rebuttal does not cause the Attorney General to reverse such determination, the Attorney General shall so notify the alien involved and, subject to subsection (d), shall terminate the permanent resident status of the alien (and that of the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).

(iv) ADMINISTRATIVE AND JUDICIAL REVIEW.—An alien may seek administrative review of an adverse determination made under subparagraph (A) by filing a petition for such review with the Board of Immigration Appeals. If the Board of Immigration Appeals denies the petition, the alien may seek judicial review. The

procedures for judicial review under this clause shall be the same as the procedures for judicial review of a final order of removal under section 242(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(1)). During the period in which an administrative or judicial appeal under this clause is pending, the Attorney General shall continue the conditional basis of the alien's permanent resident status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).

(2) SECOND DETERMINATION.—

(A) AUTHORIZATION TO CONSIDER INVESTMENTS IN OTHER COMMERCIAL ENTERPRISES.—In determining under this paragraph whether to remove a conditional basis continued under paragraph (1)(F)(ii) with respect to an alien, the Attorney General shall consider any capital investment made by the alien in a commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation), in the United States, regardless of whether that investment was made before or after the determinations under paragraph (1) and regardless of whether the commercial enterprise is the same as that considered in the determinations under such paragraph, if facts and information with respect to the investment and the enterprise are included in the petition submitted under subparagraph (B).

(B) PETITION.—In order for a conditional basis continued under paragraph (1)(F)(ii) for an eligible alien (and the alien's spouse and children) to be removed, the alien must submit to the Attorney General, during the period described in subparagraph (C), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subparagraphs (A) and (B) of section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) with respect to any commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation) which the alien desires to have considered under this paragraph, regardless of whether such enterprise was created before or after the determinations made under paragraph (1).

(C) PERIOD FOR FILING PETITION.—

(i) 90-DAY PERIOD BEFORE SECOND ANNIVERSARY.—Except as provided in clause (ii), the petition under subparagraph (B) must be filed during the 90-day period before the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

(ii) DATE PETITIONS FOR GOOD CAUSE.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in clause (i).

(D) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION.—

(i) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under paragraph (1)(F)(ii), if no petition is filed with respect to the alien in accordance with subparagraph (B), the Attorney General shall terminate the permanent resident status of the alien (and the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

(ii) HEARING IN REMOVAL PROCEEDING.—In any removal proceeding with respect to an alien whose permanent resident status is terminated under clause (i), the burden of proof shall be on the alien to establish compliance with subparagraph (B).

(E) DETERMINATIONS AFTER PETITION.—If a petition is filed by an eligible alien in accordance with subparagraph (B), the Attorney General shall make a determination, within 90 days of the date of such filing, whether—

(i) the petition contains any material misrepresentation in the facts and information alleged in the petition with respect to the commercial enterprises included in such petition;

(ii) all such enterprises, considered together, created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the eligible alien and the alien's spouse, sons, or daughters), and those jobs exist on the date on which the determination is made, except that—

(I) this clause shall apply only if the Attorney General made an adverse determination with respect to the eligible alien under paragraph (1)(A)(ii);

(II) the provisions of subparagraphs (B) and (C) of paragraph (1) shall apply to a determination under this clause in the same manner as they apply to a determination under paragraph (1)(A)(ii); and

(III) if the Attorney General determined under paragraph (1)(A)(ii) that any jobs satisfying the requirement of such paragraph were created, the number of those jobs shall be subtracted from the number of jobs otherwise needed to satisfy the requirement of this clause; and

(iii) considering all such enterprises together, on the date on which the determination is made, the eligible alien is in substantial compliance with the capital investment requirement described in section

216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)), except that—

(I) this clause shall apply only if the Attorney General made an adverse determination with respect to the eligible alien under paragraph (1)(A)(iii); and

(II) if the Attorney General determined under paragraph (1)(A)(iii) that any capital amount was invested that could be credited towards compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)), such amount shall be subtracted from the amount of capital otherwise needed to satisfy the requirement of this clause.

(F) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General renders an affirmative determination with respect to clauses (ii) and (iii) of subparagraph (E), and if the Attorney General renders a negative determination with respect to clause (i) of such subparagraph, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

(G) REQUIREMENTS RELATING TO ADVERSE DETERMINATIONS.—

(i) NOTICE.—If the Attorney General renders an adverse determination under subparagraph (E), the Attorney General shall so notify the alien involved. The notice shall be in writing and shall state the factual basis for any adverse determination. The Attorney General shall provide the alien with an opportunity to submit evidence to rebut any adverse determination. If the Attorney General reverses all adverse determinations pursuant to such rebuttal, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

(ii) TERMINATION IF ADVERSE DETERMINATION.—If the eligible alien's rebuttal does not cause the Attorney General to reverse each adverse determination under subparagraph (E), the Attorney General shall so notify the alien involved and, subject to subsection (d), shall terminate the permanent resident status of the alien (and that of the alien's spouse and children if it was obtained on a conditional basis under section 216A of

the Immigration and Nationality Act (8 U.S.C. 1186b)).

(d) HEARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1)(F)(iii) or (2)(G)(ii) of subsection (c) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General.

(e) CLARIFICATION WITH RESPECT TO CHILDREN.—In the case of an alien who obtained the status of an alien lawfully admitted for permanent residence on a conditional basis before the date of the enactment of this Act by virtue of being the child of an eligible alien described in subsection (b)(1), the alien shall be considered to be a child for purposes of this section regardless of any change in age or marital status after obtaining such status.

(f) DEFINITION OF FULL-TIME.—For purposes of this section, the term "full-time" means a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

SEC. 11032. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.

(a) IN GENERAL.—With respect to each eligible alien described in subsection (b), the Attorney General or the Secretary of State shall approve the application described in subsection (b)(2) and grant the alien (and any spouse or child of the alien, if the spouse or child is eligible to receive a visa under section 203(d) of the Immigration and Nationality Act (8 U.S.C. 1153(d))) the status of an alien lawfully admitted for permanent residence on a conditional basis under section 216A of such Act (8 U.S.C. 1186b). Such application shall be approved not later than 180 days after the date of the enactment of this Act.

(b) ELIGIBLE ALIENS DESCRIBED.—An alien is an eligible alien described in this subsection if the alien—

(1) filed, under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;

(2) pursuant to such approval, timely filed before the date of the enactment of this Act an application for adjustment of status under section 245 of such Act (8 U.S.C. 1255) or an application for an immigrant visa under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)); and

(3) is not inadmissible or deportable on any ground.

(c) TREATMENT OF CERTAIN APPLICATIONS.—

(1) REVOCATION OF APPROVAL OF PETITIONS.—If the Attorney General revoked the approval of a petition described in subsection (b)(1), such revocation shall be disregarded for purposes of this section if it was based on a determination that the alien failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)).

(2) APPLICATIONS NO LONGER PENDING.—

(A) IN GENERAL.—If an application described in subsection (b)(2) is not pending on the date of the enactment of this Act, the Attorney General shall disregard the circumstances leading to such lack of pendency and treat it as

reopened, if such lack of pendency is due to a determination that the alien—

(i) failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)); or

(ii) departed the United States without advance parole.

(B) APPLICANTS ABROAD.—In the case of an eligible alien who filed an application for adjustment of status described in subsection (b)(2), but who is no longer physically present in the United States, the Attorney General shall establish a process under which the alien may be paroled into the United States if necessary in order to obtain adjustment of status under this section.

(d) RECORDATION OF DATE; REDUCTION OF NUMBERS.—Upon the approval of an application under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence on a conditional basis as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1151(d) and 1153(b)(5)) for the fiscal year then current.

(e) REMOVAL OF CONDITIONAL BASIS.—

(1) PETITION.—In order for a conditional basis established under this section for an alien (and the alien's spouse and children) to be removed, the alien must satisfy the requirements of section 216A(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(1)), including the submission of a petition in accordance with subparagraph (A) of such section. Such petition may include the facts and information described in subparagraphs (A) and (B) of section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) with respect to any commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation) in the United States in which the alien has made a capital investment at any time.

(2) DETERMINATION.—In carrying out section 216A(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)) with respect to an alien described in paragraph (1), the Attorney General, in lieu of the determination described in such section 216A(c)(3), shall make a determination, within 90 days of the date of such filing, whether—

(A) the petition described in paragraph (1) contains any material misrepresentation in the facts and information alleged in the petition with respect to the commercial enterprises included in the petition;

(B) subject to subparagraphs (B) and (C) of section 11031(c)(1), all such enterprises, considered together, created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the alien and the alien's spouse, sons, or daughters), and those jobs exist or existed on either of the dates described in paragraph (3); and

(C) considering the alien's investments in such enterprises on either of the dates described in paragraph (3), or on both such dates, the alien is or was in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)).

(3) DATES.—The dates described in this paragraph are the following:

(A) The date on which the application described in subsection (b)(2) was filed.

(B) The date on which the determination under paragraph (2) is made.

(f) CLARIFICATION WITH RESPECT TO CHILDREN.—In the case of an alien who was a child on the date on which the application described in subsection (b)(2) was filed, the alien shall be considered to be a child for purposes of this section regardless of any change in age or marital status after such date.

SEC. 11033. REGULATIONS.

The Immigration and Naturalization Service shall promulgate regulations to implement this chapter not later than 120 days after the date of enactment of this Act. Until such regulations are promulgated, the Attorney General shall not deny a petition filed or pending under section 216A(c)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(1)(A)) that relates to an eligible alien described in section 11031, or on an application filed or pending under section 245 of such Act (8 U.S.C. 1255) that relates to an eligible alien described in section 11032. Until such regulations are promulgated, the Attorney General shall not initiate or proceed with removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) that relate to an eligible alien described in section 11031 or 11032.

SEC. 11034. DEFINITIONS.

Except as otherwise provided, the terms used in this chapter shall have the meaning given such terms in section 101(b) of the Immigration and Nationality Act (8 U.S.C. 1101(b)).

CHAPTER 2—AMENDMENTS TO OTHER LAWS

SEC. 11035. DEFINITION OF "FULL-TIME EMPLOYMENT".

Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) is amended by adding at the end the following:

"(D) FULL-TIME EMPLOYMENT DEFINED.—In this paragraph, the term 'full-time employment' means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.".

SEC. 11036. ELIMINATING ENTERPRISE ESTABLISHMENT REQUIREMENT FOR ALIEN ENTREPRENEURS.

(a) PREFERENCE ALLOCATION FOR EMPLOYMENT CREATION.—Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking "enterprise—" and inserting "enterprise (including a limited partnership)—";

(B) by striking clause (i); and

(C) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(2) in subparagraph (B)(i), by striking "establish" and inserting "invest in".

(b) CONDITIONAL PERMANENT RESIDENT STATUS FOR ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.—Section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b) is amended—

(1) in subsection (b)(1)—

(A) in subparagraph (A) by striking "establishment of" and inserting "investment in"; and

(B) by amending subparagraph (B) to read as follows:

"(B)(i) the alien did not invest, or was not actively in the process of investing, the requisite capital; or

"(ii) the alien was not sustaining the actions described in clause (i) throughout the period of the alien's residence in the United States; or";

(2) by amending subsection (d)(1) to read as follows:

"(1) CONTENTS OF PETITION.—Each petition under subsection (c)(1)(A) shall contain facts and information demonstrating that the alien—

"(A)(i) invested, or is actively in the process of investing, the requisite capital; and

"(ii) sustained the actions described in clause (i) throughout the period of the alien's residence in the United States; and

"(B) is otherwise conforming to the requirements of section 203(b)(5)."; and

(3) by adding at the end of subsection (f) the following:

"(3) The term 'commercial enterprise' includes a limited partnership.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to aliens having any of the following petitions pending on or after the date of the enactment of this Act:

(1) A petition under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), with respect to status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)).

(2) A petition under section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) to remove the conditional basis of an alien's permanent resident status.

SEC. 11037. AMENDMENTS TO PILOT IMMIGRATION PROGRAM FOR REGIONAL CENTERS TO PROMOTE ECONOMIC GROWTH.

(a) PURPOSE OF PROGRAM.—Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note), is amended—

(1) by inserting after "regional center in the United States" the following: ", designated by the Attorney General on the basis of a general proposal,";

(2) by striking "and increased domestic" and inserting "or increased domestic"; and

(3) by adding at the end the following:

"A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic

zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to—

(1) any proposal for a regional center pending before the Attorney General (whether for an initial decision or on appeal) on or after the date of the enactment of this Act; and

(2) any of the following petitions, if filed on or after the date of the enactment of this Act:

(A) A petition under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision)(or any predecessor provision), with respect to status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)).

(B) A petition under section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) to remove the conditional basis of an alien's permanent resident status.

Subtitle C—Judicial Improvements Act of 2002

SEC. 11041. SHORT TITLE.

This subtitle may be cited as the "Judicial Improvements Act of 2002".

SEC. 11042. JUDICIAL DISCIPLINE PROCEDURES.

(a) IN GENERAL.—Part I of title 28, United States Code, is amended by inserting after chapter 15 the following new chapter:

"CHAPTER 16—COMPLAINTS AGAINST JUDGES AND JUDICIAL DISCIPLINE

"§ 351. Complaints; judge defined

"(a) FILING OF COMPLAINT BY ANY PERSON.—Any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or al-

leging that such judge is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

"(b) IDENTIFYING COMPLAINT BY CHIEF JUDGE.—In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this chapter and thereby dispense with filing of a written complaint.

"(c) TRANSMITTAL OF COMPLAINT.—Upon receipt of a complaint filed under subsection (a), the clerk shall promptly transmit the complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this chapter only, included in the term 'chief judge'). The clerk shall simultaneously transmit a copy of the complaint to the judge whose conduct is the subject of the complaint. The clerk shall also transmit a copy of any complaint identified under subsection (b) to the judge whose conduct is the subject of the complaint.

"(d) DEFINITIONS.—In this chapter—

"(1) the term 'judge' means a circuit judge, district judge, bankruptcy judge, or magistrate judge; and

"(2) the term 'complainant' means the person filing a complaint under subsection (a) of this section.

"§ 352. Review of complaint by chief judge

"(a) EXPEDITIOUS REVIEW; LIMITED INQUIRY.—The chief judge shall expeditiously review any complaint received under section 351(a) or identified under section 351(b). In determining what action to take, the chief judge may conduct a limited inquiry for the purpose of determining—

"(1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation; and

"(2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation.

For this purpose, the chief judge may request the judge whose conduct is complained of to file a written response to the complaint. Such response shall not be made available to the complainant unless authorized by the judge filing the response. The chief judge or his or her designee may also communicate orally or in writing with the complainant, the judge whose conduct is complained of, and any other person who may have knowledge of the matter, and may review any transcripts or other relevant documents. The chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute.

"(b) ACTION BY CHIEF JUDGE FOLLOWING REVIEW.—After expeditiously reviewing a complaint under subsection (a), the chief judge, by written order stating his or her reasons, may—

"(1) dismiss the complaint—

"(A) if the chief judge finds the complaint to be—

"(i) not in conformity with section 351(a);

"(ii) directly related to the merits of a decision or procedural ruling; or

"(iii) frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation; or

"(B) when a limited inquiry conducted under subsection (a) demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence; or

"(2) conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events. The chief judge shall transmit copies of the written order to the complainant and to the judge whose conduct is the subject of the complaint.

"(c) REVIEW OF ORDERS OF CHIEF JUDGE.—A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge's order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

"(d) REFERRAL OF PETITIONS FOR REVIEW TO PANELS OF THE JUDICIAL COUNCIL.—Each judicial council may, pursuant to rules prescribed under section 358, refer a petition for review filed under subsection (c) to a panel of no fewer than 5 members of the council, at least 2 of whom shall be district judges.

"§ 353. Special committees

"(a) APPOINTMENT.—If the chief judge does not enter an order under section 352(b), the chief judge shall promptly—

"(1) appoint himself or herself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

"(2) certify the complaint and any other documents pertaining thereto to each member of such committee; and

"(3) provide written notice to the complainant and the judge whose conduct is the subject of the complaint of the action taken under this subsection.

"(b) CHANGE IN STATUS OR DEATH OF JUDGES.—A judge appointed to a special committee under subsection (a) may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45. If a judge appointed to a committee under subsection (a) dies, or retires from office under section 371(a), while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.

"(c) INVESTIGATION BY SPECIAL COMMITTEE.—Each committee appointed under subsection (a) shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee's recommendations for necessary and appropriate action by the judicial council of the circuit.

"§ 354. Action by judicial council

"(a) ACTIONS UPON RECEIPT OF REPORT.—

"(1) ACTIONS.—The judicial council of a circuit, upon receipt of a report filed under section 353(c)—

"(A) may conduct any additional investigation which it considers to be necessary;

"(B) may dismiss the complaint; and

"(C) if the complaint is not dismissed, shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.

"(2) DESCRIPTION OF POSSIBLE ACTIONS IF COMPLAINT NOT DISMISSED.—

"(A) IN GENERAL.—Action by the judicial council under paragraph (1)(C) may include—

"(i) ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of a complaint;

"(ii) censuring or reprimanding such judge by means of private communication; and

"(iii) censuring or reprimanding such judge by means of public announcement.

"(B) FOR ARTICLE III JUDGES.—If the conduct of a judge appointed to hold office during good behavior is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include—

"(i) certifying disability of the judge pursuant to the procedures and standards provided under section 372(b); and

"(ii) requesting that the judge voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply.

"(C) FOR MAGISTRATE JUDGES.—If the conduct of a magistrate judge is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include directing the chief judge of the district of the magistrate judge to take such action as the judicial council considers appropriate.

"(3) LIMITATIONS ON JUDICIAL COUNCIL REGARDING REMOVALS.—

"(A) ARTICLE III JUDGES.—Under no circumstances may the judicial council order removal from office of any judge appointed to hold office during good behavior.

"(B) MAGISTRATE AND BANKRUPTCY JUDGES.—Any removal of a magistrate judge under this subsection shall be in accordance with section 631 and any removal of a bankruptcy judge shall be in accordance with section 152.

"(4) NOTICE OF ACTION TO JUDGE.—The judicial council shall immediately provide written notice to the complainant and to the judge whose conduct is the subject of the complaint of the action taken under this subsection.

"(b) REFERRAL TO JUDICIAL CONFERENCE.—

"(1) IN GENERAL.—In addition to the authority granted under subsection (a), the judicial council may, in its discretion, refer any complaint under section 351, together with the record

of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States.

"(2) SPECIAL CIRCUMSTANCES.—In any case in which the judicial council determines, on the basis of a complaint and an investigation under this chapter, or on the basis of information otherwise available to the judicial council, that a judge appointed to hold office during good behavior may have engaged in conduct—

"(A) which might constitute one or more grounds for impeachment under article II of the Constitution, or

"(B) which, in the interest of justice, is not amenable to resolution by the judicial council,

the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

"(3) NOTICE TO COMPLAINANT AND JUDGE.—A judicial council acting under authority of this subsection shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge whose conduct is the subject of the action taken under this subsection.

"§ 355. Action by Judicial Conference

"(a) IN GENERAL.—Upon referral or certification of any matter under section 354(b), the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in section 354(a)(1)(C) and (2), as it considers appropriate.

"(b) IF IMPEACHMENT WARRANTED.—

"(1) IN GENERAL.—If the Judicial Conference concurs in the determination of the judicial council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

"(2) IN CASE OF FELONY CONVICTION.—If a judge has been convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under section 354(b), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.

"§ 356. Subpoena power

"(a) JUDICIAL COUNCILS AND SPECIAL COMMITTEES.—In conducting any investigation under this chapter, the judicial council, or

a special committee appointed under section 353, shall have full subpoena powers as provided in section 332(d).

"(b) JUDICIAL CONFERENCE AND STANDING COMMITTEES.—In conducting any investigation under this chapter, the Judicial Conference, or a standing committee appointed by the Chief Justice under section 331, shall have full subpoena powers as provided in that section.

"§ 357. Review of orders and actions

"(a) REVIEW OF ACTION OF JUDICIAL COUNCIL.—A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.

"(b) ACTION OF JUDICIAL CONFERENCE.—The Judicial Conference, or the standing committee established under section 331, may grant a petition filed by a complainant or judge under subsection (a).

"(c) NO JUDICIAL REVIEW.—Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

"§ 358. Rules

"(a) IN GENERAL.—Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this chapter, including the processing of petitions for review, as each considers to be appropriate.

"(b) REQUIRED PROVISIONS.—Rules prescribed under subsection (a) shall contain provisions requiring that—

"(1) adequate prior notice of any investigation be given in writing to the judge whose conduct is the subject of a complaint under this chapter;

"(2) the judge whose conduct is the subject of a complaint under this chapter be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing; and

"(3) the complainant be afforded an opportunity to appear at proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

"(c) PROCEDURES.—Any rule prescribed under this section shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such rule shall be a matter of public record, and any such rule promulgated by a judicial council may be modified by the Judicial Conference. No rule promulgated under this section may limit the period of time within which a person may file a complaint under this chapter.

"§ 359. Restrictions

"(a) RESTRICTION ON INDIVIDUALS WHO ARE SUBJECT OF INVESTIGATION.—No judge whose conduct is the subject of an investigation under this chapter shall serve upon a special committee ap-

pointed under section 353, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331, until all proceedings under this chapter relating to such investigation have been finally terminated.

"(b) AMICUS CURIAE.—No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before a judicial council or the Judicial Conference under this chapter.

"§ 360. Disclosure of information

"(a) CONFIDENTIALITY OF PROCEEDINGS.—Except as provided in section 355, all papers, documents, and records of proceedings related to investigations conducted under this chapter shall be confidential and shall not be disclosed by any person in any proceeding except to the extent that—

"(1) the judicial council of the circuit in its discretion releases a copy of a report of a special committee under section 353(c) to the complainant whose complaint initiated the investigation by that special committee and to the judge whose conduct is the subject of the complaint;

"(2) the judicial council of the circuit, the Judicial Conference of the United States, or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or

"(3) such disclosure is authorized in writing by the judge who is the subject of the complaint and by the chief judge of the circuit, the Chief Justice, or the chairman of the standing committee established under section 331.

"(b) PUBLIC AVAILABILITY OF WRITTEN ORDERS.—Each written order to implement any action under section 354(a)(1)(C), which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331, shall be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order shall be accompanied by written reasons therefor.

"§ 361. Reimbursement of expenses

"Upon the request of a judge whose conduct is the subject of a complaint under this chapter, the judicial council may, if the complaint has been finally dismissed under section 354(a)(1)(B), recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys' fees, incurred by that judge during the investigation which would not have been incurred but for the requirements of this chapter.

"§ 362. Other provisions and rules not affected

"Except as expressly provided in this chapter, nothing in this chapter shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.

"§ 363. Court of Federal Claims, Court of International Trade, Court of Appeals for the Federal Circuit

"The United States Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit shall each prescribe rules, consistent with the provisions of this chapter, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this chapter.

"§ 364. Effect of felony conviction

"In the case of any judge or judge of a court referred to in section 363 who is convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the following shall apply:

"(1) The judge shall not hear or decide cases unless the judicial council of the circuit (or, in the case of a judge of a court referred to in section 363, that court) determines otherwise.

"(2) Any service as such judge or judge of a court referred to in section 363, after the conviction is final and all time for filing appeals thereof has expired, shall not be included for purposes of determining years of service under section 371(c), 377, or 178 of this title or creditable service under subchapter III of chapter 83, or chapter 84, of title 5.".

(b) CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by inserting after the item relating to chapter 15 the following new item:

"16. Complaints against judges and judicial discipline ..... 351".

SEC. 11043. TECHNICAL AMENDMENTS.

(a) RETIREMENT FOR DISABILITY.—(1) Section 372 of title 28, United States Code, is amended—

*(A) in the section caption by striking "**; judicial discipline**"; and*

(B) by striking subsection (c).

(2) The item relating to section 372 in the table of sections for chapter 17 of title 28, United States Code, is amended by striking "; judicial discipline".

(b) JUDICIAL CONFERENCE.—Section 331 of title 28, United States Code, is amended in the fourth undesignated paragraph by striking "section 372(c)" each place it appears and inserting "chapter 16".

(c) JUDICIAL COUNCILS.—Section 332 of title 28, United States Code, is amended—

(1) in subsection (d)(2)—

(A) by striking "section 372(c) of this title" and inserting "chapter 16 of this title"; and

(B) by striking "372(c)(4)" and inserting "353"; and

(2) by striking the second subsection designated as subsection (h).

(d) RECALL OF BANKRUPTCY JUDGES AND MAGISTRATE JUDGES.—Section 375(d) of title 28, United States Code, is amended by striking "section 372(c)" and inserting "chapter 16".

(e) DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Section 604 of title 28, United States Code, is amended—

(1) in subsection (a)(20)—

(A) in subparagraph (B), by striking "372(c)(11)" and inserting "358"; and

(B) in subparagraph (C), by striking "372(c)(15)" and inserting "360(b)"; and

(2) in subsection (h)—

(A) in paragraph (1), by striking "section 372" each place it appears and inserting "chapter 16"; and

(B) in paragraph (2), by striking "section 372(c)" and inserting "chapter 16".

(f) COURT OF APPEALS FOR VETERANS CLAIMS.—Section 7253(g) of title 38, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking "section 372(c)" and inserting "chapter 16"; and

(B) by striking "such section" and inserting "such chapter";

(2) in paragraph (2)—

(A) in the first sentence, by striking "paragraphs (7) through (15) of section 372(c)" and inserting "sections 354(b) through 360"; and

(B) in the second sentence, by striking "paragraph (7) or (8) of section 372(c)" and inserting "section 354(b) or 355"; and

(3) in paragraph (3)(B), by striking "372(c)(16)" and inserting "361".

SEC. 11044. SEVERABILITY.

If any provision of this subtitle, an amendment made by this subtitle, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this subtitle, the amendments made by this subtitle, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Subtitle D—Antitrust Modernization Commission Act of 2002

SEC. 11051. SHORT TITLE.

This subtitle may be cited as the "Antitrust Modernization Commission Act of 2002".

SEC. 11052. ESTABLISHMENT.

There is established the Antitrust Modernization Commission (in this subtitle referred to as the "Commission").

SEC. 11053. DUTIES OF THE COMMISSION.

The duties of the Commission are—

(1) to examine whether the need exists to modernize the antitrust laws and to identify and study related issues;

(2) to solicit views of all parties concerned with the operation of the antitrust laws;

(3) to evaluate the advisability of proposals and current arrangements with respect to any issues so identified; and

(4) to prepare and to submit to Congress and the President a report in accordance with section 11058.

SEC. 11054.; MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 12 members appointed as follows:

(1) Four members, no more than 2 of whom shall be of the same political party, shall be appointed by the President. The President shall appoint members of the opposing party only on the recommendation of the leaders of Congress from that party.

(2) Two members shall be appointed by the majority leader of the Senate.

(3) Two members shall be appointed by the minority leader of the Senate.

(4) Two members shall be appointed by the Speaker of the House of Representatives.

(5) Two members shall be appointed by the minority leader of the House of Representatives.

(b) INELIGIBILITY FOR APPOINTMENT.—Members of Congress shall be ineligible for appointment to the Commission.

(c) TERM OF APPOINTMENT.—

(1) IN GENERAL.—Subject to paragraph (2), members of the Commission shall be appointed for the life of the Commission.

(2) EARLY TERMINATION OF APPOINTMENT.—If a member of the Commission who is appointed to the Commission as—

(A) an officer or employee of a government ceases to be an officer or employee of such government; or

(B) an individual who is not an officer or employee of a government becomes an officer or employee of a government;

then such member shall cease to be a member of the Commission on the expiration of the 90-day period beginning on the date such member ceases to be such officer or employee of such government, or becomes an officer or employee of a government, as the case may be.

(d) QUORUM.—Seven members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

(e) APPOINTMENT DEADLINE.—Initial appointments under subsection (a) shall be made not later than 60 days after the date of enactment of this Act.

(f) MEETINGS.—The Commission shall meet at the call of the chairperson. The first meeting of the Commission shall be held not later than 30 days after the date on which all members of the Commission are first appointed under subsection (a) or funds are appropriated to carry out this subtitle, whichever occurs later.

(g) VACANCY.—A vacancy on the Commission shall be filled in the same manner as the initial appointment is made.

(h) CONSULTATION BEFORE APPOINTMENT.—Before appointing members of the Commission, the President, the majority and minority leaders of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives shall

consult with each other to ensure fair and equitable representation of various points of view in the Commission.

(i) CHAIRPERSON; VICE CHAIRPERSON.—The President shall select the chairperson of the Commission from among its appointed members. The leaders of Congress from the opposing party of the President shall select the vice chairperson of the Commission from among its remaining members.

SEC. 11055. COMPENSATION OF THE COMMISSION.

(a) PAY.—

(1) NONGOVERNMENT EMPLOYEES.—Each member of the Commission who is not otherwise employed by a government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time, for each day (including travel time) during which such member is engaged in the actual performance of duties of the Commission.

(2) GOVERNMENT EMPLOYEES.—A member of the Commission who is an officer or employee of a government shall serve without additional pay (or benefits in the nature of compensation) for service as a member of the Commission.

(b) TRAVEL EXPENSES.—Members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

SEC. 11056. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) STAFF.—

(1) APPOINTMENT.—The chairperson of the Commission may, without regard to the provisions of chapter 51 of title 5 of the United States Code (relating to appointments in the competitive service), appoint and terminate an executive director and such other staff as are necessary to enable the Commission to perform its duties. The appointment of an executive director shall be subject to approval by the Commission.

(2) COMPENSATION.—The chairperson of the Commission may fix the compensation of the executive director and other staff without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code (relating to classification of positions and General Schedule pay rates), except that the rate of pay for the executive director and other staff may not exceed the rate of basic pay payable for level V of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time.

(b) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants in accordance with section 3109(b) of title 5, United States Code.

SEC. 11057. POWERS OF THE COMMISSION.

(a) HEARINGS AND MEETINGS.—The Commission, or a member of the Commission if authorized by the Commission, may hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence, as the Commission considers to be appropriate. The Commission or a member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or such member.

(b) OFFICIAL DATA.—The Commission may obtain directly from any executive agency (as defined in section 105 of title 5 of the United States Code) or court information necessary to enable it to carry out its duties under this subtitle. On the request of the chairperson of the Commission, and consistent with any other law, the head of an executive agency or of a Federal court shall provide such information to the Commission.

(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. On request of the Commission, the head of an executive agency may make any of the facilities or services of such agency available to the Commission, on a reimbursable or nonreimbursable basis, to assist the Commission in carrying out its duties under this subtitle.

(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or such member considers to be appropriate for the purpose of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in advance in appropriation Acts.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) GIFTS, BEQUESTS, AND DEVISES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.

SEC. 11058. REPORT.

Not later than 3 years after the first meeting of the Commission, the Commission shall submit to Congress and the President a report containing a detailed statement of the findings and conclusions of the Commission, together with recommendations for legislative or administrative action the Commission considers to be appropriate.

SEC. 11059. TERMINATION OF COMMISSION.

The Commission shall cease to exist 30 days after the date on which the report required by section 8 is submitted.

SEC. 11060. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $4,000,000 to carry out this subtitle.

TITLE II—JUVENILE JUSTICE

Subtitle A—Juvenile Offender Accountability

SEC. 12101. SHORT TITLE.

This subtitle may be cited as the "Consequences for Juvenile Offenders Act of 2002".

SEC. 12102. JUVENILE OFFENDER ACCOUNTABILITY.

(a) GRANT PROGRAM.—Part R of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ee et seq.) is amended to read as follows:

"PART R—JUVENILE ACCOUNTABILITY BLOCK GRANTS

"SEC. 1801. PROGRAM AUTHORIZED.

"(a) IN GENERAL.—The Attorney General is authorized to provide grants to States, for use by States and units of local government, and in certain cases directly to specially qualified units.

"(b) AUTHORIZED ACTIVITIES.—Amounts paid to a State or a unit of local government under this part shall be used by the State or unit of local government for the purpose of strengthening the juvenile justice system, which includes—

"(1) developing, implementing, and administering graduated sanctions for juvenile offenders;

"(2) building, expanding, renovating, or operating temporary or permanent juvenile correction, detention, or community corrections facilities;

"(3) hiring juvenile court judges, probation officers, and court-appointed defenders and special advocates, and funding pretrial services (including mental health screening and assessment) for juvenile offenders, to promote the effective and expeditious administration of the juvenile justice system;

"(4) hiring additional prosecutors, so that more cases involving violent juvenile offenders can be prosecuted and case backlogs reduced;

"(5) providing funding to enable prosecutors to address drug, gang, and youth violence problems more effectively and for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders;

"(6) establishing and maintaining training programs for law enforcement and other court personnel with respect to preventing and controlling juvenile crime;

"(7) establishing juvenile gun courts for the prosecution and adjudication of juvenile firearms offenders;

"(8) establishing drug court programs for juvenile offenders that provide continuing judicial supervision over juvenile offenders with substance abuse problems and the integrated administration of other sanctions and services for such offenders;

"(9) establishing and maintaining a system of juvenile records designed to promote public safety;

"(10) establishing and maintaining interagency information-sharing programs that enable the juvenile and criminal justice systems, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts;

"(11) establishing and maintaining accountability-based programs designed to reduce recidivism among juveniles who are referred by law enforcement personnel or agencies;

"(12) establishing and maintaining programs to conduct risk and need assessments of juvenile offenders that facilitate the effective early intervention and the provision of comprehensive services, including mental health screening and treatment and substance abuse testing and treatment to such offenders;

"(13) establishing and maintaining accountability-based programs that are designed to enhance school safety;

"(14) establishing and maintaining restorative justice programs;

"(15) establishing and maintaining programs to enable juvenile courts and juvenile probation officers to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism; or

"(16) hiring detention and corrections personnel, and establishing and maintaining training programs for such personnel to improve facility practices and programming.

"(c) DEFINITION.—In this section the term 'restorative justice program' means a program that emphasizes the moral accountability of an offender toward the victim and the affected community and may include community reparations boards, restitution (in the form of monetary payment or service to the victim or, where no victim can be identified, service to the affected community), and mediation between victim and offender.

"SEC. 1801A. TRIBAL GRANT PROGRAM AUTHORIZED.

"(a) IN GENERAL.—From the amount reserved under section 1810(b), the Attorney General shall make grants to Indian tribes for programs to strengthen tribal juvenile justice systems and to hold tribal youth accountable.

"(b) ELIGIBILITY.—Indian tribes, as defined by section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a), or a consortia of such tribes, shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require. Only tribes that carry out tribal juvenile justice functions shall be eligible to receive a grant under this section.

"(c) AWARDS.—The Attorney General shall award grants under this section on a competitive basis.

"(d) GUIDELINES.—The Attorney General shall issue guidelines establishing application, use, and award criteria and processes consistent with the purposes and requirements of this Act.

"SEC. 1802. GRANT ELIGIBILITY.

"(a) STATE ELIGIBILITY.—To be eligible to receive a grant under this part, a State shall submit to the Attorney General an application at such time, in such form, and containing such assurances

and information as the Attorney General may require by guidelines, including—

"(1) information about—

"(A) the activities proposed to be carried out with such grant; and

"(B) the criteria by which the State proposes to assess the effectiveness of such activities on achieving the purposes of this part; and

"(2) assurances that the State and any unit of local government to which the State provides funding under section 1803(b), has in effect (or shall have in effect, not later than 1 year after the date that the State submits such application) laws, or has implemented (or shall implement, not later than 1 year after the date that the State submits such application) policies and programs, that provide for a system of graduated sanctions described in subsection (c).

"(b) LOCAL ELIGIBILITY.—

"(1) SUBGRANT ELIGIBILITY.—To be eligible to receive a subgrant, a unit of local government, other than a specially qualified unit, shall provide to the State—

"(A) information about—

"(i) the activities proposed to be carried out with such subgrant; and

"(ii) the criteria by which the unit proposes to assess the effectiveness of such activities on achieving the purposes of this part; and

"(B) such assurances as the State shall require, that, to the maximum extent applicable, the unit of local government has in effect (or shall have in effect, not later than 1 year after the date that the unit submits such application) laws, or has implemented (or shall implement, not later than 1 year after the date that the unit submits such application) policies and programs, that provide for a system of graduated sanctions described in subsection (c).

"(2) SPECIAL RULE.—The requirements of paragraph (1) shall apply to a specially qualified unit that receives funds from the Attorney General under section 1803(e), except that information that is otherwise required to be submitted to the State shall be submitted to the Attorney General.

"(c) ROLE OF COURTS.—In the development of the grant application, the States and units of local governments shall take into consideration the needs of the judicial branch in strengthening the juvenile justice system and specifically seek the advice of the chief of the highest court of the State and where appropriate, the chief judge of the local court, with respect to the application.

"(d) GRADUATED SANCTIONS.—A system of graduated sanctions, which may be discretionary as provided in subsection (e), shall ensure, at a minimum, that—

"(1) sanctions are imposed on a juvenile offender for each delinquent offense;

"(2) sanctions escalate in intensity with each subsequent, more serious delinquent offense;

"(3) there is sufficient flexibility to allow for individualized sanctions and services suited to the individual juvenile offender; and

"(4) appropriate consideration is given to public safety and victims of crime.

"(e) DISCRETIONARY USE OF SANCTIONS.—

"(1) VOLUNTARY PARTICIPATION.—A State or unit of local government may be eligible to receive a grant under this part if—

"(A) its system of graduated sanctions is discretionary; and

"(B) it demonstrates that it has promoted the use of a system of graduated sanctions by taking steps to encourage implementation of such a system by juvenile courts.

"(2) REPORTING REQUIREMENT IF GRADUATED SANCTIONS NOT USED.—

"(A) JUVENILE COURTS.—A State or unit of local government in which the imposition of graduated sanctions is discretionary shall require each juvenile court within its jurisdiction—

"(i) which has not implemented a system of graduated sanctions, to submit an annual report that explains why such court did not implement graduated sanctions; and

"(ii) which has implemented a system of graduated sanctions but has not imposed graduated sanctions in all cases, to submit an annual report that explains why such court did not impose graduated sanctions in all cases.

"(B) UNITS OF LOCAL GOVERNMENT.—Each unit of local government, other than a specially qualified unit, that has 1 or more juvenile courts that use a discretionary system of graduated sanctions shall collect the information reported under subparagraph (A) for submission to the State each year.

"(C) STATES.—Each State and specially qualified unit that has 1 or more juvenile courts that use a discretionary system of graduated sanctions shall collect the information reported under subparagraph (A) for submission to the Attorney General each year. A State shall also collect and submit to the Attorney General the information collected under subparagraph (B).

"(f) DEFINITIONS.—In this section:

"(1) DISCRETIONARY.—The term 'discretionary' means that a system of graduated sanctions is not required to be imposed by each and every juvenile court in a State or unit of local government.

"(2) SANCTIONS.—The term 'sanctions' means tangible, proportional consequences that hold the juvenile offender accountable for the offense committed. A sanction may include counseling, restitution, community service, a fine, supervised probation, or confinement.

"SEC. 1803. ALLOCATION AND DISTRIBUTION OF FUNDS.

"(a) STATE ALLOCATION.—

"(1) IN GENERAL.—In accordance with regulations promulgated pursuant to this part and except as provided in paragraph (3), the Attorney General shall allocate—

"(A) 0.50 percent for each State; and

"(B) of the total funds remaining after the allocation under subparagraph (A), to each State, an amount which bears the same ratio to the amount of remaining funds described in this subparagraph as the population of people under the age of 18 living in such State for the most recent calendar year in which such data is available bears to the population of people under the age of 18 of all the States for such fiscal year.

"(2) PROHIBITION.—No funds allocated to a State under this subsection or received by a State for distribution under subsection (b) may be distributed by the Attorney General or by the State involved for any program other than a program contained in an approved application.

"(b) LOCAL DISTRIBUTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), each State which receives funds under subsection (a)(1) in a fiscal year shall distribute among units of local government, for the purposes specified in section 1801, not less than 75 percent of such amounts received.

"(2) WAIVER.—If a State submits to the Attorney General an application for waiver that demonstrates and certifies to the Attorney General that—

"(A) the State's juvenile justice expenditures in the fiscal year preceding the date in which an application is submitted under this part (the 'State percentage') is more than 25 percent of the aggregate amount of juvenile justice expenditures by the State and its eligible units of local government; and

"(B) the State has consulted with as many units of local government in such State, or organizations representing such units, as practicable regarding the State's calculation of expenditures under subparagraph (A), the State's application for waiver under this paragraph, and the State's proposed uses of funds.

"(3) ALLOCATION.—In making the distribution under paragraph (1), the State shall allocate to such units of local government an amount which bears the same ratio to the aggregate amount of such funds as—

"(A) the sum of—

"(i) the product of—

"(I) three-quarters; multiplied by

"(II) the average juvenile justice expenditure for such unit of local government for the 3 most recent calendar years for which such data is available; plus

"(ii) the product of—

"(I) one-quarter; multiplied by

"(II) the average annual number of part 1 violent crimes in such unit of local government for the 3 most recent calendar years for which such data is available, bears to—

"(B) the sum of the products determined under subparagraph (A) for all such units of local government in the State.

"(4) EXPENDITURES.—The allocation any unit of local government shall receive under paragraph (3) for a payment period shall not exceed 100 percent of juvenile justice expenditures of the unit for such payment period.

"(5) REALLOCATION.—The amount of any unit of local government's allocation that is not available to such unit by operation of paragraph (4) shall be available to other units of local government that are not affected by such operation in accordance with this subsection.

"(c) UNAVAILABILITY OF DATA FOR UNITS OF LOCAL GOVERNMENT.—If the State has reason to believe that the reported rate of part 1 violent crimes or juvenile justice expenditures for a unit of local government is insufficient or inaccurate, the State shall—

"(1) investigate the methodology used by the unit to determine the accuracy of the submitted data; and

"(2) if necessary, use the best available comparable data regarding the number of violent crimes or juvenile justice expenditures for the relevant years for the unit of local government.

"(d) LOCAL GOVERNMENT WITH ALLOCATIONS LESS THAN $10,000.—If under this section a unit of local government is allocated less than $10,000 for a payment period, the amount allotted shall be expended by the State on services to units of local government whose allotment is less than such amount in a manner consistent with this part.

"(e) DIRECT GRANTS TO SPECIALLY QUALIFIED UNITS.—

"(1) IN GENERAL.—If a State does not qualify or apply for funds reserved for allocation under subsection (a) by the application deadline established by the Attorney General, the Attorney General shall reserve not more than 75 percent of the allocation that the State would have received under subsection (a) for such fiscal year to provide grants to specially qualified units which meet the requirements for funding under section 1802.

"(2) AWARD BASIS.—In addition to the qualification requirements for direct grants for specially qualified units the Attorney General may use the average amount allocated by the States to units of local government as a basis for awarding grants under this section.

"SEC. 1804. GUIDELINES.

"(a) IN GENERAL.—The Attorney General shall issue guidelines establishing procedures under which a State or specifically qualified unit of local government that receives funds under section 1803 is required to provide notice to the Attorney General regarding the proposed use of funds made available under this part.

"(b) ADVISORY BOARD.—

"(1) IN GENERAL.—The guidelines referred to in subsection (a) shall include a requirement that such eligible State or unit of local government establish and convene an advisory board to recommend a coordinated enforcement plan for the use of such funds.

"(2) MEMBERSHIP.—The board shall include representation from, if appropriate—

"(A) the State or local police department;

"(B) the local sheriff's department;

"(C) the State or local prosecutor's office;

"(D) the State or local juvenile court;

"(E) the State or local probation office;
"(F) the State or local educational agency;
"(G) a State or local social service agency;
"(H) a nonprofit, nongovernmental victim advocacy organization; and
"(I) a nonprofit, religious, or community group.

"SEC. 1805. PAYMENT REQUIREMENTS.

"(a) TIMING OF PAYMENTS.—The Attorney General shall pay to each State or specifically qualified unit of local government that receives funds under section 1803 that has submitted an application under this part the amount awarded to such State or unit of local government not later than the later of—
"(1) the date that is 180 days after the date that the amount is available; or
"(2) the first day of the payment period if the State has provided the Attorney General with the assurances required by subsection (c).
"(b) REPAYMENT OF UNEXPENDED AMOUNTS.—
"(1) REPAYMENT REQUIRED.—From amounts awarded under this part, a State or specially qualified unit shall repay to the Attorney General, before the expiration of the 36-month period beginning on the date of the award, any amount that is not expended by such State or unit.
"(2) EXTENSION.—The Attorney General may adopt policies and procedures providing for a one-time extension, by not more than 12 months, of the period referred to in paragraph (1).
"(3) PENALTY FOR FAILURE TO REPAY.—If the amount required to be repaid is not repaid, the Attorney General shall reduce payment in future payment periods accordingly.
"(4) DEPOSIT OF AMOUNTS REPAID.—Amounts received by the Attorney General as repayments under this subsection shall be deposited in a designated fund for future payments to States and specially qualified units.
"(c) ADMINISTRATIVE COSTS.—A State or unit of local government that receives funds under this part may use not more than 5 percent of such funds to pay for administrative costs.
"(d) NONSUPPLANTING REQUIREMENT.—Funds made available under this part to States and units of local government shall not be used to supplant State or local funds as the case may be, but shall be used to increase the amount of funds that would, in the absence of funds made available under this part, be made available from State or local sources, as the case may be.
"(e) MATCHING FUNDS.—
"(1) IN GENERAL.—The Federal share of a grant received under this part may not exceed 90 percent of the total program costs.
"(2) CONSTRUCTION OF FACILITIES.—Notwithstanding paragraph (1), with respect to the cost of constructing juvenile detention or correctional facilities, the Federal share of a grant received under this part may not exceed 50 percent of approved cost.

"SEC. 1806. UTILIZATION OF PRIVATE SECTOR.

"Funds or a portion of funds allocated under this part may be used by a State or unit of local government that receives a grant

under this part to contract with private, nonprofit entities, or community-based organizations to carry out the purposes specified under section 1801(b).

"SEC. 1807. ADMINISTRATIVE PROVISIONS.

"(a) IN GENERAL.—A State or specially qualified unit that receives funds under this part shall—

"(1) establish a trust fund in which the government will deposit all payments received under this part;

"(2) use amounts in the trust fund (including interest) during the period specified in section 1805(b)(1) and any extension of that period under section 1805(b)(2);

"(3) designate an official of the State or specially qualified unit to submit reports as the Attorney General reasonably requires, in addition to the annual reports required under this part; and

"(4) spend the funds only for the purpose of strengthening the juvenile justice system.

"(b) TITLE I PROVISIONS.—Except as otherwise provided, the administrative provisions of part H shall apply to this part and for purposes of this section any reference in such provisions to title I shall be deemed to include a reference to this part.

"SEC. 1808. ASSESSMENT REPORTS.

"(a) REPORTS TO ATTORNEY GENERAL.—

"(1) IN GENERAL.—Except as provided in paragraph (4), for each fiscal year for which a grant or subgrant is awarded under this part, each State or specially qualified unit of local government that receives such a grant shall submit to the Attorney General a grant report, and each unit of local government that receives such a subgrant shall submit to the State a subgrant report, at such time and in such manner as the Attorney General may reasonably require.

"(2) GRANT REPORT.—Each grant report required by paragraph (1) shall include—

"(A) a summary of the activities carried out with such grant;

"(B) if such activities included any subgrant, a summary of the activities carried out with each such subgrant; and

"(C) an assessment of the effectiveness of such activities on achieving the purposes of this part.

"(3) SUBGRANT REPORT.—Each subgrant report required by paragraph (1) shall include—

"(A) a summary of the activities carried out with such subgrant; and

"(B) an assessment of the effectiveness of such activities on achieving the purposes of this part.

"(4) WAIVERS.—The Attorney General may waive the requirement of an assessment in paragraph (2)(C) for a State or specially qualified unit of local government, or in paragraph (3)(B) for a unit of local government, if the Attorney General determines that—

"(A) the nature of the activities are such that assessing their effectiveness would not be practical or insightful;

"(B) the amount of the grant or subgrant is such that carrying out the assessment would not be an effective use of those amounts; or

"(C) the resources available to the State or unit are such that carrying out the assessment would pose a financial hardship on the State or unit.

"(b) REPORTS TO CONGRESS.—Not later than 90 days after the last day of each fiscal year for which 1 or more grants are awarded under this part, the Attorney General shall submit to Congress a report, which shall include—

"(1) a summary of the information provided under subsection (a);

"(2) an assessment by the Attorney General of the grant program carried out under this part; and

"(3) such other information as the Attorney General considers appropriate.

"SEC. 1809. DEFINITIONS.

"In this part:

"(1) UNIT OF LOCAL GOVERNMENT.—The term 'unit of local government' means—

"(A) a county, township, city, or political subdivision of a county, township, or city, that is a unit of local government as determined by the Secretary of Commerce for general statistical purposes;

"(B) any law enforcement district or judicial enforcement district that—

"(i) is established under applicable State law; and

"(ii) has the authority, in a manner independent of other State entities, to establish a budget and raise revenues; and

"(C) the District of Columbia and the recognized governing body of an Indian tribe or Alaskan Native village that carries out substantial governmental duties and powers.

"(2) SPECIALLY QUALIFIED UNIT.—The term 'specially qualified unit' means a unit of local government which may receive funds under this part only in accordance with section 1803(e).

"(3) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands, except that—

"(A) the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands (the 'partial States') shall collectively be considered as 1 State; and

"(B) for purposes of section 1803(a), the amount allocated to a partial State shall bear the same proportion to the amount collectively allocated to the partial States as the population of the partial State bears to the collective population of the partial States.

"(4) JUVENILE.—The term 'juvenile' means an individual who is 17 years of age or younger.

"(5) JUVENILE JUSTICE EXPENDITURES.—The term 'juvenile justice expenditures' means expenditures in connection with the juvenile justice system, including expenditures in connection with such system to carry out—

"(A) activities specified in section 1801(b); and

"(B) other activities associated with prosecutorial and judicial services and corrections as reported to the Bureau of the Census for the fiscal year preceding the fiscal year for which a determination is made under this part.

"(6) PART 1 VIOLENT CRIMES.—The term 'part 1 violent crimes' means murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports.

"SEC. 1810. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this part, $350,000,000 for each of fiscal years 2002 through 2005.

"(b) OVERSIGHT ACCOUNTABILITY AND ADMINISTRATION.—

"(1) IN GENERAL.—Of the amount authorized to be appropriated under section 261 of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.), there shall be available to the Attorney General, for each of the fiscal years 2002 through 2004 (as applicable), to remain available until expended—

"(A) not more than 2 percent of that amount, for research, evaluation, and demonstration consistent with this part;

"(B) not more than 2 percent of that amount, for training and technical assistance; and

"(C) not more than 1 percent, for administrative costs to carry out the purposes of this part.

"(2) OVERSIGHT PLAN.—The Attorney General shall establish and execute an oversight plan for monitoring the activities of grant recipients.

"(c) TRIBAL SET-ASIDE.—Of the amounts appropriated under subsection (a), 2 percent shall be made available for programs that receive grants under section 1801A.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the first fiscal year that begins after the date of enactment of this Act.

(c) TRANSITION OF JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANTS PROGRAM.—For each grant made from amounts made available for the Juvenile Accountability Incentive Block Grants program (as described under the heading "VIOLENT CRIME REDUCTION PROGRAMS, STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE" in the Department of Justice Appropriations Act, 2000 (as enacted by Public Law 106–113; 113 Stat. 1537–14)), the grant award shall remain available to the grant recipient for not more than 36 months after the date of receipt of the grant.

Subtitle B—Juvenile Justice and Delinquency Prevention Act of 2002

SEC. 12201. SHORT TITLE.

This subtitle may be cited as the "Juvenile Justice and Delinquency Prevention Act of 2002".

SEC. 12202. FINDINGS.

Section 101 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601) is amended to read as follows:

"FINDINGS

"SEC. 101. (a) The Congress finds the following:

"(1) Although the juvenile violent crime arrest rate in 1999 was the lowest in the decade, there remains a consensus that the number of crimes and the rate of offending by juveniles nationwide is still too high.

"(2) According to the Office of Juvenile Justice and Delinquency Prevention, allowing 1 youth to leave school for a life of crime and of drug abuse costs society $1,700,000 to $2,300,000 annually.

"(3) One in every 6 individuals (16.2 percent) arrested for committing violent crime in 1999 was less than 18 years of age. In 1999, juveniles accounted for 9 percent of murder arrests, 17 percent of forcible rape arrests, 25 percent of robbery arrest, 14 percent of aggravated assault arrests, and 24 percent of weapons arrests.

"(4) More than ½ of juvenile murder victims are killed with firearms. Of the nearly 1,800 murder victims less than 18 years of age, 17 percent of the victims less than 13 years of age were murdered with a firearm, and 81 percent of the victims 13 years of age or older were killed with a firearm.

"(5) Juveniles accounted for 13 percent of all drug abuse violation arrests in 1999. Between 1990 and 1999, juvenile arrests for drug abuse violations rose 132 percent.

"(6) Over the last 3 decades, youth gang problems have increased nationwide. In the 1970's, 19 States reported youth gang problems. By the late 1990's, all 50 States and the District of Columbia reported gang problems. For the same period, the number of cities reporting youth gang problems grew 843 percent, and the number of counties reporting gang problems increased more than 1,000 percent.

"(7) According to a national crime survey of individuals 12 years of age or older during 1999, those 12 to 19 years old are victims of violent crime at higher rates than individuals in all other age groups. Only 30.8 percent of these violent victimizations were reported by youth to police in 1999.

"(8) One-fifth of juveniles 16 years of age who had been arrested were first arrested before attaining 12 years of age. Juveniles who are known to the juvenile justice system before attaining 13 years of age are responsible for a disproportionate share of serious crimes and violence.

"(9) The increase in the arrest rates for girls and young juvenile offenders has changed the composition of violent offenders entering the juvenile justice system.

"(10) These problems should be addressed through a 2-track common sense approach that addresses the needs of individual juveniles and society at large by promoting—

"(A) quality prevention programs that—

"(i) work with juveniles, their families, local public agencies, and community-based organizations, and take into consideration such factors as whether or not

juveniles have been the victims of family violence (including child abuse and neglect); and

"(ii) are designed to reduce risks and develop competencies in at-risk juveniles that will prevent, and reduce the rate of, violent delinquent behavior; and

"(B) programs that assist in holding juveniles accountable for their actions and in developing the competencies necessary to become responsible and productive members of their communities, including a system of graduated sanctions to respond to each delinquent act, requiring juveniles to make restitution, or perform community service, for the damage caused by their delinquent acts, and methods for increasing victim satisfaction with respect to the penalties imposed on juveniles for their acts.

"(11) Coordinated juvenile justice and delinquency prevention projects that meet the needs of juveniles through the collaboration of the many local service systems juveniles encounter can help prevent juveniles from becoming delinquent and help delinquent youth return to a productive life.

"(b) Congress must act now to reform this program by focusing on juvenile delinquency prevention programs, as well as programs that hold juveniles accountable for their acts and which provide opportunities for competency development. Without true reform, the juvenile justice system will not be able to overcome the challenges it will face in the coming years when the number of juveniles is expected to increase by 18 percent between 2000 and 2030.".

SEC. 12203. PURPOSE.

Section 102 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5602) is amended to read as follows:

"PURPOSES

"SEC. 102. The purposes of this title and title II are—

"(1) to support State and local programs that prevent juvenile involvement in delinquent behavior;

"(2) to assist State and local governments in promoting public safety by encouraging accountability for acts of juvenile delinquency; and

"(3) to assist State and local governments in addressing juvenile crime through the provision of technical assistance, research, training, evaluation, and the dissemination of information on effective programs for combating juvenile delinquency.".

SEC. 12204. DEFINITIONS.

Section 103 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603) is amended—

(1) in paragraph (3) by striking "to help prevent juvenile delinquency" and inserting "designed to reduce known risk factors for juvenile delinquent behavior, provides activities that build on protective factors for, and develop competencies in, juveniles to prevent, and reduce the rate of, delinquent juvenile behavior",

(2) in paragraph (4) by inserting "title I of" before "the Omnibus" each place it appears,

(3) in paragraph (7) by striking "the Trust Territory of the Pacific Islands,",

(4) in paragraph (12)(B) by striking ", of any nonoffender,",

(5) in paragraph (13)(B) by striking ", any nonoffender,",

(6) in paragraph (14) by inserting "drug trafficking," after "assault,",

(7) in paragraph (16)—

(A) in subparagraph (A) by adding "and" at the end, and

(B) by striking subparagraph (C),

(8) in paragraph (22)—

(A) by redesignating subparagraphs (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively, and

(B) by striking "and" at the end,

(9) in paragraph (23) by striking the period at the end and inserting a semicolon, and

(10) by adding at the end the following:

"(24) the term 'graduated sanctions' means an accountability-based, graduated series of sanctions (including incentives, treatment, and services) applicable to juveniles within the juvenile justice system to hold such juveniles accountable for their actions and to protect communities from the effects of juvenile delinquency by providing appropriate sanctions for every act for which a juvenile is adjudicated delinquent, by inducing their law-abiding behavior, and by preventing their subsequent involvement with the juvenile justice system;

"(25) the term 'contact' means the degree of interaction allowed between juvenile offenders in a secure custody status and incarcerated adults under section 31.303(d)(1)(i) of title 28, Code of Federal Regulations, as in effect on December 10, 1996;

"(26) the term 'adult inmate' means an individual who—

"(A) has reached the age of full criminal responsibility under applicable State law; and

"(B) has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense;

"(27) the term 'violent crime' means—

"(A) murder or nonnegligent manslaughter, forcible rape, or robbery, or

"(B) aggravated assault committed with the use of a firearm;

"(28) the term 'collocated facilities' means facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds; and

"(29) the term 'related complex of buildings' means 2 or more buildings that share—

"(A) physical features, such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer); or

"(B) the specialized services that are allowable under section 31.303(e)(3)(i)(C)(3) of title 28 of the Code of Federal Regulations, as in effect on December 10, 1996.".

SEC. 12205. CONCENTRATION OF FEDERAL EFFORT.

Section 204 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5614) is amended—

(1) in subsection (b)—

(A) in paragraph (3) by striking "and of the prospective" and all that follows through "administered",

(B) in paragraph (5) by striking "parts C and D" each place it appears and inserting "parts D and E", and

(C) by amending paragraph (7) to read as follows:

"(7) not later than 1 year after the date of the enactment of this paragraph, issue model standards for providing mental health care to incarcerated juveniles.",

(2) in subsection (c) by striking "and reports" and all that follows through "this part", and inserting "as may be appropriate to prevent the duplication of efforts, and to coordinate activities, related to the prevention of juvenile delinquency",

(3) by amending subsection (d) to read as follows:

"(d) The Administrator shall have the sole authority to delegate any of the functions of the Administrator under this Act.";

(4) by striking subsection (i), and

(5) by redesignating subsection (h) as subsection (f).

SEC. 12206. COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

Section 206(c)(2)(B) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5616(c)(2)(B)) is amended by striking "Education and Labor" and inserting "Education and the Workforce".

SEC. 12207. ANNUAL REPORT.

Section 207 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5617) is amended by striking paragraphs (4) and (5), and inserting the following:

"(4) An evaluation of the programs funded under this title and their effectiveness in reducing the incidence of juvenile delinquency, particularly violent crime, committed by juveniles.".

SEC. 12208. ALLOCATION.

Section 222 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5632) is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) in subparagraph (A)—

(I) by striking "(other than parts D and E)",

(II) by striking "amount, up to $400,000," and inserting "amount up to $400,000",

(III) by striking "1992" the 1st place it appears and inserting "2000,",

(IV) by striking "1992" the last place it appears and inserting "2000",

(V) by striking "the Trust Territory of the Pacific Islands,", and

(VI) by striking "amount, up to $100,000," and inserting "amount up to $100,000",

(ii) in subparagraph (B)—

(I) by striking "(other than part D)",

(II) by striking "$400,000" and inserting "$600,000",

(III) by striking "or such greater amount, up to $600,000" and all that follows through "section 299(a) (1) and (3)",

(IV) by striking "the Trust Territory of the Pacific Islands,",

(V) by striking "amount, up to $100,000," and inserting "amount up to $100,000", and

(VI) by striking "1992" and inserting "2000,",

(B) in paragraph (3)—

(i) by striking "allot" and inserting "allocate", and

(ii) by striking "1992" each place it appears and inserting "2000", and

(2) in subsection (b) by striking "the Trust Territory of the Pacific Islands,".

SEC. 12209. STATE PLANS.

Section 223 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633) is amended—

(1) in subsection (a)—

(A) in the 2d sentence by striking "and challenge" and all that follows through "part E", and inserting ", projects, and activities",

(B) in paragraph (3)—

(i) by striking ", which—" and inserting "that—",

(ii) in subparagraph (A)(i) by striking "or the administration of juvenile justice" and inserting ", the administration of juvenile justice, or the reduction of juvenile delinquency", and

(iii) in subparagraph (D)—

(I) in clause (i) by inserting "and" at the end, and

(II) in clause (ii) by striking "paragraphs" and all that follows through "part E", and inserting "paragraphs (11), (12), and (13)",

(C) in paragraph (5)—

(i) in the matter preceding subparagraph (A) by striking ", other than" and inserting "reduced by the percentage (if any) specified by the State under the authority of paragraph (25) and excluding", and

(ii) in subparagraph (C) by striking "paragraphs (12)(A), (13), and (14)" and inserting "paragraphs (11), (12), and (13)",

(D) by striking paragraph (6),

(E) in paragraph (7) by inserting ", including in rural areas" before the semicolon at the end,

(F) in paragraph (8)—

(i) in subparagraph (A)—

(I) by striking "for (i)" and all that follows through "relevant jurisdiction", and inserting "for an analysis of juvenile delinquency problems in, and the juvenile delinquency control and delinquency prevention needs (including educational needs) of, the State", and

(II) by striking "of the jurisdiction; (ii)" and all that follows through the semicolon at the end, and inserting "of the State; and",

(ii) by amending subparagraph (B) to read as follows:

"(B) contain—

"(i) a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency;

"(ii) a plan for providing needed services for the prevention and treatment of juvenile delinquency in rural areas; and

"(iii) a plan for providing needed mental health services to juveniles in the juvenile justice system, including information on how such plan is being implemented and how such services will be targeted to those juveniles in such system who are in greatest need of such services;", and

(iii) by striking subparagraphs (C) and (D),

(G) by amending paragraph (9) to read as follows:

"(9) provide for the coordination and maximum utilization of existing juvenile delinquency programs, programs operated by public and private agencies and organizations, and other related programs (such as education, special education, recreation, health, and welfare programs) in the State;",

(H) in paragraph (10)—

(i) in subparagraph (A)—

(I) by striking ", specifically" and inserting "including",

(II) by striking clause (i), and

(III) redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively,

(ii) by amending subparagraph (D) to read as follows:

"(D) programs that provide treatment to juvenile offenders who are victims of child abuse or neglect, and to their families, in order to reduce the likelihood that such juvenile offenders will commit subsequent violations of law;",

(iii) in subparagraph (E)—

(I) by redesignating clause (ii) as clause (iii), and

(II) by striking "juveniles, provided" and all that follows through "provides; and", and inserting the following:

"juveniles—

"(i) to encourage juveniles to remain in elementary and secondary schools or in alternative learning situations;

"(ii) to provide services to assist juveniles in making the transition to the world of work and self-sufficiency; and",

(iv) by amending subparagraph (F) to read as follows:

"(F) expanding the use of probation officers—

"(i) particularly for the purpose of permitting nonviolent juvenile offenders (including status offenders) to remain at home with their families as an alternative to incarceration or institutionalization; and

"(ii) to ensure that juveniles follow the terms of their probation;",

(v) by amending subparagraph (G) to read as follows:

"(G) counseling, training, and mentoring programs, which may be in support of academic tutoring, vocational and technical training, and drug and violence prevention counseling, that are designed to link at-risk juveniles, juvenile offenders, or juveniles who have a parent or legal guardian who is or was incarcerated in a Federal, State, or local correctional facility or who is otherwise under the jurisdiction of a Federal, State, or local criminal justice system, particularly juveniles residing in low-income and high-crime areas and juveniles experiencing educational failure, with responsible individuals (such as law enforcement officials, Department of Defense personnel, individuals working with local businesses, and individuals working with community-based and faith-based organizations and agencies) who are properly screened and trained;",

(vii) in subparagraph (H) by striking "handicapped youth" and inserting "juveniles with disabilities",

(viii) by striking subparagraph (K),

(ix) in subparagraph (L)—

(I) in clause (iv) by adding "and" at the end,

(II) in clause (v) by striking "and" at the end, and

(III) by striking clause (vi),

(x) in subparagraph (M) by striking "boot camps",

(xi) by amending subparagraph (N) to read as follows:

"(N) community-based programs and services to work with juveniles, their parents, and other family members during and after incarceration in order to strengthen families so that such juveniles may be retained in their homes;",

(xii) in subparagraph (O)—

(I) in striking "cultural" and inserting "other", and

(II) by striking the period at the end and inserting a semicolon,

(xiii) by redesignating subparagraphs (L), (M), (N), and (O) as subparagraphs (K), (L), (M), and (N), respectively; and

(xiv) by adding at the end the following:

"(O) programs designed to prevent and to reduce hate crimes committed by juveniles;

"(P) after-school programs that provide at-risk juveniles and juveniles in the juvenile justice system with a range of age-appropriate activities, including tutoring, mentoring, and other educational and enrichment activities;

"(Q) community-based programs that provide follow-up post-placement services to adjudicated juveniles, to promote successful reintegration into the community;

"(R) projects designed to develop and implement programs to protect the rights of juveniles affected by the juvenile justice system; and

"(S) programs designed to provide mental health services for incarcerated juveniles suspected to be in need of

such services, including assessment, development of individualized treatment plans, and discharge plans.",

(I) by amending paragraph (12) to read as follows:

"(12) shall, in accordance with rules issued by the Administrator, provide that—

"(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding—

"(i) juveniles who are charged with or who have committed a violation of section 922(x)(2) of title 18, United States Code, or of a similar State law;

"(ii) juveniles who are charged with or who have committed a violation of a valid court order; and

"(iii) juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State;

shall not be placed in secure detention facilities or secure correctional facilities; and

"(B) juveniles—

"(i) who are not charged with any offense; and

"(ii) who are—

"(I) aliens; or

"(II) alleged to be dependent, neglected, or abused;

shall not be placed in secure detention facilities or secure correctional facilities;",

(J) by amending paragraph (13) to read as follows:

"(13) provide that—

"(A) juveniles alleged to be or found to be delinquent or juveniles within the purview of paragraph (11) will not be detained or confined in any institution in which they have contact with adult inmates; and

"(B) there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in collocated facilities, have been trained and certified to work with juveniles;",

(K) by amending paragraph (14) to read as follows:

"(14) provide that no juvenile will be detained or confined in any jail or lockup for adults except—

"(A) juveniles who are accused of nonstatus offenses and who are detained in such jail or lockup for a period not to exceed 6 hours—

"(i) for processing or release;

"(ii) while awaiting transfer to a juvenile facility; or

"(iii) in which period such juveniles make a court appearance;

and only if such juveniles do not have contact with adult inmates and only if there is in effect in the State a policy that requires individuals who work with both such juveniles and adult inmates in collocated facilities have been trained and certified to work with juveniles;

"(B) juveniles who are accused of nonstatus offenses, who are awaiting an initial court appearance that will occur within 48 hours after being taken into custody (ex-

cluding Saturdays, Sundays, and legal holidays), and who are detained in a jail or lockup—

"(i) in which—

"(I) such juveniles do not have contact with adult inmates; and

"(II) there is in effect in the State a policy that requires individuals who work with both such juveniles and adults inmates in collocated facilities have been trained and certified to work with juveniles; and

"(ii) that—

"(I) is located outside a metropolitan statistical area (as defined by the Office of Management and Budget) and has no existing acceptable alternative placement available;

"(II) is located where conditions of distance to be traveled or the lack of highway, road, or transportation do not allow for court appearances within 48 hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed an additional 48 hours) delay is excusable; or

"(III) is located where conditions of safety exist (such as severe adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonable safe travel;";

(L) in paragraph (15)—

(i) by striking "paragraph (12)(A), paragraph (13), and paragraph (14)" and inserting "paragraphs (11), (12), and (13)", and

(ii) by striking "paragraph (12)(A) and paragraph (13)" and inserting "paragraphs (11) and (12)",

(M) in paragraph (16) by striking "mentally, emotionally, or physically handicapping conditions" and inserting "disability",

(N) by amending paragraph (19) to read as follows:

"(19) provide assurances that—

"(A) any assistance provided under this Act will not cause the displacement (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) of any currently employed employee;

"(B) activities assisted under this Act will not impair an existing collective bargaining relationship, contract for services, or collective bargaining agreement; and

"(C) no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization involved;",

(O) by amending paragraph (22) to read as follows:

"(22) provide that the State agency designated under paragraph (1) will—

"(A) to the extent practicable give priority in funding to programs and activities that are based on rigorous, systematic, and objective research that is scientifically based;

"(B) from time to time, but not less than annually, review its plan and submit to the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, that it considers necessary; and

"(C) not expend funds to carry out a program if the recipient of funds who carried out such program during the preceding 2-year period fails to demonstrate, before the expiration of such 2-year period, that such program achieved substantial success in achieving the goals specified in the application submitted by such recipient to the State agency;",

(P) by amending paragraph (23) to read as follows:

"(23) address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups, who come into contact with the juvenile justice system;",

(Q) by amending paragraph (24) to read as follows:

"(24) provide that if a juvenile is taken into custody for violating a valid court order issued for committing a status offense—

"(A) an appropriate public agency shall be promptly notified that such juvenile is held in custody for violating such order;

"(B) not later than 24 hours during which such juvenile is so held, an authorized representative of such agency shall interview, in person, such juvenile; and

"(C) not later than 48 hours during which such juvenile is so held—

"(i) such representative shall submit an assessment to the court that issued such order, regarding the immediate needs of such juvenile; and

"(ii) such court shall conduct a hearing to determine—

"(I) whether there is reasonable cause to believe that such juvenile violated such order; and

"(II) the appropriate placement of such juvenile pending disposition of the violation alleged;",

(R) in paragraph (25)—

(i) by striking "1992" and inserting "2000", and

(ii) by striking the period at the end and inserting a semicolon,

(S) by redesignating paragraphs (7) through (25) as paragraphs (6) through (24), respectively, and

(T) by adding at the end the following:

"(25) specify a percentage (if any), not to exceed 5 percent, of funds received by the State under section 222 (other than funds made available to the State advisory group under section 222(d)) that the State will reserve for expenditure by the State

to provide incentive grants to units of general local government that reduce the caseload of probation officers within such units;

"(26) provide that the State, to the maximum extent practicable, will implement a system to ensure that if a juvenile is before a court in the juvenile justice system, public child welfare records (including child protective services records) relating to such juvenile that are on file in the geographical area under the jurisdiction of such court will be made known to such court;

"(27) establish policies and systems to incorporate relevant child protective services records into juvenile justice records for purposes of establishing and implementing treatment plans for juvenile offenders; and

"(28) provide assurances that juvenile offenders whose placement is funded through section 472 of the Social Security Act (42 U.S.C. 672) receive the protections specified in section 471 of such Act (42 U.S.C. 671), including a case plan and case plan review as defined in section 475 of such Act (42 U.S.C. 675).",

(2) by amending subsection (c) to read as follows:

"(c) If a State fails to comply with any of the applicable requirements of paragraphs (11), (12), (13), and (22) of subsection (a) in any fiscal year beginning after September 30, 2001, then—

"(1) subject to paragraph (2), the amount allocated to such State under section 222 for the subsequent fiscal year shall be reduced by not less than 20 percent for each such paragraph with respect to which the failure occurs, and

"(2) the State shall be ineligible to receive any allocation under such section for such fiscal year unless—

"(A) the State agrees to expend 50 percent of the amount allocated to the State for such fiscal year to achieve compliance with any such paragraph with respect to which the State is in noncompliance; or

"(B) the Administrator determines that the State—

"(i) has achieved substantial compliance with such applicable requirements with respect to which the State was not in compliance; and

"(ii) has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance with such applicable requirements within a reasonable time.",

(3) in subsection (d)—

(A) by striking "allotment" and inserting "allocation", and

(B) by striking "subsection (a) (12)(A), (13), (14) and (23)" each place it appears and inserting "paragraphs (11), (12), (13), and (22) of subsection (a)", and

(4) by adding at the end the following:

"(e) Notwithstanding any other provision of law, the Administrator shall establish appropriate administrative and supervisory board membership requirements for a State agency designated under subsection (a)(1) and permit the State advisory group appointed under subsection (a)(3) to operate as the supervisory board for such agency, at the discretion of the chief executive officer of the State.

"(f) TECHNICAL ASSISTANCE.—

"(1) IN GENERAL.—The Administrator shall provide technical and financial assistance to an eligible organization composed of member representatives of the State advisory groups appointed under subsection (a)(3) to assist such organization to carry out the functions specified in paragraph (2).

"(2) ASSISTANCE.—To be eligible to receive such assistance, such organization shall agree to carry out activities that include—

"(A) conducting an annual conference of such member representatives for purposes relating to the activities of such State advisory groups;

"(B) disseminating information, data, standards, advanced techniques, and program models;

"(C) reviewing Federal policies regarding juvenile justice and delinquency prevention;

"(D) advising the Administrator with respect to particular functions or aspects of the work of the Office; and

"(E) advising the President and Congress with regard to State perspectives on the operation of the Office and Federal legislation pertaining to juvenile justice and delinquency prevention.".

SEC. 12210. JUVENILE DELINQUENCY PREVENTION BLOCK GRANT PROGRAM.

Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended—

(1) by striking parts C, D, E, F, G, and H,

(2) by striking the 1st part I,

(3) by redesignating the 2d part I as part F, and

(4) by inserting after part B the following:

"PART C—JUVENILE DELINQUENCY PREVENTION BLOCK GRANT PROGRAM

"SEC. 241. AUTHORITY TO MAKE GRANTS.

"(a) GRANTS TO ELIGIBLE STATES.—The Administrator may make grants to eligible States, from funds allocated under section 242, for the purpose of providing financial assistance to eligible entities to carry out projects designed to prevent juvenile delinquency, including—

"(1) projects that provide treatment (including treatment for mental health problems) to juvenile offenders, and juveniles who are at risk of becoming juvenile offenders, who are victims of child abuse or neglect or who have experienced violence in their homes, at school, or in the community, and to their families, in order to reduce the likelihood that such juveniles will commit violations of law;

"(2) educational projects or supportive services for delinquent or other juveniles—

"(A) to encourage juveniles to remain in elementary and secondary schools or in alternative learning situations in educational settings;

"(B) to provide services to assist juveniles in making the transition to the world of work and self-sufficiency;

"(C) to assist in identifying learning difficulties (including learning disabilities);

"(D) to prevent unwarranted and arbitrary suspensions and expulsions;

"(E) to encourage new approaches and techniques with respect to the prevention of school violence and vandalism;

"(F) which assist law enforcement personnel and juvenile justice personnel to more effectively recognize and provide for learning-disabled and other juveniles with disabilities;

"(G) which develop locally coordinated policies and programs among education, juvenile justice, and social service agencies; or

"(H) to provide services to juveniles with serious mental and emotional disturbances (SED) in need of mental health services;

"(3) projects which expand the use of probation officers—

"(A) particularly for the purpose of permitting nonviolent juvenile offenders (including status offenders) to remain at home with their families as an alternative to incarceration or institutionalization; and

"(B) to ensure that juveniles follow the terms of their probation;

"(4) counseling, training, and mentoring programs, which may be in support of academic tutoring, vocational and technical training, and drug and violence prevention counseling, that are designed to link at-risk juveniles, juvenile offenders, or juveniles who have a parent or legal guardian who is or was incarcerated in a Federal, State, or local correctional facility or who is otherwise under the jurisdiction of a Federal, State, or local criminal justice system, particularly juveniles residing in low-income and high-crime areas and juveniles experiencing educational failure, with responsible individuals (such as law enforcement officers, Department of Defense personnel, individuals working with local businesses, and individuals working with community-based and faith-based organizations and agencies) who are properly screened and trained;

"(5) community-based projects and services (including literacy and social service programs) which work with juvenile offenders and juveniles who are at risk of becoming juvenile offenders, including those from families with limited English-speaking proficiency, their parents, their siblings, and other family members during and after incarceration of the juvenile offenders, in order to strengthen families, to allow juvenile offenders to be retained in their homes, and to prevent the involvement of other juvenile family members in delinquent activities;

"(6) projects designed to provide for the treatment (including mental health services) of juveniles for dependence on or abuse of alcohol, drugs, or other harmful substances;

"(7) projects which leverage funds to provide scholarships for postsecondary education and training for low-income juveniles who reside in neighborhoods with high rates of poverty, violence, and drug-related crimes;

"(8) projects which provide for an initial intake screening of each juvenile taken into custody—

"(A) to determine the likelihood that such juvenile will commit a subsequent offense; and

"(B) to provide appropriate interventions (including mental health services) to prevent such juvenile from committing subsequent offenses;

"(9) projects (including school- or community-based projects) that are designed to prevent, and reduce the rate of, the participation of juveniles in gangs that commit crimes (particularly violent crimes), that unlawfully use firearms and other weapons, or that unlawfully traffic in drugs and that involve, to the extent practicable, families and other community members (including law enforcement personnel and members of the business community) in the activities conducted under such projects;

"(10) comprehensive juvenile justice and delinquency prevention projects that meet the needs of juveniles through the collaboration of the many local service systems juveniles encounter, including schools, courts, law enforcement agencies, child protection agencies, mental health agencies, welfare services, health care agencies (including collaboration on appropriate prenatal care for pregnant juvenile offenders), private nonprofit agencies, and public recreation agencies offering services to juveniles;

"(11) to develop, implement, and support, in conjunction with public and private agencies, organizations, and businesses, projects for the employment of juveniles and referral to job training programs (including referral to Federal job training programs);

"(12) delinquency prevention activities which involve youth clubs, sports, recreation and parks, peer counseling and teaching, the arts, leadership development, community service, volunteer service, before- and after-school programs, violence prevention activities, mediation skills training, camping, environmental education, ethnic or cultural enrichment, tutoring, and academic enrichment;

"(13) to establish policies and systems to incorporate relevant child protective services records into juvenile justice records for purposes of establishing treatment plans for juvenile offenders;

"(14) programs that encourage social competencies, problem-solving skills, and communication skills, youth leadership, and civic involvement;

"(15) programs that focus on the needs of young girls at-risk of delinquency or status offenses;

"(16) projects which provide for—

"(A) an assessment by a qualified mental health professional of incarcerated juveniles who are suspected to be in need of mental health services;

"(B) the development of an individualized treatment plan for those incarcerated juveniles determined to be in need of such services;

"(C) the inclusion of a discharge plan for incarcerated juveniles receiving mental health services that addresses aftercare services; and

"(D) all juveniles receiving psychotropic medications to be under the care of a licensed mental health professional;

"(17) after-school programs that provide at-risk juveniles and juveniles in the juvenile justice system with a range of age-appropriate activities, including tutoring, mentoring, and other educational and enrichment activities;

"(18) programs related to the establishment and maintenance of a school violence hotline, based on a public-private partnership, that students and parents can use to report suspicious, violent, or threatening behavior to local school and law enforcement authorities;

"(19) programs (excluding programs to purchase guns from juveniles) designed to reduce the unlawful acquisition and illegal use of guns by juveniles, including partnerships between law enforcement agencies, health professionals, school officials, firearms manufacturers, consumer groups, faith-based groups and community organizations;

"(20) programs designed to prevent animal cruelty by juveniles and to counsel juveniles who commit animal cruelty offenses, including partnerships among law enforcement agencies, animal control officers, social services agencies, and school officials;

"(21) programs that provide suicide prevention services for incarcerated juveniles and for juveniles leaving the incarceration system;

"(22) programs to establish partnerships between State educational agencies and local educational agencies for the design and implementation of character education and training programs that reflect the values of parents, teachers, and local communities, and incorporate elements of good character, including honesty, citizenship, courage, justice, respect, personal responsibility, and trustworthiness;

"(23) programs that foster strong character development in at-risk juveniles and juveniles in the juvenile justice system;

"(24) local programs that provide for immediate psychological evaluation and follow-up treatment (including evaluation and treatment during a mandatory holding period for not less than 24 hours) for juveniles who bring a gun on school grounds without permission from appropriate school authorities; and

"(25) other activities that are likely to prevent juvenile delinquency.

"(b) GRANTS TO ELIGIBLE INDIAN TRIBES.—The Administrator may make grants to eligible Indian tribes from funds allocated under section 242(b), to carry out projects of the kinds described in subsection (a).

"SEC. 242. ALLOCATION.

"(a) ALLOCATION AMONG ELIGIBLE STATES.—Subject to subsection (b), funds appropriated to carry out this part shall be allocated among eligible States proportionately based on the population that is less than 18 years of age in the eligible States.

"(b) ALLOCATION AMONG INDIAN TRIBES COLLECTIVELY.—Before allocating funds under subsection (a) among eligible States, the Administrator shall allocate among eligible Indian tribes as determined under section 246(a), an aggregate amount equal to the

amount such tribes would be allocated under subsection (a), and without regard to this subsection, if such tribes were treated collectively as an eligible State.

"SEC. 243. ELIGIBILITY OF STATES.

"(a) APPLICATION.—To be eligible to receive a grant under section 241, a State shall submit to the Administrator an application that contains the following:

"(1) An assurance that the State will use—

"(A) not more than 5 percent of such grant, in the aggregate, for—

"(i) the costs incurred by the State to carry out this part; and

"(ii) to evaluate, and provide technical assistance relating to, projects and activities carried out with funds provided under this part; and

"(B) the remainder of such grant to make grants under section 244.

"(2) An assurance that, and a detailed description of how, such grant will supplement, and not supplant State and local efforts to prevent juvenile delinquency.

"(3) An assurance that such application was prepared after consultation with and participation by the State advisory group, community-based organizations, and organizations in the local juvenile justice system, that carry out programs, projects, or activities to prevent juvenile delinquency.

"(4) An assurance that the State advisory group will be afforded the opportunity to review and comment on all grant applications submitted to the State agency.

"(5) An assurance that each eligible entity described in section 244 that receives an initial grant under section 244 to carry out a project or activity shall also receive an assurance from the State that such entity will receive from the State, for the subsequent fiscal year to carry out such project or activity, a grant under such section in an amount that is proportional, based on such initial grant and on the amount of the grant received under section 241 by the State for such subsequent fiscal year, but that does not exceed the amount specified for such subsequent fiscal year in such application as approved by the State.

"(6) Such other information and assurances as the Administrator may reasonably require by rule.

"(b) APPROVAL OF APPLICATIONS.—

"(1) APPROVAL REQUIRED.—Subject to paragraph (2), the Administrator shall approve an application, and amendments to such application submitted in subsequent fiscal years, that satisfy the requirements of subsection (a).

"(2) LIMITATION.—The Administrator may not approve such application (including amendments to such application) for a fiscal year unless—

"(A)(i) the State submitted a plan under section 223 for such fiscal year; and

"(ii) such plan is approved by the Administrator for such fiscal year; or

"(B) the Administrator waives the application of subparagraph (A) to such State for such fiscal year, after finding good cause for such a waiver.

"SEC. 244. GRANTS FOR LOCAL PROJECTS.

"(a) GRANTS BY STATES.—Using a grant received under section 241, a State may make grants to eligible entities whose applications are received by the State, and reviewed by the State advisory group, to carry out projects and activities described in section 241.

"(b) SPECIAL CONSIDERATION.—For purposes of making grants under subsection (a), the State shall give special consideration to eligible entities that—

"(1) propose to carry out such projects in geographical areas in which there is—

"(A) a disproportionately high level of serious crime committed by juveniles; or

"(B) a recent rapid increase in the number of nonstatus offenses committed by juveniles;

"(2)(A) agreed to carry out such projects or activities that are multidisciplinary and involve more than 2 private nonprofit agencies, organizations, and institutions that have experience dealing with juveniles; or

"(B) represent communities that have a comprehensive plan designed to identify at-risk juveniles and to prevent or reduce the rate of juvenile delinquency, and that involve other entities operated by individuals who have a demonstrated history of involvement in activities designed to prevent juvenile delinquency; and

"(3) the amount of resources (in cash or in kind) such entities will provide to carry out such projects and activities.

"SEC. 245. ELIGIBILITY OF ENTITIES.

"(a) ELIGIBILITY.—Except as provided in subsection (b), to be eligible to receive a grant under section 244, a unit of general purpose local government, acting jointly with not fewer than 2 private nonprofit agencies, organizations, and institutions that have experience dealing with juveniles, shall submit to the State an application that contains the following:

"(1) An assurance that such applicant will use such grant, and each such grant received for the subsequent fiscal year, to carry out throughout a 2-year period a project or activity described in reasonable detail, and of a kind described in one or more of paragraphs (1) through (25) of section 241(a) as specified in, such application.

"(2) A statement of the particular goals such project or activity is designed to achieve, and the methods such entity will use to achieve, and assess the achievement of, each of such goals.

"(3) A statement identifying the research (if any) such entity relied on in preparing such application.

"(b) LIMITATION.—If an eligible entity that receives a grant under section 244 to carry out a project or activity for a 2-year period, and receives technical assistance from the State or the Administrator after requesting such technical assistance (if any), fails to demonstrate, before the expiration of such 2-year period, that such project or such activity has achieved substantial success in achiev-

ing the goals specified in the application submitted by such entity to receive such grants, then such entity shall not be eligible to receive any subsequent grant under such section to continue to carry out such project or activity.

"SEC. 246. GRANTS TO INDIAN TRIBES.

"(a) ELIGIBILITY.—

"(1) APPLICATION.—To be eligible to receive a grant under section 241(b), an Indian tribe shall submit to the Administrator an application in accordance with this section, in such form and containing such information as the Administrator may require by rule.

"(2) PLANS.—Such application shall include a plan for conducting programs, projects, and activities described in section 241(a), which plan shall—

"(A) provide evidence that the applicant Indian tribe performs law enforcement functions (as determined by the Secretary of the Interior);

"(B) identify the juvenile justice and delinquency problems and juvenile delinquency prevention needs to be addressed by activities conducted with funds provided by the grant for which such application is submitted, by the Indian tribe in the geographical area under the jurisdiction of the Indian tribe;

"(C) provide for fiscal control and accounting procedures that—

"(i) are necessary to ensure the prudent use, proper disbursement, and accounting of grants received by applicants under this section; and

"(ii) are consistent with the requirement specified in subparagraph (B); and

"(D) comply with the requirements specified in section 223(a) (excluding any requirement relating to consultation with a State advisory group) and with the requirements specified in section 222(c); and

"(E) contain such other information, and be subject to such additional requirements, as the Administrator may reasonably require by rule to ensure the effectiveness of the projects for which grants are made under section 241(b).

"(b) FACTORS FOR CONSIDERATION.—For the purpose of selecting eligible applicants to receive grants under section 241(b), the Administrator shall consider—

"(1) the resources that are available to each applicant Indian tribe that will assist, and be coordinated with, the overall juvenile justice system of the Indian tribe; and

"(2) with respect to each such applicant—

"(A) the juvenile population; and

"(B) the population and the entities that will be served by projects proposed to be carried out with the grant for which the application is submitted.

"(c) GRANT PROCESS.—

"(1) SELECTION OF GRANT RECIPIENTS.—

"(A) SELECTION REQUIREMENTS.—Except as provided in paragraph (2), the Administrator shall—

"(i) make grants under this section on a competitive basis; and

"(ii) specify in writing to each applicant selected to receive a grant under this section, the terms and conditions on which such grant is made to such applicant.

"(B) PERIOD OF GRANT.—A grant made under this section shall be available for expenditure during a 2–year period.

"(2) EXCEPTION.—If—

"(A) in the 2-year period for which a grant made under this section shall be expended, the recipient of such grant applies to receive a subsequent grant under this section; and

"(B) the Administrator determines that such recipient performed during the year preceding the 2–year period for which such recipient applies to receive such subsequent grant satisfactorily and in accordance with the terms and conditions applicable to the grant received;

then the Administrator may waive the application of the competition-based requirement specified in paragraph (1)(A)(i) and may allow the applicant to incorporate by reference in the current application the text of the plan contained in the recipient's most recent application previously approved under this section.

"(3) AUTHORITY TO MODIFY APPLICATION PROCESS FOR SUBSEQUENT GRANTS.—The Administrator may modify by rule the operation of subsection (a) with respect to the submission and contents of applications for subsequent grants described in paragraph (2).

"(d) REPORTING REQUIREMENT.—Each Indian tribe that receives a grant under this section shall be subject to the fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31, United States Code.

"(e) MATCHING REQUIREMENT.—(1) Funds appropriated for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of any program or project with a matching requirement funded under this section.

"(2) Paragraph (1) shall not apply with respect to funds appropriated before the date of the enactment of the Juvenile Justice and Delinquency Prevention Act of 2002.

"(3) If the Administrator determines that an Indian tribe does not have sufficient funds available to meet the non-Federal share of the cost of any program or activity to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent the Administrator deems necessary.".

SEC. 12211. RESEARCH; EVALUATION; TECHNICAL ASSISTANCE; TRAINING.

Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended by inserting after part C, as added by section 12510, the following:

"PART D—RESEARCH; EVALUATION; TECHNICAL ASSISTANCE; TRAINING

"SEC. 251. RESEARCH AND EVALUATION; STATISTICAL ANALYSES; INFORMATION DISSEMINATION.

"(a) RESEARCH AND EVALUATION.—(1) The Administrator may—

"(A) plan and identify the purposes and goals of all agreements carried out with funds provided under this subsection; and

"(B) conduct research or evaluation in juvenile justice matters, for the purpose of providing research and evaluation relating to—

"(i) the prevention, reduction, and control of juvenile delinquency and serious crime committed by juveniles;

"(ii) the link between juvenile delinquency and the incarceration of members of the families of juveniles;

"(iii) successful efforts to prevent first-time minor offenders from committing subsequent involvement in serious crime;

"(iv) successful efforts to prevent recidivism;

"(v) the juvenile justice system;

"(vi) juvenile violence;

"(vii) appropriate mental health services for juveniles and youth at risk of participating in delinquent activities;

"(viii) reducing the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups;

"(ix) evaluating services, treatment, and aftercare placement of juveniles who were under the care of the State child protection system before their placement in the juvenile justice system;

"(x) determining—

"(I) the frequency, seriousness, and incidence of drug use by youth in schools and communities in the States using, if appropriate, data submitted by the States pursuant to this subparagraph and subsection (b); and

"(II) the frequency, degree of harm, and morbidity of violent incidents, particularly firearm-related injuries and fatalities, by youth in schools and communities in the States, including information with respect to—

"(aa) the relationship between victims and perpetrators;

"(bb) demographic characteristics of victims and perpetrators; and

"(cc) the type of weapons used in incidents, as classified in the Uniform Crime Reports of the Federal Bureau of Investigation; and

"(xi) other purposes consistent with the purposes of this title and title I.

"(2) The Administrator shall ensure that an equitable amount of funds available to carry out paragraph (1)(B) is used for research and evaluation relating to the prevention of juvenile delinquency.

"(3) Nothing in this subsection shall be construed to permit the development of a national database of personally identifiable information on individuals involved in studies, or in data-collection efforts, carried out under paragraph (1)(B)(x).

"(4) Not later than 1 year after the date of enactment of this paragraph,the Administrator shall conduct a study with respect to juveniles who, prior to placement in the juvenile justice system, were under the care or custody of the State child welfare system, and to juveniles who are unable to return to their family after completing their disposition in the juvenile justice system and who remain wards of the State. Such study shall include—

"(A) the number of juveniles in each category;

"(B) the extent to which State juvenile justice systems and child welfare systems are coordinating services and treatment for such juveniles;

"(C) the Federal and local sources of funds used for placements and post-placement services;

"(D) barriers faced by State in providing services to these juveniles;

"(E) the types of post-placement services used;

"(F) the frequency of case plans and case plan reviews; and

"(G) the extent to which case plans identify and address permanency and placement barriers and treatment plans.

"(b) STATISTICAL ANALYSES.—The Administrator may—

"(1) plan and identify the purposes and goals of all agreements carried out with funds provided under this subsection; and

"(2) undertake statistical work in juvenile justice matters, for the purpose of providing for the collection, analysis, and dissemination of statistical data and information relating to juvenile delinquency and serious crimes committed by juveniles, to the juvenile justice system, to juvenile violence, and to other purposes consistent with the purposes of this title and title I.

"(c) GRANT AUTHORITY AND COMPETITIVE SELECTION PROCESS.—The Administrator may make grants and enter into contracts with public or private agencies, organizations, or individuals and shall use a competitive process, established by rule by the Administrator, to carry out subsections (a) and (b).

"(d) IMPLEMENTATION OF AGREEMENTS.—A Federal agency that makes an agreement under subsections (a)(1)(B) and (b)(2) with the Administrator may carry out such agreement directly or by making grants to or contracts with public and private agencies, institutions, and organizations.

"(e) INFORMATION DISSEMINATION.—The Administrator may—

"(1) review reports and data relating to the juvenile justice system in the United States and in foreign nations (as appropriate), collect data and information from studies and research into all aspects of juvenile delinquency (including the causes,

prevention, and treatment of juvenile delinquency) and serious crimes committed by juveniles;

"(2) establish and operate, directly or by contract, a clearinghouse and information center for the preparation, publication, and dissemination of information relating to juvenile delinquency, including State and local prevention and treatment programs, plans, resources, and training and technical assistance programs; and

"(3) make grants and contracts with public and private agencies, institutions, and organizations, for the purpose of disseminating information to representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, the courts, corrections, schools, and related services, in the establishment, implementation, and operation of projects and activities for which financial assistance is provided under this title.

"SEC. 252. TRAINING AND TECHNICAL ASSISTANCE.

"(a) TRAINING.—The Administrator may—

"(1) develop and carry out projects for the purpose of training representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, to carry out the purposes specified in section 102; and

"(2) make grants to and contracts with public and private agencies, institutions, and organizations for the purpose of training representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, to carry out the purposes specified in section 102.

"(b) TECHNICAL ASSISTANCE.—The Administrator may—

"(1) develop and implement projects for the purpose of providing technical assistance to representatives and personnel of public and private agencies and organizations, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, in the establishment, implementation, and operation of programs, projects, and activities for which financial assistance is provided under this title; and

"(2) make grants to and contracts with public and private agencies, institutions, and organizations, for the purpose of providing technical assistance to representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, in the establishment, implementation, and operation of programs, projects, and activities for which financial assistance is provided under this title.

"(c) TRAINING AND TECHNICAL ASSISTANCE TO MENTAL HEALTH PROFESSIONALS AND LAW ENFORCEMENT PERSONNEL.—The Administrator shall provide training and technical assistance to mental health professionals and law enforcement personnel (including public defenders, police officers, probation officers, judges, parole officials, and correctional officers) to address or to promote the develop-

ment, testing, or demonstration of promising or innovative models (including model juvenile and family courts), programs, or delivery systems that address the needs of juveniles who are alleged or adjudicated delinquent and who, as a result of such status, are placed in secure detention or confinement or in nonsecure residential placements.".

SEC. 12212. DEMONSTRATION PROJECTS.

Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended by inserting after part D, as added by section 12511, the following:

"PART E—DEVELOPING, TESTING, AND DEMONSTRATING PROMISING NEW INITIATIVES AND PROGRAMS

"SEC. 261. GRANTS AND PROJECTS.

"(a) AUTHORITY TO MAKE GRANTS.—The Administrator may make grants to and contracts with States, units of general local government, Indian tribal governments, public and private agencies, organizations, and individuals, or combinations thereof, to carry out projects for the development, testing, and demonstration of promising initiatives and programs for the prevention, control, or reduction of juvenile delinquency. The Administrator shall ensure that, to the extent reasonable and practicable, such grants are made to achieve an equitable geographical distribution of such projects throughout the United States.

"(b) USE OF GRANTS.—A grant made under subsection (a) may be used to pay all or part of the cost of the project for which such grant is made.

"SEC. 262. GRANTS FOR TECHNICAL ASSISTANCE.

"The Administrator may make grants to and contracts with public and private agencies, organizations, and individuals to provide technical assistance to States, units of general local government, Indian tribal governments, local private entities or agencies, or any combination thereof, to carry out the projects for which grants are made under section 261.

"SEC. 263. ELIGIBILITY.

"To be eligible to receive a grant made under this part, a public or private agency, Indian tribal government, organization, institution, individual, or combination thereof shall submit an application to the Administrator at such time, in such form, and containing such information as the Administrator may reasonably require by rule.

"SEC. 264. REPORTS.

"Recipients of grants made under this part shall submit to the Administrator such reports as may be reasonably requested by the Administrator to describe progress achieved in carrying out the projects for which such grants are made.".

SEC. 12213. AUTHORIZATION OF APPROPRIATIONS.

Section 299 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671) is amended—

(1) by striking subsection (e), and

(2) by striking subsections (a), (b), and (c), and inserting the following:

"(a) AUTHORIZATION OF APPROPRIATIONS FOR TITLE II (EXCLUDING PARTS C AND E).—(1) There are authorized to be appropriated to carry out this title such sums as may be appropriate for fiscal years 2003, 2004, 2005, 2006, and 2007.

"(2) Of such sums as are appropriated for a fiscal year to carry out this title (other than parts C and E)—

"(A) not more than 5 percent shall be available to carry out part A;

"(B) not less than 80 percent shall be available to carry out part B; and

"(C) not more than 15 percent shall be available to carry out part D.

"(b) AUTHORIZATION OF APPROPRIATIONS FOR PART C.—There are authorized to be appropriated to carry out part C such sums as may be necessary for fiscal years 2003, 2004, 2005, 2006, and 2007.

"(c) AUTHORIZATION OF APPROPRIATIONS FOR PART E.—There are authorized to be appropriated to carry out part E, and authorized to remain available until expended, such sums as may be necessary for fiscal years 2003, 2004, 2005, 2006, and 2007.".

SEC. 12214. ADMINISTRATIVE AUTHORITY.

Section 299A of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5672) is amended—

(1) in subsection (d) by striking "as are consistent with the purpose of this Act" and inserting "only to the extent necessary to ensure that there is compliance with the specific requirements of this title or to respond to requests for clarification and guidance relating to such compliance", and

(2) by adding at the end the following:

"(e) If a State requires by law compliance with the requirements described in paragraphs (11), (12), and (13) of section 223(a), then for the period such law is in effect in such State such State shall be rebuttably presumed to satisfy such requirements.".

SEC. 12215. USE OF FUNDS.

Section 299C(c) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5674(c)) is amended to read as follows:

"(c) No funds may be paid under this title to a residential program (excluding a program in a private residence) unless—

"(1) there is in effect in the State in which such placement or care is provided, a requirement that the provider of such placement or such care may be licensed only after satisfying, at a minimum, explicit standards of discipline that prohibit neglect, and physical and mental abuse, as defined by State law;

"(2) such provider is licensed as described in paragraph (1) by the State in which such placement or care is provided; and

"(3) in a case involving a provider located in a State that is different from the State where the order for placement originates, the chief administrative officer of the public agency or the officer of the court placing the juvenile certifies that such provider—

"(A) satisfies the originating State's explicit licensing standards of discipline that prohibit neglect, physical and

mental abuse, and standards for education and health care as defined by that State's law; and

"(B) otherwise complies with the Interstate Compact on the Placement of Children as entered into by such other State.".

SEC. 12216. LIMITATIONS ON USE OF FUNDS.

Part F of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671 et seq.), as so redesignated by section 12510, is amended adding at the end the following:

"SEC. 299F. LIMITATIONS ON USE OF FUNDS.

"None of the funds made available to carry out this title may be used to advocate for, or support, the unsecured release of juveniles who are charged with a violent crime.".

SEC. 12217. RULES OF CONSTRUCTION.

Part F of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671 et seq.), as so redesignated by section 12510 and amended by section 12516, is amended adding at the end the following:

"SEC. 299G. RULES OF CONSTRUCTION.

"Nothing in this title or title I shall be construed—

"(1) to prevent financial assistance from being awarded through grants under this title to any otherwise eligible organization; or

"(2) to modify or affect any Federal or State law relating to collective bargaining rights of employees.".

SEC. 12218. LEASING SURPLUS FEDERAL PROPERTY.

Part F of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671 et seq.), as so redesignated by section 12510 and amended by sections 12516 and 12517, is amended adding at the end the following:

"SEC. 299H. LEASING SURPLUS FEDERAL PROPERTY.

"The Administrator may receive surplus Federal property (including facilities) and may lease such property to States and units of general local government for use in or as facilities for juvenile offenders, or for use in or as facilities for delinquency prevention and treatment activities.".

SEC. 12219. ISSUANCE OF RULES.

Part F of title II or the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671 et seq.), as so redesignated by section 12510 and amended by sections 12516, 12517, and 12518, is amended adding at the end the following:

"SEC. 299I. ISSUANCE OF RULES.

"The Administrator shall issue rules to carry out this title, including rules that establish procedures and methods for making grants and contracts, and distributing funds available, to carry out this title.".

SEC. 12220. CONTENT OF MATERIALS.

Part F of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671 et seq.), as so redesignated by section 12510 and amended by sections 12516, 12517, 12518, and 12519, is amended by adding at the end the following:

"SEC. 299J. CONTENT OF MATERIALS.

"Materials produced, procured, or distributed both using funds appropriated to carry out this Act and for the purpose of preventing hate crimes that result in acts of physical violence, shall not recommend or require any action that abridges or infringes upon the constitutionally protected rights of free speech, religion, or equal protection of juveniles or of their parents or legal guardians.".

SEC. 12221. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TECHNICAL AMENDMENTS.—The Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) is amended—

(1) in section 202(b) by striking "prescribed for GS–18 of the General Schedule by section 5332" and inserting "payable under section 5376",

(2) in section 221(b)(2) by striking the last sentence,

(3) in section 299D by striking subsection (d), and

(4) by striking title IV, as originally enacted by Public Law 93–415 (88 Stat. 1132–1143).

(b) CONFORMING AMENDMENTS.—(1) The Victims of Child Abuse Act of 1990 (42 U.S.C. 13001 et seq.) is amended—

(A) in section 214(b)(1) by striking "262, 293, and 296 of subpart II of title II" and inserting "299B and 299E",

(B) in section 214A(c)(1) by striking "262, 293, and 296 of subpart II of title II" and inserting "299B and 299E",

(C) in section 217(c)(1) by striking "sections 262, 293, and 296 of subpart II of title II" and inserting "sections 299B and 299E", and

(D) in section 223(c) by striking "section 262, 293, and 296" and inserting "sections 262, 299B, and 299E".

(2) Section 404(a)(5)(E) of the Missing Children's Assistance Act (42 U.S.C. 5773) is amended by striking "section 313" and inserting "section 331".

SEC. 12222. INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS.

(a) AMENDMENT.—Title V of the of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5781–5785), as added by Public Law 102–586, is amended to read as follows:

"TITLE V—INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS

"SEC. 501. SHORT TITLE.

"This title may be cited as the 'Incentive Grants for Local Delinquency Prevention Programs Act of 2002'.

"SEC. 502. DEFINITION.

"In this title, the term 'State advisory group' means the advisory group appointed by the chief executive officer of a State under a plan described in section 223(a).

"SEC. 503. DUTIES AND FUNCTIONS OF THE ADMINISTRATOR.

"The Administrator shall—

"(1) issue such rules as are necessary or appropriate to carry out this title;

"(2) make such arrangements as are necessary and appropriate to facilitate coordination and policy development among all activities funded through the Department of Justice relating to delinquency prevention (including the preparation of an annual comprehensive plan for facilitating such coordination and policy development);

"(3) provide adequate staff and resources necessary to properly carry out this title; and

"(4) not later than 180 days after the end of each fiscal year, submit a report to the chairman of the Committee on Education and the Workforce of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate—

"(A) describing activities and accomplishments of grant activities funded under this title;

"(B) describing procedures followed to disseminate grant activity products and research findings;

"(C) describing activities conducted to develop policy and to coordinate Federal agency and interagency efforts related to delinquency prevention; and

"(D) identifying successful approaches and making recommendations for future activities to be conducted under this title.

"SEC. 504. GRANTS FOR DELINQUENCY PREVENTION PROGRAMS.

"(a) PURPOSES.—The Administrator may make grants to a State, to be transmitted through the State advisory group to units of local government that meet the requirements of subsection (b), for delinquency prevention programs and activities for juveniles who have had contact with the juvenile justice system or who are likely to have contact with the juvenile justice system, including the provision to juveniles and their families of—

"(1) alcohol and substance abuse prevention services;

"(2) tutoring and remedial education, especially in reading and mathematics;

"(3) child and adolescent health and mental health services;

"(4) recreation services;

"(5) leadership and youth development activities;

"(6) the teaching that people are and should be held accountable for their actions;

"(7) assistance in the development of job training skills; and

"(8) other data-driven evidence based prevention programs.

"(b) ELIGIBILITY.—The requirements of this subsection are met with respect to a unit of general local government if—

"(1) the unit is in compliance with the requirements of part B of title II;

"(2) the unit has submitted to the State advisory group a minimum 3-year comprehensive plan outlining the unit's local front end plans for investment for delinquency prevention and early intervention activities;

"(3) the unit has included in its application to the Administrator for formula grant funds a summary of the minimum 3-year comprehensive plan described in paragraph (2);

"(4) pursuant to its minimum 3-year comprehensive plan, the unit has appointed a local policy board of not fewer than 15 and not more than 21 members, with balanced representa-

tion of public agencies and private nonprofit organizations serving juveniles, their families, and business and industry;

"(5) the unit has, in order to aid in the prevention of delinquency, included in its application a plan for the coordination of services to at-risk juveniles and their families, including such programs as nutrition, energy assistance, and housing;

"(6) the local policy board is empowered to make all recommendations for distribution of funds and evaluation of activities funded under this title; and

"(7) the unit or State has agreed to provide a 50 percent match of the amount of the grant, including the value of in-kind contributions, to fund the activity.

"(c) PRIORITY.—In considering grant applications under this section, the Administrator shall give priority to applicants that demonstrate ability in—

"(1) plans for service and agency coordination and collaboration including the colocation of services;

"(2) innovative ways to involve the private nonprofit and business sector in delinquency prevention activities;

"(3) developing or enhancing a statewide subsidy program to local governments that is dedicated to early intervention and delinquency prevention;

"(4) coordinating and collaborating with programs established in local communities for delinquency prevention under part C of this subtitle; and

"(5) developing data-driven prevention plans, employing evidence-based prevention strategies, and conducting program evaluations to determine impact and effectiveness.

"SEC. 505. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title such sums as may be necessary for fiscal years 2004, 2005, 2006, 2007, and 2008.".

(b) EFFECTIVE DATE; APPLICATION OF AMENDMENT.—The amendment made by subsection (a) shall take effect on October 1, 2002, and shall not apply with respect to grants made before such date.

SEC. 12223. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall apply only with respect to fiscal years beginning after September 30, 2002.

Subtitle C—Juvenile Disposition Hearing

SEC. 12301. JUVENILE DISPOSITION HEARING.

Section 5037 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in the second sentence—

(i) by striking "enter an order of restitution pursuant to section 3556,"; and

(ii) by inserting after "official detention" the following: "which may include a term of juvenile delinquent supervision to follow detention"; and

(B) by inserting after the second sentence the following: "In addition, the court may enter an order of restitution pursuant to section 3556.";

(2) in subsection (b)—

(A) by striking the last sentence; and

(B) by adding at the end the following:

"The provisions dealing with probation set forth in sections 3563 and 3564 are applicable to an order placing a juvenile on probation. If the juvenile violates a condition of probation at any time prior to the expiration or termination of the term of probation, the court may, after a dispositional hearing and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to section 994 of title 28, revoke the term of probation and order a term of official detention. The term of official detention authorized upon revocation of probation shall not exceed the terms authorized in section 5037(c)(2) (A) and (B). The application of sections 5037(c)(2) (A) and (B) shall be determined based upon the age of the juvenile at the time of the disposition of the revocation proceeding. If a juvenile is over the age of 21 years old at the time of the revocation proceeding, the mandatory revocation provisions of section 3565(b) are applicable. A disposition of a juvenile who is over the age of 21 years shall be in accordance with the provisions of section 5037(c)(2), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of official detention may continue beyond the juvenile's 26th birthday, and in any other case, no term of imprisonment may continue beyond the juvenile's 24th birthday. A term of official detention may include a term of juvenile delinquent supervision.";

(3) in subsection (c)(1)—

(A) in subparagraph (A), by striking "or";

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following:

"(B) the maximum of the guideline range, pursuant to section 994 of title 28, applicable to an otherwise similarly situated adult defendant unless the court finds an aggravating factor to warrant an upward departure from the otherwise applicable guideline range; or";

(4) in subsection (c)(2)(A), by striking "five years; or" and inserting: "the lesser of—

"(i) five years; or

"(ii) the maximum of the guideline range, pursuant to section 994 of title 28, applicable to an otherwise similarly situated adult defendant unless the court finds an aggravating factor to warrant an upward departure from the otherwise applicable guideline range; or";

(5) in subsection (c)(2)(B)—

(A) in clause (i), by striking "or";

(B) by redesignating clause (ii) as clause (iii); and

(C) by inserting after clause (i) the following:

"(ii) the maximum of the guideline range, pursuant to section 994 of title 28, applicable to an otherwise similarly situated adult defendant unless the court finds an aggravating factor to warrant an upward departure from the otherwise applicable guideline range; or";

(6) by redesignating subsection (d) as subsection (e); and

(7) by inserting after subsection (c) the following:

"(d)(1) The court, in ordering a term of official detention, may include the requirement that the juvenile be placed on a term of juvenile delinquent supervision after official detention.

"(2) The term of juvenile delinquent supervision that may be ordered for a juvenile found to be a juvenile delinquent may not extend—

"(A) in the case of a juvenile who is less than 18 years old, a term that extends beyond the date when the juvenile becomes 21 years old; or

"(B) in the case of a juvenile who is between 18 and 21 years old, a term that extends beyond the maximum term of official detention set forth in section 5037(c)(2) (A) and (B), less the term of official detention ordered.

"(3) The provisions dealing with probation set forth in sections 3563 and 3564 are applicable to an order placing a juvenile on juvenile delinquent supervision.

"(4) The court may modify, reduce, or enlarge the conditions of juvenile delinquent supervision at any time prior to the expiration or termination of the term of supervision after a dispositional hearing and after consideration of the provisions of section 3563 regarding the initial setting of the conditions of probation.

"(5) If the juvenile violates a condition of juvenile delinquent supervision at any time prior to the expiration or termination of the term of supervision, the court may, after a dispositional hearing and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to section 994 of title 18, revoke the term of supervision and order a term of official detention. The term of official detention which is authorized upon revocation of juvenile delinquent supervision shall not exceed the term authorized in section 5037(c)(2) (A) and (B), less any term of official detention previously ordered. The application of sections 5037(c)(2) (A) and (B) shall be determined based upon the age of the juvenile at the time of the disposition of the revocation proceeding. If a juvenile is over the age of 21 years old at the time of the revocation proceeding, the mandatory revocation provisions of section 3565(b) are applicable. A disposition of a juvenile who is over the age of 21 years old shall be in accordance with the provisions of section 5037(c)(2), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of official detention may continue beyond the juvenile's 26th birthday, and in any other case, no term of official detention may continue beyond the juvenile's 24th birthday.

"(6) When a term of juvenile delinquent supervision is revoked and the juvenile is committed to official detention, the court may include a requirement that the juvenile be placed on a term of juvenile delinquent supervision. Any term of juvenile delinquent supervision ordered following revocation for a juvenile who is over the age of 21

years old at the time of the revocation proceeding shall be in accordance with the provisions of section 5037(d)(1), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of juvenile delinquent supervision may continue beyond the juvenile's 26th birthday, and in any other case, no term of juvenile delinquent supervision may continue beyond the juvenile's 24th birthday.".

TITLE III—INTELLECTUAL PROPERTY

Subtitle A—Patent and Trademark Office Authorization

SEC. 13101. SHORT TITLE.

This subtitle may be cited as the "Patent and Trademark Office Authorization Act of 2002".

SEC. 13102. AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE.

(a) IN GENERAL.—There are authorized to be appropriated to the United States Patent and Trademark Office for salaries and necessary expenses for each of the fiscal years 2003 through 2008 an amount equal to the fees estimated by the Secretary of Commerce to be collected in each such fiscal year, respectively, under—

(1) title 35, United States Code; and

(2) the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946).

(b) ESTIMATES.—Not later than February 15, of each fiscal year, the Undersecretary of Commerce for Intellectual Property and the Director of the Patent and Trademark Office (in this subtitle referred to as the Director) shall submit an estimate of all fees referred to under subsection (a) to be collected in the next fiscal year to the chairman and ranking member of—

(1) the Committees on Appropriations and Judiciary of the Senate; and

(2) the Committees on Appropriations and Judiciary of the House of Representatives.

SEC. 13103. ELECTRONIC FILING AND PROCESSING OF PATENT AND TRADEMARK APPLICATIONS.

(a) ELECTRONIC FILING AND PROCESSING.—The Director shall, beginning not later than 90 days after the date of enactment of this Act, and during the 3-year period thereafter, develop an electronic system for the filing and processing of patent and trademark applications, that—

(1) is user friendly; and

(2) includes the necessary infrastructure—

(A) to allow examiners and applicants to send all communications electronically; and

(B) to allow the Office to process, maintain, and search electronically the contents and history of each application.

(b) AUTHORIZATION OF APPROPRIATIONS.—Of amounts authorized under section 13102, there is authorized to be appropriated to carry out subsection (a) of this section not more than $50,000,000 for each of fiscal years 2003, 2004, and 2005. Amounts made available pursuant to this subsection shall remain available until expended.

SEC. 13104. STRATEGIC PLAN.

(a) DEVELOPMENT OF PLAN.—

(1) IN GENERAL.—The Director shall, in close consultation with the Patent Public Advisory Committee and the Trademark Public Advisory Committee, develop a strategic plan that sets forth the goals and methods by which the United States Patent and Trademark Office will, during the 5-year period beginning on January 1, 2003—

(A) enhance patent and trademark quality;

(B) reduce patent and trademark pendency; and

(C) develop and implement an effective electronic system for use by the Patent and Trademark Office and the public for all aspects of the patent and trademark processes, including, in addition to the elements set forth in section 13103, searching, examining, communicating, publishing, and making publicly available, patents and trademark registrations.

(2) CONTENTS AND CONSULTATION.—The strategic plan shall include milestones and objective and meaningful criteria for evaluating the progress and successful achievement of the plan. The Director shall consult with the Public Advisory Committees with respect to the development of each aspect of the strategic plan.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—Not later than 4 months after the date of enactment of this Act, the Director shall submit the plan developed under subsection (a) to the Committees on the Judiciary of the Senate and the House of Representatives.

SEC. 13105. DETERMINATION OF SUBSTANTIAL NEW QUESTION OF PATENTABILITY IN REEXAMINATION PROCEEDINGS.

(a) IN GENERAL.—Sections 303(a) and 312(a) of title 35, United States Code, are each amended by adding at the end the following: "The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any determination of the Director of the United States Patent and Trademark Office that is made under section 303(a) or 312(a) of title 35, United States Code, on or after the date of enactment of this Act.

SEC. 13106. APPEALS IN INTER PARTES REEXAMINATION PROCEEDINGS.

(a) APPEALS BY THIRD-PARTY REQUESTER IN PROCEEDINGS.—Section 315(b) of title 35, United States Code, is amended to read as follows:

"(b) THIRD-PARTY REQUESTER.—A third-party requester—

"(1) may appeal under the provisions of section 134, and may appeal under the provisions of sections 141 through 144, with respect to any final decision favorable to the patentability

of any original or proposed amended or new claim of the patent; and

"(2) may, subject to subsection (c), be a party to any appeal taken by the patent owner under the provisions of section 134 or sections 141 through 144.".

(b) APPEAL TO BOARD OF PATENT APPEALS AND INTERFERENCES.—Section 134(c) of title 35, United States Code, is amended by striking the last sentence.

(c) APPEAL TO COURT OF APPEALS FOR THE FEDERAL CIRCUIT.—Section 141 of title 35, United States Code, is amended in the third sentence by inserting ", or a third-party requester in an inter partes reexamination proceeding, who is" after "patent owner".

(d) EFFECTIVE DATE.—The amendments made by this section apply with respect to any reexamination proceeding commenced on or after the date of enactment of this Act.

Subtitle B—Intellectual Property and High Technology Technical Amendments

SEC. 13201. SHORT TITLE.

This subtitle may be cited as the "Intellectual Property and High Technology Technical Amendments Act of 2002".

SEC. 13202. CLARIFICATION OF REEXAMINATION PROCEDURE ACT OF 1999; TECHNICAL AMENDMENTS.

(a) OPTIONAL INTER PARTES REEXAMINATION PROCEDURES.—Title 35, United States Code, is amended as follows:

(1) Section 311 is amended—

(A) in subsection (a), by striking "person" and inserting "third-party requester"; and

(B) in subsection (c), by striking "Unless the requesting person is the owner of the patent, the" and inserting "The".

(2) Section 312 is amended—

(A) in subsection (a), by striking the second sentence; and

(B) in subsection (b), by striking ", if any".

(3) Section 314(b)(1) is amended—

(A) by striking "(1) This" and all that follows through "(2)" and inserting "(1)";

(B) by striking "the third-party requester shall receive a copy" and inserting "the Office shall send to the third-party requester a copy"; and

(C) by redesignating paragraph (3) as paragraph (2).

(4) Section 315(c) is amended by striking "United States Code,".

(5) Section 317 is amended—

(A) in subsection (a), by striking "patent owner nor the third-party requester, if any, nor privies of either" and inserting "third-party requester nor its privies"; and

(B) in subsection (b), by striking "United States Code,".

(b) CONFORMING AMENDMENTS.—

(1) APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES.—Subsections (a), (b), and (c) of section 134 of title 35, United States Code, are each amended by striking "admin-

istrative patent judge" each place it appears and inserting "primary examiner".

(2) PROCEEDING ON APPEAL.—Section 143 of title 35, United States Code, is amended by amending the third sentence to read as follows: "In an ex parte case or any reexamination case, the Director shall submit to the court in writing the grounds for the decision of the Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Director and the parties in the appeal.".

(c) CLERICAL AMENDMENTS.—

(1) Section 4604(a) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, is amended by striking "Part 3" and inserting "Part III".

(2) Section 4604(b) of that Act is amended by striking "title 25" and inserting "title 35".

(d) EFFECTIVE DATE.—The amendments made by section 4605 (b), (c), and (e) of the Intellectual Property and Communications Omnibus Reform Act, as enacted by section 1000(a)(9) of Public Law 106–113, shall apply to any reexamination filed in the United States Patent and Trademark Office on or after the date of enactment of Public Law 106–113.

SEC. 13203. PATENT AND TRADEMARK EFFICIENCY ACT AMENDMENTS.

(a) DEPUTY COMMISSIONER.—

(1) Section 17(b) of the Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946") (15 U.S.C. 1067(b)), is amended by inserting "the Deputy Commissioner," after "Commissioner,".

(2) Section 6(a) of title 35, United States Code, is amended by inserting "the Deputy Commissioner," after "Commissioner,".

(b) PUBLIC ADVISORY COMMITTEES.—Section 5 of title 35, United States Code, is amended—

(1) in subsection (i), by inserting ", privileged," after "personnel"; and

(2) by adding at the end the following new subsection:

"(j) INAPPLICABILITY OF PATENT PROHIBITION.—Section 4 shall not apply to voting members of the Advisory Committees.".

(c) MISCELLANEOUS.—Section 153 of title 35, United States Code, is amended by striking "and attested by an officer of the Patent and Trademark Office designated by the Director,".

SEC. 13204. DOMESTIC PUBLICATION OF FOREIGN FILED PATENT APPLICATIONS ACT OF 1999 AMENDMENTS.

Section 154(d)(4)(A) of title 35, United States Code, as in effect on November 29, 2000, is amended—

(1) by striking "on which the Patent and Trademark Office receives a copy of the" and inserting "of"; and

(2) by striking "international application" the last place it appears and inserting "publication".

SEC. 13205. DOMESTIC PUBLICATION OF PATENT APPLICATIONS PUBLISHED ABROAD.

Subtitle E of title IV of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, is amended as follows:

(1) Section 4505 is amended to read as follows:

"SEC. 4505. PRIOR ART EFFECT OF PUBLISHED APPLICATIONS.

"Section 102(e) of title 35, United States Code, is amended to read as follows:

"'(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language; or'.".

(2) Section 4507 is amended—

(A) in paragraph (1), by striking "Section 11" and inserting "Section 10";

(B) in paragraph (2), by striking "Section 12" and inserting "Section 11".

(C) in paragraph (3), by striking "Section 13" and inserting "Section 12";

(D) in paragraph (4), by striking "12 and 13" and inserting "11 and 12";

(E) in section 374 of title 35, United States Code, as amended by paragraph (10), by striking "confer the same rights and shall have the same effect under this title as an application for patent published" and inserting "be deemed a publication"; and

(F) by adding at the end the following:

"(12) The item relating to section 374 in the table of contents for chapter 37 of title 35, United States Code, is amended to read as follows:

"'374. Publication of international application.'".

(3) Section 4508 is amended to read as follows:

"SEC. 4508. EFFECTIVE DATE.

"Except as otherwise provided in this section, sections 4502 through 4504 and 4506 through 4507, and the amendments made by such sections, shall be effective as of November 29, 2000, and shall apply only to applications (including international applications designating the United States) filed on or after that date. The amendments made by section 4504 shall additionally apply to any pending application filed before November 29, 2000, if such pending application is published pursuant to a request of the applicant under such procedures as may be established by the Director. Except as otherwise provided in this section, the amendments made by section 4505 shall be effective as of November 29, 2000 and shall apply to all patents and all applications for patents pending on or filed after November 29, 2000. Patents resulting from an international application filed before November 29, 2000 and applications published pursuant to section 122(b) or Article 21(2) of the treaty defined in section 351(a) resulting from an international application filed before November 29, 2000 shall not be effective as prior art as of the filing date of the international application; however, such pat-

ents shall be effective as prior art in accordance with section 102(e) in effect on November 28, 2000.".

SEC. 13206. MISCELLANEOUS CLERICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 35.—The following provisions of title 35, United States Code, are amended:

(1) Section 2(b) is amended in paragraphs (2)(B) and (4)(B), by striking ", United States Code".

(2) Section 3 is amended—

(A) in subsection (a)(2)(B), by striking "United States Code,";

(B) in subsection (b)(2)—

(i) in the first sentence of subparagraph (A), by striking ", United States Code";

(ii) in the first sentence of subparagraph (B)—

(I) by striking "United States Code,"; and

(II) by striking ", United States Code";

(iii) in the second sentence of subparagraph (B)—

(I) by striking "United States Code,"; and

(II) by striking ", United States Code." and inserting a period;

(iv) in the last sentence of subparagraph (B), by striking ", United States Code"; and

(v) in subparagraph (C), by striking ", United States Code"; and

(C) in subsection (c)—

(i) in the subsection caption, by striking ", UNITED STATES CODE"; and

(ii) by striking "United States Code,".

(3) Section 5 is amended in subsections (e) and (g), by striking ", United States Code" each place it appears.

*(4) The table of chapters for part I is amended in the item relating to chapter 3, by striking "**before**" and inserting "**Before**".*

(5) The item relating to section 21 in the table of contents for chapter 2 is amended to read as follows:

"21. Filing date and day for taking action.".

(6) The item relating to chapter 12 in the table of chapters for part II is amended to read as follows:

"12. Examination of Application** ..... **131".

(7) The item relating to section 116 in the table of contents for chapter 11 is amended to read as follows:

"116. Inventors.".

(8) Section 154(b)(4) is amended by striking ", United States Code,".

(9) Section 156 is amended—

(A) in subsection (b)(3)(B), by striking "paragraphs" and inserting "paragraph";

(B) in subsection (d)(2)(B)(i), by striking "below the office" and inserting "below the Office"; and

(C) in subsection (g)(6)(B)(iii), by striking "submittted" and inserting "submitted".

(10) The item relating to section 183 in the table of contents for chapter 17 is amended by striking "of" and inserting "to".

(11) Section 185 is amended by striking the second period at the end of the section.

(12) Section 201(a) is amended—

(A) by striking "United States Code,"; and

(B) by striking "5, United States Code." and inserting "5.".

(13) Section 202 is amended—

(A) in subsection (b)(4), by striking "last paragraph of section 203(2)" and inserting "section 203(b)"; and

(B) in subsection (c)—

(i) in paragraph (4), by striking "rights;" and inserting "rights,"; and

(ii) in paragraph (5), by striking "of the United States Code".

(14) Section 203 is amended—

(A) in paragraph (2)—

(i) by striking "(2)" and inserting "(b)";

(ii) by striking the quotation marks and comma before "as appropriate"; and

(iii) by striking "paragraphs (a) and (c)" and inserting "paragraphs (1) and (3) of subsection (a)"; and

(B) in the first paragraph—

(i) by striking "(a)", "(b)", "(c)", and "(d)" and inserting "(1)", "(2)", "(3)", and "(4)", respectively; and

(ii) by striking "(1." and inserting "(a)".

(15) Section 209 is amended in subsections (d)(2) and (f), by striking "of the United States Code".

(16) Section 210 is amended—

(A) in subsection (a)—

(i) in paragraph (11), by striking "5901" and inserting "5908"; and

(ii) in paragraph (20) by striking "178(j)" and inserting "178j"; and

(B) in subsection (c)—

(i) by striking "paragraph 202(c)(4)" and inserting "section 202(c)(4)"; and

(ii) by striking "title.." and inserting "title.".

*(17) The item relating to chapter 29 in the table of chapters for part III is amended by inserting a comma after "**Patent**".*

(18) The item relating to section 256 in the table of contents for chapter 25 is amended to read as follows:

"256. Correction of named inventor.".

(19) Section 294 is amended—

(A) in subsection (b), by striking "United States Code,"; and

(B) in subsection (c), in the second sentence by striking "court to" and inserting "court of".

(20) Section 371(d) is amended by adding at the end a period.

(21) Paragraphs (1), (2), and (3) of section 376(a) are each amended by striking the semicolon and inserting a period.

(b) OTHER AMENDMENTS.—

(1) Section 4732(a) of the Intellectual Property and Communications Omnibus Reform Act of 1999 is amended—

(A) in paragraph (9)(A)(ii), by inserting "in subsection (b)," after "(ii)"; and

(B) in paragraph (10)(A), by inserting after "title 35, United States Code," the following: "other than sections 1 through 6 (as amended by chapter 1 of this subtitle),".

(2) Section 4802(1) of that Act is amended by inserting "to" before "citizens".

(3) Section 4804 of that Act is amended—

(A) in subsection (b), by striking "11(a)" and inserting "10(a)"; and

(B) in subsection (c), by striking "13" and inserting "12".

(4) Section 4402(b)(1) of that Act is amended by striking "in the fourth paragraph".

SEC. 13207. TECHNICAL CORRECTIONS IN TRADEMARK LAW.

(a) AWARD OF DAMAGES.—Section 35(a) of the Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946") (15 U.S.C. 1117(a)), is amended by striking "a violation under section 43(a), (c), or (d)," and inserting "a violation under section 43(a) or (d),".

(b) ADDITIONAL TECHNICAL AMENDMENTS.—The Trademark Act of 1946 is further amended as follows:

(1) Section 1(d)(1) (15 U.S.C. 1051(d)(1)) is amended in the first sentence by striking "specifying the date of the applicant's first use" and all that follows through the end of the sentence and inserting "specifying the date of the applicant's first use of the mark in commerce and those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce.".

(2) Section 1(e) (15 U.S.C. 1051(e)) is amended to read as follows:

"(e) If the applicant is not domiciled in the United States the applicant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.".

(3) Section 8(f) (15 U.S.C. 1058(f)) is amended to read as follows:

"(f) If the registrant is not domiciled in the United States, the registrant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated can-

not be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.".

(4) Section 9(c) (15 U.S.C. 1059(c)) is amended to read as follows:

"(c) If the registrant is not domiciled in the United States the registrant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.".

(5) Subsections (a) and (b) of section 10 (15 U.S.C. 1060(a) and (b)) are amended to read as follows:

"(a)(1) A registered mark or a mark for which an application to register has been filed shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Notwithstanding the preceding sentence, no application to register a mark under section 1(b) shall be assignable prior to the filing of an amendment under section 1(c) to bring the application into conformity with section 1(a) or the filing of the verified statement of use under section 1(d), except for an assignment to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing.

"(2) In any assignment authorized by this section, it shall not be necessary to include the good will of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted.

"(3) Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment, and when the prescribed information reporting the assignment is recorded in the United States Patent and Trademark Office, the record shall be prima facie evidence of execution.

"(4) An assignment shall be void against any subsequent purchaser for valuable consideration without notice, unless the prescribed information reporting the assignment is recorded in the United States Patent and Trademark Office within 3 months after the date of the assignment or prior to the subsequent purchase.

"(5) The United States Patent and Trademark Office shall maintain a record of information on assignments, in such form as may be prescribed by the Director.

"(b) An assignee not domiciled in the United States may designate by a document filed in the United States Patent and Trade-

mark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the assignee does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served upon the Director.".

(6) Section 23(c) (15 U.S.C. 1091(c)) is amended by striking the second comma after "numeral".

(7) Section 33(b)(8) (15 U.S.C. 1115(b)(8)) is amended by aligning the text with paragraph (7).

(8) Section 34(d)(1)(A) (15 U.S.C. 1116(d)(1)(A)) is amended by striking "section 110" and all that follows through "(36 U.S.C. 380)" and inserting "section 220506 of title 36, United States Code,".

(9) Section 34(d)(1)(B)(ii) (15 U.S.C. 1116(d)(1)(B)(ii)) is amended by striking "section 110" and all that follows through "(36 U.S.C. 380)" and inserting "section 220506 of title 36, United States Code".

(10) Section 34(d)(11) is amended by striking "6621 of the Internal Revenue Code of 1954" and inserting "6621(a)(2) of the Internal Revenue Code of 1986".

(11) Section 35(b) (15 U.S.C. 1117(b)) is amended—

(A) by striking "section 110" and all that follows through "(36 U.S.C. 380)" and inserting "section 220506 of title 36, United States Code,"; and

(B) by striking "6621 of the Internal Revenue Code of 1954" and inserting "6621(a)(2) of the Internal Revenue Code of 1986".

(12) Section 44(e) (15 U.S.C. 1126(e)) is amended by striking "a certification" and inserting "a true copy, a photocopy, a certification,".

SEC. 13208. PATENT AND TRADEMARK FEE CLERICAL AMENDMENT.

The Patent and Trademark Fee Fairness Act of 1999 (113 Stat. 1537–546 et seq.), as enacted by section 1000(a)(9) of Public Law 106–113, is amended in section 4203, by striking "111(a)" and inserting "1113(a)".

SEC. 13209. COPYRIGHT RELATED CORRECTIONS TO 1999 OMNIBUS REFORM ACT.

Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, is amended as follows:

(1) Section 1007 is amended—

(A) in paragraph (2), by striking "paragraph (2)" and inserting "paragraph (2)(A)"; and

(B) in paragraph (3), by striking "1005(e)" and inserting "1005(d)".

(2) Section 1006(b) is amended by striking "119(b)(1)(B)(iii)" and inserting "119(b)(1)(B)(ii)".

(3)(A) Section 1006(a) is amended—

(i) in paragraph (1), by adding "and" after the semicolon;

(ii) by striking paragraph (2); and

(iii) by redesignating paragraph (3) as paragraph (2).

(B) Section 1011(b)(2)(A) is amended to read as follows:

"(A) in paragraph (1), by striking 'primary transmission made by a superstation and embodying a performance or display of a work' and inserting 'performance or display of a work embodied in a primary transmission made by a superstation or by the Public Broadcasting Service satellite feed';".

SEC. 13210. AMENDMENTS TO TITLE 17, UNITED STATES CODE.

Title 17, United States Code, is amended as follows:

(1) Section 119(a)(6) is amended by striking "of performance" and inserting "of a performance".

*(2)(A) The section heading for section 122 is amended by striking "**rights; secondary**" and inserting "**rights: Secondary**".*

(B) The item relating to section 122 in the table of contents for chapter 1 is amended to read as follows:

"122. Limitations on exclusive rights: Secondary transmissions by satellite carriers within local markets.".

*(3)(A) The section heading for section 121 is amended by striking "**reproduction**" and inserting "**Reproduction**".*

(B) The item relating to section 121 in the table of contents for chapter 1 is amended by striking "reproduction" and inserting "Reproduction".

(4)(A) Section 106 is amended by striking "107 through 121" and inserting "107 through 122".

(B) Section 501(a) is amended by striking "106 through 121" and inserting "106 through 122".

(C) Section 511(a) is amended by striking "106 through 121" and inserting "106 through 122".

(5) Section 101 is amended—

(A) by moving the definition of "computer program" so that it appears after the definition of "compilation"; and

(B) by moving the definition of "registration" so that it appears after the definition of "publicly".

(6) Section 110(4)(B) is amended in the matter preceding clause (i) by striking "conditions;" and inserting "conditions:".

(7) Section 118(b)(1) is amended in the second sentence by striking "to it".

(8) Section 119(b)(1)(A) is amended—

(A) by striking "transmitted" and inserting "retransmitted"; and

(B) by striking "transmissions" and inserting "retransmissions".

(9) Section 203(a)(2) is amended—

(A) in subparagraph (A)—

(i) by striking "(A) the" and inserting "(A) The"; and

(ii) by striking the semicolon at the end and inserting a period;

(B) in subparagraph (B)—

(i) by striking "(B) the" and inserting "(B) The"; and

(ii) by striking the semicolon at the end and inserting a period; and

(C) in subparagraph (C), by striking "(C) the" and inserting "(C) The".

(10) Section 304(c)(2) is amended—

(A) in subparagraph (A)—

(i) by striking "(A) the" and inserting "(A) The"; and

(ii) by striking the semicolon at the end and inserting a period;

(B) in subparagraph (B)—

(i) by striking "(B) the" and inserting "(B) The"; and

(ii) by striking the semicolon at the end and inserting a period; and

(C) in subparagraph (C), by striking "(C) the" and inserting "(C) The".

(11) The item relating to section 903 in the table of contents for chapter 9 is amended by striking "licensure" and inserting "licensing".

SEC. 13211. OTHER COPYRIGHT RELATED TECHNICAL AMENDMENTS.

(a) AMENDMENT TO TITLE 18.—Section 2319(e)(2) of title 18, United States Code, is amended by striking "107 through 120" and inserting "107 through 122".

(b) STANDARD REFERENCE DATA.—(1) Section 105(f) of Public Law 94–553 is amended by striking "section 290(e) of title 15" and inserting "section 6 of the Standard Reference Data Act (15 U.S.C. 290e)".

(2) Section 6(a) of the Standard Reference Data Act (15 U.S.C. 290e) is amended by striking "Notwithstanding" and all that follows through "United States Code," and inserting "Notwithstanding the limitations under section 105 of title 17, United States Code,".

Subtitle C—Educational Use Copyright Exemption

SEC. 13301. EDUCATIONAL USE COPYRIGHT EXEMPTION.

(a) SHORT TITLE.—This subtitle may be cited as the "Technology, Education, and Copyright Harmonization Act of 2002".

(b) EXEMPTION OF CERTAIN PERFORMANCES AND DISPLAYS FOR EDUCATIONAL USES.—Section 110 of title 17, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

"(2) except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic lit-

erary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if—

"(A) the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;

"(B) the performance or display is directly related and of material assistance to the teaching content of the transmission;

"(C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to—

"(i) students officially enrolled in the course for which the transmission is made; or

"(ii) officers or employees of governmental bodies as a part of their official duties or employment; and

"(D) the transmitting body or institution—

"(i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and

"(ii) in the case of digital transmissions—

"(I) applies technological measures that reasonably prevent—

"(aa) retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and

"(bb) unauthorized further dissemination of the work in accessible form by such recipients to others; and

"(II) does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination;"; and

(2) by adding at the end the following:

"In paragraph (2), the term 'mediated instructional activities' with respect to the performance or display of a work by digital transmission under this section refers to activities that use such work as an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting. The term does not refer to activities that use, in 1 or more class sessions of a single course, such works as textbooks, course packs, or other material in any media, copies or phonorecords of which are typically purchased or acquired by the students in higher education for their inde-

pendent use and retention or are typically purchased or acquired for elementary and secondary students for their possession and independent use.

"For purposes of paragraph (2), accreditation—

"(A) with respect to an institution providing post-secondary education, shall be as determined by a regional or national accrediting agency recognized by the Council on Higher Education Accreditation or the United States Department of Education; and

"(B) with respect to an institution providing elementary or secondary education, shall be as recognized by the applicable state certification or licensing procedures.

"For purposes of paragraph (2), no governmental body or accredited nonprofit educational institution shall be liable for infringement by reason of the transient or temporary storage of material carried out through the automatic technical process of a digital transmission of the performance or display of that material as authorized under paragraph (2). No such material stored on the system or network controlled or operated by the transmitting body or institution under this paragraph shall be maintained on such system or network in a manner ordinarily accessible to anyone other than anticipated recipients. No such copy shall be maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary to facilitate the transmissions for which it was made.".

(c) EPHEMERAL RECORDINGS.—

(1) IN GENERAL.—Section 112 of title 17, United States Code, is amended—

(A) by redesignating subsection (f) as subsection (g); and

(B) by inserting after subsection (e) the following:

"(f)(1) Notwithstanding the provisions of section 106, and without limiting the application of subsection (b), it is not an infringement of copyright for a governmental body or other nonprofit educational institution entitled under section 110(2) to transmit a performance or display to make copies or phonorecords of a work that is in digital form and, solely to the extent permitted in paragraph (2), of a work that is in analog form, embodying the performance or display to be used for making transmissions authorized under section 110(2), if—

"(A) such copies or phonorecords are retained and used solely by the body or institution that made them, and no further copies or phonorecords are reproduced from them, except as authorized under section 110(2); and

"(B) such copies or phonorecords are used solely for transmissions authorized under section 110(2).

"(2) This subsection does not authorize the conversion of print or other analog versions of works into digital formats, except that such conversion is permitted hereunder, only with respect to the amount of such works authorized to be performed or displayed under section 110(2), if—

"(A) no digital version of the work is available to the institution; or

"(B) the digital version of the work that is available to the institution is subject to technological protection measures that prevent its use for section 110(2).".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 802(c) of title 17, United States Code, is amended in the third sentence by striking "section 112(f)" and inserting "section 112(g)".

(d) PATENT AND TRADEMARK OFFICE REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act and after a period for public comment, the Undersecretary of Commerce for Intellectual Property, after consultation with the Register of Copyrights, shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report describing technological protection systems that have been implemented, are available for implementation, or are proposed to be developed to protect digitized copyrighted works and prevent infringement, including upgradeable and self-repairing systems, and systems that have been developed, are being developed, or are proposed to be developed in private voluntary industry-led entities through an open broad based consensus process. The report submitted to the Committees shall not include any recommendations, comparisons, or comparative assessments of any commercially available products that may be mentioned in the report.

(2) LIMITATIONS.—The report under this subsection—

(A) is intended solely to provide information to Congress; and

(B) shall not be construed to affect in any way, either directly or by implication, any provision of title 17, United States Code, including the requirements of clause (ii) of section 110(2)(D) of that title (as added by this subtitle), or the interpretation or application of such provisions, including evaluation of the compliance with that clause by any governmental body or nonprofit educational institution.

Subtitle D—Madrid Protocol Implementation

SEC. 13401. SHORT TITLE.

This subtitle may be cited as the "Madrid Protocol Implementation Act".

SEC. 13402. PROVISIONS TO IMPLEMENT THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS.

The Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946, as amended (15 U.S.C. 1051 and following) (commonly referred to as the "Trademark Act of 1946") is amended by adding after section 51 the following:

"TITLE XII—THE MADRID PROTOCOL

"SEC. 60. DEFINITIONS.

"In this title:

"(1) BASIC APPLICATION.—The term 'basic application' means the application for the registration of a mark that has been filed with an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.

"(2) BASIC REGISTRATION.—The term 'basic registration' means the registration of a mark that has been granted by an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.

"(3) CONTRACTING PARTY.—The term 'Contracting Party' means any country or inter-governmental organization that is a party to the Madrid Protocol.

"(4) DATE OF RECORDAL.—The term 'date of recordal' means the date on which a request for extension of protection, filed after an international registration is granted, is recorded on the International Register.

"(5) DECLARATION OF BONA FIDE INTENTION TO USE THE MARK IN COMMERCE.—The term 'declaration of bona fide intention to use the mark in commerce' means a declaration that is signed by the applicant for, or holder of, an international registration who is seeking extension of protection of a mark to the United States and that contains a statement that—

"(A) the applicant or holder has a bona fide intention to use the mark in commerce;

"(B) the person making the declaration believes himself or herself, or the firm, corporation, or association in whose behalf he or she makes the declaration, to be entitled to use the mark in commerce; and

"(C) no other person, firm, corporation, or association, to the best of his or her knowledge and belief, has the right to use such mark in commerce either in the identical form of the mark or in such near resemblance to the mark as to be likely, when used on or in connection with the goods of such other person, firm, corporation, or association, to cause confusion, mistake, or deception.

"(6) EXTENSION OF PROTECTION.—The term 'extension of protection' means the protection resulting from an international registration that extends to the United States at the request of the holder of the international registration, in accordance with the Madrid Protocol.

"(7) HOLDER OF AN INTERNATIONAL REGISTRATION.—A 'holder' of an international registration is the natural or juristic person in whose name the international registration is recorded on the International Register.

"(8) INTERNATIONAL APPLICATION.—The term 'international application' means an application for international registration that is filed under the Madrid Protocol.

"(9) INTERNATIONAL BUREAU.—The term 'International Bureau' means the International Bureau of the World Intellectual Property Organization.

"(10) INTERNATIONAL REGISTER.—The term 'International Register' means the official collection of data concerning international registrations maintained by the International Bureau that the Madrid Protocol or its implementing regulations require or permit to be recorded.

"(11) INTERNATIONAL REGISTRATION.—The term 'international registration' means the registration of a mark granted under the Madrid Protocol.

"(12) INTERNATIONAL REGISTRATION DATE.—The term 'international registration date' means the date assigned to the international registration by the International Bureau.

"(13) MADRID PROTOCOL.—The term 'Madrid Protocol' means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid, Spain, on June 27, 1989.

"(14) NOTIFICATION OF REFUSAL.—The term 'notification of refusal' means the notice sent by the United States Patent and Trademark Office to the International Bureau declaring that an extension of protection cannot be granted.

"(15) OFFICE OF A CONTRACTING PARTY.—The term 'Office of a Contracting Party' means—

"(A) the office, or governmental entity, of a Contracting Party that is responsible for the registration of marks; or

"(B) the common office, or governmental entity, of more than 1 Contracting Party that is responsible for the registration of marks and is so recognized by the International Bureau.

"(16) OFFICE OF ORIGIN.—The term 'office of origin' means the Office of a Contracting Party with which a basic application was filed or by which a basic registration was granted.

"(17) OPPOSITION PERIOD.—The term 'opposition period' means the time allowed for filing an opposition in the United States Patent and Trademark Office, including any extension of time granted under section 13.

"SEC. 61. INTERNATIONAL APPLICATIONS BASED ON UNITED STATES APPLICATIONS OR REGISTRATIONS.

"(a) IN GENERAL.—The owner of a basic application pending before the United States Patent and Trademark Office, or the owner of a basic registration granted by the United States Patent and Trademark Office may file an international application by submitting to the United States Patent and Trademark Office a written application in such form, together with such fees, as may be prescribed by the Director.

"(b) QUALIFIED OWNERS.—A qualified owner, under subsection (a), shall—

"(1) be a national of the United States;

"(2) be domiciled in the United States; or

"(3) have a real and effective industrial or commercial establishment in the United States.

"SEC. 62. CERTIFICATION OF THE INTERNATIONAL APPLICATION.

"(a) CERTIFICATION PROCEDURE.—Upon the filing of an application for international registration and payment of the prescribed fees, the Director shall examine the international application for the purpose of certifying that the information contained in the inter-

national application corresponds to the information contained in the basic application or basic registration at the time of the certification.

"(b) TRANSMITTAL.—Upon examination and certification of the international application, the Director shall transmit the international application to the International Bureau.

"SEC. 63. RESTRICTION, ABANDONMENT, CANCELLATION, OR EXPIRATION OF A BASIC APPLICATION OR BASIC REGISTRATION.

"With respect to an international application transmitted to the International Bureau under section 62, the Director shall notify the International Bureau whenever the basic application or basic registration which is the basis for the international application has been restricted, abandoned, or canceled, or has expired, with respect to some or all of the goods and services listed in the international registration—

"(1) within 5 years after the international registration date; or

"(2) more than 5 years after the international registration date if the restriction, abandonment, or cancellation of the basic application or basic registration resulted from an action that began before the end of that 5-year period.

"SEC. 64. REQUEST FOR EXTENSION OF PROTECTION SUBSEQUENT TO INTERNATIONAL REGISTRATION.

"The holder of an international registration that is based upon a basic application filed with the United States Patent and Trademark Office or a basic registration granted by the Patent and Trademark Office may request an extension of protection of its international registration by filing such a request—

"(1) directly with the International Bureau; or

"(2) with the United States Patent and Trademark Office for transmittal to the International Bureau, if the request is in such form, and contains such transmittal fee, as may be prescribed by the Director.

"SEC. 65. EXTENSION OF PROTECTION OF AN INTERNATIONAL REGISTRATION TO THE UNITED STATES UNDER THE MADRID PROTOCOL.

"(a) IN GENERAL.—Subject to the provisions of section 68, the holder of an international registration shall be entitled to the benefits of extension of protection of that international registration to the United States to the extent necessary to give effect to any provision of the Madrid Protocol.

"(b) IF THE UNITED STATES IS OFFICE OF ORIGIN.—Where the United States Patent and Trademark Office is the office of origin for a trademark application or registration, any international registration based on such application or registration cannot be used to obtain the benefits of the Madrid Protocol in the United States.

"SEC. 66. EFFECT OF FILING A REQUEST FOR EXTENSION OF PROTECTION OF AN INTERNATIONAL REGISTRATION TO THE UNITED STATES.

"(a) REQUIREMENT FOR REQUEST FOR EXTENSION OF PROTECTION.—A request for extension of protection of an international registration to the United States that the International Bureau transmits to the United States Patent and Trademark Office shall be deemed to be properly filed in the United States if such request, when received by the International Bureau, has attached to it a dec-

laration of bona fide intention to use the mark in commerce that is verified by the applicant for, or holder of, the international registration.

"(b) EFFECT OF PROPER FILING.—Unless extension of protection is refused under section 68, the proper filing of the request for extension of protection under subsection (a) shall constitute constructive use of the mark, conferring the same rights as those specified in section 7(c), as of the earliest of the following:

"(1) The international registration date, if the request for extension of protection was filed in the international application.

"(2) The date of recordal of the request for extension of protection, if the request for extension of protection was made after the international registration date.

"(3) The date of priority claimed pursuant to section 67.

"SEC. 67. RIGHT OF PRIORITY FOR REQUEST FOR EXTENSION OF PROTECTION TO THE UNITED STATES.

"The holder of an international registration with a request for an extension of protection to the United States shall be entitled to claim a date of priority based on a right of priority within the meaning of Article 4 of the Paris Convention for the Protection of Industrial Property if—

"(1) the request for extension of protection contains a claim of priority; and

"(2) the date of international registration or the date of the recordal of the request for extension of protection to the United States is not later than 6 months after the date of the first regular national filing (within the meaning of Article 4(A)(3) of the Paris Convention for the Protection of Industrial Property) or a subsequent application (within the meaning of Article 4(C)(4) of the Paris Convention for the Protection of Industrial Property).

"SEC. 68. EXAMINATION OF AND OPPOSITION TO REQUEST FOR EXTENSION OF PROTECTION; NOTIFICATION OF REFUSAL.

"(a) EXAMINATION AND OPPOSITION.—(1) A request for extension of protection described in section 66(a) shall be examined as an application for registration on the Principal Register under this Act, and if on such examination it appears that the applicant is entitled to extension of protection under this title, the Director shall cause the mark to be published in the Official Gazette of the United States Patent and Trademark Office.

"(2) Subject to the provisions of subsection (c), a request for extension of protection under this title shall be subject to opposition under section 13.

"(3) Extension of protection shall not be refused on the ground that the mark has not been used in commerce.

"(4) Extension of protection shall be refused to any mark not registrable on the Principal Register.

"(b) NOTIFICATION OF REFUSAL.—If, a request for extension of protection is refused under subsection (a), the Director shall declare in a notification of refusal (as provided in subsection (c)) that the extension of protection cannot be granted, together with a statement of all grounds on which the refusal was based.

"(c) NOTICE TO INTERNATIONAL BUREAU.—(1) Within 18 months after the date on which the International Bureau transmits to the Patent and Trademark Office a notification of a request for exten-

sion of protection, the Director shall transmit to the International Bureau any of the following that applies to such request:

"(A) A notification of refusal based on an examination of the request for extension of protection.

"(B) A notification of refusal based on the filing of an opposition to the request.

"(C) A notification of the possibility that an opposition to the request may be filed after the end of that 18-month period.

"(2) If the Director has sent a notification of the possibility of opposition under paragraph (1)(C), the Director shall, if applicable, transmit to the International Bureau a notification of refusal on the basis of the opposition, together with a statement of all the grounds for the opposition, within 7 months after the beginning of the opposition period or within 1 month after the end of the opposition period, whichever is earlier.

"(3) If a notification of refusal of a request for extension of protection is transmitted under paragraph (1) or (2), no grounds for refusal of such request other than those set forth in such notification may be transmitted to the International Bureau by the Director after the expiration of the time periods set forth in paragraph (1) or (2), as the case may be.

"(4) If a notification specified in paragraph (1) or (2) is not sent to the International Bureau within the time period set forth in such paragraph, with respect to a request for extension of protection, the request for extension of protection shall not be refused and the Director shall issue a certificate of extension of protection pursuant to the request.

"(d) DESIGNATION OF AGENT FOR SERVICE OF PROCESS.—In responding to a notification of refusal with respect to a mark, the holder of the international registration of the mark may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person residing in the United States on whom notices or process in proceedings affecting the mark may be served. Such notices or process may be served upon the person designated by leaving with that person, or mailing to that person, a copy thereof at the address specified in the last designation filed. If the person designated cannot be found at the address given in the last designation, or if the holder does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person residing in the United States for service of notices or process in proceedings affecting the mark, the notice or process may be served on the Director.

"SEC. 69. EFFECT OF EXTENSION OF PROTECTION.

"(a) ISSUANCE OF EXTENSION OF PROTECTION.—Unless a request for extension of protection is refused under section 68, the Director shall issue a certificate of extension of protection pursuant to the request and shall cause notice of such certificate of extension of protection to be published in the Official Gazette of the United States Patent and Trademark Office.

"(b) EFFECT OF EXTENSION OF PROTECTION.—From the date on which a certificate of extension of protection is issued under subsection (a)—

"(1) such extension of protection shall have the same effect and validity as a registration on the Principal Register; and

"(2) the holder of the international registration shall have the same rights and remedies as the owner of a registration on the Principal Register.

"SEC. 70. DEPENDENCE OF EXTENSION OF PROTECTION TO THE UNITED STATES ON THE UNDERLYING INTERNATIONAL REGISTRATION.

"(a) EFFECT OF CANCELLATION OF INTERNATIONAL REGISTRATION.—If the International Bureau notifies the United States Patent and Trademark Office of the cancellation of an international registration with respect to some or all of the goods and services listed in the international registration, the Director shall cancel any extension of protection to the United States with respect to such goods and services as of the date on which the international registration was canceled.

"(b) EFFECT OF FAILURE TO RENEW INTERNATIONAL REGISTRATION.—If the International Bureau does not renew an international registration, the corresponding extension of protection to the United States shall cease to be valid as of the date of the expiration of the international registration.

"(c) TRANSFORMATION OF AN EXTENSION OF PROTECTION INTO A UNITED STATES APPLICATION.—The holder of an international registration canceled in whole or in part by the International Bureau at the request of the office of origin, under article 6(4) of the Madrid Protocol, may file an application, under section 1 or 44 of this Act, for the registration of the same mark for any of the goods and services to which the cancellation applies that were covered by an extension of protection to the United States based on that international registration. Such an application shall be treated as if it had been filed on the international registration date or the date of recordal of the request for extension of protection with the International Bureau, whichever date applies, and, if the extension of protection enjoyed priority under section 67 of this title, shall enjoy the same priority. Such an application shall be entitled to the benefits conferred by this subsection only if the application is filed not later than 3 months after the date on which the international registration was canceled, in whole or in part, and only if the application complies with all the requirements of this Act which apply to any application filed pursuant to section 1 or 44.

"SEC. 71. AFFIDAVITS AND FEES.

"(a) REQUIRED AFFIDAVITS AND FEES.—An extension of protection for which a certificate of extension of protection has been issued under section 69 shall remain in force for the term of the international registration upon which it is based, except that the extension of protection of any mark shall be canceled by the Director—

"(1) at the end of the 6-year period beginning on the date on which the certificate of extension of protection was issued by the Director, unless within the 1-year period preceding the expiration of that 6-year period the holder of the international registration files in the Patent and Trademark Office an affidavit under subsection (b) together with a fee prescribed by the Director; and

"(2) at the end of the 10-year period beginning on the date on which the certificate of extension of protection was issued by the Director, and at the end of each 10-year period thereafter, unless—

"(A) within the 6-month period preceding the expiration of such 10-year period the holder of the international registration files in the United States Patent and Trademark Office an affidavit under subsection (b) together with a fee prescribed by the Director; or

"(B) within 3 months after the expiration of such 10-year period, the holder of the international registration files in the Patent and Trademark Office an affidavit under subsection (b) together with the fee described in subparagraph (A) and the surcharge prescribed by the Director.

"(b) CONTENTS OF AFFIDAVIT.—The affidavit referred to in subsection (a) shall set forth those goods or services recited in the extension of protection on or in connection with which the mark is in use in commerce and the holder of the international registration shall attach to the affidavit a specimen or facsimile showing the current use of the mark in commerce, or shall set forth that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. Special notice of the requirement for such affidavit shall be attached to each certificate of extension of protection.

"(c) NOTIFICATION.—The Director shall notify the holder of the international registration who files 1 of the affidavits of the Director's acceptance or refusal thereof and, in case of a refusal, the reasons therefor.

"(d) SERVICE OF NOTICE OR PROCESS.—The holder of the international registration of the mark may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person residing in the United States on whom notices or process in proceedings affecting the mark may be served. Such notices or process may be served upon the person so designated by leaving with that person, or mailing to that person, a copy thereof at the address specified in the last designation so filed. If the person designated cannot be found at the address given in the last designation, or if the holder does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person residing in the United States for service of notices or process in proceedings affecting the mark, the notice or process may be served on the Director.

"SEC. 72. ASSIGNMENT OF AN EXTENSION OF PROTECTION.

"An extension of protection may be assigned, together with the goodwill associated with the mark, only to a person who is a national of, is domiciled in, or has a bona fide and effective industrial or commercial establishment either in a country that is a Contracting Party or in a country that is a member of an intergovernmental organization that is a Contracting Party.

"SEC. 73. INCONTESTABILITY.

"The period of continuous use prescribed under section 15 for a mark covered by an extension of protection issued under this title may begin no earlier than the date on which the Director issues the certificate of the extension of protection under section 69, except as provided in section 74.

"SEC. 74. RIGHTS OF EXTENSION OF PROTECTION.

"When a United States registration and a subsequently issued certificate of extension of protection to the United States are owned

by the same person, identify the same mark, and list the same goods or services, the extension of protection shall have the same rights that accrued to the registration prior to issuance of the certificate of extension of protection.".

SEC. 13403. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the later of—

(1) the date on which the Madrid Protocol (as defined in section 60 of the Trademark Act of 1946) enters into force with respect to the United States; or

(2) the date occurring 1 year after the date of enactment of this Act.

TITLE IV—ANTITRUST TECHNICAL CORRECTIONS ACT OF 2002

SEC. 14101. SHORT TITLE.

This title may be cited as the "Antitrust Technical Corrections Act of 2002".

SEC. 14102. AMENDMENTS.

(a) PANAMA CANAL ACT.—Section 11 of the Panama Canal Act (37 Stat. 566; 15 U.S.C. 31) is amended by striking the undesignated paragraph that begins "No vessel permitted".

(b) SHERMAN ACT.—Section 3 of the Sherman Act (15 U.S.C. 3) is amended—

(1) by inserting "(a)" after "SEC. 3."; and

(2) by adding at the end the following:

"(b) Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce in any Territory of the United States or of the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia, and any State or States or foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.".

(c) WILSON TARIFF ACT.—

(1) TECHNICAL AMENDMENT.—The Wilson Tariff Act (28 Stat. 509; 15 U.S.C. 8 et seq.) is amended—

(A) by striking section 77; and

(B) in section 78—

(i) by striking "76, and 77" and inserting "and 76"; and

(ii) by redesignating such section as section 77.

(2) CONFORMING AMENDMENTS TO OTHER LAWS.—

(A) CLAYTON ACT.—Subsection (a) of the 1st section of the Clayton Act (15 U.S.C. 12(a)) is amended by striking "seventy-seven" and inserting "seventy-six".

(B) FEDERAL TRADE COMMISSION ACT.—Section 4 of the Federal Trade Commission Act (15 U.S.C. 44) is amended by striking "77" and inserting "76".

(C) PACKERS AND STOCKYARDS ACT, 1921.—Section 405(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 225(a)) is amended by striking "77" and inserting "76".

(D) ATOMIC ENERGY ACT OF 1954.—Section 105 of the Atomic Energy Act of 1954 (42 U.S.C. 2135) is amended by striking "seventy-seven" and inserting "seventy-six".

(E) DEEP SEABED HARD MINERAL RESOURCES ACT.—Section 103(d)(7) of the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1413(d)(7)) is amended by striking "77" and inserting "76".

(d) CLAYTON ACT.—The first section 27 of the Clayton Act (15 U.S.C. 27) is redesignated as section 28 and is transferred so as to appear at the end of such Act.

(e) YEAR 2000 INFORMATION AND READINESS DISCLOSURE ACT.—Section 5(a)(2) of the Year 2000 Information and Readiness Disclosure Act (Public Law 105–271) is amended by inserting a period after "failure".

(f) ACT OF MARCH 3, 1913.—The Act of March 3, 1913 (chapter 114, 37 Stat. 731; 15 U.S.C. 30) is repealed.

(g) REPEAL.—Section 116 of the Act of November 19, 2001 is repealed.

SEC. 14103. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect on the date of enactment of this Act.

(b) APPLICATION TO CASES.—(1) Section 14102(f) shall apply to cases pending on or after the date of the enactment of this Act.

(2) The amendments made by subsections (a), (b), and (c) of section 14102 shall apply only with respect to cases commenced on or after the date of enactment of this Act.

And the Senate agree to the same.

From the Committee on the Judiciary, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER,
HENRY HYDE,
GEORGE W. GEKAS,
J. HOWARD COBLE,
LAMAR SMITH,
ELTON GALLEGLY,
JOHN CONYERS, Jr.,
BARNEY FRANK,
BOBBY SCOTT,
TAMMY BALDWIN,

(*Provided,* That Mr. BERMAN is appointed in lieu of Ms. BALDWIN for consideration of sec. 312 of the Senate amendment, and modifications committed to conference.)

HOWARD BERMAN,

From the Committee on Energy and Commerce, for consideration of secs. 2203–6, 2206, 2210, 2801, 2901–2911, 2951, 4005, and title VIII of the Senate amendment, and modifications committed to conference:

BILLY TAUZIN,
MICHAEL BILIRAKIS,
JOHN D. DINGELL,

From the Committee on Education and the Workforce, for consideration of secs. 2207, 2301, 2302, 2311, 2321–4, and 2331–4 of the Senate amendment, and modifications committed to conference:

PETER HOEKSTRA,
MICHAEL N. CASTLE,
GEORGE MILLER,
Managers on the Part of the House.

PATRICK LEAHY,
TED KENNEDY,
ORRIN HATCH,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill, H.R. 2215, the 21st Century Department of Justice Appropriations Authorization Act, to authorize appropriations for the Department of Justice for fiscal year 2002, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck the entire House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

Section 1. Short title and table of contents

Section 1 provides that the short title of the Act shall be the 21st Century Department of Justice Appropriations Authorization Act, as well as the Table of Contents.

DIVISION A—21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 2002

Section 101. Specific sums authorized to be appropriated for fiscal year 2002

Section 101 authorizes appropriations to carry out the work of the various components of the Department of Justice for fiscal year 2002. The structure of section 101 mirrors the organization of the annual Commerce-Justice-State (CJS) appropriations bill and the President's budget request. The section authorizes the appropriations of amounts requested by the President in most accounts and as enacted in Public Law 107–77. This provision is similar to section 101 of the House bill. The accounts, and the activities and components that each would fund, are as follows:

General Administration—$92,668,000.—For the leadership offices of the Department (including the offices of the Attorney General and Deputy Attorney General) and the Justice Management

Division, Executive Support Program, Intelligence Policy, Office of Professional Responsibility, and General Administration.

Administrative Review and Appeals—$173,647,000.—For the Executive Office for Immigration Review and the Office of the Pardon Attorney.

Office of Inspector General—$50,735,000.—For the investigation of allegations of violations of criminal and civil statutes, regulations, and ethical standards by Department employees, and for the new position of Deputy Inspector General to oversee the Federal Bureau of Investigation. This amount is $10 million above the President's request. The IG's Office has been severely downsized over the last several years from approximately 460 to 360 full-time equivalents. Oversight is a priority and this level of funding should get the IG back on the path of meeting the audit and oversight needs of the Department. The Committee expects that the OIG will substantially increase its oversight of the FBI, INS, and the Department's grant programs.

General Legal Activities—$549,176,000.—For the conduct of the legal activities of the Department. This includes the Office of Solicitor General, Tax Division, Criminal Division, Civil Division, Environment and Natural Resources Division, Civil Rights Division, Office of Legal Counsel, Interpol, Legal Activities Office Automation, and Office of Dispute Resolution. The authorization includes not less than $4,000,000 to augment the investigation and prosecution of denaturalization and deportation cases involving alleged Nazi war criminals.

Antitrust Division—$140,973,000.—For decreasing anticompetitive behavior among U.S. businesses and increasing the competitiveness of the national and international business environment.

United States Attorneys—$1,353,968,000.—For the 94 U.S. Attorneys and their offices and the Executive Office of U.S. Attorneys. The U.S. Attorneys represent the United States in the vast majority of criminal and civil cases handled by the Justice Department. The authorization includes not less than $10,000,000 to augment the investigation and prosecution of intellectual property crimes, including software counterfeiting crimes and crimes identified in the No Electronic Theft (NET) Act (Public Law 105–147).

Federal Bureau of Investigation—$3,524,864,000.—For the detection, investigation, and prosecution of crimes against the United States. The FBI is also authorized by Executive Order to protect against foreign intelligence and international terrorist activities and, in certain circumstances, to collect foreign intelligence.

United States Marshals Service—$648,696,000.—To protect the Federal courts and its personnel and to ensure the effective operation of the Federal judicial system, of which no more than $15,000,000 may be used for construction.

Federal Prison System—$4,622,152,000.—For the administration, operation, and maintenance of Federal penal and correctional institutions.

Federal Prison Detention—$706,182,000.—For the support of U.S. prisoners in non-Federal institutions, as authorized by 18 U.S.C. 4013(a).

Drug Enforcement Agency—$1,481,783,000.—To enforce the controlled substance laws and regulations of the United States and to recommend and support nonenforcement programs aimed at reducing the availability of illicit controlled substances on the domestic and international markets.

Immigration and Naturalization Service—$3,499,854,000.—For the administration and enforcement of the laws relating to immigration, naturalization, and alien registration, of which no more than $2,739,695,000 for salaries and expenses and border affairs, no more than $631,745,000 for salaries and expenses of citizenship and benefits, and no more than $128,454,000 for construction.

Fees and Expenses of Witnesses—$156,145,000.—For fees and expenses associated with providing witness testimony on behalf of the United States, expert witnesses, and private counsel for Government employees who have been sued, charged, or subpoenaed for actions taken while performing their official duties.

Interagency Crime and Drug Enforcement—$338,577,000.—For the detection, investigation, and prosecution of individuals involved in organized crime drug trafficking.

Foreign Claims Settlement Commission—$1,136,000.—To adjudicate claims of U.S. nationals against foreign governments under jurisdiction conferred by the International Claims Settlement Act of 1949, as amended, and other authorizing legislation.

Community Relations Service (CRS)—$9,269,000.—To assist communities in preventing violence and resolving conflicts arising from racial and ethnic tensions and to develop the capacity of such communities to address these conflicts without external assistance. CRS activities are conducted in accordance with title X of the Civil Rights Act of 1964.

Assets Forfeiture Fund—$22,949,000.—To provide a stable source of resources to cover the costs of the asset seizure and forfeiture program, including the costs of seizing, evaluating, inventorying, maintaining, protecting, advertising, forfeiting, and disposing of property.

United States Parole Commission—$9,876,000.—For the activities of the U.S. Parole Commission. The Commission has jurisdiction over all Federal prisoners eligible for parole, wherever confined, and continuing jurisdiction over those who are released on parole or as if on parole.

Federal Detention Trustee—$1,000,000.—For necessary expenses to exercise all power and functions authorized by law relating to the detention of Federal prisoners in non-Federal institutions or otherwise in the custody of the U.S. Marshall Service; and the detention of aliens in the custody of the Immigration and Naturalization Service.

Joint Automated Booking System—$1,000,000.—For expenses necessary for the nationwide deployment of a Joint Automated Booking System including automated capability to transmit fingerprint and image data.

Narrowband Communications—$94,615,000.—For the costs of conversion to narrowband communications, including the cost for operation and maintenance of Land Mobile Radio legacy systems.

Radiation Exposure Compensation.—such sums as necessary—For administrative expenses in accordance with the Radiation Exposure Compensation Act.

Counterterrorism Fund—$4,989,000.—For the reimbursement of costs authorized by section 101 of the USA PATRIOT Act (Public Law 107–56).

Office of Justice Programs—$132,862,000.—For necessary administrative expenses of the Office of Justice Programs.

Section 102. Specific sums authorized to be appropriated for fiscal year 2003

Section 102 authorizes appropriations to carry out the work of the various components of the Department of Justice for fiscal year 2003. The conferees added this section to the conference report to reflect the President's budget request for fiscal year 2003, which was released after passage of the House and Senate bills. There are authorized to be appropriated for fiscal year 2003, to carry out the activities of the Department of Justice (including any bureau, office, board, division, commission, subdivision, unit, or other component thereof), the following sums:

General Administration.—$121,079,000.—For the leadership offices of the Department (including the offices of the Attorney General and Deputy Attorney General) and the Justice Management Division, Executive Support Program, Intelligence Policy, Office of Professional Responsibility, and General Administration.

Administrative Review and Appeals.—$198,869,000.—For the Executive Office for Immigration Review and the Office of the Pardon Attorney.

Office of Inspector General.—$66,288,000.—For the investigation of allegations of violations of criminal and civil statutes, regulations, and ethical standards by Department employees, and for the new position of Deputy Inspector General to oversee the Federal Bureau of Investigation.

General Legal Activities.—$659,181,000.—For the conduct of the legal activities of the Department. This includes the Office of Solicitor General, Tax Division, Criminal Division, Civil Division, Environment and Natural Resources Division, Civil Rights Division, Office of Legal Counsel, Interpol, Legal Activities Office Automation, and Office of Dispute Resolution. The authorization includes not less than $4,000,000 to augment the investigation and prosecution of denaturalization and deportation cases involving alleged Nazi war criminals.

Antitrust Division.—$141,855,000.—For decreasing anticompetitive behavior among U.S. businesses and increasing the competitiveness of the national and international business environment.

United States Attorneys.—$1,550,948,000.—For the 94 U.S. Attorneys and their offices and the Executive Office of U.S. Attorneys. The U.S. Attorneys represent the United States in the vast majority of criminal and civil cases handled by the Justice Department. The authorization includes not less than $10,000,000 to augment the investigation and prosecution of intellectual property crimes, including software counterfeiting crimes and crimes identified in the No Electronic Theft (NET) Act (Public Law 105–147).

Federal Bureau of Investigation.—$4,323,912,000.—For the detection, investigation, and prosecution of crimes against the United States. The FBI is also authorized by Executive Order to protect against foreign intelligence and international terrorist activities and, in certain circumstances, to collect foreign intelligence.

United States Marshals Service.—$737,346,000.—To protect the Federal courts and its personnel and to ensure the effective operation of the Federal judicial system, of which no more than $6,621,000 may be used for construction.

Federal Prison System.—$4,605,068,000.—For the administration, operation, and maintenance of Federal penal and correctional institutions.

Drug Enforcement Administration.—$1,582,044,000.—To enforce the controlled substance laws and regulations of the United States and to recommend and support nonenforcement programs aimed at reducing the availability of illicit controlled substances on the domestic and international markets.

Immigration and Naturalization Service.—$4,131,811,000. For the administration and enforcement of the laws relating to immigration, naturalization, and alien registration, of which no more than $3,253,561,000 for salaries and expenses of Border Patrol; no more than $88,598,000 for salaries and expenses of immigration services, including international services; and no more than $789,652,000 for salaries and expenses for support and administration.

School Compliance with INS Regulations: Designated School Officials (DSO) Certification. The conferees strongly endorse a plan for the INS to implement after January 31, 2003, a comprehensive training program for DSOs. This program should educate DSOs on their professional responsibilities with regards to IIRIRA, the USA PATRIOT Act and SEVIS and should employ a testing mechanism to verify this understanding. In addition, the training system should include a mechanism for creating a "professional register" of DSOs who have completed the requisite training and are, therefore, eligible to perform this vital function. It is recommended that the program be outsourced to a private-sector company with the ability to implement such a program effectively, rapidly and at little or no cost to the Federal Government.

Fees and Expenses of Witnesses.—$156,145,000.—For fees and expenses associated with providing witness testimony on behalf of the United States, expert witnesses, and private counsel for Government employees who have been sued, charged, or subpoenaed for actions taken while performing their official duties.

Interagency Crime and Drug Enforcement.—$362,131,000.—For the detection, investigation, and prosecution of individuals involved in organized crime drug trafficking.

Foreign Claims Settlement Commission.—$1,194,000.—To adjudicate claims of U.S. nationals against foreign governments under jurisdiction conferred by the International Claims Settlement Act of 1949, as amended, and other authorizing legislation.

Community Relations Service.—$10,732,000.—To assist communities in preventing violence and resolving conflicts arising from racial and ethnic tensions and to develop the capacity of such communities to address these conflicts without external assistance.

CRS activities are conducted in accordance with title X of the Civil Rights Act of 1964. The increased authorization provided by this section is intended to support the addition of six full-time employees to accommodate the expansion of the Community Relations Service's efforts to address heightened tension and potential for conflict in many communities in the wake of the September 11, 2001 attacks on the United States.

Assets Forfeiture Fund.—$22,949,000.—To provide a stable source of resources to cover the costs of the asset seizure and forfeiture program, including the costs of seizing, evaluating, inventorying, maintaining, protecting, advertising, forfeiting, and disposing of property.

United States Parole Commission.—$11,355,000.—For the activities of the U.S. Parole Commission. The Commission has jurisdiction over all Federal prisoners eligible for parole, wherever confined, and continuing jurisdiction over those who are released on parole or as if on parole.

Federal Detention Trustee.—$1,388,583,000.—For necessary expenses to exercise all power and functions authorized by law relating to the detention of Federal prisoners in non-Federal institutions or otherwise in the custody of the U.S. Marshals Service; and the detention of aliens in the custody of the Immigration and Naturalization Service.

Identification System Integration.—$24,505,000.—For expenses necessary for the operation of the Identification System Integration.

Narrowband Communications.—$149,292,000.—For the costs of conversion to narrowband communications, including the cost for operation and maintenance of Land Mobile Radio legacy systems.

Radiation Exposure Compensation.—such sums as necessary.—For administrative expenses in accordance with the Radiation Exposure Compensation Act.

Counterterrorism Fund.—$35,000,000.—For the reimbursement of costs authorized by section 101 of the USA PATRIOT Act (Public Law 107–56).

Office of Justice Programs.—$215,811,000.—For administrative expenses not otherwise provided for, of the Office of Justice Programs.

Legal Activities Office.—$15,942,000.—For necessary expenses related to office automation.

Section 103. Appointment of additional Assistant United States Attorneys; reduction of certain litigation positions

This section authorizes the Attorney General to transfer 200 additional Assistant U.S. Attorneys from among the six litigating divisions at the Justice Department's headquarters (Main Justice) in Washington, DC., to the various U.S. Attorneys offices around the country. Vacant positions resulting from transfers pursuant to this section will be terminated. This section is intended to raise the productivity of Washington-based lawyers, who litigate criminal and civil cases across the nation for the Justice Department, by moving them to the field. Litigating attorneys for the Government are most effective in the Federal judicial district where their cases are pending. The appointment authorization is at the discretion of

the Attorney General. This provision is identical to section 101 of the Senate bill and similar to section 102 of the House bill.

Section 104. Authorization of Additional Assistant United States Attorneys for project safe neighborhoods

This section authorizes an additional Assistant United States Attorney in each of the 94 U.S. Attorney Offices to implement part of the Administration's Project Safe Neighborhoods proposal to reduce school gun violence across the Nation. These prosecutors will assist in targeting juveniles who obtain weapons and commit violent crimes, as well as the adults who place firearms in the hands of juveniles. This provision is identical to section 102 of the Senate bill.

TITLE II—PERMANENT ENABLING PROVISIONS

Section 201. Permanent authority

Section 201 amends chapter 31 of title 28, United States Code, by creating a new section, "530C". This section details permitted uses of available funds by the Attorney General to carry out the activities of the Justice Department. General permitted uses of available funds include:

Payment for motor vehicles, boats, and aircraft;

Payment for service of experts and consultants, and payment for private counsel;

Payment for official reception and representation expenses and public tours;

Payment of unforeseen emergencies of a confidential character;

Payment of miscellaneous and emergency expenses;

Payment of certain travel and attendance expenses;

Payment of contracts for personal services abroad;

Payment of interpreters and translators;

Payment for uniforms;

Payment for primary and secondary schooling of dependents of personnel stationed overseas; and

Payment for rewards, including authority for terrorism-related rewards previously authorized by the USA PATRIOT Act (Public Law107–56));

Specific permitted uses of available funds include:

Payment for aircraft and boats;

Payment for ammunition, firearms, and firearm competitions; and

Payment for construction of certain facilities.

The use of funds appropriated for Fees and Expenses of Witnesses is limited to certain expenses and the construction of witness safesites. The use of funds appropriated for the Federal Bureau of Investigation is limited to the detection, investigation, and prosecution of crimes against the United States. The use of funds appropriated for the Immigration and Naturalization Service is limited to general Immigration and Naturalization Service activities. The use of appropriated funds for the Federal Prison System is limited to general function of the Federal Prison System. The use of appropriated funds for the Detention Trustee is limited to the

functions authorized by law relating to the detention of Federal prisoners in non—Federal institutions or otherwise in the custody of the U.S. Marshals Service and for the detention of aliens in the custody of the INS.

The Attorney General is prohibited from compensating employed attorneys who are not duly licensed and authorized to practice under the law of a State, U.S. territory, or the District of Columbia. And reimbursement payments to governmental units of the Department of Justice, other Federal entities, or State or local governments are limited to uses permitted by the authority permitting such reimbursement payment.

The section also permits the FBI and other components of the Department of Justice to enter into cooperative projects with foreign countries to improve law enforcement or intelligence operations and to authorize the Attorney General to charge and collect a fee for training of railroad police officers. In addition, the section authorizes the Attorney General to seek reimbursement of warranty work performed at Department of Justice facilities. The administration requested these provisions in its budget submissions for fiscal year 2002 and fiscal year 2003. This provision is similar to section 201 of the Senate and House bills.

Section 202. Permanent authority relating to enforcement of laws

Section 202 amends chapter 31 of title 28, United States Code, by creating a new section, "530D" relating to reporting on the enforcement of laws. This section directs the Attorney General to report to Congress in any case in which the Attorney General, the President, head of executive agency, or military department:

(1) Establishes a policy to refrain from enforcing any provision of a Federal statute, rule, regulation, program, policy, or other law within the responsibility of the Attorney General;

(2) Refrains from adhering to, enforcing, applying, or complying with any other judicial determination or other statute, rule, regulation, program, or policy within the responsibility of the Attorney General;

(3) Decides to contest in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law;

(4) Refrains from defending or asserting, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law, or not to appeal or request review of any judicial, administrative, or other determination adversely affecting the constitutionality of such provision when the constitutionality of the provision is challenged; or

(5) When the Attorney General approves the settlement or compromise of any claim, suit or other action against the United States for more than $2,000,000 (excluding prejudgment interest) or for certain injunctive relief against the Government that is likely to exceed three years.

Each report, which is subject to certain time and content requirements, must be submitted to the Majority and Minority Leaders of the Senate, the Speaker of the House, House Majority Leader, House Minority Leader, and the Chairman and ranking minor-

ity member of the Senate and House Committees on the Judiciary, the Senate Legal Counsel and the General Counsel of the House of Representatives. Section 202 also includes a number of conforming amendments.

This provision is similar to section 202 of the Senate and House bills.

Section 203. Miscellaneous uses of funds; technical amendments

Section 203 provides technical amendments to the Bureau of Justice Assistance grant programs in title I of the Omnibus Crime Control and Safe Streets Act of 1968. It also makes minor amendments to the amount available to compensate attorneys specially retained by the Attorney General. This provision is identical to section 203 of the Senate bill and similar to section 204 House bill.

Section 204. Technical and miscellaneous amendments to Department of Justice authorities; authority to transfer property of marginal value; recordkeeping; protection of the Attorney General

Section 204 makes technical amendments to section 524(c) of title 28, United States Code, clarifies the Attorney General's authority to transfer property of marginal value, and requires the use of standard criteria for the purpose of categorizing offenders, victims, actors, and those acted upon in any data, records, or other information acquired, collected, classified, preserved, or published by the Attorney General for any statistical, research, or other aggregate reporting purpose. It also requires the Attorney General to notify Congress in writing of any civil asset forfeiture award greater than $500,000. This section further makes several clerical and technical amendments to title 28, United States Code. In addition, this section adds authority to ensure that no inference is created that the Government is liable for interest on certain retroactive payments made by the Department of Justice, and to improve financial systems and debt-collection activities. This provision is identical to section 204 of the Senate bill and similar to section 205 of the House bill.

Section 205. Oversight; waste, fraud, and abuse within the Department of Justice

Section 205 amends section 529 of title 28, United States Code, to require the Attorney General to submit an annual report to the House and Senate Committees on the Judiciary describing:

Every grant, cooperative agreement, or programmatic services contract that was made, entered into, awarded, or supplemented in the immediately preceding fiscal year by or on behalf of the Office of Justice Programs (other than one made to a governmental entity, pursuant to a statutory formula); and

A report on every grant, cooperative agreement, or programmatic services contract made, entered into, awarded, or supplemented by or on behalf of the Office of Justice Programs that was terminated or that otherwise ended in the immediately preceding fiscal year (other than one made to a governmental entity, pursuant to a statutory formula).

In addition, section 205 amends the Anti-Lobbying Act to expand its coverage to all legislative activity at the Federal and State level and establishes a new reporting requirement on the enforcement and prosecution of copyright infringements, along with a number of conforming amendments. This provision is similar to section 205 of the Senate bill and section 206 of the House bill.

Section 206. Enforcement of Federal criminal laws by Attorney General

Section 206 provides clarifying amendments to title 28, United States Code, relating to the enforcement of Federal criminal law. This provision is identical to section 206 of the Senate bill and section 207 of the House bill.

Section 207. Strengthening law enforcement in United States territories, commonwealths, and possessions

Section 207 allows the payment of a retention bonus and other extended assignment incentives to retain law enforcement personnel in U.S. territories, commonwealths and possessions. This new authority is needed to continue the fight against drug and crime problems in these areas. This provision is identical to section 208 of the Senate bill.

TITLE III—MISCELLANEOUS

Section 301. Repealers

Section 301 repeals open-ended authorizations of appropriations for the National Institute of Corrections and the U.S. Marshals Service and redundant authorizations for payment of rewards. This provision is similar to section 301 of the Senate and House bills.

Section 302. Technical amendments to Title 18 of the United States Code

Section 302 makes several minor clarifying amendments to title 18, United States Code. Section 302(3) moves a comma that became the focus of a statutory construction question in Crandon v. United States.[1] This provision is identical to section 302 of the Senate and House bills.

Section 303. Required submission of proposed authorization of appropriations for the Department of Justice for fiscal years 2004 and 2005

Section 303 requires the President to submit a Department of Justice authorization bill for fiscal years 2004 and 2005 to the House and Senate Committees on the Judiciary when the President submits his fiscal year 2004 budget request. This authorization bill should contain any recommended additions, changes or modifications to existing authorities that may be necessary to carry out the functions of the Department. Any such addition, change, or modification should be accompanied by a description of the change and

[1] 494 U.S. 152 (1990) (J. Scalia concurring).

the justification for the change. This provision is similar to section 303 of the Senate and House bills.

Section 304. Study of untested rape examination kits

Section 304 requires the Attorney General to conduct a study and assessment of untested rape examination kits that currently exist nationwide, including information from all law enforcement jurisdictions. The Attorney General is required to submit a report of this study and assessment to the Congress. This provision is identical to section 304 of the Senate bill and section 305 of the House bill.

Section 305. Reports on use of DCS 1000 (carnivore)

Section 305 requires the Attorney General and Director of the Federal Bureau of Investigation to submit a timely report to the House and Senate Committees on the Judiciary detailing, among other things, as:

(1) The kind and number of orders or extensions applied for to authorize the use of the DCS 1000 program (or any subsequent version of such program);

(2) The period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(3) The offense specified in the order or application, or extension of an order;

(4) The number and nature of the facilities affected;

(5) The identity of the applying investigative or law enforcement agency making the application for an order; and

(6) The specific persons authorizing the use of the DCS 1000 program (or any subsequent version of such program).

This provision is identical to section 305 of the Senate bill and is similar to section 306 of the House bill.

Section 306. Study of allocation of litigating attorneys

Section 306 requires the Attorney General to report to Congress within 180 days of enactment of this bill on the allocation of funds, attorneys, and other personnel, per-attorney workloads for each office of U.S. Attorney and each division of the Department of Justice. This provision is identical to section 306 of the Senate bill.

Section 307. Use of Truth-in-Sentencing and Violent Offender Incarceration Grants

Section 307 provides States with flexibility to use existing Truth-In-Sentencing and Violent Offender Incarceration Grants to account for juveniles being housed in adult prison facilities. This provision is identical to section 307 of the Senate bill.

Section 308. Authority of the Department of Justice Inspector General

Section 308 would amend Section 8E of the Inspector General Act of 1978 (5 U.S.C. App.) to provide explicit statutory authority for the Office of the Inspector General ("OIG") to investigate all allegations of criminal or administrative misconduct by DOJ employees, including FBI personnel. The OIG is also authorized to refer

certain matters to the FBI Office of Professional Responsibility or to the internal affairs office of the appropriate component of the Department. The Attorney General is directed to promulgate regulations implementing this OIG authority. The section would make clear that the OIG may investigate alleged misconduct by DOJ component heads.

For many years, the FBI was excluded from OIG jurisdiction and the FBI's own internal Office of Professional Responsibility had sole authority to investigate FBI personnel misconduct, unless the Attorney General made an exception. The FBI's exclusive domain to investigate its own misconduct was unique in the Department and created the appearance of a conflict of interest. On July 11, 2001, Attorney General Ashcroft issued a new rule expanding the OIG's jurisdiction over the FBI. This section is consistent with, and codifies, the Attorney General's new rule.

This provision is similar to section 308 of the Senate bill.

Section 309. Review of the Department of Justice

To ensure that the OIG has the necessary structure and resources to effectively assume its new jurisdiction over the FBI and that the Congress is fully informed of such needs, this section requires the Inspector General to: (1) appoint an official to help supervise and coordinate oversight operations and programs of the FBI during the transition period; (2) conduct a comprehensive study of the FBI and report back to the House and Senate Judiciary Committees with a plan for auditing and evaluating various parts of the FBI (including information technology) and for effective continued OIG oversight; and (3) report back to the House and Senate Judiciary Committees on whether an Inspector General for the FBI should be established. The section would add a requirement to report on FBI administrative changes to implement the OIG authority, on different internal investigative methods used by DOJ components and steps to bring uniformity, and on whether recommended guidelines should be developed for the discipline of DOJ personnel for misconduct. This provision is similar to section 309 of the Senate bill and section 304 of the House bill.

Section 310.—Authorization of appropriations

The conferees agreed to add this section to authorize appropriations for the OIG and the FBI Office of Professional Responsibility for fiscal year 2003.

Subsection (a) would authorize $2,000,000 to be appropriated to the Department of Justice for fiscal year 2003 for three purposes: first, to increase the staffing level of the OIG by 25 full-time employees to conduct an increased number of audits, inspections, and investigations of alleged misconduct by FBI employees; second, to fund additional audit coverage of the grant programs administered by the Office of Justice Programs of the Department of Justice; and third, to conduct special reviews of FBI efforts to implement recommendations made by the OIG in reports on alleged misconduct by the Bureau.

Subsection (b) would authorize $1,700,000 to be appropriated to the FBI for fiscal year 2003 to increase the staffing level of the

FBI Office of Professional Responsibility by 10 full-time special agents and 4 full-time support employees.

Section 311. Report on threats and assaults against Federal law enforcement officers, United States judges, United States officials and their families

Section 311 repeals a burdensome reporting requirement on the compilation of statistics relating to intimidation of Government employees and requires the Attorney General to report to Congress not later than 45 days after the end of the fiscal year 2002 on the number of investigations and prosecutions on threats and assaults against Federal law enforcement officers, U.S. judges, U.S. officials and their families. This provision is similar to section 311 of the Senate bill and the repeal provision is identical to the repeal provision in section 301 of the House bill.

Section 312. Additional Federal judgeships

Section 312 authorizes eight new permanent judgeships as follows: five judgeships in the Southern District of California, two judgeships in the Western District of Texas, and one judgeship in the Western District of North Carolina. It would also convert four temporary judgeships to permanent judgeships—one each in the Central District of Illinois, the Southern District of Illinois, the Northern District of New York, and the Eastern District of Virginia. Additionally, section 312 creates seven new temporary judgeships, one each in the Northern District of Alabama, the District of Arizona, the Central District of California, the Southern District of Florida, the District of New Mexico, the Western District of North Carolina, and the Eastern District of Texas. Finally, it extends the temporary judgeship in the Northern District of Ohio for five years.

TITLE IV—VIOLENCE AGAINST WOMEN

Section 401. Short title

Section 401 establishes the "Violence Against Women Office Act" as the short title.

Section 402. Establishment of Violence Against Women Office

Section 402 specifies that Part T of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3796gg et seq.) will be amended by the following insertion, and changes the existing paragraph numbers to incorporate the amendment.

Section 2002. Establishment of Violence Against Women Office

Section 2002 creates a separate and independent Violence Against Women Office (hereinafter the "Office") in the Department of Justice, under the general authority of the Attorney General. The Office shall be headed by a Director who reports directly to the Attorney General and has final authority over all grants, cooperative agreements and contracts awarded by the Office.

Section 2002 also affirms that the Office has the sole jurisdiction over all the duties and functions delineated for the Director in Section 2004, and that the Office is solely responsible for coordina-

tion with other departments, agencies, or offices of all activities authorized or undertaken under the Violence Against Women Act of 1994 (Title VI of Public 103–322) and the Violence Against Women Act of 2000 (Division B of Public Law 106–386). For instance, since its inception in 1995, the Violence Against Women Office has handled and coordinated the Department of Justice's legal and policy issues regarding violence against women—everything from enforcing protection orders across state lines to issuing annual reports on stalking. The jurisdiction provision ensures that coordination such as this will continue.

In addition, the Violence Against Women Office also works with other federal agencies, such as the Department of Housing and Urban Development, the Department of Health and Human Services, and the Immigration and Naturalization Service about federal policies, programs, statutes, and regulations that impact violence against women such as immigration procedures for battered immigrant women, public housing assistance for battered women and their children, and women's health programs. Pursuant to this jurisdiction section, inter-department coordination such as this will continue.

Section 2003. Director of Violence Against Women Office

Section 2003 establishes that the Office shall be headed by a Director appointed by the President and confirmed by the Senate. In addition, the Director is prohibited from other employment during service as Director. This provision specifies that compensation for the Director shall not exceed the rate payable for Level V of the Executive Schedule under § 5316 of Title 5, United States Code.

Section 2004. Duties and functions of director of Violence Against Women Office

Section 2004 delineates the duties and functions of the director and correspondingly, the jurisdiction of the Office as set forth in § 2002 and they are as follows:

(1) Maintaining liaison with the judicial branches of the Federal and State governments on matters relating to violence against women;

(2) Providing information to the President, the Congress, the judiciary, State, local and tribal governments, the general public on matters relating to violence against women;

(3) Serving, at the request of the Attorney General, as the representative of the Department of Justice on domestic task forces, committees, or commissions addressing policy or issues relating to violence against women;

(4) Serving, at the request of the President, acting through the Attorney General, as the representative of the United States Government on human rights and economic justice matters related to violence against women in international fora, including, but not limited to, the United Nations;

(5) Carrying out the functions of the Department of Justice under the Violence Against Women Act of 1994 (Title IV of Public Law 103–322) and the Violence Against Women Act of 2000 (Division B of Public Law 106–386) including with respect to those functions—

(A) the development of policy, protocols, and guidelines;

(B) the development and management of grant programs and other programs, and the provision of technical assistance under such programs;

(C) the award and termination of grants, cooperative agreements, and contracts.

(6) Providing technical assistance, coordination, and support to—

(A) other components of the Department of Justice, in efforts to develop policy and to enforce Federal laws relating to violence against women, including the litigation of civil and criminal actions relating to enforcing such laws;

(B) other Federal, State, local and tribal government agencies, in efforts to develop policy, provide technical assistance and improve coordination among agencies carrying out efforts to eliminate violence against women, including Indian or indigenous women; and

(C) grantees, in efforts to combat violence against women and to provide support and assistance to victims of such violence.

(7) Exercising such other powers and functions as may be vested in the Director pursuant to this part or by delegation of the Attorney General; and

(8) Establishing such rules, regulations, guidelines and procedures as are necessary to carry out any function of the Office.

Pursuant to § 2004(3), the Director and the Office will continue to participate in task forces, commissions, committees, working groups such as the Violence Against Women Coordinating Council in the Department of Justice, Office of Justice Programs Indian Issues Working Group, and the Department of Defense Task Force on Domestic Violence.

Section 2005. Staff of Violence Against Women Office

Section 2005 requires the Attorney General to ensure that the Office receives adequate staff to support the Director in carrying out the responsibilities, duties and functions.

Section 2006. Authorizations of appropriations

Section 2006 authorizes the appropriations of such sums as may be necessary to carry out this title for each fiscal year until fiscal year 2005, the year through which the Violence Against Women Act is authorized.

Section 403. Effective date

Section 403 states that this Title shall take effect 90 days after the date of enactment of this amendment.

DIVISION B—MISCELLANEOUS DIVISION

TITLE I—BOYS AND GIRLS CLUB OF AMERICA

Section 1101. Boys and Girls Clubs of America

Section 1101 authorizes DOJ grants to the Boys and Girls Clubs of America to help establish 1,200 additional Boys and Girls Clubs across the nation with the goal of having 4,000 Boys and Girls Clubs in operation by January 1, 2007. This provision is similar to section 1101 of the Senate bill.

TITLE II—DRUG ABUSE EDUCATION, PREVENTION, AND TREATMENT ACT OF 2001

Section 2001. Short title

Section 2001 provides that the short title of this Act shall be the Drug Abuse Education, Prevention, and Treatment Act of 2001. It is the same as section 2001 of the Senate bill.

Subtitle A—Drug-Free Prisons and Jails

Section 2101. Use of residential substance abuse treatment grants to provide for services during and after incarceration

Section 2101 authorizes the use of Residential Substance Abuse Treatment Grants for treatment and sanctions both during incarceration and after release, as requested in the Administration's fiscal year 2002 budget request. This provision is identical to section 310 of the Senate bill.

Section 2102. Jail-based substance abuse treatment programs

Section 2102 provides grants to States for jail-based substance abuse programs, and requires States to make at least 10 percent of funds received under this section available to local correctional facilities. It is similar to section 2102 of the Senate bill.

Section 2103. Mandatory revocation of probation and supervised release for failing a drug test

Section 2103 amends 18 U.S.C. sections 3565(b) and 3583(g) to provide for mandatory revocation of probation or supervised release if a defendant tests positive for illegal controlled substances more than three times over the span of one year. This provision is identical to section 2103 of the Senate bill.

Subtitle B—Treatment and Prevention

Section 2201. Report on drug-testing technologies

Section 2201 directs the National Institute of Justice to conduct a study of drug-testing technologies to identify and assess the efficacy, accuracy, and usefulness of such technologies. It is similar to section 2209 of the Senate bill.

Section 2202. Drug and substance abuse treatment, prevention, education, and research study

Section 2202 instructs the President, in consultation with the Attorney General, the Secretary of Health and Human Services,

the Secretary of Education, and other appropriate Federal officers, to review all federal drug treatment, prevention, education, and research programs and recommend to Congress ways in which those programs could be streamlined, consolidated, simplified, coordinated, and made more effective.

Section 2203. Drug abuse and addiction research

Section 2203 authorizes the expansion of current and ongoing interdisciplinary research and clinical trials with treatment centers of the National Drug Abuse Treatment Clinical Trials Network relating to drug abuse and addiction. It is similar to section 2208 of the Senate-passed bill.

Subtitle C—Drug Courts

Sec. 2301. Drug courts

Section 2301 authorizes the Attorney General to make grants to States to fund adult drug courts, juvenile drug courts, family drug courts, and tribal drug courts. Drug court programs receiving funds may only involve nonviolent offenders and must involve continuing supervision over those offenders, coordination with appropriate State or local prosecutor, and the provision of services such as drug treatment. The Attorney General is also required to implement recommendations of the General Accounting Office to improve the accountability and track the success of drug court programs throughout the nation. This section is similar to section 2401 of the Senate bill.

Sec. 2302. Authorization of appropriations

Section 2302 authorizes appropriations of $50 million for fiscal year 2002, $54 million for fiscal year 2003, $58 million for fiscal year 2004, and $60 million for fiscal year 2005. This section is similar to section 2402 of the Senate bill.

Sec. 2303. Study by the General Accounting Office

Section 2303 instructs the GAO to study and assess the effectiveness and impact of grants made under this subtitle.

Subtitle D—Program for Successful Reentry of Criminal Offenders Into Local Communities

Sec. 2411. Post incarceration vocational and remedial educational opportunities for inmates

Section 2411 establishes a Federal Reentry Center Demonstration project, under which individualized plans will be developed to reduce recidivism by offenders to be released from the Federal prison population. Among other things, the project will include substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and educational training. The project will also include a reasonable method for imposing sanctions for a prisoner's violation of the conditions of participation in the project. It is similar to section 2511 of the Senate bill.

Sec. 2421. Amendments to the Omnibus Crime Control and Safe Streets Act of 1968

Section 2421 authorizes the Attorney General to make grants of up to $1 million to States, Territories, and Indian tribes to establish demonstration projects to promote successful reentry of criminal offenders. Funds can be expended for oversight and monitoring of released offenders, substance abuse treatment, and other purposes. This provision is similar to section 2521 of the Senate bill.

Subtitle E—Other Matters

Sec. 2501. Amendment to Controlled Substances Act

Section 2501 makes a technical amendment to the Drug Abuse Treatment Act, which was signed into law last year, to amend the opt-out time limit from the date of passage of the Act to the date of Food and Drug Administration approval of the type of drugs authorized to be prescribed under the Act. This provision is identical to section 2951 of the Senate bill.

Sec. 2502. Study of methamphetamine treatment

Section 2502 amends section 3633 of the Methamphetamine Anti-Proliferation Act of 2000 to request that the National Institute on Drug Abuse produce a report that the Act directed the Institute of Medicine of the National Academy to produce. This provision is identical to section 2952 of the Senate bill.

Sec. 2503. Authorization of funds for DEA police training in South and Central Asia

Section 2503 authorizes not less than $5 million for fiscal year 2003 to the Attorney General for regional antidrug training by the Drug Enforcement Administration for law enforcement entities in South and Central Asia.

Sec. 2504. United States-Thailand drug prosecutor exchange program

Section 2504 authorizes the Attorney General to establish an exchange program in which prosecutors, judges, or policymakers from Thailand participate in an exchange program to observe federal prosecutors to learn about the various rules and procedures used in the United States to prosecute violations of federal criminal narcotics laws. The section authorizes $75,000 for fiscal years 2003 and 2004.

TITLE III—SAFEGUARDING THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM

Sec. 3001. Increasing the penalty for using physical force to tamper with witnesses, victims, or informants

Section 3001 would increase the statutory maximum sentence for witness tampering that involves the use of physical force. Under current law, a defendant convicted of using physical force to tamper with a witness, victim or informant faces a maximum sentence of 10 years. This section would increase the maximum for the use or attempted use of force to 20 years, which is the same sentence

available for a defendant who tampers with a witness by attempted murder. The increased penalty is justified because the use of physical force is often comparably egregious to attempted murder, such as where the victim, witness or informant is severely beaten, even though the government cannot prove the specific intent to commit murder. Judges should have the authority to sentence accordingly. This section would also add a provision for conspiracy cases making the maximum sentence for conspiracy the same as the maximum sentence for the underlying substantive offense. This provision is similar to section 4001 of the Senate bill.

Sec. 3002. Correction of aberrant statutes to permit imposition of both a fine and imprisonment

This section would allow the court to impose both a fine and imprisonment under certain aberrant statutes that presently permit the imposition of only one of these punishments, but not both. The statutes at issue are 18 U.S.C. § 401 (criminal contempt); 18 U.S.C. § 1705 (destruction of letter boxes); 18 U.S.C. § 1916 (unauthorized employment or disposition of lapsed appropriations); 18 U.S.C. § 2234 (willfully exceeding authority in executing a search warrant); 18 U.S.C. § 2235 (maliciously procuring and executing a search warrant); and 28 U.S.C. §§ 636(e)(2) & (3) (criminal contempt by magistrates). Although the general policy of the Sentencing Reform Act of 1984 that courts should have multiple sentencing options, see 18 U.S.C. § 3551(b) ("A sentence to pay a fine may be imposed in addition to any other sentence."), these statutes stand as an anomalous exception to that policy, see *United States* v. *Versaglio,* 85 F.3d 943, 946–47 (2d Cir. 1996) (notwithstanding § 3551(b), court many not impose both imprisonment and a fine under § 401); *United States* v. *Holloway,* 991 F.2d 370, 373 (7th Cir. 1993) (same).

Of the statutes that limit the court to a single sentencing option, only section 401 has generated case law concerning the effect of its disjunctive sentencing provisions. These cases have resulted in windfalls for undeserving defendants when judges who are unaware of the unusual restriction on their sentencing authority mistakenly impose an illegal sentence of both a fine and imprisonment. If the defendant tenders payment of the fine before the error is corrected, the sentence is deemed to have been fully satisfied and the term of imprisonment must be vacated. See *In re Bradley,* 318 U.S. 50 (1943); *United States* v. *Catalano,* 1996 WL 387220 (2d Cir. July 11, 1996); *Versaglio*, 85 F.3d at 948; *United States* v. *Holmes,* 822 F.2d 481 (5th Cir. 1987); *United States* v. *Sampogne,* 533 F.2d 766, 767 (2d Cir. 1976). In effect, the defendant can buy immunity from imprisonment by immediately paying the fine and then filing an appeal challenging only the prison term. Even where it is clear that the sentencing court would have imposed a prison term rather than a fine if it had correctly understood its options, the defendant must be allowed to go free, with no possibility of the case being remanded for resentencing. While these decisions may be compelled by the plain wording of the statute, their outcomes are hardly satisfactory. As Chief Justice Stone remarked in his dissenting opinion in *Bradley,* it is unjust that "the choice rests with the offender rather than with the court whether he shall be punished by fine

or by imprisonment, either of which alone the court could have lawfully imposed; and that by payment of the fine, imposed and accepted under mistake of law * * * he may irrevocably escape punishment by imprisonment." 318 U.S. at 53; see also *Holmes,* 822 F.2d at 505 (Brown, J., dissenting) ("The Constitution does not require that sentencing should be a game in which the wrong move by a judge means immunity for the prisoner.").

There is no sound reason to limit a court's sentencing authority under the statutes at issue to only a fine or imprisonment. No legislative history apparently exists to explain the reasons for these disjunctive sentencing provisions. Indeed, the Senate Judiciary Committee has previously remarked that this feature of section 401 was probably unintended and proposed correcting it in the Criminal Code Reform Act of 1979. See S. Rep. No. 96–553 at 355 (96th Cong. 2d Sess.). The correction is long overdue. The proposed amendment would therefore insert the phrase "or both" after the language authorizing a fine or imprisonment in the affected statutes. This section is identical to section 4002 of the Senate-passed bill.

Sec. 3003. Reinstatement of counts dismissed pursuant to a plea agreement

This section would create a new provision, to be codified at 18 U.S.C. § 3296, which would extend the statute of limitations for counts dismissed pursuant to a plea agreement when the defendant's guilty plea is subsequently vacated. There have been cases where a defendant is indicted on one set of charges and pleads guilty to lesser counts pursuant to a plea bargain, but then later succeeds in getting the guilty plea vacated. If the plea is vacated after the statute of limitations on the original set of charges has run, courts have held that those charges cannot be reinstated and that the case is time-barred. Thus, the defendant can no longer be prosecuted even though the government acted with all reasonable diligence in bringing the case. See *United States* v. *Midgley,* 142 F.3d 174, 178–80 (3d Cir. 1998); *United States* v. *Podde,* 105 F.3d 813 (2d Cir. 1995). The bill would close this loophole by giving the government 60 days after the order vacating the defendant's plea becomes final to move to reinstate any charges dismissed pursuant to a plea agreement. This approach is analogous to that of 18 U.S.C. § 3288, which grants the government a grace period to obtain a new indictment when counts are dismissed after the expiration of the statute of limitations.

The new section 3296 would not prevent the court from considering any defense other than statute of limitations to the reinstated charges. Thus, for example, defendants who contend that their ability to defend against the reinstated counts has been irreparably prejudiced by the passage of time retain their ability to bring a constitutional speedy trial claim, see *Barker* v. *Wingo,* 407 U.S. 514 (1972), as well as any other defenses to the prosecution they would otherwise have. This provision is identical to section 4003 of the Senate bill.

Sec. 3004. Appeals from certain dismissals

This section clarifies that 18 U.S.C. § 3731 authorizes an appeal by the United States, consistent with the Double Jeopardy clause, whenever a district court enters an order dismissing or striking part of an indictment or information. Section 3731 confers broad authority on the United States to appeal orders of district courts that dismiss an indictment or information either in whole or as to "any one or more counts." The statute was designed to permit the United States to appeal virtually all adverse rulings in criminal cases, when not precluded from doing so by the Double Jeopardy Clause of the Constitution, and contains a final sentence stating that the "provisions of this section shall be liberally construed to effectuate its purposes." As a result of this language, the statute has generally been generously interpreted to allow government appeals, even when its literal language does not clearly extend to the case, such as where a district court has dismissed only a portion of a count such as a predicate act in a RICO count or an overt act in a conspiracy count. See, e.g., *United States* v. *Levasseur,* 846 F.2d 786 (1st Cir. 1988) (appeal held to lie where predicate acts were stricken from a RICO count). This approach is consistent with the Supreme Court's observation that section 3731 permits "an appeal from an order dismissing only a portion of a count." *Sanabria* v. *United States,* 437 U.S. 54, 69 n.23 (1978). However, one federal circuit has held that section 3731 does not permit any government appeals from the dismissal of only part of a count. See *United States* v. *Louisiana Pacific Corporation,* 106 F.3d 345 (10th Cir. 1997). In other cases, appellate review of orders dismissing predicate acts or overt acts has been denied where the dismissed acts could not themselves have been charged in separate counts. See *United States* v. *Terry,* 5 F.3d 874 (5th Cir. 1993); *United States* v. *Tom,* 787 F.2d 65 (2d Cir. 1986).

It is time to resolve these conflicting results definitively. The reach of section 3731 should clearly be extended to orders dismissing portions of counts. Although the Solicitor General, who must approve all appeals by the United States to a court of appeals, only seldom authorizes appeals from partial dismissals of counts in criminal cases, there is no reason not to permit the government to appeal when the issue involved is important and determined by the Solicitor General to be worthy of presentation to a higher court. Indeed, there are some cases where the dismissal of a predicate act or overt act may substantially weaken the government's ability to prove its case. The proposed amendment would therefore insert the phrase "or any part thereof" in section 3731 so as to make clear that dismissals of any part of a count are subject to appeal by the United States in appropriate circumstances. This provision is identical to section 4004 of the Senate bill.

Sec. 3005. Clarification of length of supervised release terms in controlled substance cases

This section resolves a conflict in the circuits as to the permissible length of supervised release terms in controlled substance cases. Under 18 U.S.C. 3583(b), "[e]xcept as otherwise provided," the maximum authorized terms of supervised release are 5 years for Class A and B felonies, 3 years for Class C and D felonies, and

1 year for Class E felonies and certain misdemeanors. The drug trafficking offenses in 21 U.S.C. §§ 841 and 960 prescribe special supervised release terms, however, that are longer than those applicable generally under section 3583(b). Those longer terms, which may include lifetime supervised release, were enacted in 1986 in the same Act that inserted the introductory phrase "Except as otherwise provided" in section 3583(b). Because of this clear legislative history and intent, three courts of appeals have held that section 3583(b) does not limit the length of supervised release that may be imposed for a violation of 21 U.S.C. §§ 841 or 960 when a greater term is there provided. *United States* v. *LeMay,* 952 F.2d 995, 998 (8th Cir. 1991); *United States* v. *Eng,* 14 F.3d 165, 172–3 (2d Cir. 1994); *United States* v. *Garcia,* 112 F.3d 395 (9th Cir. 1997). Two courts of appeals, however, have reached the opposite result, holding that the length of a supervised release term that can be imposed for controlled substance cases is limited by 18 U.S.C. § 3583(b). *United States* v. *Gracia,* 983 F.2d 625, 630 (5th Cir. 1993); *United States* v. *Kelly,* 974 F.2d 22, 24–25 (5th Cir. 1992); *United States* v. *Good,* 25 F.3d 218 (4th Cir. 1994).

Although the issue has not arisen with frequency, the conflict is entrenched and should be dealt with definitively. Accordingly, the amendment would add the words "Notwithstanding section 3583 of title 18" to the title 21 controlled substance offenses in the parts of those statutes dealing with supervised release to make clear that the longer terms there prescribed control over the general provision in section 3583. Of course, the Sentencing Guidelines would continue to govern the permissible length of supervised release terms under the amended statutes. This provision is identical to section 4005 of the Senate bill.

Sec. 3006. Authority of court to impose a sentence of probation or supervised release when reducing a sentence of imprisonment in certain cases

This section would confer express authority on courts under section 3582(c)(1)(A), when exercising the power to reduce a term of imprisonment for extraordinary and compelling reasons, to impose a sentence of probation or supervised release with or without conditions. Such added flexibility is consistent with the purposes for which this statute was designed and will likely facilitate its use in appropriate cases.

Under 18 U.S.C. 3582(c)(1)(A), a court is authorized, on motion of the Bureau of Prisons and consistent with the purposes of sentencing in 18 U.S.C. 3553, to "reduce the term of imprisonment" upon a finding that "extraordinary and compelling reasons" warrant such a reduction. This limited authority has been generally utilized when a defendant sentenced to imprisonment becomes terminally ill or develops a permanently incapacitating illness not present at the time of sentencing. In such circumstances, the situation of a prisoner (e.g., one suffering from a contagious debilitating disease), may make a court reluctant simply to release the prisoner back into society unless another sentencing option such as home confinement as a condition of supervised release or probation can be imposed. Presently, however, it is doubtful whether a court can order such a sentence since section 3582(c)(1)(A) speaks only in

terms of reducing "the term of imprisonment," not imposing in its stead a lesser type of sentence. Cf. Fed. R. Crim. P. 35(b), which gives a court the power to "reduce a sentence" to reflect substantial assistance. The proposed language also makes it clear that any new term of supervised release or probation cannot be longer than the unserved portion of the original prison term, as it is not intended that this provision be used to increase the total amount of time that a person's liberty is restricted. This provision is identical to section 4006 of the Senate bill.

Sec. 3007. Clarification that making restitution is a proper condition of supervised release

This section would remedy an ambiguity relating to restitution as a condition of supervised release. Under 18 U.S.C. 3583(c) and (e), the court is authorized to consider various sentencing factors set forth in 18 U.S.C. 3553 as a basis for imposing restitution as a condition of supervised release or for revoking or modifying the conditions of supervised release. Supervised release is among the purposes of sentencing enumerated in section 3553, in paragraph (a)(7), but is not among the factors enumerated in section 3583(c) and (e). However, 18 U.S.C. 3583(c) also authorizes the court to impose any condition of supervised release that is an authorized condition of probation under 18 U.S.C. 3563(b), and making restitution is among those conditions (see section 3564(b)(2)). Thus, it appears clear that a court has authority to impose a restitution condition upon a term of supervised release. But the absence of a reference to section 3553(a)(7) in the revocation subsection of section 3583 raises a question whether, even though it is an authorized condition of supervised release, a court has authority to revoke or modify the term for willful failure to make restitution. Such authority is probably implicit and was surely intended by Congress. See *United States* v. *Payan,* 992 F.2d 1387, 1395–96 (5th Cir. 1993). This amendment would provide a reference to section 3553(a)(7) in the supervised release statute and remove any ambiguity in this regard. Of course, even under the amended statute, a court could not revoke or modify the defendant's supervised release for failure to pay restitution unless the defendant had the resources to pay and willfully refused to do so. See *Bearden* v. *Georgia,* 461 U.S. 660 (1983); *Payan,* 992 F.2d at 1396–97. This provision is identical to section 4007 of the Senate bill.

TITLE IV—CRIMINAL LAW TECHNICAL AMENDMENTS ACT OF 2002

Sec. 4001. Short title

This section provides that the short title of the act shall be the "Criminal Law Technical Amendments Act of 2002." This provision is similar to section 5001 of the Senate bill.

Sec. 4002. Technical amendments relating to criminal law and procedure

This section makes over 60 separate technical changes to various criminal statutes by correcting missing and incorrect words, margins, punctuation, redundancies, outmoded fine amounts, cross

references, and other technical and clerical errors. This provision is identical to section 5002 of the Senate bill.

Sec. 4003. Additional technicals

Section 4003 makes additional technical changes to criminal statutes, and is similar to section 5003 of the Senate bill.

Sec. 4004. Repeal of outmoded provisions

This provision is similar to section 5004 of the Senate bill.

Sec. 4005. Amendments resulting from public law 107–56

This provision is identical to section 5005 of the Senate bill.

Sec. 4006. Cross reference correction

The conferees agree to add this section to make a technical correction to the International Convention for the Suppression of Terrorist Bombings.

TITLE V—PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANTS

Sec. 5001. Paul Coverdell Forensic Sciences Improvement Act

Section 5001 amends the Paul Coverdell National Forensic Sciences Improvement Act of 2000 to permit local crime labs to receive grants. In addition, the section allows the Attorney General to make discretionary grants to any State or locality after considering the state crime rate and existing crime lab resources and requires each State to include in its report to the Attorney General on the comparison of pre-grant and post-grant forensic science capabilities, and an identification of the number and type of cases currently accepted by the laboratory. This provision is identical to section 7001 of the Senate bill.

Sec. 5002. Authorization of appropriations

Section 5002 authorizes to be appropriated for each of fiscal years 2002 through 2007 such sums as necessary for the Center for Domestic Preparedness of the Department of Justice in Anniston, Alabama; the Texas Engineering Extension Service of Texas A&M University; the Energetic Materials Research and Test Center of the New Mexico Institute of Mining and Technology; the Academy of Counterterrorist Education at Louisiana State University; the National Exercise, Test, and Training Center of the Department of Energy, located at the Nevada test site; the National Center for the Study of Counter-Terrorism and Cyber-Crime at Norwich University; and the Northeast Counterdrug Training Center at Fort Indiantown Gap, Pennsylvania. This provision is similar to section 7002 of the Senate bill.

DIVISION C—IMPROVEMENTS TO CRIMINAL JUSTICE, CIVIL JUSTICE, IMMIGRATION, JUVENILE JUSTICE, AND INTELLECTUAL PROPERTY AND ANTITRUST LAWS

TITLE I—CRIMINAL JUSTICE, CIVIL JUSTICE AND IMMIGRATION

Subtitle A—General Improvements

Sec. 11001. Law Enforcement Tribute Act

Section 11001 makes findings regarding the number of law enforcement and public safety officers currently serving in the United States and the number assaulted, injured or killed in the line of duty each year. Congress finds that these officers risk their safety to serve the citizens of their communities. This section makes the finding that many of the communities do not have the resources to properly honor the fallen officers that have served them.

This section authorizes the Attorney General to award matching grants up to 50 percent of the cost of the tribute directly to a State, local government or Indian Tribe in an amount not to exceed $150,000. It provides that Indian Tribes may use any funds appropriated by Congress for activities of the Bureau of Indian Affairs or Indian tribal government to meet the matching requirements.

This section also requires any application for funds under this bill to meet the criteria established by the Attorney General. It requires the Attorney General to provide an annual report to provide Congress with information regarding the number of grants awarded, the amount of funds provided for those grants, and the activities for which the funds were used.

This section includes an authorization of $3 million for each fiscal year 2002–2006, which results in a total authorization of $15 million over 5 years.

Sec. 11002. Disclosure of grand jury matters relating to money laundering offenses

In general, information relating to the investigation of a matter before a grand jury is subject to strict protection and may not be disclosed. Section 3322 of title 18, United States Code, provides limited exceptions to this rule, permitting bank regulators to obtain information in certain cases to ensure that they can continue to supervise banking organizations involved in law enforcement investigations. The statute, enacted following the savings and loan crisis and the extensive law enforcement efforts necessitated by bank and thrift failures, does not, however, cover money laundering cases. Section 11002 would amend 18 U.S.C. 3322 so that the Justice Department may obtain a court order to share grand jury information with bank supervisors if an investigation involves money laundering.

Sec. 11003. Grant program for State and local domestic preparedness support

This section makes technical corrections and adds additional uses to the Office of Domestic Preparedness grants to support state and local law enforcement agencies and other first responders pre-

pare for and prevent terrorist attacks as authorized by section 1014 of the USA PATRIOT Act (Public Law 107–56).

The conferees strongly encourage the Department of Justice through the Office of Domestic Preparedness to support a public safety pilot project initiated by the Pennsylvania State Association of Boroughs designed to inventory the infrastructure and resources of five participating central Pennsylvania boroughs using GIS technology for the purpose of analyzing security risks and possible responses. Data collected on the five boroughs will be stored in an online searchable database or "information warehouse." Data collected will include roads, water resources, stadiums, energy plants, hazardous materials locations and other assets.

Sec. 11004. United States Sentencing Commission access to NCIC terminal

This section authorizes the U.S. Sentencing Commission to access the National Crime Information Center information system at the Federal Bureau of Investigation.

Sec. 11005. Danger pay for FBI agents

Section 11005 provides special "danger pay" allowances for FBI agents in hazardous duty locations outside the United States, as is provided for agents of the Drug Enforcement Administration. The president's budget submission for fiscal years 2002 and 2003 requested this change in law. This section is identical to section 210 of the Senate-reported bill.

Sec. 11006. Police Corps

Section 11006 extends the Police Corps' authorization for an additional four years. It also deletes the provisions that now give $10,000 a year to participating police agencies, thereby reducing the per-officer cost of the program by 30% and making funds available to support more officers; and updates the maximum for scholarship payments, from $7,500 (set when the bill was introduced in 1989) to $10,000 per year.

Sec. 11007. Radiation exposure compensation technical amendments

The Radiation Exposure Compensation Act ("RECA") Amendments of 2000, P.L. 106–245, inadvertently eliminated some claimants previously eligible for compensation, and made it more difficult for other claimants to prove eligibility. The technical amendments included in section 11007 are:

Duration of Employment Standard as an Alternative to Radiation Exposure Levels—Under RECA as amended by P.L. 106–245, uranium miners are required to prove exposure to at least 40 working level months (WLMs) of radiation. Uranium millers and ore transporters are required to demonstrate employment in a mill or as an ore transporter for one full year. During the last congressional session, proposed amendments to P.L. 106–245 by Senators Hatch and Daschle sought to eliminate the WLM exposure requirement for miners and substitute a one-year duration of employment requirement—identical to the one in place for millers and ore transporters. There are many miners, however, who worked for less than one year in uranium mines but who still were exposed to sig-

nificant levels of radiation exposure and could easily qualify for eligibility with a 40 WLM standard. The proposed technical amendment would allow uranium miners to qualify by meeting either the 40 WLM exposure standard or the one year duration of employment standard.

Reinsert a "Downwinder" Area Erroneously Stricken from Act by P.L. 106–245—In amending the list of "downwinder" areas, P.L. 106–245 inadvertently eliminated a portion of Mohave County, Arizona (located north of the Grand Canyon) that was previously compensable under RECA. As a consequence, claimants who reside in this portion of Mohave County are no longer eligible for compensation. The proposed technical amendment would again include this area in the definition of "downwinder" areas.

Remove Disparity for Downwinder and Onsite Participant "Lung Cancer" Claimants—P.L. 106–245 added seven new cancers to the list of compensable cancers for the "downwinder" and "onsite participant" provisions of RECA. These include: cancers of the male breast, salivary gland, urinary bladder, brain, colon, ovary and lung. With the exception of lung cancer, the Act now requires all compensable cancers to be "primary"—to originate in the specified organ or tissue. The proposed technical amendment would require that all compensable cancers be "primary" and thus eliminate the distinction inadvertently created by the amendments between lung cancer claimants and claimants with other compensable cancers.

Remove Inconsistent Treatment for Claimants with In Situ Lung Cancers—As a result of the recent amendments, RECA treats "downwinder" and "onsite participant" claimants with in situ lung cancer more stringently than uranium worker claimants. Presently, under the amended "downwinder" and "onsite participant" provisions, compensation is available for lung cancer "other than in situ lung cancer that is discovered during or after a post-mortem exam." This restricts compensation for in situ lung cancer to claimants who are living. No similar restriction exists for uranium worker claimants with in situ lung cancer. The proposed technical amendment would ensure consistent treatment of in situ lung cancer among all categories of claimants, and eliminate the distinction based on the timing of lung cancer diagnosis.

Uranium Miners, Mill Workers, and Ore Transporters with Lung Cancer Should Not be Required to Show Evidence of Non-Malignant Respiratory Disease—As amended by P.L. 106–245, RECA requires (in cases where the claimant is living) the submission of the same medical documentation for proof of a "non-malignant respiratory disease" and "lung cancer." While the documentation required is appropriate for purposes of establishing a non-malignant respiratory disease, it is not medically appropriate for establishing lung cancer. The requirement precludes most lung cancer claimants who do not also suffer from a non-malignant respiratory disease from establishing eligibility for compensation. The proposed technical amendment would eliminate the requirement that claimants with lung cancer also submit proof of a non-malignant respiratory disease.

Requiring Claimants to Prove Uranium Mines in States Not Designated as "AEC Mines" is Inappropriately Restrictive—P.L. 106–245 amended the Act to allow uranium miner claimants to

qualify for compensation if an additional state not designated in the Act establishes that the "Atomic Energy Commission" (AEC) operated a uranium mine in the State between January 1, 1942 and December 31, 1971. The provision states that once the State has been certified for inclusion as a uranium mining state, a claimant may demonstrate employment in that state. The AEC, however, did not exist prior to January 1, 1947. Maintaining the requirement is confusing for claimants employed in uranium mines between 1942 and 1946 in a state other than the one designated in the Act and may prevent them from qualifying for compensation. The proposed technical amendment would eliminate the requirement that a state operated an AEC uranium mine.

Section 6(i) "Issuance of Regulations" Misplaced—The new provision regarding "issuance of revised regulations" should amend "Section 6(k) Issuance of Regulations, Guidelines and Procedures." P.L. 106–245 inadvertently amends "Section 6(i) Use of Existing Resources."

Section on "Affidavits" Misplaced—P.L. 106–245 fails to enumerate a section for the newly-added provision regarding "affidavits." The provision regarding affidavits should be added as new section "Section 6(m) Affidavits."

Omission of Uranium Millers and Ore Transporters from "Full Settlement of Claims" Provision—P.L. 106–245 did not amend the Act's "full settlement of claims" provision (Sec. 6(e)) to provide that acceptance of payment under the new claimant categories—uranium millers and ore transporters—shall be in full settlement of all claims that individual may have against the United States. Presently, the provision applies only to the original RECA claimant categories. The technical amendment would correct the omission by providing that acceptance of payment shall be in full settlement of claims arising out of exposure to radiation with respect to all claimant categories. The technical amendment also takes into consideration the availability of additional compensation under the new Department of Energy compensation program (Energy Employees' Occupational Illness Compensation Program Act).

"Choice of Remedies" Provision Requires Clarifying Language—P.L. 106–245 did not amend the Act's "choice of remedies" provision which prevents double recovery for individuals seeking payment under multiple sections of the Act. Presently, the Act's "choice of remedies" provision eliminates double recovery as between "Downwinders," "Onsite participants," and "Uranium Miners." With the addition of the two new claimant categories—"Millers" and "Ore Transporters"—the provision is presently unclear as to whether multiple payments are now available. The technical amendment would clarify the "choice of remedies" provision to plainly state that there is no possibility of a double recovery under the amended Act.

Section on "GAO Reports" Misplaced—P.L. 106–245 fails to enumerate a section for the provision regarding "GAO Reports." The provision regarding GAO Reports should be added as new section "Sec. 14. GAO Reports."

Sec. 11008. Federal Judiciary Protection Act of 2002

Section 11008 increases the maximum prison term for forcible assaults, resistance, intimidation, or interference with a Federal judge, Federal law enforcement officer, or U.S. official from 3 years imprisonment to 8 years and increases the maximum prison term for use of a deadly weapon or infliction of bodily injury against a Federal judge, Federal law enforcement officer, or U.S. official from 10 years imprisonment to 20 years.

This section also increases the maximum prison term for actual or attempted influencing, impeding, or retaliating against a Federal judge, Federal law enforcement officer, or U.S. official by threatening a family member of the employee, from 5 to 10 years, and from 3 to 6 years if the threat is to commit an assault.

In addition, Section 11008 increases the maximum prison term from 5 to 10 years for threats of injury or kidnapping of any person mailed to a Federal judge, Federal law enforcement officer, or U.S. official, and from 3 to 6 years for extortionate threats to a Federal judge, Federal law enforcement officer, or U.S. official.

It directs the U.S. Sentencing Commission to amend the Sentencing Guidelines to enhance penalties for assaults and threats against a Federal judge, Federal law enforcement officer, and U.S. official engaged in their official duties.

Sec. 11009. The James Guelff and Chris McCurley Body Armor Act of 2002

Section 11009 defines the terms "body armor," "law enforcement agency," and "law enforcement officer." It directs the U.S. Sentencing Commission to provide an appropriate sentencing enhancement for any crime of violence or drug trafficking crime in which the defendant used body armor. It also states that it is the Sense of the Senate that a minimum two-level enhancement is appropriate.

Section 11009 makes it unlawful for a person who has been convicted of a violent felony to purchase, own, or possess body armor. It provides an affirmative defense against prosecution if the felon wore armor after obtaining permission from employer, and possession of armor was necessary for safe performance of lawful business activity. Individuals who violate this prohibition are guilty of a felony subject to a fine and a maximum sentence of three years.

This provision also empowers Federal law enforcement agencies to donate surplus body armor directly to local and state law enforcement departments. These agencies include the Administrator of the Drug Enforcement Administration, the Director of the FBI, the Commissioner of the Immigration and Naturalization Service, the Director of the U.S. Marshals Service, the Director of the Bureau of Alcohol, Tobacco and Firearms, the Commissioner of Customs, and the Director of the United States Secret Service. Only body armor that is not required by the Federal government is eligible for donation.

Sec. 11010. Persons authorized to serve search warrant

Section 11010 amends section 2703 of title 18 by stating that an officer's presence is not required to serve or execute a search

warrant directed to a provider of electronic communication service or remote computing service for records or other information pertaining to a subscriber of that service.

Sec. 11011. Study on reentry, mental illness, and public safety

Section 11011 requires the Attorney General to conduct a study of offenders with mental illness who are released from prison or jail to determine how many such offenders qualify for Medicaid, SSI, or SSDI, how many of those who qualify are actually enrolled in those programs, and how enrollment affects whether such offenders commit further crimes, among other things.

Sec. 11012. Technical amendment to Omnibus Crime Control Act

The current version of Section 802(b) [42 U.S.C. § 3783(b)] of the Omnibus Crime Control and Safe Streets Act gives rights of notice and appeal to applicants for the Violence Against Women Act (VAWA) Grants to Encourage Arrests program (Part U) whose applications have been denied. The Grants to Encourage Arrests program is a discretionary grant program and historically, a discretionary grant applicant is not afforded a right of appeal of an application denial. This is based on the rule that formula grants create an "entitlement," which gives formula grantees certain due process rights of notice and hearing in the event a formula grant application is denied. Discretionary grants, on the other hand, do not create any entitlement, and consequently discretionary grant applicants do not have such due process rights.

A second problem with the current version of Section 802(b) is that it does not give VAWA formula grant applicants these notice and appeal rights which they should have under the entitlement concept, because it does not cite to the STOP grant program in Part T, which is the VAWA formula grant program. This is illustrated by the language of Section 802(b) by which all formula grant programs under the Omnibus statute (except VAWA's STOP program) are covered by this version of Section 802(b), and no other discretionary grant program are referenced by this provision (except the incorrect reference to VAWA's Grants to Encourage Arrest program, which would be changed by this amendment). The logical conclusion is that the reference to Part U was a misdesignation, and that Congress intended to reference Part T, the STOP formula grant program, and not Part U, the discretionary Grants to Encourage Arrest program. Accordingly, this section amends section 802(b) to give the right of appeal to VAWA STOP formula applicants and would also eliminate the right of appeal for discretionary grant applicants, as Congress clearly intended.

Sec. 11013. Debt collection improvement

Section 11013 expands the use of the Department's Three Percent Debt Collection Fund. This fund was established by Section 108 of P.L. 103–121. The language of that Act permits the Department to credit three percent of all civil debt collections resulting from Department debt collection activities to the Working Capital Fund (the Three Percent Fund) and to use those deposits to the Fund only for the costs of processing and tracking civil debt collection litigation. The proposed language would expand the uses of the

Three Percent Fund and establish a two tier structure for the expanded use of those funds.

The first tier permits the Department would use deposits in the fund for processing and tracking both civil and criminal debt collection. Thereafter, if there are amounts remaining in the Fund after paying the costs of processing and tracking, the funds could be used for financial systems and for debt-collection related personnel, administrative, and litigation expenses. The second tier permits the Department to use balances remaining after the costs of tracking and processing have been paid to support its financial management systems and to pay the costs of personnel, administration and other debt-collection-related litigation expenses.

Sec. 11014. SCAAP authorization

Section 10014 reauthorizes the State Criminal Alien Assistance Program (8 U.S.C. section 1231(i)(5)) through fiscal year 2004.

Sec. 11015. Use of annuity brokers in structured settlements

Section 11015 reforms the Department of Justice's practice for using annuity brokers in structured settlements in two ways. First, it directs the Attorney General to establish a list of annuity brokers who meet minimum qualifications for providing annuity brokerage services in connection with structured settlements entered by the United States. This list shall be updated upon request by any annuity broker that meets the minimum qualifications for inclusion on the list. The Attorney General shall transmit the list, and any updates to such list, to all United States Attorneys. Second, this provision permits the United States Attorney (or his designee) involved in any settlement negotiations (except those negotiated exclusively through the Civil Division of the Department of Justice) to have the exclusive authority to select an annuity broker from the list of such brokers established by the Attorney General, provided that all documents related to any settlement comply with Department of Justice requirements.

Sec. 11016. INS processing fees

Section 11016 states that processing fees for I–94, I–94W, and I–68 forms are to be deposited in the Land Border Inspection Fee Account, as requested by the Bush Administration in its FY 2002 and 2003 budget submissions.

Sec. 11017. United States Parole Commission extension

Section 11017 extends the United States Parole Commission, scheduled to cease operations later this year, for an additional three years. There are numerous offenders who remain under the supervision of the Parole Commission, which is responsible for administering the supervised release of District of Columbia offenders. This section also allows current Commissioners to extend their service on the Commission, and asks the Attorney General to conduct a study on whether the Parole Commission is the appropriate entity to administer supervised release for D.C. offenders.

Sec. 11018. Waiver of foreign country residence requirement with respect to international medical graduates

Section 11018 extends until 2004 the program authorizing visas for foreign medical graduates wishing to serve in the United States, and raises the number of visas available per State from 20 to 30.

Sec. 11019. Pretrial disclosure of expert testimony relating to defendant's mental condition

Section 11019 restores two provisions of Rule 16 of the Federal Rules of Criminal Procedure that were inadvertently omitted when the Supreme Court transmitted a revision of the Rules to Congress on April 29, 2002. The omitted provisions impose reciprocal obligations on the government and defendant, requiring each to disclose their expert witnesses' testimony on the defendant's mental condition bearing on the issue of guilt. The version of the Rules transmitted by the Supreme Court take effect on December 1, 2002, unless Congress acts to modify them. This section simply ensures that the sections that were omitted are not thus deleted from the Rules.

Sec. 11020. Multiparty, Multiforum Trial Jurisdiction Act of 2002

Section 11020 would streamline the process by which multidistrict litigation governing disasters are adjudicated. This section would save litigants time and money, but would not interfere with jury verdicts or compensation rates for attorneys.

The genesis of § 11020 of the conference report took place during oversight hearings conducted in the 95th Congress by the House Subcommittee on Courts, Civil Liberties and the Administration of Justice (now Courts, the Internet and Intellectual Property). These efforts were joined by those of the Carter Administration to improve judicial machinery by abolishing diversity of citizenship jurisdiction and to delineate the jurisdictional responsibilities of state and federal courts. Following Senate opposition to such expansive change, the Subcommittee narrowed its focus and began to concentrate on the problem of dispersed complex litigation arising out of a single accident resulting in multiple deaths or injuries.[2]

Legislation on this more specific issue was first introduced in both the 98th and 99th Congresses. The House of Representatives subsequently approved legislation highly similar to § 11020 of the conference report in the 101st and 102nd Congresses; and the full House Committee on the Judiciary favorably reported this language in the 103rd Congress as well. Moreover, § 11020 of the conference report is highly similar to that set forth in § 10 of the Subcommittee substitute to H.R. 1252, the "Judicial Reform Act," from the 105th Congress, which the House passed in amended form with § 10 fully intact. In addition, during the 106th Congress the House of Representatives passed the precursor to § 11020 of the conference report, H.R. 2112, by voice vote under suspension of the rules. Section 11020 of the conference report is now largely culled

[2] Letter from Michael J. Remington, former Chief Counsel to the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the Committee on the Judiciary, U.S. House of Representatives, to Representative F. James Sensenbrenner, Jr. (July 14, 1999).

from § 3 of H.R. 860, which the House passed under suspension of the rules on March 14, 2001. No hearings on H.R. 860 were held in the 107th Congress given the ample legislative history that preceded it from the 95th Congress through the 106th. The Judicial Conference and the Department of Justice have also supported these previous legislative initiatives.

The need for enactment of § 11020 of the conference report was articulated by an attorney who testified on behalf of a major airline manufacturer at the June 16, 1999, hearing on H.R. 2112.[3] It is common after a serious accident to have many lawsuits filed in several states, in both state and federal courts, with many different sets of plaintiffs' lawyers and several different defendants. Despite this multiplicity of suits, the principal issue that must be resolved first in each lawsuit is virtually identical: Is one or more of the defendants liable? Indeed, in lawsuits arising out of major aviation disasters, it is common for the liability questions to be bifurcated and resolved first, in advance of any trial on individual damage issues. The waste of judicial resources—and the costs to both plaintiffs and defendants—of litigating the same liability question several times over in separate lawsuits can be extreme.

Different expert consultants and witnesses may be retained by the different plaintiffs' lawyers handling each case. The court in each lawsuit can issue its own subpoenas for records and for depositions of witnesses, potentially conflicting with the discovery scheduled in other lawsuits. Critical witnesses may be deposed for one suit and then redeposed by a different set of lawyers in a separate lawsuit. Identical questions of evidence and other points of law can arise in each of the separate suits, meaning that the parties in each case may have to brief and argue—and each court may have to resolve—the same issues that are being briefed, argued, and resolved in other cases, sometimes with results that conflict.

Current efforts to consolidate all state and federal cases related to a common disaster are incomplete because current federal statutes restrict the ways in which consolidation can occur—apparently without any intention to limit consolidation. For example, plaintiffs who reside in the same state as any one of the defendants cannot file their cases in federal court because of a lack of complete diversity of citizenship, even if all parties to the lawsuit want the case consolidated. For those cases that cannot be brought into the federal system, no legal mechanism exists by which they can be consolidated, as state courts cannot transfer cases across state lines. In sum, full consolidation cannot occur in the absence of federal legislative redress.

The changes set forth in § 11020 of the conference report speak directly to these problems. The revisions should reduce litigation costs as well as the likelihood of forum-shopping in airline accident cases; and an effective one-time determination of punitive damages would eliminate multiple or inconsistent awards arising from multiforum litigation.

Sec. 11020. Multiparty, Multiforum Jurisdiction of District Courts. Section 11020 of the conference report would bestow origi-

[3] Hearing on H.R. 2112 Before the Subcomm. on Courts and Intellectual Property of the House Comm. on the Judiciary, 106th Cong., 1st Sess. (June 16, 1999) (statement of Thomas J. McLaughlin, Esq., Perkins Coie, LLP, Attorneys for the Boeing Company at 4–9)

nal jurisdiction on federal district courts in civil actions involving minimal diversity jurisdiction among adverse parties based on a single accident where at least 75 persons have died. The district court in which such cases are consolidated would retain those cases for determination of liability and punitive damages.

More specifically, subsection 11020 of the conference report creates a new § 1369 of Title 28 of the U.S. Code which confers original jurisdiction upon the federal district courts of any civil action involving minimal diversity between adverse parties that arise from a single accident and where at least 75 people have died in the accident if (a) a defendant resides in a state and a substantial part of the accident occurred in another state or other location (regardless of whether the defendant is also a resident of the state where a substantial part of the accident occurred); any two defendants reside in different states (regardless of whether such defendants are also residents of the same state or states); or (c) substantial parts of the accident occurred in different states.

Subsection (b) of new § 1369 creates an exception to the minimum diversity rule. In brief, a U.S. district court may not hear any case in which a "substantial majority" of plaintiffs and the "primary" defendants are all citizens of the same state; and in which the claims asserted are governed "primarily" by the laws of that same state. In other words, only state courts may hear such cases. (This feature was one of three changes proffered to the Senate in an effort to develop greater support for H.R. 2112 in the waning days of the 106th Congress.

Subsection (c) of new § 1369 sets forth certain "special rules" and definitions. They include the following:

(1) *Minimal Diversity.* Exists between adverse parties if any party is a citizen of a state and any adverse party is a citizen of another state, a citizen/subject of a foreign state, or a foreign state.

(2) *Corporation.* Deemed to be a citizen of any state, and a citizen or subject of any foreign state, in which it is incorporated or has its principal place of business; and is deemed to be a resident of any state in which it is incorporated or licensed to do business.

(3) *Injury.* Physical harm to a person, and physical damage or destruction of tangible property, but only if physical harm exists.

(4) *Accident.* A sudden accident, or a natural event culminating in an accident, that results in death or injury incurred at a discrete location by at least 75 natural persons.

(5) *State.* Includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Subsection (d) of new § 1369 permits any person with a claim arising from an accident as defined by the terms of the bill to intervene as a party plaintiff, even if that person could not have brought an action in district court as an original matter.

Pursuant to subsection (e) of new § 1369, a federal district court in which an action is pending under the terms of the bill must promptly notify the Multidistrict Litigation Panel (MDLP)[4] of the pendency.

[4] 28 U.S.C. § 1407. The Mutidistrict Litigation Panel—a select group of seven federal judges picked by the Chief Justice—helps to consolidate lawsuits which share common questions of fact

Continued

Section 11020(b) of the conference report amends the general federal venue statute [5] by permitting any action under the bill to be brought in any district court in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.

Section 11020(c) of the conference report permits a defendant in a civil action in state court to remove to the appropriate federal district court under 28 U.S.C. § 1441 if:

(A) the action could have been brought under the terms of § 1369, or

(B) The defendant is a party to an action which is or could have been brought pursuant to the terms of the bill in a federal district court and arises from the same accident as the state court action.

New § 1441(e)(2)–(5), as created by § 11020(c) of the conference report, also sets forth the procedure for removal, along with the terms by which an action is remanded back to state court for determination of damages, including appellate procedures governing liability. Any decision under § 1441(e) concerning remand for the determination of damages is not reviewable by appeal or otherwise under new paragraph (6).

Finally, § 11020(d) of the conference report establishes service-of-process authority (new § 1697) for actions brought under its terms.

The amendments made by § 11020 of the conference report shall apply to a civil action if the accident giving rise to the cause of action occurred on or after the 90th day after the date of enactment of the Act.

Sec. 11021. Additional place of holding court in the Southern District of Ohio

This section authorizes judges in the Southern District of Ohio to hold court in St. Clairsville, Ohio.

Sec. 11022. Direct shipment of wine

This section states that during any period that the Federal Aviation Administration has in effect restrictions on airline passengers to ensure their safety, a person who purchases wine while visiting a winery can ship wine to another state provided that the purchaser could have carried or brought the wine into the state to which the wine is shipped. Further, the purchaser must be of legal age to purchase alcohol, the shipment must require an adult signature upon delivery and the wine must be for personal use only and not for resale. Within two years of the date of enactment, and at two-year intervals thereafter, the Attorney General, in conjunction with the FAA Administrator, must submit a report to the House and Senate Committees on the Judiciary on the implementation of this provision.

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filed in more than one judicial district nationwide. Typically, these suits involve mass torts—a plane crash, for example—in which the plaintiffs are from many different states. All things considered, the panel attempts to identify the one U.S. district court nationwide which is best adept at adjudicating pretrial matters. The panel then remands individual cases back to the districts where they were originally filed for trial unless they have been previously terminated.

[5] 28 U.S.C. § 1391.

Sec. 11023. Webster Commission implementation report

This section implements a recommendation in the report of the Commission for Review of FBI Security Programs, dated March 31, 2002 ("Webster Commission"). Subsection (a) would require the FBI Director to submit to the appropriate Committees of Congress a plan for implementation of the Webster Commission recommendations, including the costs of such implementation. Subsection (b) would require the FBI Director to submit to the appropriate Committee annual reports on implementation of this plan for three years thereafter. Subsection (c) defines the appropriate Committees as the Senate and House Judiciary and Appropriations Committees, the Senate Select Committee on Intelligence, and the House Permanent Select Committee on Intelligence.

Sec. 11024. FBI police

This title provides statutory authorization for an already existing FBI police force that protects FBI buildings and adjacent streets. Currently, the FBI police suffers from a high rate of turnover due to lower pay and fewer benefits than the Uniformed Division of Secret Service or Capitol and Supreme Court police. This title would close this disparity.

The section defines the terms "Director," "FBI buildings and grounds," and "FBI police" as used in the title. It authorizes the FBI Director to establish the FBI police, subject to the Attorney General's supervision, to protect persons and property within FBI buildings and grounds, including adjacent streets and sidewalks within 500 feet. FBI buildings and grounds would include any building occupied by the FBI and subject to FBI supervision and control, the land on which such building is situated, and enclosed passageways connecting such buildings. FBI police would be uniformed representatives of the FBI with authority to make arrests and otherwise enforce federal and D.C. laws, carry firearms, prevent breaches of the peace, suppress unlawful affrays and unlawful assemblies, and hold the same powers as sheriffs and constables. FBI police would not have authority to serve civil process. Pay and benefits would be equivalent to pay and benefits for the Secret Service Uniformed Division. The section provides that the authority of the Washington, D.C. Metropolitan Police would not be affected by this title.

Sec. 11025. Report on FBI information management and technology

This section would require the FBI Director, with appropriate commends from other components of the Department of Justice, to submit to the Congress a report on FBI information management and technology, including whether the authority is needed to waive normal procurement regulations. The report would provide the results of pending Justice Management Council studies and Inspector General audits and submitting a 10-point plan for improving FBI information management and technology to consider (1) to what extent appropriate FBI technology management positions should be personnel with commercial sector experience, (2) how access to the most sensitive information can be audited so that suspicious activity is subject to near contemporaneous review, (3) how critical information systems can employ a public key infrastructure, (4) how

security features can be tested, (5) which FBI employees should receive instruction in records and information management, (6) whether a reserve should be established for research and development, (7) whether administrative requirements for less costly software purchases are necessary, (8) whether the FBI should contract with an expert technology partner, (9) whether procedures should be instituted to procure through contracts of other agencies as necessary; and (10) whether system upgrades should be tested before operational deployment.

Sec. 11026. GAO report on crime statistics reporting

This section requires the General Accounting Office to report on how crime statistics are reported and used by Federal law enforcement agencies. Specifically, the report would identify policies that allow a case to be claimed or reported by more than one law enforcement agency, the conditions that allow such reporting to occur, the number of such cases reported during a 4-year period, similar multiple claims of credit for arrests, the use of such statistics for administrative and management purposes, and relevant definitions. The report would include recommendations for how to eliminate unwarranted and duplicative reporting. Federal law enforcement agencies would be required to comply with GAO requests for information necessary to prepare the report.

Sec. 11027. Crime-free rural States grants

Section 11027 authorizes $30 million over three years for the Attorney General to make grants to State criminal justice, Byrne, or other designated agencies to develop rural States' capacity to assist local communities in the prevention and reduction of crime, violence, and substance abuse.

Sec. 11028. Motor vehicle franchise contract dispute resolution process

Section 11028 requires that whenever a motor vehicle franchise contract provides for the use of arbitration to resolve a controversy arising out of or relating to the contract, arbitration may be used to settle the controversy only if both parties consent in writing after such controversy arises. This section also requires the arbitrator to provide the parties with a written explanation of the factual and legal basis for the decision. The section provides that its provisions shall apply only to contracts entered into, modified, renewed or extended after the date of enactment.

Sec. 11029. Holding court for the southern district of Iowa

Section 11029 states that the U.S. District Court for the Southern District of Iowa may hold court in Rock Island, Illinois, from January 1, 2003 through July 1, 2005, while the Davenport, Iowa courthouse undergoes renovation.

Sec. 11030. Posthumous citizenship restoration

Section 11030 extends the deadline for allowing families of non-citizen veterans who died while serving honorably in past wars to apply for purely honorary posthumous citizenship on the part of the deceased non-citizen veteran.

Sec. 11030A. Extension of H–1B status for aliens with lengthy adjudications

Section 11030A allows for extension of H–1B status for aliens who file a labor certification more than 365 days before the end of their sixth year, and file an immigration petition before the end of their sixth year. This provision recognizes the lengthy processing times of the Department of Labor.

Sec. 11030B. Application for naturalization by alternative applicant if citizen parent has died

Section 11030B amends the Immigration and Nationality Act to authorize the submission of an application for naturalization under section 322 of such Act on behalf of a child by the child's grandparent or legal guardian, if the parent who otherwise would be authorized to submit such application is deceased.

Subtitle B—EB–5 Amendments

CHAPTER 1—IMMIGRATION BENEFITS

Sec. 11031. Removal of conditional basis of permanent resident status for certain alien entrepreneurs, spouses, and children

Section 11031(a): This subsection sets forth new procedures for certain investors to remove conditional resident status.

Section 11031(b)(1): This subsection defines the investors who qualify under this section. They must meet three conditions: (1) they filed an I–526 petition and had it approved by the INS between January 1, 1995 and August 31, 1998; (2) they obtained conditional resident status; and (3) before the date of enactment of this bill they filed an I–829 to remove their conditional resident status.

Section 11031(b)(2): This subsection allows investors whose I–829 petitions have been denied an opportunity to file a motion to reopen them, as long as they file the motion to reopen within 60 days after enactment. If the investor is outside the United States, the INS must parole the person back into the country unless they are inadmissible or deportable or they had a material misrepresentation in their petition. If an investor whose I–829 petition was denied is in removal proceedings, they too can file a motion to reopen to apply under this bill.

Section 11031(c): This subsection sets forth procedures to determine whether investors can have their conditions removed.

Section 11031(c)(1): This subsection states that the INS has 180 days after enactment to decide three things: (1) whether the I–829 petition has any material misrepresentations; (2) whether the investment created or saved 10 jobs; and (3) whether the investor has substantially complied with the investment requirement ($1 million or $500,000). The section also states that investments in regional centers or in troubled businesses count.

Section 11031(c)(1)(D): This subsection gives investors a choice of three dates by which to measure their compliance: (1) the date the I–829 petition is filed; (2) six months after the I–829 petition is filed; or (3) the date the INS makes its determination.

Section 11031(c)(1)(E): This subsection states that if the investor meets the jobs and investment requirements and has not made

a material misrepresentation, the INS will remove the conditional resident status and the investor and family members become real permanent residents.

Section 11031(c)(1)(F): This subsection states that if the INS finds against the investors on any of the three grounds, the Service must notify the investor, and the investor receives a chance to rebut the adverse facts. If the investor loses on the jobs or investment requirement, the INS will continue the investor's conditional resident status for two years. During that time the investor can try to meet those requirements (see below). If the INS finds that the investor made a material misrepresentation, the INS will terminate the investor's conditional resident status. The investor can appeal to the BIA and then seek judicial review. During administrative or judicial review proceedings the investor remains in conditional resident status.

Section 11031(c)(2): This subsection provides for second determinations two years later for those investors who could not initially demonstrate the necessary number of jobs created or amount invested.

Section 11031(c)(2)(A): This subsection states that an investor can combine investments made earlier with new investments to show that altogether he or she invested the total amount required. This includes investments in limited partnerships.

Section 11031(c)(2)(C): This subsection states that the investor must file another I–829 during the 90 days preceding the two-year anniversary. Failure to file will normally terminate a conditional resident's status. There is a good cause exception.

Section 11031(c)(2)(E): This subsection states that if an investor files another I–829 petition, the INS has 90 days to decide three things: (1) whether the I–829 petition has any material misrepresentations; (2) whether the investment created or saved 10 jobs; and (3) whether the investor has substantially complied with the investment requirement ($1 million or $500,000). The investor can aggregate money invested before and jobs created or saved from the initial investment. As before, investments in regional centers or in troubled businesses count.

Section 11031(c)(2)(F): This subsection states that if the investor meets the job creation and investment requirements and has not made a material misrepresentation, the INS will remove the conditional resident status of the investor and family members, who may become real permanent residents.

Section 11031(c)(2)(G): This subsection states that if the INS finds against an investor on any of the three grounds, the Service must notify the investor, who may attempt to rebut the adverse facts. If the investor loses, the INS will terminate the investor's conditional resident status.

Section 11031(d): This subsection states that an investor whose conditional resident status is terminated can have an immigration judge review that decision.

Section 11031(e): This subsection provides that any alien who was admitted on a conditional basis by virtue of being the child of an EB–5 investor shall still be considered a child for purposes of this title.

Section 11031(f): This subsection defines "full-time" employment to mean a position that requires at least 35 hours a week.

Sec. 11032. Conditional permanent resident status for certain alien entrepreneurs, spouses, and children

Section 11032 provides similar procedures for EB–5 investors whose I–526 petitions were approved, but who never became conditional residents because the INS never acted on their adjustment of status applications or because they remained overseas. The key provisions of this section are outlined below.

Section 11032(a): This subsection states that the INS must approve applications under this section within 180 days after enactment.

Section 11032(b): This subsection defines an eligible individual as an investor who filed an I–526 petition that was approved by the INS between January 1, 1995 and August 31, 1998, and who then timely filed an adjustment of status application or applied for an immigrant visa overseas. Investors are not eligible if they are inadmissible or deportable on any ground.

Section 11032(c): This subsection states that if the INS revoked the I–526 petition on the ground that the investor failed to meet the capital investment requirement, that revocation is to be disregarded for purposes of this bill. If the adjustment of status application or immigrant visa application overseas is not pending on the date of enactment, it is to be treated as reopened if (i) it is not pending because the INS claims the investor never complied with the capital investment requirement or (ii) the investor left the United States without advance parole. If an investor applied for adjustment of status in the United States but is now overseas, the INS will establish a process to let them return to the United States if necessary to obtain adjustment.

Section 11032(e): This subsection states that like investors covered by section 11031 above, investors covered by this section must file an I–829 petition within two years of becoming a conditional resident. The determinations and process are similar for both section 11031 and section 11032 investors. For example, the Attorney General shall credit the investor with funds invested and jobs created or saved both prior to and after the date of enactment. This section gives investors a choice of two dates by which to measure their compliance: (1) the date they filed their adjustment of status application; or (2) the date the INS decides the I–829 petition.

Sec. 11033. Regulations

Section 11033 requires the INS to publish implementing regulations within 120 days of enactment. Until regulations are promulgated, the INS may not deny a pending I–829 petition or adjustment of status application relating to an alien covered under the terms of sections 11031 or 11032, or commence or continue removal proceedings against affected EB–5 investors.

Sec. 11034. Definitions

Section 11034 states that the terms used in this title shall have the meaning given such terms in section 101(b) of the Immigration and Nationality Act ("INA"), unless otherwise provided.

CHAPTER 2—AMENDMENTS TO OTHER LAWS

Sec. 11035. Definition of "Full-Time Employment"

Section 11035 defines full-time employment for purposes of section 203(b)(5) of the INA as a position that requiring at least 35 hours a week.

Sec. 11036. Eliminating enterprise establishment requirement for alien entrepreneurs

Section 11036 amends section 203(b)(5) of the INA to eliminate the "establishment" requirement for EB–5 investors. Instead of showing that they have "established" a commercial enterprise, Investors need only that they have "invested" in a commercial enterprise. This section also amends section 216A of the INA to eliminate the "establishment" requirement for EB–5 investors who have filed I–829 petitions. Instead of showing that they have "established" a commercial enterprise, they need only show that they have "invested" in a commercial enterprise. They also must show that they have "sustained" their investment actions over the two-year period. This section also clarifies that a "commercial enterprise" may include a limited partnership. The changes made by this section apply to I–526 and I–829 petitions pending on or after the date of enactment.

Sec. 11037. Amendments to pilot immigration program for regional centers to promote economic growth

Section 11037 amends section 610(a) of the 1993 Commerce, State, Justice appropriations act to clarify that an EB–5 regional center can promote increased export sales, improved regional productivity, job creation, or increased domestic capital investment. This accords with a 2000 amendment that became law, amending section 610(c) of the 1993 Act in a similar way. Section 11037 also clarifies that the INS should approve applications for EB–5 regional center status as long as they are based on a general prediction concerning the kinds of commercial enterprises that will receive capital from investors, the jobs that will be created directly or indirectly as a result of the investment of capital, and the positive economic impacts that will result from the investment of capital.

Subtitle C—Judicial Improvements Act of 2002

Sec. 11041. Short title

Section 11041 states that this subtitle may be cited as the "Judicial Improvements Act of 2002."

Sec. 11042. Judicial discipline procedures

Section 11042 amends Part I of Title 28 to add a new "Chapter 16: Complaints Against Judges and Judicial Discipline," which consists of:

QUOTED SECTION 351: COMPLAINTS; JUDGE DEFINED

Allows any person who alleges that a circuit, district, bankruptcy, or magistrate judge has engaged in improper conduct, or

that a judge is unable to perform his duties due to mental or physical disability, to file a written complaint with the clerk of the court of appeals for that judge's circuit. The clerk will present the complaint to the chief judge of the circuit, and to the judge who is the subject of the complaint. If the chief judge is the subject of the complaint, the second-most senior judge will receive the complaint. (The chief judge may also independently identify a complaint without receiving it in writing.)

QUOTED SECTION 352: REVIEW OF COMPLAINT BY CHIEF JUDGE

The chief judge shall expeditiously review any complaint, and can conduct a limited factual inquiry. The chief judge may request that the judge whose conduct is at issue submit a written response, which would not be shared with the complainant without that judge's consent. The chief judge or his or her designee may also communicate with the complainant, the judge, and any other person with knowledge of the matter. The chief judge shall not make findings of fact about any matter reasonably in dispute. The chief judge may issue a written order dismissing the complaint when: (a) it does not follow the rules set out in this statute, (b) when it is directly related to a judicial decision or ruling, (c) when it is frivolous or its allegations are incapable of being established through an investigation, or (d) when the judge's limited inquiry demonstrates that the allegations are false or lack factual foundation. The chief judge may also conclude the proceeding if corrective action has been taken or intervening events have mooted the complaint.

The chief judge shall distribute any written order to the complainant and the subject of the complaint.

A party aggrieved by the decision of the chief judge may petition the circuit's judicial council for review—denial of such petition is not judicially reviewable. If the judicial council accepts the petition, it can refer it for review to a panel of no fewer than five members of the council, including at least two district court judges.

QUOTED SECTION 353: SPECIAL COMMITTEES

If the chief judge does not issue an order dismissing the complaint, he or she shall promptly appoint himself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the allegations, providing written notice of such action to the complainant and the subject. The committee shall conduct an investigation as extensive as it feels necessary, and expeditiously file a comprehensive written report with the judicial council of the circuit. The report shall include both the findings of the investigation and recommendations for appropriate action by the judicial council.

QUOTED SECTION 354: ACTION BY JUDICIAL COUNCIL

Upon receipt of a report from the special committee, the judicial council may: (1) conduct any additional investigation it considers necessary, (2) dismiss the complaint, and (3) if the complaint is not dismissed, take any appropriate action to assure the effective and expeditious administration of the courts. (The council may also refer the complaint to the Judicial Conference of the United States

for its recommendation.) Such action may include a temporary ban on cases being assigned to the judge who was the subject of the complaint, and a private and/or public censure or reprimand of the judge.

For Article III judges, the council may certify the judge's disability and request that the judge voluntarily retire. But the council may not order removal from office. If the council determines that an Article III judge has acted in a way that might constitute grounds of impeachment, it should promptly certify such determination to the Judicial Conference.

For magistrate judges, the council may direct the chief judge of the district of the magistrate judge to take such action as the council considers appropriate. Any removal of a magistrate or bankruptcy judge shall be in accordance with existing law.

QUOTED SECTION 355: ACTION BY JUDICIAL CONFERENCE

Upon referral from a judicial council, the Judicial Conference shall by majority vote take such action as it considers appropriate, from the sanctions available under section 354. If the Judicial Conference believes that consideration of impeachment may be warranted, it shall send that determination to the House of Representatives. Upon receipt, the Clerk of the House of Representatives shall make the Judicial Conference's determination available to the public. If a judge has been convicted of a State or Federal felony, and exhausted or waived all direct appeals, the Judicial Conference may by majority vote send a determination that consideration of impeachment may be warranted to the House of Representatives, together with appropriate court records. No referral from a judicial council is needed for the Conference to take that step.

QUOTED SECTION 356: SUBPOENA POWER

Provides subpoena powers to judicial councils, special committees, the Judicial Conference, or a standing committee appointed by the Chief Justice for purposes of an investigation under this chapter.

QUOTED SECTION 357: REVIEW OF ORDERS AND ACTIONS

A complainant or judge aggrieved by an action of a judicial council under section 354 can petition the Judicial Conference for review.

QUOTED SECTION 358: RULES

Each judicial council and the Judicial Conference may create such rules as it deems appropriate for proceedings under this chapter. Such rules must include (a) adequate prior written notice to a judge who has been the subject of a complaint; (b) the right of an accused judge to appear before the investigating panel, call witnesses, and present evidence and argument; and (c) the complainant being given the opportunity to appear for proceedings if the panel believes he or she could provide substantial information. Rules must be made public and are subject to modification by the Judicial Conference.

QUOTED SECTION 359: RESTRICTIONS

No judge whose conduct is the subject of investigation can serve upon an investigatory panel, a judicial council, or the Judicial Conference until proceedings under this chapter are terminated. No person has the right to intervene or appear as an amicus in any proceeding before a judicial council or the Judicial Conference under this chapter.

QUOTED SECTION 360: DISCLOSURE OF INFORMATION

Except for referrals to the House of Representatives, all matters related to investigations under this chapter shall be confidential and not disclosed by any person in any proceeding, with certain exceptions.

QUOTED SECTION 361: REIMBURSEMENT OF EXPENSES

When a complaint is dismissed, the judge who was its subject may be reimbursed for reasonable expenses, including attorneys' fees, incurred during the investigation.

QUOTED SECTION 362: OTHER PROVISIONS AND RULES NOT AFFECTED

Nothing in this chapter shall be construed to affect any other provision of this title, the Federal Rules of Civil or Criminal Procedure, Appellate Procedure, or Evidence.

QUOTED SECTION 363: COURT OF FEDERAL CLAIMS, COURT OF INTERNATIONAL TRADE, COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Each named court shall establish rules consistent with this chapter to evaluate complaints against its judges, and shall have the powers granted by this chapter to a judicial council.

QUOTED SECTION 364: EFFECT OF FELONY CONVICTION

Any judge who has been convicted of a State or Federal felony and has exhausted all available means for direct review of that conviction shall not accrue credit toward retirement benefits or hear or decide cases unless the judicial council of the circuit determines otherwise.

Sec. 11043. Technical amendments

Section 11043 makes technical amendments necessitated by the bill.

Sec. 11044. Severability

Section 11044 states that if any part of this subtitle is found unconstitutional, the remainder of the Act will not be affected.

Subtitle D—Antitrust Modernization Commission Act of 2002

Sec. 11051. Short title

Section 11051 states that this subtitle may be cited as the "Antitrust Modernization Commission Act of 2002."

Sec. 11052. Establishment

Section 11052 establishes the Commission.

Sec. 11053. Duties of the Commission

Section 11053 states that the Commission's duties are to examine whether the antitrust laws are in need of modernization, to solicit the views of all concerned parties, to evaluate proposals, and to prepare and submit a report to Congress and the President.

Sec. 11054. Membership

Section 11054 states the Commission will have 12 members, with four appointed by the President, two each by the majority and minority leaders of the Senate, and two each by the Speaker and minority leader of the House. The President's nominees will include two members of the opposing party, to be chosen by that party's Congressional leaders. The President will choose the chair of the Commission, while the Congressional leaders from the other party will choose the vice chair.

Sec. 11055. Compensation of the Commission

Section 11055 states that government employees will not be compensated for their service on the Commission, while nongovernment employees will receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule.

Sec. 11056. Staff of Commission; experts and consultants

Section 11056 states that the chairperson of the Commission may appoint and terminate an executive director and other necessary staff, and use experts and consultants.

Sec. 11057. Powers of the Commission

Section 11057 states that the Commission may hold such hearings and take such testimony as it considers appropriate, may take testimony under oath, and obtain information directly from any executive agency or court.

Sec. 11058. Report

Section 11058 states that the Commission shall submit a detailed report to Congress and the President within three years after its first meeting, including recommendations for legislative and administrative action the Commission considers appropriate.

Sec. 11059. Termination of Commission

Section 11059 states that the Commission shall cease to exist 30 days after it submits its report.

Sec. 11060. Authorization of appropriations

Section 11060 authorizes $4 million to carry out this subtitle.

TITLE II—JUVENILE JUSTICE

Subtitle A—Juvenile Offender Accountability

Sec. 12101. Short title

This section provides that the short title of this subtitle may be cited as the "Consequences for Juvenile Offenders Act of 2002."

Sec. 12102. Juvenile offender accountability

Section 12101 establishes a juvenile offender accountability block grant program for states, authorized at $350,000,000 per year through FY2005.

QUOTED SECTION 1801: PROGRAM AUTHORIZED

Authorizes the Attorney General to provide grants to States, and in certain cases directly to eligible units of local government, for use by States and localities for the purpose of strengthening their juvenile justice systems. Subsection (b) provides an illustrative list of acceptable expenditures for the grant money. Generally, funded programs are aimed at ensuring that juveniles receive appropriate sanctions and face consequences for their wrongdoing.

QUOTED SECTION 1802: GRANT ELIGIBILITY

This section establishes the eligibility criteria for States and localities to receive funding under the grant program. Section 1802(a) provides that States applying for grant funds must provide the Attorney General with information about the proposed activities the State and its localities will carry out with the grant and the criteria by which the State proposes to assess the effectiveness of such activities on achieving the purposes of this part. The applicant must provide the Attorney General with assurances that the State and any localities within the State that qualify for funding have in effect, or will have in effect within one year of submitting its application, policies and programs that provide for a system of graduated sanctions as defined in Section 1802(c).

Section 1802(b) establishes the eligibility criteria for localities, both within States which qualify for funding, and within States that do not qualify or apply for funds, to receive grant funds under the section. Section 1802(b)(1)(A) requires that the localities must provide information about the activities the localities propose to carry out with the subgrant and the criteria by which the locality proposes to assess the effectiveness of such activities. Section 1802(b)(1)(B) requires that localities must provide assurances that a system of graduated sanctions is or will be in effect within one year of applying for the funds.

Section 1802(c) describes the four requirements that a system of graduated sanctions must meet for an applicant to qualify for the grant funds: (1) the sanctions must be imposed on a juvenile offender for each delinquent offense; (2) the sanctions escalate in intensity with each subsequent, more serious delinquent offense; (3) the system have sufficient flexibility to allow for individualized sanctions and services suited to the individual juvenile offender; and (4) the system should accord appropriate consideration to public safety and victims of crime.

Section 1802(d) provides that a State or locality may qualify for the grant funds even if its system of graduated sanctions is discretionary. A State or locality does not have to require all of its juvenile courts to impose graduated sanctions or to impose them in every case. In States and localities where the imposition of graduated sanctions is discretionary, the juvenile courts that do not im-

pose graduated sanctions must report at least annually to the applicable State or locality why graduated sanctions were not imposed in all such cases.

Section 1802(e) defines the terms "discretionary" and "sanctions." The term discretionary means that each and every juvenile court in a State or locality does not have to impose a system of graduated sanctions. The term sanctions means tangible, proportional consequences that hold juvenile offenders accountable for the offense committed. A sanction may include, but is not limited to, counseling, restitution, community service, a fine, supervised probation, or confinement.

QUOTED SECTION 1803: ALLOCATION AND DISTRIBUTION OF FUNDS

Section 1803(a) provides that each State is to receive 0.50 percent of the total grant funds. The term "State" is defined in Section 1809. The remaining funds are then to be distributed among the States based on the size of each State's juvenile population.

Section 1803(b)(1) requires that a participating State must distribute to its participating localities 75 percent of the total grant funds the State receives. This "pass-through" provision is aimed at ensuring that localities receive most of the funding when they bear most of the juvenile justice expenditures.

Section 1803(b)(2) provides for a waiver of the pass-through provision when the State is responsible for more than 25 percent of the total juvenile justice expenditures in the State. The State may seek a waiver of the pass-through requirement from the Attorney General so that it may keep a share of the grant funds equal to its share of the total expenditures in that State.

Section 1803(b)(3) provides an allocation formula to distribute the grant funding among the localities within a State. The allocation formula is intended to provide maximum resources to the localities that bear the largest burden in administering the juvenile justice system in the participating State. Under the formula, each State determines the amount that each of its localities receives, based on a combination of juvenile justice expenditures and the level of violent crime in each locality.

Section 1803(b)(4) provides that a local government shall not receive a subgrant of more than 100 percent of its juvenile justice expenditures.

Section 1803(c) requires the State to investigate the methodology used by a locality to determine the accuracy of the locality's submitted data, if the State has reason to believe such information is insufficient or inaccurate.

Section 1803(d) provides that States shall expend money on services to localities whose allotments are less than $10,000.

Section 1803(e) provides that the Attorney General will reserve not more than 75 percent of the allocation that a non-qualifying State would have received under section 1803(a) if it had qualified. This reserve will be used to provide grants to localities that meet the requirements for funding under section 1802 even though they are in the non-qualifying States.

QUOTED SECTION 1804: GUIDELINES

Section 1804(a) requires the Attorney General to issue guidelines establishing procedures under which a State or locality that receives funds is required to provide notice regarding the proposed use of funds made available under this part.

Section 1804(b) requires an eligible State or locality to establish an advisory board to review the proposed uses of such funds. The members of the board must include representatives of: State and local police departments, prosecutors' offices, juvenile courts, probation offices, educational agencies, and social service agencies; the local sheriff's departments; nonprofit, nongovernmental victim advocacy organizations; and nonprofit, religious or community groups.

QUOTED SECTION 1805: PAYMENT REQUIREMENTS

This section establishes various provisions regarding payment of funds to eligible States and localities and repayment of unexpended funds to the Attorney General. Grant recipients may use no more than 5 percent of any grant funds received for administrative costs.

QUOTED SECTION 1806: UTILIZATION OF THE PRIVATE SECTOR

This section provides that States or localities may use the funds to contract with private, nonprofit entities or community-based organizations to carry out the purposes of section 1801.

QUOTED SECTION 1807: ADMINISTRATIVE PROVISIONS

This section establishes administrative provisions for recipient State or localities that receive funds directly from the Attorney General. The recipient of the funds must establish a trust fund and deposit all payments received under this grant program into that trust.

QUOTED SECTION 1808: ASSESSMENT REPORTS

This section requires that a State or locality that receives the grant or subgrant funding must provide a report to the Attorney General summarizing the activities carried out with the funds and assessing the effectiveness of those activities. This section also includes a waiver provision for activities that are not practical to assess.

QUOTED SECTION 1809: DEFINITIONS

This section provides definitions of key terms used in the legislation.

QUOTED SECTION 1810: AUTHORIZATION OF APPROPRIATIONS

This section authorizes $350 million a year for through fiscal year 2005 to fund the programs under this title.

Subtitle B—Juvenile Justice and Delinquency Prevention Act of 2002

Section 12201. Short title

Section 12201 states that this subtitle may be cited as the "Juvenile Justice and Delinquency Prevention Act of 2002."

Section 12202. Findings

Section 12202 states the findings of Congress on the seriousness of juvenile crime and the need to address the problem through both prevention and accountability programs.

Section 12203. Purpose

Section 12203 states that the purpose of this subtitle is to assist State and local governments in preventing acts of juvenile delinquency and holding offenders accountable.

Section 12204. Definitions

Section 12204 modifies and adds to the definitions under the Juvenile Justice and Delinquency Act. It defines "graduated sanctions," "contact," "adult inmate," "violent crime," "collocated facilities," and "related complex of buildings." The definition for "contact" adopts current Federal regulations, as found in section 31.303 of Title 28 of the Code of Federal Regulations.

Section 12205. Concentration of Federal effort

Section 12205 modifies the duties of the Administrator of the Office of Juvenile Justice and Delinquency Prevention by, among other things, requiring him to issue model standards for providing mental health care to incarcerated juveniles within one year of enactment.

Section 12206. Coordinating Council on Juvenile Justice and Delinquency Prevention

Section 12206 makes a technical correction to the JJDPA, making it comply with the current title of the House Education and Workforce Committee.

Section 12207. Annual report

Section 12207 amends section 207 of the JJDPA to require an annual evaluation of the effectiveness of programs funded under this title.

Section 12208. Allocation

Section 12208 amends section 222 of the JJDPA to make technical changes to clarify the process by which States and territories receive funding under the Act.

Section 12209. State plans

Section 12209 amends section 223 of the JJDPA to amend or eliminate specific state plan requirements and modify the list of activities eligible for funding under the formula grant program.

Section 12210. Juvenile Delinquency Prevention Block Grant Program

Section 12210 amends Title II of the JJDPA by repealing Part C (National Programs), Part D (Gangs), Part E (State Challenge Activities), Part F (Treatment of Juvenile Offenders Who Are Victims of Child Abuse or Neglect), Part G (Mentoring), Part H (Boot Camps), and the first sub-part of Part I (White House Conference on Juvenile Justice). In their place, the section creates a new Part C that establishes the Juvenile Delinquency Prevention Block Grant and sets forth the allocation of funds, state plan requirements and criteria and eligibility for grants for local projects.

Section 12211. Research; evaluation; technical assistance; training

Section 12211 amends Title II of the JJDPA by creating a new Part D that authorizes research, training, technical assistance and information dissemination regarding juvenile justice matters through the Office of Juvenile Justice and Delinquency Prevention.

Section 12212. Demonstration projects

Section 12212 amends Title II of the JJDPA by creating a new Part E that permits the administrator to award grants for developing, testing, and demonstrating new initiatives and programs for the prevention, control or reduction of juvenile delinquency.

Section 12213. Authorization of appropriations

Section 12213 authorizes such sums as may be appropriate to carry out Title II of this act.

Section 12214. Administrative authority

Section 12214 amends Section 299A of the JJDPA to modify the administrator's authority to establish rules, regulations, and procedures.

Section 12215. Use of funds

Section 12215 amends Section 299C of the JJDPA to state, among other things, that no funds shall be paid to a residential program unless the State in which it is located has minimum licensing standards.

Section 12216. Limitations on use of funds

Section 12216 amends Title II, Part F of the JJDPA by adding a requirement that funds not be used to support the unsecured release of juveniles charged with a violent crime.

Section 12217. Rules of construction

Section 12217 amends Title II, Part F of the JJDPA by adding a new section to clarify that nothing in Title I or II(a) prevents otherwise eligible organizations from receiving grants, or (b) should be construed to modify or affect existing federal or state laws related to collective bargaining rights of employees.

Section 12218. Leasing surplus Federal property

Section 12218 amends Title II, Part F of the JJDPA to permit the administrator to receive surplus Federal property and lease it

to eligible entities for use in juvenile facilities or for delinquency prevention and treatment activities.

Section 12219. Issuance of rules

Section 12219 amends Title II, Part F of the JJDPA to allow the administrator to issue rules to carry out the title.

Section 12220. Content of materials

Section 12220 amends Title II, Part F of the JJDPA to add a new section requiring that materials funded by this act for the purpose of hate crimes prevention shall not abridge or infringe upon the constitutionally protected rights of free speech, religion, and equal protection of juveniles or their parents or legal guardians.

Section 12221. Technical and conforming amendments

Section 12221 sets forth technical and conforming amendments.

Section 12222. Incentive grants for local delinquency prevention programs

Section 12222 reauthorizes Title V of the JJDPA, which provides for grants for delinquency prevention programs and activities for juveniles who have had contact with the juvenile justice system or who are likely to have contact with the juvenile justice system, with minor amendments.

Section 12223. Effective date; application of amendments

Section 12223 sets forth the effective date of the act and states that amendments made by the act shall apply to fiscal years beginning after September 30, 2002.

Subtitle C—Amendments to 18 U.S.C. 5037

Section 12301. Amendments to 18 U.S.C. 5037

Section 12301 amends 18 U.S.C. § 5037 to modify current federal law regarding the sentencing of juvenile delinquents. Specifically, it (1) provides authority to impose a term of juvenile delinquency supervision to follow a term of official detention, (2) provides authority to sanction a violation of probation when a person adjudicated a juvenile delinquent is over 21 at the time of the violation, and (3) makes technical corrections in response to the Supreme Court's decision in *United States* v. *R.L.C.*

TITLE III—INTELLECTUAL PROPERTY

Subtitle A—Patent and Trademark Office Authorization

Sec. 13101. Short Title

Section 13101 states that the short title of this subtitle is the "Patent and Trademark Authorization Act of 2002."

Sec. 13102. Authorization of amounts available to the Patent and Trademark Office

Section 13102 would authorize the PTO to receive appropriations for fiscal years 2003 through 2008 in amounts equal to those

fees collected by the agency in each such fiscal year. The Director of the PTO must submit estimates of the fees for the next fiscal year to the Committees on Appropriations and Judiciary of the Senate and the Committees on Appropriations and Judiciary of the House of Representatives no later than February 15 each fiscal year. If enacted, however, this full-funding authorization would still be subject to appropriations.

Sec. 13103. Electronic filing and processing of patent and trademark applications

Section 13103 requires the Director to develop a user-friendly electronic system for the filing and processing patent and trademark applications. This electronic system must also allow examiners and applicants to send all communications electronically, and should allow the PTO to process, maintain, and search electronically the contents and history of each application. The system must be completed within 3 years of the date of enactment of this legislation. This section authorizes not more than $50,000,000 for each of fiscal years 2003, 2004 and 2005 to carry out this section. These amounts will remain available until expended.

Sec. 13104. Strategic Plan

Section 13104 requires the Secretary of Commerce to submit annual updates on the implementation of the "21st Century Strategic Plan", which was issued on June 3, 2002, and any amendments to that plan. These annual reports should be submitted to Committees on the Judiciary of the Senate and House of Representatives in the five calendar years following the date of enactment of this act.

Sec. 13105. Determination of substantial new question of patentability in reexamination proceedings

Section 13105 modifies the sections of Title 35 of the U.S. Code that instruct the Director to determine whether substantial new questions of patentability are raised by requests for prior art citations to the Office, *ex parte* reexaminations of patents, or *inter partes* reexaminations of patents. In each of these cases, language is added to the Title to clarify that the existence of a substantial new question of patentability is not necessarily precluded by the fact that a patent or printed publication has been previously cited by the Office or considered by the Office. This section states that these amendments to the U.S. Code will be effective for any determinations made by the Director on or after the enactment of this bill.

Sec. 13106. Appeals in inter partes reexamination proceedings

Section 13106 amends 35 U.S.C. Sec. 315 by adding the Court of Appeals for the Federal Circuit as a venue where a third party requester may appeal, or be a party to an appeal of, a final decision on patentability.

This section strikes the section in the Code that states that the third-party requester may not appeal the decision of the Board of Patent Appeals and Interferences. It explicitly adds third-party requesters to those who may request an appeal or participate in an

appeal of a decision by the Board of Patent Appeals and Interferences. It also states that all of the amendments found in this section apply to any reexamination begun on or after the date of enactment of this bill.

Subtitle—B Intellectual Property and High Technology Technical Amendments

Sec. 13201. Short title

Section 13201 may be cited as the "Intellectual Property and High Technology Technical Amendments Act of 2002."

Sec. 13202. Clarification of Reexamination Procedure Act of 1999; technical amendments

Reexamination is an administrative proceeding in which a patent may be reviewed in light of new evidence affecting its patentability ("prior art").[6] Traditionally, reexamination operated only between the patent owner and the PTO (*ex parte*). As part of the AIPA, a new *inter partes* reexamination procedure was established to allow a third party also to challenge the validity of a patent or its claims through the introduction of new evidence. While this *inter partes* procedure is considered beneficial because it provides cost savings over court litigation, some critics were concerned it would be abused. As a result, reexamination through the *inter partes* mechanism was designed with certain limitations (e.g., estoppel provisions) which do not apply in *ex parte* reexamination under the Patent Act.

Section 13202 of the bill merely clarifies the Patent Act's *inter partes* reexamination section by stipulating that it will apply to the proper parties and operate as envisioned. For example, the term "third-party requester" is inserted in lieu of "persons," since only a third party may invoke this *inter partes* reexamination. This is logical because a patent owner has more rights under *ex parte* reexamination and would not choose to use the *inter partes* procedures even if available.

The bill, under paragraph (c), specifies that the effective date of these reexamination procedures shall apply to any reexamination on or after the date of the act's enactment.

Sec. 13203. Patent and Trademark Efficiency Act amendments

The AIPA contained a title (the "Patent and Trademark Efficiency Act") to modernize the PTO by transforming it into a more autonomous and efficient agency. The first section of the bill clarifies the status and authority of the Deputy Director of the PTO under this reorganization. The amendments made by the succeeding two paragraphs also conform the membership of the Trademark Trial and Appeal Board and the Board of Patent Appeals and Interferences to include the Deputy Director, as under current statute.

Section 13203 amends section 5, chapter 1, of title 35. The employees of the PTO are currently prohibited from having an ownership interest in patents.[7] Members of the newly-established Public

[6] 35 U.S.C. § 301 et seq.
[7] 35 U.S.C. § 4.

Advisory Committee are currently considered employees of the Office. Currently, those individuals who possess the most thorough understanding of the patent system (for example, independent inventors) are prohibited from participating on the Public Advisory Committee. This subsection eases this restriction on those serving on the Public Advisory Committee in light of the goals of the AIPA.

This section eliminates the need for a signature to be attested on a patent grant. This amendment removes one step of the agency's bureaucracy and allows the PTO to issue patents more expeditiously.

Sec. 13204. Domestic publication of Foreign Filed Patent Applications Act of 1999 amendments

The AIPA established the early publication of patent applications in the U.S. patent system for the first time along with certain conditions and new rights for inventors. One such right is a corresponding provisional right (e.g., a reasonable royalty) in patent infringement cases. These provisions will take effect 1 year after the AIPA's date of enactment. Section 13204 is technical in nature and clarifies the text regarding the statutory requirement for the effective date of international applications which may qualify for the provisional rights based on early publication.

Sec. 13205. Domestic publication of patent applications published abroad

The AIPA established the early publication of patent applications, as described above. One consequence of early publication is its effect on the standard of novelty for a patent application. Section 13205 and the following paragraphs establish certain safeguards regarding the interplay of the early publication of patent applications and the review of novelty during the patent examination process. It is an especially important safeguard in light of the fact that the U.S. is a signatory of the Patent Cooperation Treaty, an international convention allowing for the multi-national application of patents in several languages.

Subsection 1 contains a safeguard that the PTO will only rely on information published in English in patent applications as it makes the essential determination of novelty during the examination of a patent application. This limits the evidence from foreign applications that may be considered "prior art" and could affect patentability. This is an important safeguard for independent inventors and small American businesses that do not have access to expensive translation services and the foreign patent offices.

The effective date language relating to section 102(e) generally provides that all patents, whenever granted, and all pending applications for patents, whenever filed, will be subject to prior art as defined by section 102(e) of title 35 effective as of November 29, 2000. However, patents resulting from an international application filed before November 29, 2000 and applications published under section 122(b) of title 35 or Article 21(2) of the treaty defined in section 351(a) of title 35 resulting from an international application filed before November 29, 2000 will not be effective as prior art references as of the filing date of the international application. This exception includes patents and published applications derived di-

rectly or indirectly from international applications filed before November 29, 2000, including international applications that claim benefit to an earlier application for patent in the United States. Thus, for example, if an application for patent, filed before, on, or after November 29, 2000, claims the benefit to an international application filed before November 29, 2000, and the international application, in turn, claims the benefit to earlier filed United States application for patent, neither the filing date of the international application nor the filing date of the earlier-filed application for patent in the United States will be considered in determining when the resulting published application or patent is effective as a prior art reference under section 102(e) of title 35 effective on November 29, 2000. However, under section 102(e) of title 35 as amended by the AIPA, for patents and published applications derived indirectly from an international application filed before November 29, 2000 through a bypass continuation application (an application for patent filed under section 111 of title 35 that claims the benefit of the filing date of an earlier international application that did not enter the national stage under section 371 of title 35), such patents and published applications are effective as prior art references as of the filing date of the bypass continuation application.

This section also clarifies that a patent or pending application for patent will be subject to prior art patents resulting from international applications filed before November 29, 2000 based on the provisions of section 102(e) of title 35 in effect before November 29, 2000. Thus, such patents may be prior art references as of the date of compliance with the requirements of section 371(c)(1), (2), and (4) of title 35 and not the filing date of the international application, unless the date of compliance with the requirements of section 371(c)(1), (2), and (4) of title 35 coincides with the filing date of the international application.

Sec. 13206. Miscellaneous clerical amendments

Section 13206 contains a series of highly technical clerical amendments developed by the Office of Legislative Counsel upon its own initiative. These changes to the Patent Act are self-evident, and range from aligning paragraphs, deleting quotation marks, correcting the fonts of headings, and the like.

Sec. 13207. Technical corrections in trademark law

In Section 13207, the first paragraph clarifies the statutory text of the Trademark Act as it relates to damages. In 1999, the "Anti-Cybersquatting Consumer Protection Act"[8] established certain damages for willful violation of § 43(c) of the Trademark Act.[9] The present language entitles a plaintiff to damages, but it reads awkwardly. This bill makes a technical correction to the text and thereby removes the redundant text, without altering the substance of available trademark infringement remedies.

The second paragraph provides for additional technical amendments, including four strictly clerical changes, such as the deletion of a comma and the realignment of a paragraph. The bill also

[8] H.R. 3194, P.L. 106–113 (Nov. 29, 1999)
[9] 15 U.S.C. § 1125(c)

makes additional changes to the Trademark Act regarding the designation of persons involved with the filing procedures for receiving notice and process correspondence relating to the trademark registration.

Sec. 13208. Patent and trademark fee clerical amendment

Section 13208 corrects a clerical error pertaining to the section of the law cited relating to the adjustment of trademark fees and the consumer price index. The change to the cited reference does not make a substantive change in trademark law.

Sec. 13209. Copyright related corrections to 1999 Omnibus Reform Act

Section 13209 makes amendments to Title I of IPCORA.

Paragraph (1)(A) amends section 1007(2) by striking "paragraph (2)" and inserting "paragraph (2)(A)".

Paragraph (1)(B) amends section 1007(3) by striking "1005(e)" and inserting "1005(d)". In section 1007(3), the amendment instructions require paragraph 12 to be added to subsection 119(a) "as amended by section 1005(e)". The reference to section 1005(e) is wrong. Section 1005(d) amended subsection 119(a), whereas section 1005(e) amended subsection 119(d).

Section 1005(d) amended subsection 119(a) by adding paragraph 11. Section 1005(e) amended subsection 119(d) by rewriting its paragraph 11. This amendment corrects this.

Paragraph (2) amends section 1006(b) by striking "119(b)(1)(B)(iii)" and inserting "119(b)(1)(B)(ii)". Section 1006(b) amended section 119(b)(1)(B)(iii) by inserting "or the Public Broadcasting Service satellite feed" after "network station". Section 119(b)(1)(B)(ii), not (iii), should have been amended. Section 119(b)(1)(B)(iii) contains no reference to "network station". Section 119(b)(1)(B)(ii) does contain that reference, and it is clear that section 1006(b) was intended to amend section 119(b)(1)(B)(ii).

Paragraphs (3)(A) and (3)(B) amend section 1006(a)(2) by repealing it, redesignating the paragraphs and changing the language in section 1011(b). The amendment in section 1006(b)(2) amends section 119(a)(1) by inserting new wording so that the text will read as follows, with the new wording italicized: "primary transmission made by a superstation or by the Public Broadcasting Service satellite feed and embodying a performance or display of a work".

The amendment in section 1011(b)(2)(A) subsequently amends the same language but does not take the first amendment into account. It directs that section 119(a)(1) be amended to delete "primary transmission made by a superstation and embodying a performance or display of a work" (ignoring the fact that "or by the Public Broadcasting Service satellite feed" has been inserted into the middle of that phrase). In lieu of that phrase, it inserts "performance or display of a work embodied in a primary transmission made by a superstation" (but without taking into account the addition of "or by the Public Broadcasting Service satellite feed"). As a result, it is unclear what is to be done with the phrase "or by the Public Broadcasting Service satellite feed". Although the intent is clear, the language of sections 1006(a)(2) and 1011(b)(2)(A) does not

necessarily accomplish the intended result. These paragraphs clarify the ambiguity and achieve the intended result.

Sec. 13210. Amendments to title 17, United States Code

Section 13210 makes amendments to title 17, United States Code.

Paragraph (1) amends section 119(a)(6) by striking "of performance" and inserting "of a performance". Section 1011(b)(2) of IPCORA amended section 119(a)(6) so that "performance or display of a work embodied in" is inserted after "by a satellite carrier of". The word "a" is missing between these two phrases. This section inserts it before "performance" so that the language will read "by a satellite carrier of a performance or display of a work embodied in".

Paragraph (2)(A) amends the section heading for section 122 by striking "rights; secondary" and inserting "rights: Secondary". Section 1002(a) of IPCORA added section 122 to title 17. The title of section 122 has editorial errors. To make it consistent with the style used throughout title 17, the title is changed to substitute a colon in lieu of the semicolon and "secondary" is capitalized. Paragraph (2)(B) amends the item relating to section 122 in the table of contents for chapter 1 to make it consistent with the change made by paragraph (2)(A).

Paragraph (3)(A) amends the section heading for section 121 by striking "reproduction" and inserting "Reproduction". Paragraph 3(B) amends the item relating to section 121 in the table of contents for chapter 1 by striking "reproduction" and inserting "Reproduction". This makes the heading for section 121 and the table of contents for chapter 1 conform to the editorial style used for the rest of the headings for title 17 by capitalizing "reproduction".

Paragraphs (4)(A), (4)(B), and (4)(C) amend cross references to the limitations on exclusive rights in copyright to include section 122. Throughout title 17, such references to "121" are changed to "122". Paragraph 4(A) amends section 106 by striking "107 through 121" and inserting "107 through 122". Paragraph (4)(B) amends section 501(a) by striking "106 through 121" and inserting "106 through 122". Paragraph (4)(C) amends section 511(a) by striking "106 through 121" and inserting "106 through 122".

Paragraph (5)(A) amends section 101 by moving the definition of "computer program" so that it appears after the definition of "compilation". Paragraph (5)(B) amends section 101 by moving the definition of "registration" so that it appears after the definition of "publicly". This amendment ensures that the definitions appear in alphabetical order.

Paragraph (6) amends section 110(4)(B) in the matter preceding clause (i) by striking "conditions;" and inserting "conditions:". A colon is the proper punctuation when a phrase that introduces multiple subparts is worded to include "the following".

Paragraph (7) amends section 118(b)(1) in the second sentence by striking "to it". This section was amended by the Copyright Royalty Tribunal Reform Act of 1993 to substitute "Librarian of Congress" for references to the "Copyright Royalty Tribunal" (CRT). As originally enacted by the Copyright Act of 1976, the second sentence in subsection(b) used the pronoun "it" to refer to the CRT. As

amended in 1993, the sentence now states, "The Librarian of Congress shall proceed on the basis of the proposals submitted to it. . . ." This amendment corrects that reference.

Paragraphs (8)(A) and (B) amend section 119(b)(1)(A). Paragraph (A) strikes "transmitted" and inserts "retransmitted". Paragraph (B) strikes "transmissions" and inserts "retransmissions". These paragraphs correct two drafting errors in section 119(b)(1)(A) when it was enacted by the Satellite Home Viewer Act of 1988.

Paragraphs (9)(A), (B) and (C) amend section 203(a)(2). Paragraph (9)(A)(i) amends subparagraph (A) by striking "(A) the" and inserts "(A) The". Paragraph (9)(A)(ii) amends subparagraph (A) by striking the semicolon at the end and inserting a period. Paragraph (9)(B)(i) amends subparagraph (B) by striking "(B) the" and inserting "(B) The". Paragraph (9)(B)(ii) amends subparagraph (B) by striking the semicolon at the end and inserting a period. Paragraph (9)(C) amends subparagraph (C) by striking "(C) the" and inserting "(C) The".

Paragraphs (10)(A), (B) and (C) amend section 304(c)(2). Paragraph (10)(A)(i) amends subparagraph (A) by striking "(A) the" and inserting "(A) The". Paragraph (10)(A)(ii) amends subparagraph (A) by striking the semicolon at the end and inserting a period. Paragraph (10)(B)(i) amends subparagraph (B) by striking "(B) the" and inserting "(B) The". Paragraph (10)(B)(ii) amends subparagraph (B) by striking the semicolon at the end and inserting a period. Paragraph (10)(C) amends subparagraph (C) by striking "(C) the" and inserting "(C) The". The addition of subparagraph (C) to sections 203(a)(2) and 304(c)(2) resulted in inconsistent punctuation and this amendment makes the punctuation in sections 203(a)(2) and 304(c)(2) internally consistent.

Paragraph (11) amends the item relating to section 903 in the table of contents for chapter 9 by striking "licensure" and inserting "licensing". As originally enacted in 1984, the table of contents for chapter 9 and the text each had a different heading for section 903. The heading in the text was the same as it is now, which is "Ownership, transfer, licensing, and recordation". The heading in the table of contents was, "Ownership and transfer." In 1997, a technical amendment changed the heading in the table of sections to its present form, which is, "Ownership, transfer, licensure, and recordation." The 1997 amendment did not change the heading in the text to make it the same. This amendment makes both the table of contents and the heading in the text the same.

Paragraph (12) amends section 109 by striking subsection (e). Section 803 of the Computer Software Rental Amendments Act of 1990 amended section 109 of title 17 by adding subsection (e). According to section 804(c) the amendments made by section 803 shall not apply to public performances or displays that occur on or after October 1, 1995. Therefore, section 109 is expired.

Sec. 13211. Other copyright related technical amendments

Section 13211 makes other technical and conforming amendments. Paragraph (a) amends title 18, section 2319(e)(2) by striking "107 through 120" and inserting "107 through 122". Paragraph (b)(1) and (2) correct an incorrect reference to an uncodified title. It is incorrect to directly cite to an uncodified title.

Subtitle C—Educational Use Copyright Exemption

Sec. 13301. Educational use copyright exemption

Subsection (a) provides that this provision may be cited as the "Technology, Education and Copyright Harmonization Act of 2002."

Subsection (b): Exemption of certain performances and displays for educational uses

Section 1(b) of the TEACH Act amends section 110(2) of the Copyright Act to encompass performances and displays of copyrighted works in digital distance education under appropriate circumstances. The section expands the scope of works to which the amended section 110(2) exemption applies to include performances of reasonable and limited portions of works other than nondramatic literary and musical works (which are currently covered by the exemption), while also limiting the amount of any work that may be displayed under the exemption to what is typically displayed in the course of a live classroom session. At the same time, section 1(b) removes the concept of the physical classroom, while maintaining and clarifying the requirement of mediated instructional activity and limiting the availability of the exemption to mediated instructional activities of governmental bodies and "accredited" non-profit educational institutions. This section of the Act also limits the amended exemption to exclude performances and displays given by means of a copy or phonorecord that is not lawfully made and acquired, which the transmitting body or institution knew or had reason to believe was not lawfully made and acquired. In addition, section 1(b) requires the transmitting institution to apply certain technological protection measures to protect against retention of the work and further downstream dissemination. The section also clarifies that participants in authorized digital distance education transmissions will not be liable for any infringement by reason of transient or temporary reproductions that may occur through the automatic technical process of a digital transmission for the purpose of a performance or display permitted under the section. Obviously, with respect to such reproductions, the distribution right would not be infringed. Throughout the Act, the term "transmission" is intended to include transmissions by digital, as well as analog means.

Works subject to the exemption and applicable portions

The TEACH Act expands the scope of the section 110(2) exemption to apply to performances and displays of all categories of copyrighted works, subject to specific exclusions for works "produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks" and performance or displays "given by means of a copy or phonorecord that is not lawfully made and acquired," which the transmitting body or institution "knew or had reason to believe was not lawfully made and acquired."

Unlike the current section 110(2), which applies only to public performances of non-dramatic literary or musical works, the amendment would apply to public performances of any type of work, subject to certain exclusions set forth in section 110(2), as

amended. The performance of works other than non-dramatic literary or musical works is limited, however, to "reasonable and limited portions" of less than the entire work. What constitutes a "reasonable and limited" portion should take into account both the nature of the market for that type of work and the pedagogical purposes of the performance.

In addition, because "display" of certain types of works, such as literary works using an "e-book" reader, could substitute for traditional purchases of the work (e.g., a text book), the display exemption is limited to "an amount comparable to that which is typically displayed in the course of a live classroom setting." This limitation is a further implementation of the "mediated instructional activity" concept described below, and recognizes that a "display" may have a different meaning and impact in the digital environment than in the analog environment to which section 110(2) has previously applied. The "limited portion" formulation used in conjunction with the performance right exemption is not used in connection with the display right exemption, because, for certain works, display of the entire work could be appropriate and consistent with displays typically made in a live classroom setting (e.g., short poems or essays, or images of pictorial, graphic, or sculptural works, etc.).

The exclusion for works "produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks" is intended to prevent the exemption from undermining the primary market for (and, therefore, impairing the incentive to create, modify or distribute) those materials whose primary market would otherwise fall within the scope of the exemption. The concept of "performance or display as part of mediated instructional activities" is discussed in greater detail below, in connection with the scope of the exemption. It is intended to have the same meaning and application here, so that works produced or marketed primarily for activities covered by the exemption would be excluded from the exemption. The exclusion is not intended to apply generally to all educational materials or to all materials having educational value. The exclusion is limited to materials whose primary market is "mediated instructional activities," *i.e.,* materials performed or displayed as an integral part of the class experience, analogous to the type of performance or display that would take place in a live classroom setting. At the same time, the reference to "digital networks" is intended to limit the exclusion to materials whose primary market is the digital network environment, not instructional materials developed and marketed for use in the physical classroom.

The exclusion of performances or displays "given by means of a copy or phonorecord that is not lawfully made and acquired" under Title 17 is based on a similar exclusion in the current language of section 110(1) for the performance or display of an audiovisual work in the classroom. Unlike the provision in section 110(1), the exclusion here applies to the performance or display of any work. But, as in section 110(1), the exclusion applies only where the transmitting body or institution "knew or had reason to believe" that the copy or phonorecord was not lawfully made and acquired. As noted in the Register's Report, the purpose of the ex-

clusion is to reduce the likelihood that an exemption intended to cover only the equivalent of traditional concepts of performance and display would result in the proliferation or exploitation of unauthorized copies.[10] An educator would typically purchase, license, rent, make a fair-use copy, or otherwise lawfully acquire the copy to be used, and works not yet made available in the market (whether by distribution, performance or display) would, as a practical matter, be rendered ineligible for use under the exemption.

Eligible transmitting entities

As under the current section 110(2), the exemption, as amended, is limited to government bodies and non-profit educational institutions. However, due to the fact that, as the Register's Report points out, "nonprofit educational institutions" are no longer a closed and familiar group, and the ease with which anyone can transmit educational material over the Internet, the amendment would require non-profit educational institutions to be "accredited" in order to provide further assurances that the institution is a bona fide educational institution. It is not otherwise intended to alter the eligibility criteria. Nor is it intended to limit or affect any other provision of the Copyright Act that relates to non-profit educational institutions or to imply that non-accredited educational institutions are necessarily not bona fide.

"Accreditation" is defined in section 1(b)(2) of the TEACH Act in terms of the qualification of the educational institution. It is not defined in terms of particular courses or programs. Thus, an accredited nonprofit educational institution qualifies for the exemption with respect to its courses whether or not the courses are part of a degree or certificate-granting program.

Qualifying performances and displays; mediated instructional activities

Subparagraph (2)(A) of the amended exemption provides that the exemption applies to a performance or display made "by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of . . . systematic mediated instructional activity." The subparagraph includes several requirements, all of which are intended to make clear that the transmission must be part of mediated instructional activity. First, the performance or display must be made by, under the direction of, or under the actual supervision of an instructor. The performance or display may be initiated by the instructor. It may also be initiated by a person enrolled in the class as long as it is done either at the direction, or under the actual supervision, of the instructor. "Actual" supervision is intended to require that the instructor is, in fact, supervising the class activities, and that supervision is not in name or theory only. It is not intended to require either constant, real-time supervision by the instructor or pre-approval by the instructor for the performance or display. Asynchronous learning, at the pace of the student, is a significant and beneficial characteristic of digital distance education, and the

[10] Register of Copyrights, report on copyright and digital distance education (1999) at 159.

concept of control and supervision is not intended to limit the qualification of such asynchronous activities for this exemption.

The performance or display must also be made as an "integral part" of a class session, so it must be part of a class itself, rather than ancillary to it. Further, it must fall within the concept of "mediated instructional activities" as described in section 1(b)(2) of the TEACH Act. This latter concept is intended to require the performance or display to be analogous to the type of performance or display that would take place in a live classroom setting. Thus, although it is possible to display an entire textbook or extensive course-pack material through an e-book reader or similar device or computer application, this type of use of such materials as supplemental reading would not be analogous to the type of display that would take place in the classroom, and therefore would not be authorized under the exemption.

The amended exemption is not intended to address other uses of copyrighted works in the course of digital distance education, including student use of supplemental or research materials in digital form, such as electronic course packs, e-reserves, and digital library resources. Such activities do not involve uses analogous to the performances and displays currently addressed in section 110(2).

The "mediated instructional activity" requirement is thus intended to prevent the exemption provided by the TEACH Act from displacing textbooks, course packs or other material in any media, copies or phonorecords of which are typically purchased or acquired by students for their independent use and retention "in most postsecondary and some elementary and secondary contexts). The Committee notes that in many secondary and elementary school contexts, such copies of such materials are not purchased or acquired directly by the students, but rather are provided for the students" independent use and possession (for the duration of the course) by the institution.

The limitation of the exemption to systematic "mediated instructional activities" in subparagraph (2)(A) of the amended exemption operates together with the exclusion in the opening clause of section 110(2) for works "produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks" to place boundaries on the exemption. The former relates to the nature of the exempt activity; the latter limits the relevant materials by excluding those primarily produced or marketed for the exempt activity.

One example of the interaction of the two provisions is the application of the exemption to textbooks. Pursuant to subparagraph (2)(A), which limits the exemption to "mediated instructional activities," the display of material from a textbook that would typically be purchased by students in the local classroom environment, in lieu of purchase by the students, would not fall within the exemption. Conversely, because textbooks typically are not primarily produced or marketed for performance or display in a manner analogous to performances or display in the live classroom setting, they would not per se be excluded from the exemption under the exclusion in the opening clause. Thus, an instructor would not be precluded from using a chart or table or other short excerpt from a

textbook different from the one assigned for the course, or from emphasizing such an excerpt from the assigned textbook that had been purchased by the students.

The requirement of subparagraph (2)(B), that the performance or display must be directly related and of material assistance to the teaching content of the transmission, is found in current law, and has been retained in its current form. As noted in the Register's Report, [11] this test of relevance and materiality connects the copyrighted work to the curriculum, and it means that the portion performed or displayed may not be performed or displayed for the mere entertainment of the students, or as unrelated background material.

Limitations on receipt of transmissions

Unlike current section 110(2), the TEACH Act amendment removes the requirement that transmissions be received in classrooms or similar places devoted to instruction unless the recipient is an officer or employee of a governmental body or is prevented by disability or special circumstances from attending a classroom or similar place of instruction. One of the great potential benefits of digital distance education is its ability to reach beyond the physical classroom, to provide quality educational experiences to all students of all income levels, in cities and rural settings, in schools and on campuses, in the workplace, at home, and at times selected by students to meet their needs.

In its place, the Act substitutes the requirements in subparagraph (2)(C) that the transmission be made solely for and, to the extent technologically feasible, the reception be limited to students officially enrolled in the course for which the transmission is made or governmental employees as part of their official duties or employment. This requirement is not intended to impose a general requirement of network security. Rather, it is intended to require only that the students or employees authorized to be recipients of the transmission should be identified, and the transmission should be technologically limited to such identified authorized recipients through systems such as password access or other similar measures.

Additional safeguards to counteract new risks

The digital transmission of works to students poses greater risks to copyright owners than transmissions through analog broadcasts. Digital technologies make possible the creation of multiple copies, and their rapid and widespread dissemination around the world. Accordingly, the TEACH Act includes several safeguards not currently present in section 110(2).

First, a transmitting body or institution seeking to invoke the exemption is required to institute policies regarding copyright and to provide information to faculty, students, and relevant staff members that accurately describe and promote compliance with copyright law. Further, the transmitting organization must provide notice to recipients that materials used in connection with the course may be subject to copyright protection. These requirements are in-

[11] *Id.* at 80.

tended to promote an environment of compliance with the law, inform recipients of their responsibilities under copyright law, and decrease the likelihood of unintentional and uninformed acts of infringement.

Second, in the case of a digital transmission, the transmitting body or institution is required to apply technological measures to prevent (i) retention of the work in accessible form by recipients to which it sends the work for longer than the class session, and (ii) unauthorized further dissemination of the work in accessible form by such recipients. Measures intended to limit access to authorized recipients of transmissions from the transmitting body or institution are not addressed in this subparagraph (2)(D). Rather, they are the subjects of subparagraph (2)(C).

Third, in the case of a digital transmission, the transmitting body or institution must not "engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination." As the context makes clear, this requirement refers to conduct that is taken in connection with the particular transmissions subject to the exemption, rather than to the broader activities of the transmitting body or institution generally. Further, like the other provisions under paragraph (2)(D)(ii), the requirement has no legal effect other than as a condition of eligibility for the exemption. Thus, it is not otherwise enforceable to preclude or prohibit conduct.

The requirement that technological measures be applied to limit retention for no longer than the "class session" refers back to the requirement that the performance be made as an "integral part of a class session." The duration of a "class session" in asynchronous distance education would generally be that period during which a student is logged on to the server of the institution or governmental body making the display or performance, but is likely to vary with the needs of the student and with the design of the particular course. It does not mean the duration of a particular course (i.e., a semester or term), but rather is intended to describe the equivalent of an actual single face-to-face mediated class session (although it may be asynchronous and one student may remain online or retain access to the performance or display for longer than another student as needed to complete the class session). Although flexibility is necessary to accomplish the pedagogical goals of distance education, the Committee expects that a common sense construction will be applied so that a copy or phonorecord displayed or performed in the course of a distance education program would not remain in the possession of the recipient in a way that could substitute for acquisition or for uses other than use in the particular class session. Conversely, the technological protection measure in subparagraph (2)(D)(ii) refers only to retention of a copy or phonorecord in the computer of the recipient of a transmission. The material to be performed or displayed may, under the amendments made by the Act to section 112 and with certain limitations set forth therein, remain on the server of the institution or government body for the duration of its use in one or more courses, and may be accessed by a student each time the student logs on to participate in the particular class session of the course in which the dis-

play or performance is made. The reference to "accessible form" recognizes that certain technological protection measures that could be used to comply with subparagraph (2)(D)(ii) do not cause the destruction or prevent the making of a digital file; rather they work by encrypting the work and limiting access to the keys and the period in which such file may be accessed. On the other hand, an encrypted file would still be considered to be in "accessible form" if the body or institution provides the recipient with a key for use beyond the class session.

Paragraph (2)(D)(ii) provides, as a condition of eligibility for the exemption, that a transmitting body or institution apply technological measures that reasonably prevent both retention of the work in accessible form for longer than the class session and further dissemination of the work. This requirement does not impose a duty to guarantee that retention and further dissemination will never occur. Nor does it imply that there is an obligation to monitor recipient conduct. Moreover, the "reasonably prevent" standard should not be construed to imply perfect efficacy in stopping retention or further dissemination. The obligation to "reasonably prevent" contemplates an objectively reasonable standard regarding the ability of a technological protection measure to achieve its purpose. Examples of technological protection measures that exist today and would reasonably prevent retention and further dissemination, include measures used in connection with streaming to prevent the copying of streamed material, such as the Real Player "Secret Handshake/Copy Switch" technology discussed in *Real Networks* v. *Streambox,* 2000 WL 127311 (Jan. 18, 2000) or digital rights management systems that limit access to or use of encrypted material downloaded onto a computer. It is not the Committee's intent, by noting the existence of the foregoing, to specify the use of any particular technology to comply with subparagraph (2)(D)(ii). Other technologies will certainly evolve. Further, it is possible that, as time passes, a technological protection measure may cease to reasonably prevent retention of the work in accessible form for longer than the class session and further dissemination of the work, either due to the evolution of technology or to the widespread availability of a hack that can be readily used by the public. In those cases, a transmitting organization would be required to apply a different measure.

Nothing in section 110(2) should be construed to affect the application or interpretation of section 1201. Conversely, nothing in section 1201 should be construed to affect the application or interpretation of section 110(2).

Transient and temporary copies

Section 1(b)(2) of the TEACH Act implements the Register's recommendation that liability not be imposed upon those who participate in digitally transmitted performances and displays authorized under this subsection by reason of copies or phonorecords made through the automatic technical process of such transmission, or any distribution resulting therefrom. Certain modifications have been made to the Register's recommendations to accommodate instances where the recommendation was either too broad or not sufficiently broad to cover the appropriate activities.

The third paragraph added to the amended exemption under section 1(b)(2) of the TEACH Act recognizes that transmitting organizations should not be responsible for copies or phonorecords made by third parties, beyond the control of the transmitting organization. However, consistent with the Register's concern that the exemption should not be transformed into a mechanism for obtaining copies,[12] the paragraph also requires that such transient or temporary copies stored on the system or network controlled or operated by the transmitting body or institution shall not be maintained on such system or network "in a manner ordinarily accessible to anyone other than anticipated recipients" or "in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary to facilitate the transmissions" for which they are made.

The liability of intermediary service providers remains governed by section 512, but, subject to section 512(d) and section 512(e), section 512 will not affect the legal obligations of a transmitting body or institution when it selects material to be used in teaching a course, and determines how it will be used and to whom it will be transmitted as a provider of content.

The paragraph refers to "transient" and "temporary" copies consistent with the terminology used in section 512, including transient copies made in the transmission path by conduits and temporary copies, such as caches, made by the originating institution, by service providers or by recipients. Organizations providing digital distance education will, in many cases, provide material from source servers that create additional temporary or transient copies or phonorecords of the material in storage known as "caches" in other servers in order to facilitate the transmission. In addition, transient or temporary copies or phonorecords may occur in the transmission stream, or in the computer of the recipient of the transmission. Thus, by way of example, where content is protected by a digital rights management system, the recipient's browser may create a cache copy of an encrypted file on the recipient's hard disk, and another copy may be created in the recipient's random access memory at the time the content is perceived. The third paragraph added to the amended exemption by section 1(b)(2) of the TEACH Act is intended to make clear that those authorized to participate in digitally transmitted performances and displays as authorized under section 110(2) are not liable for infringement as a result of such copies created as part of the automatic technical process of the transmission if the requirements of that language are met. The paragraph is not intended to create any implication that such participants would be liable for copyright infringement in the absence of the paragraph.

Subsection (c): Ephemeral recordings

One way in which digitally transmitted distance education will expand America's educational capacity and effectiveness is through the use of asynchronous education, where students can take a class when it is convenient for them, not at a specific hour designated by the body or institution. This benefit is likely to be particularly

[12] *Id.* at 151.

valuable for working adults. Asynchronous education also has the benefit of proceeding at the student's own pace, and freeing the instructor from the obligation to be in the classroom or on call at all hours of the day or night.

In order for asynchronous distance education to proceed, organizations providing distance education transmissions must be able to load material that will be displayed or performed on their servers, for transmission at the request of students. The TEACH Act's amendment to section 112 makes that possible.

Under new subsection 112(f)(1), transmitting organizations authorized to transmit performances or displays under section 110(2) may load on their servers copies or phonorecords of the performance or display authorized to be transmitted under section 110(2) to be used for making such transmissions. The subsection recognizes that it often is necessary to make more than one ephemeral recording in order to efficiently carry out digital transmissions, and authorizes the making of such copies or phonorecords.

Subsection 112(f) imposes several limitations on the authorized ephemeral recordings. First, they may be retained and used solely by the government body or educational institution that made them. No further copies or phonorecords may be made from them, except for copies or phonorecords that are authorized by subsection 110(2), such as the copies that fall within the scope of the third paragraph added to the amended exemption under section 1(b)(2) of the TEACH Act. The authorized ephemeral recordings must be used solely for transmissions authorized under section 110(2).

The Register's Report notes the sensitivity of copyright owners to the digitization of works that have not been digitized by the copyright owner. As a general matter, subsection 112(f) requires the use of works that are already in digital form. However, the Committee recognizes that some works may not be available for use in distance education, either because no digital version of the work is available to the institution, or because available digital versions are subject to technological protection measures that prevent their use for the performances and displays authorized by section 110(2). In those circumstances where no digital version is available to the institution or the digital version that is available is subject to technological measures that prevent its use for distance education under the exemption, section 112(f)(2) authorizes the conversion from an analog version, but only conversion of the portion or amount of such works that are authorized to be performed or displayed under section 110(2). It should be emphasized that subsection 112(f)(2) does not provide any authorization to convert print or other analog versions of works into digital format except as permitted in section 112(f)(2).

Relationship to fair use and contractual obligations

As the Register's Report makes clear "critical to [its conclusion and recommendations] is the continued availability of the fair use doctrine."[13] Nothing in this Act is intended to limit or otherwise to alter the scope of the fair use doctrine. As the Register's Report explains:

[13] Id. at xvi.

> Fair use is a critical part of the distance education landscape. Not only instructional performances and displays, but also other educational uses of works, such as the provision of supplementary materials or student downloading of course materials, will continue to be subject to the fair use doctrine. Fair use could apply as well to instructional transmissions not covered by the changes to section 110(2) recommended above. Thus, for example, the performance of more than a limited portion of a dramatic work in a distance education program might qualify as fair use in appropriate circumstances.[14]

The Register's Report also recommends that the legislative history of legislation implementing its distance education requirements make certain points about fair use. Specifically, this legislation is enacted in recognition of the following:

a. The fair use doctrine is technologically neutral and applies to activities in the digital environment; and

b. The lack of established guidelines for any particular type of use does not mean that fair use is inapplicable.[15]

While the Register's Report also examined and discussed a variety of licensing issues with respect to educational uses not covered by exemptions or fair use, these issues were not included in the Report's legislative recommendations that formed the basis for the TEACH Act. It is the view of the committee that nothing in this Act is intended to affect in any way the relationship between express copyright exemptions and license restrictions.

Nonapplicability to secure tests

The Conference is aware and deeply concerned about the phenomenon of school officials who are entrusted with copies of secure test forms solely for use in actual test administrations and using those forms for a completely unauthorized purpose, namely helping students to study the very questions they will be asked on the real test. The Conference does not in any way intend to change current law with respect to application of the Copyright Act or to undermine or lessen in any way the protection afforded to secure tests under the Copyright Act. Specifically, this section would not authorize a secure test acquired solely for use in an actual test administration to be used for any other purpose.

Subsection (d): PTO report

The report requested in subsection (d) requests information about technological protection systems to protect digitized copyrighted works and prevent infringement. The report is intended for the information of Congress and shall not be construed to have any effect whatsoever on the meaning, applicability, or effect of any provision of the Copyright Act in general or the TEACH Act in particular.

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[14] Id. at 161–162.
[15] Id.

Subtitle D—Madrid Protocol Implementation

Sec. 13401. Short title

This section provides that this subtitle may be cited as the "Madrid Protocol Implementation Act."

Sec. 13402. Provisions to implement the protocol relating to the Madrid Agreement Concerning the International Registration of Marks

This section amends the "Trademark Act of 1946" by adding a new "Title XII—The Madrid Protocol," which contains new sections 60 through 74 with the following:

(A) The owner of a registration granted by the U.S. Patent and Trademark Office (PTO) or the owner of a pending application before the PTO may file an international application for trademark protection at the PTO.

(B) After receipt of the appropriate fee and inspection of the application, the PTO Director is charged with the duty of transmitting the application to the WIPO International Bureau.

(C) The Director is also obliged to notify the International Bureau whenever the international application has been "restricted, abandoned, canceled, or has expired," within a specified time period.

(D) The holder of an international registration may request an extension of its registration by filing with the PTO or the International Bureau.

(E) The holder of an international registration is entitled to the benefits of extension in the United States to the extent necessary to give effect to any provision of the Protocol; however, an extension of an international registration shall not apply to the United States if the PTO is the office of origin with respect to that mark.

(F) The holder of an international registration with an extension of protection in the United States may claim a date of priority based on certain conditions.

(G) If the PTO Director believes that an applicant is entitled to an extension of protection, the mark will be published in the "Official Gazette of the Patent and Trademark Office." This serves notice to third parties who oppose the extension. Unless an opposition and/or other court proceeding conducted pursuant to existing law is successful, the request for extension may not be refused. If the request for extension of protection is denied, however, the Director notifies the International Bureau of such action and sets forth the reason(s) why. The Director must also apprise the International Bureau of other relevant information pertaining to requests for extension of protection within designated time periods.

(H) If an extension for protection is granted, the PTO issues a certificate attesting to such action, and publishes notice of the certificate in the "Official Gazette." Holders of extension certificates thereafter enjoy protection equal to that of other owners of registration listed on the Principal Register of the PTO.

(I) If the International Bureau notifies the PTO of a cancellation of some or all of the goods and services listed in the international registration, the PTO must cancel an extension of protection with respect to the same goods and services as of the date on

which the international registration was canceled. Similarly, if the International Bureau does not renew an international registration, the corresponding extension of protection in the United States shall cease to be valid. Finally, the holder of an international registration canceled in whole or in part by the International Bureau may file an application for the registration of the same mark for any of the goods and services to which the cancellation applies that were covered by an extension of protection in the United States based on that international registration.

(J) The holder of an extension of protection must, within designated time periods and under certain conditions, file an affidavit setting forth the relevant goods or services on or in connection with which the mark is in use in commerce and attaching a specimen or facsimile showing the current use of the mark in commerce, or setting forth that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

(K) The right to an extension of protection may be assigned to a third party so long as that person is a national of, or is domiciled in, or has a "bonafide" and effective industrial or commercial establishment in a country that is a member of the Protocol; or has such a business in a country that is a member of an intergovernmental organization (such as the EC) belonging to the Protocol.

(L) An extension of protection conveys the same rights as an existing registration for the same mark if the extension and existing registration are owned by the same person, and extension of protection and the existing registration cover the same goods or services, and the certificate of extension is issued after the date of the existing registration.

Sec. 13403. Effective date

This section states that the effective date of the act shall commence on the date on which the Madrid Protocol enters into force with respect to the United States or 1 year after the date of enactment of the act, whichever occurs later.

TITLE IV—ANTITRUST TECHNICAL CORRECTIONS ACT OF 2002

Sec. 14101. Short title

Section 14101 provides that this title may be cited as the "Antitrust Technical Corrections Act of 2002."

Sec. 14102. Amendments

Subsection 14102(a) repeals the paragraph in Section 11 of Panama Canal Act, prohibiting ships owned by persons who are violating the antitrust laws from passing through the Canal.

Subsection 14102(b) adds a new Section 3(b) to the Sherman Act to clarify that Section 2 of the Sherman Act applies to the District of Columbia and the territories.

Subsection 14102(c) repeals Section 77 of the Wilson Tariff Act and also eliminates several cross-references to Section 77 in five other statutes (the Clayton Act, the Federal Trade Commission Act, the Packers and Stockyards Act, the Atomic Energy Act of 1954,

and the Deep Seabed Hard Mineral Resources Act). These cross-references occur in definitions of the term "antitrust laws" in the other statutes and do not change the substance of those statutes.

Subsection 14102(d) corrects an erroneous section number designation in the Curt Flood Act passed in 1998. It makes no substantive change.

Subsection 14102(e) inserts an inadvertently omitted period in the Year 2000 Information and Readiness Disclosure Act. It makes no substantive change.

Subsection 14102(f) repeals the Act of March 3, 1913, requiring that depositions in Sherman Act equity cases brought by the government be held in public.

Subsection 14102(g) repeals section 116 of the Act of November 19, 2001.

Section 14103. Effective date; application of amendments

Subsection 14103(a) provides that the changes shall take effect on the date of enactment.

Subsection 14103(b) provides that the change made by subsection 14102(a) shall apply to cases pending on or after the date of enactment.

Subsection 14103(c) provides that the change made by subsections 14102(b), (c), and (d) shall apply only to cases commenced on or after the date of enactment.

From the Committee on the Judiciary, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER,
HENRY HYDE,
GEORGE W. GEKAS,
J. HOWARD COBLE,
LAMAR SMITH,
ELTON GALLEGLY,
JOHN CONYERS, Jr.,
BARNEY FRANK,
BOBBY SCOTT,
TAMMY BALDWIN,
(*Provided*, That Mr. BERMAN is appointed in lieu of Ms. BALDWIN for consideration of sec. 312 of the Senate amendment, and modifications committed to conference.)
HOWARD BERMAN,

From the Committee on Energy and Commerce, for consideration of secs. 2203–6, 2206, 2210, 2801, 2901–2911, 2951, 4005, and title VIII of the Senate amendment, and modifications committed to conference:

BILLY TAUZIN,
MICHAEL BILIRAKIS,
JOHN D. DINGELL,

From the Committee on Education and the Workforce, for consideration of secs. 2207, 2301, 2302, 2311, 2321–4,

2331–4 of the Senate amendment, and modifications committed to conference:

PETER HOEKSTRA,
MICHAEL N. CASTLE,
GEORGE MILLER,
Managers on the Part of the House.

PATRICK LEAHY,
TED KENNEDY,
ORRIN HATCH,
Managers on the Part of the Senate.

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