The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable DANIEL K. AKAKA, a Senator from the State of Hawaii.

The PRESIDING OFFICER. Today's prayer will be offered by guest chaplain, Rabbi Arthur Schnieer, Park East Synagogue, New York City, NY.

PRAYER

The guest chaplain, Rabbi Arthur Schnieer, Park East Synagogue, New York, NY, offered the following prayer:

Let us pray:

God bless America. But God needs man. The men and women in this Chamber, who are elected by the people, understand this truth. By their commitment and dedication to the American system, they are copartners with You, O Lord, in making America the land of freedom and opportunity.

We stand in prayer today on the eve of the 55th anniversary of Kristallnacht, the infamous day and night of broken glass. The terror of those hours is still etched into my soul as I recall, as a child in Vienna, the burning of synagogues and the burning of books, fires that ultimately ended with the burning of Jews.

Kristallnacht has taught us that the right of men and women to live in peace and dignity and respect is as essential as the very air we breathe. But these are not our human rights alone; they belong also to every member of the human family. For each one of us is linked to the other in a thousand ways.

Give us the wisdom, O God, to remember what went before; the U.S. Memorial Holocaust Museum, only a mile or so from this Capitol, is a monument to the collective memory of those who perished not so long ago, the victims of cruelty, of indifference, and of silence. Help us, O God, to see with a clear eye what is happening now and to imagine what may yet happen tomorrow. Let us remember the words of the sage Hillel and his three sublime questions:

"If I am not for myself, then who will be for me?"
"But if I am only for myself, what am I?"
"And if not now, when?"

If we in the blessed land do not act—as we must—in our own self-interest there will be none to do so. But if we act only for ourselves, we will have surrendered our moral sense and moral purpose as a nation. We can never go back to the days when we tried, and failed, to insulate and isolate ourselves against the world.

The spirit of America has captured the hearts and minds of people throughout the world. Let their faith in our way of life encourage us to guard and preserve our precious freedom.

Victory belongs not to evil but to good, not to indifference but to justice, not to darkness but to light, not to death but to life. And in that final victory, with Your help, O God, America will play its role.

Heavenly Father, bless this land. Bless the President, the Vice President, the Congress, and all who labor for peace, for justice, and for the freedom of mankind, all who have learned to remember, to listen, and to act.

In the words of the Psalmist, "Let your work be revealed to your servants, and your glory upon their children. May your favor, Lord our God, rest on us [and] establish for us the work of our hands."

And let us all say: Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. Byrd].

The assistant legislative clerk read the following letter:

U.S. SENATE,
President pro tempore,

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DANIEL K. AKAKA, a Senator from the State of Hawaii, to perform the duties of the Chair.

ROBERT C. BYRD, President pro tempore.

Mr. AKAKA thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the consideration of morning business not to extend beyond the hour of 10 a.m., with the time to be under the control of the Senator from West Virginia [Mr. Byrd].

The Chair recognizes the Senator from West Virginia [Mr. Byrd].

THE BALANCED BUDGET AMENDMENT

Mr. BYRD. Mr. President, it seems that we live in an age of little reverence and less patience. It is an era of fast food and slick advertising slogans, of instant analysis and rapid information. In politics, it is a time of sound bites and media men.

The practical application of democracy as it has evolved, with its condensed messages and its blow-dried candidates, stands in stark contrast to the carefully crafted, intricate, thoughtful system envisioned by the Framers and given form by the written document known as the Constitution of the United States of America.

Representative democracy is a slow, complex, and cumbersome way of governing. Its strong point is not speed but stability. In a world enamored of instant gratification, 30-second political ads, 30-minute press conferences, rapid transit, fax machines, satellite communications, and a whole host of lifestyle subtleties that peddle speed and simplicity as invaluable commodities, I sometimes wonder if, as a people, we have somewhere lost the patience for representative democracy.

It is as if the perseverance to examine issues with meticulous care, considering and publicly debating all aspects until a solid consensus emerges, has gone out of style. Perhaps our ability to concentrate—the American attention span, if you will—has been shortened, rather like a child who has watched too much bad television. And there is all too much of that to watch.

Given our national fascination with time-saving devices that simplify our lives, it becomes easy to understand why intractable problems, without quick or obvious solutions, are especially frustrating to the American people. In many American families, both parents have to work just to make ends meet and then struggle to parcel out any leftover time, if there is any left over, to raise their children. The American people, frankly, are distracted by their own overly busy, fractured lifestyles, and the simple, quick solution is currently at a premium value.

Some in the political sphere have seized upon that distraction and have made hay out of offering one-liner solutions to the Nation's most complex problems. Some manipulative politicians have discovered that the simple,

This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
the catchy, the obvious, the easy will sell like hot cakes to an American public frustrated by the demands of making a living and disappointed by a political system that no longer seems to mean anything to them. Is the American public weary of budget deficits? Yes. Pass a constitutional amendment to balance the budget. It is just that simple. Only a constitutional amendment will not intend that the Constitution never be amended for all time. They provided an article, article V, which provides for the amending of that document if two-thirds of both Houses and three-fourths of the States give their approval to amending the Constitution. It can be done; it has been done. We have 27 amendments, 17 since the original 10 that we refer to as the Bill of Rights.

But we are not talking about that here. We are talking about an amendment that would burst at its seams the very pillars on which this constitutional system rests: The separation of powers and checks and balances. That is what it amounts to. That is what we are talking about here. Why do we not just throw out the Constitution and start all over, start out anew? Perhaps we will do neither. Perhaps we will modify it, place it under the cloak of a balanced budget amendment to the Constitution.

Mr. President, last Monday I came to this floor to speak against Senate Joint Resolution 41. If passed by the Congress and ratified by the States, the resolution, which proposes an amendment to the Constitution, would require that the Federal budget be in balance on an annual basis.

Section 1 of the proposed constitutional amendment reads: "Total outlays for any fiscal year shall not"—it does not say may not—"shall not exceed receipts for that fiscal year, unless three-fifths of both Houses and three-fourths of the States agree to suspend the rule by law for a specific excess of outlays over receipts by a rollcall vote." In my remarks last week, I pointed out several of the dangers inherent in placing that kind of mandate in this Nation's basic charter. Today, I want to focus on one particular aspect of this measure, Senate Joint Resolution 41. Just as Toto pulled back the curtain to expose the not-so-mighty Wizard of Oz, the curtain must be pulled back on this resolution so that the American people, too, can see that it is political sorcery.

The legislative history in the proposed constitutional amendment mandates that outlays of the Federal government shall not exceed receipts, and, to some, that probably sounds fairly straightforward. But if we accept that requirement, if we let that quack nostrum into the Constitution of the United States, then the obvious question is how do we ensure that in fact, outlays do not exceed receipts? How do we ensure that outlays do not exceed receipts? How are we supposed to comply with that constitutional mandate? Simply stating that outlays shall not exceed receipts is an empty incantation and will not make it happen. There must be some sort of enforcement mechanism.

Well, Mr. President, the proponents of this resolution tell us not to worry. They say, and quite correctly, that a constitutional amendment is not the place to put the particulars, put the details of how we achieve budget balance. Instead, we are told that section 6 of the proposed amendment requires the Congress to develop its own enforcement mechanism by passing the implementing legislation.

Section 6 reads as follows: The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

For Senators to understand what kind of wonder drug they are being asked to swallow, they need to truly understand specific section of the resolution. I also believe that once the American people understand it, they will know that this amendment is nothing more—nothing more—than a sleight-of-hand and political sorcery.

Section 6 of the resolution states that "The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts." Again, Mr. President, such language would appear rather uncomplicated. Let us take a look at this sleight-of-hand mechanism. If we take a closer look, especially at the latter half of this, we will see that the entire premise of this amendment is as shaky as a house of cards. Indeed, in one single word—the word "estimates"—we find the achilles heel of the whole bal­lance budget amendment concept, be it Senate Joint Resolution 41 or some other version. The achilles heel is in the word "estimates."

If we follow the directive of section 6, then the central tenet of our enforce­ment mechanism, we would see, is to be based on "estimates of outlays and receipts." Now get that, "The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts." What the public needs to know is that, unlike most individuals who will receive a set salary or wage for the year and whose expenses are relatively fixed, both outlays and total receipts of the Federal govern­ment are not known—and infact they cannot be known—at the beginning of any given fiscal year. It is impossible for them to be known at the beginning of any given fiscal year. All that the President and the Congress have to work with, when they begin to put the budget together, are estimates provided to them by the Office of Manage­ment and Budget and the Congres­sional Budget Office—estimates, nothing more.

If we have learned nothing else over the past 12 years, we have learned that actual outlays and actual receipts in any given year can and do vary from those estimates by billions of dollars. In fact, in most years, actual outlays and actual receipts do not even come close—to what budget of a projection. In the beginning of the fiscal year. As these charts will show, outlays, receipts, and deficits have consistently been misestimated in every one of the 12 years from fiscal year 1981 through fiscal year 1992, inclusive. No exception. In every one of those 12 years, the outlays, receipts and deficits have been misestimated.

Mr. President, before turning to the specifics of these charts, let me empha­size that the data presented here come from the independent and nonpartisan Congressional Budget Office. That office, created by the 1974 Congressional Budget Act, has a staff of 225 people and an annual budget of $22.3 million. By comparison, the Office of Manage­ment and Budget, which provides economic advice to the President, retains a staff of 560 people, and has an annual budget of $560 million. Mr. President, the Congressional Budget Office's pri­mary function is to assist the Congress in the preparation and analysis of the budget by providing us with the eco­nomic and budget data we need throughout the year. As part of those duties, they are responsible for closely monitoring the government's deficits. But, as we shall see, despite all the expertise of the individuals who work in that office, they remain powerless—powerless—to provide the accuracy that would be required under this amendment.

Now let us look at the first chart. This first chart shows the difference between revenues as estimated in the first budget resolution for each of fiscal years 1981 through 1992, versus what those revenues actually turned out to be.

In fiscal year 1981, we can see that actual revenues collected by the Fed­eral government were $11.2 billion less than what had been forecast in the budget resolution for that year. Eleven billion dollars, Mr. President! Then, in fiscal year 1982, revenues fell short of the estimate by $40 billion; for fiscal year 1983, the revenues fell short of the estimate by $35.3 billion; for fiscal year 1984, revenues fell short of the estimate by $31.1 billion; in fiscal year 1985, revenues fell $16.8 billion short; in fis­cal year 1986, they were $26.6 billion short—$26.6 billion short of the estimates that had been projected; in fiscal year 1987, revenues were actually $1.7 billion greater than what had been ex­pected; in fiscal year 1988, we can see that revenues again fell short of the projection by $23.8 billion; in fiscal year 1989, they were $28.4 billion greater than projected; in fiscal year 1990,
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they were $34 billion short of the estimate contained in fiscal year 1981, $35.7 billion short; and in fiscal year 1992, revenues were an unbelievable $77.5 billion short of the projection—$77.5 billion short of the estimate. The last column on the chart, to the viewer's right, shows the average differences between actual and projected revenues for these 12 fiscal years amounted to $25 billion. The average difference per year between the revenues that were estimated and the actual revenues was $25 billion. So, Mr. President, on average, over the past 12 years, we have underestimated the amount of revenues available to the government by $25 billion every year.

The next chart shows, for the same 12 fiscal years of 1981 through 1992, the difference between estimated outlays as contained in the first budget resolution and what those outlays actually were. That was estimated, on the one hand, and what the outlays actually were, on the other hand.

Starting again on the viewer's left with fiscal year 1981, we can see that outlays were actually $46.9 billion more than what the budget resolution had estimated. In fiscal year 1982, outlays were $32.9 billion greater; in fiscal year 1983, outlays were $26.2 billion greater; in fiscal year 1984, outlays were $5.4 billion less than what had been estimated; in fiscal year 1985, outlays once again exceeded estimates by $4.8 billion; in fiscal year 1986, outlays exceeded estimates by $22.2 billion; in fiscal year 1987, $7.9 billion greater; in fiscal year 1988, the outlays exceeded the estimates by $21.7; in fiscal year 1989, the outlays were $83.2 billion greater than the estimates; in fiscal year 1990, the outlays were $65 billion greater than the estimates by the CBO at the beginning of the fiscal year. Only in fiscal years 1991 and 1992 were outlays appreciably lower than what had been estimated, which Mr. President, as we can see from this chart, in only 2 of those 12 years was the actual deficit within $10 billion of what had been estimated. In only two of those years, 1994 and 1997, in only those 2 years, was the actual deficit within $10 billion of what had been estimated.

The point of these charts is to show that, no matter how hard the Congress, in the budget resolution, tries to estimate outlays and receipts, it has repeatedly failed.

In the days of the tyrannical mon­archies, the heads at CBO would have lost their heads. In 10 of the past 12 years, revenues have been lower than expected, and in 9 of the 12 years, outlays have been greater than expected. And there is nothing in this resolution, nothing in this resolution, or any other resolution or any other version of the balanced budget amendment, that can correct that problem. And there is not one among the 100 Senators who can come up with a version that will correct it; not one. All 100 Senators cannot come up with a constitutional amendment that would allow us to proceed on the basis of estimating receipts and outlays versus actual receipts and outlays and come out with accurate estimates. It cannot be done.

Despite knowing that the estimates we must work with will inevitably be in error, they are exactly what this resolution would have us rely on. Re-
the only way around them is with the designation of an emergency.

The second reason for the difference between actual versus estimated revenues, outlays, and deficits, is attributed to the budgetary process itself. Congress must always anticipate the actual performance of the economy. I know that some Americans may not be aware of the fact that, when the budget is put together, it is based on certain economic assumptions. Factors such as the gross national product, the unemployment rate, the inflation rate, and interest rates must be assumed for the upcoming year. They have to be assumed because they cannot be known.

Therefore, if more Americans are unemployed than had been anticipated, the government will have larger outlays for unemployment insurance benefits, food stamps, and so on, than originally thought. This larger payout for these benefits would then be categorized as an economic error. Likewise, if interest rates unexpectedly go up, then the amount of interest we have to pay on the national debt would be higher. This, too, would be considered as an economic error. Nobody can help it. No one could foresee it.

To illustrate this point further, Mr. President, we need only look to the recent recession. Because that recession was deeper than expected, and the recovery weaker, revenues unexpectedly fell in fiscal year 1992 by $46.3 billion. In addition, these lower-than-projected revenues, due to the economy’s failure to perform as expected, caused the fiscal year 1992 budget deficit to exceed the budget resolution’s deficit estimate by $25.7 billion.

The third reason why estimates are inaccurate is due to what CBO calls technical differences. This category contains a number of items. Most notable among these are the miscalculations related to Medicare and Medicaid costs associated with the Medicare and Medicaid programs.

Mr. President, I know all of these explanations and numbers must be mind-numbing to the American people. But the fact that this material may be dry does not make it any less true or important. What is important, though, is that the public understands that errors in estimates attributable to economic factors accounted for 33.8 percent of the $42.6 billion average error in the deficit projection for the period 1981 to 1992, inclusive. What that means, simply, is that of all of the factors that account for deficit estimates being out-of-sync with reality, more than half of the average error over the past 12 years was due to factors that we will never be able to correct, unless, of course, someone has a crystal ball that can accurately tell us at the beginning of each year what the unemployment rate, the interest rate, the inflation rate, and the gross domestic product will be for that year. It cannot be done.

This is why I refer to the word “estimates” as being the Achilles’ heel of the balanced budget amendment. On the one hand, under this resolution we would be mandated to balance the Federal budget, while at the same time the struggle with that difficult task, the economic information we have at our disposal will inevitably be in error, and more than half of that error will be due to factors beyond anyone’s control. Mr. President, the balanced budget amendment amounts to is like telling someone that they must drive their car 100 miles, but only giving them 80 miles worth of gas. No matter how hard they try, or how well-intentioned they may be, there is just no way on God’s green Earth that they can make it up that last 20 miles.

If we know, then, that we must balance the budget, and we also know that it is impossible to do that at the beginning of the year, it should be obvious to everyone that the Congress will be forced to pull out its old bag of tricks and bring back the smoke and mirrors that Mr. President, this appears to work. They will not make it work. They will make it appear to work. So what can the American people expect to see if this catastrophe is inserted into the Constitution? Rather than rely on my own imagination, Mr. President, I would like to read to the Senate a few ideas that come from the Judiciary Committee’s own report that accompanies Senate Joint Resolution 41.

This is the Judiciary Committee’s own report that accompanies Senate Joint Resolution 21.

On page 11 of that report—get it and read it—Senate report 103–183, it is stated that: “This provision”—meaning section 6—“gives Congress an appropriate degree of flexibility in fashioning necessary implementing legislation.” What is meant by flexibility? The report continues: “For example, the Congress could use estimates of receipts or outlays at the beginning of the fiscal year to determine whether the balanced budget requirement of section 1 would be satisfied, so long as the estimates were reasonable.”

Who knows what “reasonable” is? Who is to say what is reasonable? So long as the estimates were reasonable, and made in good faith. How do we know whether or not they were made in good faith? Who is to say? Who is to know whether they were made in good faith?

The next sentence states: “In addition, Congress could decide that a deficit caused by a temporary, self-correcting drop in receipts or increase in outlays during the fiscal year would not violate the article. Mr. President, what that sentence says to me, is that, at the same time the proponents of this amendment are telling the American people that a constitutional amendment will bring about balanced budgets, they are telling the Congress that they do not expect us to practice what we preach. If we followed this advice and the Congress codified a broad definition of the words “temporary” and “self-correcting,” then we will have found the escape door that we all know will be needed under this amendment. But will that be what the American people expect from this amendment?

The proponents have trumpeted from the Atlantic to the Pacific, from the Canadian border to the Gulf of Mexico: This is the wonder cure. This is the wonder drug, a prescription for budget deficits. A politician appearing before an audience, can ask the question: “How many of you believe that we ought to have a balanced budget amendment to the Constitution? All hands will go up. ‘Well, I want to tell you, ladies and gentlemen, you elect me, and I will vote for a constitutional amendment to balance the budget.’

Get your applause meters going. This is a sure way to ring the bell. This wonder drug is the way to get votes. It is not a sure cure, but it is a sure way to get votes.

Reading again from the report, the next sentence states:

Similarly, Congress could state that very small or negligible deviations from a balanced budget would not represent a violation of section 1.

Now get that. Let us read it again.

Similarly, Congress could state that very small or negligible deviations from a balanced budget would not represent a violation of section 1.

How small is small? How small is a negligible deviation? It reminds me of Abraham when he intervened on behalf of the city of Sodom. He asked God if, perchance, there were 50 people in Sodom who were righteous people, would God spare Sodom. God answered yes. Abraham then asked, if there were less than 50, perchance 45, would you spare Sodom? God said, yes, if there are 45, He would spare Sodom. Perchance, if there were
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40, would you spare Sodom? God an-
swered, yes. Perchance 30? God an-
swered in the affirmative. Perchance
there were? God said He would spare
Sodom if there were. If not only 10,
would you spare Sodom? God an-
swered that if there were 10 righteous
men in Sodom, He would spare the
city.

This is the same thing in a reverse
sort of way. If Congress could state
that very small, or negligible, deviations
from a balanced budget would not represen-
t a violation of section 1, how small is
small?

Is it $5 billion? Yes. Well, if $5 billion
is "small," how about $10 billion? If $10
billion is "negligible," what is wrong with
$11 billion? OK. If $11 billion is small,
how about $12 billion? And if $12
billion is only a "negligible" deviation,
how about $15 billion? So, where do we
stop?

Here, Mr. President, we have the sug-
 gestion that the Congress could just
stand up and declare that certain
amount of deficit, as long as we deter-
mined them to be "negligible," are not in
violation of the amendment.

A $25 billion deviation—Congress
could say it is OK. It is "small." Small in
comparison to what? When consid-
ered in the context of a budget that is
$1.5 trillion, it is negligible.

But if we were to constitutionalize
the mandate that outlays must not ex-
ceed receipts, any congressional at-
temt to deviate from that require-
ment would bring the moral authority
of the entire Constitution into ques-
tion.

I will say that again.

If we were to constitutionalize the
mandate that outlays shall not exceed
receipts—that is what the amendment
says. It does not say "may not," the am-
endment says that outlays shall not exceed
receipts. If we were to constitutionalize the
mandate, any at-
temt to deviate from that require-
ment would bring the moral authority
of the entire Constitution into ques-
tion.

If we could violate this amendment
with impunity, then what other provi-
sions of the Constitution might be put
in peril? Finally, this paragraph is
really a wonder drug paragraph; it will
fit any prescription for a balanced
budget. Amazing new, wonder drug,
this section 6. Do not vote for it. If you
follow me, Senators, and listen care-
fully, you can see that this will not work.

Finally, the last sentence in this para-
graph states:

If an excess of outlays over receipts
were to occur, Congress can require that any
shortfall must be made up during the follow-
ing fiscal year.

That is a loophole, that if adopted by
the Congress as part of its implement-
ing legislation, would immediately have
Attila, the king of the Huns, and his
hordes of horsemen from Central Asia
swipe through.

What the sponsors of the amendment
are telling us is that, if Congress can-
not figure out how to live within a
budget, if Congress runs into options too difficult to swal-
low, Congress can just require that the
shortfall be made up the next year. Just
put it off until the next year.

Mr. President, what kind of fiscal
shenanigans is this? Just put it over
until next year.

Let me emphasize again: These sug-
gestions for dealing with the deficit
under a balanced budget amendment
come from the committee's report.
Every Senator, every Senator's office
shall get that report. The Judiciary
Committee's report on Senate Joint
Resolution 38, which includes these,
the suggestions in the committee report
would not become part of the underly-
ing resolution if it were to pass. They
are not going to be incorporated into
the constitutional amendment. They
would not have any force of law. But,
nevertheless, they give the American
people some idea of the kinds of gim-
micks and evasions the people can ex-
pect to see if this constitutional
amendment is adopted by the Congress
and ratified by three-fourths of the
states.

The American people are being sold a
bag of budget tricks. Is this what the
American people want? Are they being
told about the realities of what it
would take to balance the budget each
and every year?

As I listen to those who speak in
favor of a balanced budget amendment,
I do not hear them telling the public
that we really intend just to roll the
deficit over into the following year. I
do not hear them telling the public
that the Congress will just state that
the deficit is "negligible," and so we do
not have to deal with it. I do not hear
them telling the public that, if this
measure is passed and ratified, the im-
plementing legislation will only re-
quire that the budget be balanced on
paper at the beginning of the year.
That is not what the American people
are being told.

Mr. President, if this matter were
not so serious, if it were not so dan-
gerous to the delicate separation and
balance of powers that were put in
place more than 200 years ago, and if
it would not have such cataclysmic ef-
fec ts on the economic well-being of the
American people and so many that we have seen
today, with respect just to section 6
would be laughable. It would be laugh-
able. But it is really not laughable.
And the sooner the American people
begin to understand this and the sooner
the Members of this body under-
stand that, the sooner we will realize
the serious policy choices that must be
made if we are to put our fiscal house
in order.

Mr. President, if this amendment is
ever enshrined in our Constitution, it
would be impossible to accomplish the
task of health-care reform that so
many want. And it would have been
impossible to fund the crime bill that
many of our fiscally conservative
friends so desperately wanted.

Mr. President, how much confidence
do we have in the authors of this amend-
ment, if right in the commit-

ee report they start figuring out
ways to get around this amendment? How much
confidence do we have, sponsors of the amend-
ment—if right in the commit-

ee report they start figuring out
ways to get around this amendment? No, Mr. President, this proposal is not
worthy of being enshrined in our Con-
stitution. It is little more than politi-
cal correctness. This is the authors of
difficulty of getting our budgets in bal-
ance. I do not think we should per-
petuate this charade upon the Amer-
ican people. If it were simply a politi-
cal correctness, it would be laughable.
But it is really not laughable. It
would be regrettable and unwise to adopt. But it
is much, much worse than those things.

This proposal is dangerous. Within
its murky appeal and unbound formu-

la for budget balance lie the seeds for the
further diminishment of the trust of
the people in their government. The
legislative branch can ill afford any
more cynicism and loss of trust. And
this Senator worries almost as much
about the trust deficit as he does about
the budget deficit.

Often Members believe that doing
what seems to be the safe thing—the
popular thing—will prove also to be
the right thing. Political correctness is
supposed to be the order of the day, I

guess. I believe that endorsing this bal-
ced budget amendment unaccounted
for on the aura of a politically correct act. It
has become a litmus test of sorts—the
right choice to make the political pro-
proprietary meter register 100 percent in
one's favor.

But whether or not we amend the
Constitution in this damaging way is
far too important for us to take the
temporarily easy way out. The Amer-

ican people must be made to under-
stand that once they take a closer look
at this amendment, it is far from what
it seems. I hope that each Senator will
carefully study this amendment before
voting on it. I believe close and open-
minded scrutiny of this proposal shreds
it, reveals its many shortcomings, and
unmasks its benign countenance to re-

veal the sinister seeds of a constitu-
tional crisis in the making.
I thank the Chair and I yield the floor.

Mr. GRASSLEY addressed the Chair. The PRESIDING OFFICER (Mr. Grah- ham). The Senator from Iowa [Mr. GRASSLEY] is recognized.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that I may speak for 6 minutes, as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Iowa is recognized.

AIR FORCE C-17 CONTRACTS

Mr. GRASSLEY. Mr. President, since the beginning of the year, I have spoken several times about financial mismanagement and abuse on Air Force C-17 contracts.

My thoughts on the subject have been drawn almost exclusively from reports prepared by the Inspector general [IG] at the Department of Defense [DOD].

Admittedly, Mr. President, those reports focused on financial mismanagement and abuse that occurred between July 1, 1990, and December 31, 1990.

That was 3 years ago. That was a long time ago. Some say that the Air Force has cleaned up the C-17 act.

They say the Air Force has fixed the problem.

Well, that is pure baloney. There has been no let up.

Anyone having doubts about my assessment of C-17 contract mismanagement need not go far for confirmation. Just go to your nearest Armed Services Committees report.

The same old problems persist right up to the present time.

Mr. President, I would like to quote from the House Armed Services Committees Report No. 103-200, dated July 30, 1993.

I quote from page 77:

After an extensive set of hearings, the committee learned that the C-17 remains a seriously troubled program * * * in a way that defies remedy. The contractor may be in default on the full-scale development contract and plans to seek $2.3 billion in claims against the government. And lax management by the Air Force may be signaling that the government has no intention of enforcing the contract terms or terminating the program.

Mr. President, that is a devastating assessment. It is an indictment of the C-17 program.

The Senate Armed Services Committee Report No. 103-112, dated July 27, 1993, is almost as critical of the C-17 program as its House counterpart.

This is what the Senate Armed Services Committees say about the C-17:

I quote from page 49:

The committee is at the limit of its patience with the C-17 program, due to serious mismanagement by the Air Force and the contractor, and is approaching the point of advocating program termination.

Mr. President, we have serious criticism about the C-17 coming from both Armed Services Committees. That is reason for concern. That is a red warning flag. We need to pay attention.

That criticism is based on extensive knowledge.

Mr. President, my concerns flow from two related developments.

First, C-17 aircraft delivered to date do not meet important contract specifications.

Official Air Force and DOD documents, such as the DD-280—or Material Inspection and Receiving Report—clearly indicate that C-17 aircraft delivered to date have significant contract deficiencies.

Mr. President, I am not talking about Mickey Mouse stuff, either.

The C-17 does not meet range/payload specifications or specs as they are called. The C-17 has failed to demonstrate the capability to carry cargo into a short, 3,000-foot runway.

That is not the only one.

Mr. President, what we are talking about here are deficiencies that could undermine the primary justification for the contract.

Second, DOD is developing an unsatisfactory solution for the problem. The plan is outlined in a memo from the new DOD acquisition czar, Mr. John M. Deutch, to the Secretary of the Air Force. It is dated May 11, 1993.

Mr. Deutch has essentially told the Air Force to revise the C-17 specs as the service sees fit.

Mr. Deutch has given the Air Force a license to steal.

The Deutch memo gives credence to the House Armed Services Committees' warning that the 'Government has no intention of enforcing the terms of the contract.'

The Deutch plan will help the contractor and the airplane meet the specs. The specs will be lowered.

The specs are either too high for the airplane rather than having the airplane meet the specs. This is one way to achieve harmony on contracts. It is also a waste of money.

We paid McDonnell Douglas top dollar to meet much more stringent specs. More stringent specs are more expensive because they involve greater risk. They may not be feasible.

If the C-17 cannot meet the more stringent specs, then the McDonnell Douglas must either correct the problem or repay the Government a reasonable sum of money for lost performance.

Otherwise, Mr. President, the contract should be terminated for default.

But, Mr. President, we all know that is not going to happen. The contract will be modified to meet the airplane. We are headed down that road, again.

News reports suggests that the deed is done.

The C-17's range/payload specifications were then adjusted downward on three different occasions—November 1985, March 1990, July 1991. They are about to take another nosedive.

Each time we paid for higher specs but end up with lower ones and still pay full price and more.

The practice of harmonizing contract specs to match product performance makes a mockery of defense contracting.

Mr. President, if contracts are constantly modified to meet product performance, what value do contracts have?

Mr. President, I know the Armed Services Committee is trying to grapple with the problem.

Mr. President, the Armed Services Committee is trying to impose some discipline on the C-17 program and to prevent further erosion of critical aircraft performance specifications.

Thanks to the Armed Services Committee, the fiscal year 1994 defense authorization bill includes a provision—section 124—designed to hold the line on a long list of important C-17 performance requirements.

Mr. President, Senator D'Amato and I offered an amendment to the fiscal year 1994 Defense appropriations bill, section 8132, that would buttress the section 124 of the authorization bill.

Our amendment was adopted on October 18.

It would attempt to draw a line on contract specifications.

Mr. President, our amendment would help to ensure: First, that progress payments on fiscal year 1994 contracts are commensurate with the work performed; and second, that the work performed meets the quality standards established in those contracts.

If fiscal year 1994 C-17 aircraft are on schedule, within cost, and meet contract specifications, then the money will flow as planned. If not, then there is a problem—as there should be.

Our amendment would help to reinforce and reinvigorate section 2307 of title X, which the DOD IG says is being ignored and abused.

What is this * * * line?

I want to send a clear signal to the Air Force: Obey the law when making progress payments on C-17 contracts.

And that is it.

Mr. President, I hope the Appropriations Committee will protect our amendment in conference.

If you support the C-17 program but want better management, then you should support my amendment.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, already this year, the administration has sent
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major proposals to Congress to reform education, reform health care, and re­invent Government. Soon we will also receive a bill to reform the Nation’s welfare system.

This is an area in which I have long held a strong interest. I now serve on the Labor and Health Committee, under the able guidance of our distin­guished chairman, Senator KENNEDY. Both the 1980’s and 1990’s have seen welfare reform as the centerpiece of every election and every budget in Congress. I have been working to develop a proposal to do so. I will be introducing my welfare-to­work proposal in the next few weeks before Congress recesses until next year. So I want to take a few minutes this morning to review the need for this legislation and to briefly outline it.

Let me say at the outset, unless we have welfare reform coincidental with health care reform, I do not think health care reform is really going to work, not unless we also have a parallel track of welfare reform in this country, because the two go so closely, hand in hand.

Nowhere is the need for change more apparent and necessary than in welfare programs. For example, the prede­cessor to Aid to Families With Dependent Children, AFDC, was created almost 60 years ago. During the 1980’s the program was amended, with some of the most sweeping changes being en­acted in the Family Support Act of 1988. Yet despite these thoughtful reform efforts, expenditures on AFDC have increased, as have the numbers of families and children on welfare.

Two million more children are on welfare today than in 1980, and one in five American children now lives in poverty. In Iowa, one of every seven children lives in poverty, an increase of 21.7 percent, almost twice the national increase.

We can go into the reasons for that. Obviously, our economic system over the last 20 years has not been working well for low-income Americans. Real wages, for example, of those young Americans who did not go on to college but only with a high school education, has dropped by over 20 percent in the last few years. The real wages have gone down that much. So we do have to address it on the economic side, in terms of employment, job training, et cetera.

But, again, that will not solve the problem until we really address the fact that the current welfare system is falling children, families, and tax­payers, and it must be changed. Something that is 60 years old, built upon conditions that existed many years ago, based upon a demography that ex­isted years ago just will not work today.

Last spring, the State of Iowa, with virtually unanimous bipartisan sup­port, passed a welfare reform program that I think can serve as a model for the rest of the country. At the core of the Family Investment Program, as it is called in the State of Iowa, is a re­quirement that all families on welfare must enter into a social contract with the State of Iowa. That agreement de­tails the steps that individual families will take to move off of welfare and into work and self-sufficiency.

I chose those words carefully. It is not getting off of welfare and getting a job. That job is not just the answer. A job can be so low paying that the person really still is below the poverty level and still is on welfare. So the idea is to get people off of welfare into self­sufficiency, not just get a job. As I have said many times before, jobs are not the issue. What is the issue is a job that provides a living when you think about it. So it is not just a job. It is what kind of a job and how much will that individual earn to enable them to be self-sufficient and to take care of their families.

Under the Iowa plan the social contract will be developed with individ­uals. There will be an agreement and each individual agreement will estab­lish a specific time when welfare bene­fits will end for that family. The Iowa Program forces families to act respon­sibly and provides them a hand up to do so. It requires families to take stock of their situation, to think out what needs to be done, to enter into this agreement, and take the steps that move them off of welfare and make that family self-sufficient. To facili­tate this process, families will have more incentives to earn and save.

Each family agreement will take into consideration the unique problems that confront each family indi­vidually. In some cases, benefits will be needed for 6 months. In other situa­tions up to 2 years. But, for the most difficult circumstances, a family may need 3 or 5 or 7 years. The key is not necessarily the length of time. The key is whether or not the family is making progress, acting re­sponsibly, and keeping their end of the bargain.

This individualized approach is im­portant because arbitrary uniform time limits called for by some do not recognize the unique circumstances of different families and may uninten­tionally increase the time some people spend on welfare.

An inflexible 2-year limit could well end up being a 3-year minimum welfare stay. The Iowa Program charts a course for how a family will get off of welfare and establishes periodic bench­marks for progress. This thoughtful, workable approach is more likely to succeed than a one-size-fits-all approach that fails to recognize individ­ual differences.

I think that government is simply a fact of life for all Americans. It is an agen­cy of each person and their elected leaders. Government has a role to play in helping people realize their dreams. But each indi­vidual is a party to that contract also. Welfare, like any government in­stanc­e, should come with a price—and that price is responsibility. That is the heart of the Iowa plan: Responsibility on the part of the recipient and responsi­bility on the part of the State. The State must meet its end of the con­tract. It must provide the support serv­ices—the training, transportation, child care, et cetera—to enable the in­dividual to meet his or her end of the agreement.

So it is a contract between the govern­ment and the recipient. It is giving people dignity and hope for a better future so they can hang on and hang to­gether through the tough times. It is building a community, a government and a welfare recipient and saying, OK, in 2 years you are off. It is not coming down to an individual and saying you have to take this job. It is sitting down with an individual, looking at his or her unique circumstances, education, background, training—what are they capable of doing? How soon are they capable of doing it? What supportive services do they need in the interim to get them through this timeframe to self­sufficiency? How long is it reason­able to expect? And then to set up benchmarks along the way so you do not just go to 10 months or 2 years or whatever the timeframe is and then say to the individual, well, you are off now. Good luck. You have benchmarks along the way so if either one side or the other is not living up to their end of the agreement, changes can be made, more incentives can be made, things can be implemented to make sure that one end or the other of the contract is lived up to.

Our current welfare system has gotten away from the simple principle—that it is basically to give people digni­ty and hope and opportunity for the future. Instead of a contract in which both parties give something and both get something, we now have a system where too many people are giving something with nothing asked in return—and both sides lose. I firmly be­lieve it is not that our Government asks too much of our citizens, it is that our Government asks too little. The American people are eager to help when they believe those they are help­ing are also helping themselves.

The Iowa welfare reform program de­mands responsibility and accountabil­ity from families but it is not punitive. It recognizes that welfare should pro­vide a hand-up, not a hand-out. It says that Government will do its part in providing the support and the guidance.
and the services, if you, the recipient, do your part to move back to self-sufficiency by moving into the work force.

As you know, Jonathan Freedman on poverty in America gave an eloquent description of what welfare programs should be. Freedman argues that social programs should not be a safety net, but should be a railing up a staircase. I have spoken for years about the misguided directions inherent in supporting this idea of a safety net that catches people when they fall out the bottom. I have argued for years that rather than a safety net we should have a ladder or ramp of opportunity which enables people to ascend.

Jonathan Freedman, in his book, said: "A railing"—this railing up a staircase—is "used to prevent falls and to guide people upward; it makes ascent safer without taking away self-reliance."

I believe that is an apt description of how the Iowa Family Investment Program works, and it is an apt description of where this Nation should be headed on welfare reform.

I worked long and hard with State and Federal officials to secure the waivers necessary to implement Iowa's innovative program. I want to thank the Secretary of Health and Human Services, Donna Shalala, for responding to this and providing Iowans the waivers necessary to experiment with this new program. We received the final approval in August. The first family investment agreements will be negotiated and signed in January of next year.

As I said earlier, I believe the Iowa plan can serve as a model for the rest of the country and, in the next few weeks, I will be introducing legislation to that effect.

Again, I want to take this opportunity, Mr. President, to give a warning to the Governor and to the legislature in Iowa. One is of one party and one is of the other, so I am not doing it in a partisan manner. But I say to those who sign on the dotted line with welfare reform that if they do not do that, then it is not going to succeed.

So, again, Mr. President, this, I believe, is a proper way to go for welfare reform in this country. But welfare reform itself is not enough, as I said in the beginning. We must change some of the underpinnings of economics for these families. The expansion of the Earned Income Tax Credit is very important to make it work as a viable option to these people moving off welfare and into the work force. Health care reform is also essential because they simply cannot afford to lose the Medicaid coverage for themselves and their children.

Improving collection of child support is just as important, and my legislation will address that. Absent parents must be responsible and provide financial support for their children. There is a substitute for child support and that is welfare. Deadbeat dads will not get away scot free. They have a responsibility, and they will fulfill that responsibility.

In 1991, the U.S. Commission on Interstate Child Support said that collection of child support fell far short of court awards. Eleven million children in the United States have been awarded a total of $15 billion in support payments, but about $5 billion, or about 30 percent of that, is not paid each year. In Iowa, over $223 million in child support is overdue, and half of that is over 5 years late.

We have made some progress in this area, but we need to do more. We must enforce the court-ordered child support awards and improve the efforts to put more child support orders in place. The legislation I will shortly introduce will strengthen activities to establish paternity at the time of birth and require employers to send copies of W-4 forms to the State child support recovery agency. That agency could then match records to see if the worker owes child support.

Mr. President, in closing, let me just say that many States have passed welfare reform programs. I think it is important that Federal welfare reform legislation not interfere with the State programs. This principle recognizes the vast difference among States and it will allow States to continue to act as laboratories for change and progress and reform.

I look forward to cooperating with the Clinton administration as we reform our welfare system. I look forward to an era where work is rewarded, where responsibility is welcomed, where Government provides that railing up the staircase and not just a welfare safety net, and where the Government meets its end of the agreement.

Most of all, Mr. President, I look forward to an era when all Americans, regardless of circumstances of birth or where they may live, race, color, that all Americans can reach their dreams with dignity and not just be provided a safety net to catch them when they fall.

Mr. President, I yield the floor.
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(10) Up to 75 percent of all domestic assaults reported to law enforcement agencies were inflicted after the separation of the couples.

(11) In one study of spousal homicide, over half of the male defendants were separated from their victims.

(12) Seventy-three percent of battered women seeking emergency medical services were sexually abused.

SEC. 04. DEMONSTRATION GRANTS FOR SUPER­

VISED VISITATION CENTERS.

SEC. 05. EVALUATION OF DEMONSTRATION GRANTS.

SEC. 06. AUTHORIZATION.

(1) The purpose of this Act is to authorize funding to enable supervised visitation centers to provide the following:

(a) In General.—A grant, contract, or cooperative agreement may not be made or entered into under this Act unless an applica­
tion for such a grant, contract, or cooperative agreement has been submitted to and approved by the Secretary. (b) APPROVAL.—Grants, contracts and co­operative agreements under this Act shall be awarded in accordance with such regulations as the Secretary may promulgate. At a mini­mum, to be approved by the Secretary under this section an application shall—

(1) demonstrate that the applicant has rec­ognized expertise in the area of family vio­lence and a record of high quality service to victims of family violence; and

(2) be submitted from an entity located in a State where State law requires the courts to consider evidence of violence in custody decisions.

SEC. 06. EVALUATION OF DEMONSTRATION GRANTS.

(a) IN GENERAL.—Not later than 30 days after the end of each fiscal year, a recipient of a grant, contract or cooperative agree­
tement under this section shall prepare and submit to the Secretary a report that contains information concerning—

(1) the number of families served per year; and

(2) the number of families served per year categorized by—

(A) families who require supervised visitation because of childhood abuse only; and

(B) families who require supervised visitation because of a combination of child abuse and domestic violence; and

(C) families who require supervised visitation because of domestic violence only; and

(3) the number of visits per family in the report year categorized by—

(A) supervised visitation required by the courts;

(B) supervised visitation based on sus­pected or proven risk of sexual, physical, or emotional abuse, or threats of parental ab­
duction of the child that is not court mand­
dated;

(C) supervised visitation that is part of a foster care arrangement; and

(D) supervised visitation because of an order of protection.

(b) APPLICATION.—To be eligible to receive a grant under this section an entity shall prepare and submit to the Secretary an applica­tion at such time, in such manner and contain­ing such information as the Secre­tary may require, including documentary evidence to demonstrate that the entity pos­sesses a high level of clinical expertise and experience in child abuse treatment and pre­vention as they relate to visitation. The level of clinical expertise and experience re­quired will be determined by the Secretary.

(c) REPORT.—Not later than 1 year after the date on which a grant is received under this section, and each year thereafter for the duration of the grant, the grantee shall pre­pare and submit to the Secretary a report containing the clinical data collected under such grant.

SEC. 08. REPORTING.

Not later than 18 months after the date of enactment of this Act, and annually there­after, the Secretary shall prepare and submit to the appropriate committees of Congress a report containing the information collected under the reports received under sections 06 and 07, including recommendations made by the Secretary concerning whether or not the use of supervised visitation centers and clinical data programs should be author­ized.
(a) IN GENERAL.—For the purpose of awarding grants, contracts, and cooperative agreements under this Act, there are authorized to be appropriated $15,000,000 for fiscal year 1994, $20,000,000 for fiscal year 1995, and $25,000,000 for fiscal year 1996.

(b) DISTRIBUTION.— Of the amounts appropriated under subsection (a) for each fiscal year:

(1) not less than 80 percent shall be used to award grants, contracts, or cooperative agreements under section 90; and

(2) not more than 20 percent shall be used to award grants under section 97.

(c) DISBURSEMENT.— Amounts appropriated under this section shall be disbursered as appropriated under subsection (a) for each fiscal year.

Finally, these child visitation centers serve as an additional safeguard so that parents can have an exchange of the child without there being any violence. Seventy-five percent of the cases of family violence in America take place after separation and divorce. I cannot emphasize enough, Mr. President, how important these supervised visitation centers are in preventing that violence from happening. This way you can have visitation and the exchange of the child through this supervised center without any of that violence taking place.

Second of all, these supervised visitation centers would provide supervised visitation for families where there has been documented sexual, physical, or emotional abuse. When we talk about crime and violence, one of the problems is that all too often there is a history of abuse and a parent, but yet during visitation rights, quite often the child is then in jeopardy again. With these safe child visitation centers, there would be supervision so that violence does not happen.

Third of all, these child visitation centers provide a safe and neutral place for parents to visit with children who have been put in foster care because of abuse or neglect.

I cannot emphasize enough the importance of this. When a child has been abused by his or her parent or parents, that child still loves the parents. So what you want to do is to build a relationship. The way in which you could do that, however, has to be with clear supervision; again, protecting the child against violence, against a crime.

In many ways, that is what is in both intervention and prevention at the same time.

Mr. President, if adopted by the Senate—and I believe it will have the support of my colleagues—addresses violence at the home, it addresses violence and crime against women and children. It is most important of all, it is a first step toward ending violence in the streets.

We have two of these centers in Minnesota. There have been efforts to establish some of these centers around the country. When you talk to people, a broad cross section—clergy, law enforcement, women, children, community groups—they all say it is a marriage of public policy.

No. 1, it tries to support families that are struggling.

No. 2, it protects children against the violence and it protects children against crime, and it is a positive force for women. It is effective. It is simple, and it works.

Mr. President, I wish to be very clear. One of the reasons I think all of us on the subcommittee feel so strongly about it—Senator Dodd is an original cosponsor. I would ask unanimous consent that Senator Dodd and Senator Inouye’s names be included as cosponsors of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSSTONE. I know it also has very strong support of Senator BIDEN.

We had testimony in our committee by Joanie Colsrud, whom I wish to quote:

In 1988 and 1986, my ex-husband told numerous people that he was going to shoot us. He said the kids would be better off dead than with me. He even told my girlfriend. I told the sheriff of these threats, but he told me there was nothing he could do because it was only hearsay.

On January 2, 1987, my ex-husband came to pick up the children for his visitation with a loaded shotgun. He shot Chad, age 6, in the left shoulder, neck and face area. He shot Nicole and missed her, thank God. He shot me in the right leg and as a result of the shot, my leg had to be removed from above the knee.

My whole reason for telling you about all this is because I firmly believe that if we had a child’s visitation center available to us, none of this would have had an opportunity to take place.

And then she goes on to explain. Her husband could have come and the visitation would have taken place under supervision. She could have come in, the children would have been at the center, she would have left, and the husband would have come in. There would have been no encounter. And if we had been protection for her, would have been,
in which we communicate in a message from Senators that we support families and support children and support women.

People in the court system in Minnesota tell us, we wish we had so many more of these visitation centers because we know so much of the violence takes place during visitation, but we have no way of dealing with it, because we know the children are also in jeopardy, because we know the children can see that violence, and we know what a horrible effect it has on children.

Mr. President, I think I have spoken enough at the beginning, and I wish to reserve the remainder of my time. I believe there will be broad support in the Senate for this amendment. I think it is an example of a program which can make a huge difference. I urge my colleagues, as a vote for community, as a vote against violence, as a vote against crime, and that is exactly what we are talking about—to support this amendment.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. WELLSTONE. Mr. President, I would suggest the absence of a quorum and ask that the time be charged equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The absence of a quorum has been suggested. The clerk will call the roll. The time will run equally to both sides during the pendency of the quorum call.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Mr. President, I again suggest the absence of a quorum, and I ask that the time be equally charged.

The PRESIDING OFFICER. The time will be equally charged against both sides, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. WELLSTONE. I yield time to the Senator.

Mr. BIDEN. Mr. President, I am not sure. Parliamentary inquiry: Who controls the time?

The PRESIDING OFFICER. The manager, assuming that he is in opposition to the amendment offered by the Senator from Minnesota, the Senator from Minnesota is controlling the time in favor of the amendment.

Mr. BIDEN. I ask the Senator to yield to me 3 minutes.

Mr. WELLSTONE. I yield such time as the Senator from Delaware needs. He is not rising to oppose the amendment but to support it.

The PRESIDING OFFICER. The Senator is advised that he controls 2 minutes and 12 seconds.

Mr. BIDEN. Mr. President, it will not take much more time than that.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I support the Wellstone amendment—I support it strongly—which provides grants for supervised visitation centers for parents who are separated from their children, and where there has been past abuse.

During the difficult period of separation and divorce, family violence often escalates. Every year 1,000 to 5,000 children are killed by their parents in this Nation. And about 160,000 children are seriously injured by or abused or neglected each year. These things get worse after separation. Up to 75 percent of all domestic assaults reported to law enforcement agencies are inflicted after the couple separates.

Senator Wellstone's amendment will provide a safe place for parents and children to meet during these difficult times. It will help fund supervised visitation centers in cases where this is documented abuse, and where there have been threats of abduction, and where children have been placed in foster homes.

This proposal will help stop the cycle of violence that terrorized some of our Nation's children. It is important for children to have the support of both parents.

This amendment will allow such conflicts to take place in a safe setting, and it provides an opportunity for both parents to remain involved in their children's lives. It will help provide a safe, secure environment for families so they can start healing their wounds, and putting their lives back together.

I commend the Senator who has been the most eloquent and effective champion on behalf of our Nation's children. And I urge my colleagues to adopt this amendment.

I thank the Senator.

Mr. President, I again suggest the absence of a quorum, and I ask that the time be equally charged.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. HATCH. Mr. President, we have been negotiating. As I understand it, both sides are willing to accept this amendment.

So we can vitiate the rollick vote and accept the amendment, with the understanding that Senator Sммр's amendment will be up next and that there will be no amendments to the Smith amendment.

Mr. BIDEN. Mr. President, if the Senator asks to withhold on vitiation—

Mr. HATCH. Mr. President, we have been negotiating. As I understand it, both sides are willing to accept this amendment.

The PRESIDING OFFICER. The Chair informs the Senator that the yeas and nays have not been ordered on the amendment.

Mr. HATCH. I thought they had.

The PRESIDING OFFICER. All time has expired.

Mr. HATCH. We accept the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 1124) was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WELLSTONE. Mr. President, I wish to be recognized for 30 seconds to thank my colleagues.

The PRESIDING OFFICER. The Senator from Minnesota.
Mr. WELLSTONE. First of all, I thank both Senators, the Senator from Delaware and the Senator from Utah, for their support. I have really appreciated the discussion and negotiation. I thank them very much.

I thank my wife, Sheila, for her support.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, may I say one thing on that?

Mr. HATCH. Mr. President, I commend the Senator from Minnesota, and, in particular, his willingness to cut back on the total authorization amount in the amendment has been very helpful in getting an acceptance.

The amendment does have a great deal of merit, and I think all of us recognize that.

So we are pleased we have been able to resolve this without the necessity of a rollcall vote.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, we have seen an interesting and, I think, very positive development in that the husbands and wives of sitting Senators and Congressmen— and, I might point out the obvious, the President—have increasingly played constructive roles in positive changes in the law and attitudes in this country.

Prior to the mentioning of it by the Senator from Wisconsin, I planned on mentioning it.

Mr. WELLSTONE. Minnesota.

Mr. BIDEN. Minnesota. I compliment the Senator from Minnesota. The reason I said Wisconsin is that I have been dealing with the Senator from Wisconsin [Mr. KOHL] on an amendment he has regarding children and guns. I do apologize. I compliment the Senator from Minnesota [Mr. WELLSTONE]. I hope he has the opportunity not only to work with the Senator—and I am not being solicitous when I say this—but also the opportunity to work with his wife Sheila. She has done more than many, a lot of people who serve in the U.S. Congress, particularly in her State of Minnesota, but now beyond the State of Minnesota, in trying to resolve these conflicts that result in horrible physical abuse, in many cases resulting in death of spouses and children as a consequence of so-called domestic violence.

I, on the record, on the floor of the Senate, compliment her for her work on this amendment, the Wellstone amendment. I do not think my friend from Minnesota would be offended if I said the Wellstone amendment, because she has done a phenomal job and has been a real help to not only the people of Minnesota, as I observed it, but in helping me, as the chairman of the Judiciary Committee, substantively formulate some of this legislation. I cannot believe she did not play a part in helping the Senator from Minnesota formulate his amendment.

Mr. WELLSTONE. I thank the Senator from Delaware for his very gracious remarks.

Mr. BIDEN. I am not being gracious. I am just being totally truthful. I know the Presiding Officer in the chair knows of whom I speak, and she is a very committed person in this fight.

Mr. President, I say, for the benefit of my colleagues who are on the floor, as well as those who are in committee hearings and have their staffs watching these proceedings, the Senator from Utah and I, the managers of the bill, are attempting, as we have now dealt with some of the major pieces of this legislation—it is not to mislead anybody. There are a number of potential, outstanding amendments. As a matter of fact, we have a list of roughly 250 potential amendments to the crime bill. My guess is and the guess of the Senator from Utah is somewhere in the order of 200 of these will go away when they realize what they are proposing has already been passed in the bill thus far.

And there is probably the ability to agree on and accept, without a vote by unanimous consent, anywhere from another 2 to 40 amendments that are very positive amendments.

So, what we have mutual staffs doing is trying to get some sense of those outstanding amendments and determine which ones we can agree on so that, at some point in the package, we can present a number of those amendments.

The second thing we are attempting to do is, we believe that it is important, to the extent that we can without being overly rigorous about it, to take turns—a Republican amendment, a Democrat amendment, a Republican amendment—on those that appear as though they will require a vote.

At the outset, we thought the Wellstone amendment was going to require a vote, but, through the good offices and hard work of the Senator from Wisconsin, he was able to accept the amendment.

So I invite my colleagues who have amendments that they think will require a vote to contact Cathy Russell of my staff, who is here on the floor, and Republicans to contact Senator Harkin's staff to see if we can get some order so we do not waste a lot of Senators' time being on the floor here waiting to get in line.

Then the 36 amendments from Utah and I have a package of amendments that relate to major pieces of the bill, everything from rural crime to drug courts to FBI and so on. We are very close to working out an agreement on some of these major pieces. When we do and if we do—and I expect we will—we would probably—and I look to my colleagues to confirm this, if I am not mistaken—we would move to those items first.

Then we have some very contentious amendments that I do not believe there is any possibility of, A, either getting a time agreement on or, B, getting an agreement to accept them. They, almost in every case, are amendments that either changes, proposed changes in minimum mandatory penalties relating to guns, including the death penalty, or those amendments relating to limiting access to the ability to purchase and own a gun.

Those amendments, as we know from vast experience here on the floor of the U.S. Senate, always generate a great deal of debate and a great deal of interest because they are important.

So, it is our hope that we will proceed in the following general way, without being slavish about trying to stick to this: First, we are going to try to line up amendments that we believe would require a vote on which we could get a time agreement. A case in point: The Senator from New Hampshire [Mr. SENSENICH] is on his way to the floor. He has an amendment that we believe we can—we will not attempt to get the UC until he is here—we can agree to an hour's time, equally divided, no second-degree amendments being in order.

So I urge those who have amendments that we can get a time agreement on to come forward so that we can order those amendments.

It would be my hope that we would withhold at least until the early after­noon moving to those amendments that are going—how can I say this?—to maybe be the firing shot on mayhem on the floor in terms of a debate. I would like to get as much done as we can before we get to those amendments that are not likely to be able to be resolved either by agreement and/or by time agreements that will take a lot of time.

That is how the Senator from Delaware, at least, would propose that we proceed.

I see my friend from Pennsylvania seeking recognition. I will be happy to yield for a question. I do not want to yield the floor in the event my friend may have an amendment that does not fall into one of those categories at this point.

Does the Senator have a question?

Mr. SPECTER. I do have a question.

Will the Senator from Delaware yield for the introduction of an amendment that has been agreed to, the so-called lottery amendment which the Senator wanted to handle last Friday?

Mr. BIDEN. I would be delighted to. I believe we have reached agreement on both sides on this amendment.

I would be delighted to yield to my friend from Pennsylvania for that purpose.

The PRESIDING OFFICER. The Senator from Pennsylvania.
across State lines, the development of communication technology resulted in interstate transportation of the lottery, this loophole in the Federal lottery law of title 18, United States Code, is amended by inserting "or, being engaged in the business of procuring for a person in 1 State such a ticket, chance, share, or interest in a lottery ticket, the subsequent development of communication technology resulted in a loophole that allows for the sale of an interest in out-of-State lottery tickets via computer transaction with no paper crossing State lines, are under a strict interpretation of the law which, I believe, is in urgent need of updating.

The transactions of concern to Pennsylvania are the sale of interests in out-of-State lottery tickets via computer transaction with no paper crossing State lines. The sale of out-of-State lottery tickets within its borders and exclusion of the sale of other States' tickets would have banned out-of-state lottery sales. Pennsylvania is the only state in the country in which our lottery dollars are one-hundred percent dedicated to the needs of older people. Only 16 percent of the Department of Aging's budget is federal.

The issue of senior citizens was put into sharp focus by a letter from Mr. Harvey Portner, chairperson of the Pennsylvania Council on Aging, dated October 18, 1993, which reads as follows:

DEAR SENATOR SPECTER: As you know, Pennsylvania is the only state in the country which enforces such a lottery, gift, enterprise, or similar scheme conducted by another State (unless that person is permitted under an agreement between the States in question or appropriate authorities of those States), knowingly transmits in interstate or foreign commerce information for the purpose of procuring such a ticket, chance, share, or interest," after "scheme;"

Mr. SPECTER. Mr. President, this amendment would prohibit transactions in which interests in out-of-State lottery tickets are purchased by a person in the purchaser's home State, which means that under this amendment someone in Pennsylvania could not buy an interest in an out-of-State lottery ticket which is transmitted by electronic means.

The amendment would close a loophole which has undermined the Pennsylvania lottery and its providing of funds for senior citizens. The situation arose in July of this year, Mr. President, when a Federal court in Harrisburg struck down a Pennsylvania law which prohibited the sale of an interest in out-of-State lottery tickets—that is non-Pennsylvania tickets—which were sold in Pennsylvania. That means that somebody in Pennsylvania could buy an interest, hypothetically, in a lottery ticket in California.

A Federal judge found that the Federal law did not prohibit the sale of an interest in out-of-State lottery tickets, based really on a technicality. Although this provision of law would prohibit the interstate transportation of the lottery ticket and would appear on its face to restrict all sales of lottery tickets across State lines, the development of communication technology resulted in this loophole in the Federal lottery law. Transactions of the sale and interest in out-of-State lottery tickets by persons via computer communications, where no paper crosses State lines, are legal under this strict interpretation of the law.

Pennsylvania's interests in promoting its lottery have been infringed and State officials in Pennsylvania believe that to be the case. We have no remedy other than to introduce an amendment numbered 1113.

Mr. SPECTER. Mr. President, in up amendment No. 1113 on behalf of myself and Senator Wofford, proposes an amendment numbered 1113.

The final result will be revenue losses for programs that assist very vulnerable older citizens of Pennsylvania.

Mr. SPECTER. Mr. President, current law prohibiting interstate transfer of lottery tickets is designed to protect the sovereignty of State lottery programs. However, due to advances in communication technologies, current law does not accomplish its intended goals. This amendment is designed to uphold the intent of that law by preserving a State's right to sell its own lottery tickets within its borders and exclude the sale of other States' tickets.

A recent Federal court decision struck down a Pennsylvania law to prohibit the sale of an interest in out-of-State lottery tickets in Pennsylvania. This decision was based on a strict interpretation of the law which, I believe, is in urgent need of updating. Current law does prohibit the interstate transportation "of any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in * * * a lottery." Although this provision of law would appear to restrict the interstate sale of a lottery ticket or any interest in a lottery ticket, the subsequent development of communication technology has resulted in a loophole that allows for the circumvention of the law.

The transactions of concern to Pennsylvania are the sale of interests in out-of-State lottery tickets via computer transaction with no paper crossing State lines. The sale of out-of-State lottery tickets would have the exclusive right to sell lottery ticketswithin its own borders.

The situation in Pennsylvania is not unique. Other States which have lottery programs are concerned that the sale of out-of-State lottery tickets will undermine their ability to realize projected revenues for valued State programs. State lottery programs are based on the premise that the revenues derived from the lottery go toward State programs for the betterment of that particular State. Any erosion of those revenues due to the sale of out-of-State lottery tickets would have banned out-of-state lottery sales. These types of sales have a direct and negative impact on Pennsylvania lottery sales. The final result will be revenue losses for programs that assist very vulnerable older citizens of Pennsylvania.

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Mr. SPECTER. Mr. President, current law prohibiting interstate transfer of lottery tickets is designed to protect the sovereignty of State lottery programs. However, due to advances in communication technologies, current law does not accomplish its intended goals. This amendment is designed to uphold the intent of that law by preserving a State's right to sell its own lottery tickets within its borders and exclude the sale of other States' tickets.
Further, the right of a State to regulate lottery and gambling within its borders must be preserved. Federal law prohibits the sale of lottery tickets across State lines. However, the Pennsylvania lottery is large enough to make it a significant contribution to the State treasury. This amendment will prevent the negative impact on lottery sales in small States the loophole entails and maintains those lotteries as important sources of revenue. I urge colleagues to support this amendment.

Mr. President, I am pleased to offer this amendment with the senior Senator from Pennsylvania, who has historically had the authority to establish, operate, and regulate lotteries within its own borders. But new technologies are undermining that historic right. Pennsylvania, like many other States, has worked hard over the past 21 years to maintain the integrity of its lottery. As a result, our lottery receipts have grossed $1.5 billion this year with over $800 million going toward senior citizens programs.

However, the Pennsylvania lottery is threatened today by a scheme under which out-of-State lotteries are in fact able to market and sell their lottery tickets in Pennsylvania. These schemes, which plainly violate the spirit and intent of the Federal law, are allowable because of a loophole in the current law.

The purpose of the amendment we are offering today is to close this loophole by updating the law to preserve States historic ability to regulate lotteries. I am pleased that this amendment has been cleared on both sides. I thank and commend my colleague from Pennsylvania for his work on this issue. And I thank the Chair and ranking member of the Judiciary Committee for working with us to accept this amendment.

Mr. BIDEN. Mr. President, currently, Federal law prohibits the sale of lottery tickets across State lines. However, a loophole exists that allows the sale of a receipt, instead of a ticket, for a lottery located in another State.

A recent Federal court case in Pennsylvania overturned a Pennsylvania law that attempted to close this loophole. Not only is the loophole contrary to congressional intent to prohibit interstate gambling operations, but it hurts the operation of lotteries in the smaller States, like Delaware. The Governor of Delaware, Thomas Carper, wrote to me in support of this amendment.

His letter noted that the Delaware State lottery added $29 million to the State treasury last year. These funds are a significant contribution to the State treasury. This amendment will prevent the negative impact on lottery sales in small States the loophole entails and maintains those lotteries as important sources of revenue. I urge my colleagues to support the amendment.

Mr. President, a State’s right to conduct State lotteries and regulate gambling within its own borders must be preserved. Federal laws should continue to be effective. Federal borders must be preserved. Federal forms of gambling. Accordingly, I urge my colleagues to support the amendment.

The purpose of the amendment we are offering today is to close this loophole by updating the law to preserve States historic ability to regulate lotteries. But our amendment will not be successful if it is not accompanied by another amendment, which bans the sale of out-of-state lottery tickets. The Wofford/Specter amendment would in effect overturn this decision by amending federal interstate gambling law to prohibit the sale of out-of-state lottery tickets. As the court’s decision has the potential to negatively affect state revenues from lottery ticket sales, especially for smaller States, this amendment is supported by the National Association of State and Provincial Lotteries. Should Pic-A-State and other companies which may form as a result of the recent U.S. District Court decision move into Delaware, I am concerned about the potential adverse financial impact on Delaware’s revenues from state lottery ticket sales. Last year, Delaware’s lottery contributed $35 million to the state’s general fund.

I hope that you will keep these issues in mind during your deliberations on the crime bill. Again, I appreciate the opportunity to share my thoughts with you.

Sincerely,

Tom Carper
Governor

Mr. Hatch. Mr. President, I want to again compliment the distinguished Senator from Pennsylvania. It is a good amendment and, as usual, it is a very thoughtful one. The distinguished Senator from Pennsylvania knows as much about this subject as anybody on the floor or anybody in the whole Congress. We appreciate having his advice and counsel on this and certainly we are prepared to accept the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment offered by the Senator from Pennsylvania. The amendment (No. 1113) was agreed to.

Mr. Specter. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BIDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BIDEN. Mr. President, I am about to propose a unanimous-consent request and then, after I do that, ask by unanimous consent we yield to the Senator from New Jersey for 10 minutes on an unrelated matter.

Mr. President, I ask unanimous consent that we proceed to debate on the Smith amendment on alien terrorists with 1 hour for debate equally divided and controlled in the usual form with a vote to occur on or in relation to the Smith amendment upon the use or yielding back of time, and no other amendments be in order prior to the disposition of the Smith amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I now ask unanimous consent that we put the Smith amendment aside without any time being charged to it for a period of 10 minutes to yield to the Senator from New Jersey on an unrelated matter.

I might say that through the generosity of the Senator from New Hampshire we are doing this because, as I told the Senator from New Jersey, what he has to speak to is very important. But I would discourage those who have speeches on unrelated matters, matters unrelated to the crime bill, from coming to the floor because it will not be my intention to yield for matter of that nature that related to the crime bill so we can get amendments up, ordered, and move along.

But I am delighted to yield now, and I ask unanimous consent I be permitted to yield to the Senator from New Jersey.

The PRESIDING OFFICER. Senator from New Jersey is recognized for 10 minutes.

Mr. Bradley. I thank the distinguished Senator from New Hampshire for allowing me to proceed, and I thank the distinguished chairman of the committee.

Mr. President, today, I rise to speak in favor of the North American Free Trade Agreement, an aspect of that agreement—its job-creating potential. I do so as a result of the implementing legislation being sent to the Congress last Thursday or Friday.
The United States is in the midst of four economic transformations. These are worldwide transformations. All have both positive and negative impacts upon jobs in this country.

We are in the middle of the period of adjusting to the end of the cold war, which has given great hope to people—peace breaking out all over. Yet the jobs that defined the sector will have dropped from 7.2 to 4.2 million by 1996.

We are in the midst of a knowledge revolution, changing the way we produce things, the services that are offered. The effect of that knowledge revolution, however, is also to reduce the number of workers needed to produce the same amount of product.

The third transformation is an explosion of world markets. In the last decade the walls of communism and protectionism and authoritarianism have folded across the world. There are 3 billion members in that market today—a billion more workers producing tradable goods. The result has been some loss of jobs because of that competition.

The fourth transformation is the debt that has increased over the last decade has a result of irresponsible fiscal policies. That also has produced job loss.

All four of these transformations have taken place— are taking place—and do produce job loss. I believe the North American Free-Trade Agreement has the potential of job creation precisely at a time when these other transformations are leading to job loss. The North American Free-Trade Agreement reduces tariffs and nontariff barriers over a 10-year period for all manufacturing goods and over a 16-year period for agricultural goods. It enshrines in Mexico the concept of the free market as opposed to autarchy. And I believe that it gets Mexico to do the things we have wanted them to do for a generation: Lower trade barriers, stabilize the currency, deregulate business, and encourage foreign investment.

This will produce jobs in the United States. In the automobile sector alone, in the first year of the North American Free-Trade Agreement the companies estimate they will sell 50,000 cars into Mexico. Last year they sold 1,000 cars. That is 60,000 cars in 1 year, into a growing market. There are 750,000 cars sold every year in Mexico. It is going to be a million soon. Mexican production facilities cannot possibly keep up with that. It will generate thousands and thousands of jobs in the United States in the automotive sector—supply the demand in Mexico for automobiles.

In addition to that, there will be jobs created in the capital goods sector. We had, for example, 3 weeks ago, the head of Texas Instruments in the Finance Committee. We asked him, "Why do you not locate a manufacturing facility in Mexico since you have two assembly plants there? Why are you putting a big manufacturing facility in Dallas?" He said, "Two reasons." One reason was higher productivity in Dallas than in Mexico. And the second reason was that in Mexico there was no power grid sufficient to produce semiconductors, which need an uninterrupted power supply. Indeed, if you look at what General Electric estimates to be the demand for power grid investment in Mexico over the next decade, it is $34 billion.

Where are those turbines and those goods going to be supplied from? They are going to be supplied from the United States. They are going to be supplied from factories in the United States that are paying wages 12 to 13 percent higher than nonexport jobs.

In addition, Caterpillar has seen its sales double each year since 1988. There is a tremendous demand in Mexico for construction equipment, for tractors, for other kinds of capital investment; investment that will be made over and over again—not once, but over and over again, generating jobs in the United States.

For the first time in history, the oil and gas industry in Mexico is now open for United States investment and for United States exports. For example, it has been estimated that over the next 5 years, $20 billion will be spent in Mexico to modernize the oil and gas industry. That means $20 million that companies like Dresser Industries, or smaller companies like Solar Turbines, can compete for, thereby generating jobs in the United States.

The manufacturing sector is a winner out of the North American Free-Trade Agreement in terms of jobs generated. But, of course, our labor force is not only manufacturing. Out of 100 million people in our labor force working full time only about 17 to 18 million are in manufacturing. In Mexico only 23 percent of the Mexican goods national product is manufacturing, but 60 percent of the Mexican gross national product is services. The services market for U.S. companies has been virtually closed. If we do the North American Free-Trade Agreement, that will be opened up.

What kind of services am I talking about? Communications, transportation, banking, insurance, publishing, beach front tourism, film distribution, retraining, education training, civil engineering, computer software design, and natural gas and electric power generating facilities.

So in the services industry there is an enormous opportunity for job creation. For example, because of the elimination of equity limits and establishment of a good patents and copyright law, Government procurement opportunities, and because of some investment guarantees, you are going to see a dramatic explosion of everything from the sale of films in Mexico, drugs in Mexico, candy in Mexico—insurance in this country. However, all imports do it. It is at 3 percent here. It will be a big market for insurance.

One finance company in my State says they will open 100 offices in Mexico over the next 5 years and each one of these offices will support a job in my State of New Jersey of up to $40,000 to $50,000 a job.

One pharmaceutical company says it will increase 800 to 1,000 jobs in New Jersey because of the North American Free-Trade Agreement.

The fact of the matter is, in my State the North American Free-Trade Agreement is a tremendous advantage. In the last several years we have increased our exports to Mexico from New Jersey from $189 million to $483 million. There are approximately 16,000 jobs in my State directly related to export to Mexico. If the North American Free-Trade Agreement goes through, there will be an additional 3,260 jobs in New Jersey, as a result of exports to Mexico.

The reality is that the North American Free-Trade Agreement is a major job producer. Do not take my word for that. The President of Caterpillar, who says it will generate 200,000 jobs over the next 4 years. Take 24 out of 25 studies that have been done of the impact of the North American Free-Trade Agreement. It will generate jobs—24 out of 25 say that, net, it will generate jobs, jobs in the manufacturing sector, as well as jobs in the service sector; jobs that would not be there otherwise; jobs that will be generated precisely at the time that the other four economic transformations that the economy is going through will cost jobs.

Mr. President, I think it is also important to understand the concept that virtually all exports generate jobs in this country. How do we define jobs? Do not subtract jobs. What do I mean by that? Let us say you are importing a product that you could not otherwise get; for example, oil. That does not lose jobs. You need the oil, you generate the jobs with the oil. Or let us say you import something, you need distribution and marketing jobs in this country. Those are jobs generated.

The reality is the North American Free-Trade Agreement will generate jobs. It is a big idea. It is an idea whose time has come, and I hope that we can focus on why it is good in terms of job creation for the manufacturing sector and for the services sector and why it will make us more competitive in international markets in the years ahead.

The PRESIDING OFFICER. The Senator’s time has expired. Under the unanimous-consent agreement, the Chair recognizes the Senator from New Hampshire.
VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1993

The Senate continued with the consideration of the amendment.

AMENDMENT NO. 125

(Purpose: To provide special procedures for the removal of alien terrorists)

Mr. SMITH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Hampshire [Mr. SMITH], for himself and Mr. SIMPSON, proposes an amendment numbered 1125.

Mr. SMITH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The hearing OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, add the following:

"SECT. 242C. [DEFINITIONS.—As used in this section—]

(a) The term 'alien terrorist' means any alien described in section 241(a)(4)(B);

(b) the term 'classified information' has the same meaning as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App. IV);

(c) the term 'national security' has the same meaning as in section 1(b) of the Classified Information Procedures Act (18 U.S.C. App. IV);

(d) the term 'special court' means the court described in subsection (c) of this section; and

(e) the term 'special removal hearing' means the hearing described in subsection (e) of this section.

(2) APPLICATION FOR USE OF PROCEDURES.—The provisions of this section shall apply whenever the Attorney General certifies under seal to the special court that—

(1) the Attorney General or Deputy Attorney General has approved of the proceeding under this section;

(2) an alien terrorist is physically present in the United States;

(3) removal of such alien terrorist by deportation proceedings described in section 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would disclose classified information;

(3) The amendment of the following new section:

The amendment is as follows:

"(A) the alien who is the subject of the application has been identified;

(B) a deportation proceeding described in section 242, 242A, or 242B would pose a risk to the national security of the United States because such proceeding would disclose classified information; and

(C) the threat posed by the alien's physical presence is immediate and invokes the risk of serious bodily harm to any person.

"(d) SPECIAL REMOVAL HEARING.—(1) Except as provided in paragraph (4), the special removal hearing is authorized by a show of probable cause described in subsection (d)(2) shall be open to the public.

"(2) The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent such alien. Counsel may be appointed as described in section 300A of title 18, United States Code.

"(3) The alien shall have a right to introduce evidence on his own behalf, and except as provided in paragraph (4), shall have a right to cross-examine any witness or request that the judge issue a subpoena for the presence of a named witness.

"(4) The judge shall authorize the introduction in evidence of only that evidence which, in the judge's determination, the specific evidence, or

"(5) With respect to any evidence described in paragraph (4), the judge shall cause to be delivered to the alien any substituted evidence described in paragraph (A) which would create a substantial risk of death or serious bodily harm to any person, a statement informing the alien that no such summary is possible.

"(6) If the judge determines—

"(A) that the substituted evidence described in paragraph (B) will provide the alien with substantially the same ability to make his defense as would disclosure of the specific evidence, or

"(B) that disclosure of even the substituted evidence described in paragraph (A) would create a substantial risk of death or serious bodily harm to any person, then the determination of deportation described in subsection (f) shall be made pursuant to this section.

"(f) DETERMINATION OF DEPORTATION.—If the determination in subsection (e)(6)(A) has been made, the judge shall consider the evidence on the record as a whole, require that the alien be deported if the Attorney General proves, by clear, convincing, and unequivocal evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

"(g) APPEALS.—(1) The alien may appeal a determination under subsection (f) to the court of appeals for the Federal Circuit, by filing a notice of appeal with such court within 20 days of the determination under this subsection.

"(h) The Attorney General may appeal a determination under subsection (d), (e), or (f) to the court of appeals for the Federal Circuit, by filing a notice of appeal with such court within 20 days of the determination under one of such subsections.

"(i) When requested by the Attorney General, the entire record of the proceeding under this section shall be transmitted to the court of appeals under seal. The court of appeals shall consider such appeal in camera and ex parte.

The PRESIDING OFFICER. The Senator is recognized for 30 minutes.

Mr. SMITH. Mr. President, I am offering this amendment on behalf of myself and the Senator from Wyoming [Mr. SIMPSON] the distinguished ranking minority member and former chairman of the Subcommittee on Immigration and Refugee Affairs of the Committee on the Judiciary.

The Smith-Simpson amendment is essentially identical to section 821, the so-called 3 years of silence, of the House bill 1356, or otherwise known as the Republican crime bill.

As we see the end of the cold war, we see dramatically diminished the unremitting threats that plagued all Americans for so many decades, but there is another specter that still looms large, and that is the threat of the wave of terrorism that we see in the United States.

Earlier this year, that threat became reality with the bombing of the World Trade Center. Americans were horrified and outraged by the senseless murder and destruction brought by that heinous act of terrorism.

Fortunately, the Justice Department's Federal Bureau of Investigation moved with impressive speed to identify the suspects who are now being prosecuted for the World Trade Center bombing. Those suspects, of course, are aliens. They are not American citizens.

Mr. President, now that the scourge of international terrorism has come to our shores in a major way with the World Trade Center bombing, it is time to give the Department of Justice another tool to prevent future acts of terrorism. My amendment, which would establish special procedures for the removal of alien terrorists from the United States, provides that tool, a much-needed tool. My proposal is not a new one. The special procedure for the removal of alien terrorists that would be established by the clearance process was formally submitted to the Congress by the Reagan administration in 1988. It continued to be supported by the Bush administration throughout its 4-year term. Thus, it was supported by three successive Attorneys General of the United States of America.

This removal of alien terrorist proposal resulted from the careful work of a team that was comprised largely of our shores in a major way with the Justice Department, and that team of
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Justice Department lawyers aimed to solve a difficult problem: International terrorism brought to the shores of the United States.

Let me describe that problem. One of the most important jobs that the FBI does is to investigate international terrorism. They are also increasingly involved in arrests of terrorist aliens and organizations as they operate in the United States. The goal of those investigations is to detect preparations for and ultimately to prevent acts of terrorism from ever happening. The FBI has to arrest suspects one after the other; what we must try to do is detect this problem before the act occurs. One of the best ways to prevent terrorism is for the FBI to identify terrorist aliens and to work with the Immigration and Naturalization Service to deport those aliens from the United States. But by virtue of the very nature of antiterrorism investigations, much of the information that the FBI gathers is a given alien terrorist’s secret. This information is classified under the law in order to protect human sources of information and to safeguard the methods of intelligence gathering.

Under current law, however, Mr. President, classified information cannot be used to establish the deportability of aliens. In other words, any and all information that the Government uses to seek the deportation of an alien must be disclosed to the alien. Thus, in situations in which the Government does not have sufficient unclassified information to establish the deportability of a terrorist alien, the Government faces a catch-22 situation. It faces two untenable choices, in other words: On the one hand, the Government did declassify enough of its evidence against the terrorist to get that alien lawfully deported. But sometimes that simply cannot be done because the information is so sensitive that its disclosure to the alien would endanger the lives of human sources or compromise secret methods of intelligence gathering. That choice, then, is untenable. The Government simply cannot create a situation in which its human sources get themselves killed because they provided the FBI with information about terrorist aliens.

Let us look at the other choice. That is equally untenable, in my opinion. The Government can simply let the terrorist alien involved remain in the United States. It then must wait until he commits a crime before it acts. But aliens, of course, are our guests. We ought not to have to tolerate the presence in this country of aliens who are working on behalf of and to further the terrorist activities of terrorist organizations that threaten the lives and property of American citizens. Thus, letting terrorist aliens remain in this country until they commit a crime is equally untenable.

Let me describe what I have been saying by using an all too plausible hypothetical scenario. Let us say that the FBI identifies an alien who is a high-ranking operative of an international terrorist organization. Let us say that organization’s activities pose a potent danger of the commission of terrorist acts in the United States. Let us also say that the alien in question subsequently left the United States to attend meetings with other terrorists overseas and to undergo terrorist training, only to slip back into the United States. Thus, he is a threat to public safety, armed with more information. But let us also say that the alien involved is quite careful not to cross the line and commit a crime for which he could be prosecuted and put in jail. Believe me, we are dealing with some very sophisticated people here who have the capability of doing just that.

Let us say that the FBI determines that the alien involved is sufficiently dangerous to have abused his ‘guest’ status as a ‘guest’ in this country to a degree that he should be deported. But the FBI and the INS have a problem. All of the information that the Government has about the terrorist alien that we are talking about in this hypothetical is classified. And it is classified because the FBI has sources for that information whose lives would be endangered if that alien learned of the information or realized how it had been obtained. In other words, the information is so sensitive that the U.S. Government’s human sources might be killed if the information were to come to the attention of the alien in question.

Under current law, the Justice Department is just plain stuck. It has done its job by discovering the activities of the terrorist alien. That alien is part of a dangerous organization. He is important to that organization, which will be hurt by his removal from the United States. The Justice Department believes strongly that national security requires the removal of that alien, but the circumstances of the case are such that the Justice Department cannot neutralize that alien by making out a criminal case against him and getting him put in jail.

At the very least, at the very least, the Justice Department believes that terrorist alien ought to be removed from the United States and be forced to return to his home country. But because that information that Justice has in its dossier about the alien is classified and cannot be used publicly under current law without risking someone being killed, Justice must let this same alien remain at large in the United States of America—remain at large.

Now, faced with this situation in real cases—no more hypotheticals, in real cases—the Justice Department carefully developed a proposal to address the problem. That proposal, developed by the Reagan Justice Department and strongly supported by the Bush Justice Department, is embodied by this amendment, the amendment that I offer, the Smith-Simpson amendment.

This amendment establishes a special procedure that permits the use of unclassified information under limited circumstances to establish the deportability of terrorist aliens. This amendment utilizes familiar definitions from existing law. It clearly defines an alien terrorist. It defines that term used under the Immigration Act of 1990. And under that act it basically says:

Engaged in Terrorist Activity: As used in this Act, the term 'engaged in terrorist activity' means to commit in an individual capacity or as a member of an organization an act of terrorist activity or an act which the actor knows or reasonably should know affords material support to any individual, or organize, or government in conducting a terrorist activity at any time including any criminal activity; and 5. Solicitation of any individual for membership in a terrorist organization, terrorist government, or to engage in a terrorist activity.

That is the legal term. It defines classified information as that term is used in the Classified Information Procedures Act, with which most of us are familiar.

It establishes a special court that is modeled on the special court that was established by the Foreign Intelligence Surveillance Act. Under this amendment, the special removal procedure for terrorist aliens could only be used under extraordinary circumstances. The procedure could only be invoked when the Attorney General certifies under seal to the special court: First, that the Attorney General or the Deputy Attorney General has personally approved of invoking a special procedure; second, an alien terrorist is physically present in the United States; third, the removal of that alien terrorist by the use of the normal process of public immigration proceedings would pose a risk to the national security of the United States because such proceedings would disclose classified information.

So under this amendment, once the Attorney General made those determinations, the Government’s case for the removal of the terrorist alien involved would go before this special court. That special court would be made up of seven sitting U.S. district judges designated by the Chief Justice of the United States. Only such a judge would sit on each case. Thus the
Government would have the burden of proving its case for the removal of the terrorist alien before an independent, life-tenured Federal judge. It is the Government's burden to prove the case.

Mr. President, one of the Government's primary purposes in removing a given terrorist alien is before a Federal judge, the judge must make his or her own independent determination about whether the invocation of the special procedure is justified.

The judge must determine that there is probable cause to: First, believe that the alien involved has been correctly identified; second, that a public deportation hearing would pose a risk to the lives of human sources or the national security of the United States because such proceedings would disclose classified information; and third, the threat posed by the alien's physical presence is immediate and involves the risk of death or serious bodily harm to American citizens.

Let me reflect for a moment, Mr. President. This amendment provides major protections against any abuse by the Government of this special procedure—major protections. First, as I have explained, the Attorney General must make certain specific determinations before the Government can seek to use the procedure. Second, the independent U.S. district judge to whom the case is assigned must make specific determinations of his or her own before the process can go any further.

Under my amendment, once the special procedure is invoked by the Attorney General's certification and is approved by the U.S. district judge, a special removal hearing is held. The alien is provided the right to be present at that hearing and to be represented by a lawyer, at public expense if necessary. The alien also is given the right to introduce evidence on his or her own behalf and to ask the judge to issue subpoenas for the presence of named witnesses.

On the Government's side, my amendment allows the Justice Department to introduce classified information for the independent Federal judge to review to establish the need for the removal from the United States of this terrorist alien. Before the judge can decide not to allow the alien to see the evidence, however, the judge must make his or her own independent determination that public disclosure of the evidence would pose a risk to the lives of human sources or the national security of the United States.

If the Federal district judge involved makes that determination, that Federal judge would then review the classified information in his or her chambers and would not permit that information to be seen or disclosed to the alien or to his counsel. So classified information is protected.

For those civil libertarians over there anxiously awaiting to take me on, there is another protection for the alien. Where possible, without compromising the classified evidence, the judge would give the alien a summary of the evidence and/or the facts established by that evidence. Under the Smith-Simpson amendment, the U.S. district judge ultimately would determine whether, considering the evidence on the record as a whole, the Justice Department has proven by clear and convincing evidence that the alien is a terrorist—as defined by the Immigration Act of 1990 and therefore should be removed from the United States. In cases where the Federal district judge determines that the alien is a terrorist who should be removed from the United States, then the alien is given the right to appeal to the U.S. Court of Appeals for the Federal Circuit and, again, to appeal even further to the U.S. Supreme Court.

Mr. President, this Senator understands and appreciates the concerns of those who oppose changing the law to allow the use of classified information to establish the deportability of terrorist aliens.

Their fundamental concern is that under this amendment the alien is not allowed to confront his accusers and to be informed of all the specific evidence against him. They make two main points. First, they say such a procedure never could be used against a U.S. citizen; second they say it is fundamentally unfair to the alien but of course the persons who are subject to removal from the United States by this special procedure are not U.S. citizens. They are aliens. They are guests. As such they do not have the same constitutional rights as an American citizen.

With regard to the fairness, this amendment goes the extra mile to balance the legitimate rights of the alien against the national security interests of the United States. We have the right to use the procedure to protect our Nation against this kind of terrorism. This amendment provides many layers of protection against abuse by the Government, but ultimately when push comes to shove, we as a country and our national security interests of the United States must outweigh the procedural rights of an alien terrorist.

Mr. President, let me review once more the specific protections that this amendment provides to aliens who are subject to this procedure.

First, this amendment requires the personal approval of the Attorney General or the Deputy Attorney General, the two top officials, personal approval before the special procedure can be used.

Second, this amendment requires the independent approval of a life-tenured U.S. district judge.

Third, this amendment requires notice to the Government: That the Government is seeking to deport the alien under this procedure.

Fourth, the Smith-Simpson amendment requires the district judge to allow the alien to testify and present evidence on his behalf.

Fifth, this amendment gives the alien a right to counsel, sometimes at public expense.

Sixth, this amendment entitles the alien, whenever national security allows it, to a summary of the evidence and a statement of facts established by the evidence.

Seventh, the amendment gives the alien the right to appeal to the court of appeals, and to the Supreme Court, if necessary.

In short, this amendment seeks to address a serious problem with a balanced approach, an approach that seeks to protect to the maximum extent possible both the rights of the alien involved and the vital national security interests of the United States.

Let me reiterate that this is not new. It is a proposal that was made by the Reagan administration, supported later by the Bush administration. It is a proposal that the Justice Department in those administrations believed to be fully constitutional, and it was supported by all three of the immediate predecessors of the current Attorney General of the United States.

Unfortunately, though, as Congress does its work the Senate Judiciary Committee has failed to hold hearings on this proposal after it was sent to Congress by President Reagan in 1988. It failed to hold hearings in 1988. It failed to hold hearings in 1989. It failed to hold hearings in 1990. It failed to hold hearings in 1991. It failed to hold hearings in 1992.

It is time to stop waiting for the committee to act, Mr. President. It is time for the full Senate to act and adopt this amendment.

Let us give the Justice Department the vital new tool to help prevent future terrorist acts like the World Trade Center bombing.

We all live in a dangerous world. I can assure you the American people support this amendment. I can assure you the American people do not want aliens walking the streets when we know they are planning to commit suicide bombings. We have the right to protect our Nation against this kind of terrorism. This amendment provides many layers of protection against abuse by the Government, but ultimately when push comes to shove, our national security interests of the United States must outweigh the procedural rights of an alien terrorist.

Mr. President, let me close this on point, Mr. President.

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Let us give the Justice Department the vital new tool to help prevent future terrorist acts like the World Trade Center bombing.
international terrorism. And we are very concerned about it—very concerned about it.

All of us as Americans saw this at the World Trade Center. That is just one example. Let us resolve to do all that we can to protect ourselves against this potent threat to our domestic security.

This is a reasonable amendment. It protects the rights of the individual terrorist even. But even more importantly, it protects the national security of the United States of America, and it also protects the citizens of the United States of America which is what we ought to be doing in all of our actions here in the U.S. Senate.

So, Mr. President, I ask for the yeas and nays at this point, and I reserve the remainder of my time.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. BIDEN. Will the Senator withhold the request for just a moment? I would like to ask a question before he does that.

Mr. SMITH. Yes.

Mr. BIDEN. Mr. President, I think we may be able to, at least I know the Senator from Illinois has some points to raise about this amendment. But I am inclined to accept the amendment. My inclination to accept the amendment goes in direct proportion of whether or not we have to take 15 minutes to vote on the amendment.

So depending on what the Senator from Illinois...

Mr. SIMON. If my colleague will yield, I favor the general idea. I think there are some things that need to be worked out. I am not opposed to it accepting it by a voice vote, with the understanding that when we move to conference we try to work something out here on some of the details.

I think it is important that we not move away from some basic protections that the Senator from New Hampshire and the Senator from Delaware and I all believe.

Mr. BIDEN. Mr. President, with this amendment, the Senator from New Hampshire makes a basic fundamental point that I think is irrefutable; that is, nothing that he is proposing rises to the level of being unconstitutional. We are not talking about a constitutional violation. Were we talking about an American citizen with this proposal, I would be up here filibustering, if need be, to stop this from passing, if I could affect it. We do not have that as an issue in this debate.

So, although I would write this slightly differently, I have no objection to accepting the amendment. And obviously, any amendment accepted and/or passed when we get to conference on an amendment, its chances of surviving the conference are enhanced by how much agreement can be reached in the conference.

So, I would suggest, if the Senator from New Hampshire is willing, that we accept his amendment. I would like to make a very few brief comments about not being required to bring all of our colleagues back at 12:30 to vote on it.

It is totally up to him.

Mr. SMITH. If the chairman is willing to accept this amendment, I believe there is no need for a recorded vote. If you get a win, you accept a win. I am more than happy to do that.

I might also say if you do have suggestions, we would be happy to discuss any suggestions the chairman might have.

Mr. BIDEN. Mr. President, since the Senator from Illinois has some points he wants to raise about it, before we...

Mr. SIMON. I do not need to take the time here to do that.

If my colleague will yield, what I would like to do is have his staff work with the Senate Judiciary Committee staff to see if we cannot get something worked out in conference that we can all agree to.

Mr. BIDEN. Mr. President, I want to make it clear to the Senator from New Hampshire. I am proposing accepting the amendment notwithstanding, not conditioned upon, whether anything is worked out.

So I would accept the amendment. I just mention that working it out, having your staff sit down and talk, does enhance the prospects of when and if it comes up in conference in dispute; that it is more helpful, if the Senator from Illinois and others are also speaking for the amendment. To that extent, it is a value to work it out. But I am not conditioning acceptance on that point.

Mr. SIMPSON. Mr. President, I support this amendment which would provide the United States with a new weapon to fight international terrorism perpetrated by aliens present in our country.

I believe our Nation has few interests more compelling than combating the terrorist threat. And as a member of the Judiciary Committee, I am proposing acceptance of this amendment.

This amendment specifically excludes aliens who are merely fund-raisers or membership solicitors for groups with questionable international ties.

Mr. BIDEN. Will the Senator with yield, what I do not expect the Government to use this procedure very often at all. Nonetheless, where there is reliable evidence of an immediate and serious terrorist threat, we must take that threat seriously. And if it is clear that the only evidence we have against the alien is confidential and disclosure of the evidence would expose the source of that information to death or serious bodily harm.

Mr. President, if we have good information that a violent terrorist is imminent, and if revealing the source of that information would expose that source to possible death, then I think it is proper to go forward and deport that alien terrorist as swiftly as possible.

This is admittedly a rare instance. I do not expect the Government to use this procedure very often at all. Nonetheless, where there is reliable evidence of an immediate and serious terrorist threat, we must take that threat seriously. And if it is clear that the only evidence we have against the alien is confidential and disclosure of the evidence would expose the source of that information to death or serious bodily harm.

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process existed in a civil proceeding depended on a test which balanced the following three interests: First, the individual's interest; second, the risk of an erroneous decision by the existing procedure, and the ability to make determinations more accurate with additional procedures; and third, the Government's interest.

This amendment specifically incorporates the factors which Mathews created. The amendment would not allow an alien to be deported under the special court procedures unless the judge has determined—in addition to the alien being deportable—that the due process factors of Mathews have been satisfied.

This amendment does comply with constitutional due process requirements. If anyone criticizes this amendment on due process grounds, then they are devising a definition of due process that is beyond what the Constitution requires. Let me be perfectly clear on that point.

In addition, I should note that the Supreme Court has found that national security and the need for Government confidentiality has been found to overcome a plaintiff's right to recover damages for wrongdoing in civil torts. U.S. v. Reynolds, 1975.

Following the Supreme Court precedent, a Federal appeals court invoked national security to deny 27 individuals and organizations an opportunity to sue the Government for claimed violations of the fourth amendment: Halkins versus Helms, 1978. There should be no doubt that national security is an effective ground upon a court may properly reply to restrict a person's right to a civil proceeding.

Mr. SMITH. Mr. President, because of the statement made by the chairman, I withdraw my request for the yeas and nays.

The PRESIDING OFFICER. Who yields the floor?

Mr. BIDEN. I would be delighted to yield as much time to my friend from Utah as he needs.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Thank you, Mr. President. We are prepared to accept this on this side as well.

I rise in strong support of the amendment by my colleague from New Hampshire. The events of the past year have graphically demonstrated the need for quick and certain procedures for the removal of aliens who would terrorize our people. In February, we witnessed the bombing of the World Trade Center in New York. And this past summer, the outstanding work of Federal law enforcement agencies prevented a series of terrorist acts from being carried out in and around New York City.

I congratulate the agencies which apprehended the World Trade Center bombers, and which prevented the later disasters. But it is time to give our law enforcement agencies and courts the tools they need to quickly remove alien terrorists from our midst without jeopardizing national security or the lives of law enforcement personnel.

My colleague from New Hampshire provided the Justice Department with a mechanism to do this. It allows for a special deportation hearing and in camera, ex parte review by special judges when the disclosure of information in open court of Government evidence would pose a threat to national security.

It is entirely within the power of Congress to establish special adjudicatory proceedings and to specify the procedural rights of aliens involved in terrorist acts. As the Supreme Court noted over 10 years ago, "control over matters of immigration is a sovereign prerogative, largely within the control of the Executive and the legislature." Landon v. Plascencia, 459 U.S. 21, 34-35 (1983).

Mr. President, sound policy dictates that we take steps to ensure that we deport alien terrorists without disclosing to them and their partners our national security secrets. Our counterterrorism programs have, so far, effectively safeguarded our citizens. The success to date of our counterterrorism efforts is largely due to our effective protective of classified information used to infiltrate these groups. We cannot afford to turn over these secrets in open court, jeopardizing both the future success of these programs and the lives of those who carry them out.

Some raise heartfelt concerns about the precedence of this provision. I believe their opposition is sincere, and I respect their views. Yet, these special procedures are not criminal proceedings for which the alien will be incarcerated. Rather, the result will simply be the removal of these aliens from U.S. soil—that is all.

According to the FBI, there are numerous terrorist organizations operating within the United States. Over the past decade, the FBI has recorded at least 75 terrorist preventions here at home. Recently, the FBI arrested four individuals who were plotting to attack the Israeli Embassy. And as I noted a moment ago, there have been several terrorist attempts in New York this year. The FBI has supported legislation similar to this amendment in the past.

Americans are a fair people. Our Nation has always emphasized that its procedures be just and fair. And the procedures in the Smith amendment are in keeping with that tradition. The special court would have to determine that the alien in question is an alien terrorist, that an ordinary deportation hearing would pose a security risk, and that the threat by the alien's physical presence is grave and immediate. The alien would be provided with counsel, given all information which would not pose a risk if disclosed, and would have the right of appeal. But Mr. President, in our effort to be fair, we must not provide to terrorists, and to their supporters abroad, the informational means to wreak more havoc on our society.

Mr. President, ours is a free society. Of all of our liberties, the openness of our institutions and our freedom to travel are among our most cherished.

But his freedom is not without its cost. Because we have chosen to live in a country vulnerable to those noncitizens who would take advantage of our liberty to inflict terror on us. This amendment ensures that those noncitizens who would terrorize our citizens receive, but swiftly, deportation without disclosing sensitive information which would then be turned against us. I urge my colleagues to support it.

The PRESIDING OFFICER. If there is no further debate on the amendment offered by the Senator from New Hampshire, the question is on agreeing to the amendment.

The amendment (No. 1126) was agreed to.

Mr. SMITH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The PRESIDING OFFICER. The motion to lay on the table was agreed to.

Mr. BIDEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DOGAN). Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I am not going to offer an amendment, but I would like to discuss an amendment that I did not have time to discuss on Friday, which amendment was accepted by the majority and Republican sides of the aisle. It is now part of the legislation before us.

The reason I want to discuss it is because it tries to deal with a very real problem that we have. I also want to discuss it because I want the managers
of the bill, when this is in conference, hopefully, to seriously and conscientiously defend it.

If there were some comments that I am going to refer to from the CONGRESSIONAL RECORD of Friday that would indicate that there may not be desire to do that, I want all of my colleagues to know how important this amendment is, and, more importantly, understand the very difficult problem it deals with.

The amendment that was adopted on Friday deals with litigation in Federal court by people who are in prison, including State prisons.

It makes it easier for the States and for Federal judges to require prisoners filing civil rights cases in the Federal courts to first exhaust available administrative remedies. It does not limit prisoners' rights to sue in Federal court at all. It merely ensures that judges can continue the case for the prisoners only if they have an appropriate period of time to try to resolve their complaint through an administrative grievance system.

Prisoners' civil rights cases are overload and clogging our Federal courts. While the courts struggle to handle their criminal docket, they find huge portions of their time squandered on frivolous complaints by convicted felons who file time in State prison. In the past year, prisoners' civil rights cases were 14.2 percent of the total Federal civil docket. That is a mind-boggling 32,000 cases that are before our Federal courts—14.2 percent of all those cases coming from the very small percentage of the people in this country who are incarcerated. In Arizona, they were an astonishing 48 percent of the cases; in Arkansas, 42 percent. And you can go on and on.

It seems to me we have a responsibility to treat as a serious problem. We need to do something about it, and do something about it not only to save the taxpayers' money, as important as that is. Because the injustice here is to people who have not committed any crimes, never been in prison and want justice in our court system, but cannot get that justice because 1 percent of the people in this country are clogging the courts with 14 percent of the cases. It seems to me we have a responsibility to make sure the other 99 percent of the people who have civil matters they want dealt with have access to justice.

It would not be so bad if these prisoners had legitimate grievances. But I want to give an example of some of the cases that are being brought:

Keith Smith sued because a prison doctor would not give him birth control pills.

Charles McManus sued because he had to eat too fast in the prison mess hall.

Jesse Loden sued because he could not attend chapel in the nude.

In Nevada, child molester Chris Chapman sued because the prison would not let him subscribe to the North American Man-Boy Love Association bulletin.

In Florida, Donald Perry has filed not 1 but 42 lawsuits. One sounded very serious—it charged a guard with beating him with a flashlight. Mr. Perry neglected to mention that at the time he was stabbing the officer and a colleague with an ice pick. The jury ruled against Perry after a few minutes deliberation, but that suit still cost $50,000.

Another inmate sued because he was not allowed to deal drugs from his cell. Obviously, my colleagues, or anybody listening wants to know whether this is a very serious business we are talking about, when these examples make it sound like it is almost a joke? Yes, this is serious business because it is taking up 14.2 percent of the caseload in our Federal courts and it is costing $50,000 per case.

There is another case here, one we discussed on the floor last week, maybe 10 days ago now. A group of inmates sued, claiming their freedom of religion was violated when the prison would not let their new religion—it is called the Church of the New Song, whose sacraments were chateaubriand and Harve's Bristol Cream—meet and worship at their leisure. That case was in the court for 10 years.

In the ultimate ridiculous case, Kenny Parker sued, claiming cruel and unusual punishment. The prison served him cream instead of chunky peanut butter.

These anecdotes from last month's ABC "20/20" broadcast on "The Great Prison Pastime" give some idea of the nature of the problem.

My amendment makes some very simple changes that Federal judges have urged. Let me give a little background to my interest in this, other than "20/20." Making it real to the taxpayers of this country, so they demand that something be done.

Go back 4 years, I believe it was. Chief Justice Rehnquist appointed me as one Member of this body, Judge Heflin, the other, among four Members of Congress who were on the Federal Courts Study Committee, a 20-member citizen/officeholder-type review of the Federal court system, the first review of the Federal court system in 200 years. For 2 years we studied and made recommendations on judicial reforms. This was one of the reforms suggested when we reported 2½ years ago—now 3 years ago, I think.

In addition to the four Members of Congress who were on this study committee, there were several circuit court of appeals judges, several Federal district court judges, appellate State court and local judges, prosecutors, and public defenders who made up the committee. So the judges have urged this problem be addressed.

First and most important, the amendment that was adopted makes it easier for the States to establish administrative grievance procedures under the Civil Rights of Institutionalized Persons Act of 1980. It will allow the court to continue a case for exhaustion of remedies if the court determines or the Justice Department certifies that the grievance system either successful or substantially complies with the minimum standards laid out in the statute or is otherwise fair and effective. This is necessary because, as the Federal Courts Study Committee concluded, the current system is onerous. And the current system has failed to encourage administrative resolution the State prisoners' civil rights claims.

The requirement that is already imposed on Federal prisoners and has not caused any undue burden on legitimate claimants.

Second, the amendment extends the period during which the judge can continue the case from 90 to 180 days. And, finally, the amendment adds failure to state a claim to the reasons a judge can dismiss a prisoner case brought in forma pauperis.

The changes to the Civil Rights of Institutionalized Persons Act are supported by the Administrative Office of the Federal Courts. Understand, what we are proposing here is already instituted for people who are in Federal prisons.

We want to apply this to State prisons. I have some figures comparing the States of Minnesota, Iowa and the State of Iowa. These figures show that where you do have an administrative grievance system like this working, it really cuts down on the workload of the courts. I will submit these for the RECORD. But let me note, for the State of Minnesota, in just 1 year, 1993, they had a total of 2,380 civil cases. Of those only 107 that dealt with the civil rights of a State prisoner.

In my own State of Iowa, we have had in the northern district 645 civil cases in 1993. Almost one-third of those, 191, were State prisoner civil rights cases. In the southern district of Iowa, out of 1,232 civil cases, 472, at least one-third, were State prisoner civil rights cases.

In Minnesota, they have a system for administrative determination of the legitimacy of some of these complaints.
It keeps frivolous prisoner cases out of the Federal court system, for the most part, so that these cases constitute less than 5 percent of the Federal docket in Minnesota.

In those other States that lack administrative grievance systems, there is a much higher percentage of these prisoner cases that get into the Federal courts and clog the Federal courts. The administrative grievance system could work in all of the other 48 States, like it is working in the State of Minnesota.

The reason I bring this up at this time, Mr. President, is because we had an hour’s worth of debate set aside for the proponents and opponents of this on Friday. Mine was going to be the last amendment of the day, but Senator MOSELEY-BRAUN, because her mother has been ill, wanted to bring her amendment up. So, in the first instance, the manager of the bill, Senator BIDEN, said if we would keep the debate limited, we would have a rollcall, and he indicated to me in private conversation—I hope I am not violating any confidence—that he could perhaps even find fit to vote for it in a rollcall vote just to get it done away with and have a rollcall on it. That was to my liking at that particular time, because if you can get an overwhelming rollcall vote, I think it establishes your position in the conference.

That still would have taken too much time for the Senate to get its work done on Friday, and Senator MOSELEY-BRAUN wanted to move ahead. So he asked if I would give up the rollcall vote and just have my amendment accepted. I thought, based upon our previous discussion, that would be a perfectly good way to go. The hint that I got from Senator BIDEN was that he would vote for my amendment.

Then I read this statement in the Friday RECORD under Senator BIDEN’s acceptance of my amendment:

Although I have reservations about the amendment, having checked with the folks that have a deep concern about it, we are not happy about it, but we are prepared to accept it.

I know Senator BIDEN is not here, but maybe when he comes back he can discuss this with me because I would like to get some determination based upon what happened between the 5 minutes he originally talked to me and the period of time that he moved in debate in the Chamber of the Senate to accept my amendment, that it seems to me, looking back now, I would have been better off if I had not been cooperative and had a rollcall vote on my amendment and gone to conference with such a rollcall vote supporting my case.

I think, though, that on reflection, if Senator BIDEN will look at, and if anybody in conference looks at what my amendment attempts to do, looks at the success in States where this procedure does work, and sees how these cases by a small percentage of our population are, in fact, clearly clogging our courts and costing $50,000 on an average per case, they will conclude that we just cannot allow this system to go on. It is not giving justice to the people in prison, because such a high percentage of these cases are frivolous. And, second, it denies legitimate access to our Federal courts in civil matters, denying justice to people with legitimate grievances.

So I ask that when Senator BIDEN comes back, he please consider my request. I am hoping he will be able to make a statement of willingness to look into the seriousness of this problem and to help us get it solved, hopefully the way my amendment would solve it.

Mr. President, I ask unanimous consent to print in the RECORD the statistics I mentioned concerning the State of Minnesota and the State of Iowa, statistics on prisoner petitions commenced during the 12-month periods ended June 30, 1970 through 1993 and civil cases filed in U.S. district courts.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>U.S. DISTRICT COURTS CIVIL CASES FILED YEARS ENDED JUNE 30</th>
<th>State prisoner civil rights</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All civil cases</td>
<td>State prisoner civil rights</td>
</tr>
<tr>
<td></td>
<td>Filing cases</td>
<td>Percent of total</td>
</tr>
<tr>
<td>1980</td>
<td>233,838</td>
<td>25,039</td>
</tr>
<tr>
<td>1990</td>
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<tr>
<td>1992</td>
<td>215,995</td>
<td>22,338</td>
</tr>
<tr>
<td>1993</td>
<td>208,053</td>
<td>22,369</td>
</tr>
</tbody>
</table>

Source: Administrative Office of the U.S. Courts.

Mr. GRASSLEY. I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I understand we are in the midst of waiting for the next step. I know the two managers of the bill have been working very hard to try to set up an order of amendments. I understand I am not taking time from anybody at this moment who may be bringing up an amendment.
November 8, 1993

CONGRESSIONAL RECORD—SENATE 27821

ment. I want to speak just briefly on a subject which may seem at the moment somewhat unrelated, but it is not. It refers to our children, it refers to a matter of importance, which the distinguished Presiding Officer is well aware. He has been one of the leaders in both the House of Representatives and in the Senate on hunger issues. I have been proud to work with him on that.

I mention it because it has to be also one of those areas that affects some of the conduct of children, such as criminality.

Incidentally, I should note, I have been advised by the distinguished Senator from Iowa that he had been asked to put in a quorum call when he finished speaking. I assure the Chair I will put in a quorum call, unless the managers are here on the floor, when I finish, so they may take back control of the bill.

I mention this because if you look at the issue of nutrition, undernutrition, it is really the scourge of America's children. We have in our country, in this rich powerful country, 1 million children at risk of impaired mental development. Why? Because of anemia, and anemia is caused by under-nourishment—1 million children.

It really raises the issue that we have to stop hunger at once. I look at even the situation in my home State of Vermont, a State which has been blessed with natural resources, where people care for each other, a State that, as far as I am concerned, is one of the ideal places to live, and to grow, to be nourished and to be educated. But even in my State, we find 55,000 Vermonters are on food stamps. That is over 10 percent of the population of my State. In fact, the Vermont food bank provides 40 tons of food per month. They tell me that nowhere near enough.

To put that in perspective, one of the scenic beauties of our State is Mount Mansfield, the highest spot in the State, but if you took 40 tons of food per month, put it into boxes of breakfast cereal and stacked them end on end, it would be 13 times higher than Mount Mansfield. Vermont's child poverty rate is 11.5 percent. There are 17,000 hungry children today in Vermont. Even short-term under-nourishment affects a child's ability to learn and it affects a child's ability to be a productive and useful member of society.

I know that the Secretary of Agriculture is very concerned about this, too.

The Department of Agriculture, under Secretary Espy's leadership, is starting a series of regional hunger forums across the country. The first one will be held next month, December 13. It will be held in Vermont at St. Michael's College McCarthy Arts Center. It will go from 9 in the morning to 1 that afternoon. It is going to look at the extent and consequences of hunger, access to a healthy diet, and how you can take control of hunger issues. It will speak to a regional area, looking into all of the counties.

I wish to thank Secretary Espy for picking Vermont as the first place to hold this extremely important series of forums on regional hunger, as he will in other parts of the country later on.

If we do not worry about hunger, Mr. President, we are not worrying about our children; we are not worrying about the next generation. There is not one Senator who goes hungry except by choice. We can walk out of this Chamber just a few blocks, and we will find people who do not have the choice of whether to go hungry or not. If they do not have the choice and have to go hungry, they also have a sense of hopelessness and a sense of desperation.

When we debate this crime bill, we ought to think of that as one of the reasons for the desperation we see in some of the crimes committed in this country. Our nation, the most powerful nation on Earth. We have the ability, as no other major power has ever had, to not only feed all 250 million people of our country but to have food left over for export or for humanitarian reasons. Hunger should not exist in this Nation. I am hoping that this series of hearings will bring about the best ways to combat it.

As I said, the distinguished Presiding Officer and I have worked on these issues with our good friend, Harry Chaplin, and with others in a bipartisan effort, both in the Senate and in the House, and I think as a result of some of the efforts on which we have joined together there are millions of people who are fed in this country today who would not have been otherwise.

I know when I became chairman of the Senate Agriculture Committee, I said at the first meeting of that committee, the first meeting with the Secretary of Agriculture, we were putting the word "nutrition" back, and it would be known as the Senate Agriculture Committee and that hunger would be a top priority.

Since that time, I am proud of the fact that millions of Americans are fed daily who would not have been fed other than because of the steps that we took. But it took a joint effort of both Republicans and Democrats in the House and the Senate to do that. I am proud of it.

So I hope people will come to this regional hunger forum, will join Secretary Espy and myself at St. Michael's College on December 13, and talk together to figure out how best we tackle what really is not only one of the great problems of this Nation but is a problem that shames so powerful and wonderful a nation as ours.

We should not have a million people at risk of impaired development because of anemia caused by under-nourishment; we should not have a child poverty rate of over 11 or 13 percent; we should not have a situation with people in my State or any other State on food stamps. That must end. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Daschle). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded. The PRESIDING OFFICER. Without objection, it is so ordered.

GETTING A WORD IN EDGEWISE ON NAFTA

Mr. DORGAN. Mr. President, in reading the Wall Street Journal the other day, I was struck by a sentence that I was getting a very heavy dose of pro-NAFTA propaganda. So, I decided to add it up. I reviewed the editorial and op-ed pages of the Post from January 1 to the present. Sure enough, the heavy dose was an overdose. It turned out that the Post had devoted 40 feet of column space to pieces politicizing on behalf of NAFTA. The pact's opponents, meanwhile, got all of 6 feet. That is nearly a 7-to-1 advantage for those pushing the NAFTA cause. A fair and competitive debate? A free and open marketplace of ideas? Hardly.
This is a shame. The NAFTA debate ought to be a barnburner, not a steamroller—a long-overdue discussion of the basic trade issues our country faces. For one thing, it could be an opportunity to think about this trade issue like most others: the truth lies in the details. The major dailies apparently have followed the lead of the Mobil Oil ad, which admonished the country to ‘set the specifics aside’ and define NAFTA as ‘This is all it is.’ But if it were to respect the treaties on trade theory. Yet NAFTA is nothing if not specific trade rules for everything from beans to automobiles to french fried potatoes. Many of these rules are totally unfair. Mexican producers of beans, potatoes, and other crops, for example, get big advantages over their American competitors. Food processors who stay in the United States lose, while those who move production to Mexico win—not just in terms of low wages, but with tariff and quota protections as well. The list goes on and on.

The Bush administration, which negates trends by going for the easy show during its term of rejecting any form of industrial policy because they said it would put government in the business of picking winners and losers. Why then did they pick winners and losers in the trade negotiations for NAFTA? That in turn raises more basic questions. Is NAFTA really about free trade when corporations are free to move their factories but workers are not free to move their labor, nor farmers their fields. Or, is NAFTA really about free capital flight—the movement of jobs—which is much different? Is the corporate agenda of producing abroad at Third World wages and then selling back to the United States marketplace really a strategy that will make the United States more competitive—or will it simply make us more jobless? Most basic of all, of course, is whether NAFTA would take America forward or back. NAFTA is based on the 19th century notion of competitive advantage, which holds that the global economy will work to clockwork perfection if we do what we do best, by virtue of climate, raw materials, and the like. Yet today, comparative advantage is generally political rather than natural; nations attract factories not by superior raw materials or dexterity of workers, but by keeping wages low, environmental standards lax, and so forth.

When all is said and done, NAFTA would take one of the worst aspects of our Federal system—the smokestack chasing that leads to enormous taxpayer subsidies and waste—and project it onto a hemispheric scale. It is true that this competition for jobs exists already. But that is precisely why we need a trade agreement that addresses the problem rather than enshrines it into international law. Why cannot the United States and Canada and Mexico work together to compete against Japan and the rest of the world, instead of competing with one another for factories and jobs? Maybe we will still have that debate if the major newspapers let us get a word in edgewise. After all, if competition is good for trade, then competitive debates must be good for the agreements under which that trade proceeds. I yield the floor. I suggest the attention.

The PRESIDING OFFICER (Ms. Feinstein). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BIDEN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1993

The Senate continued with the consideration of the bill.

Mr. BIDEN. Madam President, the distinguished Senator from Mississippi [Mr. Lott] is here, and has an amendment. He is ready to go with it. I would like to ask him whether or not he is prepared to enter into a time agreement whereby there would be a half-hour equally divided in the usual form, with no amendments in order to his amendment. If he is, I think it would be helpful.

Mr. LOTT. Madam President, if I might reply, I would be happy to agree with that. We need the two or three Members that would like to make comments on it. But I do not see any reason why we need to drag this out. It is pretty easy to explain. We will have a few statements. I would be willing to agree with a time agreement.

Mr. BIDEN. I so request, then, Madam President.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Mississippi is recognized.

AMENDMENT NO. 1126

(Purpose: To amend title 18, United States Code, to provide mandatory life imprisonment for persons convicted of a third violent felony)

Mr. LOTT. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will file it.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. Lott] proposes an amendment numbered 1126.

Mr. LOTT. Madam President, I ask unanimous consent that reading of the amendment he dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is as follows:

Section 3551 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(c) IMPROBATION OF CERTAIN VIOLENT FELONS.—

(1) DEFINITION.—In this section, violent felony means a crime of violence (as defined in section 16) under Federal or State law that—

(A) involves the threatened use, use, or risk of use of physical force against the person of another;

(B) is punishable by a maximum term of imprisonment exceeding 1 year; and

(C) is not designated as a misdemeanor by the law that defines the offense.

(2) MANDATORY LIFE IMPRISONMENT.—Notwithstanding any other provision of this title or any other law, in the case of a conviction for a Federal violent felony, the court shall sentence the defendant to prison for life if the defendant has been convicted of a violent felony on 2 or more prior occasions.

(3) ROLE OF CONSTRUCTION.—This subsection shall not preclude imposition of the death penalty.

Mr. LOTT. Madam President, this amendment in the form of a bill has generally been referred to as the LIFER bill. There is similar legislation pending in the House of Representatives with over 70 cosponsors. There are a number of cosponsors of this bill in the Senate along with perhaps some other versions of the same bill.

It is very simple to understand, really. It just says three strikes and you are out; or, if you will, three strikes and you are in.

If you commit not one, not two, but three felonies, on that third State or Federal felony you will go to prison for life, without parole.

If you talk to law enforcement officials, they will tell you repeatedly that one of their biggest problems is recidivism—those criminals who commit felonies repeatedly. In fact, about 70 percent of violent crimes are committed by the same 6-percent repeat offenders. So this LIFER bill would say that once you have committed a third violent felony, you would pay the penalty of life in prison.

There are a number of groups supporting this LIFER bill: The National Victim Center, Empower America, and various law enforcement groups, including the National Sheriffs' Association.

So I urge my colleagues to take a very close look at this amendment. I want to note now that the State of Washington, just last Tuesday, passed a version of this LIFER amendment. I understand there might be some differences. That one did include some grants to the State to help carry it out. But even States now are taking the initiative in this area. The State of Washington did it last week.

There is no doubt that a small hardening of group of criminals commit most
of the violent crimes in this country. This amendment would begin to try to deal with this. LIFER stands for Life Imprisonment For Egregious Recidivists Act. Many of the people involved in these crimes are released again and again, because of the "revolving door" of the prison system. They commit a crime, they are indicted and convicted, but we do not have enough prisons, so they are back out in the streets and they commit other crimes. So we are talking about State and Federal felonies. They would have to go to prison for life. Seventy-six percent of criminals who have been jailed three times or more end up committing criminal offenses again. They think they have a license to kill, steal, and maim. They might have to serve a little time, but they get back on the streets.

A 1987 study by the National Institute of Justice found that the average multiple offender is responsible for $430,000 in crime costs. Putting just 1,000 more repeat offenders away would cost about $25 million more annually. But putting these crooks behind bars would save society millions of dollars and save many, many lives.

I would like to read from some of the letters that I received endorsing this legislation.

The National Sheriffs' Association said:

On behalf of the 22,000 members of the National Sheriffs' Association, we are writing to support the LIFER amendment to the crime bill.

The crime bill is certainly comprehensive in that it proposes reforms and solutions to several issues in the criminal justice system. However, this amendment will address the problem of victimization by removing some of the most dangerous criminals in our society. This is one big step in curbing recidivist crimes.

The National Victim Center also has written, and they make it very clear that they are concerned about this issue and would like to support the LIFER amendment.

I ask unanimous consent that the letter from the National Sheriffs' Association be printed in the RECORD at this point, along with the National Victim Center legislation letter.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:


Hon. Trent Lott, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENSATOR LOTT: On behalf of the Board Members and Staff of the National Victim Center, we wish to lend our full support to the "Life Imprisonment for Egregious Recidivists Act of 1993" (Senate Bill 490).

The National Victim Center works with more than 8,000 victim-related organizations and law enforcement agencies nationwide. These organizations and agencies serve on the front lines in our nation's war against crime. As such, they see first-hand the horrible human toll violent crime exacts on innocent members of society.

Nothing is more demoralizing to victims and services than the same offenders destroying the lives of countless other victims, despite previous arrests, convictions, and sentences.

The criminal justice machine recycles the same career criminals time after time and crime after crime. The offenders appear unchecked by the system, but their victims are ground beneath its gears.

Statistics indicates that 6 percent of violent offenders commit 70 percent of violent crimes. In the first two years of their release from incarceration. But the real cost can only be measured in human terms. Each cycle through the system comes at the expense of at least one victim.

The legislation you have proposed allows victims a first glimmer of hope that this vicious cycle can be stopped no later than the third turn of the wheel. Given the recidivism rates of our nation's most violent offenders, their is no doubt that tens of thousands of would-be victims would be spared and thousands of lives saved each year.

No greater accomplishment could be offered to those victims of crime in this nation than a measure that would reduce the addition of more members to their ranks. The "Life Imprisonment for Egregious Recidivists" bill is such a measure.

Therefore, the Board of Directors and Staff of the National Victim Center support this important bill and urge your colleagues in the Senate to make every effort to secure passage of this legislation.

Sincerely,

ROBERT S. ROSS, JR., Executive Director.

Mr. LOTT. I also have a letter from the Law Enforcement Alliance. I will read one paragraph from this letter:

For violent recidivists, career criminals who thrive on violent anti-social behavior, we urge swift and certain isolation from society. Senator Trent Lott's S. 499, aimed at egregious, repeat, violent offenders is, in our view, the primacy of perpetrator rights over those of their victims. We have watched and remained silent, until now.

We are compelled to break our professional silence and raise the cry for simple justice for crime victims and for society.

Over the decades, the courts have taken great pains and great strides to protect the rights of the accused and of those convicted of heinous crimes. We agree in principle. But, those laudable goals have been turned into a travesty of their intent by the deliberate and frivolous peddling of imagined or exaggerated infractions. Further, the extremes taken to mitigate time served by turning penal institutions into virtual prison entertainment centers has failed to stem the recidivist rate. When we treat those who committed crimes are extremes in austere living conditions.

We urge a determined legislative search for a realistic middle ground that ensures basic rights, provides basic living conditions, and underscores the fact that inmates are serving time for a very real, very serious infraction of society's rules.

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We urge a determined legislative search for a realistic middle ground that ensures basic rights, provides basic living conditions, and underscores the fact that inmates are serving time for a very real, very serious infraction of society's rules.
experimentation with drugs designed to cure our illnesses. We certainly shouldn’t use humans, in this case society, to research ways to curb those who rape, rob, or kill. To do so is to heap yet another insult upon crime’s victims.

We look forward to your leadership in providing sound measures addressing our concerns.

Again, we offer our assistance in any way possible to pass meaningful remedies to our nation’s crime problems.

Sincerely,

JAMES J. FOTIS, Executive Director.

Mr. LOTTT. Madam President, last week, we did make some major revisions to this crime bill. I think we improved it considerably. We did add a large amount of funds for prisons, Federal prisons. These recidivists are the people who really need to be put in these Federal or regional prisons, as well as the prisons in the various States around the country.

I urge my colleagues to support this amendment. I believe it will go a long way toward really dealing with crime in this country. I noted late last Friday that the distinguished majority leader said, “There is not much in this Federal legislation that is really going to deal with crime and criminals in this country. A lot of it occurs under the jurisdiction of the State and local level.” But recidivism is one place where we can make a difference. If we can begin to get these few thugs off of the streets, it will really make a difference, not only in cities like Washington, DC, but in rural areas across this country.

Again, I urge adoption of this amendment.

I yield the floor.

Mr. BIDEN. Madam President, I think I and all Americans sympathize with what my friend from Mississippi is attempting to do. In the crime bills that have passed in the recent 10 years, we have had some what we refer to as minimum mandatory sentences in the bill, like this being a minimum mandatory.

For example, as the Senator accurately pointed out, there is mandatory life imprisonment in this circumstance. I will read the language:

Notwithstanding any other provision of this title or any other law, in the case of a conviction for a Federal violent felony, the court shall sentence the defendant to prison for life.

The point is: “Shall sentence for life,” Madam President. Now, the Senator from Delaware did when I drafted minimum mandatory provisions 3, 4, or 5 years ago in previous crime bills; that is, what we are looking for here is the perpetrator, the guy or woman out there—in almost every instance it is the man—who has committed a heinous crime, has been let out of jail and commits another one, and is let out of jail and then commits another one. He is clearly a predator.

It is a term I use, not a term of art; but that is how I think of these folks, and I think we need to put them in jail. This would be the 3-time rapist and the 3-time murderer. You might say, should they not be in jail for life after one?

Well, the truth is, the average amount of time served in the District for a conviction for a capital offense, I believe, is 5 1/2 years, and in other States it is similar. The reason I wrote the sentencing commission law with a couple others about 10 years ago, Madam President, was because your State of California was letting people out of jail after being convicted of murder on average of serving only 7 years. I remember Sirhan Sirhan coming up, and I said, “How in the Lord’s name can we have that happen?” So they are the people we are all looking at.

One of the things that I found out is when you pass these minimum mandatory bills you sometimes end up in your net taking in people who you would never intend by the scope of the law when you write it to take in.

As I read this amendment—and I promise to try not to nitpick with my friend from Mississippi—but it says the definition of a “violent felony,” to be precise, “means a crime of violence (as defined in section 16) under Federal or State law that—”

“(A) involves the threatened use, use, or risk of use of physical force against the person of another;

“(B) is punishable by a maximum term of imprisonment exceeding 1 year; and,

“(C) is not designated as a misdemeanor by the law that defines the offense.”

If one man takes his hand and that hand connects to another man’s jaw, in almost every case in every State in the Union that is a felony. That is an assault. It is a felony and by definition of this law is a violent crime.

We all have in our small towns and our large cities, the person who gets drunk, who is the person who causes brawls in bars. We can identify them, particularly in small towns who they are. It is either Bubba, Charlie, Harry, Bill, or Pete. They may very well have been convicted twice of being in a fistfight in a bar-connected fight. Both are felonies. In almost every State in the Nation, a plain old, good old American fistfight, in fact, in most States is a felony, a violent crime punishable by more than a year in jail.

If that same person has the misfortune of also getting in one of those fistfights at Yellowstone Park, at one of the restaurants in Yellowstone Park, at one of the lodges—it sounds as though as it sounds, a Federal judge, upon convicting, finding that person guilty, must send that person to jail for the rest of his natural life.

I do not think we are intending to do that. I know I could not say “know.” I suspect that is not the intention of my friend from Mississippi.

As I understand the rapist, I do not have even the slightest concern about that person spending the rest of his life in jail. As a matter of fact, in the violence against women legislation which I quoted earlier this year, in this bill, we increased the penalties for rape. I am all for minimum mandatory life imprisonment—no probation and no parole.

There are aberrations that occur in the law. I wonder if my friend would entertain an amendment to his legislation whereby in subsection (c)(1) where it says “Definition” it says, “In this section, ‘violent felony’ means a crime of violence (as defined in section 16) under Federal or State law that”—and then to sections (A), (B), and (C) add a section (D) that says, “And carries with it a maximum penalty of 10 years or more,” so that we do not end up inadvertently serving a 2-year sentence for something.

I think we want to make certain that a Federal judge would be required to put in jail for life—the drunk en brawler who gets in his third fight and he happens to do it in Yellowstone Park while he is there— and the reason for “Yellowstone Park” I am not being facetious—one of these offenses has to occur under Federal jurisdiction. So if he does a crime of violence on a Federal jurisdiction, almost by definition, with a few notable exceptions, it has to be a crime committed on an Indian reservation and/or a crime committed on Federal property.

Theoretically, I guess, if someone had two prior convictions for being drunk and disordered and getting in fights and then happens to be watching this debate up in the gallery there and someone said, “I do not like what Biden says,” the other says, “I like it,” and he pops him, that is on Federal property, and that is a Federal crime.

The other thing I might point out is I think this is a very dangerous law to pass in terms of equity for American Indians because I know that the American Indian and you get over a period of 10 years, 20 years, 30 years, convicted three times for being disorderly and/or a crime of assault with your fist because you are on an Indian reservation and that is Federal property, you might have to go to jail for life.

I do not think that is the intention of my friend from Mississippi. Maybe it is. If it is, I would like to know. If it is not, I would like to suggest maybe we could go into a short forum call and see if there is any way he would be willing to further circumscribe this to get at the people he and I and everyone wants to get at, and those are people who commit serious heinous crimes.

I am not suggesting to get in a fight, one man with another, and without provocation one man hits another and knocked his teeth out or tooth out is not serious. That is serious. I am not trying to belittle that. I do not think
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anybody is suggesting that person should have to be sent to jail for life with no discretion on the part of the judge because that happens three times over the period of his life. But that is a question and a request. Mr. LOTT. Madam President, will the distinguished Senator from Delaware yield?

Mr. BIDEN. I am happy to yield.

Mr. LOTT. Certainly. I think for any rule you could find an exception. I can think of certain circumstances where obviously you would like for the judge to have some discretion. If you get in a fistfight one time, I guess that could happen with anybody. I am responding to the Senator's example about the fistfights. If you get into one, maybe you just got carried away; if you get into the second one maybe it was provoked. If you got in a third one, that is assault and battery, whatever the evidence. Keeping in mind that under the system we have, the judge has discretion on the part of the convicted person is required to serve that time. That is what we call flat time sentencing. In only rare circumstances can a Federal judge alter it by increasing or decreasing up to 15 percent the sentence. That is where we get into the system, have this 85 percent, serve a minimum of 85 percent of the time having to be served.

I am taking more time than is needed to be taken here. I will not formally propose this at the moment, but I would consider propounding a unanimous request that we temporarily move off this amendment without the Senator losing the right to come back up and ask for a vote if he so chooses. I would like to work out a language that somewhat circumscribes the people to whom we intend this to apply.

I am confident his staff and mine can work out some language. Again, I have nothing particular in mind. I have not thought through how it should be. I just want to tighten it so we do not get the folks we are talking about who are repeat offenders. It is a serious problem when you have this combination of felonies; quite often one may not be so serious and the next one could be a lot more serious. I want to emphasize something I said a while ago, that the average multiple offender is responsible for $400,000 in crime costs.

While there might be some additional costs as a result of this amendment to incarcerate these people for life, it is estimated we could save $400 million per thousand prisoners if we could pass an amendment like this because of the burden of the cost on the judicial system, the law enforcement system, where these people come back and have to be tried again and again and again.

It is something for which there is a lot of support. I saw one poll just last week that indicated well over 70 percent of the American people thought we should be tough on these repeat offenders. When I talk to policemen, sheriffs, and other law enforcement people in my State, this is the issue they mention more than anything else—more than habeas corpus, more than some of these other rules that we talk about. They say that if we had the surety of punishment of these repeat offenders, it would make their jobs so much easier and safer from that standpoint.

Mr. BIDEN. Will the Senator yield for one more question?

Mr. LOTT. I am glad to yield.

Mr. BIDEN. Again, we have no disagreement, at least he and I have no disagreement, on trying to get to these serious repeat offenders, three-time losers.

But I have a second question unrelated to that. And that is, I am a little bit confused the way the amendment is written.

Does this require a State to impose minimum mandatory life or only the Federal judge to apply minimum mandatory life? In other words, must the defendant be within the jurisdiction of a Federal judge—having committed his third felony, that felony being a Federal felony for violence—before this can happen, or is the Senator instructing every State to change their laws and for them to impose at a State level in State court minimum mandatory life imprisonment?

Mr. LOTT. Madam President, I would like to respond to the Senator's question. It is not my intention that we micromanage every State judge. Obviously a Federal judge would impose such restrictions under this amendment. Mr. BIDEN. I think the Senator has it fairly clearly in this and I was not suggesting it was not.

But we have a rash, as my friend from Mississippi knows, of State's States from Mississippi and the Senator from Delaware has on the Lott amendment.

I do not have any particular language in mind. All I want to do is believing, and the Senator confirmed it, they are the people he is going after, that there may be a way to tighten this a little bit so we do not inadvertently get the folks we do not want to get.

For example, under the Federal system, under the current guidelines a murderer with two prior convictions or one of these folks out there with two serious convictions gets an average sentence of 30 years under the Federal guidelines; whereas, a troublemaker who gets in three fights under the present guideline of the Sentencing Commission gets an average of 5 1/2 years.

We are not looking to let off the bully who goes around knocking people's teeth out. They get 5 1/2 years on average.

When the Senator was in the House and I was and we worked on this, under the Federal guidelines we took away the discretion of the judges. That is why they are mad. Right now the judges are not real happy with the Senator from Delaware, separate and apart from minimum mandates because we passed a law that is the law now, and the Sentencing Commission exists out there.

For every Federal crime we make a crime, they must set up a sentence, and the sentences are those that are required. The defendant is required, the convicted person is required to serve that time. That is what we call flat time sentencing. In only rare circumstances can a Federal judge alter it by increasing or decreasing up to 15 percent the sentence. That is where we get into the system, have this 85 percent, serve a minimum of 85 percent of the time having to be served.

I am taking more time than is needed to be taken here. I will not formally propose this at the moment, but I would consider propounding a unanimous request that we temporarily move off this amendment without the Senator losing the right to come back up and ask for a vote if he so chooses. I would like to work out a language that somewhat circumscribes the people to whom we intend this to apply.

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While there might be some additional costs as a result of this amendment to incarcerate these people for life, it is estimated we could save $400 million per thousand prisoners if we could pass an amendment like this because of the burden of the cost on the judicial system, the law enforcement system, where these people come back and have to be tried again and again and again.
The PRESIDING OFFICER. Is there objection? There being none, that will be the order.

Mr. LOTT. Madam President, I ask unanimous consent, that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Madam President, I ask unanimous consent that I be permitted to modify my amendment. I send that modification to the desk.

The PRESIDING OFFICER. Is there objection to the modification? There being none, it is so ordered. The amendment is modified.

The amendment (No. 1126), as modified, is as follows:

At the appropriate place insert the following:

SEC. 1. MANDATORY LIFE IMPRISONMENT OF PERSONS CONVICTED OF A THIRD VIOLENT CRIME.

Section 5581 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(c) IMPRISONMENT OF CERTAIN VIOLENT FELONS.—

"(1) DEFINITION.—In this section, 'violent felony' means a crime of violence (as defined in section 16) under Federal or State law that—

"(A) involves the threatened use, use, or risk of use of physical force against the person of another; and

"(B) is punishable by a maximum term of 5 years or more; and

"(C) is not designated as a misdemeanor by the law that defines the offense.

"(2) MANDATORY LIFE IMPRISONMENT.—Notwithstanding any other provision of this title or any other law, in the case of a conviction for a Federal violent felony, the court shall sentence the defendant to prison for life if the defendant has been convicted of a violent felony on two or more prior occasions.

"(3) RULE OF CONSTRUCTION.—This subsection shall not be construed to preclude imposition of the death penalty."

Mr. LOTT. Madam President, before I yield the floor, I would like to point out I had a discussion with the distinguished chairman of the committee and the distinguished Senator from Delaware, and we have agreed to the modification that would change, on the second page of the amendment, section "(B), is punishable by a maximum term of 5 years or more.

This would replace the language that had said, "imprisonment exceeding 1 year." I think this is an improvement. This is the language basically that was recommended by the Senator from Delaware to get at those most violent criminals.

I think this is a reasonable approach. That is why I modified the language.

I ask unanimous consent that Senator McCain be added as a cosponsor of the amendment and Senator Gorton of Washington.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, as Senator Biden said, the scope of definition could cover prior conditions, which the Senator from Mississippi does not wish to cover. I commend my colleague from Mississippi for working with the Senator from Delaware to make it clear this amendment applies to individuals with three felony convictions for crimes incurring a maximum penalty of 5 years or more. I think that is a reasonable way to resolve this.

I commend the distinguished Senator from Mississippi for his efforts in trying to get this provision through because I think it is important. He has made the right decision. I think that this provision will help us in this fight against crime.

Mr. BIDEN. Madam President, how much time does the Senator from Delaware have?

The PRESIDING OFFICER. Two minutes fifty-three seconds.

Mr. BIDEN. I ask unanimous consent that we be able to increase the time on each side 5 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BIDEN. I yield 5 minutes to my friend from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Madam President, I thank my friend, the distinguished Senator from Delaware. I am pleased to have been able to give an enthusiastic co­ sponsor to this modified amendment.

Last Tuesday when the citizens of my State passed Initiative 593, with more than 75 percent voting in favor, they made the State of Washington extremely unpleasant for two-time violent offenders to live. If someone now commits a third serious felony in Washington State, they are going to go to prison for life. The Nation watched this election campaign as the initiative entitled, "Three Strikes, You're Out." That is the case now in Washington State. It will be the case under the Federal system if this amendment is to be adopted.

Let me tell you just one of the significant differences this makes in the State of Washington. Up until this point, before this initiative passed, the average prison term for a child molester who had two previous sex felony convictions on his record was 9 1/2 years. That will not be the case in the future. We will not have that kind of predator going in and out of the revolving door in the State of Washington.

I regret to say that 2 years ago the State of Washington had the sixth highest crime rate in the Nation, and that last year there was another percentage increase. This is a reaction by the people of the State of Washington in repudiation of that kind of record and particularly because two-thirds of all violent crime is committed by a relatively small handful of offenders.

My citizens, the people I represent, want those predators off our streets, away from our schools and safely behind bars. As a consequence, this is one of the few amendments on any bills with which we deal in which we have a graphic illustration in the very week in which we vote, that people in one State, who I am convinced are typical of people across the United States, have told us precisely what it is that they wish.

The modification, which the Senator from Mississippi has offered, makes it certain that this will not inadvertently be applied to some of those who have engaged in crimes, which most of us probably would not regard as being serious enough to count against the "three strikes you're out" strategy. In Washington State, when our young people play baseball, "Three strikes and you're out." The people of the State of Washington have said to violent criminals, "Three strikes and you're out." The amendment says to those who are charged under the current system: "Three strikes, you're out."

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Madam President, how much time do I have?

The PRESIDING OFFICER. Seven minutes and twenty-four seconds.

Mr. LOTT. Madam President, if I could take a moment to commend the distinguished Senator from Washington for his statement. Having served as attorney general of the State of Washington before he came to this body, he had an outstanding record and was well respected as an attorney general by the attorneys general from all over this country. I know that is the case because I have talked with other attorneys general with whom he served. I am very pleased he came here this morning and was able to work with us on this legislation. I believe it adds a great deal of weight and timeliness to this particular amendment.

Madam President, I do not have any further request for time at this moment. I would like to ask for the yeas and nays, perhaps so we can be assured of getting a recorded vote, perhaps at an agreed-to time. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Madam President, with the permission of my friend from Mississippi, I ask unanimous consent that the vote on this amendment, for which the yeas and nays have just been ordered, occur at 2:30 today.
The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. That being the case, I yield back whatever time I have remaining on this amendment.

Mr. HOLLINGS. Mr. President, I was unable yesterday to address myself to the Lott amendment, the so-called three-time loser amendment. I believe this is a much needed amendment. We must take those who continue to perpetrate violent crimes and make sure they never walk the streets again. We must insure these repeat offenders are isolated from society forever. Again, I just wanted to let the record show that despite my absence, I support the amendment of the Senator from Mississippi.

The PRESIDING OFFICER. All time is yielded back.

Mr. GLENN. Madam President, I yield back the remainder of my time.

The PRESIDING OFFICER. Time is yielded back.

Mr. BIDEN. Madam President, I think we are very close—we are literally drafting the final language, as they say, crossing the t's and dotting the i's on four major initiatives that the Senator from Utah and I have been working on literally for the past month. They relate to several major areas of the bill.

So, unless someone wishes to speak, I am going to suggest the absence of a quorum and hopefully between now and 2:30, we will be back with that drafted language which we can approve and accept prior to the rollover vote on the Lott amendment.

Further, that upon the completion of the Lott amendment, we hopefully will have another amendment we can go to for action and debate, as we are lining up to accommodate within our penal system. The rights of people are protected through the court system. It is a long and arduous process that judicial system is severely strained, as the distinguished majority leader pointed out in the Chamber here last week. He believes that we need more people in that system that we can get the system more quickly and make sure their rights are fully protected—and I agree with that. But once again I submit that we are convicting more people through that system than we are able to take care of.

So we come to the last part of that system, the punishment part of the system—taking away the freedom of those who cannot live within the boundaries of the laws that we depend on in this democratic society of ours.

Depriving a man of his freedom is not done lightly. But once it is decided by the courts, after all of the constitutional protections have been afforded, after all of the police apprehension efforts, after all of the judicial proceedings, at that point the carrying out of that sentence should be swift; it should be certain; and it should be meaningful so that it continues to be effective for everybody in this country of ours.

Let us go back through those three things again—apprehension by our police system, determination of guilt by our judicial system, and punishment.

First, apprehension of those who break the laws. We have in this country right now around 600,000 sworn officers in police and sheriffs departments. In this legislation, we are going to increase the number of officers by up to 100,000 over 5 years. Needless to say, this is a very substantial increase.

No one doubts that will make some difference, just by the fact you see more policemen out on the street. But is that the answer? No. I do not think that is the principal weakness of our whole system of crime and punishment in this country. The facts are that we have more arrests now than we are able to accommodate within our judicial system and more than we are able to accommodate within our penal system. The police are simply arresting more people than our judicial system can handle.

Now, will this visible presence out on the street do some good? Of course it will. How many times have you driven along a road just a little bit over the speed limit and just the sight of a police car—perhaps the Ohio State Patrol used to call visual patrol, just parking a car out along the road—leads you to slow down? Perhaps you will even slow down. But when punishment is nonexistent or minimal at best, we are engaged in the process of
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I still visit bases around this country and around the world. I find some of these buildings still being used some 45 years after they were constructed. They are not constructed for just a few months of use. They can be made just as livable from the Arctic to the tropics and in places of any water condition.

We love to rise on the Senate floor and talk about the crisis of crime. And it is a crisis. No one doubts that. But when we deal with a crisis, are we willing really to commit the necessary dollars or are we looking for a cheaper way that we can make sure that people serve the sentence that they have received?

We are putting somewhere around $6 billion into prison construction in this bill.

Let us say we take an average cost of $50,000 per cell for regular prison construction across this country. What will $6 billion mean divided by $50,000 per cell? It means that 120,000 additional people could be locked up, even if this bill works out perfectly.

Yet we find in my home State of Ohio, we have some 90,000 people locked up. But our capacity is only 21,863 prisoners. So we are nearly double the capacity of the Ohio prison system right now. And Ohio is not alone.

I think we would come a long ways toward tripling or quadrupling the effect of that $6 billion if we did not insist on all of this brick and mortar construction and went to quite adequate low cost construction, whether they be Quonset huts or Butler buildings, or some other type of low-cost housing.

We also have excess military bases around this country. They have all the facilities of a city. They have sewage, water, lights, buildings, bunks, recreation, the whole works furnished right there, ready to be moved in once those bases are surplus. They should be utilized.

One thing that is provided in the bill that I think is good is it encourages the reuse of the Quonset huts and other facilities in several States. I think that is important. I hope that some of the States exercise their rights once Federal entities have indicated there is no Federal use for the property and it becomes the right of the State as the next claimant. I hope that States are willing to work out some agreements where they can use those bases for prisons. They are set up ideally for this purpose.

Next, I think we should look at existing penal facilities. Within States by some of these cheaper methods that I am talking about. What is wrong with going to some of our facilities in Ohio which are overcrowded using some of these cheaper construction techniques to expand their facilities on those same grounds? What is wrong with that? I see nothing wrong with it myself. I repeat, millions of Americans have lived in those and far worse facilities in serving their country. I don't say it is not hard, I think this would be inhumane or is not

creating a nation of scofflaws who are making a mockery of our penal system. They know they have committed a crime. Why not go out and rob again? Why not grab an old lady's purse and run down the street with it? You are not going to get anything much if you steal from your employer? Does that make any difference? They are probably not going to be able to prove that make any difference? They are probably not going to be able to prove it. If they do, the sentence will probably be light.

You know there will be minimal penalty if you are caught.

I read in the paper a few days ago where a person, I believe in Florida, drove across a median, drunk, ran into some other cars, and several people were killed. That person had been arrested for drunk driving 24 times previously.


Over the last few days we have had soaring rhetoric from Senator after Senator. We are going to get tougher. We are going to outrun anybody else. We are going to show them we can be as tough on crime as anybody will be, and we will show them through proposals such as the death penalty that we really mean business on crime.

So we pass all sorts of things that lead us into thinking that we are doing something, and leads the American people into thinking we are doing something, when I feel we are not even addressing the major weakness. The part that is missing is really meaningful confinement, the loss of liberty for those who cannot obey the laws that everybody else obeys.

Let me go back to the last time we had a crime bill on the floor. Let me tell you my little personal experience. This might be of some interest to my colleagues on both sides of the aisle who are up for reelection and want to touch the hot button among the people on crime. In 1991 when the crime bill was on the floor for debate, I happened to have been in the Cloakroom and planned to take part in the debate. But what they were debating at the time I came on the floor was the amount we were going to spend to help States build prisons, and what was going to be spent on the Federal prison system.

I was interested in this because back home when I was running for election back many years ago, I had made some statement about spending billions of dollars. Why crime should be punished once the judgment is in—that crime should be punished immediately, and we should have adequate prison space.

And I proposed some ideas at that time, not for great new brick and mortar palaces that we put people in, but the kind of prison that have, by the way, been dealing with the violent criminals, but ways of dealing with the nonviolent criminals and how we could incapacitate them without building these great big expensive structures costing hundreds and thousands of millions of dollars.

I made my statements that day on the floor concerning some ideas on low-cost incarcerations that I thought were very good. I proposed that we use some of these cheaper construction techniques that have been used in the military and that I had some experience with. And I proposed that we build not just great big new brick and mortar things where each cell costs as much as $50,000 per prisoner, more than many of the people that they have offended paid for their homes. I think it is ridiculous to be putting out that kind of money for non-violent prisoners.

I do not question locking the violent people up in whatever the most secure facilities are. But for nonviolent prisoners, I do not think we need that same kind of construction nor that kind of security.

Is there a better way? Is there a cheaper incarceration for the non-violent? I believe there is. I lived in low-cost housing like Butler buildings or, back in World War II days and since then, Quonset huts, plain old Quonset huts.

Everybody is familiar with what I mean when we say a Quonset hut. But whether it is Quonset hut, Butler buildings, prefab, or mobile home conversions, or whatever it may be, I believe we can do prison and jail construction more inexpensively. Some localities have even tried things like taking old 18-wheeler trailers off the highway after their days are done, refurbishing them and making them into quarters for people; even things like that may have practical application in our prison system.

Is this inhuman? Is this inadequate? Our military experience is evidence that millions of good American citizens in the military lived in quarters just like that for years at a time, and did it without any problem at all. Whole families lived in quarters like that. I know because on two different occasions my family lived in half of a Quonset hut, and it was quite adequate. But it was constructed at a mere fraction of the cost that a big brick and mortar building would have cost.

This is not something that just applies to the tropics. People lived in things like Quonset huts and Butler buildings for month after month, year after year, from the Arctic to the tropics. You can take these buildings and make them just as livable as any other building.

I still visit bases around this country and around the world. I find some of these buildings still being used some 45 years after they were constructed. They are not constructed for just a few months of use. They can be made just as livable from the Arctic to the tropics and from summer to winter use.

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the way to treat prisoners. I think it is every bit the way to treat prisoners.

A third area: If we establish new pris­
oners, we would get our prisoners. What happened to the day when you would save billions of dollars.

If we establish these new prisons, I do not think there is any problem with pe­

imeter security on anything like that. I find people thinking we have to have all sorts of exercise equipment and

and rowing machines for prisoners. What happened to the day when you could get your exercise by running around the perimeter of a facility—in six courses—running around to get your exercise? What is wrong with hav­
ing the people build their own Quonset huts, as far as that goes? About six people can build one in 3 or 4 days, once you lay out the construction and know what you are doing. You can in­

ulate it and do whatever you want with it.

What is wrong with having prisoners build some of their own facilities? That has been tried in Arizona. They built 100 Quonset huts and housed a number of people in them over a number of years. What is wrong with people growing some of their own food on that ground? A hoe in the hand to some of these people might lead them to learn that tomatoes do not come in cans and so forth. I do not see why it is a prob­lem to have them grow some of their own food. I could go on and on with the analogies, but it is not necessary.

In other words, a Quonset establish­

ent like that can have buildings for whatever purpose you may want to have a building built. You can join those together, and you will have a li­

rary, you can have your shower and toilet facilities, and you can have whatever you want, and it can be done at a fraction of the cost of what it is now. That is what I talked about when I came on the floor 2 years ago.

Advice to my colleagues: Let me tell you what happened. This was 2 years ago before the current furor about the rise of crime and what we are going to do about it. I left the floor that day, and by the time I got back to our office—this whole presentation having been made on C-SPAN, of course; now that the Senate is broadcast by C-SPAN all over the country every day—by the time I got back to my office, the phones had lit up, not just from back home in Ohio, but from all over this country. People were saying, "Why not? What is wrong with that idea? It is the best idea I have heard of in a long time." We got a terrific increase in mail over the next few weeks on this very subject. People were saying, "What? We do not want the crooks back in our neighbor­hood. Why does everybody convicted not serve some time?" And they are right.

Following that time, I had such an outpouring of interest. I went back and spent a week at the next break going all around Ohio. I asked the people in several of our major communities—six of them—to set up meetings with pros­

ectors, police, sheriffs, judges, may­
ors, all in onemeeting, to talk about what was wrong with our criminal jus­
tice system. What is lacking in our present system that would make the whole system work better?

Well, what I found was a great frustra­
tion on behalf of the prosecutors, police, sheriffs, judges, the mayors, that after all of the efforts to appre­
hend, after all of the efforts in the judi­

cal system, too often, the final out­

come was that the prisoner walks free to do it again. This was the frustration of these people who were most in­
volved. Why? Because there is no place to put them. Or you have to let one go early for every new one that you put in.

Let me give an example. In one of our major counties, the sheriff there told me he had between 50,000 and 70,000 unserved warrants. He did not send of­

icers out to arrest more offenders be­
cause he did not have anywhere to put them anyway. At that time, the sheriff 2,000 times had given people convicted of crimes letters telling them when to come back—up to 18 months later—to start serving their sentence. When and if they came back in 18 months, what would be the result? They would have to let one go out of prison to let the other go in. This is not a mockery of justice, I do not know what is.

Earlier I referenced the crisis facing Ohio's prison system. It is creating a situation where you cannot get by without serving any major pen­

alty because we have no place to put them.

What is wrong with the idea of Butler buildings, or Quonset huts, or convert­

ing trailers, or whatever, for our non­
violent prisoners? I see nothing wrong with it. Millions of Americans have lived under those conditions and lived quite well while they were in the mili­

itary.

I see no reason why our prisoners should be treated better than the peo­

ple in our military. If we had a system the way it is supposed to work, we would have enough beds spaces out there, in whatever type facility. We should have beds waiting. We should have beds waiting so that when a judge imposes a sentence he knows that per­
son is going directly into prison and not be let off. We should have enough space so that a prison official does not have to put somebody out of the prison to let another person get into the sys­
tem. It just makes common sense.

How are we going to ever carry out the Stevens proposal, which I fully back up, saying 85 percent of every sen­
ator in this room that that is impossible to do with the present spaces that we have available.

When I came to the Senate floor a couple years ago, a man in Cleveland was listening that day and sent me a little model. Everyone likes to see the Senate floor these days with little models of everything. Since we went on C-SPAN, I think the cost of doing charts for the Senate floor must have gone up to 10,000 percent. I would like to know what the bill is now for placards. We love to have easels on the Senate floor. This man sent this to me from Cleveland. This man was Mr. Milton Rudler. He heard what I said and was interested in seeing what he could do to make a model of this. Here is an old World War II style Quonset hut.

I do not think he knew we were hav­ing a brand new debate on this subject, but went back and made a model of a new Quonset hut the other day. He sent us one that looked like prisoners could be incarcerated in without hurting their souls too much. Here it is.

Do we are gaining our own little city of model Quonset huts here so everyone will see what these look like. This has shrubbery around it, a flag out in front, and a few other things with it. This Quonset hut looks a little better than the old World War II style, I must admit.

What I am submitting is not an ad for Quonset huts. It is an ad for low­
cost incarceration of nonviolent pris­

The PRESIDING OFFICER. The Sen­
nator from Ohio.

Mr. BIDEN. If the Senator will yield for a question?

Mr. GLENN. I yield for a question.

Mr. BIDEN. As I understand it, the Senator from Ohio has another half an hour.

Mr. GLENN. No, about 10 minutes.

Mr. BIDEN. The Senator from Ohio has another 10 minutes on the issue he was speaking of.

Then, what I would like to do, with the permission of the ranking member, comanager of the bill, is then move to the Helms amendment. Senator Helms has an amendment on restriction on payments of benefits to individuals convicted of certain offenses by court order to public instit­

ations pursuant to verdicts of not guilty by reason of insanity or other mental disorders.

Mr. THURMOND. Madam President, we have an amendment following that on HJRES.

Mr. BIDEN. Madam President, what I would like to do—we have been at­

tempting to go back and forth here, Democratic and Republican amendment—I would be delighted to go to
the Senator from South Carolina after the Senator from North Carolina, assuming there is not a Democratic amendment intervening. But I want to put everyone on notice at the expiration of the 15 minutes equally divided, with no second-degree amendment to the Helms amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. In the meantime, I will sit with my friend from South Carolina and others to see if we can line up additional amendments to go upon the completion of the Helms amendment. I thank my friend from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DORGAN. Madam President, I wonder if the Senator from Ohio will yield for a comment and question?

Mr. GLENN. I yield for questions with the understanding that I may respond to the question.

Mr. DORGAN. Madam President, I have worked with the Senator from Ohio [Mr. GLENN], on this amendment and I am a cosponsor with him.

This amendment furthers what we are trying to do with the crime legislation I introduced last month. Senator GLENN cosponsored this legislation, which attempts to develop alternative incarceration facilities.

Senator GLENN has made the point that is important to remake. One half of the people in prison are nonviolent. I believe there is no reason for us not to take these offenders out of regular prison cells, put them in converted air bases or Army bases with alternative incarceration facilities, and free up the prison cells for violent criminals. This will give us the room to stop turning criminals out early or not even putting them in, as is now the case.

The interesting thing about this approach is that it is a way of doing things better and doing things smarter. We do not always have to throw money at problems. Senator GLENN has suggested that we could build prisons for nonviolent offenders for about one-fifth the cost of building regular prison cells for violent criminals. We have plenty of cells, let us just put violent prisoners in them and turn some of the nonviolent prisoners out into a different kind of incarceration facilities.

I think that nonviolent prisoners sentenced to prison ought to serve their time. But, why not provide alternative facilities that are one-fifth as costly and open up those prison cells to put violent prisoners in. The Senator from Ohio has been talking about this for some long while and does the Senate, I think, a real service in pointing out something that has been turned into a thing at much less cost. We do not always have to look for the most costly approach to solve a problem.

Finally, one other point that I made when we debated alternative forms of incarceration last week. The problems in this country are not just related to an epidemic of violence, but an inability to properly deal with violent offenders behind bars and keep them there. Almost every major crime has been committed by someone we knew, someone who has been in jail and was turned out. Why? Because there is overcrowding. Senator GLENN and I have a solution that will save an enormous amount of money and accomplish the same result.

Mr. GLENN. It would certainly lock up far more prisoners for the dollars spent. That is the bottom line of what we are trying to do here.

The PRESIDING OFFICER. If the Senator will suspend for one more moment, I am going to get the Senate in order.

The Senator from Ohio.

Mr. GLENN. What we are talking about is that we should have enough spaces in our prison system so that when a judge sentences someone to a time in jail, there should be a bed waiting—and that space should cost the taxpayers the least amount plausible.

A judge should not be constrained by having to integrate part of his thinking into the fact that we do not have a spot for that person unless we put another one out. What kind of a criminal justice system is it that sends us through an apprehension process with the police out there sometimes ringing their lives, through an expensive judicial process, through a sentencing process, and then it ends and we say, "Oh, yes, I forgot, we don't really have any place to put you and we are going to send you back to your community with a letter to wait your turn as to when you will serve. And when you do come back in to serve that sentence, we will have to put somebody else out to accommodate you." It is happening right now in my home State of Ohio.

Madam President, Senator STEVENS made a proposal that 85 percent of the sentences should be carried out. I agree with that. 85 percent of the time the sentences should be served. We just adopted moments ago in this Chamber a proposal that says if you are a three-time felony offender, you go to jail. No question, that is it. But where are they going to go to jail? That is what I am trying to address today.

Almost half of the people that have been through the criminal justice system in this country—they have been apprehended, been charged, been tried, have served time, and most of them are nonviolent prisoners. Why do they have to have to be housed in brick and mortar high security facilities when those are needed for the violent prisoners? Putting them instead in low-cost housing would relieve much of the stagnation in our prison system, as I see it.

There is a GAO report that came out in October of 1991, almost 2 years ago. It is called "Prison Costs, Opportunities Exist to Lower the Cost of Building Federal Prisons." And they are so right. If anything, this has become more obvious over the last couple of years since this report was published in October of 1991: "Prison Costs, Opportunities Exist to Lower the Cost of Building Federal Prisons."

I wish I did have a blowup of this. I was making a little bit of fun about some of the charts and pictures we see in the Senate Chamber these days. I wish everyone could see this. It pictures facilities in Arizona and Florida that would be the envy of any small college. They are beautiful facilities. These facilities are far better than the places where many of the prisoners came from, I can guarantee you that.

Then it says: These facilities have the potential to house nonviolent prisoners as well as violent ones. Nonviolent prisoners do not need to be in a facility where there is a slammer, where it has to be locked up at night.

According to the GAO report:

The Bureau of Prisons' overall philosophy is that the term of confinement is the punishment, not the conditions of confinement and that inmates should find their surroundings safe, humane and "normalized."

The State prisons cost more to build than State prisons. In the report, construction costs are compared.

The State prisons analyzed ranged from about $11,000 and $25,000 per bed with an overall average of about $55,000. Construction costs for the four Federal prisons range from about $30,000 to $83,000 per bed and averaged about $70,000.

This is for violent and nonviolent prisoners. Why are we spending more than the homes they came from to lock them up—more per cell—when they could just as well be housed like millions of Americans have been housed for years and years and years, for many decades, ever since World War II. Not in inhumane facilities, but in something like these model Quonset huts, Butler buildings, or whatever. In facilities I am sure we could design that would cost maybe one-fourth or one-fifth as much. And for the same amount of money we could incarcerate
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Let my give you one little example of this. Almost 2 years ago, I chaired a hearing of the Governmental Affairs Committee. The hearing involved some of the problems of apprehension of drug offenders here in the District. Without going into a lot of detail on it, we had two young people in from the Mayor's task force in Washington who were working to keep the kids out of drugs. They were both in their very early twenties. One of them had grown up out here in an area infested with drugs which is in the paper a lot these days for murders and other crimes. The first one had not been in any trouble. He stayed out of trouble. He wanted to be part of the Mayor's task force. The second one was a young man, I think he was 23, and he had been in trouble. He had been to prison. He had been selling drugs and he got caught.

I asked him when he started selling drugs—he was just hustling drugs himself—how much was he making? And he said, “Oh, about 60 bucks a day.” I said, “Well, but you could talk to people.” He said, “Yeah, I wound up with 24 mules working for me.” And I said, “How much did you make then?” And as I recall I think he said, “$350,000.” And I said, “Over what time?” I think the figure was 5 months. And I said, “Well, why did you get into this to begin with?” “Well,” he said, “the other kids had a car and they had good clothes and I wanted that, so I got into it that way.”

He said, “I knew there was some danger in it, but everybody always said we make a lot of money and then occasionally go to prison but it's a piece of cake. It's no problem. It's almost like living at home,” words to that effect. “There is no problem with it. So you can do your time and get out and you will get out pretty quick anyway.”

And then I said, “Well, is that the way the prison system works?” That was not the way he found it. He did not like jail. He did not like to be locked up. He did not like to be away from his home area. And so he hated that lockup so much that he was now signing up to help prevent other kids from getting involved in that same sort of thing.

Now, going to jail and the certainty of a sentence is not something that is a piece of cake, as he had been told. He did not like jail. He did not like to be locked up. He did not like to be away from his home area. And so he hated that lockup so much that he was now signing up to help prevent other kids from getting involved in that same sort of thing.

So going to jail does have an effect, it does have an impact. But justice should be served swiftly, fairly, and compassionately. I hope we can get out immediately at the end of it, if it is to mean anything. I would say as far as the nonviolent prisoners go—I let me just repeat that—
The nonviolent prisoners can be incarcerated in a different type of facility that are not the big slammers, not the $50,000 per cell unit. They can be done at a fraction of that cost with lesser facilities, and I think that is what we should be doing.

For the first offender who may be at the beginning of his criminal life and receive a sentence right then, maybe it will stop them. But they get the idea that, hey, this is a piece of cake; we can roll this over. No problem. I will just take my chance out here. I will grab that old woman's purse, and I will not go to jail anyway. Street crime, whatever crime, white collar crime, you name it. What happens out on our highways? Do we lock people up that should be locked up for drunk driving repeat offenses? No, we do not.

So we are not just talking about murders here. We are talking about the people who are just scofflaws that are not locked up at the State level because they do not have the facilities in which to put them.

We have about 40,000 to 50,000 deaths, incidentally, to follow up on that, on our highways every year. It varies up and down a little bit. Half of those fatalities on the highway—half of them—are from drunk driving. We thought it was a tragedy that in the Vietnam war we killed 58,000 people over a 10-year period. Every 2½ years we kill as many people in this United States just from drunk driving as we did in 10 years of the Vietnam war. And yet we laugh it off—oh, yeah, you were just drunk; you had a few beers.

That is fine until you come up against the thing I mentioned a little while ago. The fellow in Florida who had 24 arrests for drunk driving and nothing happened, basically, and he is out then driving down the road, goes across the median, rams into a car and kills some people. He should have been locked up a long time ago, so he would have known that the consequences of drunk driving are not something that you can wave off and say, "Well, it is not important, ho, ho, ho." Yes, "ho, ho, ho," unless you have a family member who is a victim of something like that.

This crime bill, the Biden crime bill, has some very major provisions to it, and I support the bill. Community policing, which I believe has the idea that police out there on the corner does work. We do not need the big slammers. We do not need the death penalty. We do not need the death penalty-50 new death penalty offenders in the first 20 years there have been 40 documented cases where mistakes have been made in this area. I know of no study which says that the death penalty really is effective in creating less violent crime deaths in the future. It turns out most studies show these are not crimes where someone sat down and said, "You know, I am going to go out and get so and so."

Most of them are crimes of passion, spur-of-the-moment type things.

There are over 60 penalty increases in new offenses primarily covering violent crime, drug trafficking, gun crimes, enhanced penalties for, among other crimes, the use of semiautomatic gun possession by convicted criminals dealing in drug zones. That is a whole section on increased penalties.

Where are we going to put these offenders once we have these increased penalties meted out? There is no place that I know of. Increased penalties for sexual violence, child abuse—all of these are very laudable provisions of this legislation. But at the end of the process, there is no place to put the offenders, no place to lock up the criminals.

Fifty percent of the criminals that are apprehended and go through our system are judged to be nonviolent. We do not need the big slammers. We do not need the death penalty. We do not need the death penalty increases in penalties meted out? There is no place that I know of. Increased penalties for sexual violence, child abuse—all of these are very laudable provisions of this legislation. But at the end of the process, there is no place to put the offenders, no place to lock up the criminals.

What we do need is the cheapest possible incarceration per prisoner we can get for those prisoners. I am not trying to be inhumane. But I am trying to say we should be treating those people no better than millions upon millions of military personnel in this country have been treated, living in, whether it is Quonset huts, Butler buildings, converted warehouses, or whatever. But let us make it fair. Let us arrange for the lowest cost incarceration instead of blowing the money provided in this bill on big, new, brick and mortar, in effect, palaces for people who are convicted criminals.

Mr. President, I send to the desk an amendment that seeks to ensure this goal. I believe it has been accepted on both sides. I want to speak just briefly about it and then summarize my statement to you as we make all of the money in this bill. I am trying to make sure it gets spent wisely, deters crime, and punishes criminals to the maximum extent per dollar spent.

In the legislation before us, we are increasing the number of police. I favor that. We have a judicial system in this country that gives people their fair day in court, and we do not have that with this bill, and not with any other bills like this, are we going to really have an appropriate punishment at the end of that judicial process unless we do a lot more than we are doing now.

I talked a couple of years ago to our Governor and Lieutenant Governor about the idea of low-cost prison construction after I made my trip around Ohio. They agreed basically we should be going to something like this.

So what this amendment does, Mr. President, is it calls on the Attorney General to encourage innovations and cost-saving methods in making grants to States and localities under this bill. We are talking about cost savings in a lot of areas. One of them is administrative spending. We can do better in streamlining operations, including automation, providing for more cooperative ventures, and reducing the cost of overhead administration.

We are talking about putting a lot of police officers on the street. We can compound this effect by encouraging more community policing; also making neighborhoods partners in providing for security in their communities.

Another issue that Senator DORGAN spoke to me about recently and I certainly support increasing our criminal debt collection efforts. It is estimated that of the fines assessed against criminals, only 5 to 10 percent get collected. Maybe they do not have much money or they would not be out there committing whatever crime it is. But it is estimated that over $1 billion is owed in this area. And I am certain that more of that could be collected if we were to be more vigorous. We are not required to pay back the people that they have wronged, if at all possible? I agree with that. Senator DORGAN deserves a lot of credit for the work he has done in this particular area.

Certainly we can do better in providing facilities for nonviolent offenders at a lesser cost than we have been doing. We do not need Cadillac prisons. We do not need marble palaces for people in prison. It is estimated that over $1 billion is owed in this area. And I am certain that more of that could be collected if we were more vigorous. We are not required to pay back the people that they have wronged, if at all possible? I agree with that. Senator DORGAN deserves a lot of credit for the work he has done in this particular area.

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the kind of crimes that they are committing.

We say it is a crisis, but it is a crisis which forces judges and prison officials to choose the lesser of two evils. You will, or a family attack roulette, in allocating prison space, making impossible choices on who to keep locked up and who to let go.

I already spoke about the situation in Ohio where prisons now house 41,121 people, and that is 18,258 inmates over capacity and growing. Some facilities in Ohio, like the Lorain Correctional Institution, are more than 200 percent of capacity.

I only hope that the action we took last week in the extraordinary effort of Senator BYRD—I commend him for this—the chairman, and the ranking minority member, will alleviate this situation. And I have worked closely with my friend and colleague, Senator DORGAN from North Dakota, on efforts to increase prison space for the non-violent prisoners.

We do not want to just make more space. We want to add it in the most cost-effective manner possible. We do not need to be building $50,000-a-bed prisons for drunk drivers and non-violent drug offenders.

It is my hope that this amendment will result in greater use of low-cost alternative forms of housing other than marble palaces. I think most people across this country would be supporting that.

These models were sent to me by Mr. Rudler. I did not ask for them. I do not know him personally. He heard some of my remarks on the floor a few years ago. He sent the first one. A few days ago this model arrived, a little model of a Quonset hut, a shortened version. It shows that it can be quite an attractive place. I was accused by one of the kids of a little while ago of trying to put mailboxes on the Senate floor, which I am not exactly doing. But what I am doing is saying that this is a model of a Quonset hut; it could just as well be a Butler building; but it is low-cost space and can be built very cheaply compared to what we spend in price for prisons right now.

To those who say this type of alternative is too harsh, that it would provide prisoners with a spartan existence, I would make two points:

First, millions of military personnel have lived in Quonset huts—and I spent a significant part of my life in Quonset huts. Two different times my wife, our children, and I lived in half of a standard Quonset hut. We did not feel too well set upon. We lived quite reasonably well there. Would I have preferred a big permanent home someplace on a base? Yes. I would have. But it was not all that bad. The accommodations were OK. We lived through one winter, a cold winter, in a Quonset hut. It was not all that bad. We lived through a summer without an air-conditioner. We might break out in a sweat. Wouldn't that be too bad if a prisoner had to break out in a sweat?

Quonset huts are used by the military to keep our troops to the Arctic. If it is good enough to house our military people serving the country, I think it would be considered good enough for convicted criminals. They might not offer plush accommodations, but a spartan environment is not going to particularly hurt anybody.

The Warden's Association did not recommend low-cost facilities. No wonder. They, like any other administrator, would like to preside over a great campus-like environment that looks much better. I do not quarrel with that. I am interested in seeing convicted criminals get locked up. I do not say this would be the answer for housing all prisoners, but at the very least they provide an overflow relief valve. Not all prisoners need to be in a high-security environment, but they should be incarcerated.

Housing them in Quonset huts or other prefabricated structures accomplishes two important things: It ensures that all offenders, regardless of their offense, serve their time. No. 2, it frees up space in the big brick and mortar facilities for violent criminals to serve a greater percentage of their terms.

We have a number of States currently using some prefab housing to alleviate their prison overcrowding problems. As I mentioned, one State that utilized the Quonset hut approach is Arizona. In 1984, the Arizona State Prison faced a severe overcrowding crisis, and they came up in what was looked at as an ingenious solution. They obtained a hold of enough Army surplus material for 100 Quonset huts, formed prisoner work crews to put them up, and lo and behold, the prison was no longer overcrowded. They, like any other administrator, might not like the idea? I do not quarrel with that. It is a low-cost, and they did it quickly. Just as important, it did them themselves.

A hammer in a man's hand, I feel, can be a real character builder. And so I would like to see prisoners grow their own food and have them learn that food does not all come out of a fast food drive-through window, that tomatoes grow on vines, that peas have pods, and that corn can grow in an little as 90 days. They might learn something. They can eat their own food and have some of it, as we did when I was a kid in New Concord, OH. Crazy idea? I do not think it is. And neither are Quonset huts or Butler buildings, or other types of low-cost facilities. They can mean a very significant cost savings.

Our overcrowded prisons are sending a less than effective message. Do you know what society does? It talks like Rambo and acts like Bambi. That is what we do here on the Senate floor—talk like Rambo and act like Bambi when it comes to doing what has to be done in providing punishment to criminals who were sentenced in the criminal justice system. We say we did not really mean it after all. It might cost a little bit, but it need not cost as much as we have been led to believe.

A career of crime carries with it little or no risk of serving time in too many cases. We need to help States avoid low-cost alternatives to brick and mortar prisons so the revolving door criminals are not back on the street to repeat the crimes, being picked up again and going through the system, and once again finding no place to punish them at the end of that process.

We can make sure there is always a vacancy at the local jail or State prison. A "no vacancy" situation can no longer be an excuse for the absence of justice.

Mr. President, it is my understanding from the floor managers of the bill that they are prepared to accept this amendment.

THE PRESIDING OFFICER. Will the Senator send his amendment to the desk?

AMENDMENT NO. 127

(Purpose: To promote efficiency in law enforcement and corrections.)

Mr. GLENN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

THE PRESIDING OFFICER (Mr. LIEBERMAN). The clerk will report.

The bill clerk read as follows:

The Senator from Ohio (Mr. GLENN), for himself, Mr. HELMS, Mr. DORGAN, and Mr. KERRY, proposes an amendment numbered 1127.

Mr. GLENN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

THE PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 447, after line 23, add the following:

SEC. 99. EFFICIENCY IN LAW ENFORCEMENT AND CORRECTIONS.

(a) In General.—In the administration of each grant program funded by appropriations authorized by this Act or by an amendment thereto by this Act, the Attorney General shall—

(1) encourage innovative methods for the low-cost construction of facilities to be constructed, converted, or expanded and the low-cost operation of such facilities and the reduction of administrative costs and overhead expenses; and

(2) give priority to the use of surplus Federal property.

(i) ASSESSMENT OF CONSTRUCTION COMPONENTS AND DESIGNS.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall make an assessment of the cost efficiency and utility of using modular, prefabricated, precast, and pre-engineered construction components and designs for housing nonviolent criminals.

(ii) GENERAL.—It is the sense of the Congress that in providing assistance to State and local governments, the Attorney General should emphasize the provision of savings.
Mr. HATCH. Mr. President, it is my understanding, on behalf of both floor managers, that this amendment is acceptable and we would like to have it in the bill. We commend the Senator for an articulate explanation of it and for the amendment itself.

Mr. HELMS. Mr. President, I ask the Senator from Ohio to add my name as a cosponsor of the amendment.

Mr. GLENN. I would be happy to.

THE PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1127) was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Yeas 94; Nays 1

The amendment is as follows:

"SEC. 3. RESTRICTION ON PAYMENT OF BENEFITS TO INDIVIDUALS CONFINED BY COURT ORDER TO PUBLIC INSTITUTIONS PURSUANT TO VERDICTS OF NOT GUILTY BY REASON OF INSANITY OR OTHER MENTAL DISORDER."
November 8, 1993

Stop Mr. Hayes' payments
Close the Federal spending by removing disabil-
ity pay for all who are criminally insane and in-
carcerated.
Thank you for listening. Above all, we
must reduce the deficit spending.
Sincerely,

J. W. Sisson, Jr.

Mr. President, let me outline specifically
what happened in this case. Five
years ago in Winston-Salem a man
named Michael Hayes died into several
cars as they passed by. He shot nine
people, four of whom died. They were
killed in cold blood. Hayes was found
to be insane by the courts and sent-
tenced to a mental institution where
he promptly filed for Social Security
disability benefits. And what do you
know? He got them.

Mr. President, Hayes, as I said ear-
erly, now collects $536 a month of the
taxpayers' money sent to him by the
Federal Government that has no choice
about it unless this Senate and the House
of Representatives and the President
approve.

According to the father of one of the four
victims who were killed, Hayes is
living in hog heaven. I think Mr. Nich-
olson, the father with whom we have
been in contact, gave the best descrip-
tion of this injustice when he appeared
before a House subcommittee several
weeks ago.

Let me quote.

The inventory of Hayes' personal property
filled nine pages with
items on each sheet,
necessitating that the hospital provide him
with additional storage space for all the
things he was able to buy with that $536 a
month.

Still quoting.

He had four jackets, two full-length leath-
er coats, all purchased with the Social Secu-
ri ty disability benefits ** two television
sets, ** two VCR's, an elaborate stereo **
microwave oven, and walkie-talkies, with
which he and his girl friend, a fellow patient,
communicated during the day.

That is the information supplied by
Mr. Nicholson.

Mr. President, this did not happen
just in North Carolina. It is happening
all across the Nation. For example, in
New Jersey a man named Herbert
Osen tried to kill his parents; he was
found to be insane, and he has collected
$8,646 in retroactive disability pay-
ments and then began receiving $578 a
month thereafter. Then he escaped and
went to New York to buy drugs, sub-
sidized by your government—the tax-
payers of the United States.

Mr. President, as Congressman Jacs
ons has said, as so many of us have
said, Social Security disability pay-
ments are intended to provide food and
shelter for the disabled. Inmates of
mental institutions are already receiv-
ing food and shelter, and they should
not be allowed to double dip into the
pockets of the taxpayers.

Mr. President, the law already pro-
hibits such payments to convicted fel-
ons in prison. This amendment merely
expands the current law and will save
the taxpayers at least $1 million a year
perhaps more than that.

Since managers of the bill, Mr. BIDEN
and Mr. HATCH, have agreed to accept
this amendment, I shall not ask for a
rollcall vote because the Senate has al-
ready had a rollcall vote, taken back in
September. But I do seek assurance
from the managers of the bill that, this
time, the Senate committees will stand
up for this and other worthwhile
amendments, including the Glenn
amendment which has just been dis-
cussed.

With that understanding and with
that assurance from Senator HATCH,
who is on the floor, I will yield the
floor when the Senator gives me that
assurance.

Mr. President, I ask that this time
not be charged against my 7/16 minutes.

The PRESIDING OFFICER. The time
allotted to the Senator from North
Carolina has just expired.

Mr. HATCH. Pardon me.

The PRESIDING OFFICER. The time
allotted to the Senator from North
Carolina has just expired.

Mr. HATCH. Does the Senator yield?

Mr. HELMS. Let the Chair rule on
my unanimous-consent request for 5
minutes, please.

The PRESIDING OFFICER. The Chair
advises the Senate the Senator from North
Carolina propounded a
unanimous-consent request that his
time be extended by 5 minutes.

Is there objection?

Without objection, it is so ordered.

Mr. HATCH. I understand the Sen-
ator has a question for me.

Mr. HELMS. I thank the Chair.

I certainly will yield to my friend
from Utah.

Mr. HATCH. Mr. President, it is my
understanding the Senator would like
assurance we will fight for this provi-
sion in conference. I intend to do so.
I intend to do the best I can for him.
I am hopeful there might be a conference
and we might be able to pass the bill in
good form, that the President and ev-
eybody else will support it.

Mr. HELMS. Very well, I thank the
Senator.

With that assurance, Mr. President, I
yield back the remainder of the 5 min-
utes, and I ask we proceed with the
vote.

The PRESIDING OFFICER. Is all
time yielded back?

Does the Senator from North Caro-
lines yield back his remaining time?

Mr. HATCH. I yield back our time as
well.

The PRESIDING OFFICER. All time
having been yielded back, the question
stands as amended, offered by the
Senator from North Carolina.
The amendment (No. 1128) is agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HELMS. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from South Carolina [Mr. THURMOND].

Amendment No. 1129

(Purpose: To amend section 1201 of title 18, United States Code, to provide for a definition of the term “parent”)

Mr. THURMOND. Mr. President, I send an amendment to the desk on behalf of myself, Senator METZENBAUM, Senator DOLE, Senator SIMPSON, Senator NICKLES, Senator KENNEDY, Senator HATCH, Senator HELMS, Senator CRAIG, and Senator KEMPTHORNE.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk reads as follows:

The Senator from South Carolina [Mr. THURMOND], for himself, Mr. METZENBAUM, Mr. DOLE, Mr. SIMPSON, Mr. NICKLES, Mr. KENNEDY, Mr. HATCH, Mr. HELMS, Mr. CRAIG, and Mr. KEMPTHORNE proposes an amendment numbered 1129.

Mr. THURMOND. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill add the following:

SEC. 1. DEFINITION.

Section 1201 of title 18, United States Code, is amended by adding at the end thereof the following:

"(h) As used in this section, the term ‘parent’ does not include any person whose parental rights have been terminated by a final court order."  

Mr. THURMOND. Mr. President, this proposal addresses the interpretation of the Federal Kidnaping Act by the fourth circuit in U.S. versus Sheek.

The Federal Kidnaping Act, often referred to as the Lindbergh Act, was adopted by the Congress soon after the high profile kidnaping of the Lindbergh baby. This act makes criminal the interstate kidnaping “for ransom or reward or otherwise.” However, the act exempted kidnaping of a minor by the parent thereof.

The Sheek decision involved the abduction of two children from a couple in South Carolina who were licensed foster parents pursuing adoption of the children. In November of 1987, the South Carolina Department of Social Services had removed the children from the custody of their biological mother and placed them in the care of the foster parents. In November of 1989, a South Carolina family court issued an order wherein the parental rights of the biological mother were permanently terminated. In the language of the family court, “The Parental Rights of Grace York and Michael York are hereby terminated, henceforth and forever.” The family court had found evidence relating to physical abuse and neglect of the children. The court further found that the mother had made no effort to maintain a bond with her children after they were placed in foster care. Further, at the time of final hearing, the mother was incarcerated in Florence, South Carolina.

Later, the mother moved to Missouri and remarried. In August of 1991, she returned to South Carolina with friends where they tied up the prospective adoptive parents, robbed them of over $5,000 in cash and abducted the children. The biological mother then took the children to Missouri, crossing State lines and thereby triggering the Lindbergh Act. The mother and the others were arrested in Missouri. The mother was charged under the Lindbergh Act and a Federal firearms statute.

The mother, Mrs. Sheek, moved to dismiss the counts under the Lindbergh Act upon the grounds that she was exempted from liability by virtue of her status as a parent of the two children. As I stated earlier, the Lindbergh Act exempted parents from criminal liability for their minor’s kidnaping of a minor by the parent thereof. The Federal district court dismissed the counts applicable to Mrs. Sheek because of the parental exemption under the Lindbergh Act. The United States appealed. On appeal the fourth circuit upheld the dismissal and ruled that the law does not apply to biological parents, even if their parental rights have been terminated.

Mr. President, this ruling is understandable under the plain language of the statute when given its ordinary meaning. Our amendment today will clarify the parental exemption under the Lindbergh Act. It denies exemption to a parent under the Lindbergh Act where that parent has had parental rights finally terminated by a final court order. I believe individuals should not be exempt from Federal kidnaping charges where their parental rights as to the victim have been terminated by a final court order.

Taking the Sheek decision to its logical conclusion, it would protect a biological parent from kidnaping charges even if they had abducted the child from an adoptive home or a final adoption. Surely this is not the protection Congress sought to establish when the Lindbergh Act was enacted. Our amendment corrects this inconsistency and I urge my colleagues to support its passage.

Incidently, Mr. President, the Senate may be interested to know that Mrs. Sheek is currently serving time on State charges of abduction and two of her accomplices are serving time on Federal charges in relation to the abduction.

The National Council for Adoption supports this amendment. I understand the Justice Department has signed off on it, so I presume it supports it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further debate?

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, I am happy to join with my colleague from South Carolina in sponsoring this amendment. It is my understanding that Senators DOLE and KENNEDY are also cosponsors of it. I believe it to be a good amendment to the Federal Kidnaping Act.

Just imagine that you are a parent living a loving home with your adoptive child. Then your adoptive child is kidnapped by his or her birth parents. Next assume that Government officials capture the wrongdoers and want to bring Federal kidnaping charges.

Can you imagine your shock and dismay to learn that the current Federal kidnaping law exempts parents from prosecution?

You are the adoptive parents, you are the ones that have brought up the child, you are the ones that have legal rights under the law and the natural parents come along and kidnap the child.

But the fact is, it is true. Parents who kidnap their children cannot be prosecuted for violating Federal kidnaping laws, even when their parental rights have been terminated by a final court order.

Just this March, the U.S. court of appeals for the fourth circuit upheld the dismissal of three counts of Federal kidnaping against a defendant because she was the parent of the victim. In that case, the defendant was a birth mother who had her parental rights permanently terminated. Although the defendant abducted her birth children while armed with a handgun, Federal kidnaping charges were dismissed solely because the defendant was the parent of the victim.

The amendment that we are offering today, would correct this unjust situation. I believe that at the time the Federal kidnaping statute was originally enacted no one could conceive that a parent would kidnap their own child. The original act also exempted parents from liability in an attempt to avoid the law from being used in custody battles among parents and other family members. Such matters may be better handled on the State level.

This amendment would only affect those parents who kidnap their child and have had their parental rights terminated by a final court order.
amendment makes it clear that persons whose parental rights have been terminated by final court order are not immune to Federal prosecution for kidnaping when they criminally abduct their child. It does not interject the Federal Government into custody matters where parents either have joint custody or one parent has custody and the other parent has visitation rights. This commonsense amendment is truly a bipartison effort. I urge my colleagues to support it.

Mr. SIMPSON. Mr. President, I am pleased to cosponsor this amendment.

This amendment closes an unintended loophole in the Lindburgh Act which has allowed great injustice to occur.

While the incidents of individuals taking advantage of this loophole are rare, the consequences to families and innocent children are so very severe that we must, in my opinion, enact this amendment into law as soon as possible.

It is truly unfortunate that an individual whose parental rights have been terminated, the child placed into adoption into a loving and sustaining home, can carry out a kidnaping simply because of a unique exception to the definition of kidnaping that would allow this bizarre result to occur.

I understand that this amendment will be accepted and I simply thank my colleagues for their support. I would congratulate my fine friend Senator THURMOND for his leadership and prompt action. He is a very special legislator.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I think this is a very good amendment. As a matter of fact, I can almost, without reservation, say that anytime the distinguished Senator from Ohio and the distinguished Senator from South Carolina—Senators METZENBAUM and Thurmond—do anything, who could be against it?

Mr. METZENBAUM. There are 168 years of wisdom contained in the amendment.

Mr. BIDEN. As the Senator from Ohio just pointed out, he said, there are 168 years of wisdom contained in this amendment. I certainly shall not stand in the way of that wisdom.

We accept the amendment on this side.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have just the exact opposite reaction. I am a cosponsor of this and now that the distinguished Senator from Ohio is on it, I am starting to worry about my cosponsorship.

But I accept it, too. I think these two grand veterans of the Senate both approach these matters very seriously. I respect both of them, and I respect this amendment and, of course, will support it here on the floor.

The PRESIDING OFFICER. Is there further debate?

Mr. THURMOND. Mr. President, I wonder if the able chairman of the Judiciary Committee would like to be added as a cosponsor?

Mr. BIDEN. I would be delighted.

Mr. THURMOND. Mr. President, I ask unanimous consent that his name be added.

The PRESIDING OFFICER. Without objection, the Senator from Delaware will be added as a cosponsor.

Is there further debate?

Hearing no further debate, the question is on agreeing to the amendment. The amendment (No. 1129) was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BIDEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Mr. President, I send this amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas (Mr. GRAMM) proposes an amendment numbered 1130.

Mr. GRAMM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning on page 396, strike line 13 and insert in lieu thereof the following:

Section 924(c)(1) of title 18, United States Code, is amended by inserting after the first sentence the following: "Except to the extent a greater minimum sentence is otherwise provided by the preceding section or by any other provision of this subsection or by any other law, a person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon (including a firearm) for which a person is subject to prosecution in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be punished by imprisonment for not less than 10 years; or if the firearm is discharged, be punished by imprisonment for not less than 20 years; and (C) if the death of a person results, be punished by death or by imprisonment for not less than life.".

SEC. MANDATORY MINIMUM SENTENCES FOR THOSE WHO SELL ILLEGAL DRUGS TO MINORS OR WHO USE MINORS IN DRUG TRAFFICKING AC- TIVITIES

(a) DISTRIBUTION TO PERSONS UNDER AGE 18.—Section 418 of the Controlled Substances Act (21 U.S.C. 858) is amended—

(1) in subsection (a) (first offense) by inserting after the second sentence "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection in a case involving distribution to a person under 18 years of age by a person 21 or more years of age shall be not less than 10 years, notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence.", and

(2) in subsection (b) (second offense) by inserting after the second sentence "Except to the extent a greater sentence is otherwise authorized by section 401(b), a term of imprisonment under this subsection in a case involving distribution to a person under 18 years of age by a person 21 or more years of age shall be a mandatory term of life imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence.",

(b) EMPLOYMENT OF PERSONS UNDER 18 YEARS OF AGE.—Section 420 of the Controlled Substances Act (21 U.S.C. 861) is amended—

(1) in subsection (b) by adding at the end the following: "Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment of a person 21 or more years of age convicted under this subsection shall be not less than 10 years, notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subsection.", and

(2) in subsection (c) (penalty for second offenses) by inserting after the second sentence the following: "Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment of a person 21 or more years of age convicted under this subsection shall be a mandatory term of life imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence.",

SEC. LIFE IMPRISONMENT WITHOUT RELEASE FOR DRUG TRAFFICKING CRIMINALS CONVICTED A THIRD TIME

Section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is amended by striking "If any person commits a violation of this subparagraph or of section 418, 419, or 420 after two or more prior convictions for a felony drug trafficking offense", and inserting "If any person commits a violation of this subparagraph or of section 418, 419, or 420 after two or more prior convictions for a felony drug trafficking offense, or if any such person commits the offense in another state, or if any such person is subject to prosecution in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be punished by imprisonment for not less than 15 years; or if the firearm is discharged, be punished by imprisonment for not less than 30 years; and (C) if the death of a person results, be punished by death or by imprisonment for not less than life for the offense, or if any
Mr. GRAMM. Madam President, I would like to begin by saying I believe we have the makings of a historic crime bill. I want to do everything I can to help us move ahead with this crime bill because I think we have put together a funding mechanism that we have not just promised to do something about violent criminals, but that we are actually going to get something done. We are not just promising to put police officers on the street, we are actually providing the money to put 100,000 of them on the street. We are not just promising to build prisons, we are building 10 regional prisons, and we are allowing States to participate with us in using these prisons to incarcerate violent repeat offenders. But, in order for States to participate they have to adopt a truth-in-sentencing provision that requires that when someone is sent to prison for a long time, they serve a long time in prison.

It had been my intention to offer a series of amendments, but in trying to help us move this bill forward, what I have done is combined a series of amendments into one amendment. I assume anybody who would support any one of these provisions would support all three of them and anyone who would oppose any one of them would probably oppose all three of them. If the amendment is rejected, then I would like to offer each of them independently, but I think the issue is basically the same.

Let me begin by talking about what I am doing in terms of mandatory minimum sentencing, and then I would like to talk about a dispute with the chairman that I would like to work on and see if we could compromise. But let me first go through the amendment. When then the chairman gets back we can talk about the other issue.

The amendment I have sent to the desk strikes language in the bill, and it inserts three new provisions. The first provision is one to do with these crimes, this is not a gun amendment; this is a criminal amendment. This is not an amendment that blames guns for crime; this is the amendment that blames criminals for crime. What it says in essence is this: If someone is in the act of committing a violent crime or a drug felony and they have a gun, and they are apprehended and convicted, they are going to serve 10 years in prison without parole for possessing a firearm during the commission of a violent crime or drug felony, no matter what the violent crime or drug felony itself.

The amendment also says, if they discharge the firearm, they get 20 years in prison. If they kill somebody, they get life imprisonment without parole. And, under aggravated circumstances and other provisions of this bill, they would get the death penalty.

The basic objective here is to send a very clear signal to those who would carry firearms and those who would commit violent crimes or drug felonies: You are going to get a mandatory minimum sentence of 10 years in prison for carrying that firearm during the commission of the violent crime or drug felony. If you discharge the firearm, you are going to get 20 years in prison without parole. If you kill somebody, you are going to spend the rest of your life in prison. And if it is an aggravated circumstance, you are going to be put to death. That is the first provision.

The second provision tries to deal with two separate circumstances. One is some drug hoodlum using children to deliver drugs and the second situation is some drug hoodlum using children to actually deliver the drugs. The second provision that would be covered is people selling drugs to minors; and to try to be absolutely sure we are getting adults who are selling drugs to minors, we define an adult as somebody who is 21 or over and a minor as somebody who is under 18. But the bottom line, the logic of the amendment is very simple. If you sell drugs to a minor, no matter who your daddy is or how society has done you wrong, and you are apprehended and convicted, you are going to spend 10 years in prison in that circumstance. If you sell drugs to a minor, no matter who your daddy is or how society has done you wrong, and you are apprehended and convicted, you are going to spend 10 years in prison in that circumstance. If you sell drugs to a minor, no matter who your daddy is or how society has done you wrong, and you are apprehended and convicted, you are going to spend 10 years in prison in that circumstance. If you sell drugs to a minor, no matter who your daddy is or how society has done you wrong, and you are apprehended and convicted, you are going to spend 10 years in prison in that circumstance. If you sell drugs to a minor, no matter who your daddy is or how society has done you wrong, and you are apprehended and convicted, you are going to spend 10 years in prison in that circumstance.

The final provision is similar to an amendment that was offered before, but I think it has a better, stronger definition and it says minors; and to try to be absolutely sure we are getting adults who are selling drugs to minors, we define an adult as somebody who is 21 or over and a minor as somebody who is under 18. But the bottom line, the logic of the amendment is very simple. If you sell drugs to a minor, no matter who your daddy is or how society has done you wrong, and you are apprehended and convicted, you are going to spend 10 years in prison in that circumstance. If you sell drugs to a minor, no matter who your daddy is or how society has done you wrong, and you are apprehended and convicted, you are going to spend 10 years in prison in that circumstance. If you sell drugs to a minor, no matter who your daddy is or how society has done you wrong, and you are apprehended and convicted, you are going to spend 10 years in prison in that circumstance.

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sentences are really just people who happen to be in the wrong place at the wrong time doing the wrong thing.

According to the U.S. Sentencing Commission, in fiscal year 1992, a total of 9,221 individuals were convicted of drug offenses which carried a mandatory minimum sentence. Of that total, 662 were individuals who carried no weapon, had zero criminal history points, and had played only a minimal or minor role in the offense.

Out of the 9,221 people in 1992 who were subject to mandatory minimum sentencing, 662 had no criminal record, did not carry a weapon, and had played only a minor, mitigating role in the offense. Of those 662, 306 were non-U.S. citizens. We do not know what their record was. We do not know how many crimes these people had committed in their own country.

Of those who were U.S. citizens and for whom complete sentencing data is available, only 180 individuals received the mandatory minimum sentences. The others had their sentences reduced because of the assistance they rendered, or for other reasons.

In 1992, 9,221 were people convicted of drug crimes that carried mandatory minimum sentences. When you look at the people who were not carrying a weapon, who had no criminal history, and who were only minor players in the crime, you reduce that down to 662; 306 of whom were not American citizens, and we do not know what their criminal history was.

When you get down to the ones we actually have data on—which is not all of them—and you look at the people who provide assistance in prosecuting other people, we get down to 180 people out of 9,221.

So was anybody who was sentenced to a mandatory minimum sentence someone who just happened to be convicted of a crime by the government? had no criminal record, did not carry a weapon, and was not a major player in the crime? Of those 9,221 that we have good data on, only 180 might have fallen into those categories and yet got a mandatory minimum sentence.

I know there are a lot of writings. I told the story of a lady who smuggled cocaine into the country in her girdle. I talked about the lady who was a junior college student who was engaged in a drug conspiracy to sell drugs to minors. Those are held out in articles as examples of the unfairness of mandatory minimum sentencing.

Madam President, I am not convinced, but also I would like to work with my colleagues. So what I have done is I have struck the provisions of the bill that would eliminate mandatory minimum sentencing under certain circumstances. And I have substituted the three mandatory minimum provisions which seem to have become my annual contribution to the crime bill but which never become the law of the land. Even though we voted for them in the Senate, even though we vote for them in the House, they always mysteriously die in conference.

But I am willing to sit down with the chairman and the ranking member and try to come up with language that would deal with the case where you had a first offender who carried no weapon, who had no criminal record, including an extensive juvenile record, who was an illegal alien, and who played a minor role in the drug offense. I would be willing to try to work something out with the chairman and with the ranking member.

But I want a provision that says that if this same person who happened to be in the wrong place at the wrong time doing the wrong thing, that if, in fact, they happen to be in the wrong place at the wrong time doing the wrong thing a second time, I want 20 years in prison without parole for conviction of that offense.

That is something that is not in this bill, but it is something that I will consider if someone wants to sit down and talk with me about it.

Quite frankly, Madam President, I believe selling drugs to minors is a violent crime. I think much of the violence in our society springs from drugs. Someone selling drugs to a child, in my opinion, ought to go to prison and ought to be there a very long time. But what I have done is simply struck the language which would weaken mandatory minimum sentencing.

I am willing to sit down with any of my colleagues and see what might be worked out on that issue. What I have substituted for that language is three new mandatory minimum provisions.

First, mandatory minimum sentencing for gunj violations. 10 years for possession, 20 years for discharge, life imprisonment for conspiracies to sell drugs to a minor. And the death penalty in aggravated cases.

The second provision has to do with conviction of not one, not two, but three violent crimes or drug felonies, a combination of a major violent crime and a combination of violent crimes and drug felonies, life imprisonment.

And, finally, mandatory minimum sentencing, 10 years in prison, for selling drugs to a minor under any circumstances. So if someone has a parent who is powerful and greatly respected, or if someone has the saddest sob story about how society has done them wrong, it would not do them any good if they were convicted of selling drugs to a minor because they would have 10 years in prison to decide not to do it again.

That is the essence of the amendment. I have combined all three amendments that we have voted on many times; I think our colleagues understand them perfectly; some at least feel to be an injustice.

Quite frankly, Madam President, I think much of the violence in our society springs from drugs. Someone selling drugs to a child, in my opinion, ought to go to prison and ought to be there a very long time. But what I have done is simply struck the language which would weaken mandatory minimum sentencing.

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That is the essence of the amendment. I have combined all three amendments that we have voted on many times; I think our colleagues understand them perfectly; and rather than coming down and offering three different amendments—

since I believe that we have made great progress on this bill and I very much want to see it become the law of the land—I thought I would just combine all three amendments, propose a simple amendment in bringing all three together, strike the provision in the bill that undermines mandatory minimum sentencing, and say to any of my colleagues that, before we finish the bill, I would be willing to sit down and discuss with them. At least by my numbers, this 180 people out of 9,221 last year who were given a mandatory minimum sentence who did not have a criminal record, did not possess a weapon, were not illegal aliens, were not active participants in the crime in terms of being a leader of a drug conspiracy. I think it is a straightforward amendment. We have debated it many times. I do not require an extensive debate on it.

I yield the floor.

Mr. Hatch addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 1131 TO AMENDMENT NO. 1130

(Purpose: To provide for increased mandatory minimum sentences for criminals using firearms and for life imprisonment without release for crimes committed by firearms.

To provide for increased mandatory minimum sentences for criminals using firearms and for life imprisonment without release for those committing crimes.

To provide for increased mandatory minimum sentences for criminals using firearms and for life imprisonment without release for any crime committed by firearms, third time, and to provide for flexibility in sentencing for certain nonviolent offenses in which a mandatory minimum term of imprisonment is imposed by law.)

Mr. Hatch. Madam President, I appreciate the amendment of the distinguished Senator from Texas, and I want to improve the amendment. So I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk reads as follows:

The Senator from Utah [Mr. Hatch] proposes an amendment numbered 1131 to amendment No. 1130.

Mr. Hatch. Madam President, I ask unanimous consent that the unsigned copies of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In the pending amendment, strike all after the first word and insert the following:

Subtitle B—Mandatory Minimum Sentence Guidelines

SEC. 2011. FLEXIBILITY IN APPLICATION OF MANDATORY MINIMUM SENTENCE PROVISIONS IN CERTAIN CIRCUMSTANCES.

(a) AMENDMENT OF TITLE 18, UNITED STATES CODE.—Section 3553 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(1) MANDATORY MINIMUM SENTENCE PROVISIONS.—

(1) SENTENCING UNDER THIS SECTION.—In the case of an offense described in paragraph (2), the court shall, notwithstanding the requirement of a mandatory minimum sentence, sentence the defendant to a term of imprisonment in accordance with this section and the sentencing guidelines and any pertinent policy statement issued by the United States Sentencing Commission.

(2) OFFENSES.—An offense is described in this paragraph if—"
"(A) the defendant is subject to a mandatory minimum term of imprisonment under section 401 or 402 of the Controlled Substances Act (21 U.S.C. 841 and 844) or section 1091 of the Controlled Substances Import and Export Act (21 U.S.C. 960);"

(2) "If the defendant have—"

(i) more than 1 criminal history points under the sentencing guidelines; or

(ii) any prior conviction that resulted in a term of imprisonment (or an adjudication as a juvenile delinquent for an act that, if committed by an adult, would constitute a crime and resulted in a defendant’s being taken into State custody;

(C) the offense did not result in death or serious bodily injury (as defined in section 1985) to any person—

(i) as a result of the act of any person during the course of the offense; or

(ii) as a result of the use by any person of a controlled substance that was involved in the offense;

(D) the defendant did not carry or otherwise have possession of a firearm (as defined in section 921) or other dangerous weapon during the course of the offense and did not direct another person who possessed a firearm to do so; or

(E) the defendant was not an organizer, leader, manager, or supervisor of others (as defined or determined under the sentencing guidelines) in the offense; and

(F) the defendant was not more than 20 years of age when the offense was committed, and

shall amend the sentencing guidelines, if necessary, to assign to an offense under section 401 or 402 of the Controlled Substances Act (21 U.S.C. 841 and 844) or section 1091 of the Controlled Substances Import and Export Act (21 U.S.C. 960) to which a mandatory minimum term of imprisonment applies a guideline range that results in the imposition of a term of imprisonment at least equal to the mandatory term of imprisonment that is currently applicable unless a defendant demonstrates that it is not necessary to achieve a greater measure of credibility and that the amendment would improve the operation of the criminal justice system’s response to crime and drugs is a review of our Government’s enforcement and sentencing policies to ensure that they have their intended effect.

Consistent with this responsibility, Attorney General Janet Reno, whom I
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admire and respect, has announced a review of Federal sentencing policies. I am anxious to review the Department's findings.

As the Supreme Court affirmed in the case of Mistratta v. United States in 1968, the Constitution does not exclusively assign to any one of the three branches of Government responsibility for Federal sentencing—the function of determining the scope and extent of punishment for Federal offenses. Still, the Constitution assigns to Congress the power to define crimes and fix the degree and method of punishment.

While the right to try offenses and, upon conviction, impose punishment is judicial, Congress has the power to control the scope of judicial sentencing discretion. If exercised appropriately, these powers provide Congress with a prominent and constructive role in Federal sentencing.

In recent years, Congress has begun to take a more active role in the sentencing system and has fundamentally altered our Nation's sentencing goals and practices. As most of my colleagues on the Judiciary Committee know, Congress' assertion of its powers in this area has been the subject of much debate, controversy, and litigation.

In 1984, a bipartisan majority of Congress rejected the rehabilitation policies of the 1960's and 1970's. Congress found that this soft-headed approach to crime lacked the certainty necessary to retain the confidence of society and be an effective deterrence against crime. Indeterminate sentencing produced disparity and uncertainty in sentencing and a fundamental lack of comprehensiveness and consistency.

The concern which Congress had for so long was at the heart of these disparities. There was unjustifiable variation in the sentences imposed by judges upon similarly situated defendants and the Parole Commission compounded the problem by releasing prisoners according to its own view of the appropriate degree and method of punishment. By 1984, Congress and the American people had had enough. Congress began to take a more prominent role in sentencing policy. Through passage of the Sentencing Reform Act of 1984, which I along with Senators THURMOND, KENNEDY, EIDEN, and others authored, Congress outlined the objectives of sentencing, described in detail the kind of sentences that may be imposed and described the factors to be considered in sentencing in a particular case. Rehabilitation was rejected as a primary objective of sentencing. Certain and effective sentencing became the primary goal of sentencing.

The most revolutionary aspect of the 1984 act was the creation of the U.S. Sentencing Commission. The commission produced a guideline system which has been the judicial state's and the states' objectives for sentencing by curtailing unwanted sentencing disparity, ensuring sentence certainty and providing just punishment. Congress in order to ensure that there was adherence to this new sentencing philosophy made the guidelines compulsory and abolished parole.

Congress' pursuit of certain ineffective sentencing did not end with the creation of the sentencing commission. Congress began to renew support for mandatory minimum sentences. From 1984 to 1994 to the Thornburgh memo an array of mandatory minimum penalties specifically targeted at drugs and violent crime. The purpose of mandatory minimum penalties is to deter through the prospect of certain and lengthy prison terms potential offenders from engaging in these offenses. As well, mandatory minimum sentences embody Congress' view of the appropriate minimum level of punishment for these offenses. Inherent in judging the effectiveness of mandatory minimum sentences, however, is the need to ensure that there is uniform application in cases involving similarly culpable defendants.

Today there is a significant debate over whether Congress' enhanced role in sentencing has proven beneficial. On the whole, I believe it has. Supporters and critics alike acknowledge that while sentencing guidelines have been in effect for only a short time, the current system is more predictable and uniform and therefore preferable to policies of the 1960's and 1970's. As well, mandatory minimum sentences have enhanced the likelihood of incarceration for certain serious offenses. In recent years, some have begun to question whether mandatory minimums advance the objectives of sentences as established in the 1984 act. Some believe that the mandatory minimum sentences are too tough or unfair. I do not believe that we need to return to the soft-headed approach to crime that we had been that to which this subject is that we need to take a closer look at mandatory minimum sentences. In some cases we need more of them. In other cases we need to return to a greater degree of discretion of the judiciary.

The amendment I offer today accomplishes both of these objectives. First, my amendment enhances the mandatory minimum penalties for firearms-related offenses. It is virtually identical to the proposal authored by Senator GRAMM and contained in the Dole-Hatch bill which provides that anyone who carries a firearm in a crime of violence or drug trafficking offense receives a mandatory minimum sentence of 10 years in prison. If the firearm carries with it an additional 20 years. If the firearm is a semiautomatic rifle, the amendment provides for 30 years' imprisonment, mandatory. If death or serious bodily injury results, the amendment imposes mandatory life imprisonment. As well, the amendment provides mandatory life for three-time losers.

Mr. President, a relatively small portion of the population is responsible for a large amount of violent crimes in this country. A University of Pennsylvania study found that about 66 percent of the violent crimes were committed by 7 percent of young males. Congress' assertion of its powers in this area has been the subject of much debate, controversy, and litigation.

In my opinion, the mandatory minimum penalties proposed in this amendment provide an appropriate and just level of punishment for what are often brutal offenses. Some may argue that Congress should not enact any more mandatory minimum penalties. I do not believe this at all. The mandatory minimum penalties for violent offenders, if applied uniformly, are entirely appropriate and accomplish Congress' stated goals of predictability and uniformity in sentencing.

But in large part to what is commonly referred to as the Thornburgh memorandum, mandatory minimum penalties for firearms offenses are being applied in a uniform manner. The Thornburgh memo initiated a still ongoing policy within the Department of Justice that limits the ability of Federal prosecutors to plea bargain or drop charges against defendants who violate the armed career criminal statute.

There is nothing fact that armed career criminals through the operation of the Thornburgh memo and Project Trigger Lock are being charged with section 924(c) violations, use of a firearm in a drug trafficking or a crime of violence, and that they are receiving the required mandatory minimum sentences.

My amendment appropriately enhances the penalties under section 924(c) so that we can be assured that there will be no further danger to the public.

Despite my strong support for mandatory minimums in general, especially for cases involving violent offenders, I am concerned that some mandatory minimum sentences for nonviolent offenses have led to some sentencing disparity. The critical factor controlling the effectiveness of mandatory minimum sentences is whether they are applied in a uniform manner. Absent uniform application, there is no sentencing certainty and therefore they are of less value as a deterrent.

The judiciary conference, the Federal Court Study Commission and the sentencing commission all found that in many cases involving nonviolent offenders, mandatory minimums are not being applied in a uniform manner.
In a major study of mandatory minimums ordered by Congress, the United States Sentencing Commission found that offenders whose conduct warranted application of mandatory minimums would normally receive sentences approximately 41 percent of the time. Further, of the 60 criminal statutes containing mandatory minimums, only 4 result in frequent convictions. A lack of uniform application in nonviolent, drug cases involving first-time offenders is reducing sentencing certainty.

Why is this the case? The Federal sentencing guidelines incorporate a real offense approach to sentencing, but mandatory minimums are basically a charge-specific approach wherein the sentence is only triggered if the prosecutor chooses to charge the defendant with a given offense or charge certain things.

So unless the prosecutor charges the defendant with a mandatory minimum offense, it is uncertain that the mandatory sentence envisioned by a Congress will be imposed.

Quite often more comparable defendants in the drug conspiracy can oppose evidence and information which is of use to the prosecutor. These offenders can essentially sell that information to a prosecutor in exchange for a reduced charge, or a prosecutor can agree to make a motion to reduce a sentence based on substantial assistance.

When the court grants a substantial assistance motion, mandatory minimum sentences do not apply. Meanwhile, low-level, nonviolent offenders, who have no information to provide the authorities because they have only limited involvement with a given enterprise or are acting alone, get charged with the mandatory minimum offense and cannot benefit from the substantial-assistance motion.

I believe Congress must return a limited degree of discretion to the courts for sentencing first-time nonviolent offenders in certain nonviolent drug offenses.

Mr. BIDEN. I am not alone in my desire to address this problem. A bipartisan group of Senators who have been working on this issue for some time, and those who have expressed interest in this effort include Senators THURMOND, SIMPSON, WEBER, SIMON, KENNEDY, and LEAHY.

The Hatch amendment, in addition to enhancing mandatory minimum penalties for violent offenders, steps up to the plate and delivers the narrow reform needed to return a small degree of discretion to the courts for a small percentage of nonviolent drug cases. It essentially permits the courts, consistent with the sentencing guidelines, to impose sentences below the mandatory minimums for drug trafficking, distribution, and possession offenses provided the defendant was nonviolent, is nonviolent, not a leader, or organizer, and that he or she is a first-time offender. Mandatory minimum sentences for violent offenses or for child-related drug offenses are not affected by this part of my amendment.

So in order to give us a chance to look at this, I question the presence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. SIMON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMON. Mr. President, I ask unanimous consent that the pending amendment be set aside so that I may offer another amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1132

(Purpose: To prohibit the imposition of a sentence of death for crimes committed by persons under the age of 18 years)

Mr. SIMON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Illinois [Mr. SIMON] proposes an amendment numbered 1132.

At the appropriate place insert the following:

No person in the United States shall be sentenced to death for a crime committed when the person was under 18 years of age.

The district courts of the United States shall have jurisdiction of proceeding for injunctive and equitable relief to enforce this section.

Mr. BIDEN. Mr. President, if the Senator will yield for a moment, maybe this has already been done. Is the Senator prepared to enter into a time agreement on his amendment?

Mr. SIMON. I am certainly prepared to do that as I indicated to Senator Biden over the phone. If we want to have 40 minutes or 20 minutes on each side, that is fine with me.

Mr. BIDEN. Mr. President, I ask unanimous consent that there be 40 minutes equally divided on the amendment of the Senator from Illinois, that the time be handled in the usual manner, and that there be no second-degree amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMON. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SIMON. Mr. President, my amendment simply says that capital punishment may not be applied if you are under the age of 18.

In June 1992, the Senate gave its advice and consent to the International
Covenant on Civil and Political Rights which a great many countries have adopted. Part of that is to say in this area of human rights that no one under the age of 18 will be executed by a country.

When we acceded to the covenant last year, however, we did it subject to some exceptions. One of those was that we retain the right to execute individuals who had committed crimes while under the age of 18.

What countries now execute people under the age of 18? Mr. President, you will be interested in this list. In the last decade, the only countries to impose capital punishment on people under the age of 18 are Bangladesh, Barbados, Pakistan, Iran, Iraq, and the United States of America.

I do not think we should continue in that kind of lonely company. Since 1976, about 75 people who were under 18 when they committed their crimes were sentenced to death in the United States. At present, about 35 of 2,800 inmates across the Nation who are now on death row committed their crimes when they were under the age of 18.

So we are talking about 1 percent of those who are on death row. One of the other realities is because they are minors there are many more appeals, and it costs literally millions to prosecute in the case of minors in the United States.

It is also interesting that in the case of minors, race plays an even greater part. One of the things that is clearly wrong with our system of punishment is that if you are an African-American, if you are a Hispanic-American, the reality is—and you commit the same crime as someone who is white who lives in the suburbs—you are going to get a harsher punishment. That is also true for young people in the case of capital punishment.

One other case, I might mention, Mr. President, that in 1988, the Court threw out the death sentence of an Oklahoma youth who committed his crime when he was 15. But the Court in 1989 held in a 5-to-4 decision that States are free to impose the death penalty for young people 16 and 17.

I think we ought to join the large overwhelming majority of nations in outlawing the death penalty for those under the age of 18.

I might mention, because someone is probably going to mention this—am I opposed to the death penalty generally? Yes; I am. I think the evidence is overwhelming that the death penalty is applied only to those of limited means.

If you have the money to hire a good attorney, you do not get the death penalty. But to apply the death penalty to people under the age of 18 I think is unconscionable.

The other, maybe there will be no opposition—the amendment could be agreed to, and we could vote on it. But I do not anticipate that will be the case.

I yield the floor.

Mr. BIDEN. Mr. President, will the Senator yield a few minutes of his time to me because I support his amendment?

Mr. SIMON. I yield 4 minutes to the Senator from Delaware.

Mr. BIDEN. I thank the Senator.

Mr. President, I think this is a good amendment. As a matter of fact, I think it is a necessary amendment. I support the death penalty unlike I believe my friend from Illinois, I believe, and unlike some in this Chamber. I happen to support, and have supported the death penalty.

But there are two things that I have had great difficulty with, for those who do support the death penalty. One is when they have, in addition to supporting the death penalty, loosened the safeguards built into the process whereby you significantly diminish the protection of the rights of the defendant, the rights of an innocent person. That does happen in a system like ours. No matter how perfect the system, that happens.

So in this bill we have a so-called death penalty procedure section that is designed to see to it that although the death penalty is available, it is available only in circumstances wherever reasonable constitutional safeguards available to a criminal defendant is afforded that defendant.

This is a second area I have great difficulty with regarding the death penalty; and that is, putting children to death. I realize I am one of an overwhelming minority who last Friday voted to not treat 12-year-olds and 13-year-olds as adults. We passed on this floor a bill overwhelmingly. I might add—maybe it is me—overwhelmingly that was a constitutional requirement—not discretionary requirement that in Federal court a 13-year-old committing certain crimes must be tried as an adult in Federal court.

I personally have great difficulty with that.

I have always had difficulty with the idea that we are going to, where the death penalty is available, subject people under the age of 18 to the death penalty.

It seems to me when we do that we have basically in a sense surrendered. We have surrendered to our baser side. We have surrendered in a way that undercuts the whole notion that there is any such thing as youth, and that there is the possibility of redemption, if you will. So I hope—although I have no illusions, as I have been here long enough to know that the Senator from Illinois is going to have a tough fight on this one—I hope that we will be able to pass his amendment, and I just plead for a little bit of mercy on this floor when it comes to the death penalty.

I can understand how everyone is prepared to not be inclined to feel that way in almost every imposition of every other sentence. But death is final, to state the obvious. I just think that there is a bit of a measure of what kind of society we think ourselves to be.

Again, as I said, we are attaching this to a bill that is called the Biden crime bill—I introduced this bill—but we are adding all these amendments to this. I wrote this bill. I wrote into the law that we add a number of death penalty provisions at a Federal level. So I support the death penalty. But it seems to me that we should have some sense of societal compassion when it comes to dealing with children in society.

I know you can give examples where 17-year-olds are as bad as 18-year-olds, and 15-year-olds are as bad as 30-year-olds, but I wish we would not do this.

(Mr. SIMON assumed the chair.)

Mr. BIDEN. I assume, since the Presiding Officer is the person controlling the time on his bill, that as manager of the bill I am able to control the time for the Senator from Illinois, in which case I have been instructed to yield 5 minutes to the distinguished Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I also rise in strong support of the Chair's amendment. The senior Senator from Illinois has brought up a very important amendment as I think would improve this bill. I am delighted to hear of the support of the chairman of the committee for it as well.

What the senior Senator from Illinois has brought up very clearly is: What kind of a society executes its youth? That is the question. He has really given the answer. He mentioned those six countries in the world that do this—Bangladesh, Barbados, Pakistan, Iran, Iraq, and the United States. Not only is it not necessarily good company to be in with those countries on a variety of issues, but particularly in the area of human rights.

I further understand that even South Africa and Libya have set a minimum age of 18 before they would impose the death penalty, and that includes, apparently, even countries that have criminal codes that I think would disturb us in many respects. Yet, more than half of the States in our United States with the death penalty actually allow execution of offenders under the age of 16 at the time of their offense.

This amendment would halt the practice of executing juvenile offenders in the United States and thus bring us into accord with the rest of the international community. In fact, as the Senator from Illinois pointed out, the Senate gave its advice and consent to the International Covenant On Civil and Political Rights that would ban this practice. It is unfortunate that the United States acceded to the covenant last year with a few exceptions, one being to reserve the right to execute
individuals who commit crimes while under the age of 18.

The international consensus on this issue is so strong that it has also been included in the Geneva Convention relative to the protection of civilian persons in time of war; the American Declaration of the Rights and Duties of Man, just to name a few.

I do not want to leave any doubt—as I am sure the author does not—that the death penalty is more brutal than in an adult prison. The number of assaults in juvenile facilities is much higher than in adult facilities. I think this is, at least in part, due to the fact that juveniles are usually less rational than adults and do not think about the consequences of their actions.

The death penalty will not and does not deter juvenile criminal behavior. I am afraid it may actually encourage violence among youth. It is my view across the board that the death penalty only adds to societal violence and is morally wrong. When it comes to youth, it has a special lack of reasoning connected with it.

We are all concerned about the disturbing rise in violence among our Nation's young people. We should be and are seeking ways to turn this tide and, hopefully, we can provide them with remedies that will not lead them not to resort to violence. That is the goal, to think of violence as an unacceptable alternative. How many times do we have to hear about kids shooting other children over a fight or dispute, or as the result of even more shocking circumstances as we have had in our own home State of Wisconsin, such as one kid wants another kid's pair of shoes, or a warmup jacket.

What kind of a signal does this practice of executing kids under 18 send to these young people? It is the signal of death, that even our Federal Government is in the death business and wants to expand its participation into this deadly war; that the States allow the execution of juveniles and that that is what our country is all about. We are sending the wrong message to our youth with this practice: If you commit a violent act, the Government will also resort to violence and will kill you.

I think that is wrong; it is the wrong message, and I am very, very pleased with the amendment of the Senator from Illinois. I am enthusiastic about supporting it.

Mr. HATCH addressed the Chair.

The PRESIDENT pro tempore of the Senate (Mr. CAMPBELL). The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate this opportunity to talk about this particular amendment.

I have to say that I do not support it. There is no simple and very soli-

dary reason why I cannot support it. And that is, here we are, Senators of the Federal Government telling the States what they have to do with re-
gard to something as important as cap-
tal punishment. I think the States are very capable of making up their own minds, regardless of what we may think one way or the other. This is the ultimate "we know it all here in the Federal Government within this belt-
way" amendment.

Frankly, I do not think we should support an amendment that would im-
pose upon the States this type of an ob-
ligation. I have some serious doubts and empathy for the Senator's amendment if we limit it to the Federal Govern-
ment. I would probably support it if it was limited to the Federal Govern-
ment. But when we start getting to the point where we start dictating to the States how they can handle these prob-
lems, I think it is a big mistake. I think it is not the thing to do. Mr. President, we do that too often.

Mr. SIMON. If the Senator will yield on that point, we have signed the International Covenant on Civil and Political Rights, and under that cov-

enant, it says that those under the age of 18 should not be executed. We made clear when we approved that that we did not include this provision. Never-
theless, we have signed that. And under the Constitution, article I, section 8, it says: "Congress has the authority to define and punish piracies and felonies committed on the high seas, and of-
fenses against the law of nations."

This is something that clearly the huge majority of nations, by signing this international covenant, have agreed is the law of nations. In fact, I do not know if the Senator was here when I pointed out that the only na-
tions in the last decade to execute those under the age of 18 have been Bangladesh, Barbados, Pakistan, Iraq, Iran, and the United States of America.

So I think we have a legal precedent.

I think it is clearly constitutional. If the point that the Senator from Utah makes is that it is unwise, I differ with him in terms of its constitutionality. I think we clearly have the authority to do it.

Mr. HATCH. Even if we might have the authority to do it, the question is whether we should do it. In Stanford versus Kentucky, the Supreme Court ruled that you can impose capital pun-
ishment for 16-, 17-, and 18-year-olds. They decided that. Who are we to be standing here in the Federal Government and telling the States what they have to do?

That is precisely what is killing us with regard to the grazing fees. The Federal Government is telling the States they are going to change the whole water laws of the country. I am getting tired of that, to be honest with you.

The fact is that this particular amendment I could support if we limited it strictly to the Federal Government. I do not have any desire to im-
pose capital punishment on young peo-
ple below 18 years old. I do not have much desire to impose it on them 18 or over. I would very seldom use it, only in the most heinous of cases where there is no evidence of discrimination and there is clear-cut evidence of guilt.

The fact of the matter is what I ob-
tect to is based on the principles of fed-
eralism. I object to us here in the Fed-
eral Government telling the States that they cannot do anything with re-
gard to cleaning up crime in their own States with regard to capital punish-
ment.

This amendment prohibits not only the Federal Government but every State from imposing a death penalty on someone who has committed a crime who is under 18 years of age. In my view, this is a matter which ought to be left to the State, given the in-
creasing violence by younger and younger people.

States ought to be left to determine what is best for them. Frankly, some of these younger people are very hardened criminals. Some of them think they can go and shoot people at will. Some of them think it is a sport, it is a game, and they are being made into he-

roes by their compatriots.

Maybe some of the States where they are having particular problems might feel otherwise than we here today.

In the Stanford versus Kentucky case, the Supreme Court of the United States held that States may impose the death penalty on 16- and 17-year-
olds and they can do so constitu-
tionally.

In article I, clause 8, paragraph 10, Congress has the power to define of-
fenses as on the basis of the law of na-
tions.

On the other hand, that does not mean that Congress has power or should exercise its power to impose its will on the States in this particular area.

I think it is offensive to the States. It ought to be offensive to those of us who really believe in the principles of federalism. It really ought to be offen-
vie to those of us who believe our States may have special needs and may have special situations where they may not like this rule.

Let us face it. If the Senator's amendment is limited to the Federal
Government, there would be very, very few cases where it would apply. If you put it on the State government and impose it upon them, there may be literally hundreds, if not thousands, of cases where it would apply, and there may be some very, very specific areas where imposing the death penalty constitutionally on 16-, 17-, and 18-year-olds may be something that will help to deter crime in those particular States, or at least the States ought to have the right to make that determination. I doubt that many will. But why should we be imposing upon them and directing them in a bill involving the Federal Government and its viewpoint toward crime?

In any event, I hope my colleagues will vote against this amendment and be happy to have it limited to the Federal Government. I would be happy to support it if it was, because I think the distinguished Senator, of course, has a very good point of view. I do not particularly disagree with him. But when you get into the area of imposing upon the States something which they themselves may not want, I think that is something we ought to leave up to the States. Let them decide for themselves, and under the Supreme Court's constitutional decision they would be able to decide for themselves what they do.

Many of them may opt to do what the distinguished Senator from Illinois decides is right for the Federal Government, and they may opt to do what he thinks is right for the States. But some of them may not, and it may be States where some of the worst criminal activity is taking place.

In Utah we had some drive-by shootings by some of the young people who are 16, 17, and 18 years of age who do not seem to care about human life at all. They don't seem to have any consideration for it.

In those situations where the crimes are particularly heinous, where they clearly have evidence of guilt, and where there is evidence of an act of discrimination against a person, I am not so sure that maybe some of these 16-, 17-, and 18-year-olds should not have to face the music. Maybe it would be a very, very good thing for the rest of their friends who are thinking that guns are nice things to play with and shooting people is not a bad thing, and that they can kill their friends at will and maybe people they do not even know in drive-by shootings. Maybe it would be important for them to have to face the music, and maybe the States will decide it is important for them to do that in certain exemplary cases where it is really deserved.

So I hope my colleagues will vote against this. I really believe it is important that we vote it down. Then, if the distinguished Senator wants to limit it to the Federal Government, then I support him on that because we have a right to make that decision, and I do understand his sincerity and desire to do that. Of course, I have a great appreciation and feeling of respect for him as well.

So I hope our colleagues will vote this amendment down. I yield the floor and reserve the remainder of my time.

Mr. SIMON, Mr. President. I simply point out that it is already in the bill that those under 18 cannot be executed at the Federal level. I would simply re-inforce what the Senator from Wisconsin said earlier, Senator FEINGOLD. Libya even has done away with executing those under the age of 18. Five nations, plus the United States, still execute people under the age of 18. Iraq thinks it is right, Iran does not like the company we are keeping, Mr. President. I think we can do better.

Mr. FEINGOLD. Mr. President, will the Senator from Illinois yield for a question?

Mr. SIMON. I am pleased to yield to my colleague from Wisconsin.

Mr. FEINGOLD. Mr. President, in talking about States rights, we just heard about the importance of allowing the States to make the decision for themselves. I cannot help but think a little bit about the fact the way the death penalty has been imposed in this country and who is most likely to be executed as a result of this. Is it not the case that it is most likely to be members of racial minority groups—and in this case children—who will be the ones who will suffer if we do not ban this practice?

Mr. SIMON. There is no question about that. That is why, frankly, I oppose capital punishment, period, because it is disproportionately African-American, Hispanic, and native Americans who get the death penalty.

I would add one other point that I think is important. It is entirely people of limited means. If you have enough money to hire a good attorney, a high-priced attorney, you are not going to get the death penalty, period. If we want to impose that on people above the age of 18, I do not like it, but I know it is one of those things. But to do this to young people under the age of 18 I think is unconscionable.

Mr. President, if the Senator from Utah is willing to yield back his time, I am willing to yield back the time and go ahead and vote on it.

Mr. HATCH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HATCH. Are the yeas and nays ordered?

The PRESIDING OFFICER. They are not.
Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HATCH. The motion to lay on the table that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1123 TO AMENDMENT NO. 1922

The PRESIDING OFFICER. The question before the Senate now is amendment No. 1123.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

UNANIMOUS-CONSENT REQUEST—S. 1301

Mr. MITCHELL. Mr. President, I ask unanimous consent that the majority leader, with the consent of the Republican leader, may at any time turn to the consideration of Calendar No. 224, S. 1301, the intelligence authorization bill; that the bill be considered under the following limitation: 30 minutes for debate on the bill, including the committee amendment, and three amendments to be offered by the managers on behalf of themselves and others, equally divided in the usual form: 2 hours and 10 minutes for the debate on Senator METZENBAUM's sense-of-the-Congress amendment regarding disclosure of the annual intelligence budget, with the time to be divided as follows: 75 minutes under Senator METZENBAUM's control, 45 minutes under Senator WARNER's control and 10 minutes under Senator SPECTER's control; that no other amendments or motions to recommit be in order; that upon third reading of the bill, the Intelligence Committee be discharged from further consideration of the House companion, H.R. 2330; that all after the enacting clause be stricken and the text of S. 1301, as amended, be substituted in lieu thereof, and that the Senate, without any amendment or debate, vote on final passage of H.R. 2330, as amended; that upon the disposition of H.R. 2330, the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses and the Chair be authorized to appoint conferees; and that the Senate bill be indefinitely postponed at that time.

Mr. STEVENS. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MITCHELL. Mr. President, I withdraw my request.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1993

The Senate continued with the consideration of the bill.

Mr. BIDEN. Mr. President, while I have some of our colleagues on the floor, let me tell them where we are on this bill. There are about 200 slots that have been reserved for amendments. Many of these amendments we do not have language for at this moment, and I expect, as always on a crime bill and other major pieces of legislation, some of these will evaporate as we move down the line.

But there are, as I count them, about 20 amendments at this point that look like they would take real, live votes. In a moment, I would like to read off some of those amendments and encourage the authors of those amendments to stick around a little bit now to see if we can get an agreement as to what order to bring these up.

In addition, we are going to now, most assuredly, have votes on at least one very controversial amendment. There will be an amendment offered on assault weapons. That will be offered, hopefully, sooner than later in the a.m. tomorrow or early afternoon. So I say to my friends, once we dispose of that amendment, there will be much clearer reading of how the remainder of this bill is going to move.

Let me just suggest that there is a Boxer amendment on driver's licenses; a Kennedy amendment on clinic access; a Kerry amendment on the police corps; a Simon amendment on drug emergency areas; a Lieberman amendment on carjacking; a Lieberman amendment on rapid deployment services; a Dole amendment on gangs; a Moseley-Braun amendment on mandatory education in prisons; this is not an exclusive list, but these are amendments on which I am fairly confident we will not be able to reach agreement, not be able to clear them, and they will require votes.

A Wofford amendment on citizen policing; a Brown amendment on Federal prisons; a Chafee amendment on stalking; a Danforth amendment on police brutality; a Moseley-Braun amendment on women in prison and their children; a Gorton amendment on—I do not even know what it is.

Mr. GORTON. Sexual predators.

Mr. BIDEN. Sexual predators, allowing a judge to keep someone in jail even after they served their sentence, which is the most novel thing I have heard in a long time.

A Grassley amendment on international child pornography; and a Hutchison amendment concerning the use of moneys in this bill for community policing to pay overtime.

As I have gone down the list of a couple hundred amendments, they are the amendments which seem fairly clear on their face on which we are not going to reach agreement. So I ask those Senators, if they are willing to do what Senator BOXER and others have done, to enter into time agreements with us tonight so we can, in a rational fashion, try to stack these amendments tomorrow in order to have some reasonable prospect of how to order your day.

There is also an amendment of the Senator from Wisconsin relating to children and guns which, depending on the outcome of other things, may or may not be accepted or may or may not require a vote.

I urge Senators whose names I have mentioned to stay around and give the managers some idea of how much time they will require, and then we will see if we can get a UC agreement on some of these.

Mr. DOLE. Will the majority yield?

Mr. BIDEN. I will be happy to yield.

Mr. DOLE. While the majority leader is on the floor, I understand there is a function that would take from about 7:30 until 9. I am prepared to stay and offer my gang amendment. I am not sure the majority leader is able to be here.

Mr. BIDEN. I am able to be here.

Mr. DOLE. Maybe we can get people to stay and offer their amendments and then have the votes in the morning so we do not keep everybody here until 9 o'clock or after. I will offer my amendment. I think others will offer their amendments, and we will accomplish the same result without keeping a lot of people here.

Mr. BIDEN. I say to the Republican leader, I think that is a very good idea. I am prepared to do that. I will again ask anyone in the Chamber—I see some of the people whose names I mentioned—is there anyone in the Chamber who is willing to go with their amendment tonight, debate and enter a time agreement? Senator BROWN is. Is Senator LIEBERMAN prepared to? I beg your pardon, both Senator MOSELEY-BRAUN and my distinguished friend from Arizona, have the same amendment. Is Senator CHAFEE prepared to go tonight as well?

I am sure I can say to the leader, we can do that. As he knows, we always get complete cooperation on these crime bills. So I am sure we can stack at least 10 or 12 votes for tomorrow morning at this rate. But, no, I am delighted to do that. I would like to do that and, with the permission of the leader, we will do that.

Mr. HATCH. Let us let people go then.

Mr. President, I would like very much to suggest, if we can do what is suggested by the Republican leader, that we start voting as early as 9 o'clock tomorrow morning.

Mr. KERRY. Mr. President, I suggest the same thing to an amendment of the leader I think that is a very good idea. I am prepared to do that. I will again ask anyone in the Chamber—I see some of the people whose names I mentioned—is there anyone in the Chamber who is willing to go with their amendment tonight, debate and enter a time agreement? Senator BROWN is. Is Senator LIEBERMAN prepared to? I beg your pardon, both Senator MOSELEY-BRAUN and my distinguished friend from Arizona, have the same amendment. Is Senator CHAFEE prepared to go tonight as well?

I am sure I can say to the leader, we can do that. As he knows, we always get complete cooperation on these crime bills. So I am sure we can stack at least 10 or 12 votes for tomorrow morning at this rate. But, no, I am delighted to do that. I would like to do that and, with the permission of the leader, we will do that.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.
November 8, 1993

Mr. MITCHELL. Mr. President, it is now apparent, based on prior discussion, that it is not possible to have any further votes this evening, and therefore Senators who have amendments are encouraged to stay and offer those amendments.

It is also clear from the private discussion that followed we cannot have any votes tomorrow morning, and therefore any votes would have to be stacked to occur beginning tomorrow afternoon after the caucuses.

I say to Senators that there are only 2 more days in session this week, and Senators should be prepared for very lengthy sessions tomorrow and Wednesday, very lengthy, late in the evening, if we hope to have any chance of making good progress on this bill and have any chance of completing our work prior to Thanksgiving.

Mr. DOLE. Will the majority leader yield?

Mr. MITCHELL. Yes.

Mr. BYRD. Will the distinguished majority leader yield?

Mr. MITCHELL. Yes. The Republican leader.

Mr. DOLE. I will be happy to yield to the Senator from West Virginia.

Mr. BYRD. I thank the distinguished Republican leader.

I was merely rising to pose the question as to what time the cloture vote would occur tomorrow, on the motion that has been entered on cloture against the Interior appropriations bill?

Mr. MITCHELL. I was asked again this evening for additional time to debate the subject. I must express my personal view. I think that subject has been debated far more than is necessary. But I have proposed 1 hour this evening, 1 hour early tomorrow morning, and then to have the cloture vote at 15, and then to be followed by whatever votes are stacked on amendments to be debated tonight and in the morning.

Mr. BYRD. Mr. President, if the distinguished majority leader will yield further.

Mr. MITCHELL. Yes.

Mr. BYRD. I do not think any more than 90 minutes equally divided will be needed on that, and at any time that is convenient with the majority leader tomorrow as far as the overall program is concerned, it is perfectly agreeable with me as chairman of the Appropriations Subcommittee to proceed, but we will need to do something or else the rule will work itself and we will vote 1 hour after we come in.

Mr. MITCHELL. If we do not get agreement, that is precisely what would occur. It is my expectation that we will get an agreement.

Mr. BYRD. Very well. I thank the leader.

Mr. MITCHELL. I am pleased to yield to the Republican leader.

Mr. DOLE. Let me indicate we just had a meeting in the majority leader's office to try to accommodate a lot of people who want to depart here before Thanksgiving, and in order for that to happen, because of the problem we have tomorrow morning, it is going to be necessary that a number of Members either offer their amendments tomorrow night—those that are going to require votes—or in the morning.

Mr. BIDEN, Both.

Mr. DOLE. Or both. That is probably better. Or, as the majority leader has indicated, there is only one way to make it up. You have to make it up late tomorrow night, late the next night, and I assume some have obligations on Thursday with Veterans Day. The majority leader loses the morning.

So I hope we can accommodate the wishes of the majority leader and the managers, and we will do our best to produce, not just produce votes—if we can take the amendments without votes, that is fine. But if there has to be a vote, we ought to make certain we do not have a bunch of quorum calls tonight and tomorrow morning.

Mr. MITCHELL. I thank my colleague.

Mr. DOLE. It is also fair to say that you might as well mark November 20, Saturday, because we will be in session.

Mr. MITCHELL. We will be, and if necessary on that Sunday as well.

Mr. BYRD. November 20. On that day I will be 27,760 days old. And I do not look a bit older than 25.

Mr. DOLE. That was the reason for the session, just a special tribute to the distinguished Senator.

[Laughter.]

Mr. BIDEN. Mr. President, I ask Senator KERRY, Senator LIEBERMAN, Senator REID, Senator GORTON, and Senator CHAFFEES, all of whom indicated they were ready to debate amendments tonight, to please hold fast, and we will enter into a time agreement on their amendments within the next 5 minutes so we can deal with them.

But we will get a time agreement so we know when people are going to be voting. The Senator from Arizona and the Senator from Illinois—we have an amendment that they have that we are prepared to agree to, that the majority is prepared to agree to. Do they wish to discuss the amendment? Why do I not yield to them, let them discuss their amendment, and proceed to it now.

Mr. HATCH. I would like to finish the mandatory minimum amendment. We have an agreement. I am going to go ahead with it.

Mr. BIDEN. I have no objection to that. If that is what the Republican manager would like to do. Let me make sure we have checked it out with staff.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 131, AS MODIFIED

Mr. HATCH. I send a modification to the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

The amendment is so modified.

The amendment (No. 1131) as modified, is as follows:

(Purpose: To provide for increased mandatory minimum sentences for criminals using firearms and for the imposition of a sentence without release for criminals convicted a third time, and to provide for flexibility in sentencing for certain nonviolent offenses in which a mandatory minimum term of imprisonment is imposed by law)

In the pending amendment strike all after the first word and insert the following:

Subtitle B—Mandatory Minimum Sentence Guidelines

SEC. 2911. FLEXIBILITY IN APPLICATION OF MANDATORY MINIMUM SENTENCING VISIONS IN CERTAIN CIRCUMSTANCES.

(a) AMENDMENT OF TITLE 18, UNITED STATES CODE.—Section 3553(a) of title 18, United States Code, is amended by adding at the end the following new subsection:

"(b) MANDATORY MINIMUM SENTENCE PROVISIONS.—"

"(1) SENTENCING UNDER THIS SECTION.—In the case of an offense described in paragraph (2), the court shall, notwithstanding the requirement of a mandatory minimum sentence in that section, impose a sentence in accordance with this section and the sentencing guidelines and any pertinent policy statement issued by the United States Sentencing Commission.

"(2) OFFENSES.—An offense is described in this paragraph if—

"(A) the defendant is subject to a mandatory minimum term of imprisonment under section 401 or 402 of the Controlled Substances Act (21 U.S.C. 841 and 844) or section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960);"

"(B) the defendant was previously convicted of an offense described in paragraphs (A) through (D) of subsection (a) of section 922(g) of title 18, United States Code, and the prior offense was committed as a result of the act of any person described in subsection (a) of that section;"

"(C) the defendant does not have—"

"(1) more than 6 criminal history points defined under sentencing guidelines and policy statements issued by the United States Sentencing Commission;"

"(ii) any prior conviction, foreign or domestic, for a crime of violence against the person or drug trafficking offense that resulted in a sentence of imprisonment, or an adjudication as a juvenile delinquent for an act that, if committed by an adult, would constitute a crime of violence against the person or drug trafficking offense;"

"(C) the offense did not result in death or serious bodily injury (as defined in section 1661) to any person;"

"and if—"

"(i) as a result of the act of any person during the course of the offense; or"

"(ii) as a result of the entry of any person of a controlled substance that was involved in the offense;"

"(D) the defendant did not carry or possess with accessibility any firearm (as defined in section 921) or other dangerous weapon during the course of the offense and did not direct another person who possessed a firearm to do so and the defendant had no knowledge of any other conspiracy that involved possession of a firearm;"

"(E) the defendant was not an organizer, leader, manager, or supervisor of others (as defined or determined under the sentencing guidelines) in the offense;"

"(F) the defendant was not nonviolent in that the defendant did not use, attempt to use, or
make a credible threat to use physical force against the person of another during the course of the offense; and

(G) the defendant did not own the drugs, finance any part of the purchase, or sell the drugs."

(b) HARMONIZATION.-

(1) The United States Sentencing Commission-

(A) may make such amendments as it deems necessary and appropriate to harmonize the sentencing guidelines and policy statements with section 3553(c) of title 18, United States Code, as added by subsection (a), and promulgate policy statements to assist the courts in interpreting that provision; and

(B) shall amend the sentencing guidelines, in a sentence following the one that makes a finding under section 401 or 402 of the Controlled Substances Act (21 U.S.C. 841 and 844) or section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 951) to which a mandatory minimum term of imprisonment applies a guideline level that will result in the imposition of a term of imprisonment at least equal to the mandatory term of imprisonment that is currently applicable unless a downward adjustment is authorized under section (c) of title 18, United States Code, as added by subsection (a).

(2) If the Commission determines that an expedited procedure is necessary in order for amendments made pursuant to paragraph (1) to become effective on the effective date specified in subsection (c), the Commission may promulgate such amendments as emergency amendments under the procedures set forth in section 21(a) of the Sentencing Act (Public Law 94-402, 101 Stat. 1271), as those amendments under that section had not expired.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) and any amendments to the sentencing guidelines pursuant to subsection (b) shall apply with respect to sentences imposed for offenses committed on or after the date that is 90 days after the date of enactment of this Act. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence.

SEC. 10. INCREASED MANDATORY MINIMUM SENTENCES FOR CRIMINALS USING FIREARMS.

Section 929(c)(1) of title 18, United States Code, is amended by inserting after the first sentence the following: "Except to the extent a greater minimum sentence is otherwise provided by the preceding sentence or by any other provision of this subsection or any other law, a person who, during and in relation to any crime of violence or drug trafficking crime described in this subsection, including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which a person may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for the crime of violence or drug trafficking crime—

(A) be punished by imprisonment for not less than 10 years; and

(B) if the firearm is discharged, be punished by imprisonment for not less than 20 years; and

"(C) if the death of a person results, be punished by death or by imprisonment for not less than life.

SEC. 11. MANDATORY MINIMUM PRISON SENTENCES FOR THOSE WHO SELL ILLEGAL DRUGS TO MINORS OR WHO USE OF FIREARMS IN DRUG TRAFFICKING ACTIVITIES.

(a) DISTRIBUTION TO PERSONS UNDER AGE 18.—Section 418 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(1) in subsection (a) (first offense) by inserting after the second sentence "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection in a case involving distribution to a person under 18 years of age by a person 21 or more years of age shall be not less than 10 years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence."; and

(2) in subsection (b) (second offense) by inserting after the second sentence "Except to the extent a greater sentence is otherwise authorized by section 401(b), a term of imprisonment under this subsection in a case involving distribution to a person under 18 years of age by a person 21 or more years of age shall be a mandatory term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence.".

(b) EMPOYMENT OF PERSONS UNDER 18 YEARS OF AGE.—Section 420 of the Controlled Substances Act (21 U.S.C. 861) is amended—

(1) in subsection (b) by adding at the end the following sentence: "Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment of a person 21 or more years of age convicted under this subsection shall be not less than 10 years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence.".

(2) in subsection (c) (penalty for second offense) by inserting after the second sentence the following: "Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment of a person 21 or more years of age convicted under this subsection shall be a mandatory term of life imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence.".

SEC. 12. LIFE IMPRISONMENT WITHOUT RELEASE FOR DRUG FELONS AND VIOLENT CRIMINALS CONVICTED A THIRD TIME.

Section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is amended by striking "If any person commits a violation of subsection (b) of section 419, or 420 after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence," and inserting "If any person commits a violation of this subparagraph involving a drug offense under section 419, 420, or 846 after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence,". For purposes of this subparagraph the term 'crime of violence' means an offense that is a felony punishable by a maximum term of imprisonment of 10 years or more and has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or by its nature involves a substantial risk that physical force against the person or property of another will be committed by the defendant in the course of committing the offense.".

Mr. HATCH. Mr. President, where we are right now is that we have worked together with both sides on this. Neither Senator Gramm is not totally pleased with this. Neither are Senators Kennedy and Simon. However, we believe it is a good compromise. We believe it will resolve the problems. I hope it does not have to lead to a vote. If it does, we will vote on it.

We believe we have made a very, very good effort to try to accommodate everyone and everybody's feelings on this matter.

I would like to have the amendment, the Hatch-Gramm-Dole amendment, agreed to tonight if we can.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I would like to ask the distinguished manager of the bill, is this the Gramm amendment as amended or perfected by Senator Hatch?

Mr. HATCH. This is the modified Hatch-Gramm-Dole amendment that accepts the basic Gramm amendment and provides for some flexibility with regard to the first-time offenders who have not pushed drugs to school and who have not been violent.

Mr. D'AMATO. I have no objection as it relates to those provisions whereby you give flexibility to first-time, non-violent offenders as it relates to dealing drugs. I have heard that many of the judges have complained about lack of flexibility. I think it is important. I think it is fine.

I do not have as it relates to not having an opportunity to offer a gun amendment that the floor manager was well aware of, as it relates to imposing real mandatory sentences for those that commit crimes on state lines. I do not intend to be precluded as a result of the parliamentary situation that we find ourselves in and agree to passage of this without having an opportunity to offer my amendment. If I have to stay on the floor and object to our going further, believe me, I am prepared to do it.

Mr. HATCH. Parliamentary inquiry.

Mr. D'AMATO. Is there anything that would stop the distinguished Senator from New York from offering his amendment once this amendment is either adopted or voted up or down? It seems to me it would be totally in order for him to offer his amendment.

Mr. D'AMATO. It seems to me, if you might indulge me—

Mr. HATCH. Could I get an answer?

The PRESIDING OFFICER. The substitute amendment would still be in order.
Mr. HATCH. I acknowledge that the distinguished Senator from New York has an excellent amendment. And it is something that I hope will be adopted by the Senate as a whole. I would certainly support his amendment because he is very thoughtful and reflective on what needs to be done in this area. No one has tried to preclude him from offering his amendment.

Certainly, what we have done here today is try to bring both sides together on the mandatory minimum issue, which has been a very difficult and problematic issue as we have tried to resolve this bill.

But I do not see any way that it is going to stop the distinguished Senator from New York from sending his amendment to the desk later and see if we can or cannot vote on it.

Mr. D'AMATO. Let me suggest, if I do not have an opportunity, it seems to me, as pointed out to me by the Senator from Arizona, to amend the amendment that the underlying amendment that the Hatch amendment dealt with, as SenatorGramm's amendment, that I will be precluded from touching those sections, I think subsection 104. I would be precluded from doing that, as this would be dealing with sentences that are already dealt with.

I would suggest that maybe we spend a little time and work out and see to it that we do have an opportunity—that I have this opportunity. I withheld for a week from offering the gun amendment. After all, nobody is going to offer a gun amendment. Fine. I am not going to be bigger than the institution. I understand that.

But then when I find out that almost the identical language which would preclude me from putting forth an amendment which I think goes further, does more, and accomplishes something, then I have to say I am going to insist that I have the right to do that. I am willing to work with the distinguished managers of the bill, but I want to make sure that I am not going to lose that opportunity. That is something I have not been assured of. I have to tell you, I waited patiently. I was down here on this floor a couple of days. I withheld. Then to come and find out that I find myself in the situation where I may not be able to, as the parliamentary situation they placed me in, then I am going to say that I will not agree to a time agreement, not as long as you have that gun amendment in that bill. If you have the gun amendment as part of that which precludes me from offering mine, then I am going to object.

Mr. HATCH. Parliamentary inquiry: Is the Senator precluded from doing what he would like to do by the Hatch-Gramm-Dole amendment? Would he be prevented from adding his amendment to the sections involved?

The PRESIDING OFFICER. The pending second-degree amendment would not preclude.

Mr. HATCH. That is my understanding: Nothing would preclude the Senator from New York from offering his amendment later on or on any of the sections that he has mentioned. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. D'AMATO. Let me say—

Mr. HATCH. I ask unanimous consent that the distinguished Senators—

Mr. BIDEN. Reserving the right to object, I am not sure that I understand what is being requested here. So for the moment, I object to a unanimous-consent agreement. Particularly, is it required in order for the Senator to be able to do what he wishes to do? I want to figure out what is going on. I yield the floor.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that we temporarily set aside the Hatch-Gramm-Dole amendment, so that the distinguished Senator from Arizona can call up his amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 133

(Purpose: To encourage parents to assume greater responsibility for preventing their children from engaging in illegal activity)

Mr. McCAIN. Mr. President, I send an amendment to the desk later and see if we can or cannot vote on it.

Ms. MOSELEY-BRAUN. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk reads as follows:

The Senator from Arizona [Mr. McCAIN] proposes an amendment numbered 1133.

Mr. McCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SEC. 133. PARENTAL ACCOUNTABILITY.

(a) In General.—Chapter 43 of title 18, United States Code, is amended by adding at the end the following new section:

Section 5042. Civil Penalties for Parents of Certain Juvenile Offenders.

(b) In General.—(1) The parent or legal guardians of any juvenile charged with any violation of federal law shall attend all court proceedings involving the juvenile, and

(ii) if the court finds that the lawful guardian or guardians did not exercise reasonable care to control the juvenile.

(a) the legal guardian or guardians shall be ordered to perform the same community service sentence as required to be performed by the juvenile if such sentence is ordered, or

(b) if ordered by the court to perform community service, shall not exceed 2 terms of service for each seven days of incarceration ordered for the juvenile if community service is not ordered to be performed by the juvenile.

(3) Paragraph (1) or (2) may be waived, in whole or in part, by the court if it deems that compliance with paragraphs (1) and (2) would result in undue hardship to the family of the juvenile.

(4) For the purpose of this section, the term "juvenile" means any person under 18 years of age.

AMENDMENT NO. 123 TO AMENDMENT NO. 133

Ms. MOSELEY-BRAUN. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk reads as follows:

The Senator from Illinois [Ms. MOSELEY-BRAUN] proposes an amendment numbered 1134.

Ms. MOSELEY-BRAUN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SEC. 123. PARENTAL RESPONSIBILITY.—The court may decline to enforce it if it deems that compliance with paragraphs (a)(1) or (2) of this section would result in undue hardship to the family of the juvenile.

(2) As provided in subsection (b), the parents or legal guardians of a juvenile who has been convicted of a criminal offense under any Federal law may be liable to the United States for a civil penalty of not more than $10,000.

(3) For the purpose of this section, the term "juvenile" means any person who is under 18 years of age.

(4) COMMUNITY SERVICE OR PARENTING CLASSES IN LIEU OF CIVIL PENALTY.—A parent or legal guardian ordered to pay a civil penalty under this Section shall perform community service or attend and successfully complete parenting classes, as the court determines to be appropriate, in lieu of the civil penalty.

(5) Definitions.—

(a) For the purposes of this section, the term "juvenile" means any person who is under 18 years of age.
(2) For the purpose of this section, the term "parent" means a biological or custodial parent who has legal responsibility for the child at the time the crime was committed.

(f) TECHNICAL AMENDMENT.—The chapter analysis for chapter 463 of title 18, United States Code, is amended by adding at the end of the following new item:

"5035. Civil penalties for parents of certain juvenile offenders."

Mr. McCain. Mr. President, the amendment at the desk can be summarized in two words: parental accountability. Simply, it makes the parents accountable for crimes committed by their dependent children.

When an individual, juvenile or not, commits a crime, that individual must be made to pay back society for the wrongdoing. But in our society, we do not hold juveniles totally responsible for their actions. We also hold parents and legal guardians responsible for the actions of their children. Parents must take a greater role in their children's lives, and greater responsibility for their children's actions. This amendment furthers that goal.

This amendment would mandate that when any individual under the age of 18 is charged with breaking Federal law, the child's guardian or guardians of that individual must:

First, attend all court proceedings; and if the juvenile is convicted,

Second, pay a fine up to $10,000; or

Third, may petition the court to perform community service or attend and successfully complete parenting classes in lieu of a monetary fine.

Further, because many families in which a child commits a crime may be suffering from financial and social hardship, the amendment allows the court to waive, in whole or in part, the sanctions if compliance would result in an undue hardship to the family.

Mr. President, I had originally hoped to apply criminal penalties to parents who neglect their duty and allow their children to commit crimes. The first degree violence is rising, and it concerns us exactly that. However, due to constitutional concerns raised by some of my colleagues, Senator Mosley-Braun and I have offered a second degree amendment that meets constitutional muster and forces parents to assume a greater responsibility for preventing their children from engaging in illegal activity.

Mr. President, daily the media reports of young people under the age of 18 who join gangs, deal drugs, and treat death and killings as cavalier events. This is demonstrative proof that parents are neglecting their obligation to teach our children right from wrong.

The prevalence of gangs is growing.

Gang violence is rising.

No area is safe. Drugs are omnipresent—not merely being used by young Americans, but being sold and marketed as a business by young Americans.

According to U.S. News & World Report, November 8, 1993:

Today, more than 3 million crimes a year are committed in or near the 85,000 U.S. public schools. * * * A University of Michigan study revealed that 95 percent of high school students carry a gun, knife, or club to school at least once a month. In all, an estimated 270,000 guns go to school every day.

According to the article, in 1940, public school teachers rated the top disciplinary problems as: talking out of turn; chewing gum; making noise; running in the halls; cutting in line; dress code violations; and fighting. In 1990, public school teachers rated the top disciplinary problems as: drug abuse; alcohol abuse; pregnancy; suicide; rape; robbery; and assault.

Mr. President, we are watching the disintegration of our society. We simply cannot sit back and idly watch this happen.

On October 17, 1993, the Seattle Times headline read:


The article states that in 1991, according to the Washington State Department of Children Development, the number of violent crimes—assault, homicide, sexual assault—committed by 10 to 17 year-olds has doubled since 1981. Although people in this age group represent only 11 percent of the population, they committed at least 26 percent of all violent crimes in Washington State. I do not in any way mean to single out Washington State. This is a national, not local, problem.

According to the Phoenix Gazette article entitled "Violent Juvenile Crimes on the Rise: Experts Blame Unfulfilled Emotional Needs of Children":

The FBI reports a 27 percent increase in violent juvenile crime in a decade since 1980. This increase crosses all racial, social, and economic boundaries.

Our youth did not become violent overnight. Our youth did not choose the gang and drugs. Our youth committed their problems due to a change in the weather.

These problems are occurring because we are abrogating our responsibility to our children.

Mr. President, the people we represent back home know the unfortunate truth: the family is disintegrating. Parents allow their children to run around uncontrolled and without supervision or moral guidance.

The realities of the modern age may make it more difficult for parents to spend a great deal of time with their children. That is unfortunate, but in many cases it is reality. But parents cannot be divested of their moral obligation to teach their children right from wrong. Values cannot be artificially imposed on children by society or the Government. Values are learned and should only be taught by parents. Justice will not prevail unless it is taught to our children.

Dr. Deborah Prothro-Stith, a national expert on juvenile violence from Harvard University stated:

"It's no longer enough to offer children an average stable family life. When (juveniles) have this kind of generative consistent message that's made as attractive as it is, parents must actively counter it."

According to Hunter Hurst, Director of the National Center for Juvenile Justice in Pennsylvania:

Society can't just sit back and rely on police, public officials or public institutions to solve the problem. Parents need to get back to the basics and take care of their children.

That is exactly what this amendment encourages.

Mr. President, it is time for us to say to parents, you are responsible for your children. You cannot step back, give no guidance or moral leadership to your children and then say "society—now it's your problem." If parents are going to let our Nation's youth commit crime, then parents are going to be held responsible by a just and fair society.

This amendment does exactly that. When a young person takes是从 society, then the courts can make the parents perform community service to pay back our communities.

This is a new and novel concept. If a young person breaks a store window, it is the parents who are held accountable and made to pay retribution. If a young person desires to enter into a contract, we mandate that the parents take responsibility and sign the contract. Why should we not then hold parents responsible when their child commits a crime?

This amendment also acts as a deterrent. If parents know that their child's activity in a gang or with drugs may result in their being punished, I wonder how many will turn a blind eye to these kinds of activities.

The concept for increased parental accountability has been promulgated by the Governor Symington, the Governor of Arizona. I believe that it is significant that this proposal originated with a state official.

Thus I charge my colleagues, listen to our local officials. Let us base our policies on their initiatives, tested in the laboratory of the streets, and use their knowledge. Let us pay attention to individuals such as Governor Symington and his good work embodied in his anticrime proposal. These local officials have told us that we must act, and act now. These people on the front
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I lines have told us to follow their lead: Pass a tough crime bill that punishes those who commit crimes and that stops our families from hemorrhaging. I would hope this amendment would be readily accepted. The purpose of this amendment summarizes this issue perfectly—to "encourage parents to assume greater responsibility for preventing their children from engaging in illegal activity."

I have held parents accountable, then who can we? I hope my colleagues will carefully consider that question and support this fair, simple amendment.

Mr. President, in summary, I thank the Senator from Illinois for her second-degree amendment to my amendment. I think it is an important addition. It is a privilege to work with her on this very important and critical issue on the crime bill.

Very briefly, the amendment of the Senator from Illinois will mandate that when any individual under the age of 18 that is charged with breaking Federal law, the legal guardian or parents of that individual must attend all court proceedings. If the juvenile is convicted, they must pay a fine of up to $10,000, or may petition the court to perform community service or attend successfully complete parenting classes in lieu of a monetary fine.

I yield to the Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, I associate myself with the chairman of the committee. I appreciate what these distinguished Senators are trying to do here this evening. I understand and I think it is a worthwhile amendment. I associate myself with the chairman of the committee. I appreciate what these distinguished Senators are trying to do here this evening. I understand and I think it is a worthwhile amendment.

The PRESIDING OFFICER. The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Parliamentary inquiry.

Mr. HATCH. I move to reconsider the vote.

The PRESIDING OFFICER. The Senate from Utah is correct.

Mr. HATCH. I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the second-degree amendment?

The question is on agreeing to the amendment.

The amendment (No. 1131) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote.

Mr. BIDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BIDEN. Mr. President, we now have an agreement from at least five individuals who are prepared to debate their amendments tonight, and we have time agreements. I am going to propose a unanimous-consent agreement relative to time. I ask that on the Dole amendment relating to ganges, there be 20 minutes equally divided in the usual form, with no second-degree amendment.

Mr. HATCH. Parliamentary inquiry.

Has my underlying amendment been agreed to on the mandatory minimum?

The PRESIDING OFFICER. The underlying amendment of the Senator from Texas is still pending, which was No. 1130.

Mr. HATCH. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KERREY). Without objection, it is so ordered.

Mr. HATCH. Mr. President, I feel very good about what we are about to do next because we are going to move this bill even further along than we have up to now. This bill has the potential of becoming the best crime bill in history from the Federal Government's standpoint. Right now in my opinion it is. We are going to add some provisions that I think are going to make it even better.

AMENDMENT NO. 1135 THROUGH 1139

Mr. BIDEN. Mr. President, I send to the desk a package of amendments and ask for its immediate consideration en bloc.

The PRESIDING OFFICER. Without objection the pending amendment will be set aside. The clerk will report. The bill clerk read as follows:

The PRESIDING OFFICER. Without objection the pending amendment will be set aside. The clerk will report.
The amendments are as follows:

AMENDMENT NO. 1135
Strike Title II and insert the following:

TITLE II—DEATH PENALTY

SEC. 101. SHORT TITLE.
This title may be cited as the "Federal Death Penalty Act of 1993." 

SEC. 202. CONSTITUTIONAL PROCEDURES FOR THE IMPOSITION OF THE SENTENCE OF DEATH

(a) IN GENERAL.—Part II of title 18, United States Code, is amended by inserting after chapter 227 the following new chapter:

CHAPTER 228—DEATH SENTENCE

"Sec.

"3591. Sentence of death.
"3592. Mitigating and aggravating factors to be considered in determining whether a sentence of death is justified.
"3593. Special hearing to determine whether a sentence of death is justified.
"3594. Imposition of a sentence of death.
"3595. Review of a sentence of death.
"3596. Implementation of a sentence of death.
"3597. Use of State facilities.
"3598. Special provisions for Indian country.

*3591. Sentence of death*—A defendant who has been found guilty of—

(1) an offense described in section 794 or section 2331; 
(2) an offense described in section 1751(c), if the defendant committed the offense knew that a person was manufacturing or repairing an atomic weapon or weapon of mass destruction and no notice has been given; or
(3) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at the hearing under section 3593, constitutes an attempt to intentionally kill the President of the United States and results in bodily injury to the President or comes dangerously close to causing the death of the President; or
(4) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at the hearing under section 3593, constitutes an attempt to intentionally kill a person, the death of whom was less than 18 years of age at the time of the offense.

*3592. Mitigating and aggravating factors to be considered in determining whether a sentence of death is justified*—

(1) IMPAIRED CAPACITY.—The defendant’s capacity to appreciate the wrongfulness of the defendant’s conduct or to conform to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

(2) DURESS.—The defendant was under unusual and extreme pressure, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

(3) MINOR PARTICIPATION.—The defendant is punishable as a principal in an offense, which was committed by another, but the defendant’s participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

(4) EQUALLY CULPABLE DEFENDANTS.—Another defendant or defendants, equally culpable in the crime, will not be punished by death.

(5) NO PRIOR CRIMINAL RECORD.—The defendant did not have a significant prior history of other criminal conduct.

(6) DISTURBANCE.—The defendant committed the offense under severe mental or emotional disturbance.

(7) VICTIM’S CONSENT.—The victim consented to the criminal conduct that resulted in the victim’s death.

(8) OTHER FACTORS.—Other factors in the defendant’s background, record, or character or any other circumstance of the offense that mitigate against imposition of the death sentence.

(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TERRORISM.—Whether a sentence of death is justified for an offense described in section 3591(1), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors for which notice has been given and determine which, if any, exist:

(1) PRIOR ESPIONAGE OR TREASON OFFENSE.—The defendant has previously been convicted of another offense involving espionage or treason for which a sentence of either life imprisonment or death was authorized by law.

(2) GRAVE RISK TO NATIONAL SECURITY.—In the commission of the offense the defendant knowingly created a grave risk of substantial danger to the national security.

(3) GRAVE RISK OF DEATH.—In the commission of the offense the defendant knowingly created a grave risk of death to another person.

(4) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of 2 or more Federal or State offenses punishable by a term of imprisonment of more than 1 year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

(5) GRAVE RISK OF DEATH TO ADDITIONAL PERSONS.—The defendant, in the commission of the offense, or in the expectation of the receipt, of anything of pecuniary value, knowingly created a grave risk of death to 1 or more persons in addition to the victim of the offense.

(6) HENOUS, CRUEL, OR DEPRAVED MANNER OF COMMITTING OFFENSE.—The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

(7) EMPLOYMENT OF OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

(8) PECUNIARY GAIN.—The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

(9) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation to cause the death of a person who was not a participant in the offense.

(10) CONVICTION FOR TWO FELONY DRUG OFFENSES.—The defendant has previously been convicted of 2 or more offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

(11) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.
"(12) Conviction for Serious Federal Drug Offenses.—The defendant had previously been convicted of violating title II or III of the Controlled Substances Act for which the maximum term of imprisonment is five years or more or the defendant is a minor; and the case involved continuing criminal enterprise in violation of section 960(c) of the Controlled Substances Act (21 U.S.C. 848(c)), and that violation involved the distribution of drugs to persons under the age of 21 in violation of section 418 of that Act (21 U.S.C. 666).

"(14) Public Officials.—The defendant committed the offense against:

(a) the United States; the President-elect, the Vice President, the Vice-President-designate, or, if there is no Vice President, the officer next in order of succession to the office of the President of the United States, or any person who is acting as President under the Constitution and laws of the United States;

(b) a chief of state, head of government, or the political equivalent, of a foreign nation;

(c) a foreign official listed in section 1116(b)(3) of this Act, if the official is in the United States;

(A) a Federal government agency; or

(ii) any person who is acting as President under the Constitution and laws of the United States;

(2) A Federal government agency or any person who is acting as President under the Constitution and laws of the United States;

(3) a chief of state, head of government, or the political equivalent, of a foreign nation.

For purposes of this subparagraph, a "law enforcement officer" is a public servant authorized by law or by a Governor's emergency or Congress to conduct or engage in the prevention, investigation, or prosecution or adjudication of an offense, and includes those engaged in corrections, parole, or probation functions.

The jury, or if there is no jury, the court, may consider any other aggravating factor for which notice has been given exists.

§ 3592. Special hearing to determine whether a sentence of death is justified

"(1) Conviction for Serious Federal Drug Offenses.—If, in a case involving an offense described in section 3591, the attorney for the government believes that the circumstances of the offense are such that a sentence of death is justified under this chapter, the attorney shall, at a reasonable time before the trial or before acceptance by the court of a plea of guilty, sign and file with the court, and serve on the defendant, a notice:

(1) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this chapter and that the government will seek the sentence of death; and

(2) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim or victims and may include oral testimony, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim and the victim's family, and any other relevant information.

The court may permit the attorney for the government to present at the trial or before the hearing which the notice upon a showing of good cause.

(3) Hearing before a Court or Jury.—If the attorney for the government has filed a notice as required under subsection (a) and the defendant is found guilty of or pleads guilty to an offense described in section 3591, there shall be a hearing, or before the trial or before the hearing, at which the attorney for the government shall present the evidence which the notice permitted under subsection (a) and the defense may present any evidence to rebut any information received at the hearing.

The defendant may present any evidence to rebut any information received at the hearing, including any mitigating factor.

(4) Notice by the Government.—If, in a case involving an offense described in section 3591, an aggravating factor required to be considered under section 3592(b) is found to exist; or

(5) Notice by the Government.—If, in a case involving an offense described in section 3591, an aggravating factor required to be considered under section 3592(e) is found to exist, the jury, or if there is no jury, the court, shall consider whether any aggravating factors found to exist outweigh any mitigating factors found to exist and shall be given fair opportunity to consider whether any aggravating factor or factors alone are sufficient to justify a sentence of death.

Based upon this consideration, the court shall impose a sentence of death or life imprisonment without possibility of release or some other lesser sentence.

(6) Special Precaution to Ensure Against Discrimination.—In a hearing held before a jury, the court, prior to the return of the jury, shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, religious beliefs, national origin, or sex of the defendant or any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or of any victim was.

"(7) Procedure for Mitigating and Aggravating Factors.—The Federal Rules of Criminal Procedure, when a defendant is found guilty or pleads guilty to an offense under section 3591, no presentence report shall be prepared. At the sentencing hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered under section 3592. Information presented at the hearing shall be given fair opportunity to consider whether any aggravating factor or factors found to exist sufficiently outweigh all the mitigating factor or factors found to exist to justify a sentence of death.

(8) Mitigating and Aggravating Factors.—If the aggravating factor or factors found to exist, or any other aggravating factor for which notice has been given exists.

The aggravating factor or factors found to exist, or any other aggravating factor for which notice has been given exists.
§ 5395. Review of a sentence of death

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW OF APPEAL.—The court of appeals shall review the entire record in the case, including:

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) IF THE COURT OF APPEALS FINDS THAT—

"(1) the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor and whether the evidence supports the special finding of the existence of an aggravating factor required to be considered under section 3592.

"(3) whenever the court of appeals finds that—

"(A) the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the admissible evidence and information adduced does not support the special finding of the existence of the required aggravating factor; or

"(C) the proceedings involved any other legal error requiring reversal of the sentence that the procedures preserved for appeal under the rules of criminal procedure.

the court shall remand the case for reconsideration under section 3585 or imposition of a sentence other than death. The court of appeals shall not reverse or vacate a sentence of death on account of any error which can be harmless, including any erroneous special finding of the existence of the required aggravating factor or government establishes beyond a reasonable doubt that the error was harmless.

"(3) the court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

§ 5396. Implementation of a sentence of death

"(a) IN GENERAL.—A person who has been sentenced to death pursuant to this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of the State does not provide for implementation of a sentence of death, the court shall designate another State, a law which provides for the implementation of a sentence of death, and the sentence shall be implemented in the latter State in the manner prescribed by such law.

"(b) PREGNANT WOMAN.—A sentence of death shall not be carried out upon a woman while she is pregnant.

"(c) MENTAL CAPACITY.—A sentence of death shall not be carried out upon a person who is mentally retarded or who, as a result of mental disability, lacks the mental capacity to understand the death penalty and why it was imposed on that person.

§ 5397. Use of State facilities

"(a) In any United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, necessary, to appropriately provide State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

"(b) EXCUSE OF AN EMPLOYEE ON MORAL OR RELIGIOUS GROUNDS.—No employee of any State department or official who are of the appropriate State or local official of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

§ 5398. Special provisions for Indian country

"(a) NOTWITHSTANDING sections 1112 and 1115, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence under this chapter for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151 of this title) and which has occurred within the boundaries of an Indian reservation, unless the Governor of the tribe has elected that this chapter have effect over land and persons subject to its criminal jurisdiction.

"(b) TECHNICAL AMENDMENT.—The part analysis for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 227 the following new item:

"229. Death sentence .................................. 3591a."

SEC. 203. SPECIFIC OFFENSES FOR WHICH DEATH PENALTY IS AUTHORIZED.

(a) CONFORMING CHANGES IN TITLE 18.—Title 18, United States Code, is amended as follows:

(1) AIRCRAFT AND MOTOR VEHICLES.—Section 34 of title 18, United States Code, is amended by striking the comma after "imprisonment for life", inserting a period, and striking the remainder of the section.

(2) ESPIONAGE.—Section 794(a) of title 18, United States Code, is amended by striking the period at the end of the section and inserting "

, except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense involves the theft, theft, or unauthorized use of the United States, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; computer programs or cryptographic information; or any other major weapon systems or major element of defense strategy.

(3) EXPLOSIVE MATERIALS.—Section 844(d) of title 18, United States Code, is amended as "(d) by striking as indicated in the section 34 of this title.

(b) TECHNICAL AMENDMENT.—The part analysis for part II of title 18, United States Code, is amended by inserting after the item relating to chapter 24 the following new item:

"229. Death sentence .................................. 3591a."

§ 5399. Determination of guilt and penalty

"(a) DETERMINATION OF GUILT.—In any case in which a sentence of death is imposed, the court shall determine whether the evidence supports the special finding adduced does not support the special finding of the existence of the death penalty.

"(b) DETERMINATION OF PENALTY.—In any case in which a sentence of death is imposed, the court shall determine whether the evidence supports the special finding that—

"(1) the conduct constitutes an attempt to intentionally kill the President of the United States and result in bodily injury to the President or otherwise comes dangerously close to causing the death of the President, by death or imprisonment for any term of years or for life.

"(2) if the conduct constitutes an attempt to intentionally kill the President of the United States and result in bodily injury to the President or otherwise comes dangerously close to causing the death of the President, by death or imprisonment for any term of years or for life.

"(3) WRECKING TRAINS.—The second to the last sentence of section 844(c) of title 18, United States Code, is amended by striking the comma after "or for life" the following: and, if the death of any person results, shall be punished by death or life imprisonment.

"(c) DETERMINATION OF JURISDICTION.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" the following: and, if the death of any person results, shall be punished by death or life imprisonment.

"(d) DETERMINATION OF JURISDICTION.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" the following: and, if the death of any person results, shall be punished by death or life imprisonment.

"(e) DETERMINATION OF JURISDICTION.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" the following: and, if the death of any person results, shall be punished by death or life imprisonment.

"(f) DETERMINATION OF JURISDICTION.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" the following: and, if the death of any person results, shall be punished by death or life imprisonment.

"(g) DETERMINATION OF JURISDICTION.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" the following: and, if the death of any person results, shall be punished by death or life imprisonment.

"(h) DETERMINATION OF JURISDICTION.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" the following: and, if the death of any person results, shall be punished by death or life imprisonment.

"(i) DETERMINATION OF JURISDICTION.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" the following: and, if the death of any person results, shall be punished by death or life imprisonment.

"(j) DETERMINATION OF JURISDICTION.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" the following: and, if the death of any person results, shall be punished by death or life imprisonment.

"(k) DETERMINATION OF JURISDICTION.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" the following: and, if the death of any person results, shall be punished by death or life imprisonment.

"(l) DETERMINATION OF JURISDICTION.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" the following: and, if the death of any person results, shall be punished by death or life imprisonment.

"(m) DETERMINATION OF JURISDICTION.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" the following: and, if the death of any person results, shall be punished by death or life imprisonment.

"(n) DETERMINATION OF JURISDICTION.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" the following: and, if the death of any person results, shall be punished by death or life imprisonment.

"(o) DETERMINATION OF JURISDICTION.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" the following: and, if the death of any person results, shall be punished by death or life imprisonment.
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life and a fine of not more than $1,000,000, or both.

CARJACKING.—Section 2199(3) of title 18, United States Code, is amended by striking the period after "both" and inserting "; or sentencing a person, in the case of
murder, by a sentence of death or life imprisonment as provided under section 1111, or
by an indeterminate term of at least fifteen years and a maximum of life, or an unexecuted sentence of death.

(a) CONFORMING AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end the following new section:

§ 1118. Murder by a Federal prisoner

(a) OFFENSE.—A person who, while confined in a Federal correctional institution under a sentence for a term of life imprisonment, commits the murder of another shall be punished by death or by life imprisonment.

(b) DEFINITIONS.—In this section—

"Federal correctional institution" means a Federal prison, Federal correctional center, or Federal halfway house.

"murder" means a first degree or second degree murder (as defined by section 1111).

"term of life imprisonment" means a sentence for the term of natural life, a sentence committed to an indeterminate term of at least fifteen years and a maximum of life, or an unexecuted sentence of death.

§ 1119. Murder by escaped prisoners

(a) DEFINITION.—In this section—

"Federal prisoner" means any Federal prisoner.

"murder" means a first degree murder (as defined in section 1111(a)), a death punished, imprisoned for any term of years or for life, fined under this title, or both; or

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by striking the item for section 1119 and inserting the following:

§ 1119. Sexual abuse resulting in death

(a) OFFENSE.—A person, who, in the course of an offense under this chapter, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by striking the item for section 1119 and inserting the following:

§ 1119. Foreign murder of United States nationals

(a) DEFINITION.—In this section—

"Federal prisoner" means any Federal prisoner.

"murder" means a first degree murder (as defined in section 1111(a)), a death punished, imprisoned for any term of years or for life, fined under this title, or both; or

(b) LIMITATIONS ON PROSECUTION.-(1) A person who, in the course of a violation of section 109A(b)(2) of the Federal Code, is sentenced for a term of not less than twenty years, may be sentenced to a term of life imprisonment, or both; or

(2) By redesignating section 2925 as section 2924 and—

(a) AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by striking the term for section 2925 and inserting the following:

§ 2924. Sexual abuse resulting in death

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by striking the item for section 2924 and inserting the following:

§ 2924. Foreign murder of United States nationals

(a) DEFINITION.—In this section—

"Federal prisoner" means any Federal prisoner.

"murder" means a first degree murder (as defined in section 1111(a)), a death punished, imprisoned for any term of years or for life, fined under this title, or both; or

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by striking the term for section 2924 and inserting the following:

§ 2924. Sexual abuse resulting in death

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by striking the term for section 2924 and inserting the following:

§ 2924. Foreign murder of United States nationals

(a) DEFINITION.—In this section—

"Federal prisoner" means any Federal prisoner.

"murder" means a first degree murder (as defined in section 1111(a)), a death punished, imprisoned for any term of years or for life, fined under this title, or both; or

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by striking the term for section 2924 and inserting the following:

§ 2924. Sexual abuse resulting in death

(a) AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by striking the term for section 2924 and inserting the following:
SEC. 215. MURDER IN COURSE OF ALIEN SMUGGLING.

Section 274(a) of the Immigration and Naturalization Act (8 U.S.C. 1324) is amended by inserting before the period at the end the following: "(2) in subsection (a) by striking "(c)"

HOMICIDES INVOLVING FIREARMS IN ATTEMPTED HOMICIDE

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SEC. 214. HOMICIDES AND ATTEMPTED HOMICIDES INVOLVING FIREARMS IN FEDERAL FACILITIES.

Section 2355 of title 18, United States Code, is amended—

(1) by redesignating subsections (c), (d), (e), and (f) of section 2355, respectively; and (f) as subsections (d), (e), (f), and (g), respectively;

(2) in subsection (a) by striking "(i)" and inserting "(d)"; and

(b) by redesignating the following subsections:

"(c) A person who kills or attempts to kill any person in the course of a violation of subsection (a) or (b) in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, shall be punished as provided in sections 1111, 1112, and 1118.

(2) in subsection (a) by striking "(c)"

USE OF COMPONENTS.—The Attorney General may utilize any component or components of the Department of Justice in carrying out this section or provisions of this title, or in coordinating activities under the programs authorized by this title.

IN GENERAL.—The Comptroller General of the United States shall study and assess the effectiveness of the impact of grants authorized by this title and report to Congress the results of the study on or before January 1, 1997.

DEFINITION.—In this title, "violent offender" means a person charged with or convicted of an offense (or charged with or adjudicated as a defendant by reason of conduct that, if engaged in by an adult would constitute an offense), during the course of which offense—

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

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

(3) there occurred the use of force against the person of another without regard to whether any of the circumstances described in paragraph (1), (2), or (3) is an element of the offense or conduct of which or for which the person is charged, convicted, or adjudicated as a delinquent.

Mr. HATCH. Mr. President, the Democrat's crime bill proposes spending $1.2 billion on a drug courts program. The proposal is essentially three separate State grant programs which will be coordinated by the Attorney General.

These grant programs would fund drug testing on arrest programs, residential drug treatment programs, and alternative sanctions for young offenders. The Attorney General is required to coordinate the distribution of these grants so that efforts similar to the Miami/Dade County's drug court will be funded. The Miami program was pioneered by Janet Reno. The Miami program assigns drug cases to one or two special courtrooms, where offenders, who are called clients, are assigned treatment for their drug problem rather than punishment.

As a general matter, the Democrat bill stresses expanded drug treatment as opposed to additional prison construction. I do not quarrel with the need to treat those who are, in fact, treatable. Yet, I believe dollars should be spent on treatment only after we have ensured the peaceful, law-abiding people of this Nation that we have adequate prison space to back up the sentences we impose. Furthermore, I do not believe that all criminals with drug problems are treatable. While I believe there is a role for treatment in combating drug related crime, we must bear in mind that treatment's proven effectiveness is limited. Each of Florida's State prison inmates has participated in a drug treatment program before entering prison. [Bureau of Justice Statistics, Survey of State Prison Inmates, 1981.]

I must concede that I am suspicious of programs which propose treatment as a complete alternative to prison. Unless these drug court programs are carefully monitored, we run the risk of letting soft-headed, self-proclaimed experts on drug policy take drug crimes completely out of the criminal justice system. Alternatively, we risk turning our courts into social service bureaus through which drug addicts are recycled.

I have several other reservations about the proposed drug courts program. I am concerned that the program might backfire. Many experts believe that offenders will repeatedly try to use the treatment programs to avoid prison. Indeed, Miami's program has a certain degree of failure—that is, recidivism—built in. The offenders are expected to continue to use drugs.

Additionally, the effectiveness of drug treatment programs, and drug courts in general, is still unknown and largely anecdotal. At least 40 in four of the offenders completing the program in Dade County, Florida, has been re-arrested. And these recidivism rates do not include those offenders who do not successfully complete the drug court program. [Washington Post, February 20, 1993.]

Moreover, since an offender's record is wiped clean pursuant to the Miami program, it is very difficult to determine whether the programs have any positive effect at all.

My concerns are supported by some criminal defense attorneys. As one well known defense attorney recently said,
"These drug programs don't work. The success rate is very poor—probably because offenders don't get into the same environment where they came from, where everybody's doing drugs." [Legal Times, March 1, 1993 quoting Greta Van Susteren of DC's Coast, Allen, & Van Susteren.]

In addition to my concerns about the effectiveness of these programs, I am concerned that violent offenders will inevitably make their way into these drug court systems, further endangering society and eroding our criminal justice system's credibility.

As I understand the Democratic proposal, the drug courts established under this bill are intended to be limited to non-violent drug offenders. However, as originally drafted, the proposal does not bar nonviolent offenders. In fact, it requires that gang-related offenders be allowed to participate. The drug court programs being proposed in some of our cities anticipate the participation of violent offenders. As proposed in some jurisdictions, such as the District of Columbia, drug courts could handle a broader range of offenders, including those arrested on non drug charges, but who are considered to have an underlying drug problem. [Legal Times, March 1, 1993.]

The same is true for the drug court program being instituted in Los Angeles. That program may be broadened to include more serious crimes than drug offenses and recidivism. [Los Angeles Times, May 17, 1993.]

That said, I support the needs for the drug court program being instituted in Los Angeles. That program may be broadened to include more serious crimes than drug offenses and recidivism. [Los Angeles Times, May 17, 1993.]

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That is, punishment other than prison—could be available to violent criminals.

Currently, the jury is still out on alternative sanctions. Over 25 percent of all inmates assigned to halfway houses in the District of Columbia simply walk away. [The Washington Post, October 19, 1993.]

A number of recent high-profile crimes in the District of Columbia were committed by convicted criminals who were supposed to be in the District's halfway houses:

A 33-year-old man who escaped from a halfway house in January, was charged with a brutal videotaped robbery of a Korean-owned jewelry store in September. When the videotape aired on local news, many of us watched in horror as the suspect pistol-whipped one victim and critically shot another.

A 22-year-old man, who had escaped from a halfway house in January, was charged in the August killing of a liquor store dispenser in a robbery.

In May, a 33-year-old man was charged with the kidnapping and rape of a 24-year-old Maryland woman 1 week after he walked away from his halfway house.

Despite my concerns, I recognize the link between drug abuse and crime. I support the need to treat drug-dependent, nonviolent offenders. For this reason, I am willing to work with this administration on this drug court program. Yet, we cannot afford the prospect that violent or repeat offenders will be placed back on the streets. Any federally sponsored drug courts program must expressly exclude the participation of violent offenders from the program.

The focus of the criminal justice system should be on keeping criminals—especially violent criminals—from the streets. If a program does not do this, indeed if it actually increases the chances that such criminals will stay on the streets, it should not be in the crime bill. Drug treatment programs, or so-called drug courts, should not be used to supplant incarceration for violent criminals who should be in prison.

If the drug courts proposal is limited to nonviolent drug offenders as intended, it meets this test.

Amendment No. 1137

On page 276, line 7, strike "28" and insert "25".

Amendment No. 1138

(Purpose: To add provisions relating to drug control and rural crime and law enforcement personnel)

On page 308, strike line 5 and all that follows through page 310, line 7, and insert the following:

Subtitle A—Drug Trafficking in Rural Areas

SEC. 1401. AUTHORIZATION FOR RURAL LAW ENFORCEMENT TASK FORCES.

(a) AUTHORIZATION OF APPROPRIATIONS—

Section 1001(a)(9) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking the following:

"There are there are appropriated to be carried out part O $50,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.

(b) AMENDMENT TO BASE ALLOCATION—

Section 1001(a)(2)(A) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking "$200,000,000" and inserting "$200,000,000".

SEC. 1402. RURAL CRIME AND DRUG ENFORCEMENT TASK FORCES.

(a) ESTABLISHMENT—Not later than 90 days after the date of enactment of this Act, the Attorney General, in consultation with the Governors, mayors, and chief executive officers of State and local law enforcement agencies, shall establish a Rural Crime and Drug Enforcement Task Force in each of the Federal judicial districts which encompass significant rural areas. Asset seized as a result of investigations initiated by a Rural Crime and Drug Enforcement Task Force shall be used primarily to enhance the operations of the task force and its participating State and local law enforcement agencies.

(b) TASK FORCES—The task forces established under subsection (a) shall be chaired by the United States Attorney for the respective Federal judicial district. The task forces shall include representatives from—

(1) State and local law enforcement agencies;
(2) the Drug Enforcement Administration;
(3) the Federal Bureau of Investigation;
(4) the Immigration and Naturalization Service;
(5) the Customs Service;
(6) the United States Marshals Service; and
(7) law enforcement officers from the United States Park Police, United States Forest Service and Bureau of Land Management.

The purpose of this Act is to provide Federal attention needs to be given to rural America. More Federal agents and other special efforts are needed to support State and local enforcement efforts in rural America. A Judiciary Committee staff report issued last Congress found that in 3 rural States, including Utah, violent crime increased at a faster rate than in New York City.

Rural America is suffering through a plague of violent crime which, in many respects, exceeds that of our larger cities. For example, in 1991, FBI figures show that violent crime rose 36 percent faster in rural counties than it did in America's eight largest cities. According to these FBI statistics, a person stands a better chance of being raped or the victim of theft in Utah than he or she does in the United States of America, Los Angeles, or New York City. Still, the police presence in these cities far exceeds Utah's. For example, the District has four times as many police officers per capita than Utah. Plainly, the alarming figures which demonstrate that rural America needs relief.
Utah has a growing problem of youth gangs, who are coming to Salt Lake City and other rural areas to conduct drug and crime activity with them. According to Salt Lake City officials, drive-by shootings are more common and national gangs like the Bloods and gangs, who are coming to affect on the individual who takes illegal drugs, drugs relate to crime in at least three ways: First, a drug user may commit crime because of drug-induced changes in physiological functions, cognitive ability, and mood; second, a drug user may commit crime in order to obtain money to buy drugs; and third, a violent crime may occur as part of the drug business or culture. See Goldstein, Drugs and Violent Crime, in “Pathways to Criminal Violence” 16, 24-36, N. Wolfs, M. Wolfson et al., 1988. Studies bear out these possibilities, and demonstrate a direct nexus between illegal drugs and crimes of violence. See generally id., at 16-18.

For example, 57 percent of a national sample of male arrestees arrested in 1989 for homicide tested positive for illegal drugs. National Institute of Justice, “1989 Drug Use Forecasting Annual Report” June 9, 1990. The comparable statistics for assault, robbery, and weapons arrests were 55, 73, and 63 percent, respectively. In New York City, in 1988, 90 percent of all male arrestees tested positive for drug use.

While I would think that most of us understand this link between crime and drugs, Mr. President, thus far, the Clinton administration, while talking about getting tough on crime, has been sending the signal that drug control is no longer a national priority. Mr. President, I think it should be.

When President Clinton was running for office he said, in recognition of the link between drugs and crime, that “we have seen too much of our government that requires a tough national response.” New York Times, March 26, quoting an earlier Clinton statement. This campaign rhetoric does not match the governing reality. Director Lee Brown, the President’s own drug czar, has recently conceded that drugs are no longer at the top of the agenda as an issue. Washington Post, July 8.

The administration has been retreating in the drug wars. In 1989, for example, the administration presented with great fanfare its so-called interim drug control strategy. Mr. President, it is a major disappointment, consisting largely of generalities and pitches for raising drug-related property and personnel costs, much like the National Service Plan. It is a placebo; a political document so general as to be unhelpful, and useful only to give the appearance of taking this issue as seriously as it should be.

Drugs and drug violence are problems that hit us all right at home. According to the Salt Lake Tribune, last year in my home State of Utah, where we have been subjected to increasing drug and gang presence, there were 6,673 drug-related arrests. One-fifth of those arrested for drugs last year were juveniles. Salt Lake Tribune, October 2. Our kids and our families are at risk, and we cannot afford not to invest the effort and resources necessary to win this war and end this scourge. And we must do it now.

A recent University of Michigan study demonstrates why. The study shows that the typical drug user among our Nation’s young people which began during the Reagan-Bush years, has virtually halted and that marijuana and LSD use are on the rise. The New York Times reported that Dr. Lloyd Johnson, who headed up the research team, concluded that the study indicates a more tolerant attitude toward drugs and the possibility of a steep increase in drug abuse. New York Times, July 16. This study demonstrates the risk we face if we do not attack immediately and with resolve.

Mr. President, drugs, crime, and violence are national problems facing urban and rural America. Unfortunately, the crime problems faced in rural America have been overlooked by Federal agencies in Washington. They have focused on the crime in more affluent urban areas. Yet, rural States problems need greater Federal attention. The number of Federal prosecutors and law enforcement agencies has been inadequate to handle the growing crime.

In addition, rural States have unique problems which make criminal investigations more difficult. For example, clandestine labs, especially methamphetamine, “ice” labs, present a big problem for rural authorities. According to DEA officials in Utah, a major center for these labs is Utah. In an 11-month period, DEA bust 15 such labs.

The Neighborhood Security Act of 1993, S. 1356, addresses the crime and drug problems faced by all of America—urban and rural—by assisting in the fight against drug traffickers and violent criminals. The bill does, however, provide a special focus on crime in rural areas. For example, the legislation:

- Amends current State and local law enforcement grants program to authorize an additional $250 million in grants for rural States over 6 years.
- Authorizes an additional $100 million over 5 years to hire additional DEA agents for drug investigations in rural and urban areas.
- Directs the Attorney General to establish task forces in every Federal judicial district that includes significant rural areas. Headed by the local U.S. attorneys, the task forces would include personnel from DEA, FBI, Customs, U.S. Park Police, U.S. marshals, and State and local law enforcement. These task forces would be required to coordinate activities to ensure that resources are used as effectively as possible.
- Permits the Attorney General to cross-designate up to 100 law enforcement officers from the U.S. Park Police, U.S. Forest Service, Bureau of Land Management, and other law enforcement agencies to enforce Federal drug and criminal law in rural areas. Also, the section requires the Attorney General to ensure that the task forces are adequately staffed with investigators.
- Establishes a specialized training program at the Federal Law Enforcement Training Center in Glynco, GA., to teach police officers and sheriffs from rural areas the most effective methods of conducting drug trafficking investigations.
- Requires that the assets forfeited by rural task forces be used to enhance the operations of the task force and participating State and local law enforcement agencies.
- Mr. President, the protection of citizens is the first duty of government. If there is a place where Federal expenditures is warranted, it is to fight national crime and violence. I urge my colleagues to support the Neighborhood Security Act to stop crime and violence in our cities and in our rural areas.

Mr. PRESSLER. Mr. President, we have seen significant progress made in the last couple of days toward giving the American people a truly significant, and no doubt historic, crime bill. When the scholars write the history of when this Nation turned the tide in stemming the violent crime wave undermining civilization in this Nation, they may well begin with the actions the Senate has taken in recent days.

Of particular importance to me is the rural crime amendment, cosponsored by Senators Hatch, Kempthorne, myself, and others, to the crime bill which addresses crime issues in rural areas. Too often when we look at fighting crime, the focus is on crime generated by conditions in urban areas. But rural areas are not immune from the ravages of crime. According to the 1992 Uniform Crime Reports, the number of persons arrested for certain crimes is increasing
at a faster rate in rural counties than in suburban and urban counties. For example, the number of persons arrested for robbery increased 14.5 percent in rural counties. Arrests for the same offense in metropolitan counties and cities declined during the same period. Aggravated assaults increased 7.2 percent, a rate higher than in either suburban counties or cities. Sex offenses in rural counties over the past year increased 19.5 percent, a nearly fourfold rate over cities and suburban counties. Arrests for drug abuse in rural counties increased 22.5 percent from 1992 to 1993. This was nearly twice the rate in suburban areas and nearly four times the rate as in cities.

The facts are clear: serious crime problems exist in rural areas, particularly in the area of drugs. That is why I strongly support this important rural crime amendment now contained in the crime bill.

Let me explain how this amendment will help law enforcement authorities in fighting crime in rural areas. First, it will allow for the establishment of rural crime and drug enforcement task forces in rural areas. These task forces, comprised of Federal, State, and local law enforcement authorities, will enable us to wage a coordinated and powerful attack against drug crime in rural areas.

Second, it ensures adequate staff assistance for these rural drug task forces. Creating a task force without the means to carry out its mission would be like hiring additional police without the means to fight crime. It would not be very effective.

Third, the rural crime amendment also provides that assets seized as a result of rural drug enforcement task force investigations will be used primarily to enhance the operation of these task forces. This will help these task forces to stay ahead of the criminals by turning their own resources against them.

Rural America needs to have these rural crime provisions in the crime bill before the end of the session. I am glad to join with my colleagues in cosponsoring this important amendment.

AMENDMENT NO. 119

(Purpose: To authorize the Attorney General to make grants for improved training and technical automation)

On page 219, between lines 7 and 8, insert the following:

Subtitle D—Improved Training and Technical Automation

SEC. 1021. IMPROVED TRAINING AND TECHNICAL AUTOMATION

(A) increase use of mobile digital terminals;
(B) improve communications systems;
(C) accelerate paper-flow reduction of unimportant case records;
(D) establish or improve ballistics identification programs;
(E) improve the application of automated fingerprint and biometric identification systems and their communications on an interstate and intrastate basis and
(F) improve computerized collection of criminal records.

(2) No fund under this subsection may be used to implement a cryptographic or digital telephone program.

(3) TRAINING AND INVESTIGATIVE ASSISTANCE

(A) expand and improve investigative and managerial training courses for State and local law enforcement agencies and
(B) develop and implement, on a pilot basis with no more than 10 participating cities, an intelligent information system that gathers, integrates, organizes, and analyzes information in active support of investigations by Federal, State, and local law enforcement agencies.

(4) IMPROVEMENT OF FACILITIES—The improvement described in subsection (a) shall include improvements of the training facilities of the Criminal Justice Training and Assistance Program at Quantico, Virginia.

(5) INTELLIGENT INFORMATION SYSTEM—The intelligent information system described in paragraph (1)(B) shall be developed and implemented by the Federal Bureau of Investigation and shall utilize the resources of the FBI National Academy.

(6) AUTHORIZATION OF APPROPRIATIONS.—There is appropriated to be appropriated for the fiscal year 1994:

(A) $100,000,000 to carry out subsection (a);
(B) $40,000,000 to carry out subsection (b)(1)(A); and
(C) $10,000,000 to carry out subsection (b)(2)(B).

QUANTICO LAW ENFORCEMENT ASSISTANCE AMENDMENT

Mr. HATCH. Mr. President, I rise to offer an amendment which will bolster our effort in the Nation's war against crime and drugs by providing the Department of Justice with needed resources to improve law enforcement efficiency and training. The amendment authorizes a $1.5 billion for grants to States for computerized automation and technical improvements; expansion of investigative and managerial training for State and local law enforcement; and improved intelligence sharing in the investigation of violent serial crimes.

With skyrocketing deficits and a creeping erosion in our Government's financial stability, Congress needs to decide what its funding priorities are going to be. I believe that crime control is of paramount importance and that more resources need to be dedicated to the investigation, prosecution, and incarceration of violent criminals.

While we must spend more, we must also do what we can to improve the efficiency of existing law enforcement agencies and personnel. Inherent in this effort is providing local law enforcement with funds to improve communications systems, reduce paper flow, and encourage other technological improvements. I agree with my colleagues that we need to get more police officers on the street, but we must also make sure that they are adequately trained and that their respective departments benefit from the improved services and information sharing we all take for granted.

My amendment furthers these interests. First, it provides grants to State and local law enforcement to make technological improvements. The District of Columbia's Metropolitan Police Department still uses rotary dial phones. They are not adequately computerized. The same holds true for police departments all across the country. In an effort to help bring law enforcement into the information age, I worked with D.C. Police Chief Henry Thomas to craft a grant program which will provide law enforcement with the resources it needs to do its job better.

This grant program provides $100 million for programs to improve law enforcement efficiency through technological improvements. Funds can be used to purchase mobile digital terminals, improve ballistics identification, reduce paper flow, and more.

My amendment also recognizes the need to continue the FBI's valuable role in training our Nation's law enforcement agencies. The amendment provides an additional $40 million to the FBI Academy at Quantico to improve its delivery of training and technical assistance to Federal, State, and local law enforcement. Over 26,000 State and local law enforcement officers, including several officers from Utah, have graduated from the National Academy. Last year alone, over 1,040 State and local law enforcement officials graduated from the National Academy. These men and women returned to their respective agencies and enhanced the law enforcement capabilities of the investigative and operational techniques of law enforcement. The academy also provides, at regional locations, specialized and technical training to approxi-
Finally, my amendment provides $10 million to the Department of Justice to develop and implement an artificial intelligence system to help Federal, State, and Local law enforcement behavioral sciences. Their expertise is profiling and assisting the States in their investigation of serial crimes is unmatched.

Mr. President, I am very proud to announce the passage of the Criminal Street Gangs Offenses Act of 1993.

Mr. BIDEN. I move to lay that motion on the table. The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, the amendment is as follows:

On page 114, strike line 11 and all that follows through page 126, line 13, and insert the following:

TITLE VI—GANGS, JUVENILES, DRUGS, AND PROSECUTORS

SEC. 601. SHORT TITLE.
This title may be cited as the “Anti-Gang and Youth Protection Act of 1993”.

SEC. 611. CRIMINAL STREET GANGS OFFENSES.
(a) OFFENSE.—Title 18, United States Code, is amended by inserting after chapter 93 the following new chapter:

CHAPTER 94—PROHIBITED PARTICIPATION IN CRIMINAL STREET GANGS AND GANG CRIME

Sec. 1930. Crimes in furtherance of gang.
1931. Prohibited activity.
1932. Penalties.
1933. Investigative authority.

Sec. 1930. Crimes in furtherance of gang. (a) FINDINGS.—The Congress makes the following findings:

(1) Criminal street gangs have become increasingly prevalent and entrenched in our society in the last several decades. In many areas of the country, these gangs exert considerable control over other members of their community, particularly through the...
use of violence and drugs. Criminal street gangs have also become more national in scope, extending their influence beyond the urban areas in which they originated.

The activities of criminal street gangs can cause significant disruption to local communities and pose a challenge to law enforcement, even when their particular activities, viewed in isolation, appear to be purely intrastate.

"(b) BASIS FOR CHAPTER.—On the basis of the findings stated in subsection (a), the Congress determines that the provisions of this chapter are necessary and proper for the purpose of carrying into effect the powers of Congress to regulate commerce and to establish criminal law.

§ 1951. Prohibited activity

(a) DEFINITIONS.—In this chapter—

"criminal street gang" means an organisation or group of 5 or more persons, whether formal or informal, who act in concert, or agree to act in concert, for a period in excess of 30 days (whether or not continuous) with the intent to promote or further the activities of a criminal street gang or for the purpose of gaining entrance to or maintaining or increasing position in such a gang; or

"participate in a criminal street gang" means to act in concert with a criminal street gang with intent to commit, or with the intent that any other person associated with the criminal street gang will commit, 1 or more predicate gang crimes.

"predicate gang crime" means—

(B) attempting to participate, or attempt to participate, in a criminal street gang, or conspire to do so;

(C) command, counsel, persuade, induce, entice, or coerce any individual to participate in a criminal street gang;

"(4) to employ, use, command, counsel, persuade, induce, entice, or coerce any individual to commit, cause to commit, or facilitate the commission of, a predicate gang crime or the activities of a criminal street gang or for the purpose of gaining entrance to or maintaining or increasing position in such a gang; or

"(f) to operate, base, maintain, or contribute to, or to aid in the operation, maintenance, or contribution to, a criminal street gang facility, as defined in section 403(b) of the Controlled Substances Act (21 U.S.C. 843(b)), in causing another to commit, or to attempt to commit, or to facilitate the commission, of a predicate gang crime with intent to promote or further the activities of a criminal street gang or for the purpose of gaining entrance to or maintaining or increasing position in such a gang. Each separate use of a communication facility shall be a separate offense under this subsection.

§ 1953. Penalties

(a) Penalties of up to 20 years or life imprisonment.—A person who violates section 1951(b) (1) or (2) shall be punished by imprisonment for not more than 20 years, or by imprisonment for any term of years or for life if the violation is based on a predicate gang crime for which the maximum penalty is life imprisonment.

(b) Penalties between 5 and 10 years.—A person who violates section 1931(b) (3) or (4) shall be sentenced to imprisonment for not less than 5 nor more than 10 years, and if a person who was the subject of the act was less than 18 years of age, to imprisonment for not less than 10 years and may be for any term of years exceeding 15 years or for life.

(c) Penalties of up to 5 years.—A person who violates section 1931(b)(5) shall be punished by imprisonment for not more than 5 years.

(d) ADDITIONAL PENALTIES.—

(1) DEFINITIONS.—In addition to the other penalties, in this section—

(A) a person who violates section 1931(b)(1) or (2), 1 of whose predicate gang crimes involves murder or conspiracy to murder, and who commits, or consents, under this subsection shall run consecutively to any other term of imprisonment, including that imposed for any other violation of this chapter.

(B) a person who violates section 1931(b)(1) or (2), 1 of whose predicate gang crimes involves attempted murder or conspiracy to commit murder, shall be punished by death or by imprisonment for life.

(e) PERFORATURE.—

(1) IN GENERAL.—A person who violates section 1931(b) (1) or (2) shall, in addition to any other penalty and irrespective of any other violation of this title, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(b) UNLAWFUL ACTS.—It shall be unlawful for

(1) to commit, or to attempt to commit, a predicate gang crime with intent to promote or further the activities of a criminal street gang or for the purpose of gaining entrance to or maintaining or increasing position in such a gang;

(2) to employ, use, command, counsel, persuade, induce, entice, or coerce any individual to participate in a criminal street gang, or conspire to do so;

(3) to employ, use, command, counsel, persuade, induce, entice, or coerce any individual to participate in a criminal street gang;

(4) to employ, use, command, counsel, persuade, induce, entice, or coerce any individual to participate in a criminal street gang;
952(a), 953, 955, 959, 960(b)(1), (2), (3), or (963);” and
(B) by striking “922(p)” and inserting “922(p)”,
(2) in the fourth undesignated paragraph—
(A) by striking “an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959),” and inserting “an act described in clause (1) or (3) of the Controlled Substances Act (21 U.S.C. 841, 844, or 846), section 1002(a), 1005, 1009, 1010(b)(1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959, 960(b)(1), (2), or (3), or 963), or section 921(b), (g), or (h) of this title;” and
(B) by striking “subsection (b)(1)(A), (C), or (D), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), (3),” and inserting “an act described in (1) or (3) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A). (B), or (C), or (D), or (e), 944, or 846) or section 1002(a), 1003, 1009, 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), or (3), or 963);” and
(3) in the fifth undesignated paragraph by adding after the following: “In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such a factor, if found to exist, shall weigh heavily in favor of a transfer to adult status, but the absence of this factor shall not be determinative.”
SEC. 415. INCREASED PENALTIES FOR EMPLOYING CHILDREN TO DISTRICT DANGEROUS NEAR SCHOOLS AND PLAY-GROUNDS.
Section 419 of the Controlled Substances Act (21 U.S.C. 860) is amended—
(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and
(2) by inserting after subsection (b) the following new subsection:
“(c) Notwithstanding any other law, any person at least 18 years of age who knowingly and intentionally—
“(1) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to violate this section; or
“(2) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to assist in avoiding detection or apprehension for any offense under this section by any Federal, State, or local law enforcement officer, is punishable by a term of imprisonment, a fine, or both, up to triple those authorized by section 401.
SEC. 416. INCREASED PENALTIES FOR DRUG TRAFFICKING NEAR PUBLIC HOUSING.
Section 19 of the Controlled Substances Act (21 U.S.C. 840) is amended—
(1) in subsection (a) by striking “play-ground, or within” and inserting “play-ground, or housing facility owned by a public housing authority, or within”;
(2) in subsection (b) by striking “play-ground, or housing facility owned by a public housing authority, or within”;
SEC. 417. INCREASED PENALTIES FOR TRAVEL ACT CRIMES INVOLVING VIOLENCE AND CONSPIRACY TO COMMIT CON‑ rACT VIOLENCE.
SEC. 5038 of title 18, United States Code, is amended by striking “Section” and inserting “Section” and
(2) the following:
“(1) by striking subsections (d) and (e) and by adding at the end new subsection (f) as follows:
“(e) Whenever a juvenile has been found guilty of committing an act which if committed by an adult would be an offense described in clause (3) of the first paragraph of section 5032 of this title, the juvenile shall be fingerprinted and photographed, and the fingerprints and photograph shall be sent to the Federal Bureau of Investigation, Identification Division. The court shall also transmit to the Federal Bureau of Investigation, Identification Division, the information concerning the adjudication, court, offenses, and sentence, along with the notation that the matter was a juvenile adjudication. The fingerprints, photograph, other records and information relating to a juvenile described in this subsection, or to a juvenile who is prosecuted as an adult, shall be made available in the manner applicable to adult defendants.
“(f) In addition to any other authority under this section for the reporting, retention, disclosure, or availability of records or information, if the law of the State in which the Federal juvenile delinquency proceeding takes place permits or requires the reporting, retention, disclosure, or availability of records or information relating to a juvenile or to a juvenile delinquency proceeding in any circumstance, then such reporting, retention, disclosure, or availability is permitted under this subsection.
“(g) Section 3607 of title 18, United States Code, is repealed, and the corresponding item in the chapter analysis for chapter 225 of title 18 is deleted.
“(h) Section 3601 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751) is amended—
(1) in paragraph (20) by striking “and” at the end;
(2) in paragraph (21) by striking the period and inserting “,”.
(3) by inserting after paragraph (21) the following new paragraph:
“Subtitle C—Anti-gang Provisions
SEC. 623. CONINUATION OF FEDERAL STATE FUNDING FORMULA.
SEC. 624. GRANTS FOR MULTIJURISDICTIONAL DRUG TASK FORCES.
Section 504(f) of title I of the Omnibus Crime and Safe Streets Act of 1998 (42 U.S.C. 3744(f)) is amended by inserting “and” and
(3) by inserting before the last period the following:
“Subpart II—Juvemile Drug Trafficking and Gang Prevention Grants
“FORMULA GRANTS
“SEC. 231. (a) AUTHORIZATION.—The Administrator may make grants to States, units of general local government, private, not-for-profit anticrime organizations, or combinations thereof, to assist them in planning, establishing, operating, coordinating, and evaluating projects, directly or through grants and contracts with public and private agencies, for the development of more effective programs including prevention and enforcement programs to reduce—
“(1) the formation or continuation of juvenile gangs; and
“(2) the use and sale of illegal drugs by juvenile.
shall submit an application to the Administrator in such form and containing such information as the Administrator shall prescribe.

(b) REGULATIONS.—To the extent practicable, the Administrator shall prescribe regulations governing applications for this subpart that are substantially similar to the regulations governing applications required under section 231 of title II of that Act in part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5967 et seq.), which is repealed, and part E of title II of that Act in redesignated as part D.

(c) AUTHORIZATION OF APPROPRIATIONS.—

SEC. 232. CONFORMING REPEALER AND AMENDMENT.

(a) REPEAL OF PART D.—Part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5967 et seq.) is repealed, and part E of title II of that Act is redesignated as part D.

(b) AUTHORIZATION OF APPROPRIATIONS.—

The amendment defines predicate gang crime as any act, or attempted act, which is chargeable under Federal or State laws and punishable by imprisonment for more than 1 year, involving murder, attempted murder, kidnapping, robbery, obstruction of justice, and illegal drug activity. In other words, very serious crimes.

The amendment also makes it a Federal crime to participate in, or to conspire to participate in, a criminal street gang, and to induce others to join the gang.

In April we adopted minimum penalties last week at the suggestion of the distinguished Senator from California [Mrs. Boxer] when it came to admission of prior offenses in sexual misconduct. So too the mandatory minimum penalties would apply to those who violate these provisions of the new Federal antigang statute.

The amendment authorizes $100 million over 5 years to hire additional assistant U.S. attorneys to prosecute gang activity and directs the Attorney General to develop a national strategy aimed at coordinating Federal gang-related investigations.

It is one thing to make the criminal laws tougher, but it is equally important to give our Federal prosecutors the resources to ensure that these laws are enforced.

In addition, the amendment establishes crimes involving the use of minors as predicate crimes under the RICO statute. And it creates a prosecution in favor of the Attorney General to the leaders of juvenile gangs or juveniles with a history of violent crime or drug activity.

On the prevention side, the amendment establishes a $100 million grant program under the Juvenile Justice and Delinquency Prevention Act. Monies under the grant program would be made available to States and to private, not-for-profit organizations who work with juveniles and gang members.

The purpose of the grants is not to codify gang members, but to help them get on the right path through mentoring, role-modeling, and other valuable programs.

In fact, the distinguished Senator from New Mexico, Senator DOMENICI, discussed this theme earlier. I hope he or his staff is listening because I think he has particular interest in this particular provision.

I know that my distinguished colleague from Delaware establishes a similar prevention program in his bill, and I commend him for that.
Mr. President, this amendment will not stop gang activity overnight, but it is a significant step in the right direction.

There is no excuse, no reason, that can justify the vicious crimes of violence that gang members commit on无辜 bystanders. More often than not, it is the innocent bystander, and not the gang member himself, who ends up getting caught in the crossfire.

If we want to get tough with gangs and with criminal gang activity, then we ought to support this amendment.

We have had a lot of good amendments adopted. I think we are headed for a good crime bill. Let us not weaken now. Let us not back off. Let us support the crime bill which will include this particular amendment.

I thank the Chair and I yield to my colleague.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I want to thank the minority leader for his work on this amendment.

I urge my colleagues to support this amendment on gangs. Our Nation is currently witnessing an unprecedented growth in gang violence, a scourge all too well known to cities like Las Angeles and New York City. What used to be a problem of our Nation's largest cities, gangs have invaded the very States and cities in Wichita, KS, and Salt Lake City, in my own home State.

The problem of gang and youth violence is a great concern to the citizens of the United States, and New York, and other surrounding cities all contribute manpower to this effort. The Hatch-Dole amendment ensures that the President, through the very project. In July, the Senate passed legislation similar to this aspect of the Hatch-Dole amendment. Funding for multijurisdictional gang task forces must be passed so that our struggling cities are provided the funds necessary to combat gang and youth violence.

The Hatch-Dole, or Dole-Hatch, gang amendment also incorporates many other aspects of the Dole-Hatch crime bill. It includes a provision providing for the powerful arm of the Federal Government to be made available to State and local law enforcement agencies to help combat gang violence.

The amendment seeks to end Federal offenses that engage in gang-related crimes and subjects gang members to stiff mandatory minimum penalties. For example, gang members who recruit others into criminal gangs or engage in criminal conduct shall be subject to a mandatory minimum penalty of 5 years imprisonment. If a gang offense involved attempted murder, the perpetrator faces a mandatory minimum sentence of 20 years imprisonment, and if there is murder, the gang member faces a possible death sentence.

As well, our amendment makes it a RICO predicate; that is, the Racketeer-Influence and Corrupt Organizations predicate, punishable with up to 20 years imprisonment to involve juveniles in criminal activities. That is, criminal gang leaders who use juveniles in criminal enterprises for financial gain will be subject to the same penalties as organized crime leaders. That is important. It is tough. It is going to mean something, and it is going to make people think twice before they involve our teenagers in these activities.

Our amendment also provides for additional prosecution of serious juvenile offenders, increased penalties for employing children to distribute drugs near schools or playgrounds or public housing and for travel act crimes involving violence and conspiracy to commit contractual killings.

As well, our amendment provides $50 million for additional Federal prosecutors who will be assigned to fight gang violence. These additional prosecutors will make implementation of this gang measure a reality by ensuring that additional prosecutors will be assigned to cities where most needed.

Finally, the Hatch-Dole amendment establishes a $100 million grant program for efforts at the State and local level, and by private not-for-profit anticrime organizations to assist in prevention and enforcement programs aimed at fighting juvenile gangs.

Funding formulated under this provision will be allocated to each State as follows: Each State would receive a minimum of $500,000, or 1 percent, whichever is greater, and the balance would be distributed to each State based on a ratio of the population of juvenile offenders in each State, as compared to the population of juveniles residing in the country.

Mr. President, while the Democratic bill appears to address gang violence, their street gangs provision is too narrow and lacks practical use for prosecutors. In fact, in order for a gang offender to be prosecuted under their proposal, he or she must have committed a Federal crime and have a prior felony criminal conviction for drug trafficking or crime of violence.

Further, the Democratic bill fails to provide mandatory minimum penalties for serious gang related crimes. Instead, their bill simply enhances the maximum penalty. The positive aspect of the Democrats' gang title, which our amendment leaves intact, is a proposal to allow the States to use existing law enforcement grants to implement binding over systems for the prosecution of violent juveniles in adult courts. I commend my colleague from Delaware for this proposal.

Essentially, those who oppose the Hatch-Dole amendment will argue that this amendment unnecessarily federalizes matters that are better left to the States, yet I can think of no area where there is a greater Federal interest than in assisting the States to prosecute and incarcerate violent offenders.

The first responsibility of government is to ensure the safety of the public. It is true that State and local governments now handle over 95 percent of the criminal cases filed each year. The crime bill we are debating recognizes this fact by proposing a significant increase in financial assistance to States to hire additional police, build more prisons and jail facilities, and keep our communities safer. I submit, however, that the Federal Government's role in assisting the States' fight against violent crime must be measured by more than financial support.

The Federal Government, as a result of the Controlled Substance Act, has jurisdiction over virtually all drug trafficking, manufacturing, and distribution offenses. Yet, most drug cases are still prosecuted at the State and local level. This is because the Federal law enforcement agencies have worked in a cooperative manner with local officials so that the U.S. resources can be used most effectively. I urge a system of statewide or local prosecutor who opposes the Federal Government's assistance in these cases.

The Hatch-Dole antigang amendment does not transfer the exclusive jurisdiction of gang offenses from the States to
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the Federal Government. Rather, it permits the Federal Government to assist the States in their ongoing effort to fight gang violence. This amendment does not relieve the States of any responsibility for prosecuting gangs or other violent crime. It simply permits Federal assistance.

Some of my colleagues have little or no trouble proposing that we federalize the delivery and payment of health care services, labor/management relations, teacher standards, energy policy, environmental standards, child support collection, reproductive rights, and other issues too numerous to list. Yet, when the issue before the Congress is the safety of law-abiding Americans, oftentimes the enthusiasm for Federal intervention dissipates. While regrettable, their position is understandable. After all, if Federal resources must be devoted to fighting crime, there may be less resources available to address their particular interests. In my view, however, Congress should not get into these additional areas until our principal obligation to the American people has been met.

The Senator from Delaware and I differ somewhat on this amendment, but he is not opposed to federalizing all criminal matters. Last week, the Senate adopted an amendment to this bill authored by our chairman which federalizes crimes motivated by gender. I am a cosponsor of this measure and worked with our distinguished friend, Senator BIDEN, to pass it.

I appreciate the fact that Federal judges are opposed to the increasing trend toward federalization of crimes. Yet, claims that criminal cases are taking up a disproportionate amount of Federal filings are not supported by the facts. According to the Administrative Office of the U.S. Courts, the criminal caseload per judge is nearly 50 percent below that of 1972. The number of criminal cases reached a 60-year peak in 1972, and despite all of the cries from the defense bar, the number of criminal cases filed in 1992 was actually 14 percent below the 1972 figure. There were less criminal cases in Federal courts in 1992 than there were in 1972, even though the number of authorized judges is now 22 percent higher than in 1972.

Mr. President, the choice is clear. If my colleagues truly want to provide the States the assistance they need in fighting gang violence, both financial support and jurisdictional support, then they should support this amendment, and I hope they will.

I yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. We have an interesting and somewhat fascinating trend going on here in Senate. The more conservative you are and the more Republican you are, the more you want to elimi-

nate federalism and States rights. It is a phenomenal and fascinating underlying theme we have been engaged in here.

One of the two things we have always said should be left to State and local governments in terms of directing how they should act in terms of education and law enforcement. We have gone out of our way for over 200 years to prevent the establishment of a Federal police force, and we have spent a great deal of time making sure that we do not federalize all criminal laws.

Let us talk about what is in the Biden crime bill already and why I believe this is not needed.

Under the youth violence provisions of the Biden crime bill to which this amendment is being added, there are increased penalties for drug dealing in drug-free zones near playgrounds, school yards, and youth centers; increased penalties for drug dealing in public housing facilities; increased penalties for adults who use kids to deal drugs near schools and playgrounds; a new 10-year penalty for gang members who commit Federal drug offenses or crimes of violence and who have been convicted before; increased penalties for the Travel Act violations, crossing State lines, that is, to commit violent crimes in furtherance of drug trafficking; grants for State bindover programs to prosecute and sentence violent 16- and 17-year-olds as adults; and a $15 million grant for antigang and antidrug law enforcement efforts.

With regard to prevention in this area, there is a $15 million grant for antigang and drug trafficking prevention programs made available to the States, and $100 million for the safe schools program to fund anticrime, antidrug, and safety measures such as metal detectors in schools.

Now, let us take a look at the proposed Dole amendment in contrast to what I have mentioned. It is, in my view, common sense. Senator HATCH and DOLE propose for sweeping federalization of crimes that are more properly handled by the States. The Republican bill provides for Federal prosecution and penalties for State crimes—State crimes, not Federal crimes, State crimes—committed as part of gang activities, ranging from violent crimes to possession of drugs to property damage.

This amendment before us would federalize hundreds of thousands of street crimes, obviously charging Federal law enforcement agents with enforcing these street crimes. On first look, it sounds very good, but let us remember it is State and local law enforcement officers who are experts in this type of street crime, not Federal agents. The skills and resources of Federal officers are best devoted to conducting major drug investigations, and the task force is suited to these skills and expertise that involve costly Federal agents to be involved.

What is more, it is also clear that State and local law enforcement agents are the experts when it comes to busting street gangs, street thugs, and street punks. That is why this bill tar­
skews significant aid to local po­
lice.

Let us understand what we are doing. What we are doing is providing in this bill almost $9 billion—$9 billion—to provide 100,000 local police officers—100,000 over the next 5 years—who will be out on the street, on the pavement, walking around dealing with local crime—a big, big, big deal. Now, to come along after we have done that and federalize all of those local crimes, insisting that we have Federal agents doing that, bringing these cases into Federal court, prosecuted by Federal law enforcement agencies basically says one of two things: Either we think that local law enforcement is not competent to handle it, even when we contribute $9 billion additional to help them help themselves, or we have concluded that they are unwilling to pro­

secute these crimes and go after these individuals, for why else do we federalize these measures?

Think about it. For 200 years we have not federalized unless there has been a Federal nexus like in the drug cases. The reason why we have had Federal intervention in local drug cases is because drugs are fungible and porous. They pour across State borders. No single local law enforcement agency can break up a major drug cartel.

If a gang is engaged in major drug trafficking, they would fall under that purview. But if a gang involving local thugs is involved in the normal business—and it is bizarre to say normal business—the normal business of being involved in burglarizing and robbing and terrorizing communities—what are local police for? What do we have them for? Why are we passing a $9 billion bill? Why do we not spend the $9 billion, give it to the FBI and the DEA, which could use it anyway, provide Federal agents on the street in these local communities, and make them Federal criminals?

But we are doing both here. We are coming along with a total of a $21 billion bill, over $21 billion, almost all of which is in indirect aid to the States, $9 billion of which is just for police of­

ficers. On top of that, we are going to federalize these crimes.

Why would you have a burglary com­

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ited by a gang member, or a robbery attempted by a gang member, why is that a Federal crime, and yet a robbery committed by the same person not a member of the gang is a local crime? What is the rationale here? I know we do not often need a rationale to act in this body, but it seems to me there should be some nexus.

$9 billion for Federal agents doing what they do best. Ninety-five percent
of all crimes are investigated and prosecuted at the State level, and this amendment seeks to drastically change that. It seeks to federalize murder or attempted murder, assault, kidnapping, attempted murder, robbery, attempted murder, extortion, attempted arson, obstruction of justice, and attempted obstruction of justice, tampering with a witness, manufacturing, importing, or receiving, purchasing, selling, or dealing in drugs. These are all very serious crimes. I might add. They should be punished. They should be punished at the State level. This amendment is also very troublesome for another reason. In an effort to appear tough, the amendment would impose new mandatory penalties which, in many circumstances, will fit neither the crime nor the criminal. For instance, under the Republican bill, someone who acts as a lookout with a gun, who just ducked down in the corner could get up to 20 years in prison, twice as long as the sentence we would give an adult who sells $100,000 worth of cocaine.

Under Federal law, an adult who sells $100,000 worth of cocaine would get half the amount of time as the kid who is a lookout for a gang while someone else is buying drugs. The Republican bill will provide a mandatory 10-year sentence for a gang member who recruits someone else into a gang. We do not have mandatory 10-year sentences for the people in the Federal system who do a whole lot worse than that, or at the State level. A mandatory 10-year sentence to a kid who steals a transistor radio one day and breaks into a car the next day in trying to gain admission into a gang. They get 10 years, but an adult who sells $25,000 dollars worth of heroin will get 6 years.

A gang initiation where they say steal that radio, and then the next day steal that car, all things which should be prosecuted at a State level, I might add, under this bill are federalized and a mandatory 10-year sentence. The same drug dealer down the street can sell 25,000 dollars' worth of heroin, and get 6 years in jail.

I do not mean to suggest for a moment these are not serious offenses, because they are. And they should be punished. But punishment should fit the crime, and punishment should fit the criminal.

I favor much tougher treatment, and my bill, the Biden bill to which this is being attached, provides much tougher treatment. But punishment must still be appropriately calibrated. It seems to me.

There are some kids I fear who are beyond help, and that is one of the reasons why I have come to believe that there are certain juveniles, certain violent juveniles, who should be prosecuted as adults.

So my bill provides that grants could be made to States to bind over programs that certain violent 16- and 17-year-olds as adults. In other words, we give the States money to hold over these violent juveniles, 16- and 17-year-olds, and try them in adult courts.

It is also why my bill contains a stiff new penalty for gang members who commit a second violent crime or serious drug crime. It is also why the Biden bill contains stiff new penalties for crossing State lines to commit violent crimes in furtherance of drug trafficking. But my penalties, unlike those of the Dole amendment, better comport with the reality and with federalism. They apply to Federal crimes. And they apply to violent crimes and serious drug crimes. These are the kids who we really need to go after with the stiff penalties, the serious repeat offenders. We have to focus our attention on a small percentage of the kids who are committing a great majority of the crimes at a Federal level. At the local level they should focus on all of it.

I understand the frustration, fear, and the outrage that is felt across our land with regard to juvenile violence. I share it.

But that does not mean that we should federalize tens of thousands of State crimes that should be left in the hands of the States to prosecute. This is one area where the police, the local police, do a pretty good job. I might add we are giving them $9 billion—$9 billion for 100,000 local police officers to help do this job. I am willing to yield the time if my Republican colleagues are. If not, I reserve the remainder of my time.

Mr. President, parliamentary inquiry: The unanimous-consent agreement under which we are operating indicated there are no second-degree amendments. Is that correct?

The PRESIDING OFFICER (Mr. MATSUZAWA). That has not been part of the agreement. Mr. BIDEN. I would so request. I make that unanimous-consent request. The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I would also suggest, and I am going to seek some advice here from floor staff, that when we yield back the time that the vote on this amendment be ordered to occur at 2:30. Mr. President, I suggest the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll. Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded. The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BIDEN. Mr. President, I ask unanimous consent that the vote on the Dole amendment occur immediately following the disposition of the cloture vote which has been ordered tomorrow afternoon.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I see my friend from Connecticut on the floor. I know he is kind enough to stay this late hour. I truly appreciate it. I understand he has an amendment on carjacking. Do we have a three-agreement on this amendment? How much time would the Senator wish?

Mr. LIEBERMAN. Mr. President, 30 minutes will be more than enough, equally divided. Perhaps we will not have to use that amount of time.

Mr. BIDEN. Mr. President, I ask unanimous consent that 30 minutes be on this amendment and divided in the usual form with no second-degree amendments in order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 1141

Purpose: To make carjacking a Federal offense without regard to whether the offense is committed with the use of a firearm and to authorize imposition of the death penalty if death results from commission of the offense.

Mr. LIEBERMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Connecticut [Mr. LIEBERMAN] proposes an amendment numbered 1141.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 53, line 18, strike the period after "death," and insert ";" and by striking ";" postscripting a firearm as defined in section 922 of this title;

Mr. LIEBERMAN. Mr. President, as has been said by Members of the Senate of both parties, this has been an extraordinary period of days here in the United States Senate, because I really do believe that we have shown not just by our rhetoric, but by our actions, by the amendments we have adopted, that we hear the voice of the people of this country crying out for protection, crying out for public safety, crying out for help against those individuals who are committing this madness on our streets and in our neighborhoods, the outrageous and unacceptable amount of crime which strikes at the fundamental purpose for which governments are formed: Order.

So I am very proud to have been part of these discussions and to see this bill getting better and better.

This amendment that I have proposed deals with a particular part of
the horrific increase in crime into areas where crimes had not previously occurred, and that is in the particular case of carjacking. I believe, if adopted, this amendment will further strengthen the law.

In May of this year, I introduced legislation to provide prosecutors with the option of seeking the death penalty in carjackings where death results. I was prompted by the defense of the murderer of the Basu case included in his bill a provision to allow the imposition of the death penalty in carjackings in which a firearm is used and results in the death of an innocent person. But, Mr. President, the brutal and horrid character of carjackings occurring throughout the country, including in my own State of Connecticut, has convinced me that the current provisions of the bill should be extended. The law must be broadened to include all carjackings that result in death, not simply armed carjackings.

So the amendment I am offering would extend the death penalty to carjackings caused by firearms. If death results from a carjacking, the death penalty may be applied, regardless of whether a firearm was used in the course of that carjacking.

Mr. President, we were all sickened and infuriated by the Basu case, the carjacking here in suburban Maryland a year or so ago in which a young mother, in really a nightmare come true, was dragged to her death as she tried to pull her child from her car. And the mother, as the car pulled away, doing what any of us would do, terrified about what would happen to her child, grabbed her car and is literally dragged to her death. It was the collective horror over that case that prompted Congress to federalize carjacking and provide stiff penalties for the crime.

But, even though, the law we passed last year could not have been used to prosecute the crime that engendered the law—the Basu case—even if it had occurred after the law’s enactment, because in that case a gun was not used in taking the car. These individuals simply overwhelmed and strong-armed the woman and drove off with her car.

So the amendment I am introducing today removes the requirement that a firearm be used before the Federal law may be invoked. It also provides that if a death occurs as a result of the carjacking, the death penalty may be imposed. It seems to me that that was the purpose of the law in the first place. If a carjacking occurs and a death occurs as a result of that, does it really matter whether a firearm was used, whether a knife was used, whether physical force was used, or whether a mother, as in the Basu case, was dragged to her death because she wanted to make every effort to save the life of her child?

Mr. President, it is a measure of the outrageous levels to which we have sunk that we have to think of amendments like this. It is really absurd that law-abiding people in our country now have to fear not only walking the streets at night, but also driving on our streets and our highways. Today, people are afraid to do what used to be the most ordinary, safe activity—while driving. People are afraid to drive at a light today with their doors unlocked, to leave their windows open in their car on a warm day, or to stop at a rest stop along an interstate highway.

As we know—because we have heard of these cases, we have seen the terror enacted, we have seen the victims suffer—these fears are not irrational; they are based on violent crimes, carjacking crimes, that have actually occurred.

In Waterbury, CT, a man with a utility knife forced his way into a car stopped at a light and drove off after terrorizing the driver. Along Interstate 95 in Connecticut—and these are all in my home State—carjackers have struck at rest stops. In one case, a man with a knife crept up behind a woman as she opened her car door, forced his way behind the wheel and drove off, only releasing that poor woman after an hour of terror. In another case, a couple stopped at a rest stop to catch some sleep before driving further north to Massachusetts. The carjackers smashed their car windows. The carjackers grabbed the female passenger, struck her in the face with a revolver, ordered the couple out of the car, and drove off. This is barbaric, outrageous behavior that no civilized society can accept.

Mr. President, we need to send a louder and clearer message. This new violent crime of carjacking will not be tolerated. Criminals must learn that when they choose to expand their violence to carjacking, the law enforcement resources of the Federal Government will be brought to bear against them, regardless of whether or not they have used a gun. They must understand that if a carjacking causes someone’s death, they will face death themselves.

Mr. President, here, too, as we have in so many other sections of this bill that seems to grow stronger every day in the Senate, we have to galvanize Federal and State resources before carjacking becomes just another in an array of crimes that too many of us simply accept and adjust to. We must not and cannot accept these lawless acts.

Like all crimes, carjacking terrorizes not only the victims who are forced to stay on guard, change their normal patterns of life, or otherwise alter their behavior to avoid becoming a victim.

Mr. President, since armed carjacking became a Federal crime last October, the U.S. attorneys have brought over 90 prosecutions of carjackers. Some carjackers have been brought to justice and are sitting in jail where they belong. Many more prosecutions are anticipated.

It is clear that when we adopted the law we adopted last year, it was not theory. It was reality, and that reality has now been used by Federal prosecutors.

This amendment will broaden and strengthen that law so our U.S. attorneys have every possible tool available to them to attack the problem. Criminals must learn that our response to new crimes will be swift and will be decisive and that society will not tolerate this lawless behavior.

Mr. President, I invite my colleagues to join me in support of this amendment.

I yield the floor.

THE PRESIDENT. The President.

Mr. BIDEN. Mr. President, I thank my colleague from Connecticut for again staying here at this hour to offer an amendment. What I am about to say may cause him some difficulty. I have found him to be most cooperative. Whenever I have asked him to go out of his way to accommodate what sometimes was a confusing schedule of this body, at least when I have been managing a bill, he has always done it. I truly appreciate it.

Mr. President, I hope that State prosecutors, State attorneys general, State district attorneys, State Governors, State legislators, State senators, and the people of this country are listening to the debate.

The truth of the matter is everyone of the things we have talked about, almost without exception, which call for federalizing what heretofore has been a State offense are occurring because States are not doing their job. No one in here wants to admit that. No one in here wants to say the States are not doing the job. To say that gets you in trouble with your Governor, your local officials, and the like.

As chairmain of the Judiciary Committee, I get letters from all over the country asking why cannot the Federal Government do something about this, whatever "this" is. I also get the same letters with the following sentences: "The Federal Government should stay out of our business; the Federal Government should take care of matters that relate to Federal problems. But,}
by the way, shouldn't there be a law against this?"

So what we are responding to—and I am not in any way belittling the point the Senator from Connecticut has made—is that the response is the lack of commitment, the lack of efficiency, the lack of commitment, the lack of resolve, the lack of success that States have had in this matter. Yet I am confident when this is all over the Congress will be blamed for whatever it is that does not happen out there.

So I just want everybody to understand what we are doing here. In the past, the way we have dealt with crime is we have dealt with crime at a Federal level when it has been a Federal problem. My friend from Connecticut—and I am not being solicitous—is truly a first-class lawyer and was a first-rate prosecutor, a graduate of Yale Law School, a man who is esteemed in the law and knows the law. The fact of the matter is we have heretofore basically operated on the basic principle of federalism, and there has to be constitutional separation between the States and the Federal Government in order for the Federal Government to take jurisdiction.

Mark my words, as problems in school increase in some States, there will be Senators on the floor of the United States Senate saying we should federalize truancy, we should federalize any assaults that take place within a school, we should federalize any assaults or any crimes that are committed on school grounds.

Think of what we are doing. We are here on the floor at the same time that the Governors and the State legislators and the American people who are saying the Federal Government is trying to do too much are coming here and asking the Federal Government to take care of something that has historically been handled on the local level.

At least here there is a nexus. There is a nexus in that an automobile can, even if it does not, travel in interstate commerce. That nexus was stronger, I might add, when there were background checks. When a gun went along with the requirement of an automobile to find a Federal constitutional rationale—a constitutional rationale, to be more precise—to have the long arm of the Federal law extend to what is otherwise a local crime.

Keep in mind, in the past we made it bank robbers, because we found that banks transferred money in interstate. They were federally chartered and the like, so there was a rationale for it. Now, if there was a robbery in a grocery store, we do not say, "call in the FBI." If there is a robbery in the bank, we have said for years you can—you do not have to—you can call in the FBI.

Essentially what we are doing here, all of what we have been talking about here is basically saying if it happens in the corner grocery store, call in the FBI. If they take my transistor radio out of my car and it is a kid who is a member of the gang and then he steals the car, call in the FBI.

Since sometime between 20 years ago I have been involved in this criminal justice issue. From the time I got here I have spent more of my time on this issue than any other issue. I am proud to say I was a coauthor of the Speedy Trial Act, a coauthor of the Sentencing Reform Act of the Commission, the author of increasing the number of Federal judges by one-quarter, and the list goes on.

But we used to deal with getting the Federal law enforcement house in order. I just want the record to note, for those who are listening, the Federal house is in order. This is one thing the Federal Government has gotten right. We have flat-time sentencing. We have enough room in our prisons. We have enough prosecutors. We have enough judges. We have a Speedy Trial Act, and we have flat-time, stiff sentencing.

I hope the States are listening. The argument is, the States are going to make, and I expect it will be the last time tonight, but it will not be the last time before this bill is finished. At least, my friend from Connecticut has taken an area of law enforcement, a crime, that has historically been able to be prosecuted at a State and local level. Car theft crossing interstate lines has been something that, in fact, has been a Federal crime. When you use a gun, we found the nexus. When you used the car, we found a nexus. But we are getting fairly attenuated here.

I must admit that in the Biden bill, to which this is being attached, there is a provision for the Federal death penalty where a death results from a carjacking with the use of a gun.

So I must admit I am hard pressed to make a strident argument against the position of my friend from Connecticut, but, there are a few things involved in this process. But I hope we pay attention a little bit to what we are doing.

Let me conclude by saying that on Friday last the majority leader stood up and said: "We should be honest with the American people. There is not much in this bill that is going to affect crime at the State and local level."

And agree with him. But he was referring specifically to the penalties we are putting in this bill. There are a number of penalties where we are federalizing certain crimes, and there are a number of penalties where even the long arm of the Federal Government does not reach to this crime. That is not something of consequence, in my view, that we are doing in this bill. What we are doing in this bill is we are providing $1.2 billion in this Biden bill to provide for drug courts to focus on first-time drug offenders; we are providing $600 million to fund our violence-against-women legislation, all of which is significant in a big, big, big way.

If you think by federalizing—as we may tomorrow if we pass the Dole amendment—tens of thousands of street crimes that are totally, completely within local jurisdiction and, hopefully, only hundreds of crimes of the nature the Senator from Connecticut is talking about, that we are really making the most significant contribution here.

I do not know whether this amendment is going to require a vote. To tell you the truth, I started off thinking I was going to oppose the amendment, in part because I wanted to stem this hemorrhage of federalization of everything out there.

My father has an expression on unrelated matters. He says: "If everything is important to you, then nothing is important to you."

We are making everything important to the American people. I want the Federal Government focusing on the Mafia. I want the Federal Government focusing on international drug cartels. I want the Federal Government and FBI agents going after those people who defrauded the American people of tens of billions of dollars in the S&L debacle.

I want the Federal Government focusing on complex money laundering schemes. I want the Federal Government training local officers to deal with local crime. I want the Federal Government providing financial help to the States and localities in terms of police, law enforcement, and training. I want the Federal Government passing criminal laws that are modeled for the States so the States can then go out and adopt those laws.

That has historically been the role of the Federal Government. I would hope we would cease and desist from responding to every local problem with a new method, which is: Forget about the Constitution, forget about the notion of Federal relationship and pass a Federal law dealing with what heretofore has been dealt with very nicely at a local level.

So, as I said, of all the legislation in this area that I believe is the most justified, the one from my friend from Connecticut is, in my view. I understand the counter-arguments. I understand the need, because it is hard, it is very hard to resist the cries for help that are coming from people.

I can give one specific example. I know he spoke about how people are fearful of when they get in their automobiles.

If I may be anecdotal and give him two specific examples. That Senator from Delaware commutes to his home State every day. That is a 250-mile commute. When we are in late, beyond
8 o'clock, and the Metroliner to New York—I get off in Wilmington, half-way—is the last good train to leave, I often drive home, because I occasionally save time.

Let me tell you literally what I do—to reinforce the Senator's point. Up until 18 months ago, when I drive home, I drive through, to get to where I have to go, what are considered to be several relatively rough neighborhoods in Washington, DC, which, I might add, would be the case in any major city in America, any major city. And in the summer, when I drive home, Washington nights are hot. And when I say "home," I end up driving 125 miles home. When I drive home, I have the windows down.

About 18 months ago, I concluded that I could not do that anymore. When I drive home, when I drive by myself, I literally find myself, as I go down the deserted streets of Washington, DC, making sure that I pace myself, I can see the red light and I am three-quarters of a block away, I stop in the middle of the block. I slow down to 2 or 3 miles an hour, with my doors locked, so I never have to come to a complete stop at the stoplight at a corner. Because that is the place where people walk up and stick a 9 millimeter pistol up against the glass window or take a hammer and smash through the window and physically grab you or hold you gunpoint.

And so I in no way belittle the crime and the concerns the Senator is speaking to. If I, as a U.S. Senator, with the protection of the Capitol Hill Police and the help that is here in Washington, when I drive my automobile home, I must go through to get to I-95, if I do let my car ever come to a full stop—and I am hopefully still an able-bodied person in a position to handle myself, as what must it be for the elderly who lives in that neighborhood? What must it be for the woman with her two children in the back seat who lives in that neighborhood? What must it be? It is a nightmare.

And so I, in no way, underestimate the sense of fear that people have and how outrageous it is. And the last little anecdote I will tell the Senator—and I will mention this for a second time in this debate. Those nights that I do not get to go home because it is so late and I did not have a car here, I did not drive down that day, as my good friend knows, I just go down to the bottom of Capitol Hill, and there are two very nice hotels. There is a Hyatt Hotel and a Washington Court Hotel. You can rent a room in those two hotels, assuming they have a vacancy. I have been here 20 years. For the first 18 of those 20 years, I walked down to the hotel from here. It is four or five blocks.

Well, I am not allowed to walk down there anymore. And this is nothing but beautiful scenery, lovely parkland, beautiful, stately Federal buildings, one ownership mejorarized by the people of the United States. I do not go down there anymore on foot because about 5 months ago, I started down and right literally in front of the Hyatt Hotel, well lighted, in the summer, a Congressman was found beaten and robbed and stabbed while people were standing around.

Now I say Congressman. It was a Congressman. It could have been a Senator or a tourist or someone who worked in the hotel. I ask unanimous consent to proceed for one more minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. And so, to make a long story not quite so long, I have to ride down with the Senator at Arms. They insisted I go down. The former Capitol Hill policeman driving me down told me that, in his neighborhood, he started at a 7-Eleven type convenience store and while a woman was pumping gas, someone came up, put a gun to her, took her automobile, and drove off. He followed that person. He followed the person, as a former policeman—this particular fellow who was giving me a ride down to the hotel. He found the fellow, trapped him because the guy could not drive as well, got out of his automobile and went over to the car. And the fellow, I believe, I am not certain of this, I believe had a .9 millimeter pistol on the seat and turned and said, "Pal, don't. Just don't." And this guy just walked away.

These are real life experiences that happen every day.

So I commend the Senator for his interest and concern, but I hope we will follow the lead of the Senator from Delaware and give the States the money and resources to help them hire their local police to do the job. I thank my colleagues, and I yield the floor.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank my friend from Delaware for his kind words. I will just say very briefly, in the time remaining, on a personal basis, what a great pleasure it has been to have the Senator, with the profound eloquence and concern, always, as he has just now, speaking not just from his head but from his heart.

The changes in behavior that the Senator from Delaware described in his own behalf are typical of what every American has done in the last several years—and we cannot do on. These changes in behavior are the acts of a very rational man who understands what is out there. And I think that is why we need the kind of penalties that are involved in this amendment.

Mr. President, I would just say this. I understand his concern about too great a federalization of the criminal laws. I will look forward to speaking to him some other occasion.

In this case, there is already a Federal law against carjacking. In fact, more than 100 cases have been brought by U.S. attorneys in the last year.

In this case, the very bill I am amending has the death penalty for carjacking. All I am doing here is taking a small but I think significant additional step in saying, if the death penalty is going to be enacted into law for cases of carjacking where death occurs, then we ought not to require that that death have to involve a firearm. If the person in a carjacking is killed as a result of a knife or other weapon or just as a result of the carjacking, then the criminal ought to be subject to death himself. That is why I propose the amendment.

Mr. President, I hope that I may eventually enjoy the support of the Senator from Delaware, I do not know that. I will enjoy unanimous support in the Chamber because of those who oppose capital punishment.

So, in that sense, I ask when the vote be taken it be taken by the yes and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. LIEBERMAN. I thank the Chair, and I yield the floor.

Mr. BIDEN. Mr. President, I ask unanimous consent that the vote on the amendment of the Senator from Connecticut take place to follow the completion of the vote on Senator Dole's amendment tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I ask unanimous consent to get the yeas and nays on the Dole amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. BIDEN. Mr. President, I ask unanimous consent.

The PRESIDING OFFICER. Thank you, Mr. President.

I yield the floor.

AMENDMENT NO. 142

(Purpose: To provide for programs for the prosecution of driving while intoxicated charges to be included in the Edward Byrne Memorial State and Local Law Enforcement Assistance Act.)

Mr. HATCH. Mr. President, I send an amendment to the desk on behalf of Senator DOMENICI and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.
Mr. DOMENICI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:
(1) by striking "and" at the end of paragraph (22);
(2) by striking the period at the end of paragraph (23) and inserting "and"; and
(3) by adding at the end the following new paragraph:
"(24) programs for the prosecution of driving while intoxicated charges and the enforcement of laws relating to alcohol use and the operation of motor vehicles.".

Mr. DOMENICI. Mr. President, I offer an amendment that will help our country address the continuing problem of suffering and financial losses due to accidents caused by drivers operating motor vehicles while under the influence of alcohol.

All of us are painfully aware of the psychological and physical costs and the fiscal implications which result from the carnage which we as a nation inflict upon ourselves every year on America's highways. Approximately 5 million of our constituents yearly are motor vehicle crash victims, costing employers 15 million days of lost time and $48.5 billion annually, according to some estimates. Drunk drivers are a major part of the problem. As a result, I am now introducing an amendment which will make a significant contribution to the attack on drunk driving throughout the country.

My amendment amends the 1968 Omnibus Crime Control and Safe Streets Act by adding a 22d category to the initiatives that States are allowed to spend money under the Edward Byrne Memorial State and Local Law Enforcement Program. My amendment would create a new category which will allow States to fund programs for the prosecution of driving under the influence charges and for the enforcement of laws relating to alcohol use and the operation of motor vehicles.

I want to stress to Senators that although I believe that my amendment is the right thing for states to do, it does not mandate they spend any of the funding they receive from the Edward Byrne Byrne Memorial grants for the purpose outlined in the amendment. My amendment simply provides them with the authority to do so if they so desire.

Mr. President, I believe my amendment is a step in the right direction. I ask my colleagues to support it.

Mr. HATCH. It is my understanding that this amendment is agreed to by both sides.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1142) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the amendment be rescinded.

Mr. BIDEN. Mr. President, I am about to propound a unanimous-consent request. My distinguished friend from Connecticut has another amendment on drug emergency areas. I ask unanimous consent that we be able to proceed to the amendment with 30 minutes equally divided in the usual form.

Mr. HATCH. Will the Senator yield?

Let us not agree to a time limit but proceed to the amendment, debate it tonight and get unanimous consent with regard to other amendments.

Mr. BIDEN. I amend my unanimous-consent request that we proceed to the LIEBERMAN amendment on drug emergency areas and that no second-degree amendments relating to guns be in order to the amendment, and that upon completion of the debate on the amendment tonight it be laid aside until there is unanimous consent to bring it back up.

That is my request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The amendment (No. 1143) was agreed to.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:
At the appropriate place insert the following:
SEC. 1. VIOLENT CRIME AND DRUG EMERGENCY AREAS.
(a) Definition.—In this section, "major violent crime or drug-related emergency" means an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, in consultation with the Attorney General, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

(b) Declaration of Violent Crime and Drug Emergency Areas.—If a major violent crime or drug related emergency exists throughout a State or a part of a State, the President, in consultation with the Attorney General and other appropriate officials, may declare the State or part of a State to be a violent crime or drug emergency area and may take any and all necessary actions authorized by this section and other law. For the purposes of this section, the term "State" shall be deemed to include the District of Columbia and any United States territory or possession.

(c) Procedure.—A request made for a declaration designating an area to be a violent crime or drug emergency area shall be made, in writing, by the chief executive officers of the State and local governments (or in the case of the District of Columbia, the mayor), and shall be forwarded to the Attorney General. The Attorney General may by rule or regulation, or through the governors of the more cities, counties, States, or the District of Columbia may submit a joint request for designating an area to be a violent crime or drug emergency area under this subsection.

(2) Finding.—A request made under paragraph (1) shall be based on a written finding that the major violent crime or drug-related emergency is of such severity and magnitude that Federal assistance is necessary to ensure an effective response to save lives and to protect property and public health and safety.

(d) Irrelevancy of Population Density.—The President shall not limit declarations made under this section to highly populated centers of violent crime or drug trafficking, drug smuggling, or drug use, but shall also consider applications from governments of less populated areas where the magnitude and severity of such activities is beyond the capability of the State or local government to respond.

(e) Requirements.—As part of a request for a declaration under this section, and as a prerequisite to eligibility for Federal emergency assistance under this section, the chief executive officer of a State or local government shall:

(1) take appropriate action under State or local law and furnish information on the nature and amount of State and local resources that have been or will be committed to alleviating the major violent crime drug-related emergency;

(2) submit a detailed plan outlining that government's short- and long-term plans to respond to the violent crime or drug emergency, specifying the types and levels of Federal assistance requested, and including explicit goals (including quantitative goals) and timeframes; and

(3) specify how Federal assistance provided under this section is intended to achieve those goals.

(f) Review Period.—The Attorney General shall review a request submitted pursuant to this section, and the President shall decide whether to declare a violent crime or drug emergency area, within 30 days after receipt of such request.

(g) Federal Assistance.—The President may—
(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, financial assistance, financial assistance, and advisory services) in support of State and local assistance efforts; and

(2) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information; and

(b) DURATION OF FEDERAL ASSISTANCE.—

(i) IN GENERAL.—Federal assistance under this section shall not be provided to a violent Crime or Drug Emergency Area for more than 1 year.

(ii) EXTENSION.—The chief executive officer of a jurisdiction may apply to the Attorney General for an extension of assistance beyond 1 year. The President, in consultation with the Attorney General, may extend the provision of Federal assistance for not more than an additional 180 days.

(6) REGULATIONS.—Not later than 90 days after the date of the enactment of this Act, the Attorney General shall issue regulations to implement this section.

(j) EFFECT ON EXISTING AUTHORITY.—Nothing in this Section shall diminish or detract from existing authority possessed by the President or Attorney General.
in recognizing that we have this au­
thority, and we have done so in a way
that is meaningful. Again, not just with
rhetoric but with serious proposals
and on a bipartisan basis, we have put
forward the money to make those pro­
gress. What we have not done, this ex­
normal response to the fact that too
many criminals are going through the
revolving doors because there is not
enough jail space to put them into, and
we have provided billions of dollars to
help the States and localities build
jails. Thus the fact, acknowledging our
Fereral responsibility, we have pro­
vided these billions of dollars to put
more police out onto the streets. And we have also added to the
Federal criminal law, providing the
extra deterrent that the Federal sys­
tem enables us to provide.

I have spent a fair amount of time in
recent months around my State talk­
ing to police, prosecutors, citizens,
judges. There is an interesting fact
that I can report to the Chamber. While there are some—including some
editorial writers—some Federal judges
in fact, who decry the so-called fed­
eralization of the criminal law, when I
talk to the local police and the local
prosecutors they tell me to one of the
best things that has happened in the
fight against crime in recent years is
that we have added a Federal punch to
the criminal law, that we have created
tools throughout the country bringing
together Federal, State and local
investigators, enforcers, prosecu­
tors. As more than one police officer
and prosecutor in my State has said to
me, the one part of the criminal justice
system that is working today is the
Fereral part, because the criminals
know that, and local prosecutors are
using Federal law to target the worst
of the local criminals, involved in the
most serious of local crimes.

They know if arrested under the Fed­
eral law they almost always will be
taken to trial, because the Federal
courts have that capacity. And, if con­
victed, they will almost always end
up in Federal jail, and they will go to jail for a good
long period of time as they should
under the mandatory minimum sen­
tencing provisions of Federal law.

So we have taken some serious steps
forward in bringing the Federal Gov­
ernment to a reasonable partnership
with the States in protecting law-abid­
ing citizens from crime. This is the
next step I am proposing:
that, within my State and its police of­
cers are simply outgunned
and outnumbered—as has happened in
too many areas of our country—by the
criminals, that the chief elected of­
ficers say to me: ‘‘That is real. That is
better. We need the help of the Fereral Government for short term to
come in and help us to restore basic
order.’’

The President, under this proposal,
will have the ability to bring together
existing Fereral resources and send
them in to help people in the local
area. We have a special responsibilit­
y, I think, Mr. President, to help to make
that happen.

This amendment will give the Presi­
dent, upon consultation with the At­
torney General, the power to declare
that a violent crime or drug emergency
exists in a State, community or neigh­
borhood so, the President could
direct the agencies of the Fereral
Government to provide emergency
Federal assistance to the designated
area so as to supplement State and
local efforts to save lives and protect
property, public health, and safety.

The Federal Government, the Presi­
dent, and the Attorney General will be
able to rush in with the personnel,
equipment, financial assistance and
other resources needed by local law en­
forcement agencies to strike back
against gangs, drug traffickers or other
violent criminals.

Requests for declaration of an emer­
gency under this amendment must be
made in writing by the Governor and
Chief Executive officer of any affected
State and local Government, and the
President, under the amendment,
would be required to act on these
requests within 30 days. Of course, we
hope that the President would act
much more rapidly.

I do want to stress, in terms of the
concerns about who controls law en­
forcement, that any Federal personnel,
any Federal equipment sent by the
President to help local police would be
under the administrative authority of
the local police chief or the highest law
enforcement official in that jurisdic­
tion, pursuant to terms negotiated
prior to deployment among the parties.

Mr. President, I believe the case for
this amendment was reinforced by re­
cent events in the capital city of my
State or, in fact, in the state where I
am from. Facing a particul­
arly violent rash of gang activity in
Hartford, literally a war between two
gangs that effectively took over con­
trol of one of the great historic neigh­
bours and she said to me:
Mr. President, the second benefit of
this strategy, I think, would be an im­
mediate infusion of added resources,
including some personnel, equip­
ment, financial assistance and other
logistical assistance into a crime­
plagued region, giving the President
the ability to do in a natural disas­
ter, to effectively say that these vio­
 lent crime and drug emergency areas
have become unnatural disasters, man­
made disasters, and to take the re­
sources provided to the President, to
the Fereral Government to provide Under existing
law and focus them for a limited period
of time into this area where the local police simply are unable themselves to return control and security because they have been put in an unfair fight.

I know that there may be some who will question this remedy, but I believe that the greatest supporters of this proposal will be the people who live in those neighborhoods where the gangs have taken over. It is they who will welcome the arrival of Federal help with hope and with open arms.

I hope that the Senate will agree with me, support this amendment, and provide this other means of help to our local and State law enforcement officials.

Mr. President, I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, once again, let me compliment my friend from Connecticut. Back years ago when I first drafted the drug czar legislation—and it passed—and we had the first Presidential finding on what our nation should do about drugs, I had the first so-called drug bill. And in that bill, I introduced the concept called drug emergency areas whereby we would treat drug emergency areas and identify them the same way we do natural disasters.

No one bats an eye in this town or this Nation—or should they—I might add, when the poor people of Iowa and Missouri, and Kansas and Nebraska are flooded by the Platte, Missouri and Mississippi Rivers and are wiped out. No one bats an eye when the people in the Los Angeles area suffer the ravages of the consequences of an arsonist, apparently, and the State of Florida and all the way up to the hotel at night and turn on the lights and know how many people are there. They move in with firepower, fire, and they overpower a community.

As the Senator from Connecticut knows, as well as anyone, having been a former attorney general of the State, there are neighborhoods, towns, entire sectors of cities that are natural disaster areas because they are drug emergency areas.

I can take you to Philadelphia, Armingo Avenue; I can take you, I suspect, to parts of New Haven; I can take you to parts of Wilmington, DE, towns in my State, as small as the State is, where the drug trade has literally—not figuratively, literally—taken over a section of the town—armed persons on the streets, plying and selling their wares, occasionally shooting each other for control of a corner, people afraid to walk out of their homes, overwhelming local police, because, as the Senator knows, when the major drug cartels, whether they are Colombian, Jamaican, Mafia, whatever the nature of the cartel, decide to move into an area, they do not move in in a small way. They move in with firepower, financial power, organizational power, and they overpower a community.

This is where I was talking about before. This is where the Federal Government over the past 40 years has developed a genuine expertise, where we have a capability that no community can ever exercise. No matter how incredibly competent major State law enforcement agencies are, they pale in comparison to the capabilities that exist at the Federal level.

When I introduced the last Biden bill that was filibustered for 2 years by my Republican colleagues, I went even further. I had $300 million in the bill for drug emergency areas, allowing the President to designate drug emergency areas.

I think we have to think in terms of natural disasters. If you ask me whether or not I would rather a hurricane come to this area where I live on a one-time occasion or you gave me the awful alternative of having a Jamaican organized crime ring move in peddling drugs or the Mafia or the Colombian cartel or the Cali cartel move in to take over my neighborhood, at least I know what the hurricane is. If I make it past that hour, I will live and I can reconstruct my life; my children, if they make it through that hurricane, will live. We will have financial deprivation; we may have serious injuries, but we can rebuild.

People who have these cancerous organizations move into their neighborhoods in towns and cities, it is not a one-time event. It is a lifetime event. I strongly support the Senator. He does not even ask for additional money. He asks only for the authority of the President to declare an area a drug emergency area and existing Federal resources to come to the aid of that locality. This is a place where a true Federal-State partnership should exist. This is a place where we can bring to bear the significant resources of the Federal Government.

I might add that my friend from Utah, in his addition to my rural crime initiative in this bill, provided the ability to do something like this. We added a number of drug enforcement agents who are able to go into rural communities and do the kind of thing the Senator from Connecticut is asking to do on a larger scale in areas where the drug has spread. But make no mistake about it, there is no exaggeration on the part of the Senator from Connecticut when he says this is a real need. This is literally a cancer in the body politic when these major drug trafficking organizations literally take over cities, parts of cities.

Let me conclude by saying I mentioned earlier that occasionally, since I do not have an apartment or home in Washington, I stay overnight at a local hotel. It is more practical and more frugal to do it that way. I will get back to the hotel at night and turn on the television. They have their movies changed. There are more movies now—my wife and I are moviegoers at the local movie theaters—and you see the previews for coming attractions. I want the Senator to know how many upcoming movies and grade-B movies are now on the air which have as their premise that it is the year 1999 or 2005, and entire sectors of cities have been overtaken by drug gangs. The theme of the movie is having it go out and get some Robocrop or some supercorp or some madman or some Sylvester Stallone-type character to go in to no man's land. That is a Hollywood exaggeration of what exists now. Some of the areas are literally a no man's land, but real, live, decent people live in that no man's land. This is an area where the Federal Government can, should, and I believe must help local law enforcement with the considerable expertise and experience we have to bear.

I hope, when the time comes for us to vote on this tomorrow, the majority of my colleagues will agree with the Senator from Connecticut, as I do, and vote to support his legislation.

Mr. BIDEN. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank the Chair and I thank my friend and colleague from Delaware for his very powerful statement and, of course, for his support of this amendment. I really wish to thank him in a more general and historic sense—not so historic—for the fact that it was his original legislation which is the inspiration for this amendment.

The amendment grew out of experiences that we have had in Connecticut, some of the extraordinarily positive experiences with the tremendous and enormous local drug enforcement with the tremendous and enormous local drug enforcement effort. As we began to fashion the amendment, we looked back at work the Senator from Delaware had done. This seemed like the perfect response to it.

I wish to share with my friend and colleague an experience which validates so much of what he says about what has happened in too many neighborhoods in our country and leads to the kinds of films that the Senator referred to.

A while ago, the chief state attorney of Connecticut, John M. Bailey, Jr., convened what he called a summit on crime, with police officials, prosecutors, State and local, Federal legislators, and we saw there a tape I had heard about in the last 2 or 3 months and some of the most serious local law enforcement officials in Connecticut that startled me, as bad as we know things are.

It was a tape taken by the resident of a neighborhood in Bridgeport, CT, out
his window one evening and night. If you saw the tape, you would be embar-
rassed to believe that this was Amer-
ica. You would think it was another
you saw the tape, you would be embar-
down on, or we say,
raided by the local police. I believe-I
neighborhood for the purpose of drug
had been involved. The target of the raid
sales and distribution had its quarters
fearful that other gangs, hearing that
individually walking with semiautomatics,
raided against crime, perhaps more DEA
agents to help with drug emergencies.
By crime in too many of our cities and
case, but too often in too many neigh-

In New Haven, for instance, a gang
known as the Jungle Boys occupied a
housing project, literally occupied it,
chose it because they assumed the resi-
dents would not object, and also be-
cause it was right adjacent to the
interstate highway—laughable when
you think about it, providing kind of
an easy-on, easy-off access for drug
purchasers, mostly from the suburbs,
coming in to New Haven from the sub-
urbs—took it over, and victimized the
people in the project. Ultimately, the
local police acknowledged they could
not deal with it, and brought the Fed-
eral agents in.
It is a long and complicated story.
But basically they made several ar-
rests, and sent the two leaders of this
gang away to Federal prison for 21
and 28 years, respectively.
That's the kind of cooperation this
amendment is intended to build on.
Mr. President, as the Senator from
Delaware said, I have not included in
this amendment any specific funding; I
have given authority here, this amend-
ment gives authority to the President
and the Attorney General to utilize re-
sources available under law.
My hope is that some of the re-
sources that are, in fact, made avail-
able under this law would be used by
the President to respond to a local vio-
 lent crime or drug emergency.
I have some hope in believing that
there may be additional amendments
agreed to on a bipartisan basis, that
will provide more funds for more U.S.
attorneys to prosecute, more FBI
agents to be involved in the war
against crime, perhaps more DEA
agents to help with drug emergencies.
And those extra resources provided
under law, hopefully, will be at the call
of the President to organize and target
these areas that have just gone out of
control and, quite literally, have be-
come violent crime and drug emer-
cy areas. The words that the chair-
man of the Judiciary Committee spoke
are just right.
We have natural disaster areas. No
one objects. Everyone supports the
President when he goes in and helps
areas, as he has now recently with
the fires in California.
These are unnatural disasters caused
by crime in too many of our cities and
towns. I think it is time to give the
President that same authority to come
to the aid of local law enforcement and
the people, the law-abiding people, who
live in those cities and towns.


Mr. President, I again thank the
Chair. I thank my friend from Dela-
wore. I ask that when the vote be taken
on this amendment it be taken by the
yeas and nays.
The PRESIDING OFFICER. Is there a
sufficient second?
Mr. BIDEN. Mr. President, I ask the
Senator to withhold the request for the
yeas and nays, not that we cannot
vote, but that we want a vote on this.
Mr. LIEBERMAN. I thank the Sen-
ator. I withhold until tomorrow.
Mr. BIDEN. Let me say to my friend
from Connecticut, Mr. President, that
in the last crime bill that I wrote we
had provisions to provide for a signif-
ican increase in resources for DEA,
but that was not the case in this bill.
We have no time agreement at this
point, so I cannot give him the yeas and
nays. But since we have no time agreement at
this point, not because he does not, but we
cannot get one on the other side, as well
as one amendment may be in order.
So if he will withhold that until to-
morrow, I assure him if he wants a
vote, he will get a vote on this.
Mr. LIEBERMAN. I thank the Sen-
ator. I withhold until tomorrow.
Mr. BIDEN. Let me say to my friend
from Connecticut, Mr. President, that
in the last crime bill that I wrote we
had provisions to provide for a signif-
ican increase in resources for DEA,
but that was not the case in this bill.
We have no time agreement at this
point, not because he does not, but we
cannot get one on the other side, as well
as one amendment may be in order.
So if he will withhold that until to-
morrow, I assure him if he wants a
vote, he will get a vote on this.
Mr. LIEBERMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following:

SEC. 3. PROTECTION OF RECIPIENTS IN TERRORISM REWARDS PROGRAM.

(3) CONDITIONS OF ENTRY FOR REWARDS FOR PROGRAM PARTICIPANTS.—(A) Any alien admitted under subsection (e) who otherwise would be inadmissible under sections 212(a)(2) or 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182) shall be admitted and permitted to remain in the United States on the condition that the person:

(i) shall have executed a form that waives the alien's right to contest, other than on legal grounds, any decision by the Immigration and Naturalization Service concerning an adjustment of status, or

(ii) is not convicted of any criminal offense in the United States, where most of these potential benefactors live, it is often difficult for American law enforcement to provide such protection. A small number of those individuals must be relocated to the United States by quickly—sometimes overnight—and their identities must be protected.

This is just like the witness protection program that the Federal Government has used so successfully in other crimes, particularly in breaking the back of organized crime.

So this amendment would allow the Secretary of State and the Attorney General to determine jointly when an alien or a member of an alien's immediate family needs to be admitted to the United States for protection because he or she has provided information or assistance to the United States in preventing an act of terrorism or in arresting or prosecuting terrorists. The total number of aliens admitted to the United States annually under this program would not exceed 25 in any fiscal year.

Mr. President, in February 1992, I held a hearing in the Governmental Affairs Committee exploring the difficulties that those in charge of our counterterrorism programs were having in gaining INS authority to admit persons who had assisted the United States and needed our protection. Among those were a number of people who helped thwart major terrorist acts during the gulf war or who were critical to prosecutions abroad of foreign terrorists who had attacked American citizens or property.

Mr. President, I am hearing focused on one terrorist defector, whom I consider to be one of the true heroes of the international battle against terrorism.

The amendment concerns terrorism. Unfortunately, Senator D'AMATO has made certain statements against terrorism, but he has been targeted by terrorists, as the Senate knows, all too well.

Mr. President, the World Trade Center bombing earlier this year put a lie to the predictions that terrorist acts against Americans were in decline and that the United States was invulnerable to foreign-sponsored terrorism. Our law enforcement and counterterrorist experts have done an extraordinary job in pursuing that case, the World Trade Center case, and others in recent years.

This amendment would give them, those who are involved in antiterrorism, the authority to act in a way that will be helpful in pursuing their aims.

This amendment, Mr. President, would induce those with information that might prevent a terrorist attack or would aid in the capture or prosecution of a terrorist to come forward and assist the United States.

Mr. President, the vast majority of thwarted terrorist attacks and successful prosecution of terrorists are dependent on the cooperation of defectors or would-be defectors. Computer terrorist acts or has substantially contributed to an authorized investigation or the prosecution of an individual described in section 960(a)(1) and (2) of such section, the Attorney General may adjust the status of the alien and the alien's immediate relatives if admitted under such section to that of an alien admitted for permanent residence if the alien is not described in section 212(a)(3)(E) of the Immigration and Nationality Act, provided further that if the alien is subject to a determination under such sub­section (a) the adjustment may be made not earlier than 3 years after the date of admission and upon a determination by the Attorney General in consultation with the Secretary of State that the conditions of paragraph (3)(A) (through (iii)) have been met.

(b) EXCLUSIVE MEANS OF ADJUSTMENT.—Section 234(c) of the Immigration and Nationality Act (8 U.S.C. 1255(c)), as amended by section 231(d) and 231(b)(1) of the Immigration and Nationality Act for the fiscal year then current.

(b) COMPENSATION FOR CONVICTION OF A CRIME.—Section 234(c) of the Immigration and Nationality Act (8 U.S.C. 1255(c)), as amended by section 231(d) and 231(b)(1) of the Immigration and Nationality Act for the fiscal year then current.

(b) EXTENDING PERIOD OF DEPORTATION FOR CONVICTION OF A CRIME.—Section 234(c) of the Immigration and Nationality Act (8 U.S.C. 1255(c)), as amended by section 231(d) and 231(b)(1) of the Immigration and Nationality Act for the fiscal year then current.

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(b) EXTENDING PERIOD OF DEPORTATION FOR CONVICTION OF A CRIME.—Section 234(c) of the Immigration and Nationality Act (8 U.S.C. 1255(c)), as amended by section 231(d) and 231(b)(1) of the Immigration and Nationality Act for the fiscal year then current.
At the cost of his freedom, his safety and his life, this man turned his back on the Iraqi terrorist who once counted him as an ally. He provided critical information that prevented the bombing of an international hotel in Geneva, provided information useful during the war regarding the location of underground bunkers, which he had helped to construct, and most recently was the key witness in the successful prosecution in Greece of one of the world's most notorious terrorists, Mohammed Rashid. His dismal experiences with the INS—even though he had the support of the State Department, the FBI and the Marshals Service acting on his behalf in his attempt to bring close family members here—convinced me that something needed to be done to help others like him who needed the assurance that he and his family—if they had the courage to stand up to terrorists—would be protected. Believe it or not, it took 10 years to straighten out his immigration status. Only this month, could his family members, close family members, get tourist visas to visit him. Following the hearing I introduced legislation similar to the amendment I am offering today. A similar provision was included in the administration's State Department fiscal years 1994-95 authorization bill but, unfortunately, was removed in understandable deference to the Judiciary Committee's jurisdiction and in anticipation that this crime bill would again offer a provision and opportunity to facilitate entry into the United States of people who cooperate in Federal or State Government investigations of organized crime.

So this amendment addresses a different category of people who have helped prevent or resolve a terrorist act, people who may never have been part of a terrorist organization and may be needed for future investigations or trials outside or within the United States.

Mr. President, I am pleased to say that this amendment has the support of those within our Government who are battling terrorism and protecting Americans here and abroad every day. Again, I say that I am pleased to have the support of the Senator from New York (Mr. D'AMATO) who joins me as a cosponsor and whose record as a forceful and persuasive advocate on behalf of our Nation's counterterrorism program is well known.

Finally, I must say I am particularly grateful to have the support of the chairman of the Judiciary Committee, Senator BIDEN, and the ranking Republican, Senator HATCH, two other Members of this Chamber who, of course, can always be counted on in their various leadership roles, in Judiciary and Foreign Affairs, to aid the Nation's counterterrorism efforts.

Mr. BIDEN. Mr. President, once again, I congratulate the Senator from Connecticut. This is a very worthwhile amendment. Quite frankly, it is an area that we overlooked prior to his calling it to the Nation's attention and the attention of this Chamber. Senator HATCH and I have cleared it on both sides and are anxious to accept the amendment.

The PRESIDING OFFICER. Is there further debate?

The amendment is on agreeing to the amendment.

Mr. BIDEN. Mr. President, I move to reconsider the vote.

Mr. LIEBERMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON addressed the Chair.

Mr. GORTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the assistant legislative clerk read as follows:

The Senator from Washington [Mr. GOR­TON] proposes an amendment numbered 1145.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 183, between lines 11 and 12, insert the following new subtitle:

Subtitle. —Sexually Violent Predators

SEC. .01. SHORT TITLE. This subtitle may be cited as the “Sexually Violent Predators Act”.

SEC. .02. FINDINGS.

Congress finds that—

(1) there exists a small but extremely dangerous group of sexually violent predators who do not have a mental disease or defect.

(2) persons who are sexually violent predators generally have antisocial personality features that—

(A) are not amenable to mental illness treatment modalities in existence on the date of enactment of this Act; and

(B) render the persons likely to engage in predatory sexual behavior.

(3) the likelihood that sexually violent predators will repeat acts of predatory sexual violence is high; and

(4) the prognosis for curing sexually violent predators is poor and the treatment needs of the population of the predators are very long-term.

SEC. .03. DEFINITIONS.

As used in this subtitle:

(1) MENTAL ABNORMALITY. —The term “mental abnormality” means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes the person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(2) PREDATORY. —The term “predatory”, with respect to an act, means an act directed towards a stranger, or a person with whom a relationship has not been established, for the purpose of victimization, for the purpose of victimization, for the purpose of victimization, for the purpose of victimization, for the purpose of victimization.

(3) SEXUALLY VIOLENT OFFENSE. —The term “sexually violent offense” means—

(A) an act that is a violation of title 18, United States Code; or State criminal code that—

(i) involves the use or attempted or threatened use of physical force against the person or property of another person; and

(ii) is determined beyond a reasonable doubt to be sexually motivated.

(4) SEXUALLY VIOLENT PREDATOR. —The term “sexually violent predator” means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

SEC. .04. ESTABLISHMENT OF PROGRAM.

(A) IN GENERAL. —

(1) STATE GUIDELINES. —In accordance with this section, the Attorney General shall establish guidelines for State programs to require a sexually violent predator to register upon release from a current address with a designated State law enforcement agency upon release from prison, being placed on parole, or being placed on supervised release. The Attorney General shall approve each State program that complies with the guidelines.

(B) STATE COMPLIANCE.

(A) IMPLEMENTATION DATE. —A State that does not implement the program as described in subparagraph (A) shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 1756).

(B) INELIGIBILITY FOR FUNDS. —

(I) IN GENERAL. —A State that does not implement the program as described in subparagraph (A) shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 1756).

(ii) REALLOCATION OF FUNDS. —Funds made available under clause (i) shall be reallocated, in accordance with such section, to such States as implement the program as described in subparagraph (A).

(B) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE. —

(I) IN GENERAL. —An approved State program established in accordance with this section shall contain the requirements described in this section.

(II) THE DETERMINATION THAT A PERSON IS A SEXUALLY VIOLENT PREDATOR. —The determination that a person is no longer a “sexually violent predator” shall be made by the sentencing court after receiving a report by a board of experts on sexual offenses. Each State shall establish a board composed of experts in the field of the behavior and treatment of sexual offenders.

(III) NOTIFICATION. —If a person who is required to register under this section is anticipated to be released from prison, parole, or being placed on supervised release, a State prison officer shall, not later than 90 days before the anticipated date of the release or commencement of the parole or being placed on supervised release.

I thank the Chair and I yield the floor.
(B) inform the person that if the person changes residence address, the person shall give to the law address to a designated State law enforcement agency in writing not later than 10 days after the change of address;

(3) designate the appropriate law enforcement agency that has jurisdiction over the area in which the person resides; and

(D) require the person to read and sign a form stating that the duty of the person to register under this section has been explained to the person.

(4) TRANSFER OF INFORMATION TO STATE AND THE FBI.—Not later than 3 days after the receipt of the information in paragraph (2), the officer shall forward the information to a designated State law enforcement agency. As soon as practicable after the receipt of the information by the State law enforcement agency, the agency shall—

(A) enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency that has jurisdiction over the area in which the person resides; and

(B) forward the information to the Identification Division of the Federal Bureau of Investigation.

(5) QUARTERLY VERIFICATION.—Any change of address by a person required to register under this section has been explained to the person.

(6) FAILURE TO RETURN.—It is a violation of this section for a person to fail to return, by mail, the verification form to the agency that has jurisdiction over the area in which the person resides, at least once every 90 days after the person registers, unless the person has changed residence address of the person.

(7) COMPLIANCE FAILURE.—If the person fails to mail the verification form to the designated State law enforcement agency by the date that is 10 days after the receipt of the form from the law enforcement agency, the person shall be subject to the provisions of paragraph (2) of this section that would make the person likely to engage in predatory sexually violent offense, as determined by the convicting court based on expert advice. The main process is used to free such a person from the provisions of the amendment when it is appropriate to do so. Washington State leads the Nation in coping with this small group of criminals who terrorize our playgrounds, parks, and neighborhoods, preying on the most vulnerable in society. This amendment is modeled in part after the Washington State law.

The amendment is similar to the registration and tracking procedures of Crimes Against Children Subtitle of S. 1607, also known as the Jacob Wetterling Crimes Against Children Registration Act. It applies the same State guidelines and State compliance standards regarding the registration of released sexually violent predators.

This measure targets the small group of violent sexual offenders who are released into society after serving time for rape or child molestation, despite the fact that they continued to pose a threat. After a determination has been made that the person is a sexually violent predator, law enforcement officials can monitor the person’s whereabouts and warn communities where the person may prey. Currently, law enforcement officials often fail to communicate the presence of a sexual predator in their communities, because they either have no way of ensuring his residence or lack the legal protection to do so.

The amendment gives law enforcement officials the tools to do their jobs better. It allows the law enforcement agencies and State officials to protect their communities from the most violent and brutal criminals. Prison officials will share necessary information about released sexually violent predators with local law enforcement who can monitor their movement, which will enable communities to care for themselves and police to track such people in the way in which they cannot do at the present time.

As I have already said, it is a pattern on a section which was a part of this bill with respect to offenders against children. I greatly appreciate the thoughtful consideration of this proposal and the changes which have been made as a result of the action of the chairman and the staff.

At this point, I believe the proposal is acceptable to both sides, and I ask the members of this body, including the distinguished chairman, at which point I trust we can pass the amendment.

Mr. BIDEN. Mr. President, I want to compliment my friend from Washington State on the amendment. As the manager on this side, I am prepared and anxious to accept the amendment. I think it is a good amendment. As I understand, it has been cleared on the Republican side as well.

Mr. GORTON. It has been.

Mr. BIDEN. I yield back the time, and we can vote on the amendment.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment. So the amendment (No. 1145) was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote.

Mr. GORTON. I move to lay that motion on the table.
The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. What is the pending business?

Mr. GORTON. Before we go on to something else, will the Senator yield a moment?

Mr. BIDEN. I will yield for a question. I do not want to yield the floor.

AMENDMENT NO. 1143

The PRESIDING OFFICER. The pending business is amendment No. 1143.

Mr. BIDEN. Mr. President, I yield for a question to the Senator from Washington.

Mr. GORTON. I thank the Senator from Delaware for his constructive help in connection with the last amendment. I simply wanted to note that this was to take 49 minutes and possibly a vote that was otherwise reserved. He can strike that from his list.

Mr. BIDEN. I thank the Senator for his cooperation. I think the changes he made in his amendment much improve the amendment. I appreciate his being willing to do so.

Mr. President, let me sort of recap here for a moment.

For the last 2 days, we have been telling Senator KOHL, who has a very important amendment relating to children and guns, we had been asking him to withhold that amendment to accommodate the Senate.

I understand my distinguished friend from the State of Virginia has a similar amendment. It is the intention of the manager of the bill to see to it within his ability and power that the Senator from Wisconsin have an opportunity to offer his amendment first.

So I am going to through some remarks here that I have on the bill and yield to Senator KOHL.

Mr. WARNER. Mr. President, will the Senator yield?

Mr. BIDEN. I yield for a question.

Mr. WARNER. Mr. President, I ask if I could have recognition. If it is not the Senator's desire to have my recognition at this time.

Mr. BIDEN. I am happy to yield for a question.

Mr. WARNER. Mr. President, I ask if I could have recognition. If it is not the Senator's desire to have my recognition at this time.

Mr. BIDEN. It is not the Senator's desire to give up the floor at this time. I am happy to answer a question.

Mr. WARNER. Mr. President, I am not trying to end the Senator from Wisconsin in the bill that I recognize he has done work in this area, and I have done work independently.

I first read this bill today. I have been in this institution for a while. I am not trying to take another Senator's idea. This is an entirely different approach to a very complicated issue of trying to stop the sale of guns on the streets of America to juveniles.

I can answer the Senator's question. I am not even attempting to imply the Senator from Virginia is attempting to deal with an issue that was not something he had been working on. I know that. As a matter of fact, the Senator from Virginia has taken a very courageous position in years past on measures relating to guns, being from the State of Virginia and previous crime bills. I recognize that.

The reason I am going to attempt to keep the floor this evening, Mr. President, is that as the Senator from Virginia knows from managing equally complicated bills like the defense bill, he knows that when you make commitments—he did not make the commitment; the Senator from Delaware made the commitment. So I am not in any way suggesting the Senator from Virginia did or did not do something that is totally within his rights.

As he knows from managing language this complex, this large, and this expensive—and the defense bills he handles are even more expensive than this bill by a long shot—that it is a delicate balance in trying to negotiate amendments, Democrat and Republican, Democrat and Republican. We tried to do this and keep things from sort of getting out of hand.

Toward that end, the Senator from Wisconsin has been on the floor every day with his amendment in hand, every day ready to go throughout the entire day since this bill has been up, and personally have prevailed upon him not to offer his amendment, because we have been attempting to work it out. We have been attempting to work out whether or not it could be accepted.

This has nothing to do with the Senator from Wisconsin. Were the Senator from Wisconsin to assume that not the Senator from Delaware acted in bad faith. So I want to make sure that we work this out.

I have no objection whatsoever, nor would it be my right to object. I might add, to the Senator from Virginia bringing up his amendment or any amendment relative to this area whenever he would like. I would like to see if we could work out an order in which we could bring it up.

What we have done, as the Senator from Virginia probably has not had the opportunity to know, on all these amendments, we have been taking them up in subcommittee matter. We took up a series of amendments relative to, for example, gangs. We took up a series of amendments relative to police funding, and so on. In order to do that, we have come up with the order that allows us to manage this legislation.

Also, my friend from Virginia knows, although it is not his intention, that if the Senator were to lay down his amendment on guns tonight, it is amendable in the second degree and all amendments are amendable in the second degree. What may very well happen here is in this delicate balance we have been trying to put together how to deal with these gun amendments I am fearful there might be a feeling on the part of some of those who do not share the views of the Senator from Virginia and me, and they would, in fact, second degree this amendment in a way that brings into play gun legislation that I very bluntly am not prepared tonight to deal with.

Mr. WARNER. Mr. President, will the Senator yield?

Mr. BIDEN. I yield for a question.

Mr. WARNER. Mr. President, I simply came on the floor at the invitation of the managers and leadership of the Senate for Senators who have amendments to bring them.

I said explicitly to the Senator from Delaware that I am not asking for immediate consideration. I simply want it printed in the Record. I simply want to make floor comments and then depart. I am not trying to interfere in the progress on the bill. I thought I came over in a constructive manner.

Mr. BIDEN. I am sure he did.

There may be a way to deal with this. Maybe if the Senator from Virginia is willing—he need not agree to this as it is within his right not to agree with it—if the Senator is willing not to send his amendment to the desk for consideration but merely to make his comment on what his legislation does and asks that it be printed in the Record but not be sent to the desk as an amendment, I have no problem yielding to the Senator for that purpose.

Mr. WARNER. Mr. President, that is exactly what I told the managers of the bill.

Mr. BIDEN. Mr. President, I sincerely apologize. I thought the Senator was sending his amendment to the desk for consideration and discussion and then it would be taken down.

I ask unanimous consent that I be permitted to yield the floor to the Senator from Virginia on the grounds that he be able to speak to the amendment that he is going to offer at some future date, that it not be sent to the desk, but his amendment along with his remarks be printed in the Record.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. WARNER. Mr. President, I thank the distinguished manager of the bill.

Let me make it very clear that I, like many other Members of this body, am seriously concerned about the readily available source of handguns to juveniles in America. We read about it every day.
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This is not an original idea. I think many Members of this body are trying to figure out means by which to prevent this tragedy for consideration. I am not talking about a father giving a son free a gift of a gun. Let us hope the father understands what he is doing and as such will accept the responsibility.

My father gave me several guns when I was a juvenile. They are among my proudest possessions today. They happen to be a .22 rifle and a shotgun. I understand that. I am not trying to interfere with family life and guns.

What I am directing this amendment to is the street scene. And clearly in this statute or the amendment that I am sending forth, if it becomes law, it is for the transactions where these guns are sold for cash or traded for drugs or a combination thereof.

This may not be the perfect amendment. I yield to anybody to improve it. I tell you, we have done a lot of work and let anybody have the name on it if they want it if they can do a better job.

The Senator from Wisconsin [Mr. KOHL], has an amendment which I discovered long after I had this idea and began to work on it, but that happens around here all the time. I am perfectly willing that he go first. I can go last. You can put me at any point in time. It makes no difference to me.

But let us hope that the minds of this body are able to devise some type of legislation to get down to these transactions in the street for cash and for drugs, which transactions are leading to the wanton killing and maiming of thousands and thousands of individuals.

So I am going to momentarily send this amendment to the desk and have it printed. Then it is up to the managers when they might wish to bring it up.

First, I define what a handgun is. And this definition is taken out of other Federal law.

The term "handgun" means—

(A) a firearm that has a short stock and is designed to be held and fired by the use of a single hand; and,

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

Now, as to the offense: "Section 922 of title 18, United States Code, is amended"—in other words, there is a title of the Code right in there now that prevents gun dealers, just gun dealers from selling to anyone under the age of 21, but the law is silent about these transactions taking place in the street every day—silent. And the purpose of this amendment is to fill that gap.

The amendment reads:

Section 922 of title 18, United States Code is amended by adding at the end thereof the following new subsection:

(c)(4) It shall be unlawful for any person to sell or otherwise transfer for consideration to a juvenile, or to a person whom the transferee knows or has reasonable cause to believe is a juvenile—

(A) a handgun;

or,

(B) ammunition that is suitable for use in a handgun.

Second section:

For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

Penalties: I will move right onto section 5(a):

(5)(A) Except as provided in subparagraph (B), whoever knowingly violates subsection (s) of section 922 shall be fined not more than $5,000, imprisoned not more than five years, or both.

(B) Whoever knowingly violates subsection (s) of section 922 knowing or having reasonable cause to know that the juvenile to whom the handgun or ammunition was sold or otherwise transferred for consideration intended to carry, possess, discharge, or other­

wise use such handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

In other words, if this transaction places in such a manner that the seller, the owner of the gun that is transferring it to a juvenile, has reason to believe that the juvenile is going to use it in a crime of violence, whom, 10 years.

Now both of these penalties are left, in terms of the minimum, to the discretion of the judge. I did that inten­

tionally not to make them mandatory, because in my travels through the State of Virginia recently, I sat down with every single Federal judge in the Commonwealth of Virginia in their chambers, in the various locations where the Federal judiciary sits in my State, and discussed at length this problem. This was one of their No. 1 problems.

This is an idea that was imparted to me by those individuals, the jurists on the front line of law enforcement, the state attorneys and the front line of law enforcement, the state attorneys and the chiefs of police. So I am here speaking on their behalf today. This is something that is badly needed in our Fed­

eral Code.

This is a simple, direct approach to selling guns to juveniles. It makes it a crime to sell or otherwise transfer—be­

cause there are many transactions that these youngsters formulate that none of us have ever experienced before. It is hard to write it into law—for consider­

ation. That means something flows from the juvenile to the seller of the weapon—dollars, drugs, but there is some consideration. And that is a term well defined in the law. The amend­

ment is limited to handgun or handgun ammunition to a person under 18.

I am not in any way trying to invade the province of the father and the son, the uncle and the son, and the family

and the son in the country and on the farms. I am not trying to in any way to invade the military. That is not af­

fected by this statute. They do not sell or transfer for consideration.

I joined the Navy when I was 17. We were taught to use the firearms, and I served in the Marines and in the Navy for many more years. I had the age of 18, 17-year-old marines. This amend­

ment does not affect that.

This amendment goes down into the streets and the alleys all across this country, where these transactions are taking place at the very moment we are in this Chamber tonight. At the very moment we are struggling with this complex crime bill, these trans­

actions are taking place. This bill does not attempt to reach the issue of mere possession of a handgun by a juvenile; a very difficult issue, but important.

Lastly, it directs our attention to the guns on the streets, as I said, and pro­

vides no penalties. I am looking with the members of the Federal judiciary, sitting with the prosecutors, sitting with the chiefs of police.

It is, it was a very valuable trip. I would urge other Senators to go and visit with the members of their judici­

ary in their State. These individuals are struggling from dawn to dusk with their problems associated with crime.

In many instances, they are being over­

whelmed. So I thank them. I thank the managers of this bill.

Mr. President, I ask unanimous con­

sent to insert in the RECORD tonight for printing a copy of my amendment to the copy of the amendment from Wisconsin, as it was reported by a Judiciary Subcommittee, so that Sen­

ators can compare the two. I find them quite distinct and, therefore, in no way was I trying to invade the workman­

ship of one of my most respected col­

leagues and friends in this Chamber.

As I say, this work product is derived from a field trip that I have undertaken over the past 2 or 3 months throughout my State, visiting with members of the judiciary and other law enforcement officials.

So, Mr. President, I ask unanimous consent to have those printed in the RECORD.

There being no objection, the mate­

rial was ordered to be printed in the RECORD, as follows:

WARNER AMENDMENT

(Purpose: To amend section 944 of title 18, United States Code, to prohibit the sale or transfer for consideration of a handgun or handgun ammunition to a juvenile)

On page 127, after line 15, insert the fol­

lowing new section:
SEC. 1. SHORT TITLE. This Act may be cited as the “Youth Gun Safety Act of 1993.”

SEC. 2. FINDINGS AND DECLARATIONS. The Congress finds and declares that—

(1) Crime, particularly crime involving drug-related guns, is a pervasive, nationwide problem.

(2) Problems with crime at the local level are exacerbated by the interstate movement of drugs, guns, and criminal gangs.

(3) Firearms and ammunition, and handguns in particular, move easily in interstate commerce, as documented in numerous hearings in both the Judiciary Committee of the House of Representatives and Judiciary Committee of the Senate.

(4) The interstate commerce in firearms, the guns, their component parts, ammunition, and the raw materials from which they are made, has considerably moved in interstate commerce.

(5) While criminals freely move from State to State, ordinary citizens may fear to travel to or through certain parts of the country due to the concern that violent crime is not under control, and foreigners may decline to travel in the United States for the same reason.

(6) Just as the hardened drug kingpins begin their life in the illicit drug culture by exporting their goods, the criminal enterprises of the young ager are often started by their criminal careers on streets where the ready availability of guns to young people results in the acceptability of their random use.

(7) Violent crime and the use of illicit drugs go hand-in-hand, and attempts to control one without controlling the other may be fruitless.

(8) Individual States and localities find it impossible to handle the problem by themselves, even those localities that have made a strong effort to prevent, detect, and punish crime find their effort unavailing due in part to the nature or inability of other States and localities to take strong measures.

(9) Inasmuch as an illicit drug activity and related violent crime overflow State lines and national boundaries, the Congress has power, under the Interstate Commerce Clause and other provisions of the Constitution, to enact measures to prevent and control these problems.

(10) The Congress finds that it is necessary and appropriate to assist the States in controlling crime by stopping the commerce in handguns with juveniles nationwide, and allowing the possession of handguns by juveniles only when handguns are possessed and used for legitimate purposes under appropriate conditions.

SEC. 3. PROHIBITION OF THE POSSESSION OF A HANDGUN OR AMMUNITION BY, OR THE PRIVATE TRANSFER OF A HANDGUN OR AMMUNITION TO, A JUVENILE. (a) DEFINITION.—Section 921(a) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking “paragraph (2)(A)”; and

(2) by adding at the end the following new paragraph:

“(B) Whoever knowingly violates subsection (a) of section 922 knowing or having reasonable cause to know that the juvenile to whom the handgun or ammunition was sold or otherwise transferred for consideration intended to carry, possess, discharge, or otherwise use such handgun or ammunition in the commission of a crime of violence, shall be fined not more than $5,000, imprisoned not more than five years, or both.

(b) WHOEVER KNOWINGLY VIOLATES SUBSECTION (A) OF SECTION 922 KNOWING OR HAVING REASONABLE CAUSE TO KNOW THAT THE JUVENILE TO WHOM THE HANDGUN OR AMMUNITION WAS SOLD OR OTHERWISE TRANSFERRED FOR CONSIDERATION INTENDED TO CARRY, POSSESS, DISCHARGE, OR OTHERWISE USE SUCH HANDGUN OR AMMUNITION IN THE COMMISSION OF A CRIME OF VIOLANCE, SHALL BE FINED UNDER THIS TITLE, IMPRISONED NOT MORE THAN 10 YEARS, OR BOTH.”

KOHL BILL

November 8, 1993

CONGRESSIONAL RECORD—SENATE

The floor. I thank the managers.

Mr. WARNER. Mr. President, I yield the floor. I thank the managers.

Mr. BIDEN. Mr. President, let me compliment my friend from Virginia in speaking to a problem that I wish, quite frankly, the entire body was more sensitive to.

Mr. WARNER. Mr. President, I was not able to give the distinguished Senator my attention.

Mr. BIDEN. I said let me thank my friend from Virginia for speaking to a subject that, quite frankly, I wish the entire body was more sensitive to. I thank him for being willing, not just on this occasion but on past occasions relative to working on crime issues, to stand up and take a risk.

It has never been popular in any of our States to be perceived as being for gun control. But when it was unpopular, before there was a significant, overwhelming support from the public for efforts to deal rationally with the proliferation of guns and access to guns, the Senator from Virginia was a stand-up fellow and he stood and spoke to it.

So I compliment him on the way he has gone about this, and on his position on this issue.

Mr. WARNER. If I might just interject, I thank my distinguished colleague from Delaware. Indeed I worked with him for many years, and I commend him and commend his distinguished ranking member, Mr. HARCH, for the work they have done.

I will be guided by the wishes of the managers and others as to when and if amendments to this bill can be brought up. I can only say that I shall be available tomorrow at their request.
FAMILY BREAKDOWN

Mr. DOLE. Mr. President, by adopting the Republican truth-in-sentencing proposal and by devoting $22 billion in resources to build more prison space and put more police on the streets, the Senate has taken a big step forward in the war against crime.

In the final analysis, however, the best deterrent to crime is not police, or a police cell, but something called conscience—that little inner voice that says: "No, you better not do that. It's wrong." For generations, people have developed conscience through the church, the schools, and most importantly, through families and the set of values that families have traditionally transmitted to their children.

Unfortunately, the American family today is in tatters. More than two-thirds of all black children, and nearly 25 percent of all white children, are born to unwed mothers. In some inner-city communities, the illegitimacy rate is a staggering 80 percent, as thousands of teenage girls become single mothers and then are cast into a world without fathers and to mothers who are simply unprepared for the responsibilities of motherhood.

The corrosive impact of family breakdown is not just a statistic. It cannot be underestimated. Not only is there a clear link between family breakdown and poverty, as my Senate colleague DANIEL PATRICK MOYNIHAN pointed out some 25 years ago, there is also an indisputable link between family breakdown and crime. Not surprisingly, 70 percent of the juveniles in State reformatories today come from homes without fathers.

An important article written by Charles Murray and appearing in the Wall Street Journal last week puts this all in perspective. I commend the article to my colleagues. Mr. Murray asked an unanimous consent that the Wall Street Journal article be inserted in the RECORD immediately after my remarks.

There being no objection, the order to be printed in the RECORD, as follows:

From the Wall Street Journal, Oct. 29, 1993

THE COMING WHITE UNDERCLASS

(By Charles Murray)

Every once in a while the sky really is falling, and this seems to be the case with the latest national figures on illegitimacy. The unadorned statistic is that, in 1991, 1.2 million children were born to unwed mothers, with a high of 30% of all live births. How high is 30%? About four percentage points higher than the illegitimacy rate in the early 1960s that motivated Daniel Patrick Moynihan to write his famous memorandum on the breakdown of the black family.

The 1961 story for blacks is that illegitimacy has now reached 58% of births to black women. In the white world, the illegitimacy rate is typically in excess of 8%. Many of us have heard these numbers so often that we are inured. It is time to think about them as if we were back in the mid-1960s with the young Moynihan and asked to predict what would happen if the black illegitimacy rate were 60%.

Impossible, we would have said. But if the proportion of fatherless boys in a given community were to reach 60%, surely the collapse of society would be "the Lord of the Flies" writ large, the values of unsocialized male adolescents made norms—physical violence, immediate gratification and predatory behavior. That is the culture now taking over the black inner city.

But the black story, however dismayling, is not news in itself, because the rest of the United States is white illegitimacy. Matters have not yet quite gotten out of hand, but they are on the brink. If we want to act, now is the time. In 1991, 700,000 white babies were born to single white women, representing 22% of white births. The elite wisdom holds that this phenomenon cuts across social classes, as if the increase in Murphy Brownes were pushing the trendline. Thus, a few months ago, a Census Bureau study of fertility among all American women with high school education or less concluded 32%. Women with family incomes of $75,000 or more contribute only 1% of white illegitimate babies, while women with family incomes under $30,000 contribute 60%.

The National Longitudinal Study of Youth, a Labor Department study that has tracked more than 16,000 youths since 1979, shows an even more dramatic picture. For white women below the poverty line in the year prior to giving birth, 44% of births have been to a high school dropout, compared with 49% for women above the poverty line. White illegitimacy is overwhelming a lower-class phenomenon.

This brings us to the emergence of a white underclass. In raw numbers, European-American, or white American, whites are the ethnic group with the most people of illegitimate birth. White children, most women on welfare, most unemployed men, and most arrests for serious crimes. And yet whites have not had an "underclass" as such, because the whites who might qualify have been scattered among the working class. Instead, whites have had "white trash" concentrated in a few streets on the outskirts, sometimes a Skid Row of unattached white men in the large cities. But these scatterings have seldom been large enough to make up a neighborhood. An underclass needs a critical mass, and white America has not had one.

But now the overall white illegitimacy rate is 22%. If the reasons for social disintegration work—class communities may be twice that.

How much illegitimacy can a community tolerate? Nobody knows, but the historical fact is that the more white illegitimacy, the more child crime, the more domestic disputes and casual violence. The real news of this study is that the proportion of single mothers with less than a high school education jumped to 48% from 35% in a single decade.

CLASS DIFFERENCES

These numbers are dominated by whites. Breaking down the numbers by race (using data not available in the published version), women with college degrees contribute only 4% of white illegitimate babies, while women with a high school education or less contribute 82%. Women with family incomes of $75,000 or more contribute 1% of white illegitimate babies, while women with family income under $30,000 contribute 60%.

The ethical underpinning for the policies I am about to describe is this: Bringing a child into the world is the most important thing that most human beings ever do. Bringing a child into the world when one is not emotionally or financially prepared to be a parent is wrong. The child deserves society's support. The parent does not.

The social justification is this: A society with high levels of illegal fertility creates a new, strong nongovernmental institutions to temper and restrain behavior. Of these, marriage is paramount. Either we reverse the trends in the last two decades, which constrained the overwhelming majority of births to take place within marriage. The past 30 years have seen those walls cave in. It is time to rebuild them.

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to end all economic support for single mothers. The AFDC (Aid to Families With Dependent Children) payment goes to zero. Single mothers are not eligible for subsidized housing. And, for a variety of other subsidies and in-kind benefits dis-appear. Since universal medical coverage appears to be an idea whose time has come, I will stipulate that all children have medical care for yourself is profoundly irresponsible, and the government will no longer subsidize it.

How does a poor young mother survive without government support? The same way she has since time immemorial. If she wants to keep a child, she must enlist support from her parents, kids of adoption, church or philanthropies. She must get support from somewhere, anywhere, other than the government. The objectives are threefold.

First, enlisting the support of others raises the probability that other mature adults are going to be involved with the upbringing of the child, and this is a good thing in itself.

Second, the need to find support forces a self-selection process. One of the most shortsighted and unwise current biases is that an adolescent who is utterly unprepared to be a mother "needs someone to love." Childish yearning isn't a good enough selection device. We need to raise the probability that an adolescent who is utterly unprepared to be a parent must enlist support from somewhere, any place, other than thegovernment.

Some small proportion of infants and larger proportion of older children will be adopted.
Mandatory minimum sentences cause these irrational results, and enactment of the Hatch amendment that this may be as far as the current Congress is prepared to go. If this law is enacted, I hope my colleagues will join me in evaluating its effect, and reviewing the Sentencing Commission’s recommendations for further action.

My opposition to mandatory sentencing is not based on the length or severity of current sentences. Rather, I oppose mandatory sentencing laws because they are counterproductive in the fight against crime and are flatly inconsistent with the sentencing guideline system that we enacted by passing the Sentencing Reform Act of 1984.

That act marks more than a decade of congressional debate, created the U.S. Sentencing Commission, established the guideline system, abolished parole, and authorized appellate review of sentences. The Sentencing Reform Act provides the framework for a coherent Federal sentencing policy.

Senator THURMOND and I worked together for many years to persuade our colleagues of the merits of sentencing reform. Our strategy and our goals were bipartisan. We sought to eliminate unwarranted disparity, promote honesty in sentencing, and rationalize this stage of the Federal criminal justice system.

But mandatory minimum sentencing statutes have hampered the guideline system and are becoming an increasingly serious obstacle to its success.

Congress has persisted in enacting these statutes in recent years, despite the fact that mandatory minimums interfere with the commission’s effort to devise a rational sentencing system. Both mandatory penalties and guidelines interfere with the strategy and our goals. We sought to eliminate unwarranted disparity, promote honesty in sentencing, and rationalize this stage of the Federal criminal justice system.

Mandatory minimums inevitably lead to sentencing disparity because defendants with different degrees of guilt and different criminal records receive the same sentence.

The guideline system permits the consideration of aggravating and mitigating circumstances relevant to each offense and each offender, but mandatory minimums override such individualized sentencing.

Some advocates of mandatory sentencing believe that coerced uniformity is appropriate. But the mandatory statutes do not produce uniformity; they just transfer discretion from judges to prosecutors, who decide whether defendants will be charged with an offense carrying a mandatory penalty, and whether to insist on a plea to that count of the indictment. A guideline system makes judges accountable for the discretion they exercise; mandatory sentencing laws impose no similar check on prosecutors.

The Attorney General, the Sentencing Commission and the Judicial Conference have all criticized mandatory penalties. At a recent conference, Chief Justice Rehnquist noted that mandatory minimums “frustrate the careful calibration of sentences, from one end of the spectrum to the other, that the guidelines were intended to accomplish.”

So our safety valve was a small but important step in the effort to recapture the goals of sentencing reform. We must begin to let the Sentencing Commission do the job we delegated to it.

But the Hatch approach—especially as it has now been modified—is far too small a step. Let me describe some of the differences between our approach and the Hatch approach.

The Hatch safety valve applies to defendants convicted of drug laws, but doesn’t apply to defendants convicted of attempt to violate the drug laws. Certainly a defendant who merely attempted to violate the law deserves as much consideration as a defendant who actually violated the law.

The Hatch safety valve doesn’t apply to defendants convicted of conspiracy to violate the drug laws. Serious injustices often occur in these conspiracy cases, because a minor player in a conspiracy is criminally responsible for the entire amount of drugs involved in the conspiracy. So low-level conspirators get 10- or 20-year sentences, they clog up the courts and the prisons, and that’s precisely what’s wrong with mandatory minimums.

Our version applies to individuals who have, at most, very minor criminal histories under the guidelines. The Hatch version is much narrower—it excludes anyone who has ever been sentenced to a period of incarceration, or who has a juvenile adjudication of criminal conduct. So under the Hatch version, a prior shoplifting conviction or a juvenile adjudication would result in a 10-year mandatory minimum prison sentence.

Similarly, a 55-year-old defendant with no criminal history, but who was sentenced to 40 years ago would be ineligible for the Hatch version, a prior shoplifting conviction or a juvenile adjudication would result in a 10-year mandatory minimum prison sentence.

A Kerry of Massachusetts amendment to stalking, which I believe he is willing to agree to a 20-minute time limitation. We do not have UC for these yet, but he has agreed to a 20-minute time limitation.

A D’Amato amendment concerning mandatory minimum sentences on which it has agreed to have a 30-minute time limitation.

A Kerry of Massachusetts amendment relative to increased funds for police court. He has agreed to a 1-hour time agreement.

The Senator from Delaware, Mr. ROTH, on noncooperation of local governments with the Immigration and Naturalization Service. He has 30 minutes he has agreed to on that amendment.

A Chafee amendment on stalking which I believe he is willing to agree to a 40-minute time agreement, equally divided.

In addition, pending and laid aside at the moment is the Gramm of Texas amendment, as amended by the Hatch amendment.

We hope that Senators, the Senators I named, will be here tomorrow to offer their amendments beginning at 10 a.m. At that time, I hope to turn this announcement into a unanimous consent
request, to enter into an agreement for considering these amendments, and to stack votes on them to follow those votes already ordered. We will also seek to reach agreements on all other amendments.

I have also been informed the Senators from Arizona and California and Ohio—METZENBAUM, FEINSTEIN, and DECONCINI—wish to move early, relatively early, tomorrow, on their amendment relative to assault weapons.

So we should have a full day tomorrow. If we can continue the pace and progress we have made today, I hope the majority leader would consider keeping us in very late tomorrow night until we finish this legislation.

Mr. President, there is no more business relative to the crime bill, the Biden crime bill, that I wish, or anyone wishes to bring before the Senate.

MORNING BUSINESS

Mr. BIDEN. Mr. President, I ask unanimous consent there be a period for morning business for up to 8 minutes, with Senators permitted to speak therein for up to 5 minutes.

THE PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate proceed to the executive session to consider the following nominations:

Calendar 472. Jeffrey E. Garten, to be Under Secretary of Commerce for International Trade;

Calendar 482. Jonathan Z. Cannon, to be an Assistant Administrator of the Environmental Protection Agency;

Calendar 483. Mary Dolores Nichols, to be an Assistant Administrator of the Environmental Protection Agency;

Calendar 490. Eugene A. Brickhouse, to be an Assistant Secretary of Veterans Affairs (Human Resources and Administration);

Calendar 491. Kathy Elena Jurado, to be an Assistant Secretary of Veterans Affairs (Public and Intergovernmental Affairs);

Calendar 493. Joseph A. Dear, to be an Assistant Secretary of Labor;

Calendar 494. Ernest W. DuBester, to be a member of the National Medicine Board;

Calendar 495. Diane B. Frankel, to be Director of the Institute of Museum Services;

Calendar 497. Lt. Gen. Gary H. Mears, to be lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

To be lieutenant general:


IN THE ARMY

The following-named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370:

To be general:


The following-named officer for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility under title 10, United States Code, section 601(a):

To be lieutenant general:


Calendar 499. Maj. Gen. Johnnie E. Wilson, for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility;

Calendar 500. The officers named for promotion in the Regular Army of the United States:

Calendar 501. The officers named to be major general and brigadier general;

Calendar 502. The captains named of the Reserve of the U.S. Navy for permanent promotion of rear admiral (lower half);

Calendar 503. The rear admirals (lower half) named of the Reserve of the U.S. Navy for permanent promotion to the grade of rear admiral;

Calendar 504. Vice Adm. Jerry O. Tuttle, to be vice admiral;

Calendar 505. Vice Adm. William A. Owens, to be admiral;

Calendar 506. Vice Adm. Thomas J. Lopez, to be vice admiral; and

All nominations placed on the Secretary's Desk today for confirmation for the following:

ENVIRONMENTAL PROTECTION AGENCY

Jonathan Z. Cannon, of Virginia, to be an Assistant Administrator of the Environmental Protection Agency.

Mary Dolores Nichols, of California, to be an Assistant Administrator of the Environmental Protection Agency.

FEDERAL LABOR RELATIONS AUTHORITY

Joseph Swierzewski, of Colorado, to be General Counsel of the Federal Labor Relations Authority;

DEPARTMENT OF VETERANS AFFAIRS

Eugene A. Brickhouse, of Virginia, to be an Assistant Secretary of Veterans Affairs (Human Resources and Administration).

Kathy Elena Jurado, of Florida, to be an Assistant Secretary of Veterans Affairs (Public and Intergovernmental Affairs).

DEPARTMENT OF LABOR

Joseph A. Dear, of Washington, to be an Assistant Secretary of Labor.

NATIONAL MEDIATION BOARD

Ernest W. DuBester, of New Jersey, to be a member of the National Mediation Board for a term expiring July 1, 1995.

NATIONAL FOUNDATION ON THE ARTS AND THE ARTIST

Diane B. Frankel, of California, to be Director of the Institute of Museum Services.

[New Reports]

DEPARTMENT OF DEFENSE

IN THE AIR FORCE

The follow-named officer for appointment to the grade of lieutenant general on the
November 8, 1993

CONGRESSIONAL RECORD—SENATE

27885

The following-named officer for appointment to a position of importance and responsibility under title 10, United States Code, section 601:

To be admiral

The following-named officer for reappointment to the grade of vice admiral while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be vice admiral

Air Force nominations beginning Richard A. Aceto, and ending Raymond D. Wilkins, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 14, 1993.

Air Force nomination of Robert G. Worthington, which was received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Air Force nominations beginning Samar K. Bhowmick, and ending Ronald E. Weeks, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Army nominations beginning Kenneth F. Abel, and ending Shelia J. Zrimm, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Army nominations beginning Robert E. Abodeely, and ending Julia B. Williams, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 4, 1993.

Army nominations beginning Thomas N. Bonder, and ending Lynnastre D. Kinnison, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Army nominations beginning Patricia A. Afe, and ending Alan H. Brightman, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Army nominations beginning Jeffrey A. Baumert, and ending Jeffery A. Rips, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Marine Corps nominations beginning Stephen B. Adams, and ending Craig W. Wood, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Marine Corps nominations beginning Stephen B. Adams, and ending Craig W. Wood, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Marine Corps nominations beginning Joseph A. Alexander, Jr., and ending Wade Toffee, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Marine Corps nominations beginning James C. Andrus, and ending Floyd H. Winn, Jr., which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Marine Corps nominations beginning Timothy C. Abe, and ending Mark G. Zimmerman, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Marine Corps nominations beginning Jon Christian Abeles, and ending John Stewart Daughenbaugh, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Marine Corps nominations beginning Ronald David Abate, and ending Reuben Tercu Tsiulmura, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Marine Corps nominations beginning Jonathan Seretis, and ending Robert H. S. Stump, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Navy nominations beginning Lee Thomas Baker, and ending Thomas Joseph Yurik, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Navy nominations beginning Charles L. Aley III, and ending Commander N. T. Thao, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

STATEMENT ON THE NOMINATIONS OF EUGENE A. BRICKHOUSE AND KATHY J. JULDO

Mr. ROCKEFELLER. Mr. President, as chairman of the Committee on Veterans’ Affairs, I am pleased to recommend to the Senate the confirmation of two individuals to important positions in the Department of Veterans Affairs. The two nominees, and the positions to which they have been nominated, are:

Eugene A. Brickhouse to be Assistant Secretary for Human Resources and Administration; and

Kathy J. Juldo to be Assistant Secretary for Public and Intergovernmental Affairs.

There are two outstanding individuals, and I am confident that each will use their skills and talents to play key roles alongside the Secretary of Veterans Affairs, Jesse Brown, and Deputy Secretary, Hershel Gober, in providing the Department of Veterans Affairs with leadership and motivation.

The Committee held a hearing on October 26, 1993, at which both nominees responded candidly to questions from committee members. Each nominee also responded to pre- and post-hearing questions and completed the committee’s questionnaire. After reviewing all these materials as well as the FBI reports on both individuals, I am satisfied that each is well suited to serve in the position for which they have been nominated. On Wednesday, November 3, 1993, our committee met to consider these nominations and voted unanimously to recommend their confirmation to the full Senate.

Mr. President, I would like to speak briefly regarding the two nominees.

A native of Exmore, VA, Eugene Brickhouse graduated from Virginia State University in 1962 and from the University of Texas in 1976 with a master’s degree in management of human resources. He has a distinguished career in the Army, including extensive experience with human resource management and administrative matters.

In addition, for the last 18 months, Eugene has served as a professional staff member on the staff of the House Committee on Veterans’ Affairs. He has been a valuable resource on Capitol Hill for everyone dedicated to veterans’ issues.

Kathy Jurado was born in Tampa, FL, and received her undergraduate degree in government and international relations from the University of Notre Dame in 1982. She has experience in
public affairs both in the private and public sectors. She served as press secretary for the Florida Clinton-Gore 1992 campaign and is presently the University of South Florida’s director of government relations. I am impressed by Kathy, and I am confident that she will be a highly effective Assistant Secretary for Public and Intergovernmental Affairs.

Mr. President, in conclusion, I reiterate my sense of satisfaction that these two nominees are well suited to take on the challenges of the positions for which they have been nominated, and I urge my colleagues to give them their unanimous support.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

TRADE OF RHINOCEROS AND TIGER PARTS—MESSAGE FROM THE PRESIDENT—PM68

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

On September 7, 1993, the Secretary of the Interior certified that the People’s Republic of China (PRC) and Taiwan are engaging in trade of rhinoceros and tiger parts and products that diminishes the effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Five rhinoceros species and the tiger are listed in Appendix I of CITES, which means that the species are threatened with extinction and no trade for primarily commercial purposes is allowed. Although recent actions by the PRC and Taiwan show that some progress has been made in addressing their rhinoceros and tiger trade, the record demonstrates that they still fall short of the international conservation standards of CITES. This letter constitutes my report to the Congress pursuant to section 8(b) of the Fisherman’s Protective Act of 1967, as amended (Pelly Amendment) (22 U.S.C. 1978(b)).

The population of the world’s rhinoceros has declined 80 percent within the last 25 years to less than 10,000 animals, and the tiger population has declined 55 percent within this century to the present level of about 5,000. Neither the PRC nor Taiwan has fully implemented the international standards established by CITES for controlling the trade in these species, and the poaching of rhinoceroses and tigers continues in their native ranges fueled in part by the market demand in the PRC and Taiwan. These populations will likely be extinct in the next 2 to 5 years if the trade in their parts and products is not eliminated.

To protect the rhinoceros and tiger from extinction, all countries and entities that currently consume their parts and products must implement adequate legislative measures and provide for adequate enforcement. This means that CITES rates the trade, including taking actions to comply with the criteria set down by CITES in September 1993 and fully cooperating with all CITES delegations. The PRC and Taiwan have made good faith efforts to stop the trade in rhinoceros and tiger parts and products, and have, since the announcement of Pelly certification, undertaken some positive legislative and administrative steps in this regard. These efforts, however, have not yet yielded effective reductions in trade.

I wish to support and build on these good faith efforts undertaken by the PRC and Taiwan. At the same time, I would like to make clear the U.S. position that only effective reductions in the destructive trade in these species will prevent the rhinoceros and tiger from becoming extinct. Accordingly, I have established an Interagency Task Force to coordinate the provision of U.S. technical assistance to the PRC and Taiwan to help them eliminate their illegal wildlife trade. I have also instructed the Department of the Interior, in coordination with the Department of State and the American Institute in Taiwan, to enter immediately into dialogue with the PRC and Taiwan regarding specific U.S. offers of trade and law enforcement assistance.

Actions by the PRC and Taiwan that would demonstrate their commitment to the elimination of trade in rhinoceros and tiger parts and products could include: at a minimum, consolidation and control of stockpiles; formation of a permanent wildlife or conservation law enforcement unit with specialized training; development and implementation of a comprehensive law enforcement and education action plan; increased enforcement, or the promulgation of termination of amnesty periods for illegal holding and commercialization; and establishment of regional law enforcement arrangements. I expect that in taking these actions, the PRC and Taiwan would take account of the recommendations by the CITES Standing Committee and other CITES subsidiary bodies. In that regard, I am pleased to announce that the United States will participate in a delegation to the PRC and Taiwan organized by CITES to evaluate their progress between now and the March 1994 CITES Standing Committee meeting.

At its last meeting, the CITES Standing Committee unanimously recommended that parties consider implementing “stricter domestic measures up to and including prohibition in trade in wildlife species now” against the PRC and Taiwan for their trade in rhinoceros and tiger parts and products. The United States is prepared, through close dialogue and technical aid, to assist the PRC and Taiwan. I hope that both will demonstrate measurable, verifiable, and substantial progress by March 1994. Otherwise, important prohibitions will be necessary, as recommended by the CITES Standing Committee.

WILLIAM J. CLINTON. The WHITE HOUSE. November 8, 1993.

MESSAGES FROM THE HOUSE

At 1:58 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the bill (S. 1490) to amend Public Law 100-518 and the U.S. Grain Standards Act to extend the authority of the Federal Grain Inspection Service to collect fees to cover administrative and supervisory costs, and for other purposes; with amendments, in which it requests the concurrence of the Senate.

H.R. 2151. An act to amend the Merchant Marine Act, 1996, to establish the Maritime Security Fleet program, and for other purposes.

At 7:09 p.m. a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 615. An act to amend title 38, United States Code, to provide a cost-of-living adjustment in the rates of disability compensation for veterans who are service connected disabled and the rates of dependency and indemnity compensation for survivors of such veterans.

H.R. 175. An act to amend title 18, United States Code, to authorize the Federal Bureau of Investigation to obtain certain subscriber information.

H.R. 1345. An act to designate the Federal Building located at 200 South First Street in San Jose, CA, as the “Robert F. Peckham United States Courthouse and Federal Building.”
MEASURES REFERRED

The following bill was read the first and second time by unanimous consent:

H.R. 2151. An act to amend the Merchant Marine Act, 1936, to establish the Maritime Security Fleet program, and for other purposes; to the Committee on Commerce, Science, and Transportation.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1735. A communication from the Secretary of Agriculture, transmitting a draft of proposed legislation entitled "The Retail Food Store Authorization Act of 1993"; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1736. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on direct spending or receipt legislation within five days of enactment; to the Committee on Governmental Affairs.

EC-1737. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on Congress appropriations legislation within five days of enactment; to the Committee on the Budget.

EC-1738. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on Congress appropriations legislation within five days of enactment; to the Committee on the Budget.

EC-1739. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on Congress appropriations legislation within five days of enactment; to the Committee on the Budget.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. COCHRAN (for himself, Mr. SPECTER, Mr. LOTT, and Mr. FORD):

S. 1632. To extend the effectiveness of an exemption from the requirements of the Deposit Insurance Management Interlocks Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. RIEGLE (for himself and Mr. D'AMATO):

S. 1633. A bill to consolidate under a new Federal Banking Commission the supervision of all depository institutions insured under the Federal Deposit Insurance Act, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HEFLIN:

S. 1634. A bill to authorize each State and certain political subdivisions of States to control the movement of municipal solid waste generated within, or imported into, the State or political subdivisions of the State, and for other purposes; to the Committee on Environment and Public Works.

By Mr. MACK:

S. 1635. A bill to authorize a certificate of documentation for certain vessels; to the Committee on Commerce, Science, and Transportation.

By Mr. KERRY (for himself, Mr. STEVENS, and Mr. PACKWOOD):

S. 1636. A bill to authorize appropriations for the Marine Mammal Protection Act of 1972 and to improve the program to reduce the incidental taking of marine mammals during the course of commercial fishing operations, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. JOHNSTON:

S. 1637. A bill to provide a more effective, efficient, and responsive Department of the Interior; to the Committee on Energy and Natural Resources.

S. 1638. A bill to provide a more effective, efficient, and responsive Department of Energy; to the Committee on Energy and Natural Resources.

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 1639. A bill for the management of portions of the Presidio under the jurisdiction of the Secretary of the Interior, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. EKON:

S. 1640. A bill to amend the Hazardous Materials Transportation Act to authorize appropriations to carry out that Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. RIEGLE (for himself and Mr. D'AMATO):

S. 1641. A bill to authorize a certificate of documentation for the vessel Inspiration; to the Committee on Commerce, Science, and Transportation.

S. 1642. A bill to authorize a certificate of documentation for the vessel Princess Xanadu of Monaco; to the Committee on Commerce, Science, and Transportation.

S. 1643. A bill to authorize a certificate of documentation for the vessel Match Maker; to the Committee on Commerce, Science, and Transportation.

S. 1644. A bill to authorize a certificate of documentation for the vessel Princess Xanadu of Monaco; to the Committee on Commerce, Science, and Transportation.

S. 1645. A bill to authorize a certificate of documentation for the vessel Venus; to the Committee on Commerce, Science, and Transportation.

By Mr. LIECHY:

S. 1646. A bill to amend the Food Stamp Act of 1977 to reduce food stamp fraud and improve the food stamp program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTION

By Mr. RIEGLE (for himself and Mr. D'AMATO):

S. 1632. The Committee consolidates a new Federal Banking Commission the supervision of all depository institutions insured under the Federal Deposit Insurance Act, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

REGULATORY CONSOLIDATION ACT OF 1993

Mr. RIEGLE. Mr. President, I rise to introduce the Regulatory Consolidation Act of 1993 together with the rank-and-file Republican and the bipartisan members of the Banking, Housing, and Urban Affairs Committee, Senator ALFONSE D'AMATO. This legislation addresses three important needs in America's financial regulatory system, the President, the need to modernize and streamline the outdated anachronistic system under which the Nation's banking and thrift institutions currently must operate; second, the need to increase the effectiveness of Federal Government oversight of depository institutions by integrating responsibility for Federal supervision and examination in a single regulatory body; and third, the need to reduce unnecessary regulatory compliance costs on the industry wherever possible without sacrificing safety and soundness.

Our bill would combine the supervisory and regulatory functions of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision into a single Federal Banking Commission. AMERICA'S FLAWED BANK REGULATORY SYSTEM

Today, we have four entirely separate Federal banking agencies. Each has its own squad of examiners, its own bureaucracy, and its own regulations. No thoughtful person would ever design such a system from scratch. In fact, nobody planned our present bank regulatory system—it's a product of historical accident. America's bank regulatory system evolved as a reaction to crisis. Running short of money to fund the Civil War, Congress created the Office of the Comptroller of the Currency to facilitate war financing efforts in 1863. In 1913, Congress established the Federal Reserve System to stabilize the industry after a series of banking panics. In 1933, Congress created the FDIC to introduce a system of Federal deposit insurance and restore confidence in our financial system after hundreds of bank failures. And the Office of Thrift Supervision also arose from the Depression, only to be transformed into its present form after the savings and loan crisis.

This piecemeal regulatory system is clearly out of date and in critical need of overhaul. It generates needless expense and endless confusion for America's banks and thrifts. Money that the banking industry could make available for lending to its customers is spent in avoiding the regulatory red tape. Nobody planned our present regulatory system—it's a product of historical accident. America's bank regulatory system evolved as a reaction to crisis. Running short of money to fund the Civil War, Congress created the Office of the Comptroller of the Currency to facilitate war financing efforts in 1863. In 1913, Congress established the Federal Reserve System to stabilize the industry after a series of banking panics. In 1933, Congress created the FDIC to introduce a system of Federal deposit insurance and restore confidence in our financial system after hundreds of bank failures. And the Office of Thrift Supervision also arose from the Depression, only to be transformed into its present form after the savings and loan crisis.

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TESTIMONY OF EX-REGULATORS AND EXPERTS

On September 14, 1993, the Senate Banking Committee received testimony from a bipartisan group of six former financial regulators, together with former Senate Banking Committee Chairman Proxmire. The current House Banking Committee Chairman Henry Gonzalez.

The group was unanimous and unequivocal in its view that the current system is costly, burdensome, inefficient, archaic and the time has come for it to be re-engineered and modernized. Our witnesses were also unanimous and unequivocal on the following issues:

Major consolidation would benefit consumers;
Major consolidation would benefit the industry;
Major consolidation would improve the safety and soundness of the financial services industry; and

Regulatory supervision and regulatory bureaucracy is long overdue and now is the time to address the need for major consolidation. We have a new administration committed to change. Banks and thrifts are committed to cost-saving, deficit reduction and a more efficient government. This issue must be addressed in the administration's ongoing effort to reinvent government.

As I have said, these views were shared by every single one of our witnesses. Here are some brief excerpts of what each had to say about the current bank regulatory system:


We have the most bizarre, entangled regulatory system in the world. It never ceases to amaze me that it has lasted this long.

It should like to add the recommendation that the Congress consolidate the bank regulatory functions of the Comptroller of the Currency, the Federal Reserve Board and the FDIC in a single agency. The minimum consolidation of bank regulatory functions should also include the bank regulatory functions of these three agencies and the Office of Thrift Supervision.

HENRY B. GONZALEZ, current chairman of the House Committee on Banking, Finance and Urban Affairs.

Our current system of regulation operates like a Hydra-headed monster, with its many heads flailing around, each with a mind of its own and indifferent to the activities of the other. Certainly, no rational person would have ever designed such a system for regulating the nation's banks and thrifts.

Consolidation of the regulatory functions (OCC, FDIC, FRB and OTS) into a single, independent regulator would result in many benefits.

L. William Seidman, chairman of the Federal Deposit Insurance Corporation from 1982-85.

If one wants to talk about "reinventing government", one doesn't have to be a Thomas Edison to recognize that this is an obvious place to start. "* * * regulatory restructuring is necessary for the following reasons: to simplify the system and make its regulations more effective and efficient; to make it operate on a timely basis; to make our financial system more competitive; and to reduce frustration and the resultant consumption of stomach pills."  

John G. Heimann, Comptroller of the Currency from 1977 to 1981:

I first testified in favor of reorganizing the bank supervisory structure in 1975 and, since that time, have consistently argued for banking agency consolidation both while I was in government service and after my retirement to the private sector. My view as to the wisdom of consolidation remains the same some 18 years later. The system we have today is archaic, expensive, duplicative and inefficient. The costs are unnecessarily burdensome. Directly and indirectly, they are borne by the consumer and the shareholder. They can be meaningfully reduced without harmful consequences. In fact, I would argue that consolidation would improve the system of banking supervision at less cost.

We should recreate a single banking regulatory Commission (F.B.C.) which would envelop the present bank supervisory activities of the OCC, OTS, FDIC, FRB and the National Credit Union Administration (N.C.U.A.).

H. Joe Selby, Executive Vice President and Director of Regulatory Affairs at the Federal Home Loan Bank of Dallas from 1985 to 1986; Senior Deputy Comptroller of the Currency from 1975 to 1986; and Acting Comptroller of the Currency in 1985.

The present regulatory apparatus is outdated and outmoded. Created in response to financial crises, and to the introduction of new financial products, it has been rendered inefficient and ineffective in many respects by the rapid changes in the financial system.

Multiple federal agencies with overlapping responsibilities only promote duplication, inconsistency and inefficiency.

Responsibility for regulation and supervision of all federally insured depository institutions and holding companies should be vested in a single, federal financial institution supervisory agency.

Andrew F. Brimmer, member of the board of governors of the Federal Reserve System from 1966 to 1974; and former Governor of the Federal Reserve System from 1989 to 1991.

** Uneven bank examination standards—growing out of our fragmented Federal Bank Regulatory System—have contributed to the severe credit crunch of 1990-91 and aggravated the recession which occurred in those years.

The Federal Bank Regulatory structure should be revamped. The Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration should be combined.

Richard C. Breeden, Chairman of the Securities and Exchange Commission from 1989-93; Deputy Counsel to the Vice-President and Staff Director of the Task Group on Regulation of Financial Services.

Our current bank regulatory system is simply too big, too costly, and too inefficient. At a time when we face extremely difficult and painful choices as a nation regarding resource allocation and government spending priorities, it is surprising that the bank regulatory system has remained seemingly immune to reductions in overcapacity and elimination or privatization of unnecessary functions. Indeed, the total employment of the five primary regulatory agencies in the U.S. is over 40,000 persons. This exceeds the size of several NATO armies, and it is more than 15 times greater than the total employment of the SEC, even though the SEC oversees approximately the same number of entities of different types with aggregate assets at least double all the deposits of banks and thrifts in the U.S.

It would be a substantial improvement from the status quo if each banking company could have a single regulator (rather than 2 or 3). Of course, total consolidation of the bank and thrifts agencies would allow substantial cost-savings through the elimination of redundant facilities, staff and other overhead.

Today's bank regulatory system is so costly that it is creating a major threat to the competitiveness of commercial banks, and thereby undercutting to some degree the objectives the system is designed to achieve.

Timothy Ryan, Director of the Office of Thrift Supervision from 1990-92.

There is only one word to describe all this. That word is gridlock. No one creating a regulatory system today would design such a structure.

Government has the opportunity to make the regulatory world over again not for regulation's sake, but for America's safety and soundness. Reforming the bank regulatory system has been studied for years. Almost every report issued over the last three decades has recommended the need for and benefits of consolidation.

What is the best structure? Simply stated, I believe that all bank and thrift regulatory activities should be consolidated into one agency. This agency should have all of the authority that today is vested in the multiple agencies. I know this proposal will raise turf issues. That debate, however, is not worth the time or energy.

Consolidation makes sense and could be easily implemented over a two year period. Now, it's time to "just do it."

THE NEED FOR REFORM

The fact that we have just emerged from America's greatest financial crisis in over a century does this an especially good time for Congress to look at regulatory consolidation. First, we learned the hard way of the enormous price that America's taxpayers and financial institutions are forced to pay by inefficient agency regulation. And second, for the first time in several years we can look at important administrative issues like regulatory restructuring outside of a crisis environment.

America needs a more rational, modern bank regulatory system. The current system is needlessly complex. The Banking Committee also held hearings in 1991 on several regulatory restructuring proposals, focusing on at least three major problems with the existing regulatory structure.

Lack of Independence: Like money policy, bank regulation should be separated from political influence. Bank regulatory policy should be decided on its virtue and not by the direction of blowing political winds. In
his testimony before the Banking Committee, Steve Roberts, a former aide to Fed Chairman Paul Volcker, gave his rationale for an independent banking regulator this way:

Independent agencies are able to function well for several reasons: they tend to have a continuity of mission and purpose, and their approach to regulation and supervision is more flexible than government departments normally lack such continuity and are generally headed by an individual who has great influence on the staff, the bureau's approach to its mission and objectives, and its approach to regulation.

Regulator delays: By fragmenting authority, the current system impedes timely decisionmaking because of internal squabbling among the banking agencies, and hinders efforts to make needed changes in the banking regulations. As former Senator William Proxmire said in testimony before the Banking Committee, our government's regulatory and supervisory systems are undergrowing rapid technological change where new and complex practices are introduced almost daily. Bank regulators cannot possibly stay on top of this constantly changing financial system if they must spend most of their time fighting turf wars.

Unhealthy competition among regulators: In recent years the heads of the four Federal bank regulatory agencies have all testified in favor of meaningful consolidation of the agencies, and indeed the agencies have made limited progress in carrying out their responsibilities in a properly coordinated manner. Nevertheless, the overlapping jurisdiction in the present regulatory structure continues to foster unhealthy competition among the agencies. Just last week on October 30, The Washington Post carried a story about the difficulties facing his earlier consolidation proposal in the initial legislative package sent to Congress in 1991—the package that ultimately became FDICIA. So I want to be the first to acknowledge that this bill has many ancestors.

John Sandner, the chairman of the Chicago Mercantile Exchange, earlier this year outlined his own regulatory consolidation proposal in a newspaper conference, Mr. Sandner called the current Federal system of financial regulation “an expensive morass of duplication and inefficiency.” And just recently in testimony before the Banking Committee, David Mullins, the vice chairman of the Federal Reserve Board, also called for a more rational Federal bank regulatory system, saying “there’s no question that we need to move to a more streamlined system.” He declared that the current structure “costly and cumbersome and tending not to lead to decisive actions when needed.”

I completely agree with Mr. Sandner and Mr. Mullins. Reform of our regulatory system is long overdue.

It will be a tough fight, however. In testimony before the Banking Committee in 1991, Senator Proxmire warned of the difficulties facing his earlier consolidation proposals (which did not include the thrift regulator):

I seriously underestimated the depth of the entrenched opposition to regulatory consolidation. All three bank regulatory agencies opposed the legislation. Privately, however, each agency let it be known it would withdraw its objections if it could assume the power of the other.

Therefore, it’s important to recognize that regulatory consolidation will serve many vital interests beyond those of the banking agencies:

For taxpayers, regulatory consolidation means more effective Federal supervision and examination of depository institutions, which translates into better protection against the risk that taxpayer funds will ever again need to be called on because losses outstrip Federal deposit insurance funds.

For bankers, regulatory consolidation means a more manageable, more responsive bank regulatory system. Citizens will no longer have to guess which federal agency is responsible for the particular institution they bank with. Whether it’s a bank or a thrift, they’ll know that the Federal Banking Commission is the place to turn if there’s a problem.

For the American economy, regulatory consolidation means more efficient government and a more vital, flexible, and competitive financial system. No other country hobbles its financial system with so many bank regulators. With a streamlined regulatory system, our financial institutions will be able to put more effort into their business and less into coping with their regulators.

For the banking industry, consolidation holds the promise of a more rational system of Federal oversight, with substantially reduced examination and supervision fees, less frequent and less intrusive examinations, and reduced need to sort out inconsistent and even conflicting regulatory guidance.

KEY PROVISIONS OF THIS BILL

Let me now briefly describe how the bill I am introducing today would reform America’s bank regulatory system.

This bill would establish a five-member Federal Banking Commission to supervise and regulate all FDIC-insured depository institutions. Although the Commission would be an independent agency, its members would include both the Secretary of the Treasury—or the Secretary’s designee—and a member of the Federal Reserve Board. Three independent Commissioners appointed for staggered 6-year terms would also serve on the Commission. The President would designate one of these independent Commissioners to serve as Chairman of the Commission and another to serve as Vice Chairman. I believe this structure provides both the administration and the Federal Reserve Board with the information and oversight they need with regard to bank regulation while simultaneously fulfilling the vital need for political independence in financial regulation.

The Commission would assume the regulatory and supervisory functions currently exercised by the Comptroller of the Currency with respect to national banks; the Federal Reserve Board over bank holding companies and State-chartered banks that belong to the Federal Reserve System; the FDIC with respect to other State-chartered banks; and the Office of Thrift Supervision with respect to savings associations and savings association holding companies. The FDIC, as deposit insurer, would retain its existing backup enforcement authority. The Federal Reserve would retain all of its central bank monetary policy, lender of last resort, and payment system responsibilities and would have access, through the Federal Banking Commission, to all the information and resources it needs to deal with potential systemic risk issues. I should point out that there are many powerful central

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banks around the world. As one of our witnesses pointed out, the German Bundesbank is notably among them and it is not only a powerful and effective central bank but it spends 100 percent of its time worrying about monetary policy and the value of the currency. Regulation and insurance of credit unions would remain exactly as they are today.

The bill would require the consolidation of regulatory functions to occur on a date set by the Secretary of the Treasury. The goal would be to achieve consolidation within 10 months after the bill becomes law, but the Secretary would have discretion to extend the period by an additional 3 months. To facilitate a timely and orderly consolidation, the act would urge the President to nominate the initial group of appointed Commissioners at least 3 months before the consolidation date, and urge the Senate Banking Committee to act on those nominations at least 45 days before that date.

Finally, the bill would also reform the structure of the FDIC to reflect the abolition of the Office of the Comptroller of the Currency and the Office of Thrift Supervision by giving both the Secretary of the Treasury—or the Secretary's designee—and the Chairman of the Federal Banking Commission seats on the FDIC Board.

Those are the essential provisions of this bill. Let me state as clearly as I can that I believe strongly that the time is now for full consolidation of the supervisory responsibilities of the four agencies—any alternative that doesn't go this far would simply result in another kind of regulatory hodgepodge. On other details of my bill I have an open mind. I therefore view this bill as an important first step—the central tenet of my view of what can best provide constructive solutions to the regulatory burden problem and to become the foundation of a meaningful discussion of a much-needed, modern bank regulatory structure for the future.

CONCLUSION

The bill I am offering today can go a great distance toward relieving the regulatory burdens many bankers are feeling, improving the efficiency and effectiveness of regulation, and placing America's financial system on a sound regulatory footing for generations ahead. I urge my colleagues to consider it carefully and lend it their support. I urge the administration to seize this unique moment of opportunity to reorient and reengineer Government in a more meaningful way.

Mr. President, I ask unanimous consent that the text of the bill, an analysis of it, together with additional material, be printed in the RECORD at the conclusion of the debate.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

(a) SHORT TITLE.—This Act may be cited as the "Consolidation of Financial Agencies Act of 1993."

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITILE I—FEDERAL BANKING COMMISSION

Sec. 101. Establishment.
Sec. 102. Management.
Sec. 103. Federal banking commissioners.
Sec. 104. Powers and duties of the Commission.
Sec. 105. Conforming amendment relating to transfers of functions.
Sec. 106. Designated transfer date.
Sec. 107. Timing of initial appointments.
Sec. 108. Access by the Federal Reserve Board to the Commission's records.

TITILE II—ABOLITION OF FEDERAL BANKING AGENCIES

Sec. 201. Office of Comptroller of the Currency.
Sec. 203. Savings provisions.
Sec. 204. References in Federal law to Federal savings agencies.
Sec. 205. Disposition of affairs.
Sec. 206. Status of employees.
Sec. 207. Transfer of property.
Sec. 208. Conforming changes in Federal Deposit Insurance Corporation Board of Directors.
Sec. 209. Conversion of the Federal Deposit Insurance Corporation to a government corporation.

TITILE III—FEDERAL DEPOSIT INSURANCE CORPORATION

Sec. 301. Repeal of certain provisions.
Sec. 302. Conforming amendment relating to the Federal Deposit Insurance Corporation.
Sec. 303. References in Federal law to the Federal Deposit Insurance Corporation.
Sec. 304. Designated transfer date.

TITILE IV—FUNCTIONS REPEALED

Sec. 401. Functions of the Office of Consumer Credit Protection.
Sec. 402. Functions of the Office of Thrift Supervision.
Sec. 403. Functions of the Federal Home Loan Bank System.
Sec. 404. Functions of the Federal Home Loan Bank System.
Sec. 405. Functions of the Federal Home Loan Bank System.

Appointed Commissioners Terms—

(1) 6-YEAR TERM.—Except as provided in paragraphs (3) and (4), each appointed commissioner shall be appointed for a term of 6 years.

(2) UNEXPIRED TERMS.—Any commissioner appointed to fill a vacancy occurring before the end of the term to which the commissioner's predecessor was appointed shall be appointed only for the remainder of the term.

(3) INITIAL APPOINTMENTS STAGGERED.—Of the first commissioners to be appointed under section 102(b)

(A) I shall be appointed for a term to expire 6 years after the designated transfer date;

(B) I shall be appointed for a term to expire 6 years after the designated transfer date; and

(C) I shall be appointed for a term to expire 6 years after the designated transfer date, as designated by the President at the time of the appointment.

(d) VACANCY.—Any vacancy on the Board shall be filled in the same manner in which the original appointment was made.

(e) EMPLOYMENT AND OTHER RESTRICTIONS.

(1) IN GENERAL.—During service on the Commission, no commissioner may—

(A) hold any office or position, or otherwise be employed by, any insured depository institution or company having control of an insured depository institution;

(B) be a stock or bond owner of any insured depository institution or company having control of an insured depository institution;

(C) serve as an officer, director, or employee of any Federal Reserve bank or Federal home loan bank; or

(D) serve as an officer, director, or employee of any corporation organized for charitable, educational, or other public purposes.

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2 (2) CERTIFICATION.—Upon taking office, each commissioner shall file with the Commission a certification under penalty of perjury that the commissioner is in compliance with paragraph (1).

(3) COMMISSIONERS' POST-SERVICE EMPLOYMENT RESTRICTED.—(A) IN GENERAL.—No appointed commissioner may hold any office or position in, or otherwise be employed by, any insured depository institution or company having control of an insured depository institution, during the 2-year period beginning on the date on which the commissioner ceases to serve on the Commission.

(B) EXCEPTION FOR COMMISSIONERS WHO SERVED BEFORE DESIGNATED TRANSFER DATE.—Nothing in this paragraph shall apply to any commissioner who has served the full term for which that commissioner was appointed.

(4) COMPENSATION.—(1) CHAIRPERSON.—Section 5313 of title 5, United States Code, is amended by adding at the end the following new item:

"Chairperson of the Federal Banking Commission."

(2) OTHER APPOINTED COMMISSIONERS.—Section 5313 of title 5, United States Code, is amended by adding at the end the following new item:

"Presidentially appointed members of the Federal Reserve System in connection with the insured depository institution National Interlocks Act."

SEC. 104. POWERS AND DUTIES OF THE COMMISSION.

(1) REGULATION OF NATIONAL BANKS.—(A) TRANSFER OF FUNCTIONS.—All functions of the Comptroller of the Currency are transferred to the Commission.

(B) COMMISSION'S AUTHORITY.—The Commission shall have all powers and duties that were vested in the Comptroller of the Currency before the designated transfer date.

(2) REGULATION OF MEMBER BANKS, BANK HOLDING COMPANIES AND AFFILIATES, AND VARIOUS INTERNATIONAL BANKING ENTITIES.—(A) TRANSFER OF FUNCTIONS.—All functions of the Board of Governors of the Federal Reserve System (and any Federal Reserve bank) relating to the supervision and regulation of the following entities are transferred to the Commission:

(A) Banks that are members of the Federal Reserve System.

(B) Bank holding companies and their subsidiaries and affiliates.


(D) Companies that are subject to supervision or regulation by the Board of Governors of the Federal Reserve System under any title of the Consumer Credit Protection Act.

(2) COMMISSION'S AUTHORITY.—The Commission shall have all powers and duties that were vested in the Board of Governors of the Federal Reserve System under any title of the Consumer Credit Protection Act before the designated transfer date.

(A) Sections 6 (other than the 1st and 2d paragraphs), 9, 19(h), 23, 23A, 32B, 24(a), 24A, 25, 25A, and 29, and subsections (g) and (h) of section 22, of the Federal Reserve Act.

(B) The Bank Holding Company Act of 1956.

(C) The Bank Holding Company Act Amendments of 1970.


(E) Sections 20, 31, and 32 of the Banking Act of 1941.

(F) The Federal Deposit Insurance Act.

(G) Any title of the Consumer Credit Protection Act.


(K) The Depository Institution Management Interlocks Act.

(L) The Bank Service Corporation Act.


(P) The International Lending Supervision Act of 1983.

(Q) The Expedited Funds Availability Act.


(T) The Depository Institutions Deregulation and Monetary Control Act.

(U) The Commodity Futures Modernization Act.


(Z) The Consumer Financial Protection Act of 1978 (12 U.S.C. 5501 et seq.) is amended to read as follows:

"(A) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' means the Federal Banking Commission established under section 101.

(B) AMENDED DESIGNATION.—The Secretary may, by order, change the date designated under subsection (a).

(C) PERMISSIBLE DATES.—(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under this section shall be no earlier than 120 days nor later than 365 days after the date of enactment of this Act.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is more than 300 days after the date of enactment of this Act if the Secretary transmits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance, and Urban Affairs of the House of Representatives a written certification that orderly implementation of this Act is not feasible before the last date designated under this section.

(A) An explanation of why orderly implementation of this Act is not feasible before any other date designated under this section.

(B) A description of the steps that have been taken to effect an orderly implementation of this Act.

(C) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(D) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(E) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(F) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(G) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(H) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(I) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(J) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(K) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(L) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(M) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(2) EFFECTIVE DATE.—Subsections (a) through (e) shall become effective on the designated transfer date.

(p) REGULATIONS AND ORDERS.—In addition to any powers transferred to the Commission under subsections (a) through (e), the Commission may prescribe such regulations and issue such orders as the Commission may determine to be appropriate to carry out this Act and the powers and duties of the Commission transferred under subsections (a) through (e).

SEC. 105. CONFORMING AMENDMENT RELATING TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

Effective on the designated transfer date, section 5314 of title 12, United States Code (12 U.S.C. 313) is amended to read as follows:

"The term 'appropriate Federal banking agency' means the Federal Banking Commission established under section 101.

SEC. 106. DESIGNATED TRANSFER DATE.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary, in consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairperson of the Federal Deposit Insurance Corporation, shall, by order, designate a single calendar date by which to complete the transfer of functions to the Commission under section 104.

(b) AMENDED DESIGNATION.—The Secretary may, by order, change the date designated under section 104.

(c) PERMISSIBLE DATES.—(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under this section shall be no earlier than 120 days nor later than 365 days after the date of enactment of this Act.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is more than 300 days after the date of enactment of this Act if the Secretary transmits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance, and Urban Affairs of the House of Representatives a written certification that orderly implementation of this Act is not feasible before the last date designated under this section.

(A) An explanation of why orderly implementation of this Act is not feasible before any other date designated under this section.

(B) A description of the steps that have been taken to effect an orderly implementation of this Act.

(C) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(D) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(E) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(F) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(G) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(H) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(I) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(J) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(K) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(L) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(M) A description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(3) EFFECTIVE DATE.—Subsections (a) through (e) shall become effective on the designated transfer date.

(p) REGULATIONS AND ORDERS.—In addition to any powers transferred to the Commission under subsections (a) through (e), the Commission may prescribe such regulations and issue such orders as the Commission may determine to be appropriate to carry out this Act and the powers and duties of the Commission transferred under subsections (a) through (e).

SEC. 107. TIMING OF INITIAL APPOINTMENTS.

It is the sense of the Senate that—

(1) it is highly desirable that all of the first commissioners to be appointed by the President under section 102(3) be appointed and
SEC. 203. SAVINGS PROVISIONS.

(a) SAVINGS PROVISIONS RELATING TO THE DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 104(d)(1) and (2) shall not affect the validity of any right, duty, or obligation of the United States, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or any other person, that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Comptroller of the Currency or the Office of the Comptroller of the Currency, except that the Commission shall be substituted for the Comptroller or the Office as a party to any such proceeding as of the designated transfer date.

(b) SAVINGS PROVISIONS RELATING TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 104(d)(1) and (2) shall not affect the validity of any right, duty, or obligation of the United States, the Board of Governors, any other person, that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Board of Governors or any other person, that existed on the day before the designated transfer date.

(c) SAVINGS PROVISIONS RELATING TO THE OFFICE OF THE COMPTROLLER OF THE CURRENCY.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 104(d)(1) and (2) shall not affect the validity of any right, duty, or obligation of the Comptroller of the Currency, or any other person, that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Comptroller of the Currency or any other person, that existed on the day before the designated transfer date.

(d) SAVINGS PROVISIONS RELATING TO THE DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 104(d)(1) and (2) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, or any other person, that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Director of the Office of Thrift Supervision, or any other person, that existed on the day before the designated transfer date.

(e) SAVINGS PROVISIONS RELATING TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 104(d)(1) and (2) shall not affect the validity of any right, duty, or obligation of the United States, the Board of Governors, any other person, that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Board of Governors or any other person, that existed on the day before the designated transfer date.

(f) SAVINGS PROVISIONS RELATING TO THE OFFICE OF THE COMPTROLLER OF THE CURRENCY.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 104(d)(1) and (2) shall not affect the validity of any right, duty, or obligation of the Comptroller of the Currency, or any other person, that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Comptroller of the Currency or any other person, that existed on the day before the designated transfer date.

(g) SAVINGS PROVISIONS RELATING TO THE DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 104(d)(1) and (2) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, or any other person, that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Director of the Office of Thrift Supervision, or any other person, that existed on the day before the designated transfer date.
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(A) to be treated as officers of the United States during the 90-day period referred to in paragraph (1); and
(B) to be entitled to receive compensation during that period at the same annual rate of basic pay that they were receiving before the designated transfer date.

SEC. 206. STATUS OF EMPLOYEES

(1) GENERAL TRANSFER.-The transfer of functions under this Act and the abolition of the Office of the Comptroller of the Currency and the Office of Thrift Supervision shall not be construed as affecting the status of those agencies’ employees as employees of an agency of the United States for purposes of any other provision of law.

(2) CONTINUATION OF SERVICES.

(a) USE OF EMPLOYEES AND PROPERTY.-The Commission may use the services of employees and other personnel and the property of the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, on a reimbursable basis, to perform functions that have been transferred from those agencies for such time as is reasonable to facilitate the orderly transfer of functions under this Act.

(b) AGENCY SERVICES.-Any agency, department, or other instrumentality of the United States, to the extent of any successor to any such agency, department, or instrumentality, that was providing supporting services to the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, before the designated transfer date shall, in cooperation with those transfers to the Commission-

(A) continue to provide those services, on a reimbursable basis, until the transfer of those functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and orderly transition.

(c) TRANSFER OF EMPLOYEES.-Employees of the Office of the Comptroller of the Currency and the Office of Thrift Supervision, and employees of the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, performing functions transferred to the Commission on the designated transfer date, shall be transferred to the Commission.

(d) TRANSFER OF PROPERTY.-Employees transferred under subsection (c) shall have the following rights:

(I) to be entitled to receive compensation for services performed before the designated transfer date;

(II) to be treated as officers of the United States during the period of their service as employees of an agency of the United States for purposes of any other provision of law.

(E) EMPLOYEE BENEFIT PROGRAMS.-Any employee transferred to the Commission may retain for 1 year after the date the transfer occurs membership in any employee benefit program of the transferring agency, including a health insurance program, to which the employee belongs on the designated transfer date if-

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Commission.

The Commission shall pay the difference in the costs between the benefits which would have been provided by the agency or entity and those provided by this section. If any employee elects to give up membership in a health insurance program or the Commission does not continue the health insurance program, the employee shall be permitted to select an alternate Federal health insurance program not later than 30 days after the effective date of their transfer.

(F) NOTICE OF POSITION ASSIGNMENTS.-Transferring employees shall receive notice of their position assignments not later than 120 days after the effective date of their transfer.

SEC. 207. TRANSFER OF PROPERTY.

(1) IN GENERAL.—Not later than the end of the 90-day period beginning on the designated transfer date,

(I) the property of the Office of the Comptroller of the Currency and the Office of Thrift Supervision shall be transferred to the Commission; and

(II) any property of the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation used in performing functions of those agencies transferred to the Commission under this Act shall be transferred to the Commission.

(G) TRANSFER OF EMPLOYEES.—Employees transferred under subsection (c) shall have the following rights:

(I) to be entitled to receive compensation for services performed before the transfer of those functions is complete; and

(II) to be treated as officers of the United States during that period for purposes of any other provision of law.

SEC. 208. CONFORMING CHANGES IN FEDERAL DEPOSIT INSURANCE CORPORATION BOARD OF DIRECTORS.

(a) IN GENERAL.—Sections 8336(d)(2) and 8414(b)(1)(B) of title 5, United States Code, are amended to read as follows:

“(A) to be entitled to receive compensation for services performed before the date of transfer, except for cause.

(b) USE OF EMPLOYEES AND PROPERTY.-The Commission may use the services of employees and other personnel and the property of the Office of the Comptroller of the Currency and the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, on a reimbursable basis, until the transfer of those functions is complete; and

(c) TRANSFER OF EMPLOYEES.—Employees of the Office of the Comptroller of the Currency and the Office of Thrift Supervision, and employees of the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, performing functions transferred to the Commission on the designated transfer date, shall be transferred to the Commission.

(d) TRANSFER OF PROPERTY.—Employees transferred under subsection (c) shall have the following rights:

(I) to be entitled to receive compensation for services performed before the transfer of those functions is complete; and

(II) to be treated as officers of the United States during that period for purposes of any other provision of law.

(E) EMPLOYEE BENEFIT PROGRAMS.—Any employee transferred to the Commission may retain for 1 year after the date the transfer occurs membership in any employee benefit program of the transferring agency, including a health insurance program, to which the employee belongs on the designated transfer date if-

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Commission.

The Commission shall pay the difference in the costs between the benefits which would have been provided by the agency or entity and those provided by this section. If any employee elects to give up membership in a health insurance program or the Commission does not continue the health insurance program, the employee shall be permitted to select an alternate Federal health insurance program not later than 30 days after the effective date of their transfer.

(F) NOTICE OF POSITION ASSIGNMENTS.—Transferring employees shall receive notice of their position assignments not later than 120 days after the effective date of their transfer.

SEC. 209. COMPTROLLER’S CURRENCY-RELATED FUNCTIONS REPEALED.

(a) OBSOLETE CURRENCY PROVISIONS REPEALED.—(1) REPEAL OF REVISED STATUTES PROVISIONS.—The following sections of the Revised Statutes are repealed:

(A) Section 5183 (12 U.S.C. 87).

(B) Section 5186 (12 U.S.C. 89).

(C) Section 5196 (12 U.S.C. 99).

(D) Section 5198 (12 U.S.C. 101a).

(E) Section 5199 (12 U.S.C. 102).

(F) Section 5197 (12 U.S.C. 104).

(G) Section 5173 (12 U.S.C. 107).


(K) Section 5185 (12 U.S.C. 122).


(M) Section 5226 (12 U.S.C. 131).


(O) Section 5228 (12 U.S.C. 133).


(Q) Section 5230 (12 U.S.C. 137).


(S) Section 5232 (12 U.S.C. 139).


(U) Section 5185 (12 U.S.C. 151).

(V) Section 5186 (12 U.S.C. 152).


(X) Section 5161 (12 U.S.C. 161).


(1) Section 5164 (12 U.S.C. 172).

(2) Section 5165 (12 U.S.C. 173).

(3) Section 5166 (12 U.S.C. 174).

(4) Section 5167 (12 U.S.C. 175).


(2) CURRENCY PROVISIONS IN OTHER STATUTES REPEALED.—The following provisions of law are repealed:

(A) Section 12 of the Act entitled “An Act to define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt, and for other purposes,” and approved March 14, 1900 (12 U.S.C. 101).

(B) Section 3 of the Act entitled “An Act to amend the laws relating to the denominations and notes by national banks and to permit the issuance of notes of small denominations, and for other purposes,” and approved October 5, 1917 (12 U.S.C. 105).

(C) The following sections of the Act entitled “An Act fixing the amount of United States notes, providing for a redistribution of the national-bank notes, and for other purposes,” and approved June 20, 1874:


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REGULATORY CONSOLIDATION ACT OF 1993

The Act would establish a 5-member Federal Banking Commission, consisting of:

- The Secretary of the Treasury (or the Secretary’s designee);
- A member of the Federal Reserve Board, chosen by the Board; and
- Three examiners appointed for staggered 6-year terms.

The Commission—an independent agency—would supervise and regulate all FDIC-insured depository institutions and their holding companies and other affiliates.

The Commission would thus have all the depository institution regulatory functions currently exercised by:

- The Comptroller of the Currency (national banks);
- The Federal Reserve Board (bank holding companies and State member banks);
- The FDIC (State nonmember banks); and
- The Director of the Office of Thrift Supervision (thrifts and thrift holding companies).

The FDIC would, as deposit insurer, retain its existing back-up enforcement authority. The FDIC-consolidation provisions would allow the conversion of FDIC-insured depository institutions to occur on a date set by the Secretary of the Treasury. The goal would be to achieve consolidation within 10 months after the bill becomes law, but the Secretary would have discretion to allow an additional 5 months.

To facilitate a timely and orderly consolidation, the Act would urge the President to nominate the last of appointed commissioners at least 3 months before the consolidation date, and urge the Senate Banking Committee to act on those nominations at least 45 days before the date.

The President would, subject to Senate confirmation, designate one of the 3 appointed commissioners as Chairperson and the other as Vice Chairperson.

The bill would not specifically require that the Federal Banking Commission have a separate Consumer Division or that one of the commissioners have a consumer-advocacy background.

The Secretary of the Treasury (or the Secretary’s designee) and the Chairperson of the Federal Banking Commission would sit on the FDIC’s 5-member Board of Directors, in place of the Comptroller of the Currency and the Director of the Office of Thrift Supervision.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,

HON. WILLIAM J. CLINTON, President of the United States,
White House, Washington, DC.

DEAR MR. PRESIDENT: In the preface to the “Report of the National Performance Review,” you and the Vice-President state: “It is time to radically change the way government operates.” We agree.

Let me state the problems we can see that we strongly believe that the time is now for full consolidation of the supervisory and regulatory responsibilities of the four bank and thrift regulatory agencies—the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision—into a single, independent Federal Banking Commission.

The current system is costly, burdensome, inefficient, and in need of regulatory function and modernization. We believe this issue must be addressed immediately and call
upon you to exert bold leadership in this area as part of the Administration's ongoing effort to reinvent government.

Reforming our bank and financial regulatory system is a top priority for us in this Congress. Given the similarity of approaches embodied in the bills we have introduced in the Senate, we urge the Administration witnesses to cooperate and consolidate the four regulatory agencies into a Federal Bank Commission, and it is entirely consistent with the committee's overall approach to modernizing and rationalizing the supervisory and regulatory structure.

Mr. President, I want to emphasize that this legislation addresses only regulatory structure and not the substance of the regulation. The committee recognizes the need to update bank and thrift regulation, mitigate the unintended or unnecessary consequences of particular regulations, and increase the ability of banks and thrifts to make money and credit available to the economy. In the near future, the Senate will consider S. 1275, the "Community Development, Credit Enhancement, and Regulatory Improvement Act of 1993" to address these concerns.

Mr. President, the regulatory system we seek to modernize today would consolidate a priority for our committee. I have pledged to fully support and cooperate in this effort. We are both committed to the passage of legislation by the end of this Congress. Although this is an ambitious goal, especially in light of the fate of similar efforts in the past, I urge my colleagues to capitalize on this opportunity to reinvent and reorganize the bank regulatory structure.

Mr. President, I congratulate the chairman again for offering an excellent way to reduce overregulation and streamline the regulatory structure for depository institutions. Enacting this legislation will provide for significant paperwork reduction, regulatory burden relief, and contribute to economic growth while increasing the safety and soundness of the financial system. I urge our colleagues to join us in achieving a comprehensive system of regulation for depository institutions.

By Mr. HEFLIN: S. 1634. A bill to authorize each State and certain political subdivisions of States to control the movement of municipally solid waste generated within, or imported into, the State or political subdivisions of the State, and for other purposes; to the Committee on Environment and Public Works.

MUNICIPAL SOLID WASTE FLOW CONTROL ACT OF 1993

Mr. HEFLIN. Mr. President, I rise today to introduce the Municipal Solid Waste Flow Control Act of 1993. I am introducing this legislation because I believe that both the current Congress and the Congress speak on the question of how our States and their attendant political subdivisions
plan for and manage the disposition of municipal solid waste generated within their borders.

The Congress, in RCRA, placed mandates on local communities to plan for and manage municipal solid waste on a long-term basis. Much has been said in recent days about Federal mandates on our Governors and mayors and the costs of implementing these Federal regulations. In the area of municipal solid waste management, it is essential that the Congress reaffirm that our State and local communities have the power to carry out these federally imposed planning mandates. These entities should be able not only to plan for municipal solid waste management but also to build and operate the necessary infrastructure, in public or private partnership, to deal with solid waste.

The need for this legislation is occasioned by a confused legal landscape. While local flow control has been exercised for over 100 years, there is a recent line of Federal court cases which question the right on commerce clause grounds.

While our Federal circuits are currently divided on the applicability of the commerce clause, they are agreed upon one important fact: That the U.S. Congress has never explicitly granted flow control authority to the States. If the Congress states clearly what has always been an assumed local power, the principal legal arguments over flow control will be resolved.

The bill I introduce today does precisely this. It will reaffirm the principle that States and local governments should assume responsibility for the municipal waste that they generate. It will give local governments the power to manage this waste in an environmentally responsible manner. It will protect the property rights of individuals and organizations who have separated recyclable materials from the waste stream. The legislation will protect the investments that communities have made in solid waste infrastructure already or that they need to make in the future. It will protect the community's ability to manage their own solid waste.

I would like to note that legal challenges to flow control are pending in 24 States including the State of Alabama. In southeastern Alabama, 4 counties joined together to form the Southeast Alabama Solid Waste Authority to plan for and design waste disposal capacity and recycling for some 32 cities and towns in the 4-county region. The authority plans to improve a regional disposal facility and three waste transfer stations financed by revenue bonds. Revenues from tipping fees are to support this regional effort and flow control ordinances are to guarantee a flow of solid waste sufficient to finance the integrated waste disposal plan without impacting the tax base of the counties involved and without affecting the ability to transport trash to a competing landfill site recently against the flow control ordinance and the ordinance has been struck down in Federal District Court, pending appeal.

This situation is not dissimilar in its fundamental effects to what is happening across this country. Private parties are challenging the waste management plans of communities across the United States, using the commerce clause argument. In many cases, these challenges are succeeding. The result is that local responsibility for municipal solid waste planning and disposal is disintegrating from a predictable, workable system into unknown and, I believe, dangerous territory. Simply put, communities cannot be required to plan for the disposal of solid waste if they cannot control the destination of the very same waste that is generated within their jurisdiction. A wish is not enough. A legislature wishing to transport trash to a competing landfill site is going to have to build and operate the necessary infrastructure, in public or private partnership, to deal with solid waste.

It would be a mistake for us to await definitive action on this question by the Federal judiciary. Every flow control challenge has its own particular facts and circumstances and courts are deciding these cases differently in different jurisdictions. It is highly unlikely that the Supreme Court will definitively decide this issue in the Carbone case. What is really needed is for Congress to come forward and clarify the broad outlines of permissible flow control authority. If we do this, we will prevent our existing systems of solid waste collection and management from collapsing as they are in danger of doing today.

I urge my colleagues to give this matter their serious attention and to pass legislation that clearly outlines the circumstances under which State and local communities can exercise flow control for public health and sanitation requirements. Obviously, different communities will choose to exercise these powers in different ways, but this is nothing to fear. It is a continuation of the tradition of local control and responsibility.

By Mr. MACK:
S. 1855. A bill to authorize a certification of documentation for certain vessels; to the Committee on Commerce, Science, and Transportation.

Mr. MACK. Mr. President, the Commerce Subcommittee on Merchant Marine has been working on legislation to phase out bare boat charters. Currently, the law for many years has allowed under a bare boat provision which allows foreign built vessels to operate as de facto passenger vessels. They do so without meeting the same criteria required of Coast Guard certified charter vessels.

Over the years an industry has developed and substantial investments have been made by the owners of these vessels which need Jones Act waivers. As it is my understanding the Marine Mammal Commission has cleared these vessels, I am introducing this legislation on the association's behalf.

By Mr. KERRY (for himself, Mr. STEVENS and Mr. PACKWOOD): S. 1636. A bill to authorize appropriations for the Marine Mammal Protection Act of 1972 and to improve the program to reduce the incidental taking of marine mammals during the course of commercial fishing operations, and for other purposes; to the Committee on Commerce, Science, and Transportation.

MARINE MAMMAL PROTECTION ACT AMENDMENTS OF 1993

Mr. KERRY. Mr. President, today I rise before the Senate along with my colleagues, Senators STEVENS and PACKWOOD, to introduce the Marine Mammal Protection Act Amendments of 1993, S. 1636.

Mr. President, the Committee on Commerce, Science, and Transportation held two hearings on the reauthorization of the Marine Mammal Protection Act this year. At the first hearing, the committee received testimony on the issue of interactions between marine mammals and commercial fishing operations. At the second hearing, the committee received testimony on the issue of public display and scientific research. Because proposed regulations for managing captive marine mammals were only recently made available, the legislation we are introducing today addresses only the interaction between commercial fishermen and marine mammals. Changes to the MMPA to address public display issues will be considered at a later date.

The purposes of the legislation I am introducing today are to: First, extend...
the authorization of appropriations for 5 years; and second, establish a new regime governing the incidental taking of marine mammals in commercial fishing operations.

The MMPA establishes a comprehensive Federal program to conserve marine mammals to the central feature of which program is a moratorium on the taking of all marine mammals by persons subject to U.S. jurisdiction. This protection prohibits harassment of animals, as well as the hunting or capturing of them. In addition, imports of marine mammals or marine mammal products into the United States are banned.

The moratorium on the taking or importation of marine mammals may be waived for the incidental taking of marine mammals in the course of commercial fishing operations.

General permits and small-take exceptions were issued to U.S. fishermen in 1987. In July 1986, the Federation of Japan Salmon Fishers Cooperative Association applied for a 5-year general permit to allow the incidental taking of Dall's porpoise, northern fur seals, and sea lions. The decision involved interactions between commercial fishing operations. Emphasis is placed on the need for immediate action to protect those stocks in decline or at low population levels. In addition, the intentional killing of marine mammals by commercial fishermen is prohibited.

Specifically, the bill first, would require the Secretary of Commerce to prepare and issue a stock assessment for each marine mammal stock. The stock would be designated into 1 of 5 categories ranked in priority based on population trend, size, and level of total lethal take. All stock assessments would be published within 240 days after the date of enactment, with a final stock assessment published 90 days after the end of the public comment period.

Secondly, the interim exemption—section 114—would remain in place until the regulations prescribed in the new section 118 take effect.

Third, the Secretary would be required to establish an incidental take team of knowledgeable and experienced individuals to develop an incidental take plan recommending measures for assisting a stock to recover. If the incidental take team cannot reach agreement and submit a draft plan within 6 months, then the Secretary would be required to publish a proposed plan and implementing regulations for public review within two additional months. Emergency regulations could be prescribed prior to final publication upon a Secretarial finding that incidental taking is having an immediate and significant adverse impact on a stock. The incidental take plan for a critical stock must include guidelines and evaluation of the information gathered in the stock assessment, and proposed management measures to reduce takings by commercial fisheries based proportionately on their contribution to the problem.

Fourth, the Secretary of Commerce would be authorized to develop a vessel registration system to assess the interactions between marine mammals and fisheries. The Secretary may establish a registration system only if no other Federal, State, or tribal registration system exists. Any fees charged for registration of the decal would not be permitted to exceed administration costs incurred in issuing the decal. Appropriated funds would be used to cover any costs of maintaining a separate registration system. Only those vessels which are in a fishery with frequent or occasional takes could be included within a registration system.

Fifth, all incidental lethal and serious injury takes would be reported at the end of each fishing trip on a standard form, and failure to report would be subject to civil penalties.

Sixth, the Secretary of Commerce would be authorized to implement a vessel observer program, and require vessels to carry observers to the extent they can be safely accommodated. Highest priority in assigning observers would be given to those fisheries that take stocks designated as depleted or critical. Cost of monitoring would be covered by appropriations.

Seventh, establishment of an incidental take waiver that would be mandated within 30 days of enactment to begin work immediately on a draft incidental take plan to assist the Alaska harbor seals and the Gulf of Maine harbor porpoises which are known critical stocks toward recovery.

In closing, I would like to comment on the efforts of the fishing community, conservation groups, and the administration. This has not been an easy one, and I recognize that as in all compromises, no one is completely satisfied by this legislative solution. However, I think we are all in agreement that we must move steadily toward reducing the injury of marine mammals during commercial fishing operations. At the same time we must strike a balance that does not put our commercial fishermen out of business.

This legislation is the result of many months of negotiations by the interested parties. Our efforts would not have been as successful, without their cooperation, and hard work.

Mr. President, I request that the bill be printed in the RECORD in its entirety.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:
SEC. 5. PURPOSES.

The purposes of this Act are—

(1) authorize appropriations to carry out the Marine Mammal Protection Act of 1972 for the fiscal years 1994 through 1998;

(2) ensure that the incidental take of marine mammals in any fishery, by itself and in combination with other human activities, does not have a significant adverse impact on the species or populations of marine mammals to be reduced or maintained at, for significant periods of time, a level that is below the lower limit of its optimum sustainable population range;

(3) avoid restrictions on fishing operations when such restrictions are not necessary to meet the purpose described in paragraph (2); and

(4) prohibit intentional lethal taking during commercial fishing, except as authorized through a waiver under section 101(a)(3) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(3)).

(5) focus efforts on identifying and addressing the most significant problems involving fishery-marine mammal interactions, considering both the status of the affected marine mammal stocks and the numbers of marine mammals that are taken incidentally in each fishery;

(6) streamline the procedure for authorizing the taking of marine mammals in commercial fisheries, consistent with the long-term objective of identifying and taking such steps as may be practicable to reduce to a level below the lower limit of the taking of marine mammals incidental to commercial fishing operations to insignificant levels approaching zero; and

(7) develop a cost-effective program for reducing the levels of incidental take of marine mammals in commercial fisheries and the size and current population trends of the affected marine mammal stocks.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) COMMERCE DEPARTMENT.—Section 7(a) of the act entitled "An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes", approved October 9, 1981 (16 U.S.C. 1384(a)), is amended to read as follows:

"(a) DEPARTMENT OF COMMERCE.—There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under title II of the Marine Mammal Protection Act of 1972, $1,500,000 for fiscal year 1995, $1,400,000 for fiscal year 1996, $1,500,000 for fiscal year 1997, and $1,500,000 for fiscal year 1998.

(b) DEPARTMENT OF INTERIOR.—Section 7(b) of the act entitled "An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes", approved October 9, 1981 (16 U.S.C. 1384(b)), is amended to read as follows:

"(b) DEPARTMENT OF INTERIOR.—There are authorized to be appropriated to the Department of Interior, for purposes of carrying out such functions and responsibilities as it may have been given under title II of the Marine Mammal Protection Act of 1972, $25,311,000 for fiscal year 1995, $22,500,000 for fiscal year 1996, $24,338,000 for fiscal year 1997, and $25,311,000 for fiscal year 1998.

(c) MARINE MAMMAL COMMISSION.—Section 7(c) of the act entitled "An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes", approved October 9, 1981 (16 U.S.C. 1407), is amended to read as follows:

"(c) MARINE MAMMAL COMMISSION.—There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out such functions and responsibilities as it may have been given under title II of the Marine Mammal Protection Act of 1972, $1,350,000 for fiscal year 1995, $1,300,000 for fiscal year 1996, $1,500,000 for fiscal year 1997, and $1,500,000 for fiscal year 1998."
"(G) designation of the stock (based on a scientific analysis of the stock's population trends and other factors), the total annual lethal take from the stock from all sources, and the best available estimates of net productivity at the maximum net productivity level; or listing in one of the following categories:

(i) Class 1, consisting of stocks whose population size is decreasing, whose population trend is unknown and whose realistic minimum population is less than 10,000, and from which the total annual lethal take exceeds the calculated acceptable removal level and is at its maximum net productivity level.

(ii) Class 2, consisting of stocks—

(a) whose population size is decreasing, or whose population trend is unknown and whose realistic minimum population is less than 10,000; and from which the total annual lethal take is between 50 percent and 100 percent of the net productivity of the stock's population when it is at its maximum net productivity level; or

(b) whose population size is stable, or whose population trend is unknown and whose realistic minimum population is greater than 10,000, but less than 100,000; and from which the total annual lethal take is between 50 percent and 100 percent of the net productivity of the stock's population when it is at its maximum net productivity level;

(iii) Class 3, consisting of stocks—

(a) whose population size is declining, or whose population trend is unknown and whose realistic minimum population is greater than 10,000 but less than 100,000; and from which the total annual lethal take is between 20 percent and 100 percent of the net productivity of the stock's population when it is at its maximum net productivity level; or

(b) whose population size is increasing, or whose population trend is unknown and whose realistic minimum population is greater than 100,000; and from which the total annual lethal take is greater than 20 percent, and 100 percent of the net productivity of the stock's population when it is at its maximum net productivity level; or

(iv) Class 4, consisting of stocks—

(a) whose population size is stable, or whose population trend is unknown and whose realistic minimum population is greater than 100,000; and from which the total annual lethal take is greater than 20 percent and 100 percent of the net productivity of the stock's population when it is at its maximum net productivity level; or

(b) whose population size is increasing, or whose population trend is unknown and whose realistic minimum population is greater than 100,000; and from which the total annual lethal take is between 20 percent and 100 percent of the net productivity of the stock's population when it is at its maximum net productivity level; or

(v) Class 5, consisting of stocks whose population size is increasing, or whose population trend is unknown and whose realistic minimum population is greater than 100,000; and from which the total annual lethal take is between 20 percent and 100 percent of the net productivity of the stock's population when it is at its maximum net productivity level; or

(2) Not later than 240 days after the date of enactment of this section, the Secretary shall issue a draft of each stock assessment required by this subsection, after seeking advice from the experts described in subsection (b). The Secretary shall publish in the Federal Register a notice of availability of the draft and provide an opportunity for public review and comment during a period of not less than 60 days, after which the Secretary shall publish in the Federal Register a final stock assessment, after consideration of advice, recommendations, and comments of experts and others as the Secretary considers appropriate.

(3) Not later than 90 days after the close of the public comment period on such preliminary assessment, the Secretary shall publish in the Federal Register a final stock assessment, after consideration of advice, recommendations, and comments of experts and others as the Secretary considers appropriate.

(4) The Secretary shall review stock assessments in accordance with this subsection, and on the advice and recommendations from experts—

(A) on an annual basis for stocks listed as critical stocks or for which new information is available; and

(B) at least once every 3 years for all other marine mammal stocks.

The Secretary shall revise such assessments after notice and opportunity for public comment, if the review indicates revision is necessary.

(d) INCIDENTAL TAKING PLAN.—(1) The Secretary shall develop and implement an incidental taking plan designed to assist in the recovery of each marine mammal stock that is threatened or endangered, and interacts with commercial fisheries. Such plan shall be developed in consultation with the interested parties concerning the incidental take of marine mammals from commercial fishing operations, the Secretary shall give highest priority to the development and implementation of Class 1 stocks. Within a particular class of stocks, the Secretary shall give highest priority to the incidental taking plan for the stock that the Secretary considers the most critical within the class.

(2) Each incidental taking plan developed under this subsection for a critical stock shall include the following:

(A) A review and evaluation of the information contained in the stock assessment published under subsection (c) and any new information that may be available.

(B) An evaluation and estimate of the total number of marine mammals from the stock that are being killed or seriously injured each year as a result of commercial fishing activities.

(C) Proposed management measures or voluntary actions for the reduction of incidental taking by commercial fisheries. Such proposed measures and actions shall be developed in light of the plan's immediate objective of reducing incidental lethal and serious injury take by commercial fisheries by the same proportion as their proportion of the total lethal and serious injury take from all sources.

(D) A long-term strategy to reduce, to insignificant levels within 10 years, the incidental mortality and serious injury within the stock that results from commercial fishing operations.

(D) Each incidental taking plan shall include projected dates for achieving the objectives of the plan. If the total lethal take exceeds the calculated acceptable removal level, the plan shall include measures that the Secretary expects will reduce, within 6 months after commencement of fishing, the share of the lethal take that exceeds the calculated acceptable removal level and is attributable to commercial fisheries.

(E) At the earliest possible time (not later than 120 days) after the Secretary issues a final stock assessment listing a stock as a critical stock, the Secretary shall—

(i) establish an incidental taking plan for such critical stock and appoint the members of such team in accordance with subparagraph (I) and (ii); and

(ii) publish in the Federal Register a notice of the team's establishment, the names of the team's appointed members, the full scope range of the plan and recommend, for such critical stock and all the commercial fisheries that have lethal incidental takings from such stock.

(B) The Secretary may charge an incidental take team to deal with a stock that extends over one or more regions, or multiple stocks within a region, if the Secretary determines that doing so would facilitate the development and implementation of plans required under this subsection.

(C) Members of incidental take teams shall be individuals knowledgeable and experienced regarding the measures to conserve such stocks and to reduce any takings from such stock incidental to commercial fishing operations. Members of the non-user interests representatives of Federal and State agencies, regional fishery management councils and commissions, academic and scientific organizations, the environmental community, and others as the Secretary considers appropriate. Incidental take teams shall, to the maximum extent practicable, maintain an equitable balance among representatives of government, resource user interests, and non-user interests. Incidental take teams shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.) but their meetings shall be open to the public, after timely publicity on the time and place of meetings.

(D) Members of incidental take teams shall serve without compensation, but shall be reimbursed by the Secretary for reasonable travel costs and expenses incurred in performing their duties as members of the team.

(E) Nothing in this section shall be construed to constrain the Secretary from establishing priority among classes of critical stocks and to reduce any takings from such stock incidental to commercial fishing operations. Members of the non-user interests representatives of Federal and State agencies, regional fishery management councils and commissions, academic and scientific organizations, the environmental community, and others as the Secretary considers appropriate.

(F) At the earliest possible time (not later than 6 months after the date of establishment of an incidental take team for the stock, the team shall submit a draft incidental taking plan for the critical stock to the Secretary, consistent with the other provisions of this section.

(B) The Secretary shall draft incidental taking plan into consideration the advice, recommendations, and comments of the team's establishment, and the draft the earliest possible time (not later than 6 months after the date of establishment of the team, the Secretary shall publish in the Federal Register a proposed incidental taking plan and public review and comment.

(B) In the event that the incidental take team does not submit a draft plan to the Secretary within 6 months after the date of the Secretary's appointment, the Secretary may publish the proposed incidental taking plan for public review and comment.
plan and implementing regulations, for public review and comment.

"(C) Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final incidental taking plan and implementing regulations, consistent with the other provisions of this section.

"(D) The Secretary may, in consultation with the incidental take team, amend the incidental taking plan and implementing regulations as necessary, consistent with the procedures in this section for the issuance of such plans and regulations.

"(E) The Secretary may, in consultation with the incidental take team, amend the incidental taking plan and implementing regulations as necessary, consistent with the procedures in this section for the issuance of such plans and regulations.

"(F) Where the total lethal take from a critical stock to which this subsection applies is estimated to be less than the calculated acceptable removal level established in the stock assessment, the following procedures shall apply in the development of the incidental taking plan:

(A) Not later than 11 months after the date of establishment of an incidental take team for the stock, the team shall submit a draft incidental taking plan for the stock to the Secretary, consistent with the other provisions of this section.

(B) The Secretary shall take the draft incidental taking plan into consideration and, not later than 60 days following the submission of the draft plan by the team, the Secretary shall publish in the Federal Register a proposed incidental taking plan and implementing regulations, for public review and comment.

(c) In the event that the incidental take team does not submit a draft plan to the Secretary within 11 months, the Secretary shall, not later than 15 months after the establishment of the team, establish a vessel registration system under subsection (h) to document the level of the incidental taking.

(D) The Secretary and the incidental take team shall meet every 6 months to monitor such plans and regulations.

(e) The Secretary may, in consultation with the incidental take team, amend the incidental taking plan and implementing regulations, consistent with the other provisions of this section.

(2) In implementing an incidental taking plan pursuant to this section, the Secretary may promulgate regulations which in the Secretary's judgment are necessary to implement the incidental taking plan and the implementing regulations.

(f) The Secretary, consistent with the other provisions of this section, shall rely upon existing Federal, State, or tribal data bases which are capable of being utilized to understand the interaction between commercial fisheries and marine mammals and to verify reporting of incidental lethal and serious injury takings of marine mammals in the course of commercial fishing operations, as set forth in subsection (b).

(g) Reporting requirement.—The owner or operator of a commercial fishing vessel subject to this Act shall report all incidental lethal and serious injury takings of marine mammals in the course of commercial fishing operations to the Secretary at the end of each fishing trip on a standard form to be developed by the Secretary in consultation with commercial fishery managers, prescribe emergency regulations which in the Secretary's judgment are necessary to implement the incidental taking plan and the implementing regulations and to provide the information required under paragraph (2) are not available to the Secretary or the team, the Secretary may require through regulation separate registration systems for the issuance of such decal or other evidence.

(h) Monitoring.—(1) The Secretary may, as a condition of accepting a Federal, State, or tribal registration system under subsection (d), require that such registration be supplemented by the requirement that the vessel so registered display a decal or other evidence, on the importance of reducing the incidental lethal and serious injury taking of marine mammals and to verify reporting of incidental lethal and serious injury takings of marine mammals in the course of commercial fishing operations, as set forth in subsection (b).

(i) Vessel registration system for a specific fishery pursuant to paragraph (3) shall be covered through Federal appropriations.

The Secretary may establish a vessel observer program to monitor incidental lethal and serious injury takings of marine mammals during the course of commercial fishing operations. The purpose of the monitoring program shall be to develop independent information on interactions between commercial fisheries and marine mammals to implement the incidental lethal and serious injury taking of marine mammals under subsection (g). Observers may perform the following tasks including:

(A) recording other sources of mortality;

(B) recording the number of marine mammals sighted during the observation period;

(C) other scientific investigations, including collection of marine mammal tissues.

(2) Commercial fishing vessels shall carry onboard observer personnel in accordance with such requirements as the Secretary, to the extent that the vessel can
(a) DEFINITIONS.—Section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361) is amended by inserting “endangered or threatened”, and is intended to abrogate or diminish existing Indian treaty fishing rights, and regulation of Native American fishing and hunting activities shall be limited to measures consistent with existing treaty rights.

SEC. 11. TRANSITION RULE.

Section 111(a)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371a(a)(2)) is amended by striking “ending” and inserting in lieu thereof “until superseded by regulations prescribed under section 118,”.

SEC. 12. TECHNICAL AMENDMENTS.

(1) A number of corrections, and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371a) is amended by striking “section 118 and after notice and opportunity for public comment, and shall be approved and implemented as quickly as practicable.

SEC. 8. ALASKA HARBOR SEALS AND GULF OF MAINE HARBOR PORPOISES.

Notwithstanding any other provision of this Act, including section 118 of the Marine Mammal Protection Act of 1972 (as added by this Act), the Secretary of Commerce shall establish an incidental take team for the harbor porpoise stock in the Gulf of Maine, within 60 days after the date of enactment of this Act. The incidental take team shall begin work immediately on a draft incidental taking plan in accordance with such section 118, and shall use the best scientific information available. The draft incidental taking plan shall be reviewed by the Secretary, after consultation with scientists experts as described in subsection (b) of such section 118, and after the opportunity for public comment, and shall be approved and implemented as quickly as practicable.

SEC. 9. AUTHORIZATION TO DETERED MAMMALS.

Section 101 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371) is amended by adding at the end the following new subsection:

(1)(e) Except as provided in paragraph (2), the provisions of this Act shall not apply to the use by any person of measures to deter marine mammals from—

(A) the year or catch of commercial or recreational fishermen;

(B) damaging private or public property;

(C) endangering personal safety.

so long as such measures do not result in marine mammal death or serious injury.

‘(d) The Secretary, after consultation with the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods through regulation under this Act.

‘(3) The authority to deter marine mammals pursuant to paragraph (1) applies to all marine mammals, including all stocks designated as depleted under this Act.’.

SEC. 10. TREATY RIGHTS.

Nothing in this Act, including any amendments made by this Act, is intended to abrogate or diminish existing Indian treaty fishing or hunting rights, and regulation of Native American fishing and hunting activities shall be limited to measures consistent with existing treaty rights.

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SEC. 9. AUTHORIZATION TO DETER MAMMALS.

Section 101 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371) is amended by adding at the end the following new subsection:
...amended by redesignating the last three paragraphs as paragraphs (16), (17), and (18), respectively.

585. Mr. STEVENS. Mr. President, I am pleased to be able to introduce this bill with my friend from Massachusetts to create a new regime governing commercial fisheries interactions with marine mammals. This bill reflects an extensive meeting process between the commercial fishing industry, the environmental community, the administration, and others concerned about the protection of marine mammals. The Commerce, Science, and Transportation Committee heard testimony at hearings earlier this session as well, and we appreciate the valuable assistance and comments of all those involved in putting this bill together.

Our bill addresses only commercial fisheries' interactions with marine mammals. It would replace the interim regime that has governed the taking of marine mammals incidental to commercial fishing operations since the 1988 amendments to the MMPA were passed. The legislation will help to focus limited Federal resources on the marine mammal stocks most in danger.

There are other outstanding issues we will need to address as part of the broader MMPA reauthorization. We anticipate additional MMPA provisions, as well as possible changes to this commercial fisheries interaction provision before the reauthorization process is completed. General concerns have been expressed to me by the Native communities in my State that the possible side effects this proposal could have on subsistence use. I would ask the cooperation of my colleagues to help me in addressing these concerns before final action is taken on this bill.

By Mr. JOHNSTON: S. 1362 is amended by redesignating the last three paragraphs as paragraphs (16), (17), and (18), respectively.

SEC. 101. AMENDMENTS TO HELIUM ACT AMENDMENTS OF 1960.

(a) Section 4 of the Helium Act Amendments of 1960 (74 Stat. 921, 50 U.S.C. 1421 et seq.) is amended—

(1) by redesignating title III, as added by Public Law 102-587 (106 Stat. 5060), as title IV; and

(2) by redesignating the sections of that title (16 U.S.C. 1421 through 1421b) as sections 401 through 409, respectively.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Department of Interior Reform and Savings Act of 1993 be referred to the Senate Energy and Natural Resources Committee.

S. 1637

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

SECTION 1. SHORT TITLE.

This Act may be referred to as the "Department of the Interior Reform and Savings Act of 1993."

TITLE I—IMPROVE THE FEDERAL MINERAL SERVICE

SEC. 101. IMPROVE THE MINERAL SERVICE.

(a) The Secretary of the Interior shall, by fiscal year 1995, direct the Minerals Management Service, Royalty Management Program to develop and implement (1) an automated billing and royalty payment system to provide to its auditors a lease history that includes reference, royalty, production, financial, compliance history, pricing and valuation, and other information that the optimal methods to identify and resolve anomalies and to verify that royalties are paid correctly; (3) a more efficient and cost-effective royalty collection process by instituting new compliance and enforcement measures, including assessments and penalties for nonreporting and for underreporting, including assessing and collecting such other actions as may be necessary to reduce royalty underpayment and increase revenue to the Federal government to the estimated total of $28 million for fiscal year 1995.

(b) The Federal Oil and Gas Royalty Management Act of 1982 (Public Law No. 97-451), 20 U.S.C. 1701 et seq., is amended by adding a new subsection 111(b) as follows:

"Penalty assessment for substantial underreporting of royalty".

SEC. 111. (b)(1) If there is any underreporting of royalty owed on production from any lease issued or administered by the Secretary for the production of oil, gas, coal, any other mineral, or geothermal steam, from any Federal or Indian lands or the Outer Continental Shelf, for any production month, by any person who is responsible for paying royalty, the Secretary may assess a penalty of 10 percent of the amount of that underreporting.

(2) There is a substantial underreporting of royalty owed on production from any lease issued or administered by the Secretary for the production of oil, gas, coal, any other mineral, or geothermal steam, from any Federal or Indian lands or the Outer Continental Shelf, for any production month, by any person who is responsible for paying royalty, the Secretary may assess a penalty of 20 percent of the amount of that substantial underreporting.

For purposes of this section, the term 'underreporting' means the difference between the royalty on the value of the production which should have been reported and the royalty on the value of the production which was reported, if the value of the production which should have been reported is greater than the value of the production which was reported.

(3) The Secretary may, for purposes of this section, disregard a portion of the underreporting if such difference exceeds 10 percent of the royalty on the value of the production which should have been reported.

(4) The Secretary shall not impose the assessment provided in paragraph (1) or (2) if the person corrects the underreporting before the date the person receives notice from the Secretary that an underreporting may have occurred, before the date of enactment of this Act, whichever is later.

(5) The Secretary shall waive any portion of an assessment provided in paragraph (1) or (2) attributable to that portion of the underreporting for which the person demonstrates that—

(i) the person had written authorization from the Secretary to report royalty on the value of the production on the basis on which it was reported;

(ii) the person had substantial authority for reporting royalty on the value of the production on the basis on which it was reported;

(iii) the person previously had notified the Secretary, in such manner as the Secretary may by rule prescribe, of relevant facts affecting the royalty treatment of specific production which led to the underreporting, or

(iv) the person meets any other exception which the Secretary may, by rule, establish.

(6) All penalties collected under this section shall be deposited to the same account as the Federal oil and gas royalty collections and paid to the same recipients in the same manner as the royalty with respect to which such penalty is paid..".
TITLE III—PHASE OUT THE MINERAL INSTITUTE PROGRAM

SEC. 101. PHASE OUT THE MINERAL INSTITUTE PROGRAM.

The Secretary of the Interior, beginning in fiscal year 1995, shall take action to phase out the Mining and Mineral Resources Research Institute Act of 1964, Public Law 88–409, as amended (38 Stat. 1536 through 1541 and 102 Stat. 2336 through 2341, 90 U.S.C. 1221 through 1230). There are hereby authorized to be appropriated under the Act of the following amounts: fiscal year 1995—$5.5 million; fiscal year 1996—$5 million; fiscal year 1997—$3 million; and fiscal year 1998—$1.5 million. No further appropriations for this Act are authorized after September 30, 1998.

S. 1638

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

SECTION 1. SHORT TITLE

This Act may be referred to as the "Department of Energy Reform and Savings Act of 1993".

TITLE I—ALASKA POWER ADMINISTRATION—SALE AUTHORIZATION ACT

SEC. 101. SHORT TITLE.

This subtitle may be cited as the "Alaska Power Administration Sale Authorization Act".

SEC. 102. SALE OF SNETTISHAM AND EKTUTNA HYDROELECTRIC PROJECTS.

(a) The Secretary of Energy may sell the Snettisham Hydroelectric Project (referred to in this subtitle as "Snettisham") to the State of Alaska Power Authority (now known as the Alaska Industrial Development and Export Authority, and referred to in this subtitle as the "Authority"), or its successor, in accordance with the Federal Power Act and the Federal Energy Regulatory Commission, in accordance with the Federal Power Act (16 U.S.C. 791 et seq.) and this Act, the Alaska Power Authority may issue and sell bonds, notes, and other evidences of indebtedness (referred to in this part as "bonds") in the manner and amounts the Administrator, considers appropriate in the name of and for and on behalf of the Alaska Power Authority, to establish the amount of proceeds needed to acquire a federally owned building or buildings or other federally owned facilities.

(b) The Secretary of Energy may sell the Ektutna Hydroelectric Project (referred to in this subtitle as "Ektutna") to the Municipal Lighting Board (now known as the Chugach Electric Association, Inc. of Anchorage doing business as Municipal Light and Power, the Chugach Electric Association, Inc., and the Matanuska Electric Association, Inc. (referred to in this subtitle as "Ektutna Purchaser") in accordance with the August 2, 1989, Ektutna Purchase Agreement between the United States Department of Energy and the Authority.

(c) The Secretary of Energy may sell the Ektutna Hydroelectric Project (referred to in this subtitle as "Ektutna") to the Municipal Lighting Board (now known as the Chugach Electric Association, Inc. of Anchorage doing business as Municipal Light and Power, the Chugach Electric Association, Inc., and the Matanuska Electric Association, Inc. (referred to in this subtitle as "Ektutna Purchaser") in accordance with the August 2, 1989, Ektutna Purchase Agreement between the United States Department of Energy and the Authority.

(d) The Secretary of Energy shall deposit sale proceeds in the Treasury of the United States to the credit of miscellaneous receipts.

(e) There are authorized to be appropriated sufficient sums as are necessary to prepare or acquire Ektutna and Snettisham assets for sale and conveyance, such preparations to provide sufficient title to ensure the beneficial use, enjoyment, and occupancy to the purchaser and to deposit any surplus funds that may arise from the sale.

(f) No later than one year after both of the sales authorized in section 102 have occurred, as measured by the Transaction Dates stipulated in these agreements, the Secretary of Energy shall—

(1) complete the business of, and close out, the Alaska Power Authority and the Authority; and

(2) prepare and submit to Congress a report documenting the sales.

TITLES II, III, AND IV—PHASE OUT OF MINERAL INSTITUTE PROGRAM

SEC. 103. ASSESSMENT OF ALTERNATIVE OPTIONS.

Before taking any action authorized in section 102, the Secretary shall assess the feasibility of all alternative options for maximising the return to the Treasury from the sale of the Alaska Power Marketing Administration.

TITLE II—FEDERAL-PRIVATE COGENERATION OF ELECTRICITY

SEC. 201. FEDERAL-PRIVATE COGENERATION OF ELECTRICITY.

Section 304(b)(2) of the National Energy Conservation Policy Act (42 U.S.C. 6272c(b)(2)) is amended by striking "exclud­

able" and inserting the following in lieu thereof: "fiscally and financially viable and to sell such sums as are necessary to prepare any cogeneration process for other than a federally owned building or buildings or other federally owned facilities."

TITLE III—POWER MARKETING INVESTMENTS—ASSIGNED DEBT BUYSOUT

PART I—BONNIEVILLE POWER ADMINISTRATION DEBT BUYSOUT

SEC. 301. SHORT TITLE.

This part may be cited as the "Bonneville Power Administration Repayment Bonds Act".

SEC. 302. SALE OF BONDS.

Notwithstanding any other law and without limitation imposed by statute on expenditure and net lending (budget outlays) of the Federal Government, section 251, 252, or 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 (22 U.S.C. 889 et seq.), related to the Bonds, all receipts and disbursements of that fund related to these Bonds, and all expenditures by the Administrator related to these Bonds—

(A) shall be issuable and payable through the Federal wire system;

(B) are negotiable instruments that may be accepted as security for any fiduciary, trust, and public funds, the investment or deposit of which is under the authority or control of any officer or agency of the United States;

(C) may be held without limitation by national banks;

(D) qualify as legal investments for banks, savings and loan institutions, and credit unions; and

(E) are eligible collateral for Federal advances and discounts, for deposits of the United States, and for the Treasury tax and loan accounts;

(F) Bonds issued under this part shall contain a recital that they are issued under this part and this recital is conclusive evidence of the regularity of the issuance and sale of the Bonds and their validity;

(G) the Bonds issued under this part, all receipts of the Secretary of the Treasury under this part, any portion of the fund established under the Federal Columbia River Transmission System Act (16 U.S.C. 838 et seq.) related to these Bonds, all receipts and disbursements of that fund related to these Bonds, and all expenditures by the Administrator related to these Bonds—

(A) are exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government, sequestration order, or discretionary spending limit;

(B) are exempt from any order issued pursuant to sections 251, 252, or 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 (22 U.S.C. 889 et seq.); and

(C) shall not be subject to the prior restraint on expenditures under subsection (b) of section 102 of the Balanced Budget and Emergency Deficit Control Act of 1985 (22 U.S.C. 889a).
SEC. 308. REPAYMENT OF EXISTING INDEBTEDNESS.

(a) Notwithstanding any other law, within 12 months after the enactment of this Act, each Administrator shall develop, in consultation with the Secretary of the Treasury, the discounted present value of principal and interest payments on power investments scheduled to be repaid from the United States Treasury.

(b) If the discounted present value of principal and interest payments on power investments scheduled to be repaid from the United States Treasury exceeds $10,000,000, the Administrator shall offer to amend existing contracts for the sale of electric power, transmission, or other services associated with the specified project or facility.

(c) If the discounted present value of principal and interest payments on power investments scheduled to be repaid from the United States Treasury is less than $10,000,000, the Administrator may exempt the specified project or facility.

SEC. 309. REVENUE BONDS.

(a) Each Administrator, in consultation with the Secretary of the Treasury, may issue and sell to the United States, without limitation, revenue bonds for the purpose of refunding existing indebtedness incurred from bonds issued under section 310. As soon as practicable after the issuance of such revenue bonds, the Administrator shall notify the United States Treasury addressed in this section of the issuance of such revenue bonds.

(b) The Administrator shall use the proceeds of the issuance of revenue bonds to retire the existing indebtedness associated with the specified project or facility.

(c) The existing indebtedness associated with the specified project or facility shall be considered to be satisfied by the issuance of revenue bonds.

SEC. 310. SECURITY FOR REVENUE BONDS.

(a) Each Administrator shall issue revenue bonds that are not secured by any assets other than the revenues from the sale of electric power, transmission, or other services associated with the specified project or facility.

(b) Each Administrator shall use the proceeds of the issuance of revenue bonds to refund the existing indebtedness associated with the specified project or facility.

(c) The existing indebtedness associated with the specified project or facility shall be considered to be satisfied by the issuance of revenue bonds.

(d) Each Administrator shall provide for the refunding of the existing indebtedness associated with the specified project or facility.

(e) The financial transactions of each Administrator shall be audited by independent financial auditors.

(f) The financial statements of each Administrator shall be submitted to the Congress within 60 days following the end of the fiscal year covered by the audit.

SEC. 311. OTHER POWER MARKETING ADMINISTRATIONS DEBT BUYOUT.

SEC. 312. DEFINITIONS.

For the purposes of this part—

(1) "Administrator" means the Administrator of the Southeastern Power Administration;

(2) "Power Marketing Administration Sinking Fund" means the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration;

(3) "Power Marketing Administration" means the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration;

(4) "Revenue Bond" means a bond issued under section 310;

(5) "Repayment Amount" means the amount by which the discounted present value of principal and interest payments on power investments scheduled to be repaid from the United States Treasury exceeds $10,000,000.

(6) "Existing Indebtedness" means the amount of indebtedness associated with the specified project or facility.

(7) "Revenue Bond Issuance" means the issuance of revenue bonds under section 310.

(8) "Repayment Obligation" means the repayment of the existing indebtedness associated with the specified project or facility.

(9) "Project" means a project associated with the specified project or facility.

(10) "Facility" means a facility associated with the specified project or facility.

(11) "Existing Indebtedness" means the amount of indebtedness associated with the specified project or facility.

(12) "Project or Facility" means the specified project or facility.

(13) "Authority" means the Administrator, the Secretary of the Treasury, or any other party authorized to act on behalf of the specified project or facility.

(14) "Revenue" means the revenues from the sale of electric power, transmission, or other services associated with the specified project or facility.

(15) "Indebtedness" means the amount of existing indebtedness associated with the specified project or facility.

(16) "Incentive Payment" means the amount by which the discounted present value of principal and interest payments on power investments scheduled to be repaid from the United States Treasury exceeds $10,000,000.

(17) "Refunding" means the issuance of revenue bonds under section 310.

(18) "Repayment" means the payment of the existing indebtedness associated with the specified project or facility.

SEC. 313. PAYMENT OF BOND COSTS.

(a) Each Administrator shall be responsible for the costs of issuing and selling revenue bonds under section 310.

(b) Each Administrator shall use the proceeds of the issuance of revenue bonds to refund the existing indebtedness associated with the specified project or facility.

(c) Each Administrator shall provide for the refunding of the existing indebtedness associated with the specified project or facility.

(d) Each Administrator shall provide for the refunding of the existing indebtedness associated with the specified project or facility.

(e) The financial transactions of each Administrator shall be audited by independent financial auditors.

(f) The financial statements of each Administrator shall be submitted to the Congress within 60 days following the end of the fiscal year covered by the audit.

SEC. 314. COMBINED REPAYMENT STUDY.

(a) Each Administrator shall study the combined repayment of the existing indebtedness associated with the specified project or facility.

(b) Each Administrator shall study the combined repayment of the existing indebtedness associated with the specified project or facility.

(c) Each Administrator shall study the combined repayment of the existing indebtedness associated with the specified project or facility.

(d) Each Administrator shall study the combined repayment of the existing indebtedness associated with the specified project or facility.

(e) Each Administrator shall study the combined repayment of the existing indebtedness associated with the specified project or facility.

(f) Each Administrator shall study the combined repayment of the existing indebtedness associated with the specified project or facility.

SEC. 315. POWER MARKETING ADMINISTRATION SINKING FUND.

(a) There is established in the Treasury of the United States a Power Marketing Administration Sinking Fund.

(b) The Administrator of the Power Marketing Administration shall deposit into the Sinking Fund the amount by which the discounted present value of principal and interest payments on power investments scheduled to be repaid from the United States Treasury exceeds $10,000,000.

(c) The amount deposited into the Sinking Fund shall be used to refund the existing indebtedness associated with the specified project or facility.

(d) The amount deposited into the Sinking Fund shall be used to refund the existing indebtedness associated with the specified project or facility.

(e) The amount deposited into the Sinking Fund shall be used to refund the existing indebtedness associated with the specified project or facility.

(f) The amount deposited into the Sinking Fund shall be used to refund the existing indebtedness associated with the specified project or facility.

SEC. 316. OTHER POWER MARKETING ADMINISTRATIONS DEBT BUYOUT.

(a) Each Administrator, in consultation with the Secretary of the Treasury, may issue and sell to the United States, without limitation, revenue bonds for the purpose of refunding existing indebtedness incurred from bonds issued under section 310.

(b) The Administrator shall use the proceeds of the issuance of revenue bonds to refund the existing indebtedness associated with the specified project or facility.

(c) The amount deposited into the Sinking Fund shall be used to refund the existing indebtedness associated with the specified project or facility.

(d) The amount deposited into the Sinking Fund shall be used to refund the existing indebtedness associated with the specified project or facility.

(e) The amount deposited into the Sinking Fund shall be used to refund the existing indebtedness associated with the specified project or facility.

(f) The amount deposited into the Sinking Fund shall be used to refund the existing indebtedness associated with the specified project or facility.

SEC. 317. SECURITY FOR REVENUE BONDS.

(a) Each Administrator shall issue revenue bonds that are not secured by any assets other than the revenues from the sale of electric power, transmission, or other services associated with the specified project or facility.

(b) Each Administrator shall use the proceeds of the issuance of revenue bonds to refund the existing indebtedness associated with the specified project or facility.

(c) The existing indebtedness associated with the specified project or facility shall be considered to be satisfied by the issuance of revenue bonds.

(d) Each Administrator shall provide for the refunding of the existing indebtedness associated with the specified project or facility.

(e) The financial transactions of each Administrator shall be audited by independent financial auditors.

(f) The financial statements of each Administrator shall be submitted to the Congress within 60 days following the end of the fiscal year covered by the audit.

SEC. 318. PAYMENT OF BOND COSTS.

(a) Each Administrator shall be responsible for the costs of issuing and selling revenue bonds under section 310.

(b) Each Administrator shall use the proceeds of the issuance of revenue bonds to refund the existing indebtedness associated with the specified project or facility.

(c) Each Administrator shall provide for the refunding of the existing indebtedness associated with the specified project or facility.

(d) Each Administrator shall provide for the refunding of the existing indebtedness associated with the specified project or facility.

(e) The financial transactions of each Administrator shall be audited by independent financial auditors.

(f) The financial statements of each Administrator shall be submitted to the Congress within 60 days following the end of the fiscal year covered by the audit.

SEC. 319. SECURITY FOR REVENUE BONDS.

(a) Each Administrator shall issue revenue bonds that are not secured by any assets other than the revenues from the sale of electric power, transmission, or other services associated with the specified project or facility.

(b) Each Administrator shall use the proceeds of the issuance of revenue bonds to refund the existing indebtedness associated with the specified project or facility.

(c) The existing indebtedness associated with the specified project or facility shall be considered to be satisfied by the issuance of revenue bonds.

(d) Each Administrator shall provide for the refunding of the existing indebtedness associated with the specified project or facility.

(e) The financial transactions of each Administrator shall be audited by independent financial auditors.

(f) The financial statements of each Administrator shall be submitted to the Congress within 60 days following the end of the fiscal year covered by the audit.

SEC. 320. POWER MARKETING ADMINISTRATION SINKING FUND.

(a) There is established in the Treasury of the United States a Power Marketing Administration Sinking Fund.

(b) The Administrator of the Power Marketing Administration shall deposit into the Sinking Fund the amount by which the discounted present value of principal and interest payments on power investments scheduled to be repaid from the United States Treasury exceeds $10,000,000.

(c) The amount deposited into the Sinking Fund shall be used to refund the existing indebtedness associated with the specified project or facility.

(d) The amount deposited into the Sinking Fund shall be used to refund the existing indebtedness associated with the specified project or facility.

(e) The amount deposited into the Sinking Fund shall be used to refund the existing indebtedness associated with the specified project or facility.

(f) The amount deposited into the Sinking Fund shall be used to refund the existing indebtedness associated with the specified project or facility.

SEC. 321. DEFINITIONS.

For the purposes of this part—

(1) "Administrator" means the Administrator of the Southeastern Power Administration;

(2) "Power Marketing Administration" means the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration;

(3) "Power Marketing Administration Sinking Fund" means the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration.

SEC. 322. REPORTS.

This part may be cited as the "Power Marketing Administrations Financing Act".
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United States, and for Treasury tax and loan accounts.

(d) Bonds issued under this part are exempt both as to principal and interest from all taxation by any State or local taxing authority, except estate, inheritance, and gift taxes.

(e) Bonds issued under this part shall contain a recital that they are issued under this part and such recital is conclusive evidence of the regularity of the issuance and sale of the bonds and their validity.

(f) These bonds are not intended to be and are not secured by the full faith and credit of the United States.

(g) The bonds issued under this part, all receipts of the Secretary of the Treasury under this part, and all expenditures by an Administrator related to these bonds—

(1) are exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government, sequestration order, or discretionary spending limit;

(2) are exempt from any order issued pursuant to sections 251, 252, or 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 et seq.); and

(3) are not subject to apportionment under subchapter II of chapter 15 of title 31, United States Code.

(h) With respect to the Western Area Power Administration, except as otherwise provided, this Act is considered to be a supplemental to the Federal reclamation laws.

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 1640 was introduced to the management of portions of the Presidio under the jurisdiction of the Secretary of the Interior, and for other purposes; to the Committee on Energy and Natural Resources.

PRESIDIO CORPORATION ESTABLISHMENT

• Mrs. BOXER, Mr. President, today I am introducing legislation, on behalf of myself and my colleague, Senator FEINSTEIN, the senior Senator from California, that will contribute to the success of the Presidio of San Francisco as a national park.

In 1972, Congress recognized the park potential of the Presidio. At that time Congressman Phil Burton's legislation creating the Golden Gate National Recreation Area [GGNRA] was drawn to include the Presidio, and provided that the Presidio would become a national park when it was no longer needed by the Army.

That time has now come, and the Army has begun the process of leaving the Presidio. Planning for the transition from military base to park has been underway and the draft general management plan for the Presidio was released last month for public comment.

It is projected that the new park will attract 10 million or more visitors a year. Those visitors will enjoy one of the most beautiful and historic urban open spaces in the world not already set aside as a park. The park offers a spectacular vistas of the Pacific Ocean, the Golden Gate, the Marin Headlands, San Francisco Bay, and the skyline of San Francisco.

The Presidio also offers over 200 years of military history, from its founding in 1776, through the Civil War, the Spanish-American War, and World Wars I and II. Presidio architecture represents a remarkable collection of structures dating from the days of Mexican sovereignty over California. The entire Presidio was declared a National Historic Landmark in 1969.

The bill I am introducing today is the second step in a two-step process designed to make the Presidio park as self-sufficient as possible and to minimize the need for annual congressional appropriations. The first bill, introduced by Senator FEINSTEIN and myself 2 weeks ago, will provide the Secretary of the Interior the authority he needs to go forward, on an interim basis, with non-military business and other properties. The bill we introduce today will establish the Presidio Corp., a public benefit corporation modeled on the Pennsylvania Avenue Development Corp.

The corporation will manage the facilities at the Presidio which are not of federal benefit. The bill we introduce today will establish the Presidio Corp., a public benefit corporation modeled on the Pennsylvania Avenue Development Corp.

The bill I am introducing today is the second step in a two-step process designed to make the Presidio park as self-sufficient as possible and to minimize the need for annual congressional appropriations. The first bill, introduced by Senator FEINSTEIN and myself 2 weeks ago, will provide the Secretary of the Interior the authority he needs to go forward, on an interim basis, with non-military business and other properties. The bill we introduce today will establish the Presidio Corp., a public benefit corporation modeled on the Pennsylvania Avenue Development Corp.

The corporation will manage the facilities at the Presidio which are not of federal benefit. The bill we introduce today will establish the Presidio Corp., a public benefit corporation modeled on the Pennsylvania Avenue Development Corp.

Critical to the success of this undertaking will be the Presidio's ability to generate revenues to offset the costs of operation and capital improvement. The corporation would have the flexibility necessary to negotiate terms of leases and other contracts, to leverage lease revenues and to utilize a staff designed to make the Presidio park as self-sufficient as possible and to minimize the need for annual congressional appropriations. The first bill, introduced by Senator FEINSTEIN and myself 2 weeks ago, will provide the Secretary of the Interior the authority he needs to go forward, on an interim basis, with non-military business and other properties. The bill we introduce today will establish the Presidio Corp., a public benefit corporation modeled on the Pennsylvania Avenue Development Corp.

The corporation will manage the facilities at the Presidio which are not of federal benefit. The bill we introduce today will establish the Presidio Corp., a public benefit corporation modeled on the Pennsylvania Avenue Development Corp.

According to expert analysis, the Presidio Corp. established by this bill would produce savings of 20 to 30 percent when compared to the cost of total Federal management of the Presidio. The Presidio is an example of defense conversion that will be cost effective while serving an important national purpose.

This bill has the support of the Park Service, the Department of the Interior, local and national environmental groups, and the local community.

The Presidio is one of the Nation's great treasures. If we act now, we can ensure the successful transformation from a military base into a monument to environmental preservation and recreation as a national park.

By Mr. EXON:

S. 1640. A bill to amend the Hazardous Materials Transportation Act to authorize appropriations to the Department of Transportation for that Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

HAZARDOUS MATERIALS TRANSPORTATION AUTHORIZATION ACT OF 1993.

Mr. EXON. Mr. President, I rise to introduce the Hazardous Materials Transportation Authorization Act of 1993. S. 1640.

This legislation builds on the success of the Hazardous Materials Transportation Uniform Safety Act of 1990. Over the years, the United States of America has developed a most impressive safety record for the transportation of hazardous materials. There are nearly 1.5 million hazmat transactions each and every day. Rarely is there a dangerous incident.

Unfortunately, that record is not good enough. Each year there are still thousands of unintentional hazmat releases, 400 human injuries, and 8 to 10 deaths as a result of hazardous materials incidents. Safety can and must be improved.

The 1993 Hazardous Materials Transportation Authorization Act makes commonsense changes which will significantly advance hazardous transportation safety on all modes. The presence of hazardous materials on the Nation's highways and byways also highlights the need for several truck safety initiatives also included in this legislation.

On July 21 of this year the Surface Transportation Subcommittee heard testimony from the Clinton administration, shippers, carriers, emergency response providers, and labor. This legislation takes into consideration that testimony and proposes significant, but manageable, safety improvements.

The legislation would authorize the hazmat program at the levels recommended by the President and incorporates several provisions to improve the use of hazmat resources by the Department of Transportation, as well as State and local authorities. To improve emergency response training and planning, provisions to allow Indian tribes to qualify for hazmat planning grants, and clarifications to the training criteria for emergency responders are added to the basic hazmat law. The bill requires the retention of shipping papers. In addition, to prevent retaliation from foreign international trading partners, a registration and fee exemption for offerors of hazmat shipments domiciled outside of the United States is included. All carriers of International hazmat shipments destined for the United States would be unaffected by this provision and would continue to file and pay registration fees.
Mr. President, one provision of which I am very proud attempts to motivate safe behavior at rail-highway grade crossings. Under the 1969 bill, a new Federal fine of up to $25,000 could be imposed on any driver of a motor vehicle carrying hazardous materials or a driver of any commercial motor vehicle, entering a highway-railroad grade crossing without having sufficient space to drive completely through the crossing without stopping. Earlier this year, an Amtrak train hit a tanker truck grid-locked in a grade crossing. The resulting fireball from the crash killed the driver and several innocent individuals in nearby cars. The threat of a significant Federal civil penalty should get the attention of all drivers.

In the area of general safety enforcement, the bill improves law enforcement’s ability to enforce current hours of service rules for all professional drivers and recognizes the special hours of service needs of rural America during planting season. The bill also requires the Secretary to issue rules which will make it easier for employers to verify the safety record of new truck drivers.

In conclusion, I will mention that the bill strengthens a toll-free number for drivers, shippers, and the public to call to report potential Hazardous Materials Transportation Act violations.

Mr. President, my top priority as chairman of the Surface Transportation Subcommittee is to ensure safety. This legislation advances safety in a responsible and deliberate manner. I encourage my colleagues to study and support this necessary and important legislation.

Thank you, Mr. President. I ask unanimous consent that the text of the Hazardous Materials Authorization Act of 1993 be entered into the Record as if read following my remarks.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1600

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

CONGRESSIONAL RECORD—SENATE November 8, 1993
November 8, 1993

CONGRESSIONAL RECORD—SENATE

SEC. 12. DRIVER'S RECORD OF DUTY STATUS.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations amending section 395.8(c) of title 49 of the Code of Federal Regulations to require that any supporting document bearing on the record of duty status of a driver who operates a commercial motor vehicle—

(1) be retained, by the motor carrier using such driver, for at least 6 months following its receipt of such document; and

(2) be included identifying the driver and vehicle related to the document.

(b) DEFINITION.—In this section, the term "supporting document" means any electronic or paper document or record generated in the normal course of business, in the provision of transportation by commercial motor vehicle, that could be used by a safety inspector or motor carrier to verify the accuracy of entries in a driver's record of duty status, including trip reports, pay slips, bills of lading or shipping papers, and receipts for fuel, lodging, and tolls.

SEC. 13. SAFETY PERFORMANCE HISTORY OF NEW DRIVERS.

(a) AMENDMENTS RELATING TO REGULATIONS.—Within 18 months after the date of enactment of this Act, the Secretary of Transportation shall amend section 391.23 of title 49, Code of Federal Regulations, to—

(1) specify the safety information that must be sought under that section by a motor carrier with respect to a driver; and

(2) require that such information be requested from former employers and that former employers furnish the requested information within 30 days after receiving the request; and

(3) ensure that the driver to whom such information applies has a reasonable opportunity to review and comment on the information.

(b) SAFETY INFORMATION.—The safety information required to be included under subsection (a)(1) shall include information on—

(1) any motor vehicle accidents in which the driver was involved during the preceding 3 years;

(2) any failure of the driver, during the preceding 3 years, to undertake or complete a remedial program under section 6020 of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701(a)), if being found to have used, in violation of law or Federal regulations, of alcohol or a controlled substance subsequent to completing such a remediation program; and

(3) any use by the driver, during the preceding 3 years, in violation of law or Federal regulations of alcohol or a controlled substance subsequent to completing such a remedial program; and

(4) any other matters determined by the Secretary of Transportation to be appropriate and useful for determining the driver's safety performance.

(c) FORMER EMPLOYER.—For purposes of this section, a former employer is any person who employed the driver in the preceding 3 years.

SEC. 14. RETENTION OF SHIPPING PAPERS.

(a) AMENDMENT.—Section 106(a)(6) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1805(a)(6)) is amended by inserting in lieu thereof—

"(B) regulations—Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations implementing the requirements of paragraphs (5) of section 105(g) of the Hazardous Materials Transportation Act, as added by subsection (a) of this section.

SEC. 15. TOLL FREE NUMBER FOR REPORTING.

The Secretary of Transportation shall establish a toll free "800" telephone number for transponders of hazardous materials and other individuals to report to the Secretary possible violations of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.), any order or regulation issued under the Act.

SEC. 16. TECHNICAL CORRECTIONS.

(a) AMENDMENTS RELATING TO PACKAGING.—(1) Section 105(o) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1805(o)) is amended by striking "(c) FORMER EMPLOYER.—For purposes of this section, the term "supporting document" means any electronic or paper document or record generated in the normal course of business, in the provision of transportation by commercial motor vehicle, that could be used by a safety inspector or motor carrier to verify the accuracy of entries in a driver's record of duty status, including trip reports, pay slips, bills of lading or shipping papers, and receipts for fuel, lodging, and tolls.

(b) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations implementing the requirements of paragraphs (5) of section 105(g) of the Hazardous Materials Transportation Act, as added by subsection (a) of this section.

SEC. 17. EXEMPTION FROM HOURS OF SERVICE REQUIREMENTS.

The Secretary of Transportation shall exempt from the hours of service requirements contained in section 395.3 of title 49, Code of Federal Regulations, when such farmers and retail farm suppliers are transporting farm supplies for agricultural purposes within a 50-mile radius of their distribution point during the crop-planting season.
The bill calls for the Secretary of Agriculture, in coordination with the Secretary of the Treasury and the Secretary of Health and Human Services, to design and implement a nationally coordinated feasibility test to more fully evaluate technological options, including online and off-line EBT technologies, and hybrid approaches, for replacing paper food stamp coupons with EBT systems.

This test will examine the advantages and disadvantages of centralized, as opposed to decentralized, EBT systems and determine the degree to which a nationwide EBT system can be integrated with existing commercial networks. The study will also ascertain the likely impact of a nationwide EBT system on recipients, the State agencies and on local food stamp offices.

In addition, the test will examine the likely impact of a nationwide EBT system on the banking and retail food industries and examine ways to use laser scanner technology with EBT technology so that only eligible food items can be purchased by food stamp participants in those stores which use scanners.

Under the bill, the Secretary of Agriculture will also report to the Congress on additional ways to ensure the confidentiality of personal information in EBT systems and the applicability of the Privacy Act of 1974 to EBT systems. The Secretary will look at the need for interagency EBT regulations to maximize cost savings of EBT technology for Federal programs and the need for the National Institute of Standards and Technology to develop standards for card and terminal manufacture and for other aspects of EBT technology.

This report will also set forth the best approaches to maximize the use of existing point of sale terminals and existing EBT systems to reduce the costs of implementing widespread EBT systems as well as to identify the best approach to maximize the use of EBT systems for multiple Federal benefit programs.

The Secretary of Agriculture will also have to determine whether using the existing Food and Nutrition Service regions in the creation of a national EBT system would be cost-effective. In making this determination the Secretary shall explore other regional configurations of State agencies.

Mr. President: I am convinced that the single most important thing we can do to reduce fraud in the Food Stamp Program is to replace the use of coupons. My bill does that. Except for certain circumstances where EBT might be impossible to use, for example at farmers' markets authorized to participate in the Food Stamp Program, coupons would be eliminated 3 years after enactment.

We can essentially eliminate illegal trafficking in coupons. We can better assure that benefits go to needy families.

Plain and simply, I am sick and tired of petty thugs ripping off the Food Stamp Program. This bill will go a long way toward fixing that problem.

There will be fraud under an EBT system. Where there is a will, there is a way. However, OTA notes that fraud on balance, should be greatly reduced under EBT.

The “Making Government Work” study released today by OTA confirms the need to take control of a problem that we can fix. I have been working on this issue for years and have introduced legislation in the past to encourage use of EBT. Now my bill mandates EBT. I know it is the right thing to do.

The bill will eliminate food stamp coupons nationwide in 3 years with certain exceptions for farmers' markets, rural areas, or States which have difficulty in meeting the implementation deadline.

A personal security number will be assigned to each EBT card to help reduce fraud. The State will improve the system of course to ensure that benefits are actually used once the system is set in place.

I know that Secretary Mike Espy and Assistant Secretary Ellen Haas are making this determination the whole administration is fully committed to the promise of EBT. The Vice President is leading the charge regarding using EBT to reduce Federal costs and increase Federal services.

I know that Secretary Mike Espy and Assistant Secretary Ellen Haas are rapidly moving forward in this area. They are convinced of the value of EBT systems. In my view, legislation is needed to give them the authority to move as quickly as possible.

I look forward to working with Secretary Espy and with Assistant Secretary Ellen Haas regarding this issue. Mr. President, I ask unanimous consent that the bill be printed in the RECORD at the conclusion of my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1646
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SEC. 1. SHORT TITLE.
This Act may be cited as the “Food Stamp Fraud Reduction Act of 1993”.

SEC. 2. FINDINGS.
(a) Making Government Work Findings.—In the findings of the report entitled “Making Government Work” regarding the electronic benefits transfers program and other government benefits, the Office of Technology Assessment found that—
(1) by eliminating cash change and reducing opportunities for trafficking in benefits, a nationwide electronic benefits transfer system might reduce levels of food stamp trafficking of 2 billion dollars per year.
(2) electronic benefits transfer is likely to reduce theft and fraud, as well as reduce errors, paperwork, delays, and the stigma attached to food stamp coupons.
(3) Congress and the President need to act quickly on electronic benefits transfer if opportunities for integrating services and capturing economies of scale are to be realized.
(4) electronic benefits transfer is proven, reliable, and easy to use;
(5) electronic benefits transfer can yield significant cost savings to retailers, recipients, financial institutions, and government agencies;
(6) recipients, retailers, financial institutions, and local program administrators who have tried electronic benefits transfer prefer electronic benefits transfer to coupons; and
(7) electronic benefits transfer experience an added sense of dignity and security.
(b) Other Findings.—Congress finds that—
(1) the food stamp program prints more than 375,000,000 food stamp booklets per year, including 2,600,000,000 paper coupons.
(2) food stamp coupons (except for $1 coupons) are used once, and each 1 of the over 2,000,000,000 coupons per year is then counted, shuffled, shipped through the banking system by the Secretary of the Treasury, stored, and destroyed.
(3) food stamp recipients can receive cash change in food stamp transactions if the cash does not exceed $1 per purchase; and
(4) the printing, distribution, handling, and redemption of coupons costs at least $96,900,000 per year.

SEC. 3. ELIMINATION OF FOOD STAMP COUPONS.
Section 4 of the Food Stamp Act of 1977 (7 U.S.C. 2024) is amended by adding at the end the following new subsection:
“(d)(1) Except as provided in paragraph (2) and notwithstanding any other provision of this Act, a use of food stamp coupons is specified to the extent that—
(A) a use of food stamp coupons is specifically authorized by section 7; or
(B) the Secretary grants a waiver to a State to delay implementation of electronic benefits transfer for good cause shown by the State.”.

SEC. 4. NATIONWIDE ELECTRONIC BENEFITS TRANSFER FEASIBILITY TEST.
(a) In General.—The Secretary of Agriculture, in coordination with the Secretary of the Treasury and the Secretary of Health and Human Services, shall conduct a nationwide coordinated feasibility test to—
(1) more fully evaluate technological options, including on-line, off-line, and hybrid electronic benefits transfer technologies, for replacing paper food stamp coupons with electronic benefits transfer systems;
(2) examine the advantages of centralized, as opposed to decentralized, electronic benefits transfer systems;
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(3) determine the degree to which a nationally

wide electronic benefits transfer system could be integrated with commercial net-

works; 

(4) ascertain the likely impact of a nation-

wide electronic benefits transfer system on the banking and retail food industries; and

(5) examine the likely impact of a nation-

wide electronic benefits transfer system on food stamp recipients, State agencies, and local food

stamp offices; 

(6) examine means of using laser scanner technology to benefits transfer technology so that only eligible food items could be purchased by food stamp participants in stores that use scanners.

(2) Draft Report.—Not later than 200

days after the date of enactment of this Act, the Secretary of Agriculture, in coordination with the Secretary of the Treasury and the Secretary of Health and Human Services, shall report to the appropriate committees of Congress on—

(1) ensuring the confidentiality of personal information in electronic benefits transfer systems and the applicability of section 553a of title 5, United States Code, to electronic benefits transfer systems; 

(2) the need for regulations to coordinate the electronic benefits transfer systems of agencies to maximize the cost savings of electronic benefits transfer technology for Federal programs; 

(3) the need for the National Institute of Standards and Technology to develop standards for card and terminal manufacture and standards for other aspects of electronic benefits transfer technology; 

(4) the best approaches for maximizing the use of current point of sale terminals and systems to reduce the costs of implementing a nationwide electronic benefits transfer system; 

(5) the best approaches for maximizing the use of electronic benefits transfer systems for multiple Federal benefit programs so as to achieve the highest cost savings possible through the implementation of electronic benefits transfer systems.

SEC. 5. IMPLEMENTATION OF NATIONWIDE ELECTRONIC BENEFITS TRANSFER SYSTEM.

Section 7 of the Food Stamp Act of 1977 (7 U.S.C. 2012) is amended—

(a) In subsection (1)(A), by inserting “after "start-up costs" the following: "less estimated savings achieved by reductions in fraud and other diversions of benefits"; and

(b) by adding at the end the following new subsection:

"(1)(A) The Secretary shall coordinate with and assist, each State agency in the conversion from use of coupons to electronic benefits transfer technology.

"(B) The Secretary shall assist stores located in very rural areas, stores without access to electricity or regular telephone services, and farmers’ markets that are authorized to accept coupons to continue to participate in the food stamp program after the conversion to electronic benefits transfer technology.

"(C) The Secretary may permit the use of coupons or other means of providing benefits to food stamp households that use stores or markets described in subparagraph (B).

"(D) The Secretary may waive the application of any other provision of this Act, to the extent the waiver is necessary to carry out subsection (B) and (C).

"(E) Not later than 18 months after the date of enactment of Food Stamp Fraud Reduction Act of 1993, the Secretary shall publish proposed regulations setting forth the rules and procedures for a nationwide electronic benefits transfer system to carry out the food stamp program.

"(F) Not later than 3 years after the date of enactment of Food Stamp Fraud Reduction Act of 1993, the Secretary shall, by regulation, a nationwide electronic benefits transfer system to carry out the food stamp program.

"(G) In establishing the system required under subparagraph (B), the Secretary shall—

"(i) shall take into account the results of the test, determination, and reports made under subsection (b) of the Food Stamp Fraud Reduction Act of 1993 and subparagraph (2) of section 6(b)(1); 

"(ii) may establish a national, regional, or State system; 

"(iii) may use on-line, off-line, or hybrid electronic benefits transfer technologies; 

"(iv) may waive the application of any other provision of this Act to the extent the waiver is necessary to carry out this paragraph, except that household eligibility and benefit levels may not be reduced as a result of a waiver; and

"(v) shall ensure that a personal identification number is issued with each electronic benefits transfer card in order to help protect the integrity of the food stamp program.

"(A) The regulations required under subparagraph (A) shall set forth standards regarding—

"(i) the required level of recipient protection regarding privacy, ease of use, and access to and service in retail food stores; 

(ii) the required level of participation by retail food stores, financial institutions, and other appropriate parties; 

(iii) system integrity; 

(iv) system transcription interchange, reliability, and processing speeds; 

(v) financial accountability; 

(vi) the required testing of system operations prior to implementation; and

(vii) rules prohibiting store participation unless any special equipment necessary to permit households to purchase food with the benefits issued under this Act is operational—

"(I) in the case of a participating retail food store in which benefits are used to purchase 15 percent or more of the total dollar amount of food sold by the store (as determined by the Secretary), at all registers in the store; and

"(II) in the case of other participating stores, at a sufficient number of registers to provide service that is comparable to service provided individuals who are not members of food stamp households, as determined by the Secretary.

"(B) Administrative costs incurred in connection with activities under this subsection shall be eligible for reimbursement in accordance with the provisions of title 3 authorizing any program subject to the limitations in section 16(g).

"(II) the best approaches for maximizing the use of electronic benefits transfer systems and the applicability of section 553a of title 5, United States Code, to electronic benefits transfer systems; 

"(III) the need for regulations to coordinate the electronic benefits transfer systems of agencies to maximize the cost savings of electronic benefits transfer technology for Federal programs; 

"(IV) the need for the National Institute of Standards and Technology to develop standards for card and terminal manufacture and standards for other aspects of electronic benefits transfer technology; 

"(V) the best approaches for maximizing the use of current point of sale terminals and systems to reduce the costs of implementing a nationwide electronic benefits transfer system; 

"(VI) the best approaches for maximizing the use of electronic benefits transfer systems for multiple Federal benefit programs so as to achieve the highest cost savings possible through the implementation of electronic benefits transfer systems.

(b) In subsection (2), by striking the third sentence and in­

serting the following new sentence: The Secretary, through the facilities of the Department of Agriculture, shall reimburse the stores for food purchases made with electronic benefits transfer cards or coupons provided under this Act.

(c) In the first sentence of section 6(b)(1) of such Act (7 U.S.C. 2012(b)(1)) is amended—

(1) by striking "coupons or authorization cards" and inserting "electronic benefits transfer cards, coupons, or authorization cards"; and

(2) in clause (i) and (ii), by inserting "or electronic benefits transfer cards" after "coupons" each place it appears.

(d) Section 7 of such Act (7 U.S.C. 2012) is amended—

(1) by striking the section heading and in­

serting the following new section heading:

"ISSUANCE AND USE OF ELECTRONIC BENEFITS TRANSFER CARDS OR COUPONS.

(2) in subsection (a), by striking "coupons" and all that follows through "coupons", and inserting "Electronic benefits transfer cards"; 

(3) in subsection (b), by striking "coupons" and inserting "Electronic benefits transfer cards"; 

(4) in subsection (f)—

(A) by striking "issue of coupons" and inserting "issue of electronic benefits transfer cards or coupons"; 

(B) by striking "coupons issuer" and insert­

ning "electronic benefits transfer or coupon issuer"; and

(C) by striking "coupons and allotments" and inserting "electronic benefits transfer cards, coupons, and allotments"; and

(5) by striking subsections (g) through (j); 

(6) by redesignating subsection (j) as subsection (k); (e) in section 6(b) of such Act (7 U.S.C. 2012(b)) is amended by striking "coupons" and inserting "electronic benefits transfer cards or coupons".

(f) Section 9 of such Act (7 U.S.C. 2013) is amended—

(1) in subsections (a) and (b), by striking "coupons" each place it appears and insert­

ning "coupons", and "coupons or authorization cards"; and
(2) in subsection (a)(1)(B), by striking “coupons” and inserting “electronic benefits transfer cards and coupon business”;
(g) The first sentence of section 10 of such Act (7 U.S.C. 2029) is amended—
(1) by inserting after “provide for” the follow-
(2) by inserting after “food coupons” the fol-
(b) Section 11 of such Act (7 U.S.C. 2030) is amended—
(1) in the first sentence of subsection (a), by striking “coupons” and inserting “electronic benefits transfer cards or coupons,”;
(2) in subsection (e)—
(A) in paragraph (2), by striking “a coupon allotment” and inserting “an allotment”; and
(B) by striking “issuing coupons” and in-
serting “issuing electronic benefits transfer cards or coupons”;
(B) in paragraph (7), by striking “coupons” and inserting “electronic benefits transfer card or coupon issuance”;
(C) in paragraph (8)(C), by striking “cou-
pons” and inserting “benefits”; and
(D) by striking “coupons” each place it appears and inserting “electronic benefits transfer cards or coupons”;
(E) in paragraph (11), by striking “in the form of coupons”;
(F) in paragraph (16), by striking “coupons” and inserting “electronic benefits transfer card or coupon issuance”; and
(G) in paragraph (20)—
(1) by striking “their coupons” and insert-
ing “the electronic benefits transfer cards or coupons of the household”; and
(ii) by striking “a coupon issuer” and in-
serting “an electronic benefits transfer card or a coupon issuer”; and
(iii) by striking “face value of any coupons” and insert-
ing “value of any benefits or coupons”; and
(H) in paragraph (21), by striking “cou-
pons” and inserting “electronic benefits transfer cards or coupons”;
(I) in paragraph (24), by striking “coupons” and inserting “benefits”; and
(J) in paragraph (25), by striking “coupons” each place it appears and inserting “electronic benefits transfer cards or coupons”;
and
(3) in subsection (h), by striking “face value of any coupon or coupons” and insert-
ing “value of any benefits or coupons”.

(1) Section 12 of such Act (7 U.S.C. 2031) is amended—
(1) in subsection (b)(3), by striking “coupons” each place it appears and inserting “electronic benefits transfer cards or coupons”;
(2) in subsection (d)—
(A) in the first sentence—
(1) by inserting after “redeem coupons” the follow-
ing: “and to accept electronic benefits transfer cards”; and
(ii) by striking “value of coupons” and in-
serting “value of benefits and coupons”; and
(D) in the third sentence, by striking “coupons” each place it appears and inserting “coupons or benefits”; and
(2) in the first sentence of subsection (f)—
(A) by inserting after “to accept and re-
 deem food coupons” the following: “elect-
ronic benefits transfer cards, or to accept and redeem food coupons,”; and
(B) by inserting before the period at the end the follow-
ing: “or program benefits.”

(1) Section 13 of such Act (7 U.S.C. 2032) is amended—
(k) Section 15 of such Act (7 U.S.C. 2034) is amended—
(1) in subsection (a), by striking “issuance or presentment for redemption” and insert-
ing “issuance, presentment for redemption, or use of electronic benefits transfer cards or”;
(2) in the first sentence of subsection (d)(1)—
(A) by inserting after “coupons, authoriza-
tion cards,” each place it appears the follow-
ing: “electronic benefits transfer cards,”;
and
(B) by striking “coupons or authorization cards” each place it appears and insert-
ing the following: “coupons, authorization cards, or electronic benefits transfer cards”; and
(3) in the first sentence of subsection (g), by inserting after “coupons, authorization cards,” the following: “electronic benefits transfer cards,”.

(1) Section 17 of such Act (7 U.S.C. 2036) is amended—
(1) in the last sentence of subsection (a)(2), by striking “coupon” and inserting “benefit”;
(2) in subsection (d)(1)(B), by striking “coupons” each place it appears and insert-
ing “benefits”; and
(3) by striking subsection (f); and
(4) by redesignating subsections (g) through (j) as subsections (f) through (i), re-
spectively.

(m) Section 21 of such Act (7 U.S.C. 2040) is amended—
(1) by striking “coupons” each place it ap-
pears (other than in subsections (b)(2)(A)(11) and (d)) and inserting “benefits”;
(2) in subsection (d)(11), by striking “coupons” and inserting “electronic benefits transfer cards or coupons”; and
(3) in subsection (e)(1), by striking “Coupons” and inserting “Benefits”; and
(B) in paragraph (3), by striking “in food cou-
pons”.

(n) Section 22 of such Act (7 U.S.C. 2043) is amended—
(1) in subsection (b),
(A) in paragraph (3)(D)—
(1) in clause (ii), by striking “coupons” and inserting “benefits”; and
(ii) in clause (iii), by striking “coupons” and inserting “electronic benefits transfer benefits”;
(3) in paragraph (g)(1)(A), by striking “coupon” and inserting “benefits”; and
(4) in paragraph (h), by striking “coupons” and inserting “benefits”.

(o) Section 19(6)(c)(7)(D) of title 18, United States Code, is amended by inserting “elec-
tronic benefits transfer cards or” before “coupons having”.

(p) This section and the amendments made by this section shall become effective on the date that the Secretary of Agriculture im-
plements a nationwide electronic benefits transfer system in accordance with section 7 of the Food Stamp Act of 1977 (7 U.S.C. 2014) (as amended by this Act).

ADDITIONAL COSPONSORS

At the request of Mr. DASCHLE, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of S. 155, a bill to amend the Internal Revenue Code of 1986 with respect to the treatment of certain amounts re-
ceived by a cooperative telephone company.

At the request of Mr. SHELBY, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cospon-

or of S. 426, a bill to amend title 4, United States Code, to declare English as the official language of the Govern-
ment of the United States.

At the request of Mr. BOREN, the name of the Senator from Florida [Mr. GRAHAM] was added as a cospon-

or of S. 462, a bill to amend title 38, United States Code, to require the Secretary of Veterans Affairs to furnish out-
patient medical services for any disabil-
ity of a former prisoner of war.

At the request of Mr. KEMPTHORNE, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cospon-

or of S. 993, a bill to end the practice of imposing unfunded Federal mandates on States and local governments and to ensure that the Federal Govern-
ment pays the costs incurred by those governments in complying with certain require-
ments under Federal statutes and regulations.

At the request of Mr. D’AMATO, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cospon-

or of S. 1329, a bill to provide for an investigation of the whereabouts of the United States citizens and others who have been missing from Cyprus since 1974.

At the request of Mr. MCCAIN, the name of the Senator from New Mexico [Mr. SASSER] was added as a cospon-

or of S. 1501, a bill to repeal certain provisions of law relating to trading with Indians.

At the request of Mr. RIEGLE, the name of the Senator from Florida [Mr. SPECTER] was added as a cospon-

or of S. 1377, a bill to provide for fair trade in financial services.

At the request of Mr. D’AMATO, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a co-

sponsor of S. 1583, a bill to impose com-
prehensive economic sanctions against Iran.

At the request of Mr. MCCAIN, the name of the Senator from Colorado
At the request of Mr. Breaux, the name of the Senator from Oklahoma [Mr. Boren] was added as a cosponsor of S. 1622, a bill to amend the Internal Revenue Code of 1986 to treat geological, geophysical, and surface casing costs like intangible drilling and development costs, and for other purposes.

S. 1629

At the request of Ms. Moseley-Braun, the name of the Senator from Hawaii [Mr. Inouye] was added as a cosponsor of S. 1629, a bill to amend the Public Health Service Act to provide for expanding and intensifying activities of the National Institute of Arthritis and Musculoskeletal and Skin Diseases with respect to lupus, and for other purposes.

SENATE JOINT RESOLUTION 56

At the request of Mr. Hatch, the sponsor of S. 1628, a joint resolution to designate the period commencing on November 23, 1993, and ending on December 4, 1993, and commencing on November 27, 1994, and ending on December 3, 1994, as "National Home Care Week."

SENATE JOINT RESOLUTION 148

At the request of Mr. Brown, the sponsor of S. 1696, a bill to amend the Code of Federal Regulations to require that any regulations promulgated under the Code be available in electronic form, and for other purposes.

At the request of Mr. D'Amato, the name of the Senator from Minnesota [Mr. Durenberger] was added as a cosponsor of S. 1686, a concurrent resolution from the United States Senate, to increase funding for the promotion of self-governance, and for other purposes.

At the request of Mr. Nickles, the names of the Senator from Indiana [Mr. Coats], and the Senator from Delaware [Mr. Roth] were added as cosponsors of S. 1689, a resolution to amend the Standing Rules of the Senate to prohibit the consideration of any retroactive tax increase unless three-fifths of all Senators duly chosen and sworn waive the prohibition by roll call vote.

At the request of Mr. Durenberger, the name of the Senator from Rhode Island [Mr. Pell] was added as a cosponsor of S. 1690, a resolution expressing the sense of the Senate regarding the October 21, 1993, attempted coup d'etat in Burundi, and for other purposes.

SENATE RESOLUTION 162

At the request of Mr. Lautenberg, the name of the Senator from Massachusetts [Mr. Kerry] was added as a cosponsor of S. 1692, a joint resolution supporting the treatment of those diagnosed with lupus, a United States citizen by the Federal Republic of Germany.

AMENDMENT NO. 113

At the request of Mr. Wofford his name was added as a cosponsor of amendment No. 113 proposed to S. 1697, a bill to control and prevent crime.

AMENDMENTS SUBMITTED

VIOLENT CRIME CONTROL AND PREVENTION ACT OF 1993

WELLSTONE AMENDMENT NO. 1123

(Ordered to lie on the table.)

Mr. WELSTONE submitted an amendment to the joint resolution proposed by him to the S. (1607) a bill to control and prevent crime; as follows:

At the appropriate place insert the following:

TITLE—DOMESTIC VIOLENCE

SEC. 1. SHORT TITLE.

This title may be cited as the "Domestic Violence Firearm Prevention Act."

SEC. 2. FINDINGS.

The Congress finds that—
(1) domestic violence is the leading cause of injury to women in the United States between the ages of 15 and 44;
(2) firearms are used by the abuser in 7 percent of domestic violence incidents; and
(3) individuals with a history of domestic abuse should not have easy access to firearms.

SEC. 3. PROHIBITION AGAINST DISPOSAL OF FIREARMS TO, OR RECEIPT OF FIREARMS BY, PERSONS WHO HAVE COMMITTED DOMESTIC ABUSE.

(a) Prohibition Against Disposal of Firearms to, or Receipt of Firearms by, Persons Who Have Committed Domestic Abuse. (Section 922(d) of title 18, United States Code, is amended—
(1) by striking "or" at the end of paragraph (6);
(2) by striking the period at the end of paragraph (7) and inserting "or"; and
(3) by inserting after paragraph (7) the following new paragraph:

"(8)(A) has been convicted in any court of the United States of an offense that—
. . ."

"(B) is required, pursuant to an order issued by a court of the United States in a case involving the use, attempted use, or threatened use of physical force against a person who is a spouse, former spouse, domestic partner, child, or former child of the person; or"

"(C) who is described in subparagraph (A), to maintain a minimum distance from that person;"

This title may be cited as the "Child Safety and Prevention Act."

SEC. 02. FINDINGS.

Congress finds the following:
(1) The problem of family violence does not necessarily cease when the victimized family is legally separated, divorced, or otherwise not sharing a household. During separation and divorce, family violence often escalates, and child custody and visitation become the new forum for the continuation of abuse.
(2) Some perpetrators use the children as pawns to control the abused party after the couple is separated.
(3) Every year an estimated 1,000 to 5,000 children are killed by their parents in the United States.
(4) In 1988, the Department of Justice reported that 351,100 children were abducted by family members who violated custody agreements or decrees. Most victims were children from ages 2 to 11 years.
(5) Approximately 160,000 children are seriously injured or impaired by abuse or neglect each year.
(6) Studies by the American Humane Association indicate that reports of child abuse and neglect have increased by over 200 percent from 1979 to 1986.
(7) Approximately 90 percent of children in homes in which their mothers are abused are themselves abused.
(8) Data indicates that women and children are at elevated risk for violence during the process of and after separation.
(9) Up to 75 percent of all domestic assaults reported to law enforcement agencies were inflicted after the separation of the couple.
(10) In one study of spousal homicide, over half of the male defendants were separated from their victims.
(11) Seventy-three percent of battered women seeking emergency medical services do so after separation.
SEC. 03. PURPOSE.

The purpose of this Act is to authorize funding to enable supervised visitation centers to meet the following:

(1) Supervised visitation in cases where there is documented sexual, physical or emotional abuse as determined by the appropriate court.

(2) Supervised visitation in cases where there is suspected or elevated risk of sexual, physical or emotional abuse, or where there have been threats of parental abduction of the child.

(3) Supervised visitation for children who have been placed in foster homes as result of abuse.

(4) An evaluation of visitation between parents and children for child protection social services to assist such service providers in making determinations of whether the children should be returned to a previously abusive home.

(5) A safe location for custodial parents to temporarily transfer custody of their children without providing a protected visitation environment, where there has been a history of domestic violence or an order for protection is involved.

(6) An additional safeguard against the child witnessing abuse or a safeguard against the presence of the abusive child or parent.

(7) An environment for families to have healthy interaction activities, quality time, non-violent, memory building experiences during supervision to help build the parent/child relationship.

(8) Parent and child education and support groups that help parents heal and learn new skills, and to help children heal from past abuse.

SEC. 04. DEMONSTRATION GRANTS FOR SUPERVISED VISITATION CENTERS.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter referred to in this Act as the "Secretary") is authorized to award grants to and enter into contracts and cooperative agreements with public or nonprofit private entities to assist such entities in the establishment and operation of supervised visitation centers.

(b) CONSIDERATIONS.—In awarding grants, contracts and agreements under subsection (a), the Secretary shall take into account:

(1) the number of families to be served by the proposed visitation center to be established under the grant, contract or agreement;

(2) the extent to which supervised visitation services are provided under the grant, contract or agreement;

(3) the relative need of the applicant; and

(4) the capacity of the applicant to make rational decisions and to receive assistance provided under the grant, contract or agreement.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Amounts provided under a grant, contract or cooperative agreement awarded under this section shall be used to establish supervised visitation centers and for the purposes described in section 06. In using such amounts, grantees shall target the economically disadvantaged and those individuals, who could not otherwise afford supervised visitation services. Other individuals may be permitted to utilize the services provided by the center on a fee basis.

(2) COSTS.—To the extent practicable, the Secretary shall ensure that, with respect to recipients of grants, contracts or agreements under this section, the perpetrators of the family violence, abuse or neglect will be responsible for any and all costs associated with the supervised visitation undertaken at the center.

SEC. 05. DEMONSTRATION GRANT APPLICATION.

(a) IN GENERAL.—A grant, contract or cooperative agreement may not be made or entered into under this Act unless an application for such grant, contract or cooperative agreement has been submitted to and approved by the Secretary.

(b) APPLICATION.—To be eligible to receive a grant under this Act, an entity receiving a grant, contract or cooperative agreement under this Act shall prepare and submit to the Secretary a report that contains information concerning:

(1) the number of families served per year;

(2) the number of families served per year categorized by:

(A) families who require that supervised visitation because of child abuse only;

(B) families who require supervised visitation because of child abuse and domestic violence; and

(C) families who require supervised visitation because of domestic violence only;

(3) the number of visits per family in the report year categorized by—

(A) supervised visitation required by the courts;

(B) supervised visitation based on suspected or elevated risk of sexual, physical, or emotional abuse, or threats of parental abduction of the child that is not court mandated;

(C) supervised visitation that is part of a foster care arrangement; and

(D) supervised visitation because of an order of protection;

(4) the number of supervised visitation arrangements terminated because of violations of visitation terms, including violence;

(5) the number of protective temporary transfers of custody during the report year;

(6) the number of parental abduction cases in a judicial district using supervised visitation services, both as identified in criminal prosecution records and civil protection order records;

(7) the number of safety and security problems that occur during the report year;

(8) the number of families who are turned away because the center cannot accommodate the demand for services;

(9) the process by which children or abused partners will be protected during visitations, temporary custody transfers and other activities for which the supervised visitation center is responsible;

(10) any other information determined appropriate in regulations promulgated by the Secretary.

(b) EVALUATION.—In addition to submitting the reports required under subsection (a), an entity receiving a grant, contract or cooperative agreement under this Act shall have a collateral visitation center, the child protection social services division of the State, and local domestic violence agencies or coalitions to evaluate the supervised visitation center operated under the grant, contract or agreement. The entities conducting such evaluations shall provide a narrative evaluation of the center to both the center and the grantee.

(c) DEMONSTRATION OF NEED.—The recipient of a grant, contract or cooperative agreement under this Act shall demonstrate, during the first 3 years of the project operated under such grant, contract or agreement, the need for continued funding.

SEC. 07. SPECIAL GRANTS TO STUDY THE EFFECTIVENESS OF VISITATION CENTER PROGRAMS ON SEXUALLY ABUSED OR SEVERELY PHYSICALLY ABUSED CHILDREN.

(a) AUTHORIZATION.—The Secretary is authorized to award special grants to public or nonprofit private entities to assist such entities in the establishment, implementation and evaluation of visitation center demonstration projects established under this Act.

(b) APPLICATION.—To be eligible to receive a grant under this Act, an entity shall prepare an application that—

(1) demonstrates the need for the establishment of supervised visitation centers in the State;

(2) describes how the funds will be utilized to establish the supervised visitation centers and provide services to the families served by the centers;

(3) describes the evaluation procedures that will be used to evaluate the effectiveness of the supervised visitation centers;

(4) includes the recommendations of the entity receiving a grant, contract or cooperative agreement on the establishment of a regional center to serve the State at large; and

(5) includes the recommendations of the entity receiving a grant, contract or cooperative agreement on the establishment of a State office to coordinate and evaluate the regional centers established under this section.

(c) DURATION.—The duration of the grants authorized under this section shall not exceed 3 years.

(d) INTEGRATION.—The Secretary shall require each entity receiving a grant under this Act to—

(1) be awarded funds on such terms as the Secretary may require, including documentary evidence to demonstrate that the entity possesses a high level of clinical expertise and experience in child abuse treatment and prevention as they relate to visitation.

(2) prepare and submit to the Secretary a report containing the information collected under the reports received under sections 05 and 06, including recommendations made by the Secretary concerning the effectiveness of the supervised visitation program.

SEC. 08. REPORTING.

Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Secretary shall prepare and submit to the appropriate committees of Congress a report containing the information collected under the reports received under sections 05 and 06, including recommendations made by the Secretary concerning whether or not the supervised visitation center demonstration projects and clinical data programs should be authorized.

SEC. 09. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—For the purpose of awarding grants, contracts and cooperative agreements under this Act, there are authorized to be appropriated $15,000,000 for fiscal year 1994, $20,000,000 for fiscal year 1995, and $25,000,000 for fiscal year 1996.

(b) DISTRIBUTION.—Of the amounts appropriated under subsection (a) for each fiscal year—

(1) not less than 80 percent shall be used to award grants, contracts, or cooperative agreements under section 06; and

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SMITH AMENDMENT NO. 1125

Mr. SMITH (for himself and Mr. SIMPSON) proposed an amendment to the bill S. 1607, supra; as follows:

"At the appropriate place, add the following:

"SEC. 1. REMOVAL OF ALIEN TERRORISTS.

The Immigration and Nationality Act (8 U.S.C. 1182 et seq.) is amended by inserting the following new section:

"REMOVAL OF ALIEN TERRORISTS

"SEC. 242C. (a) DEFINITIONS.—As used in this section—

(1) the term 'alien terrorist' means any alien described in section 241(a)(4)(B);

(2) the term 'classified information' has the same meaning as defined in section 1(a) of the Foreign Intelligence Surveillance Act (50 U.S.C. App. IV);

(3) the term 'national security' has the same meaning as defined in section 1(b) of the National Security Act (50 U.S.C. App. IV);

(4) the term 'special court' means the courts described in subsection (c) of this section;

(5) the term 'special removal hearing' means the hearing described in subsection (e) of this section;

(6) the term 'application for use of procedures' means the provisions of this section as are designated by the Attorney General.

(b) APPLICATION FOR USE OF PROCEDURES.—The provisions of this section shall apply whenever the Attorney General certifies under seal to the special court that—

(1) the Attorney General or Deputy Attorney General has approved of the proceeding under this section;

(2) an alien terrorist is physically present in the United States; and

(3) removal of such alien terrorist by deportation proceedings described in section 242, 242a, or 242b would pose a risk to the national security of the United States because such proceedings would disclose classified information.

(c) SPECIAL COURT.—(1) The Chief Justice of the United States shall publicly designate up to 7 judges from up to 7 regional districts to hear and decide cases arising under this section, in a manner consistent with the designation of judges described in section 103(a) of the Foreign Intelligence Surveillance Act (50 U.S.C. 1803(a)).

(2) The Chief Justice may, in the Chief Justice's discretion, designate the same judges under this section as are designated pursuant to 50 U.S.C. 1803(a).

(d) INVOCATION OF SPECIAL COURT PROCEEDINGS.—When the Attorney General makes the application described in subsection (b), a single judge of the special court shall consider the application in camera and ex parte.

(e) HEARING.—(1) In determining whether to authorize the procedures of subsection (e), if the judge determines that there is probable cause to believe that—

(A) the alien who is the subject of the application has been correctly identified;

(B) a deportation proceeding described in section 242, 242a, or 242b would pose a risk to the national security of the United States because such proceedings would disclose classified information; and

(C) the threat posed by the alien's physical presence is immediate and invokes the risk of death or serious bodily harm,

(2) The Attorney General may appeal a determination under subsection (d), (e), or (f) to the court of appeals for the Federal Circuit, by filing a notice of appeal with such court within 20 days of the determination under any one of such subsections.

SEC. 2. MANDATORY LIFE IMPRISONMENT OF PERSONS CONVICTED OF A THIRD VIOLENT FELONY.

Section 3581 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(c) IMPRISONMENT OF CERTAIN VIOLENT FELONIES.—

"(1) DEFINITION.—In this section, violent felony means a crime of violence (as defined in section 16) under Federal or State law that involves a substantial risk of death or serious bodily harm to any person.

"(A) It involves the threatened use, use, or risk of use of physical force against the person of another;

"(B) the offense is punishable by a maximum term of imprisonment exceeding 1 year; and

"(C) is not designated as a misdemeanor by the law that defines the offense.

"(2) MANDATORY LIFE IMPRISONMENT.—Notwithstanding any other provision of this title or any other law, in the case of a conviction for a Federal violent felony, the court shall sentence the defendant to prison for life if the defendant has been convicted of a violent felony on 2 or more prior occasions.

"(3) RULE OF CONSTRUCTION.—This subsection shall not be construed to preclude imposition of the death penalty.

Mr. GLENN (for himself, Mr. HELMS, Mr. LIEBERMAN, Mr. ROSS, Mr. INOUEY, Mr. KERRY and Mr. DORGAN) proposed an amendment to the bill S. 1607, supra; as follows:

"On page 447, after line 23, add the following:

"SEC. 6. EFFICIENCY IN LAW ENFORCEMENT AND CORRECTIONS.

(a) IN GENERAL.—In the administration of each grant program funded by appropriations authorized by this Act or by an amendment made by this Act, the Attorney General shall—

(1) encourage innovative methods for the low-cost construction of facilities to be constructed, converted, or expanded and the low-cost operation of such facilities; and the reduction of administrative costs and overhead expenses; and

(2) give priority to the use of surplus Federal property.

(b) ASSESSMENT OF CONSTRUCTION COMPONENTS AND DESIGNS.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall make an assessment of the cost efficiency and utility of using modular, prefabricated, precast, and pre-engineered construction components and designs requiring nonviolent personnel.

(c) SENSE OF CONGRESS.—It is the sense of the Congress that in providing assistance to State and local governments, the Attorney General should emphasize the provision of
technical assistance in implementing methods to promote cost efficiency and realization of savings.

HELMS AMENDMENT NO. 1128
Mr. HELMS proposed an amendment to the bill S. 1607, supra; as follows:

To be added at the end of the bill:

SEC. 1. RESTRICTION ON PAYMENT OF BENEFITS TO INMATES OF STATE INSTITUTIONS PURSUANT TO COURT ORDER TO PUBLIC INSTITUTIONS PURSUANT TO VEOUS OF PHYSICAL FORCE AGAINST THE PERSON OR PROPERTY OF ANOTHER, OR 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.

SECT. DEFINITION.

SECTION 202(x) of the Social Security Act (42 U.S.C. 402(x)) is amended—

(1) in the heading, by inserting "and Certain Other Inmates of Public Institutions" after "Prisoners";

(2) in paragraph (1) add "(A)" after (1); and

(3) in paragraph (1), by inserting at the end: (B) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual for any month during which such individual is confined in any public institution by a court order pursuant to a verdict that the individual is not guilty of such an offense by reason of insanity or, by reason of a mental disease, a mental defect, or mental incompetence, unless the payment is made to the public institution to compensate the institution for its expenses.

(4) in paragraph (3), by striking "any individual" and all that follows and inserting "any individual so confined as described in paragraph (1) if the jail, prison, penal institution, correctional facility, or other public institution to which such individual is so confined is under the jurisdiction of such agency and the Secretary requires such information to carry out the provisions of this section.

SEC. 2. EFFECTIVE DATE.

The amendments made by section 1 shall apply with respect to benefits for months commencing after 90 days after the date of the enactment of this Act.

THURMOND (AND OTHERS) AMENDMENT NO. 1129
Mr. THURMOND (for himself, Mr. METZENBAUM, Mr. DOLE, Mr. SFMSON, Mr. NICKLE, Mr. KENNEDY, Mr. HATCH, Mr. HELMS, Mr. CRAIG, Mr. KEMPTHORNE, and Mr. BIDEN) proposed an amendment to the bill S. 1607, supra; as follows:

An appropriate place in the bill add the following:

SECTION 1. DEFINITION.

Section 1201 of title 18, United States Code, is amended by adding at the end thereof the following:

"(h) As used in this section, the term 'parent' does not include any person whose parent or legal guardian rights as to the victim of an offense under this section have been terminated by a final court order.

GRAMM AMENDMENT NO. 1130
Mr. GRAMM proposed an amendment to the bill S. 1607, supra; as follows:

Beginning on page 396, strike line 13 and all that follows through the period on line 11, page 404; and insert in lieu thereof the follow

SEC. INC. INCREASED MANDATORY MINIMUM SENTENCES FOR CRIMINALS USING FIREARMS.

Section 924(a)(1) of title 18, United States Code, is amended by inserting after the first sentence the following: "Except to the extent a greater minimum sentence is otherwise provided by the preceding sentence or by any other provision of law, the sentence of any person sentenced under this subsection shall be a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence."

SEC. LIFE IMPRISONMENT WITHOUT RELEASE FOR DRUG FELONS AND VIOLENT CRIMINALS CONVICTED A THIRD OR SUBSEQUENT TIME.

Section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is amended by striking "if any person commits a violation of this subparagraph or of section 418, 419, or 420 after two or more convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence."

For the purpose of this subparagraph, the term 'criminal history' means an offense that is a felony punishable by a maximum term of imprisonment of 10 years or more and has as an element the use, attempt to use, or threatened use of physical force against the person or property of another, or 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."
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"(B) if the firearm is discharged, be punished by imprisonment for not less than 20 years; and
"(C) if the death of a person results, be punished by death or by imprisonment for life."}

SEC. 5. MANDATORY MINIMUM SENTENCES FOR CRIMINALS USING FIREARMS (A) IN GENERAL.—The United States Sentencing Commission—

(A) may make such amendments as it deems necessary and appropriate to harmonize the sentencing guidelines and policy statements with section 3553(b)(1) of title 18, United States Code, as added by subsection (a) and any amendments made pursuant to subsection (c), the Commission determines that an amendment by subsection (a) and any amendments made pursuant to paragraph (1) to correspond to the guidelines that will result in the imposition of a term of imprisonment at least equal to the mandatory term of imprisonment that is currently applicable unless a downward adjustment is authorized under section 3553(f) of title 18, United States Code, as added by subsection (a);

(b) shall amend the sentencing guidelines, if necessary, to assign an offense under section 924(c) of title 18, United States Code, as added by subsection (a), and promulgate policy statements to assist the courts in interpreting that provision;

(c) may make such amendments as it deems necessary and appropriate to harmonize the sentencing guidelines and policy statements with section 3553(b)(1) of title 18, United States Code, as added by subsection (a) and any amendments made pursuant to subsection (c), the Commission determines that an amendment by subsection (a) and any amendments made pursuant to paragraph (1) to correspond to the guidelines that will result in the imposition of a term of imprisonment at least equal to the mandatory term of imprisonment that is currently applicable unless a downward adjustment is authorized under section 3553(f) of title 18, United States Code, as added by subsection (a);

(d) shall amend the sentencing guidelines, if necessary, to assign an offense under section 924(c) of title 18, United States Code, as added by subsection (a), and promulgate policy statements to assist the courts in interpreting that provision;

SEC. 6. MANDATORY MINIMUM SENTENCE FOR CRIMINALS USING FIREARMS

Section 924(c)(1) of title 18, United States Code, is amended by omitting after the first sentence the following: "Except to the extent a greater minimum sentence is otherwise provided by this subparagraph or of section 924 of title 18, United States Code, as added by this subsection, the mandatory term of imprisonment imposed for a violation of this subparagraph shall be not less than 20 years after the date of enactment of this Act."
SEC. 202. SEC. 27916

ITY.—The court may decline to enforce (a)(1) severe financial hardship on the family of (b) FINANCIAL

"3596. Mitigating and aggravating factors to (c) MANDATORY MINIMUM.—In no case shall be considered in determining whether a (d) ADMISSION OF EVIDENCE

"3592. Mitigating and aggravating factors to be considered in determining whether a (e) TECHNICAL AMENDMENT.—The chapter (f) TECHNICAL AMENDMENT

"3594. Impose or increase a fine or other (g) DEFENDANT'S RESPONSIBILITY

"3591. Sentence of death (h) DEFENDANT'S RESPONSIBILITY

"3590. Special provisions for Indian country. (i) DEATH DURING COMMISSION OF ANOTHER CRIME

"3589. Special provisions for Indian country. (j) DEFENDANT'S RESPONSIBILITY

"3588. Mitigating and aggravating factors to be (k) DEFENDANT'S RESPONSIBILITY

"3587. Mitigating and aggravating factors to be (l) DEFENDANT'S RESPONSIBILITY

"3586. Use of State facilities. (m) DEFENDANT'S RESPONSIBILITY
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Involving the use or attempted or threatened use of a firearm (as defined in section 921) against another person.

(1) The commission of an offense for which a sentence of death or life imprisonment was authorized. The defendant has previously been convicted of another Federal offense punishable by a term of imprisonment of more than 1 year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury to another person.

(3) A previous conviction of another person for any person who is acting as President under the Constitution and laws of the United States.

(7) The commission of an offense described in section 3591(1), for which a sentence of 5 or more years may be imposed, under this chapter, the defendant was convicted after a jury trial or before the judge who presided at the trial or before another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The court may permit the attorney for the government to amend the notice upon a showing of good cause.

Special hearing to determine whether a sentence of death is justified

(a) Notice by the Government. If, in a case involving an offense described in section 3591, the attorney for the government has filed a notice as required under subsection (a) and the defendant was convicted after a jury trial or before the judge who presided at the trial or before another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

(1) before the jury that determined the defendant's guilt;

(2) before a jury impaneled for the purpose of the hearing if—

(A) the defendant was convicted after a jury trial;

(B) the defendant was convicted after a trial before the court sitting without a jury;

(C) the jury that determined the defendant's guilt was discharged for good cause or for purposes of this paragraph, as many additional persons as the judge considers necessary. A finding with respect to a mitigating factor may be made by 1 or more number of jurors who concur that the factor exists. A finding with respect to an aggravating factor required to be considered under section 3592 is found to exist, the court shall impose the sentence of death, and as to the appropriateness in the case of imposing a sentence of death. The government shall open the argument. The defendant shall be permitted to reply. The government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

Return of a finding concerning a sentence of death. If, in the case of—

(a) an offense described in section 3591(1), and an aggravating factor set forth in section 3592(b) is found to exist; or

(b) an offense described in section 3591(2) or (3), an aggravating factor required to be considered under section 3592(b) is found to exist; or
considered under section 3596(c) is found to exist, the court shall consider whether all the aggravating factor or factors found to exist sufficiently outweigh all the mitigating factor or factors found to exist. The sentence shall be death if such conclusion is found to exist, or, in the absence of a mitigating factor, whether the aggravating factor or factors alone are sufficient to justify a sentence of death. Based upon this consideration, the jury, or if there is no jury, the court, shall recommend whether the defendant should be sentenced to death, to life imprisonment without possibility of release or some other lesser sentence.

"(f) SPECIAL PROTECTION TO ENSURE AGAINST DISCRIMINATION.—In a holding before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death for the crime in question no matter what the race, color, national origin, sex of the defendant or any victim, the court shall impose any lesser sentence. The court of appeals shall review the entire record in the case, including the personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel involved in the execution of the death sentence.

"§ 3598. Special provisions for Indian country
"Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence under this chapter for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151 of this title) which is located within the boundaries of Indian country, unless the governing body of the tribe has elected that this chapter have effect over land and persons subject to its criminal jurisdiction.

"(b) TECHNICAL AMENDMENT.—The part analysis for part II of title 18, United States Code, is amended by inserting after the item relating to chapter 227 the following new item:

"228. Death sentence

"§ 3591.

SEC. 203. SPECIFIC OFFENSES FOR WHICH DEATH PENALTY MAY BE IMPOSED

(a) CONFORMING CHANGES IN TITLE 18.—Title 18, United States Code, is amended as follows:

(1) AIRCRAFT AND MOTOR VEHICLES.—Section 34 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and inserting a period, and striking the remainder of the section.

(2) ESPIONAGE.—Section 794(a) of title 18, United States Code, is amended by striking the period at the end of the section and inserting "except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, finds beyond a reasonable doubt that the error was harmless.

"(3) EXPLOSIVE MATERIALS.—(A) Section 844(d) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

(B) Section 844(f) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

(C) Section 844(d) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

(D) MURDER.—The second undesignated paragraph of section 1111(b) of title 18, United States Code, is amended to read as follows:

"Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;"

(3) FOREIGN OFFICIAL.—Section 1116(a) of title 18, United States Code, is amended by striking "any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and"

(4) KIDNAPPING.—Section 1201(a) of title 18, United States Code, is amended by inserting after "for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

"(A) ARMS, AMMUNITION, AND ARTICLES.—The last paragraph of section 1716 of title 18, August 1, 1993; CONGRESSIONAL RECORD SENATE November 8, 1993.
United States Code, is amended by striking the comma after "imprisonment for life" and inserting a period and striking the remainder of the paragraph.

SEC. 206. DEATH PENALTY FOR CIVIL RIGHTS MURDERS.

(a) CONSPIRACY AGAINST RIGHTS.—Section 241 of title 18, United States Code, is amended—

(1) by striking the period at the end of the last sentence and inserting "or if death results, shall be sentenced to death or life imprisonment, or may be sentenced to death."

(b) DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.—Section 1983 of title 42, United States Code, is amended by striking the period at the end of the last sentence and inserting "or if death results, shall be sentenced to death or life imprisonment, or may be sentenced to death."

(c) TECHNOLOGICALLY ASSISTED DEATH.-—Section 1984 of title 42, United States Code, is amended by striking the period at the end of the last sentence and inserting "or if death results, shall be sentenced to death or life imprisonment, or may be sentenced to death."

(d) DAMAGE TO RELIGIOUS PROPERTY.—Section 470(a)(1) of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting "or if death results, shall be punished by death or life imprisonment, or may be sentenced to death."

SEC. 207. DEATH PENALTY FOR THE MURDER OF FEDERAL LAW ENFORCEMENT OFFICIALS.

Section 1114(a) of title 18, United States Code, is amended by striking "punished" as provided under sections 1111 and 1112 of this title, and inserting "punished, in the case of murder, of a federal law enforcement official, by a sentence of death or life imprisonment as provided under section 1111, or, in the case of manslaughter, a sentence of imprisonment for any term of years or for life, or may be sentenced to death after "or for both."

SEC. 208. NEW OFFENSE FOR THE INDICATE USE OF WEAPONS TO FURTHER RELIGIOUS RIGHTS OR VALUES.

(a) SHORT TITLE.—This section may be cited as the "Drive-By Shooting Prevention Act of 1993."

(b) IN GENERAL.—Chapter 2 of title 18, United States Code, is amended by adding at the end the following new section:

§ 36. Drive-by shooting

(a) DEFINITION.—In this section, 'major drug offense' means:

(1) a continuing criminal enterprise punishable under section 408(e) of the Controlled Substances Act (21 U.S.C. 848(e));

(2) a conspiracy to distribute controlled substances punishable under section 406 of the Controlled Substances Act (21 U.S.C. 846); and

(3) an offense involving major quantities of drugs and punishable under section 401(b)(3)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(3)(A)) or section 1006(b)(1) of the Controlled Substances Import and Export Control Act (21 U.S.C. 950(b)(1)).

(b) OFFENSE AND PENALTIES.—(1) A person who, in furtherance of or to escape a sentence for a major drug offense and with the intent to intimidate, harass, injure, or maim, fires a weapon into a group of two or more persons causes grave risk to any human life shall be punished by a term of no more than 25 years, by fine under this title, or by imprisonment for any term of years or for life, or by imprisonment for any term of years or for life.

(2) A person who, in furtherance of or to escape a sentence for a major drug offense and with the intent to intimidate, harass, injure, or maim, fires a weapon into a group of two or more persons and who, in the course of such conduct, kills any person shall, if the killing

(A) is a first degree murder (as defined in section 1111(a)), be punished by death or imprisonment for any term of years or for life, or by imprisonment for any term of years or for life; or

(B) is a murder other than a first degree murder (as defined in section 1111(a)), be punished under this title, imprisoned for any term of years or for life, or by imprisonment for any term of years or for life.

SEC. 209. FOREIGN MURDER OF UNITED STATES NATIONALS.

(a) IN GENERAL.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following new section:

§ 2245. Drive-by shooting.

SEC. 210. DEATH PENALTY FOR RAPE AND CHILD MOLESTATION MURDERS.

(a) OFFENSE.—Section 1991(a) of title 18, United States Code, is amended—

(1) by redesignating section 2245 as section 2245(a);

(2) by inserting after section 2244 the following new section:

§ 2245. Sexual abuse resulting in death

A person who, in the course of an offense under this chapter, engages in conduct that
results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.

(b) TECHNICAL AMENDMENTS.—The chapter analysis for chapter 109A of title 18, United States Code, as amended by section 2245 of title 18, United States Code, is amended by inserting the following:

"2245. Sexual EXPLOITATION FOR SEXUAL EXPLOITATION OF CHILDREN. Section 2251(d) of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1119. Murder by escaped prisoners
(a) DEFINITION.—In this section, ‘Federal prison’ and ‘term of life imprisonment’ have the meanings stated in section 1118.
(b) OFFENSE AND PENALTY.—A person, having escaped from a Federal prison where that person was confined under a sentence for a term of life imprisonment, kills another, shall be punished as provided in sections 1111 and 1112.
(c) Technical Amendment.—The chapter analysis for chapter 51 of title 18, United States Code, as amended by section 109(a), is amended by adding at the end the following new section:

"1119. Murder by escaped prisoners."

SEC. 212. MURDER BY ESCAPED PRISONERS.
(a) IN GENERAL.—Chapter 51 of title 18, United States Code, as amended by section 109(a), is amended by adding at the end the following new section:

"(a) Definition.—In this section, ‘Federal prison’ and ‘term of life imprisonment’ have the meanings stated in section 1118.

SEC. 213. DEATH PENALTY FOR GUN MURDERS DURING FEDERAL CRIMES OF VIOLENCE AND DRUG TRAFFICKING CRIMES.
Section 2924 of title 18, United States Code, is amended by adding at the end the following new section:

(1) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—
(2) If the killing is manslaughter (as defined in section 1112), be punished as provided for the offense of manslaughter in section 1111;
(3) If the killing is manslaughter (as defined in section 1112), be punished as provided for the offense of manslaughter in section 1111;
(4) If the killing is murder (as defined in section 1111), be punished as provided for the offense of murder in section 1111.

SEC. 214. HOMICIDES AND ATTEMPTED HOMICIDES INVOLVING FIREARMS IN FACILITIES.
Section 390 of title 18, United States Code, is amended—
(a) by redesignating subsections (d), (e), and (f) as subsections (d), (e), and (g), respectively;
(b) in subsection (a) by striking "(c)" and inserting "(f)"; and
(c) by inserting after subsection (b) the following new subsection:

"A person who kills or attempts to kill any person in the course of a violation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, shall be punished as provided in sections 1111, 1112, and 1113.

SEC. 215. MURDER IN COURSE OF ALIEN SMUGGLING.
Section 2752(a) of the Immigration and Naturalization Act (8 U.S.C. 1324) is amended by inserting before the period at the end the following:

"Provided further, That if during and in connection with an offense described in paragraph (1) the person causes serious bodily injury to, or places in jeopardy the life of, any alien, the person shall be punished by a term of imprisonment of not more than 20 years, and if the death of any alien results, shall be punished by death or imprisoned for any term of years or for life.

HATCH AMENDMENT NO. 1136
Mr. HATCH proposed an amendment to the bill, S. 1607, supra; as follows:

On page 260, strike line 15 and insert the following:

SEC. 1201. COORDINATED ADMINISTRATION OF PROGRAMS.
(a) Application.—The Attorney General may establish a unified or coordinated process for applying for grants under parts T, U, and V of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as added by this title. In addition to any other requirements that may be specified by the Attorney General, an application for a grant under any provision of this title shall—
(1) include a long-term strategy and detailed implementation plan;
(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 and local sources of funding that would otherwise be available;
(4) include information and performance indicators and community initiatives which complement or will be coordinated with the proposal;
(5) certify that there has been appropriate coordination with all affected agencies;
(6) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support; and
(7) certify that no violent offenders will be eligible or allowed to participate in the program authorized under part U.
(b) Regulatory Authority.—
(1) IN GENERAL.—The Attorney General shall issue regulations and guidelines to carry out the programs authorized by this title, including specifications concerning application requirements, selection criteria, duration and renewal of grants, evaluation requirements, matching funds, limitation of administrative expenses, submission of reports, and records, and documents maintained by grantees or other persons for purposes of audit or examination.
(2) PROHIBITION OF PARTICIPATION BY VIOLENT OFFENDERS.—The Attorney General shall—
(A) issue regulations and guidelines to ensure that the programs authorized under part U of this title do not permit participation by violent offenders; and
(B) immediately suspend funding for any grant under this title if the Attorney General finds that violent offenders are participating in any program funded under part U.
(c) Technical Assistance and Evaluation.—The Attorney General may provide technical assistance to grantees under the programs authorized by this title. The Attorney General may carry out, or arrange by grant or contract or otherwise for the carrying out of, evaluations or programs receiving assistance under the programs authorized by this title. The Attorney General may require that any evaluations that grantees may be required to carry out pursuant to subsection (b).
(d) Use of Components.—The Attorney General shall utilize any component or components of the Department of Justice in carrying out this section or other provisions of this title that would further the effectiveness and impact of grants authorized by this title and report to Congress annually on the results of the study on or before January 1, 1997.

HATCH AMENDMENT NO. 1137
Mr. HATCH proposed an amendment to the bill, S. 1607, supra; as follows:

On page 276, line 7, strike "28" and insert "29".

HATCH (AND OTHERS) AMENDMENT NO. 1138
Mr. HATCH (for himself and Mr. BIDEN, Mr. PRESSLER, Mr. KEMPTHORNE, Mr. LEAHY, and Mr. FEINGOLD) proposed an amendment to the bill, S. 1607, supra; as follows:

On page 338, strike line 2 and all that follows through page 340, line 9, and insert the following:

Subtitle A—Drug Trafficking in Rural Areas
SEC. 1401. AUTHORIZATIONS FOR RURAL LAW ENFORCEMENT AGENCIES.
(a) Authorization of Appropriations.—Section 1001(a)(x) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended to read as follows:

"(x) There are authorized to be appropriated to carry out part O $50,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998;"

(b) Amendment to Base Allocation.—Section 1001(a)(2)(A) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking "$100,000" and inserting "$250,000".

Mr. HATCH: 20 sec.
(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall, in consultation with the Governors, mayors, and chief executive officers of State and local law enforcement agencies, establish a Drug Enforcement Task Force in each of the Federal judicial districts which encompass significant rural areas. Assets seized as a result of investigations initiated by a Rural Drug Enforcement Task Force shall be used primarily to enhance the operations of the task force and its participating State and local law enforcement agencies.

(b) TASK FORCE MEMBERSHIP.—The task forces established under subsection (a) shall be chaired by the United States Attorney for the respective Federal judicial district. The task forces shall include representatives from—

(1) State and local law enforcement agencies;
(2) the Drug Enforcement Administration;
(3) the Federal Trade Commission;
(4) the Immigration and Naturalization Service;
(5) the Customs Service;
(6) the United States Marshals Service; and
(7) law enforcement officers from the United States Park Police, United States Forest Service and Bureau of Land Management, and such other Federal law enforcement agencies as the Attorney General may direct.

SEC. 1403. CROSS-DESIGNATION OF FEDERAL OFFICERS

(a) IN GENERAL.—The Attorney General may cross-designate up to 100 law enforcement officers from each of the agencies specified under section 1509(b)(6) of the Omnibus Crime Control and Safe Streets Act of 1968 with jurisdiction to enforce the provisions of the Controlled Substances Act on non-Federal territories.

(b) ADEQUATE STAFFING.—The Attorney General shall, subject to the availability of appropriations—

(1) expand and improve investigative and enforcement programs of State and local law enforcement agencies; and

(2) develop and implement, on a pilot basis with no more than 10 participating cities, an intelligent information system that gathers, integrates, organizes, and analyzes information in active support of investigations by Federal, State, and local law enforcement agencies of violent serial crimes.

SEC. 1404. RURAL DRUG ENFORCEMENT TRAINING

(a) SPECIALIZED TRAINING FOR RURAL OFFICERS.—The Director of the Federal Law Enforcement Training Center shall develop a specialized course of instruction devoted to training law enforcement officers from rural areas in the investigation of drug trafficking and related crimes.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal years 1994, 1995, 1996, and 1997:

(1) $1,000,000 to carry out subsection (a); and

(2) $2,000,000 to carry out subsection (b)(2).

DOLE (AND OTHERS) AMENDMENT NO. 1146

Mr. HATCH (for himself and Mr. HATCH) proposed an amendment to the bill, S. 1607, supra; as follows:

On page 114, strike line 11 and all that follows through page 125, line 13, and insert the following:

TITLE VI—GANGLANDS, JUVENILES, DRUGS, AND PROSECUTORS

SEC. 601. SHORT TITLE

This title may be cited as the “Anti-Gang and Youth Protection Act of 1993.”

Subtitle A—Criminal Youth Gangs

SEC. 611. CRIMINAL STREET GANG OFFENSES

(a) OFFENSE.—Title 18, United States Code, is amended by inserting after section 1993 the following new chapter:

CHAPTER 94—PROHIBITED PARTICIPATION IN CRIMINAL STREET GANGS AND GANG CRIME

Sec. 1930. Crimes in furtherance of gangs

(2) the Drug Enforcement Administration; and
(3) the Immigration and Naturalization Service;
(1) to commit, or to attempt to commit, a predicate gang crime with intent to promote or further the activities of a criminal street gang or for the purpose of gaining entrance to or maintaining or increasing position in such a gang;

(2) to conspire, to attempt to participate, in a criminal street gang, or to conspire to do so;

(3) to command, counsel, persuade, induce, entice, or coerce any individual to participate in a criminal street gang;

(4) to employ, use, command, counsel, persuade, induce, entice, or coerce any individual to commit, cause to commit, or facilitate the commission of, a predicate gang crime, with intent to promote or further the activities of, a criminal street gang or for the purpose of gaining entrance to or maintaining or increasing position in such a gang;

(5) to be a member of, to reside in, to occupy a position of organizer or supervisor, or other position of management in, or to maintain or increase position in such a gang; or

Sec. 612. CRIMES INVOLVING THE USE OF MinORS AS RICO PREDICATES.

Section 1961(c) of title 18, United States Code, is amended—

(1) by inserting “or” before “(c)” and “or” after “(a)” in section 1962 of title 18, United States Code, and

(2) by inserting “any drug offense described in this paragraph;” after “the use or distribution of any controlled substance” in section 1962(c) of title 18, United States Code.

Sec. 613. SERIOUS JUVENILE DRUG OFFENSES AS ARMED, CAREER CRIMINAL ACT PREDICATES.

Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) by striking “or” before “(c)” and “or” after “(a)” in section 1962 of title 18, United States Code, and

(2) by striking “any offense against the United States that is punishable by imprisonment for more than 1 year and that involved the use of a person who was a member of a criminal street gang” in section 1962(c) of title 18, United States Code.

Sec. 614. ADULT PROSECUTION OF SERIOUS JUVENILE OFFENDERS.

Section 5032 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by striking “an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, 1009, 1010(b), 1011(b), 1001(b), 1019(a), 1003, 1009, 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959, 960(b)(1), (2), or (3), as amended—

(B) by striking “or” before “(3)” and

(C) by striking “or” before “(d)”;

and

(2) in the third undesignated paragraph—

(A) by striking paragraph (A) and

(B) by striking “(3)” and inserting “(1)”;

and

(3) in the fifth undesignated paragraph by adding at the end the following: “In considering the nature and circumstances of the offense committed by a person described by this paragraph, the court shall consider the extent to which the defendant has engaged in criminal activities, involving the use or distribution of controlled substances or firearms under this title, and the nature and circumstances of those offenses, and the defendant’s role in those offenses.”

Sec. 615. INCREASED PENALTIES FOR EMPLOYING CHILDREN TO DISTRIBUTE DRUGS NEAR SCHOOLS AND PLAY AREAS.

Section 419 of the Controlled Substances Act (21 U.S.C. 860) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and

(2) by inserting after subsection (c) the following new subsection:

(3) Notwithstanding any other law, any person under the age of 18 years who knowingly and intentionally—

(A) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to employ, hire, use, persuade, induce, entice, or coerce a person under 18 years of age to assist in avoiding detection or apprehension for any offense under this

(4) The increases in punishment provided by this section shall apply to any offense committed on or after the date of the enactment of this Act. (Nov. 8, 1993)
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section by any Federal, State, or local law enforcement official
is punishable by a term of imprisonment, a fine, or both, up to triple those authorized by

SEC. 616. INCREASED PENALTIES FOR DRUG
TRAFFICKING NEAR PUBLIC HOUSING

Section 419 of the Controlled Substances Act (21 U.S.C. 860) is amended—
(1) in subsection (a) by striking "playground, or within" and inserting "playground, or housing facility owned by a public housing authority, or within"; and
(2) in subsection (b) by striking "playground, or within" and inserting "playground, or housing facility owned by a public housing authority, or within".

SEC. 617. INCREASED PENALTIES FOR VIOLENT CRIMES INVOLVING VIOLENCE AND CONSPIRACY TO COMMIT CON­TRACT KILLINGS.

(a) TRAVEL ACT PENALTIES.—Section 1962(a) of title 18, United States Code, is amended by striking "and thereafter perfor­mers or attempt to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or im­prisoned for not more than 20 years, or both," and inserting "and thereafter perfor­mers or attempt to perform—"

(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned for not more than 5 years, or both; or

(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death re­sults shall be imprisoned for any term of years or for life.

(b) CONSPIRACY PENALTIES.—Section 1962(a) of title 18, United States Code, is amended by inserting "or who conspires to do so shall be fined the first place it appears"

SEC. 618. AMENDMENTS CONCERNING RECORDS OF CRIMES COMMITTED BY JUVENILES

(a) Section 5038 of title 18, United States Code, is amended by striking subsections (d) and (f), redesignating subsection (e) as subsection (d), and by adding at the end new subsections (e) and (f) as follows:

"(e) RALLYING.—It has been found guilty of committing an act which if com­mitted by an adult would be an offense de­scribed in clause (3) of the first paragraph of section 5038(a) of title 18, United States Code, shall be fingerprinted and photographed, and the finger­prints and photograph shall be sent to the Federal Bureau of Investigation, Identifica­tion Division. The court shall also transmit to the Federal Bureau of Investigation, Identi­fication Division, the information concern­ing the adjudication, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matter was a juvenile adjudication. The fingerprints, photograph, and other records and informa­tion relating to a juvenile described in this sub­section, or to a juvenile who is pros­ecuted as an adult, shall be made available in the manner applicable to adult defendant­s.

"(f) In addition to any other authorization under this section for the reporting, reten­tion, disclosure, or availability of records or informa­tion, if the law of the State in which a Federal juvenile delinquency proceeding takes place permits or requires the report­ing, retention, disclosure, or availability of records or information relating to a juvenile or to the juvenile delinquency proceeding in an adjudication in certain circumstances, then such reporting, retention, disclosure, or availability is permitted under this section whenever the same circumstances exist.".

"(b) Section 3607 of title 18, United States Code, is repealed, and the corresponding item in the chapter analysis for chapter 229 of title 18 is deleted.

"(c) Section 401(b)(4) of the Controlled Sub­stances Act (21 U.S.C. 841(b)(4)) is amended by striking 'and section 3607 of title 18'."

SEC. 619. ADDITION OF ANTI-GANG BRYNE GRANT FUNDING OBJECTIVE.

Section 501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751) is amended—
(1) in paragraph (20) by striking "and", and at the end;
(2) in paragraph (21) by striking the period and inserting "and"; and
(3) by inserting after paragraph (21) the fol­lowing new paragraph:
"(22) law enforcement and prevention pro­grams relating to gangs, or to youth who are involved or at risk of involvement in gangs."

Subtitle B—Gang Prosecution

SEC. 621. ADDITIONAL PROSECUTOR.

There is authorized to be appropriated $20,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998 for the hiring of add­itional Assistant United States Attorneys to prosecute gang-related offenses.

SEC. 22. GANG INVESTIGATION COORDINATION AND INFORMATION COLLECTION.

(a) COORDINATION.—The Attorney General, or the Attorney General's designee, in con­sultation with the Secretary of the Treasury (or the Secretary's designee), shall develop a national strategy to coordinate law enforcement agencies, and initiate investigations by Federal law enforce­ment agencies.

(b) DATA COLLECTION.—The Director of the Federal Bureau of Investigation shall ac­quire and collect information on incidents of gang violence for inclusion in an annual uni­form crime report.

(c) REPORT.—The Attorney General shall prepare a report on national gang violence out­lining the strategy developed under sub­section (a) to be submitted to the President and Congress by January 1, 1995.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $1,000,000 for fiscal year 1994.

SEC. 623. CONTINUATION OF FEDERAL-STATE PARTNERSHIP PROoram.


SEC. 624. GRANTS FOR MULTIJURISDICTIONAL DRUG TASK FORCES.

Section 504(d) of title I of the Omnibus Crime and Safe Streets Act of 1968 (42 U.S.C. 3754(d)) is amended by inserting "and gang" after "Except for grants awarded to State and local governments for the purpose of participating in a".

Subtitle C—Anigang Provisions

SEC. 631. GRANT PROGRAM.

Part B of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5151 et seq.) is amended—
(1) by inserting after the part heading the following subpart heading;
"Subpart I—General Grant Programs"; and
(2) by adding at the end the following new subpart:
"Subpart II—Juvenile Drug Trafficking and Gang Prevention Grants"

FORMULA GRANTS

"Sec. 231. (a) AUTHORIZATION.—The Admin­istrator may make grants to States, units of general local government, private not-for­profit antiguinme organizations, or combina­tions thereof to assist them in planning, es­tablishing, operating, coordinating, and evaluating projects, programs, and other efforts through grants and contracts with public and private agencies, for the development of more effec­tive programs including prevention and en­forcement strategies.

"(1) the formation or continuation of juven­ile gangs; and

"(2) the use and sale of illegal drugs by ju­veniles in drug-related crimes (including drug trafficking and drug use), particularly in and around elementary and secondary schools.

"(B) PARTICULAR PURPOSES.—The grants made under this section can be used for any of the following specific purposes:

"(1) To reduce the participation of juvenile in the drug-trafficking, drug use, or gang-related activities.

"(2) To reduce juvenile gang activity in rural areas.

"(3) To develop effective interventions for juveniles at risk of involvement in serious drug-related and gang-related offenses.

"(4) To reduce juvenile drug and gang-related activity in public housing projects.

"(5) To reduce and prevent juvenile drug and gang-related activity in rural areas.

"(6) To provide technical assistance and training to persons and agencies responsi­ble for the adjudication and corrections components of the juvenile and corrections systems.

"(A) identify drug-dependent or gang-in­ volved juvenile offenders; and

"(B) provide appropriate counseling and services to such youth.

"(7) To promote the involvement of juvenile in lawful activities, including in-school and after-school programs for aca­demically, athletically, and artistically enriching that also teach that drug and gang involvement are wrong.

"(8) To facilitate Federal and State co­operation with local school officials to de­velop education, prevention, and treatment programs for juveniles who are likely to par­ticipate in drug-trafficking, drug use, or gang-related activities.

"(9) To prevent juvenile drug and gang in­volvement in public housing projects or programs for juveniles through youth sports and other activities, including girls' and boys' clubs, scout troops, and Little leagues.

"(10) To provide pre- and post-trial drug abuse treatment to juveniles in the juvenile justice system with the highest possible prior­ity to providing drug abuse treatment to drug-dependent pregnant juveniles and drug­dependent juvenile mothers.

"(11) To provide education and treatment programs for juveniles exposed to severe vio­lence in their homes, schools, or neighbor­hoods.

"(12) To establish boards or any fund to carry out this subpart for any fiscal year shall be allo­cated as follows:

"(a) identify drug-dependent or gang-in­ volved juvenile offenders; and

"(b) provide appropriate counseling and services to such youth.
At the appropriate place insert the following:

SEC. 1. DRIVING WHILE INTOXICATED PROSECUTION PROGRAM.

Section 503(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (22 U.S.C. 3751), as amended by section 621, is amended—

(1) by striking "and" at the end of paragraph (22); and
(2) by adding at the end the following new paragraph:

"(24) programs for the prosecution of driving while intoxicated charges and the enforcement of other laws relating to alcohol use and the operation of motor vehicles."

LIEBERMAN AMENDMENT NO. 1143

Mr. LIEBERMAN proposed an amendment to the bill S. 1007, supra; as follows:

At the appropriate place insert the following:

SEC. 2. VIOLENT CRIME AND DRUG EMERGENCY AREAS.

(A) DEFINITION.—In this section, "major violent crime or drug-related emergency" means an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, in consultation with the Attorney General, the Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

(b) DECLARATION OF VIOLENT CRIME AND DRUG EMERGENCY AREAS.—If a major violent crime or drug-related emergency exists throughout a State or a part of a State, the President, in consultation with the Attorney General and other appropriate officials, may declare the State or part of a State to be a violent crime or drug emergency area and may take any and all necessary actions authorized by this section and other law. For the purposes of this section, the term "State" shall be deemed to include the District of Columbia and any United States territory or possession.

(c) PROCEDURE.—

(1) IN GENERAL.—A request for a declaration designating an area to be a violent crime or drug emergency area shall be made, in writing, by the chief executive officer of a State and local government, respectively (or in the case of the District of Columbia, the mayor), and shall be forwarded to the Attorney General in such form as the Attorney General may by regulation require. One or more cities, counties, State, or the District of Columbia may join in such a request for designation as a major violent crime or drug emergency area under this subsection.

(2) FINDING.—A request made under paragraph (1) shall be based on a written finding that the major violent crime or drug-related emergency is of such severity and magnitude that Federal assistance is necessary to ensure an effective response to save lives and to protect property and public health and safety.

(d) IRRELEVANCY OF POPULATION DENSITY.—The President shall not limit declarations made under this section to highly populated centers of violent crime or drug trafficking, drug smuggling, or drug use, but shall assess and consider applications from governments of less populated areas where the magnitude severity of such activities is beyond the capability of the State or local government to respond.

(e) REQUIREMENTS.—As part of a request for a declaration under section (1) and as part requisite to Federal violent crime or drug emergency assistance under this section, the chief executive officer of a State or local government shall—

(1) take appropriate action under State or local law and furnish information on the nature and severity of the violence and the resources that have been or will be committed to alleviating the major violent crime or drug-related emergency.

(2) submit a detailed plan outlining that government’s short- and long-term plans to respond to the violent crime or drug emergency, specifying the resources and levels of Federal assistance requested and including explicit goals (including quantitative goals) and timetables; and

(3) specify the Federal assistance provided under this section is intended to achieve those goals.

(7) REVOCATION PERIOD.—The Attorney General shall review a request submitted pursuant to this section, and the President shall decide to declare the violent crime or drug emergency area, within 30 days after receiving the request.

(g) FEDERAL ASSISTANCE.—The President may

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities to provide direct assistance under Federal law (including financial assistance, personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts; and

(2) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information;

(h) DURATION OF FEDERAL ASSISTANCE.—

(A) IN GENERAL.—Federal assistance under this section shall not be provided to a Violent Crime or Drug Emergency Area for more than 1 year.

(B) EXTENSION.—The chief executive officer of a jurisdiction may apply to the Attorney General for an extension of assistance beyond 1 year. The President, in consultation with the Attorney General, may extend the provision of Federal assistance for not more than an additional 180 days.

(i) RELOCATION OF PROGRAM PARTICIPANTS.—Nothing in this section shall diminish or detract from existing authority possessed by the President or Attorney General.

LIEBERMAN (AND OTHERS) AMENDMENT NO. 1144

Mr. LIEBERMAN (for himself and Mr. D’AMATO) proposed an amendment to the bill S. 1007, supra; as follows:

At the appropriate place insert the following:

SEC. 3. PROTECTION OF RECIPIENTS IN TERRORISM REWARDS PROGRAM.

(a) COUNTERTERRORISM REWARDS PROGRAM.—Section 36(e) of the State Department Basic Authorities Act (22 U.S.C. 2708) is amended—

(1) by inserting "(1) immediately after "e); and

(2) by adding the following to the end of subsection (e):

"(2) RELOCATION OF PROGRAM PARTICIPANTS.—

(A) Whenever the information that would justify a reward under subsection (a) is furnished by an alien, and the Secretary of State and Attorney General jointly determine that the protection of such alien requires the admission of such alien or aliens to the United States, then such alien and the members of the immediate family of the alien, if necessary, may be admitted to the United States without regard to the requirements of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and shall be eligible for permanent residence as provided in paragraph (4)(a) below.

(B) The total number of aliens admitted to the United States under subparagraph (A) shall not exceed the amount of funds designated under section 212(a)(2) or 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1102) shall be admitted and permitted to remain in the United States on the condition that the person:
GORTON AMENDMENT NO. 1145
Mr. GORTON proposed an amendment to the bill S. 1607, supra; as follows:

On page 183, between lines 11 and 12, insert the following:

Subtitle.—Sexually Violent Predators

SECTION 1. SHORT TITLE.
This subtitle may be cited as the "Sexually Violent Predators Act".

SEC. 2. FINDINGS.
Congress finds that—

(1) there exists a small but extremely dangerous group of sexually violent persons who do not have a mental disease or defect.

(2) persons who are sexually violent predators generally have antisocial personality features that—

(A) are amenable to mental illness treatment modalities in existence on the date of enactment of this Act;

(B) are amenable to the intermittent or continuous administration of the custody of the Attorney General or the Attorney General's designee.

(3) the likelihood that sexually violent predators will repeat acts of predatory sexual violence is high.

(4) the prognosis for curing sexually violent predators is poor and the treatment needs of the population of the predators are extraordinary.

SEC. 3. DEFINITIONS.
As used in this subtitle:

(1) MENTAL ABNORMALITY.—The term "mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes the person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(2) PREDAATORY.—The term "predatory", with respect to an act, means an act directed towards a stranger, or a person with whom a relationship has been established or promoted, for the primary purpose of victimization.

(3) SEXUALLY VIOLENT OFFENSE.—The term "sexually violent offense" means—

(A) an act that is a violation of title 18, United States Code; or state criminal code that—

(i) involves the use or attempted or threatened use of physical force against the person or property of another person; and

(ii) is committed by a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(4) SEXUALLY VIOLENT PREDATOR.—The term "sexually violent predator" means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

SEC. 4. ESTABLISHMENT OF PROGRAM.
(a) IN GENERAL.—

(1) STATE GUIDELINES.—In accordance with this section, the Attorney General shall establish guidelines for State programs to require a sexually violent predator to register a current address with a designated State law enforcement agency upon release from prison, being placed on parole, or being placed on supervised release. The Attorney General may adjust the status of such predicate as provided in subparagaph (A).

(b) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A) on not later than 90 days after the date of enactment of this Act.

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(c) REALLOCATION OF FUNDS.—Funds made available under clause (i) shall be reallocated among the States in accordance with the section to which the funds would otherwise be allocated to the State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756).

(d) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(e) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(f) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(g) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(h) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(i) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(j) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(k) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(l) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(m) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(n) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(o) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(p) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(q) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(r) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(s) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(t) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(u) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(v) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(w) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(x) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(y) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(z) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—

(i) IN GENERAL.—A State shall implement the program as described in subparagraph (A).

(ii) IN GENERAL.—A State shall implement the program as described in subparagraph (A).
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SUBCOMMITTEE ON INTERNATIONAL TRADE
Mr. BIDEN. Mr. President, I ask unanimous consent that the Subcommittee on International Trade of the Committee on Finance be permitted to receive oral testimony on the subject of trade negotiations between the United States and Japan.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

HEDGWIG DIANE ORLOWSKI

Mr. RIEGLE. Mr. President, I rise today to pay tribute to Hedwig Diane Orlowski, a nurse from Michigan who served with the 67th Evacuation Hospital during the Vietnam War. Twenty-six years ago this month Heddy Orlowski died along with two of her fellow nurses when her plane attempted to land in bad weather at Qui Nhon. She was just 22 years old.

Heddy studied at the Hurley Medical Center School of Nursing in Flint, MI. In January of 1967, she began her tour of duty in Vietnam at Qui Nhon. She was temporarily assigned to Pleiku to assist with the number of wounded there. On November 30, 1967, Heddy's plane went down as it returned her to her post.

In observing Veteran's Day this year, I would like to pay special tribute to this outstanding young woman for the ultimate sacrifice she made for our country. At the age of 22, Heddy traveled to Vietnam to provide medical attention and personal support to the young American soldiers who were wounded in the war. During each day of the 11 months she spent in Vietnam, she faced death with courage that few of us possess. She gave all her strength and personal support to the volunteers who served with her. Today, her memory is carried on by the people she nursed back to health, as well as by her family and friends who loved her.

With the dedication of the Women's Vietnam Veterans Memorial on November 11, our Nation is paying a long-overdue tribute to the service and sacrifice of Hedwig Orlowski and the 11,500 women who served with her in Vietnam. This bronze statue honors all the women who served in Vietnam—those who served with the armed forces, and the volunteers who served with humanitarian organizations such as the USO and the Red Cross.

Like Heddy, these women faced the horrors of the Vietnam conflict on a daily basis. They offered support and comfort to thousands of young men in their final moments of life and they helped save the lives of hundreds of thousands more. The fortitude and sacrifice they displayed also helped keep many soldiers from falling into despair. These women deserve recognition for their important contributions.
service to their country. The Women's Vietnam Veterans Memorials will help to ease the pain that many of these women still feel. It will also remind Americans today and in future generations of the tremendous courage and valor that they displayed and sacrificed. The Women's Vietnam Veterans Memorial can never fully make up for the loss of a young woman like Heddy who was so full of life. But it will remind us of the bravery that she displayed and the sacrifice she made. Not only will the soldiers whom she helped always be grateful to her, but all Americans are grateful for Hedwig Diane Orlowski's selfless service to her country. Through this memorial, her memory lives on.

LEON SHULL CELEBRATES HIS 80TH BIRTHDAY

Mr. WELLSTONE. Mr. President, I rise to pay tribute to Leon Shull, who is celebrating his 80th birthday today. His brand of progressive activism in the pursuit of social justice deserves our recognition and respect.

Economic and social justice are goals which Leon Shull has promoted his entire life. In 1964, Leon became the national director of Americans for Democratic Action (ADA). At the helm of ADA, Leon led national fights to bring full civil rights to all Americans. All of us who treasure our constitutional and personal freedoms owe Leon a debt of gratitude. He also worked diligently during his career to end human rights abuses abroad.

In the late 1940's Leon chaired the Philadelphia Council for Equal Job Opportunities. Out of this work was born his lifelong commitment to workers and minorities, to peace and social justice, and to honesty in government. Very involved in Pennsylvania reform politics, Leon helped to thoroughly re-form that State's political machinery. That same reform commitment carried over to the national level in his work in Pennsylvania for Stevenson and Kennedy for President.

As the publisher of the Pennsylvania Guardian, Leon aired his free-thinking, progressive views. From 1950 to 1963, he served as the executive director of the southeastern Pennsylvania chapter of ADA, bringing his expertise to grassroots action. Under Leon's leadership as the national director of ADA, he spearheaded the effort to enact full employment legislation with the passage of the Humphrey-Hawkins full employment act which Leon Shull has promoted his entire life.

MEMORIAL TO THE VICTIMS OF THE BOMBING OF PAN AM FLIGHT 103

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 264, Senate Joint Resolution 129, a joint resolution relating to the placement of a memorial cairn in Arlington Cemetery to honor the victims of the Pan Am Flight 103; that the joint resolution be read a third time, passed, the preamble be agreed to, that the motion to reconsider be laid upon the table; and that any statements appear at the appropriate place in the RECORD.

THE PRESIDENTIAL OFFICER. Without objection.

So the joint resolution (S.J. Res. 129) was deemed read the third time and passed.

The preamble was agreed to.

The joint resolution, with its preamble, is as follows:

S.J. RES. 129

Whereas Pan Am Flight 103 was destroyed by a bomb during the flight over Lockerbie, Scotland, on December 21, 1988; Whereas 270 persons from 21 countries were killed in this terrorist bombing; Whereas 189 of those killed were citizens of the United States including the following citizens of 21 States, the District of Columbia, and United States citizens living abroad:

ARKANSAS: Frederick Sanford Phillips; COLORADO: Jerry Don Avrill, Surinder Mohan Bhatia, Siacle Denise Franklin, Marce Batt, Maureen Koval, Barry Joseph Garett, Barry Joseph Valentino, Jonathan White;

COLORADO: Steven Lee Butler;

CONNECTICUT: Scott Marsh Corty, Patricia Marie Coyle, Shannon Davis, Turhan Erpin;

Thomas Britton Schultz, Amy Elizabeth Shapiro;

DISTRICT OF COLUMBIA: Nicholas Andreas Vrentos;

FLORIDA: John Binning Cummock;

ILLINOIS: Janina Anna; KANSAS: Lloyd David Ludlow;


MASSACHUSETTS: John McManus, Barbara MacBain Benello, Nicole Elise Boulanger, Nicholas Bright, Gary Leon Coleasanti, Joseph Patrick Curry, Mary Lincoln Johnson, Janette Fiss Crowl, Wendy Anne Lincoln, Daniel Emmett O'Conner, Sarah Susannah Buchanan, Phillips, James Andrew Campbell, FIC, Cynthia Joan Smith, Thomas Edwin Wexer;

MICHIGAN: Lawrence Ray Bennett, Diane Boatman-Fuller, James Ralph Fuller, Kenneth James Gibson, Pamela Elaine Herbert, Khalid Nazir Jaffar, Gregory Kosowski, Louis Anthony Marego, Anmol Rattan, Garima Rattan, Suriuchi, Ratchi, Mary Edna Shapiro, C. Andrew Terranova, Jonathan Ryan Thomas, Lawanda Thomas;

MINNESOTA: Philip Vernon Bergstrom;

NEW HAMPSHIRE: Stephen John Boland, James Vincent MacQueen;


NORTH DAKOTA: Steven Russell Berrell;

Paige, Michael Daniel, Travis Dixit, Douglas Eugene Malcote, Wendy Gay Malcote, Peter Raymond Pelcro, Michael Pescatore, Robert Alleman;
**VETERANS' REEMPLOYMENT RIGHTS**

Mr. BIDEN. Mr. President, I ask unanimous consent that the Veterans' Affairs Committee be discharged from and the Senate proceed to the immediate consideration of H.R. 995, relating to veterans' reemployment rights; that all after the enacting clause be stricken and the text of S. 843, as passed the Senate on November 2, be inserted in lieu thereof; that the bill be read a third time, passed, the motion to reconsider be laid upon the table; and that any statements relative to passage of this item appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection it is so ordered.

So the bill (H.R. 995), as amended, was deemed read the third time and passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 995) entitled "An Act to amend title 38, United States Code, to improve reemployment rights and benefits of veterans and other benefits of employment of certain members of the uniformed services, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Uniformed Services Employment and Reemployment Rights Act of 1993".

**SEC. 2. REVISION OF CHAPTER 43 OF TITLE 38.**

(a) RESTATEMENT AND IMPROVEMENT OF EMPLOYMENT AND REEMPLOYMENT RIGHTS.—Chapter 43 of title 38, United States Code, is amended to read as follows:

"CHAPTER 43—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

"SUBCHAPTER I—GENERAL


"SUBCHAPTER I—GENERAL

**§4301. Purposes; sense of Congress**

(a) The purposes of this chapter are—

(1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;

(2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service under honorable conditions; and

(3) to prohibit discrimination against persons because of their service in the uniformed services.

(4) It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter.

**§4302. Relation to other law; construction**

(a) Nothing in this chapter shall supersedes, nullify or diminish any Federal or State law (including any local law or ordinance) or employer practice, policy, agreement, or plan that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided by this chapter, the Veterans' Reemployment Rights Act of 1974 (29 U.S.C. 4301 et seq.), or any such benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

"(b) This chapter supersedes any State law (including any local law or ordinance) or employer practice, policy, agreement, or plan that reduces, limits, or eliminates in any manner right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

**§4303. Definitions**

"For the purposes of this chapter—

(1) The term 'Attorney General' means the Attorney General of the United States or any person designated by the Attorney General to carry out a responsibility of the Attorney General under this chapter.

The term 'benefit', 'benefit of employment', or 'rights and benefits' means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues by reason of an employment contract or an employer practice or custom and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, or any other plan that provides awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

(3)(A) The term 'employee' means any person employed by an employer.

(B) With respect to employment in a foreign country, the term 'employee' includes an individual who is a citizen of the United States.

(4)(A) Except as provided in subparagraphs (B) and (C), the term 'employer' means any person, institution, organization, or other entity that pays salary or wages for work performed or that in any manner controls over employment opportunities, including—

(i) a person, institution, organization, or other entity to whom the employer has delegated the performance of employment-related responsibilities;

(ii) the Federal Government;

(iii) any successor in interest to a person, institution, organization, or other entity referred to in this subparagraph; and

(iv) a person, institution, organization, or other entity that has denied initial employment in violation of section 4311 of this title.

(B) In the case of a National Guard technician employed under section 706 of title 32, the term 'employer' means the adjutant general of the State in which the technician is employed.

(C) Except as an actual employer of employees, an employee pension benefit plan described in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) shall be deemed to be an employer only with respect to the obligation to provide benefits described in section 4317 of this title.

(5) The term 'Federal executive agency' includes the United States Postal Service, the Postal Rate Commission, any nonproprietary fund instrumentality of the United States, and any Executive agency (as that term is defined in section 105 of title 5, other than an agency referred to in section 2302(a)(2)(C)(ii) of title 5).

(6) The term 'Federal Government' includes any Federal executive agency, the legislative branch of the United States, and the judicial branch of the United States.

(7) The term 'health plan' means an insurance, policy, or contract for health service coverage, group health service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.
"(a) A dropping of such person from the rolls pursuant to section 1161(b) of title 10.

"SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS; AND LIMITATIONS: PROHIBITIONS"

§4311. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited

"(a) A person is subject to a member, applies to a be a member, performs, has performed, applies to perform, or has an obligation for service in a uniformed service that shall not be denied eligibility for employment in violation of this chapter, or to have an obligation for employment by an employer on the basis of that membership, application for membership, performance, service, application for service, or obligation.

"(b) An employer shall be considered to have denied a person initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can demonstrate that the action would have been taken in any event.

"(c)(1) An employer may not discriminate in employment against or take any adverse employment action against any person because such person has taken an action to enforce a protection afforded any person under this chapter, has testified or otherwise made a statement in or in connection with any proceeding under this chapter, has assisted or otherwise participated in an investigation under this chapter, or has exercised a right provided for in this chapter.

"(2) The prohibition in paragraph (1) shall apply with respect to any person regardless of whether that person has performed service in the uniformed services.

"(d)(1) An employer may take an action otherwise prohibited by this section with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer to violate the law of the foreign country in which the workplace is located.

"(2) If an employer controls a corporation in which personnel have been ordered to or retained on active duty under section 672(a), 672(g), 673b, 673c, or 688 of title 10 or under section 331, 332, 339, 360, 367, or 412 of title 14, or under any provision of law during a war or during a national emergency declared by the President or the Congress.

"(3) An employer may take an action other than for training under section 331, 332, 339, 360, 367, or 412 of title 14.

"(4) An employer may not discriminate in employment against or take any adverse employment action against any person because such person has taken an action to enforce a protection afforded any person under this chapter, has testified or otherwise made a statement in or in connection with any proceeding under this chapter, has assisted or otherwise participated in an investigation under this chapter, or has exercised a right provided for in this chapter.

"(2) The prohibition in paragraph (1) shall apply with respect to any person regardless of whether that person has performed service in the uniformed services.

"(3) An employer may take an action otherwise prohibited by this section with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer to violate the law of the foreign country in which the workplace is located.

"(4) An employer may not discriminate in employment against or take any adverse employment action against any person because such person has taken an action to enforce a protection afforded any person under this chapter, has testified or otherwise made a statement in or in connection with any proceeding under this chapter, has assisted or otherwise participated in an investigation under this chapter, or has exercised a right provided for in this chapter.

"§4304. Character of service

"A person's entitlement to the benefits of this subchapter by reason of the service of such person in a uniformed service for services of a foreign country, the occurrence of any of the following events:

"(1) A separation of such person from such uniformed service under other than honorable circumstances, or an order of the President in time of war or emergency.

"§4312. Reemployment rights of persons who serve in the uniformed services

"(a) Subject to subsections (c) and (d), any person who is absent from a position of employment by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits of such other employment benefits of this chapter if—

"(1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notification to the person of the proposed separation and the reasons therefor; or

"(2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and

"(3) if the person reports to, or submits an application for reemployment to, such employer in accordance with subsection (e).

"(b) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity, for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

"(c)(1) A person who is absent from a position of employment by reason of service in the uniformed services if such period of service exceeds five years shall not include any such period of service shall not include any service—

"(1) that is required, beyond five years, to complete an initial period of obligated service,

"(2) that is required by the employer to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such termination has through no fault of such person.

"(3) performed as required pursuant to section 702 of title 10, under section 503(a) or 503 of title 38, or under section 331, 332, 339, 360, 367, or 412 of title 14.

"(b) Subject to the person is not entitled to reemployment under subsection (a)(1), (a)(4), or (b)(2)(B) of section 4313 of this title, such employment would impose an undue hardship on the employer.

"(c) In any proceeding involving an issue of whether—

"(1) a reemployment referred to in paragraph (1) is imposed or unreasonable because of a change in an employer's circumstances, or

"(2) any accommodation, training, or effort referred to in subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313 of this title, such employment would impose an undue hardship on the employer, the employer shall have the burden of proving the impossibility or unreasonable or undue hardship on the employer.

"(1) Subject to the person referred to in subsection (a) shall, upon the completion of a period of service in the uniformed

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services, notify the employer referred to in such subsection of the person's intent to return to a position of employment with such employer as follows:

"(A) In the case of a person whose period of service in the uniformed services was less than 31 days, or whose period of service was within the 16-day period following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service in the uniformed services was less than the person's residence; or

"(B) In the case of a person who is absent from a position of employment for a period of any length for the purposes of an examination to determine the person's fitness to perform service in the uniformed services, by reporting in the manner and time referred to in subparagraph (A).

"(C) In the case of a person whose period of service in the uniformed services was for more than 180 days, by submitting an application for reemployment with the employer not later than 14 days after the completion of the period of service.

"(D) In the case of a person whose period of service in the uniformed services was for more than 90 days, by submitting an application for reemployment with the employer not later than 90 days after the completion of the period of service.

"(2)(A) A person who is hospitalized, or convalescing from, an illness or injury incurred in, or aggravated by, the performance of service in the uniformed services shall, at the end of the period that is necessary for the person to recover from such illness or injury, report to the person's employer (in the case of a person described in subparagraph (A) or (B) of paragraph (1)) or submit an application for reemployment with the employer not later than 14 days after the completion of the period of service.

"(B) Such two-year period shall be extended by the minimum time required to accommodate the circumstances beyond such person's control such that the requirements established in subparagraph (A) impossible or unreasonable.

"(C) A person who fails to report for employment or reemployment within the appropriate period specified in this subsection shall not automatically forfeit such person's entitlement to the rights and benefits referred to in subparagraph (A) but shall be subject to the conduct rules, established policy, and general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work.

"(f)(1) A person who submits an application for reemployment in accordance with subparagraph (A) of subsection (e)(1) or section 4312 of this title (in the case of an employee of the Federal Government), a person entitled to reemployment under section 4312 of this title (in the case of an employer) or subsection (a)(2) of such section, consistent with circumstances of such person's case, with full seniority.

"(2) Any person entitled to reemployment under section 4312 of this title who is not reemployed in a position of employment by reason of paragraph (1) shall be entitled to reemployment as follows:

"(A) Except as provided in subparagraph (B), the failure of a person to provide documentation that satisfies regulations prescribed pursuant to paragraph (2) shall not be a basis for denying reemployment in accordance with the provisions of title 5, United States Code, relating to veterans and other preference eligibles.

"(B) If the person is not qualified to perform the duties of a position referred to in subparagraph (A), after reasonable efforts by the employer to qualify the person, in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay.

"(g) In any determination of a person's entitlement to protection under this chapter, the timing, frequency, and duration of the person's training or service, or the nature of such training or service (including voluntary service) in the uniformed services, shall not be a basis for denying protection of this chapter if the service does not exceed the limitations set forth in subsection (c) and the notice requirements established in subsection (g)(1) and the notification requirements established in subsection (e) are met.

§4313. Reemployment positions

(a) Subject to subsection (b) (in the case of any employee) and section 4314 of this title (in the case of an employee of the Federal Government), a person entitled to reemployment under section 4312 of this title (in the case of an employee of the Federal Government), a person entitled to reemployment under section 4312 of this title (in the case of an employer), or a position of lesser status and pay which such person is qualified to perform, as the case may be.

(b) If the person is not qualified to perform the duties of a position referred to in subparagraph (A), after reasonable efforts by the employer to qualify the person, in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay, the duties of which the person is qualified to perform.

§4314. Reemployment by the Federal Government

(a) Except as provided in subsections (b), (c), and (d), in the case of a person entitled to reemployment under section 4312 of this title, such person shall be reemployed in a position of employment as described in section 4313 of this title.
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"(b)(1) If the Director of the Office of Person­
nel Management makes a determination de­
scribed in paragraph (2) with respect to a person
who was employed by a Federal executive agen­
cy at the time the person entered the service
from which the person seeks reemployment
under this section, the Director shall—
(A) identify a position of like seniority, sta­
tus, and pay at another Federal executive agen­
cy that satisfies the requirements of section 4313
of this title and for which the person is quali­
fied; and
(B) ensure that the person is offered such
position.

"(2) The Director shall carry out the duties
referred to in subparagraphs (A) and (B) of
paragraph (1) if the Director determines that—
(A) the Federal executive agency that em­
ployed the person referred to in such paragraph
no longer exists and the functions of such agen­
cy have not been transferred to another Federal
executive agency; or
(B) it is impossible or unreasonable for the
agency to reemploy the person.

"(c) If the employer of a person described in
subsection (a) was, at the time such person en­
tered the service, an agency that provided for the
reemployment under this section, a part of the
judicial branch or the legislative branch of the
Federal Government under section 4312(e) of
this title, or the employee of a person referred to in
subsection (a) from seeking reinstatement
in a Federal executive agency on the basis
described in subsection (b)—
"(1) the Director of the Office of Per­
sonnel Management shall ensure the offer of em­
ployment by the last employer of such person,
by ensuring an offer of employment in an alter­
teative position in a Federal executive agency on
the basis described in subsection (b); or
(2) the adjutant general of a State de­
determines that it is impossible or unreasonable to
reemploy a person who was a National Guard
technician, or a member of a Reserve Components
unit, or a member of the Selective Service System,
that it is impossible or unreasonable to re­
employ such person, such person shall, upon appli­
cation to the Director of the Office of Per­
sonnel Management, be ensured an offer of employ­
ment in an alternative position in a Federal executive
agency on the basis described in subsection (b).

"§4315. Reemployment by certain Federal
agencies

(a) The head of each agency referred to in
section 2302(a)(2)(C)(ii) of title 5 shall prescribe
procedures for ensuring that the rights under this
chapter apply to the employees of such agency.

(b) In prescribing procedures under sub­
section (a), the head of an agency referred to in
that subsection shall ensure, to the maximum ex­
tent practicable, that the procedures of the agency
for reemploying persons who serve in the
uniformed services provide for the reemployment
of such persons in the agency in a manner simi­
lar to the manner of reemployment described in
section 4313 of this title.

"§4316. Rights, benefits, and obligations
of persons absent from employment for service
in a uniformed service

(a) A person who is reemployed under this
chapter after a period of service in the uni­
formed services is entitled to the seniority
and other rights and benefits determined by seniority
that the person had on the date of the com­
 mencement of such service plus the additional
seniority and rights and benefits that such per­
son would have attained if the person had not
been absent from employment for service.

(b)(1) Subject to subparagraphs (2) and (3), if
a person's employment would otherwise termi­
nate due to an extended absence from employment
for purposes of performing service in the uniformed
services, the person may elect to continue health-plan
coverage acquired through civilian employment
in accordance with this paragraph so that such
coverage continues for not more than 18 months
after such absence begins.

(2) A person who elects to continue health­
plan coverage under this paragraph may be re­
lieved of or not be required to make, or to make,
any liability of the plan arising under this para­
graph shall be allocated by the plan to the last
employer of the person. Under an employee pension benefit plan
under subparagraph (A), the plan may provide, shall be allocated to the
party or parties under an employee pension benefit plan
under subparagraph (A), the plan may provide, shall be allocated to the
party or parties,

(3) The period of coverage of a person and
the amount of the coverage provided to the person
under this paragraph shall be determined if the person
were not on a furlough or leave of absence.

(4) A person is not entitled under this sub­
section to coverage under a disability insurance
policy, of a death incurred by the person as a re­

tent of the person's participation in, or assign­
mation to an area of, armed conflict to the extent
that such coverage is excluded or limited by a provision of such policy.

(5) A person is not entitled under this sub­
section to coverage under a life insurance
policy, of a death incurred by the person as a re­

tent of the person's participation in, or assign­
mation to an area of, armed conflict to the extent
that such coverage is excluded or limited by a provision of such policy.

(6) If the employer of a person described in
paragraph (1) to a person deemed to be on a furlough or leave of
absence shall expire on the earlier of
"(A) the date of the
(b)(2) If the adjutant general of a
State determines that it is impossible or unreasonable to
reemploy a person who served in the
uniformed services for a period of more than 18 months
prior to the date on which the absence
ref erred to in paragraph (1) begins; or
"(B) the date of the expiration of the
person's obligation with respect to such service to notify
the person's employer of the person's intent to
return to a position of employment under
section 4313(e) of this title.

(b) The entitlement of a person to a right or
benefit under an employee pension benefit plan
is provided for under section 4317 of this title.

(c)(1) A Subject to paragraphs (2) and (3), if
a person's employment would otherwise termi­
nate due to an extended absence from employment
for purposes of performing service in the uniformed
services, the person may elect to continue health-plan
coverage acquired through civilian employment
in accordance with this paragraph so that such
coverage continues for not more than 18 months
after such absence begins.

(2) A person who elects to continue health­
plan coverage under this paragraph may be re­
lieved of or not be required to make, or to make,
any liability of the plan arising under this para­
graph shall be allocated by the plan to the last
employer of the person. Under an employee pension benefit plan
under subparagraph (A), the plan may provide, shall be allocated to the
person commencing the service or establishing the plan
may provide (or, if the
sponsor does not so provide, shall be allocated to the last employer
employing the person before the period served by the person
in the uniformed services)

(3) The period of coverage of a person and
the amount of the coverage provided to the person
under this paragraph shall be determined if the person
were not on a furlough or leave of absence.

(4) A person is not entitled under this sub­
section to coverage under a disability insurance
policy, of a death incurred by the person as a re­

tent of the person's participation in, or assign­
mation to an area of, armed conflict to the extent
that such coverage is excluded or limited by a provision of such policy.

(5) A person is not entitled under this sub­
section to coverage under a life insurance
policy, of a death incurred by the person as a re­

tent of the person's participation in, or assign­
mation to an area of, armed conflict to the extent
that such coverage is excluded or limited by a provision of such policy.
(B) the aggregate of the period of the person's service in the uniformed services and the period in which the person is required to notify the person in the uniformed services of the person's service in the uniformed services, an exclusion under section 4312(e) of this title.

Section 4312(f)(2) of this title provided in paragraph (2), in the case of a person whose coverage by an employer-sponsored health plan as an employee is terminated by reason of the service of such person in the uniformed services, an exclusion or waiting period may not be imposed in connection with the reinstatement of the coverage of the person upon reemployment under this chapter.

A person who is reemployed under this chapter shall be entitled to accrued benefits pursuant to subsection (b) with respect to the period of service described in subsection (a)(2) to the extent such period would not have been imposed under the health plan had coverage of such person by such health plan not been terminated as a result of such service.

(2) Paragraph (1) shall not apply to the condition of a person if the Secretary determines that the condition was incurred or aggravated during active military, naval, or air service.

(e) A person who is reemployed by an employer under this chapter shall not be discharged from such employment, except for cause-

(1) within one year after the date of such reemployment, if the person's period of service before the reemployment was more than 180 days; or

(2) within 180 days after the date of such reemployment, if the person's period of service before the reemployment was more than 30 days but less than 181 days.

(f)(1) Any person described in paragraph (2) whose employment with an employer referred to in that paragraph is interrupted by a period of service in the uniformed services shall be permitted, upon request of that person, to use during such period of service, any annual leave with pay accrued by the person before the commencement of such service.

(g)(1) A person entitled to the benefit described in paragraph (1) is a person who-

(A) has accrued vacation or annual leave with pay under a policy or practice of a State (as an employer) or private employer; or

(B) has accrued such leave as an employee of the Federal Government pursuant to subchapter I of chapter 43 of title 5, subchapter 4 of chapter 83 of title 5, or 5 U.S.C. 5320(b).

§4317. Employee pension benefit plans

(a)(1)(A) Except as provided in subparagraph (B), in the case of a right provided pursuant to an employee pension benefit plan described in section 4321 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), or a right provided under any Federal or State law governing pension benefits for governmental employees, the right to pension benefits of a person reemployed under this chapter shall be determined under this section.

(B) In the case of benefits under the Thrift Savings Plan, the rights of a person reemployed under this chapter shall be those rights provided in section 6326 of title 5. This subparagraph shall not affect any other right or benefit under this chapter.

(2)(A) Except as provided in section 4321(f)(2) of this title, a person reemployed under this chapter shall be treated as not having incurred a break in service with the employer or employers maintaining the plan by reason of the person's period or periods of service in the uniformed services.

(B) Each period served by a person in the uniformed services shall, upon reemployment under this chapter, be treated as not having incurred a break in service with the employer or employers maintaining the plan for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

(3) A person reemployed under this chapter shall be liable to an employee benefit pension plan for funding any obligation of the plan to provide the benefits described in subsection (a) that the person or the employer would have been required to pay if the person had not been required to be treated as being in service under the plan, except that the person would not be required to be treated as being in service during the period of service described in subsection (a)(2)(B). Any employee contribution or elective deferral to the plan described in this paragraph shall be made during any reasonable period following the date of reemployment.

§4321. Assistance in obtaining reemployment or other employment rights or benefits

(a) The Secretary (through the Veterans' Employment and Training Service) shall provide assistance to any person with respect to the employment and reemployment rights and benefits to which such person is entitled under this chapter. In providing such assistance, the Secretary may request the assistance of existing Federal and State agencies engaged in similar or related activities and utilize the assistance of volunteers.

(b)(1)(A) A person referred to in subparagraph (B) may submit a complaint to the Secretary with respect to the matters described in clause (ii) of such subparagraph. Such complaint shall be submitted in accordance with subsection (c).

(b)(1)(B) A person may submit a complaint under subparagraph (A) if the person claims-

(1) to be entitled under this chapter to employment or reemployment rights or benefits with respect to employment by an employer; and

(2) that the employer (including the Office of Personnel Management, if the employer is the Federal Government) has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter.

(2) The Secretary shall, upon request, provide technical assistance to a potential claimant with respect to a complaint under this subsection, and to such claimant's employer.

(c) A complaint submitted under subsection (b) shall be in a form prescribed by the Secretary and shall include-

(1) the name and address of the employer or potential employer against whom the complaint is directed; and

(2) a summary of the allegations upon which the complaint is based.

(d) The Secretary shall investigate each complaint submitted pursuant to subsection (b). If the Secretary determines that a result of the investigation that the action alleged in such complaint occurred, the Secretary shall resolve the complaint by making reasonable efforts to enforce the provisions of this chapter, the payment of which the complaint complies with the provisions of this chapter.

(e) If the efforts of the Secretary with respect to a complaint under subsection (d) are unsuccessful, the Secretary shall notify the person who submitted the complaint of-

(1) the results of the Secretary's investigation; and

(2) the complainant's entitlement to proceed under the enforcement of rights provisions provided under section 4322 of this title (in the case of a claim against a State or private employer) or section 4323 of this title (in the case of a person submitting a complaint against the Federal Government).

(f)(1) This subsection does not apply to any action relating to benefits to be provided under the Thrift Savings Plan under title 5.

§4322. Enforcement of rights with respect to reemployment and other employment rights

(a)(1) A person who receives from the Secretary a notification pursuant to section 4321(e) of this title of an unsuccessful effort to resolve a complaint relating to a State (as an employer) to suffer adverse tax or other consequences under the Internal Revenue Code of 1986, or otherwise requires contributions to be returned or reallocated, or additional contributions to be made, with respect to employees not reemployed under this chapter.
or a private employer may request that the Secretary refer the complaint to the Attorney General. If the Attorney General is reasonably satisfied that the person on whose behalf the complaint is submitted has been refused representation by the Special Counsel, the Attorney General may appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted and commence an action for appropriate relief for such person in an appropriate United States district court.

(a) A person referred to in subparagraph (A) is a person who—

(1) has chosen not to apply to the Secretary for assistance regarding the complaint under section 4321(c) of this title;

(2) has been refused representation by the Attorney General with respect to the complaint under section 4321(c) of this title;

(3) has been refused representation by the Attorney General under paragraph (1); or

(4) has been refused representation by the Attorney General under paragraph (1) or by reason of such lack of compliance.

(b) In the case of an action against a State as an employer, the appropriate district court is the district court for the county in which the State has its principal place of business.

(c) The court may use its full equity powers, including any temporary or permanent injunctive and temporary restraining orders, to enjoin or restrain any person from engaging in activity prohibited by section 4321 of this title or from taking any action that prevents the person from engaging in such activity or that will delay or prevent the person from engaging in such activity.

(d) The court shall have jurisdiction to issue writs commanding any person or employer to produce documents or to testify in any matter under investigation.

(e) In any action or proceeding to enforce a provision of this chapter, the court may award any person who prevails in such action or proceeding any reasonable attorney fees, expert witness fees, and other litigation expenses.

(f) The court may award any person who prevails in such action or proceeding any reasonable attorney fees, expert witness fees, and other litigation expenses.

(g) If the court determines as a result of a hearing or adjudication conducted pursuant to this section that any person seeking a hearing or adjudication by submitting a complaint under this section has been refused representation by counsel, the court shall order the person seeking the hearing or adjudication to pay any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to any person who prevails in such action or proceeding.

(h) Any person referred to in paragraph (1) or by reason of such lack of compliance may apply to the court for an order directing the Attorney General to represent the person in an appropriate action or proceeding to enforce a provision of this chapter.

(i) Any person referred to in paragraph (1) or by reason of such lack of compliance may apply to the court for an order directing the Attorney General to represent the person in an appropriate action or proceeding to enforce a provision of this chapter.

(j) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(k) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(l) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(m) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(n) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(o) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(p) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(q) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(r) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(s) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(t) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(u) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(v) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(w) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(x) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(y) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(z) If the person prevails in such action or proceeding, any reasonable attorney fees, expert witness fees, and other litigation expenses awarded to the person seeking the hearing or adjudication shall be paid from any funds available for the purpose.

(a) In carrying out any investigation under this chapter, the Secretary shall—

(1) promptly make the investigation and report the results of the investigation to the Attorney General;

(2) have the authority to receive and retain any evidence or information that is relevant to the investigation;

(3) have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(b) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(c) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(d) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(e) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(f) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(g) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(h) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

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(k) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

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(q) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(r) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(s) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(t) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(u) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(v) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(w) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(x) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(y) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.

(z) The Secretary shall have the authority to require any person or entity to produce any evidence or information that is relevant to the investigation.
implementing the provisions of this chapter with respect to States and local governments (as employers) and private employers.

(2) The following entities may prescribe regulations implementing the provisions of this chapter and employers under this chapter:-(A) except as provided in subparagraph (B), each employee; and

(B) In any case where military service interrupts creditable civilian service under this chapter and is followed by reemployment pursuant to chapter 43 of title 38 that occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.

(c) CREDITABLE MILITARY SERVICE UNDER FERS.—Section 8432(b) of title 5 is amended to include the following:

"(1) by striking out "Each employee" and inserting in lieu thereof "(A) Except as provided in paragraph (B), each employee; and"

"(2) by adding at the end the following:

"(B) In any case where military service interrupts creditable civilian service under this chapter and is followed by reemployment pursuant to chapter 43 of title 38 that occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.

(d) PAY DEDUCTIONS FOR MILITARY SERVICE UNDER FERS.—Subsection 8432(c)(1) of title 5 is amended to include the following:

"(1) by striking out "Each employee" and inserting in lieu thereof "(A) Except as provided in paragraph (B), each employee; and"

"(2) by adding at the end the following:

"(B) In any case where military service interrupts creditable civilian service under this chapter and is followed by reemployment pursuant to chapter 43 of title 38 that occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.

(e) TECHNICAL AMENDMENTS.—Title 5, United States Code, is amended as follows:

(1) In section 8401(f), by striking out "1954" in the first sentence and inserting in lieu thereof "1964".

(2) In section 8402(2A)(A)(H), by striking out "1954" and inserting in lieu thereof "1986".

(3) In section 8412(d), by striking out "1954" in the last sentence and inserting in lieu thereof "1986".

(4) In section 8413(h)(4), by striking out "1954" and inserting in lieu thereof "1986".

(5) In section 8415(b), by striking out "1954" in subsection (a) and inserting in lieu thereof "1986".

(6) In section 8415(b), by striking out "1954" and inserting in lieu thereof "1986".

(7) In section 8419(c), by striking out "1954" in subsection (b)(1) and inserting in lieu thereof "1986".

SEC. 5. THRIFT SAVINGS PLAN.—(a) In general.—(1) Title 5, United States Code, is amended by inserting after section 8432a the following:

"§8432b. Contributions of persons who perform military service

(a) This section applies to any employee who—

"(i) separates or leaves without-pay status in order to perform military service; and

"(ii) is subsequently restored to or reemployed in a position which is subject to this chapter, pursuant to chapter 43 of title 38.

(b)(1) Each employee to whom this section applies may contribute to the Thrift Savings Fund, in accordance with this subsection, an amount not to exceed the amount described in paragraph (c)(1) with respect to the period referred to in subsection (b)(2).

(c) The maximum amount which an employee may contribute under this subsection is equal to—

"(1) the contributions under section 8432a(a) which would have been made, over the period beginning on the date of separation or commencement of leave-without-pay status (as applicable) and ending on or after the date of restoration or reemployment; and

(b) ANyperson who performs military service in order to perform the military service on which an employee's restoration or reemployment rights are based shall be disregarded; and

(b) Such employee shall be credited with a period of civilian service equal to the period referred to in subsection (b)(1).

(b)(A) An employee to whom this section applies may elect, for purposes of section 8432(d), or paragraph (1) of section 8433(a), as the semester in which such employee's separation described in subsection (a)(1) occurred as if it had never occurred.

"(ii) the time, form, and manner in which an employee wishes to make contributions under this subsection.

"(c) The agencies referred to in section 2303(a)(2)(C)(ii) of title 5. Such regulations shall be consistent with the regulations pertaining to the States as employers and private employers.

"(2) the period of time over which the employee wishes to make contributions under this subsection.

"(B) The agencies referred to in section 2303(a)(2)(C)(ii) of title 5. Such regulations shall be consistent with the regulations pertaining to the States as employers and private employers.

"(C) The agencies referred to in section 2303(a)(2)(C)(ii) of title 5. Such regulations shall be consistent with the regulations pertaining to the States as employers and private employers.

SEC. 3. EXEMPTING FROM MINIMUM SERVICE REQUIREMENTS.—Section 5303A(a)(3) of title 38, United States Code, is amended— by striking out "or" at the end of subparagraph (E); by striking out the period at the end of subparagraph (F) and inserting in lieu thereof "or"; and by striking out the period at the end of subparagraph (G) and inserting in lieu thereof "or" and sub chapter I and section 3551.

SEC. 4. REPEAL OF TITLE 35 PROVISIONS RELATING TO EMPLOYMENT RIGHTS OF RESERVISTS.—(a) REPEAL.—Subchapter II of chapter 35 of title 38, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by striking out the items relating to subchapter II and section 3551.

SEC. 5. REVISION OF FEDERAL CIVIL SERVICE RE- EMPLOYMENT BENEFIT PROGRAM FOR MEMBERS OF THE RESERVE FORCES.—(a) CREDITABLE MILITARY SERVICE UNDER CSRS.—Section 8331(13) of title 5, United States Code, as amended in the flush manner by inserting «or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this chapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990" before the semicolon.

(b) FERS.—Section 8422(e)(1) of such title is amended— by striking out «(i) by striking out "Each employee" and inserting in lieu thereof "(A) Except as provided in paragraph (B), each employee; and" and» and by adding at the end the following:

"(B) In any case where military service interrupts creditable civilian service under this chapter and is followed by reemployment pursuant to chapter 43 of title 38 that occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.

(c) CREDITABLE MILITARY SERVICE UNDER FERS.—Section 8431(31) of such title is amended in the flush matter by inserting "or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this chapter and reemployment pursuant to chapter 43 of title 38 that occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.".

(d) PAY DEDUCTIONS FOR MILITARY SERVICE UNDER FERS.—Section 8422(c)(1) of such title is amended— by striking out "Each employee" and inserting in lieu thereof "(A) Except as provided in paragraph (B), each employee; and" and by adding at the end the following:

"(B) In any case where military service interrupts creditable civilian service under this chapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.

(e) TECHNICAL AMENDMENTS.—Title 5, United States Code, is amended as follows:

(1) In section 8401(f), by striking out "1954" in the first sentence and inserting in lieu thereof "1964".

(2) In section 8422(a)(2A)(A)(H), by striking out "1954" and inserting in lieu thereof "1986".

(3) In section 8412(d), by striking out "1954" in the last sentence and inserting in lieu thereof "1986".

(4) In section 8413(h)(4), by striking out "1954" and inserting in lieu thereof "1986".

(5) In section 8415(b), by striking out "1954" in subsection (a) and inserting in lieu thereof "1986".

(6) In section 8415(b), by striking out "1954" and inserting in lieu thereof "1986".

SEC. 5. THRIFT SAVINGS PLAN.—(a) In general.—(1) Title 5, United States Code, is amended by inserting after section 8432a the following:

"§8432b. Contributions of persons who perform military service

(a) This section applies to any employee who—

"(i) separates or leaves without-pay status in order to perform military service; and

"(ii) is subsequently restored to or reemployed in a position which is subject to this chapter, pursuant to chapter 43 of title 38.

(b)(1) Each employee to whom this section applies may contribute to the Thrift Savings Fund, in accordance with this subsection, an amount not to exceed the amount described in paragraph (c)(1) with respect to the period referred to in subsection (b)(2).

(c) The maximum amount which an employee may contribute under this subsection is equal to—

"(1) the contributions under section 8432a(a) which would have been made, over the period beginning on the date of separation or commencement of leave-without-pay status (as applicable) and ending on or after the date of restoration or reemployment (as applicable); and

(b) ANyperson who performs military service in order to perform the military service on which an employee's restoration or reemployment rights are based shall be disregarded; and

(b) Such employee shall be credited with a period of civilian service equal to the period referred to in subsection (b)(1).

(b)(A) An employee to whom this section applies may elect, for purposes of section 8432(d), or paragraph (1) of section 8433(a), as the semester in which such employee's separation described in subsection (a)(1) occurred as if it had never occurred.
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"(8) An election under this paragraph shall be made within such period of time after restoration or reemployment (as the case may be) and otherwise in such manner as the Executive Director may prescribe."

"(h) The Executive Director shall prescribe regulations to carry out this section.

(3) The period between the beginning of chapter 43 of title 38, United States Code, as amended by inserting after the item relating to section 842a the following:

"842b. Contributions of persons who perform military service.

(b) PRESERVATION OF CERTAIN RIGHTS.—(1) Section 8433(d) of title 5, United States Code, is amended by striking "," and inserting "," unless an election under section 8432b(p)(2) is made to treat such separation for purposes of this subsection as if it had never occurred.

(2) Paragraphs (1) and (2) of section 8433(h) are each amended by striking the period at the end and inserting "," or unless an election under section 8432b(p)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred.

(c) EFFECTS OF RESUMING REGULAR CONTRIBUTIONS FOR TREATMENT OF REEMPLOYMENT OR REORIENTATION.—Section 8432 of title 5, United States Code, is amended by adding at the end the following:

"This subsection applies to any employee—

(A) to whom section 8432 applies; and

(B) who is separated from service in or after a period of such employee's absence from civilian service (as referred to in section 8432b(c)(2)(B))—

(i) is eligible to make an election described in subsection (a)(1); or

(ii) would be so eligible but for having either elected to terminate individual contributions to the Thrift Savings Fund within 2 months before commencing military service or separated in order to perform military service.

(2) The Executive Director shall prescribe regulations to ensure that any employee to whom this subsection applies shall, within a reasonable time after being restored to or reemployed (in the manner described in section 8432b(a)(2)), be afforded the opportunity to make, for purposes of this section, any election which would be allowable during a period described in subsection (a)(1); or

(d) APPLICABILITY TO EMPLOYEES UNDER CSRS.—Section 8351(b) of title 5, United States Code, is amended by adding at the end the following:

"(2) If the employee changed agencies during the period between the date of such material reemployment or restoration and the date of enactment of this Act, the employing agency as of such date of enactment shall be considered the reemploying or restoring agency.

(3) (A) For purposes of any computation under section 8432b of such title, pay shall be determined in accordance with section 7010(c)(1) of title 5, United States Code, except that, with respect to the period described in subparagraph (B), actual pay attributable to the reemploying or restoring agency shall be considered.

(B) The period described in subparagraph (B) is the period beginning on the first day of the first applicable pay period beginning on or after the date of the employee's actual reemployment or restoration and ending on the day before the date determined under paragraph (1).

SEC. 7. CONFORMING AMENDMENTS.

(a) TITLE 38.—Section 8411(b) of title 5, United States Code, is amended by striking "," and inserting "section 4323" and inserting in lieu thereof "chapter 43".

(b) TITLE 10.—Section 4324(1) of title 10, United States Code, is amended by striking out "section 4321" and inserting in lieu thereof "chapter 43".

SEC. 8. TECHNICAL AMENDMENT.

(a) TECHNOHICAL AMENDMENT.—Section 9(d) of Public Law 102-16 (105 Stat. 35) is amended by striking out "Act" the first place it appears and inserting in lieu thereof "Act".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in Public Law 102-16 to which such amendment relates.

SEC. 9. TRANSITION RULES AND EFFECTIVE DATE.

(a) REEMPLOYMENT.—(1) Except as otherwise provided in this Act, the amendments made by this Act shall be effective with respect to re-employments initiated on or after the first day of the 60-day period beginning on the date of enactment of this Act.

(2) The provisions of chapter 43 of title 38, United States Code, in effect on the day before such date of enactment, shall continue to apply to reemployments initiated before the end of such 60-day period.

(b) Time serviced in the uniformed service that was initiated before the end of such period shall be counted for purposes of section 4312(a)(1) of title 38, United States Code, as provided in the amendments made by this Act, if the person complied with any applicable notice requirement under chapter 43, United States Code, and otherwise in such manner as the Executive Director may prescribe.

SEC. 10. INCREASE IN AMOUNT OF LOAN GUARANTEE FOR LOANS FOR THE PURCHASE OR CONSTRUCTION OF HOMES.

Subparagraphs (A)(i)(IV) and (B) of section 3703(a)(1) of title 38, United States Code, are each amended by striking out "$80,000" and inserting in lieu thereof "$86,000".

ORDERS FOR TUESDAY, NOVEMBER 9, 1993

Mr. BIDEN. Mr. President, on behalf of the majority leader. I ask unanimous consent that when the Senate
FEDERAL LABOR RELATIONS AUTHORITY
Joseph Swerdlowski of Colorado. To be General Counsel for the Federal Labor Relations Authority for a term of five years.

DEPARTMENT OF LABOR
Joseph A. Dear of Washington, To be an Assistant Secretary of Labor.

DEPARTMENT OF VETERANS AFFAIRS
Edmund F. Tierney of Virginia, To be an Assistant Secretary of Veterans Affairs (Human Resources Management).

Kathy Elena Jurado of Florida, To be an Assistant Secretary of Veterans Affairs (Public and Intergovernmental Relations).

NATIONAL MEDIATION BOARD
Ernest W. Dubester, of New Jersey, To be a Member of the National Mediation Board for a term expiring July 1, 1995.

ENVIRONMENTAL PROTECTION AGENCY
Jonathan E. Cannon, of Virginia, To be an Assistant Administrator of the Environmental Protection Agency.

Many Dolores Nieves, of California, To be an Assistant Administrator of the Environmental Protection Agency.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES
Diane F. Frankel, of California, To be Director of the Institute of Museum Services. The above-named nominees were approved subject to the nominees' commitment to respond to requests to appear and to testify before any duly constituted committee of the Senate.

IN THE AIR FORCE
The following Named Officers for Appointment to the grade of Lieutenant General, as being at a time prior to the date of this Nomination, nominated to be a Part of the Regular Army of the United States, in the grade of Lieutenant General, are hereby appointed as follows:

To be lieutenant general


IN THE ARMY
The following Named Officers for Appointment to the grade of Lieutenant General are nominated to be a Part of the Regular Army of the United States, in the grade of Lieutenant General, and are hereby appointed as follows:

To be lieutenant general

Gen. Jimly D. Ross, 27936, United States Army.

The following Named Officers for Promotion to the grade of Lieutenant General in the Regular Army of the United States, in the grade of Lieutenant Colonel, are hereby appointed as follows:

To be permanent brigadier general

COL. Edward P. Smith, 27936, United States Army.

COL. Neil N. Smith, 27936, United States Army.

COL. Mark B. Hamilton, 27936, United States Army.

COL. Emmett T. Ginges, 27936, United States Army.

COL. Robert D. Shafter, 27936, United States Army.

COL. Charles O. Talley, 27936, United States Army.

COL. George P. Close, 27936, United States Army.

COL. Dale R. Nelson, 27936, United States Army.

COL. Joseph E. Gregg, 27936, United States Army.

COL. Michael W. Ackerman, 27936, United States Army.

COL. Boyd K. King, 27936, United States Army.

COL. John M. Le Moyne, 27936, United States Army.

COL. Michael J. Green, 27936, United States Army.

COL. Robert A. Bagley, 27936, United States Army.

COL. John B. Staley, 27936, United States Army.

COL. James P. O'Neal, 27936, United States Army.

COL. Thomas G. Garrett, 27936, United States Army.

COL. Henry T. Alley, 27936, United States Army.

COL. James E. Shanks, 27936, United States Army.

COL. Robert E. Kimball, 27936, United States Army.

COL. James H. Myrick, 27936, United States Army.

COL. Joseph M. Cosman, 27936, United States Army.

COL. Robert S. Kibbe, 27936, United States Army.

COL. Robert E. Ivanow, 27936, United States Army.

COL. Michael L. McNamar, 27936, United States Army.

COL. David S. Weisman, 27936, United States Army.

COL. Ralph G. Wooten, 27936, United States Army.

COL. Julian B. Bagley, 27936, United States Army.

COL. Robert T. Clark, 27936, United States Army.

COL. Kevin P. Byrnes, 27936, United States Army.

COL. John M. Ingraham, 27936, United States Army.

COL. Gregory A. Bountain, 27936, United States Army.

COL. Larry J. Lust, 27936, United States Army.

COL. Peter C. Franklin, 27936, United States Army.

COL. David L. Grant, 27936, United States Army.

COL. Kenneth H. Bowditch, 27936, United States Army.

The following U.S. Army Reserve Officers for Promotion to the grade of Rear Admiral (lower half) in the U.S. Army Reserve Command.

To be rear admiral (lower half)


The following Named Captains of the Reserve of the U.S. Navy for Promotion to the Grade of Rear Admiral (lower half) in the Reserve and Staff Corps, as indicated, pursuant to the provisions of Title 10, United States Code, section 3612:

Unrestricted line officer to be rear admiral (lower half)


Capt. Timothy O'Neil Fanning, 27936, U.S. Naval Reserve.


Capt. John Benjamin Totsue, 27936, U.S. Naval Reserve.

Special Duty Officer (Cryptology)

To be rear admiral (lower half)

Capt. Robert Hubert Weidman, 27936, U.S. Naval Reserve.

MEDICAL CORPS OFFICER

To be rear admiral (lower half)

Capt. Mack Edgerton, 27936, U.S. Naval Reserve.


CHAPLAIN CORPS OFFICER

To be rear admiral (lower half)

Capt. William Ashley Will, 27936, U.S. Naval Reserve.

To be rear admiral (lower half)

Capt. Thomas D. Welt, 27936, U.S. Naval Reserve.

Unrestricted line officer to be rear admiral (training and administration of reserve) to be rear admiral

Capt. James Duane Olson, 27936, U.S. Naval Reserve.

The following Named Officer for Promotion to the grade of Rear Admiral (lower half) in the U.S. Navy for Promotion to the grade of Rear Admiral in the Reserve and Staff Corps, as indicated, pursuant to the provisions of Title 10, United States Code, section 3612:

Unrestricted line officer (training and administration of reserve) to be rear admiral

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THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be admiral
VICE ADM. WILLIAM A. O'WEN, xxx-xx-x... U.S. NAVY.

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral
VICE ADM. THOMAS J. LOPEZ, xxx-xx-x... U.S. NAVY.

IN THE AIR FORCE
AIR FORCE NOMINATIONS BEGINNING RICHARD A. ACETO, AND ENDING RAYMOND D. WILKINS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF SEPTEMBER 14, 1993
AIR FORCE NOMINATION OF ROBERT G. WORTHINGTON, WHICH WAS RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 19, 1993
AIR FORCE NOMINATIONS BEGINNING SAMAR K. BROWICK, AND ENDING ERNEST G. WEEKS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 19, 1993

IN THE MARINE CORPS
MARINE CORPS NOMINATIONS BEGINNING JEFFREY A. BAUMERT, AND ENDING JEFFREY A. RIPA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 19, 1993
MARINE CORPS NOMINATION BEGINNING STEPHEN S. ADAMS, AND ENDING CRAIG W. WOOD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 19, 1993
MARINE CORPS NOMINATIONS BEGINNING JOSEPH A. ALEXANDER, JR., AND ENDING WADE TOPFEE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 19, 1993

IN THE ARMY
ARMY NOMINATIONS BEGINNING ROBERT E. ARBODELLY, AND ENDING JULIA B. WILLIAMS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 14, 1993
ARMY NOMINATIONS BEGINNING THOMAS N. BORDNER, AND ENDING LYNNETTE D. RENNINGER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 14, 1993
ARMY NOMINATIONS BEGINNING PATRICIA A. AFFE, AND ENDING ALAN H. BRIGHTMAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 19, 1993

IN THE NAVY
NAVY NOMINATIONS BEGINNING JON CHRISTIAN ABELES, AND ENDING JOHN STEWART DAUGHERNBAUGH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 19, 1993
NAVY NOMINATIONS BEGINNING RONALD DAVID ADATE, AND ENDING REUBEN TAKU TSUJIMURA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 19, 1993
NAVY NOMINATIONS BEGINNING LEE THOMAS BAKER, AND ENDING THOMAS JOSEPH YURK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 19, 1993