SENATE—*Monday, November 8, 1993*

(Legislative day of Tuesday, November 2, 1993)

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 Schneier, Park East Synagogue, New York City, NY.

PRAYER

The guest chaplain, Rabbi Arthur Schneier, 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," he asked, "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,
Washington, DC, November 8, 1993.

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 matter in their own daily lives.

Is the American public weary of budget deficits? Yes. Pass a constitutional amendment to balance the budget; it is just that simple.

Our forefathers did 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 would rather do it by stealth, 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 total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide 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 language 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 rivet 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 would still need 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 that 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 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 balanced 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 stable, total 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—do not even come close—to what the experts projected at 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 226 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 $56.5 million. In any event, 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 $65.3 billion; for fiscal year 1984, $13.1 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 $26.4 billion greater than projected; in fiscal year 1990,

they were $34 billion short of the estimate projected; in fiscal year 1991, $55.7 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 that the average difference between actual and projected revenues for these 12 fiscal years amounted to $28 billion. The average difference per year between the revenues that were estimated and the actual revenues was $28 billion. So, Mr. President, on average, over the past 12 years, we have underestimated the amount of revenues available to the government by $28 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. What 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 2981, 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 $9.4 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 $43.2 billion greater than the estimates; in fiscal year 1990, the outlays were $85 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. As we can see, Mr. President, actual outlays in those 2 years were lower than estimates by $40.4 billion and $66.1 billion, respectively. But, even though they were lower than what had been expected, the point is that they still differed significantly from the original estimates. And finally, as the last column shows, the average difference—the average difference—between actual and estimated outlays for those 12 fiscal years amounted to $14.6 billion.

And that was the average difference, the average annual difference over the 12 years?

Chart 3 gives us the differences between actual budget totals and first budget resolution estimates for fiscal years 1981 through 1992—the actual deficits.

Since the difference between the revenues and outlays—the difference between the revenues on one hand and the outlays on the other—is what makes up the deficit, this third chart shows the difference between what the deficit was estimated to be and what it actually turned out to be for fiscal years 1981 through 1992.

For fiscal year 1981, the deficit was $58.1 billion larger than had been estimated; for fiscal year 1982, the deficit was $72.9 billion larger; for fiscal year 1983, the deficit was $91.5 billion higher than the estimated deficit. For fiscal year 1984, the difference narrowed some, but the deficit was still $3.7 billion larger; then in fiscal year 1985, it went back up to $21.6 billion larger than the estimate; in fiscal year 1986, the deficit was $48.8 billion larger; in fiscal year 1987, $6.2 billion larger; in fiscal year 1988, the actual deficit was $45.5 billion higher than the estimate; in fiscal year 1989, $16.8 billion larger than the estimate; in fiscal year 1990, the deficit was an astounding $119.1 billion higher than what had been estimated; in fiscal year 1991, Congress did better, but still the deficit was $15.3 billion larger than the estimate; and in fiscal year 1992, $11.4 billion larger. The last column, on the viewers' right, shows that the average difference for those twelve years was $42.6 billion. 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, 1984 and 1987, 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 monarchs, the heads at CBO would have gone off. The people 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.

Let me say that again. In 10 of the past 12 years, revenues have been lower than the estimates, and in 9 of the 12 years, outlays have been higher than the estimates.

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. Remember, it says right there in section 6 that we "may rely on estimates of outlays and receipts."

That is it. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

What does that mean? What are we talking about? Well, section 1 states, "total outlays for any fiscal year shall not"—shall not—"exceed total receipts for that fiscal year * * *"

And then how will it be done? The magic incantation is, in section 6, "The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts."

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. It says so. It says we "may rely on estimates of outlays and receipts."

We already have a process for estimating revenues, outlays, and deficits prior to each fiscal year, and as we have seen, it is far from perfect. So what is Congress to do? It is ludicrous to think that, just because we pass this resolution, we will somehow come up with a new system that will accurately predict balanced budgets in advance of each fiscal year. It cannot be done.

Of course, it would be easy to say that all we need to do to correct the dilemma is to find more competent budget analysts. Let us throw the rascals out and hire a whole new batch of analysts. Unfortunately, it is not that simple. The plain truth is that the men and women who help put these figures together each year are not at fault. If not the analysts, then, who is the culprit? In simple terms, the miscalculations that we have seen displayed on these charts can be put into three categories: policy miscalculations, economic miscalculations, and technical miscalculations. Those are the terms used by the Congressional Budget Office to explain the differences between the budget estimates and what actually occurred each year: policy, economic, and technical.

The first of these terms refers to any portion of these differences that can be attributed to the Congress' passing legislation that was not accounted for in the estimates.

However, over the 12 fiscal years represented on these charts, policy differences accounted for the smallest amount of estimation error. In fact, enactment of legislation by the Congress since 1990 has been but a very small portion of the deficit error. The reason for this, Mr. President, is the pay-as-you-go requirement and the spending caps that were instituted with the 1990 Budget Enforcement Act and extended this summer with the 1993 Omnibus Budget Reconciliation Act. These are tough new requirements that have worked to restrain spending because

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 failure of budget analysts to 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 due to rising health care 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 53.8 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 every year. But while we 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, what a 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 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 and rosy scenarios to make this appear 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 103-163, 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, 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 and made in good faith." Does this mean that if we pass a budget that is balanced, at least on paper, we need not worry if the budget becomes unbalanced during the course of the year? Is that the ideal we are supposed to include in our implementing legislation? If that is what the sponsors of this amendment have in mind, I think that is a very different approach than what the American people are expecting from a balanced budget amendment.

We have already seen that the estimates of revenues and outlays are invariably wrong, and that is understandable. But the committee report says "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 hatch—aha, there it is, this is the escape doorthat 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. That 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

40, would you spare Sodom? God answered, yes. Perchance 30? God answered in the affirmative. Perchance there were 20? God said He would spare Sodom if there were 20. If only 10, would you spare Sodom? God answered 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 represent 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 suggestion that the Congress could just stand up and declare that certain amounts of deficit, as long as we determined 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 considered 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 exceed receipts, any congressional attempt to deviate from that requirement would bring the moral authority of the entire Constitution into question.

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 amendment mandates that outlays shall not exceed receipts. If we were to constitutionalize the mandate, any attempt to deviate from that requirement would bring the moral authority of the entire Constitution into question.

If we could violate this amendment with impunity, then what other provisions 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 carefully, you can see that this will not work.

Finally, the last sentence in this paragraph states:

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

There you have it. What a prescription for a balanced budget. That is a massive loophole. Let me read it again.

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

That is a loophole that, if adopted by the Congress as part of its implementing legislation, would be big enough for Attila, the king of the Huns, and his hordes of horsemen from Central Asia to sweep through.

What the sponsors of the amendment are telling us is that, if Congress cannot figure out what to do, if Congress runs into options too difficult to swallow, 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 shenanigan is this? Just put it over until next year.

Let me emphasize again: These suggestions for dealing with the deficit under a balanced budget amendment come from the committee's report. Every Senator, every Senator's office should get that report, the Judiciary Committee's report on Senate Joint Resolution 41. Read it. As such, these suggestions in the committee report would not become part of the underlying 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 gimmicks and evasions the people can expect 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 implementing legislation will only require 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 dangerous 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 effects on the economic well-being of the American people, what we have seen today, with respect just to section 6 would be laughable. It would be laughable. But it is really not laughable. And the sooner the American people begin to understand that, and the sooner the Members of this body understand 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 even the authors of this amendment have, if right in the committee report, they start figuring out ways to get around this amendment? How much confidence do they have—the sponsors of the amendment—if right in the committee report they start figuring out ways to get around the amendment? No, Mr. President, this proposal is not worthy of being enshrined in our Constitution. It is little more than political catnip offered to disguise the real difficulty of getting our budgets in balance. I do not think we should perpetrate this charade upon the American people. If it were simply a political sham, which it is, if it were just a political dodge, which it is, 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 unsound formula 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 balanced budget amendment has taken on the aura of a politically correct act. It has become a litmus test of sorts—the right choice to make the political 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 American people must be made to understand 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 reveal the sinister seeds of a constitutional crisis in the making.

Surely we will not travel this road if we are fully aware of where it may lead. In the days ahead, let us be very sure of just what it is we propose to do to our country and to our Constitution before we act.

I thank the Chair and I yield the floor.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER (Mr. GRAHAM). 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 Committee report.

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

Mr. President, I would like to quote from the House Armed Services Committee 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 $1.2 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 Committee says about the C–17.

I quote from page 40:

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–250—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 rinky dink stuff.

Mr. President, what we are talking about here are deficiencies that could undermine the primary justification for the C–17.

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 Committee's 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 will meet 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 have been 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 8142, 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 the bottom 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, I ask unanimous consent to be allowed to speak for up to 15 minutes as in morning business.

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

WELFARE TO WORK

Mr. HARKIN. Mr. President, already this year, the administration has sent

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. But I am also privileged to serve as the chairman of the Senate Appropriations Subcommittee on Labor, Health, and Human Services which has direct spending authority, appropriations authority over almost all of our welfare system.

I believe it is critical that we help people move from welfare to earning a living and I have been working for months to develop a proposal to do so. I will be introducing my welfare-to-work 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 family 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 failing 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. Ajob 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 self-sufficiency, not just get a job. As I have said many times before, jobs are not the issue. Every slave had a job 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 investment 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, it may require 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 2-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 contract—an agreement —between people 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 assistance, 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 not the government coming down to 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 self-sufficiency? How long is it reasonable to expect? And then to set up benchmarksalong 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, modifications 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 got 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 parts 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.

A recent book by 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 that catches people as they fall, 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 waiver 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 both that the State of Iowa must also live up to its end of the agreement when they sign on the dotted line with welfare recipients to move them into self-sufficiency. If the State falls short and does not provide the supportive services and the training and the education, as they signed up to do in this social contract, 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 simple, clear message to be sent here: 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 $523 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 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 veryimportant 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.

IRRESPONSIBLE CONGRESS? HERE'S TODAY'S BOXSCORE

Mr. HELMS. Mr. President, the Federal debt stood at $4,429,513,344,083.03 as of the close of business on Friday, November 5. Averaged out, every man, woman, and child in America owes a part of this massive debt, and that per capita share is $17,244.92.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is closed.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1993

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1607, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1607) to control and prevent crime.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The Senator from Minnesota [Mr. WELLSTONE] is recognized to offer an amendment.

AMENDMENT NO. 1124

Mr. WELLSTONE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 1124.

Mr. WELLSTONE. 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 insert the following:

TITLE—

SECTION 1. SHORT TITLE.

This title may be cited as the "Child Safety Act".

SEC. 2. 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 354,100 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 1976 to 1986.

(7) Approximately 90 percent of children in homes in which their mothers are abused witness the abuse.

(8) Data indicates that women and children are at elevated risk for violence during the process of and after separation.

(9) Fifty to 70 percent of men who abuse their spouses or partners also abuse their children.

(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 do so after separation.

SEC. 03. PURPOSE.

The purpose of this Act is to authorize funding to enable supervised visitation centers to provide 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 with noncustodial parents, or to provide 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 injury or death of a child or parent.

(7) An environment for families to have healthy interaction activities, quality time, non-violent memory building experiences during visitation to help build the parent/child relationship.

(8) Parent and child education and support groups to 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 centers are needed locally;

(3) the relative need of the applicant; and

(4) the capacity of the applicant to make rapid and effective use of 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 03. In using such amounts, grantees shall target the economically disadvantaged and those individuals, who could not otherwise afford such 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 of 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) 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 PROJECTS.

(a) IN GENERAL.—Not later than 30 days after the end of each fiscal year, a recipient of 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 a combination 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 and custody violations;

(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 centers are created; and

(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 agreement with the court, the child protection social services division of the State, and local domestic violence agencies or State and local domestic violence coalitions to evaluate the supervised visitation center operated under the grant, contract or agreement. The entities conducting such evaluations shall submit 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 the grant, contract or agreement, the need for continued funding.

SEC. 07. SPECIAL GRANTS TO STUDY THE EFFECT OF SUPERVISED VISITATION 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 collecting clinical data for supervised visitation centers established under this Act to determine—

(1) the extent to which supervised visitation should be allowed between children who are sexually abused or severely physically abused by a parent, where the visitation is not predicated on the abusive parent having successively completed a specialized course of therapy for such abusers;

(2) the effect of supervised visitation on child victims of sexual abuse of severe physical abuse when the abusive parent exercising visitation has not completed specialized therapy and does not use the visitation to alleviate the child victim's guilt, fear, or confusion;

(3) the relationship between the type of abuse or neglect experienced by the child and the use of supervised visitation centers by the maltreating parent; and

(4) in cases of spouse or partner abuse only, the extent to which supervised visitation should be predicated on participation by the abusive spouse in a specialized treatment program.

(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 sub it 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 supervised visitation center demonstration 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 05; and

(2) not more than 20 percent shall be used to award grants under section 07.

(c) DISBURSEMENT.—Amounts appropriated under this section shall be disbursed as categorical grants through the 10 regional offices of the Department of Health and Human Services.

The PRESIDING OFFICER. Under the previous order, there is 40 minutes for consideration of this amendment, the 40 minutes being equally divided. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, this amendment authorizes funds—a very small amount of funds—starting at $15 million per year, altogether $60 million out of this fund, to create supervised visitation centers for families that have a history of violence.

These supervised visitation centers would, first of all, provide supervised visitations with 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 by 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.

Second of all, these supervised child visitation centers would provide supervised visitation for families where there is suspected or elevated risk of sexual, physical, or emotional abuse or where there have been threats of parental abduction of a child. It is really startling, but in any given year, we have several hundred thousand examples of where, during visitation, a child is abducted. If a court has reason to believe that would happen, again, at these child visitation centers, you have supervised visitation so that it cannot 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. Even 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 rebuild the relationship. The way in which you can do that, however, has to be with clear supervision; again, protecting the child against violence, against a crime. In many ways, what this is is both intervention and prevention at the same time.

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. This is very important. All too often what happens is when one spouse has visitation rights and there is a history of domestic abuse or family violence, at the point at which that spouse comes to the home, that violence takes place again. Seventy-five percent of the family violence in our country takes 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 at the home.

Finally, the importance of these supervised visitation centers is they serve as an additional safeguard against children witnessing the abuse of a parent or sustaining injury themselves. In 90 percent of the cases of family violence, Mr. President, a child witnesses that and, if we want to break that cycle of violence, there is no more important step that we can take than, on a small scale, to begin to support these safe visitation centers for children and for women.

Mr. President, I wish to quote from testimony from my wife, Sheila, before the Subcommittee on Children, Families, Drug and Alcoholism, October 2, 1993:

> Before I came to Washington, while I was a librarian in Northfield, I was responsible for cataloging all incoming documents, books, fliers, newsletters, et cetera. I began to come across many accounts of terrible things happening to women and children in their homes: Beatings, killings, threats from husbands, boyfriends. It struck me how amazing and tragic that what is supposed to be the safest place, our homes, can be the most violent, the most dangerous and the most deadly.

We have worked together on this issue, Mr. President, and we have traveled in Minnesota and talked to people from all around the country—judges, lawyers, doctors, women, police officers, groups of councilmen, groups of councilwomen—and all of them have told us that the solution of setting up these safe visitation centers is one of the most important steps we can take if we are concerned about violence and crime aimed at both women and children. These centers offer solutions.

A. They provide a place for parents to have court-ordered, supervised visits with their children.

B. They provide a place for parents who have custody of their children to transfer the children to the noncustodial parent in a way that prevents violence or abusive encounters.

I wish to repeat that. They provide a place where separated parents can exchange and visit their children without fear of any violent confrontation. This is a logical and effective way to begin to break the cycle of violence. It also is a way that families can begin to build positive relationships.

Mr. President, this amendment, 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 and, 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

No. 3, it is supportive of 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. WELLSTONE. 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 1985 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 his 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 shooting 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 children'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 could have taken place under supervision. She could have come in, the children would havebeen at the center, she would have left, and the husband would have come in. There would have been no encounter, would have been protection for her, would have been protection for her children.

What I am trying to do is take a credible, workable program and say that this clearly can be part of the way

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. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I want to add for a moment to what I said.

I am informed by my wife, Sheila, that actually, while we had representatives from two visitation centers who testified before our committee, that Senator DODD chairs, we actually now have about 20 of these centers that are strung out in Minnesota. Frankly, we hear from people from all over the country. Again, it is broad based—law enforcement, clergy, union people.

I want to make it crystal clear also that it is gender neutral in protecting family members from violence and crime.

Actually, I gave short shrift to the number of models that are developing in my own State, and the potential of this around the country.

So I did want to just clarify those remarks, and try to emphasize one more time the importance of the broad base of support.

I think if I were going to emphasize any one part of the community, Mr. President, it would be the law enforcement part which really believes, whether it be the police or the judges, that these safe child, safe visitation centers are so important both for intervention and prevention of violence and crime, both for children, women and men as well.

This is really a community-based program. It is all about what we in the Senate say we are for and say that we want to encourage.

Again, I really hope that this will have broad support.

Mr. President, I again suggest the absence of a quorum. I ask that the time be charged to both sides.

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.

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

Who yields time?

Mr. WELLSTONE. I yield time to the Senator.

The PRESIDING OFFICER. The Senator from Delaware is yielding time?

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

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

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 (Mr. DASCHLE). Without objection, it is so ordered.

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 rollcall vote and accept the amendment, with the understanding that Senator SMITH's amendment will be up next and that there will be no amendments to the Smith amendment.

Mr. BIDEN. Mr. President, if the Senator will withhold on vitiating——

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. BIDEN. Sure.

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 Congresspersons—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 have had 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 most 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 phenomenal 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 20 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 Utah, 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 HATCH'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 Senator 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 colleague 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 instance, relate to guns, 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. SMITH] 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.

AMENDMENT NO. 1113

(Purpose: To amend section 1301 of title 18, United States Code, to make unlawful the transmission in interstate or foreign commerce of information to be used for the purpose of procuring an interest in a lottery ticket)

Mr. SPECTER. Mr. President, I call up amendment No. 1113 on behalf of myself and Senator WOFFORD.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for himself and Mr. WOFFORD, proposes an amendment numbered 1113.

Mr. SPECTER. 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 end of subtitle G of title XXIX, add the following:

SEC. 2972. INTERSTATE WAGERING.

Section 1301 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, gift, enterprise, or similar scheme conducted by another State (unless that business is permitted under an agreement between the States in question or appropriate authorities of those States), knowingly transmits in interstate or foreign commerce information to be used 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 current law does 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 the State must have the exclusive right to sell lottery ticketswithin its own borders.

The issue of a lottery is highly controversial, Mr. President. Candidly, I have always had substantial reservations about it, but that has been the law of Pennsylvania for more than 20 years. The Pennsylvania lottery proceeds, under the laws of my State, have been dedicated for very worthwhile programs to benefit senior citizens, although, as I say, there has always been a question in my mind as to the desirability of taking the funds from gamblers.

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 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.

Lottery supported programs of the Pharmaceutical Assistance Contract for the Elderly (PACE), Shared Ride transportation, Property Tax and Rent Rebates, senior centers, and the OPTIONS program which enables older people to live in their homes rather than in nursing homes—are all funded by the lottery. Over one million people every year benefit from some service offered by our Commonwealth.

Mr. President, that is the essential statement of the purpose by the senior citizens. I ask unanimous consent that the full text of this letter be printed in the RECORD.

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

PENNSYLVANIA COUNCIL ON AGING,
Harrisburg, PA, October 18, 1993.

Hon. ARLEN SPECTER,
Member, U.S. Senate, Hart Office Building, Washington, DC.

DEAR SENATOR SPECTER: As you know, 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.

Lottery supported programs of the Pharmaceutical Assistance Contract for the Elderly (PACE), Shared Ride transportation, Property Tax and Rent Rebates, senior centers, and the OPTIONS program which enables older people to live in their homes rather than in nursing homes—are all funded by the lottery. Over one million people every year benefit from some service offered by our Commonwealth.

For these reasons, the PA Council on Aging is gravely concerned over a court decision in Pennsylvania that over turned a recently passed state law (Oct. 8, 1993) that 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.

We understand that you are exploring Congressional action that could prevent the out-of-state ticket sales in Pennsylvania. We urge your immediate and full support of such a legislative remedy.

Thank you for your consideration on this very important matter.

Sincerely,

HARVEY PORTNER,
Chairperson.

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 judicial interpretation of the law concluded that transactions of this nature are allowed under a strict interpretation of the law.

It is my belief that current Federal gambling laws clearly intend to prohibit this type of activity. Therefore, today I am offering this amendment to prohibit the engagement of business transactions in which interests in out-of-State lottery tickets are purchased for a person in the purchaser's home State.

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 revenues due to the sale of out-of-State

lottery tickets is contrary to the purpose of State lottery programs.

Further, the right of a State to regulate lottery and gambling within its borders must be preserved. Federal gambling laws have traditionally enabled States to regulate in-State gambling. Federal laws should continue to limit the proliferation of interstate gambling to preserve the sovereignty of States that do not permit certain forms of gambling.

Mr. President, a State's right to conduct State lotteries and regulate gambling within its own borders must be preserved. Accordingly, I urge my colleagues to support the amendment.

Mr. WOFFORD. Mr. President, I am pleased to offer this amendment with the senior Senator from Pennsylvania. This amendment is needed to update the existing Federal criminal statutes to reflect modern advancements in telecommunication and computer technology that have overtaken existing prohibitions.

States have historically had the authority to establish, operate, and regulate lotteries within their 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 effect 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 ask unanimous consent that the text of the letter from the Governor of the State of Delaware, Gov. Tom Carper, supporting this amendment be printed in the RECORD.

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

STATE OF DELAWARE,
OFFICE OF THE GOVERNOR,
Dover, DE, October 29, 1993.

Hon. JOSEPH R. BIDEN,
Russell Senate Office Building, Washington, DC.

DEAR JOE: I would like to take this opportunity to bring to your attention an amendment which may be offered to the crime package by Senators Wofford and Specter prohibiting the sale of out-of-state lottery tickets, and to make you aware of its beneficial impact on Delaware's state lottery.

As you are aware, current federal gambling law prohibits the transportation of state lottery tickets across state lines. While this statute was intended to prevent sales of out-of-state lottery tickets, a small company in New Jersey, Pic-A-State with over 160 offices in Pennsylvania, has circumvented federal law by selling receipts, instead of tickets, for large state lotteries outside of Pennsylvania. This issue has been the subject of a several year dispute between Pic-A-State and Pennsylvania state officials, who believe it has adversely affected state lottery revenues.

In July, the U.S. District Court in Pennsylvania struck down Pennsylvania's law 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 $29 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 these subjects 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.

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 on any matter other than 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.

NAFTA

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 had 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 in the defense 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 as 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 where 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 15-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 60,000 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—supplying 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, Texas?"

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 needs 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 gross national product is manufacturing, but 60 percent of the Mexican gross national product isservices. 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 terms of the service 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 open to American goods, 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 is growing at 20 percent a year in Mexico. 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 those 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 2,360 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, take President Clinton's word, 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. However, all imports 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.

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VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1993

The Senate continued with the consideration of the bill.

AMENDMENT NO. 1125

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

The amendment is as follows:

At the appropriate place, add the following:

"SEC. . REMOVAL OF ALIEN TERRORISTS.

The Immigration and Nationality Act (8 U.S.C. 1101 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 Classified Information Procedures Act (18 U.S.C. App. IV);

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

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

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

"(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 United States judicial 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 I.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 PROCEDURE.—(1) 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.

"(2) The judge shall invoke 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.

"(e) SPECIAL REMOVAL HEARING.—(1) Except as provided in paragraph (4), the special removal hearing authorized by a showing 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 camera and ex parte of any item of evidence for which the judge determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information.

"(5) With respect to any evidence described in paragraph (4), the judge shall cause to be delivered to the alien either—

"(A)(i) the substitution for such evidence of a statement admitting relevant facts that the specific evidence would tend to prove, or (ii) the substitution for such evidence of a summary of the specific evidence; or

"(B) if disclosure of even the substituted evidence described in subparagraph (A) 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 (4)(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 (5)(A) would create a substantial risk of death or serious bodily harm to any person,

then the determination of deportation (described in subsection (f)) may be made pursuant to this section.

"(f) DETERMINATION OF DEPORTATION.—(1) If the determination in subsection (e)(6)(A) has been made, the judge shall, considering the evidence on the record as a whole, require that the alien be deported if the Attorney General proves, by clear and convincing evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

"(2) If the determination in subsection (e)(6)(B) has been made, the judge shall, considering the evidence received (in camera and otherwise), 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 such subsection.

"(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.

"(3 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 removal of alien terrorist provisions of Senate bill 1356, or otherwise known as the Republican crime bill.

As we see the end of the cold war, we see dramatically diminished the unrelenting threat of the nuclear war 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 this amendment first 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 career lawyers from throughout the Justice Department, and that team of

Justice Department lawyers aimed to solve a very real 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 terrorist aliens and organizations as they operate in the United States. The goal of those investigations is to detect preparations forand ultimately to prevent acts of terrorism from ever happening. It is not enough to arrest someone after it happens. 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 on a given alien terrorist is classified. That 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 illustrate 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 has frequently left the United States to attend meetings with other terrorists overseas and to undergo terrorist training, only to slip back into the United States as an even worse 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 and has abused his 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 and 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 U.S. Government to use classified 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 as that term is 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, organization, or government in conducting a terrorist activity at any time including any of the following: 1. Preparation or planning of a terrorist activity; 2. The gathering of information on potential targets for terrorist activity; 3. The providing of any type of material support including a safe housing, transportation, communications, funds, false identification, weapons, explosives or training to any individual the actor knows or has reason to believe has committed or plans to commit a terrorist activity; 4. The soliciting of funds or other things of value for terrorist 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 created 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, but only one such 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, once the Government's case for the removal of the given terrorist alien is before a Federal judge, the judge must make his or her own 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's 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—a terrorist, not an alien, 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 as a people 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 the 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 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 alien 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 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 still 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 have information on them knowing what they are doing, and not deporting them. I can assure you the American people want them deported.

The World Trade Center bombing showed us the danger that Americans face from this threat. Let us give the Department of Justice an important new tool to protect us from these people. That is not unreasonable.

Let me close on this point, Mr. President. Many of you know that earlier this year I happened to witness a terrorist act at the CIA in which a terrorist gunman shot and killed two people, including an employee.

I think, although I had the opportunity to witness that firsthand, that many of us through the media have witnessed firsthand a great deal of

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 effect 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 it, and not be 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 the amendment, 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 have 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 Immigration Subcommittee 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 narrow situation that this amendment addresses. Here is that situation: Where an alien poses an immediate threat of death or serious bodily harm to either: First, a substantial number of persons; or second, an individual of political significance.

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

NEED FOR PROCEDURES

Some critics contend that this amendment is not needed. That is patently untrue.

We cannot proceed against some alien terrorists in criminal trials, when our only evidence is classified, and to reveal the classified information would put a person's life in danger.

We cannot exclude alien terrorists from this country if we do not find out about their being a terrorist threat until it is too late—until after they have entered. Like the aliens who were allegedly involved in the World Trade Center bombing.

CONCERN ABOUT SECRET TRIALS

I know all of us have an aversion to secret court proceedings. I share that concern. But, this amendment would avoid such a proceeding if at all possible.

First, the amendment would require an open, public hearing in most instances. It would require the Government, when using classified information, to provide an alien with either a summary or redacted—censored—version of the classified information. If that information is not provided, the court would normally be required to dismiss the case.

However, in one instance, the court may proceed even if the alien has not received a summary of the evidence. The court may proceed in secret if disclosure of even a summary of the classified information would expose the source of that information to death or serious bodily harm.

Mr. President, if we have good information that a violent terrorist act 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 place the source of the information's life in danger, then I believe we should be able to proceed with the deportation of that alien.

This amendment would require a judge to find that the alien is clearly deportable and that the alien's due process rights have been respected. I believe that that is a fair and reasonable process when the Government's interest is a compelling as it is when a terrorist threat is imminent. I urge the adoption of this amendment.

REBUTTAL TO CRITICISMS ABOUT DUE PROCESS

The amendment has been criticized as violative of an alien's right to due process. This criticism is partially correct, but we must remember what the context is. Deportation is a civil proceeding. An alien does not have the same rights as does a criminal defendant. Rather, the alien has the same rights as an American citizen would have if he were challenging the termination of his disability benefits by the Social Security Administration.

The Supreme Court case that controls here is Mathews versus Eldridge, a 1976 opinion by former Justice Powell. Mathews held that whether due

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 tort: U.S. versus Reynolds, 1953.

Following this 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 time?

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 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's amendment provides 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. *Plasencia*, 459 U.S. 21, 34–35 (1982).] So long as the procedures established by Congress are essentially fair, they satisfy the requirement of due process.

Moreover, we have the power as well to distinguish between classes of aliens, and accord separate procedures to different classes. Congress has plenary power over immigration and naturalization. The legitimate distinction between aliens and citizens justifies and permits both separate procedures for aliens and the congressional determination that not all aliens should be treated alike. [*Mathews* v. *Diaz*, 426 U.S. 67 (1976).]

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 its effective use of classifiedinformation 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 proceedings 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 costs. Because we are so open, we are 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 fair, but swift, 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. 1125) 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 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. DORGAN). 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.

I believe that 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 prison and the State in an interim period of time to try to resolve their complaint through an administrative grievance system.

Prisoners' civil rights cases are overloading 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 serving 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 Iowa and Arizona, they were an astonishing 48 percent of all Federal civil cases—these were civil rights cases brought by prisoners. In Missouri they were 46 percent of the cases; in Arkansas, 42 percent. And you can go on and on.

Let me say what the cost to the taxpayers is. These cases averaged $50,000 apiece, cost to the taxpayers—$50,000; from a very small percentage of the population, clogging the courts with 14 percent of the cases. In my State, 48 percent.

This is something that, it seems to me, this body has 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 are able to get 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.

That is a case in the Federal district court that might cost an average of $50,000.

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 $60,000.

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 Harvey'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 when the prison served him creamy 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 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 slow. The current system is onerous. And the current system has failed to encourage administrative resolution the State prisoners' civil rights claims.

This requirement 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 State of Minnesota and my State, 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 2,280 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 49 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 remarks. 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:

	Total civil cases	State prisoner civil rights
Minnesota:		
1989	2,255	53
1990	2,089	67
1991	1,942	62
1992	2,095	59
1993	2,280	107
Iowa/North Dakota:		
1989	665	104
1990	557	128
1991	626	179
1992	688	216
1993	645	191
Iowa/South Dakota:		
1989	1,279	390
1990	1,036	318
1991	1,061	356
1992	1,100	351
1993	1,232	472

U.S. DISTRICT COURTS CIVIL CASES FILED YEARS ENDED JUNE 30

	All civil	Filings	State prisoner civil rights	
			Percent of total	Percent change over previous year
Year:				
1989	233,838	25,039	10.7	
1990	217,700	24,843	11.4	−.8
1991	207,690	25,046	12.1	.8
1992	226,895	28,308	12.5	13.0
1993	228,562	32,369	14.2	14.3

U.S. DISTRICT COURTS PRISONER PETITIONS COMMENCED DURING THE 12-MONTH PERIODS ENDED JUNE 30, 1970 THROUGH 1993

	Grand total	Federal prisoners					State prisoners			
		Total	Motions to vacate sentence	Habeas corpus	Mandamus and other	Civil rights	Total	Habeas corpus	Mandamus and other	Civil rights
1970	15,997	4,185	1,729	1,832	488	136	11,812	9,088	694	2,030
1971	16,266	4,121	1,335	1,873	699	214	12,145	8,378	852	2,915
1972	16,261	4,178	1,590	1,636	700	252	12,083	7,964	776	3,343
1973	17,218	4,535	1,722	1,760	639	414	12,683	7,787	722	4,174
1974	18,410	4,987	1,822	2,089	631	445	13,423	7,626	561	5,236
1975	19,307	5,047	1,690	2,344	535	478	14,260	7,843	289	6,128
1976	19,809	4,780	1,693	1,969	626	502	15,029	7,833	238	6,958
1977	19,537	4,691	1,921	1,745	542	483	14,846	6,866	228	7,752
1978	21,924	4,955	1,924	1,851	544	636	16,969	7,033	206	9,730
1979	23,001	4,499	1,907	1,664	340	588	18,502	7,123	184	11,195
1980	23,287	3,713	1,322	1,465	323	603	19,574	7,031	146	12,397
1981	27,711	4,104	1,248	1,680	342	834	23,607	7,790	178	15,639
1982	29,303	4,328	1,186	1,927	381	834	24,975	8,059	175	16,741
1983	30,775	4,354	1,311	1,914	339	790	26,421	8,532	202	17,687
1984	31,107	4,526	1,427	1,905	372	822	26,581	8,349	198	18,034
1985	33,468	6,262	1,527	3,405	373	957	27,206	8,534	181	18,491
1986	33,765	4,432	1,556	1,679	427	770	29,333	9,045	216	20,072
1987	37,316	4,519	1,669	1,812	313	725	32,797	9,542	283	22,972
1988	38,839	5,130	2,071	1,867	330	862	33,709	9,880	270	23,559
1989	41,481	5,577	2,526	1,818	315	918	35,904	10,554	311	25,039
1990	42,630	6,611	2,970	1,967	525	1,149	36,019	10,823	358	24,843
1991	42,462	6,817	3,328	2,112	378	999	35,645	10,331	268	25,046
1992	46,452	6,662	3,717	1,526	515	904	39,790	11,087	395	28,308
1993	52,454	8,228	5,224	1,424	701	879	44,226	11,411	446	32,369

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 amend-

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 hunger in America, a matter of 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 undernourishment—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 55,600 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 is 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 undernourishment 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 around 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 at all of New England.

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. We are the richest, wealthiest 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 Chapin, 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, Nutrition, and Forestry 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 undernourishment; we should not have a child poverty rate of over 11 or 12 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 to speak as if in morning business for 5 minutes.

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

GETTING A WORD IN EDGEWISE ON NAFTA

Mr. DORGAN. Mr. President, in reading the Washington Post these past months, it struck me 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 opinionizing 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.

It looks to me as though the people who are preaching the virtues of competition and free trade for the rest of America, aren't practicing those virtues in the trade policy debate. And it is not just the Washington Post. I made the same tallies for the New York Times, the Los Angeles Times, and the Wall Street Journal—and some of them were even worse.

This one-sided debate is not because anti-NAFTA voices do not exist. There are plenty of us. So many, in fact, that passage of the United States/Mexico trade agreement in Congress is still in doubt.

But rather than give us a fair chance to speak, the Post and the others prefer to portray us as a bunch of backward folks who just pulled into town in a pickup truck looking for directions. We are dismissed as isolationists, protectionists, xenophobes, and labor dupes who fear the bracing winds of progress and change. NAFTA supporters, meanwhile, are always described as visionaries, statesmen, and deep thinkers, never corporate flacks or paid representatives of foreign governments; people who—like the pro-NAFTA pundits generally—are not likely to lose their own jobs if more plants move to Mexico.

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 show the public that trade is like most other issues: 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 debate NAFTA as though it were simply a 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 negotiated NAFTA, made a great 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 each nation does what it does 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 absence of a quorum.

The PRESIDING OFFICER (Mrs. 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. There may be 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 report.

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 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. . 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) IMPROSONMENT 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) RULE OF CONSTRUCTION.—This subsection shall not be construed to 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 particular area. The State of Washington did it last week.

There is no doubt that a small hardened 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 crimes once 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 letters was ordered to be printed in the RECORD, as follows:

NATIONAL SHERIFFS' ASSOCIATION,
Alexandria, VA, October 27, 1993.

Hon. TRENT LOTT,
U.S. Senate, Russell Building,
Washington, DC.

DEAR SENATOR LOTT: On behalf of the 22,000 members of the National Sheriffs' Association, we are writing in support of the Life Imprisonment for Egregious Recidivists," (LIFER) amendment to the crime bill. We applaud your stand and comment you for your efforts.

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.

Once again, we thank you for your endeavors and support of the nation's law enforcement community.

Sincerely,

CHARLES "BUD" MEEKS,
Executive Director.

NATIONAL VICTIM CENTER,
Arlington, VA, November 4, 1993.

Hon. TRENT LOTT,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR 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 499).

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 service providers than to see 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 unaffected by the process, but their victims are ground beneath its gears.

Statistics indicates that 6 percent of violent offenders commit 70 percent of violent crimes. Many re-offend within months 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 will be spared and thousands of lives saved each year.

No greater accomplishment could be offered to the victims of crime in this nation than a measure which will prevent 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 antisocial behavior, we urge swift and certain isolation from society. Senator Trent Lott's S. 499, aimed at egregious, repeat, violent offenders is, we believe, society's most effective short-term response. These violent predators must be removed from society if we are to be safe from their deprivations. The daily carnage on our streets demands that we prevent these monsters from claiming more victims.

I ask unanimous consent that this letter from the Law Enforcement Alliance of America be printed in the RECORD.

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

LAW ENFORCEMENT ALLIANCE
OF AMERICA,
Falls Church, VA, October 18, 1993.

Hon. JOSEPH R. BIDEN, Jr.,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR BIDEN: Once again, I am writing regarding the upcoming anti-crime bill on behalf of the now early 35,000 members of the Law Enforcement Alliance of America. The increase in LEAA membership since my last letter makes us not only the nation's largest coalition of law enforcement professionals and concerned crime victims, it makes us the nation's fastest growing organization of its kind.

I wish to call your attention to a concern of law enforcement that to date has received very little attention by legislators or the media.

Law enforcement occupies a unique position in its capacity of law conservators as first hand witnesses to the treatment of crime victims throughout our criminal justice system. Often we are the first to see victims immediately after they have suffered a criminal violation. We see them again during our investigation of the incident and yet again throughout the court proceedings.

We watch helplessly as the system often first ignores them, and then again as they are vilified during the actual trial. The greatest offense our system perpetrates against victims, in our view, is the primacy of perpetrator rights over those of their victims. We have watched and remained silent, until now.

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 petitioning for imagined or fabricated infractions. Further, the extremes taken to mitigate time served by turning penal institutions into virtual prisoner entertainment centers has failed to stem the recidivist rate from the days when prisons were extremes in austere living conditions.

We urge a determined legislative search for a solid 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.

For violent recidivists, career criminals who thrive on violent anti-social behavior, we urge swift and certain isolation from society. Senator Trent Lott's S499, aimed at egregious, repeat, violent offenders, is, we believe, society's most effective short-term response. These violent predators must be removed from society if we are to be safe from their depredations. The daily carnage on our streets demands that we prevent these monsters from claiming more victims.

I emphasize that this is a short-term solution. it provides immediate protection, saves lives, and allows honest citizens the ability to enjoy life as described in the preamble to our Declaration of Independence.

Society is not the place to experiment with unproved long-term solutions to crime. Lives are at stake. We don't allow direct human

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 the nation's crime problems.

Sincerely,

JAMES J. FOTIS,
Executive Director.

Mr. LOTT. 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 characterized, 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 Mississippi—I was going to say "I am sure"—I suspect he had in mind what 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 predator, 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, as predators. So we want 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 5½ 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 the Senate I am not trying 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 towns the guy 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, under this law, as bizarre 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 should not say "know." I suspect that is not the intention of my friend from Mississippi.

As to a three-time 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 was adopted as an amendment in this bill, we increased the penalties for rape. I am all for minimum mandatory life imprisonment—no probation and no parole.

These 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 sweeping into our net people that a Federal judge would be required to put in jail for life—the drunken brawler who gets in his third fight and he happens to do it in Yellowstone Park while he is there—and the reason I say "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 disorderly 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 if you are an 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 quorum 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

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 happened three times over the period of his life.

But that is a question and a request.

Mr. LOTT. Madam President, will the distinguished Senatorfrom Delaware yield for a comment?

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 got into one, maybe you just got carried away; if you got 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 with what he might have decided in the first case and second case. But after this third case, there is pretty good evidence that you have a repeat offender on your hands who keeps getting in fistfights and knocking people's teeth out and causing serious injury.

I think the point the Senator is making is a legitimate one. I would like to talk to him a little. I would like to look at the language and see exactly what he is proposing. Some flexibility perhaps would be something we could work together on, because I am not out trying to charge every petty crook with a felony, but these statistics we have here are not about petty crooks, but violent criminals. The Senator knows the ones we are trying to get to.

Mr. BIDEN. If the Senator will yield, I completely agree the statistics are overwhelming that there are, for example, as the Presiding Officer knows a lot about this issue as well knows that 6 percent of all the criminals in America—convicted folks—commit about 65 or 70 percent of all the serious crimes.

Mr. LOTT. Those are the ones we want.

Mr. BIDEN. Those are the ones the Senator wants. I have no disagreement on that.

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 5½ years.

We are not looking to let off the bully who goes around knocking people's teeth out. They get 5½ 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 mandatories 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 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 propound this at the moment, but I would consider propounding a unanimous consent 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 wants it and to see if we can work out 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 now in the Federal system doing 5½ years having to serve life without probation, parole, and without discretion on the part of the judge.

Mr. LOTT. If the distinguished Senator will yield further, perhaps at some point we could have that quorum call and talk more about it. I do know that there are a number of States, including the distinguished Presiding Officer's State, California, where they have a lot of 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 $430,000 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 $405 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 that 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 sanctions 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—a State's right man, a man from a State that protected its own integrity and fought for that—we have more conservatives, liberals, moderates, Democrats and Republicans insisting in this crime bill that we require States to adopt every aspect of the Federal system. I am pleased to see that is not what the Senator is doing here.

I would like to suggest, for purposes of trying to work out this language as to what the definition of a serious violent offender is, I would like to suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested.

Mr. BIDEN. I realize I must ask unanimous consent to be able to go into a quorum call without the time for the quorum being charged against the remaining time that the Senator from Mississippi and the Senator from Delaware has on the Lott amendment.

The PRESIDING OFFICER. Is there objection? There being none, that will be the order.

The clerk will call the roll.

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. . 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 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 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 other Senators, 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 crimes and 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 added as an enthusiastic cosponsor 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 was 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 9½ 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 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 Lott amendment says to those who are charged under the Federal 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 modification. His statement is a very ringing endorsement.

I commend the people of his State of Washington for the vote they had last Tuesday. They are very serious about dealing with these repeat offenders. 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, so perhaps 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 to be present for today's vote on the Lott amendment, the so-called three time loser amendment. I would like the record to show, had I been in attendance, I would have voted for the 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. LOTT. 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 rollcall 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 them up. Those offices that are listening to this proceeding on the floor, I urge you if you or your Senators have amendments that you are seeking to offer to the crime bill, let the floor staff know so we can try to order them.

I see my distinguished friend from California, the Presiding Officer, perking up because I know she has a major amendment which I am sure in due time we will get to. Hers is so major, once we get to it, we may not get to anything else for a couple of hours. So maybe we can get rid of some additional amendments in the meantime.

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

The PRESIDING OFFICER (Mrs. BOXER). Without objection, it is so ordered.

Mr. GLENN. Madam President, the debate on the crime bill has been long and will be even longer. It is one of the more important pieces of legislation we will probably pass this year.

Madam President, we pass laws in this country so that as a civilized nation we can all live together, so that we have the greatest good for the greatest number of people. We pass laws to that end, but some people find it difficult to live within those laws or deliberately try to short-circuit the system, the American democracy that we all know and love so well. They try to do things that disadvantage the rest of us, and they break our laws.

When they do, certain things then occur. The police system in this country starts out by trying to apprehend these people. There are a lot of people involved in that effort. And once our police system apprehends one suspected of a crime, we have a judicial system that goes to work and says, OK, you have been charged with certain crimes, and you now have certain constitutional privileges to protect you against unlawful abrogation of your rights. So we have an elaborate judicial system to make sure that everybody has their day in court and a fair hearing. And at the end of this whole process, which sometimes is far too lengthy, we finally have a judgment of guilty against a high proportion of these people.

Then, if things worked as they are supposed to, we have punishment meted out. Those who find they cannot live in harmony under the laws of this country receive punishment for their infractions. That is the way our system is supposed to work.

What we are considering in this crime bill is whether that system is working properly or not. And we are debating how we can strengthen the system so that it works better and so that it works more fairly 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 we can handle.

Now, will this visual 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—what the Ohio State Patrol used to call visual patrol, just parking a car out along the road—leads you to lift your foot off the gas pedal to make sure you are back under the limit. We have all done that. I admit to it myself.

So whether it is by the highway patrol out along the highways or whether it is a new cop out there on the corner, through visual presence crime is deterred. That will work to a certain degree. But I submit that our central problem is not the lack of police officers. They are arresting more people now than the rest of the system can handle.

Let us look at the judicial system for a moment. 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 so that we move people through 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 for those who violate the law and do not fit into the norms of society.

It seems to me that here is where our whole system of crime and punishment begins to fall apart these days, because our problem is not that the judicial system is in chaos; it is that the punishment system, after the judicial system has worked, is in chaos. Our whole penal system is in literal chaos. It is overloaded. It is crowded. People are not serving their sentences. We even have such overcrowding of prison facilities we are under court orders to correct the situation in the majority of States, including my home State of Ohio.

The system right now makes a mockery of justice. When the police go out, all too often at the risk of their own lives, and apprehend the criminals, the judicial system works and sentences are handed out. But then when punishment is nonexistent or minimal at best, we are engaged in the process of

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? You get very little for it, a hand slap, parole, maybe some minor punishment. 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 get caught anyway. What matters if you steal from your employer? Does that make any difference? They are probably not going to be able to prove it. If they do, the sentence will probably be light.

Why not sell drugs? It is easy money because your prison sentence will probably be minimal. Why not drive drunk? 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.

How about white-collar crime? Does it get punished properly? No. Too often not.

Over the last few days we have had soaring rhetoric from Senator after Senator after Senator. We are going to get tougher. We are going to outmacho 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 statements about my thoughts on how crime should be punished once the judgment is in—that crime should be punished immediately, and we should have adequate prison space.

I had put together and proposed some ideas at that time, not for great new brick and mortar palaces that we put people in, not the slammers that have to deal with the violent criminals, but ways of dealing with the nonviolent criminals and how we could incarcerate them without building these great big expensive structures costing hundreds and hundreds 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 our construction techniques that have been used in the military and that I have 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 isridiculous to be putting out that kind of money for nonviolent 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 nonviolent? I believe there is.

I spent some 23 years in the Marine Corps putting in my military time along with several million other Americans who did not live in great big brick buildings for years at a time. We 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 we mean when we say a Quonset hut. But whether it is Quonset hut, Butler buildings, prefabs, 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 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 in 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, and 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.

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 come out and say here is 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 40,000 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 quarters, 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 sewer, 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 regional use of the facilities like that for 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 expand 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 find it difficult to think this would be inhumane or is not

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

A third area: If we establish new prisons, I submit that we would get our greatest bang for the buck by doing what I am talking about here and not trying to insist on great big brick and mortar buildings costing $50,000 a cell. Why not go out on a 500- or 1,000-acre plot of land someplace, put security around it, double concertina wire, flood lights at night? But within that area, the living area is of the cheaper construction I am talking about, which would save billions of dollars.

If we establish these new prisons, I do not think there is any problem with perimeter security on anything like that. I find people thinking we have to have all sorts of exercise equipment and gymnasiums and nautilus equipment and rowing machines for prisoners. What happened to the day when you could get your exercise by running around the perimeter of a facility—inside, of course—running around to get your exercise? What is wrong with having 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 insulate 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 establishment like that can have buildings for whatever purpose you may want to have a building built. You can join them together, and you can have a library, 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 is wrong with it? 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 prosecutors, police, sheriffs, judges, mayors, all in onemeeting, to talk about what was wrong with our criminal justice system. What is lacking in our present system that would make the whole system work better?

Well, what I found was a great frustration on behalf of the prosecutors, police, sheriffs, judges, the mayors, that after all of the efforts to apprehend, after all of the efforts in the judicial system, too often, the final outcome was that the prisoner walks free to do it again. This was the frustration of these people who were most involved. 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 officers out to arrest more offenders because he did not have anyplace to put them anyway. At that time, the sheriff 2,900 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 put somebody out of prison to let this other person in. If that 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 we are letting people get by without serving any major penalty because we have no place to put them.

What is wrong with the idea of Butler buildings, or Quonset huts, or converting trailers, or whatever, for our nonviolent prisoners? I see nothing wrong with it. Millions of Americans have lived under those conditions and lived quite well while they were in the military.

I see no reason why our prisoners should be treated better than the people in our military. If we had a system the way it is supposed to work, we would have enough bed 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 person 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 system. It just makes common sense.

How are we ever going to carry out the Stevens proposal, which I fully back up, saying 85 percent of every sentence should be served? I submit 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 come on 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 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 he sent 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.

So 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 prisoners.

The PRESIDING OFFICER. The Senator 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 to.

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 confined by court order to public institutions pursuant to verdicts of not guilty by reason of insanity or other mental disorders.

Mr. THURMOND. Madam President, we have an amendment following that of Senator HELMS.

Mr. BIDEN. Madam President, what I would like to do—we have been attempting to go back and forth here, Democratic and Republican amendments—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 10 or 12 minutes time the Senator from Ohio is going to take, I would ask unanimous consent we then move to the Helms amendment with a time agreement of 15 minutes equally divided, with no second-degree amendments to be in order.

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 without losing my right to the floor.

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 haveto 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 how we can do the same 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 put those who are violent 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's amendment solves that and at one-fifth the cost.

The Senator from Ohio has done a real service and I just want to compliment him for it and ask him if he does not concur that his approach would 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 risking 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 so 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," as 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 assigned 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 judged and given a term—almost half of them are nonviolent prisoners. Why do they have to have 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.

We have 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 even 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. These are beautiful facilities and they 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."

Then it says:

> Thus, prisons are designed to provide a campus-like setting with recreation areas and landscaped grounds that give the inmates space for some freedom of movement.

Campus-like facilities—the pictures I just showed here, those are very plush campus-like facilities, I can guarantee you that. Is that what we really mean by establishing prisons and sending people to prisons?

Let me get on to the costs. Federal 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 $93,000 per bed with an overall average of about $55,000. Construction costs for the four Federal prisons range from about $50,000 to $85,000 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

maybe four or five times the number of people.

Madam President, there are other things in this GAO report. I will not try and cover every point made in this GAO report. Here are some other pictures of some of the gym facilities, the equipment, and the bunk rooms. I will tell you, the people in the military would have dearly loved to have lived in anything this posh or have had access to these recreation facilities. I am not against having good facilities, but I think where we talk about crime as being a crisis in this country, then I think we ought to treat it as a crisis.

"Bureau of Prisons Cost Cutting Proposals." They have some proposals, but they have a rather narrow scope.

The Bureau of Prisons convened an Administration Wardens' Advisory Group to identify and consider several options aimed at reducing construction costs for medium security prisons. In December 1990, the BOP executive staff considered the following 12 options developed by the wardens advisory group:

One, utilize inmate labor to construct staff training centers. I do not disagree with using inmate labor to construct their own buildings. I know from personal experience that one person can read the construction sheet for a Quonset hut and a half-dozen people can put one up in 3 or 4 days' time. I have done it. It is not something that is impossible to do. I hold no stock in the Guonset company.

The point I am making is that this kind of construction is something that we could use instead of the big brick and mortar structures that cost hundreds and hundreds and millions of dollars. So in regard to the recommendation to utilize inmate labor to construct facilities, I agree with that.

Two, they propose deleting construction of gymnasiums at satellite camps. I see no problem with that at all. I agree with them on that absolutely. If we want to have people get some exercise at some of these camps, what on Earth is wrong with having them run around the perimeter of the camp like people in the military have done for the last 50 years? They can get plenty of exercise—build a ball diamond, build their own huts, their own recreation facilities. What on Earth iswrong with that? What is wrong with them growing some of their own food? I do not see anything wrong with it at all.

Three, reduce programmed square footage in the following support areas: outside and inside warehouses, maintenance shop, recreation, commissary, and laundry. As far as square footage goes, low-cost facilities like Guonset huts are cheap enough to construct that I would guarantee you we could exceed the per-square-foot requirement that they put out for each prisoner. That is no problem at all. We would have plenty of space for each person, far more than we are ever going to be able to afford in the big brick and mortar construction.

Four, replace sloping roofs with flat roofs or, at a minimum, utilize composition shingles on sloped roofs. That is something that was supposed to start saving some money, I suppose. If we cannot do better by using something like these little models beside me, I would be surprised.

Five, delete landscaping and irrigation beyond basic seeding and make landscaping inmate labor intensive. I agree with that.

Six, although an actual savings would not be realized, certain equipment items could be paid from other funds.

Seven, reduce the quality of exterior walls and insulation.

Eight, delete indoor "active recreation," such as weight lifting and gymnasiums; make open-air recreation available. Boy, do I ever agree with that. What is wrong with people getting outside and building their own ball diamond? What is wrong with getting outside and making their own basketball court? What is wrong with getting outside and doing push-ups, putting cinder blocks on the end of a pipe and do bench presses if they want to, as I used to see people in the military doing all the time—and they enjoyed it.

What is wrong with focusing not on how much we can spend for prisoners but what we can do without—the minimum facilities that we can get by with for the nonviolent prisoners.

Well, several of these recommendations go on. But out of all of these recommendations, nowhere are low-cost structures considered. These were some of the recommendations of the administration-wardens advisory group.

Now, is there any wonder that the wardens do not particularly want low-cost construction? If you are a warden out there, you would love to preside over a great big Federal penitentiary with its big glass windows and its great big brick walls and nice driveways. Facilities that can cost between $50,000 and $100,000 per prisoner. Now, sure, if you were a warden, I am certain that you would much prefer to preside over that. In your office, you can sit at your window overlooking your marble palace.

But if we are trying to incarcerate criminals who are terrorizing our society, and we call this a crisis and we all get up and we beat our breasts here on the Senate floor and make our press releases talking about what a crisis this is for America, then we should be concerned about locking these people up. Half of them are nonviolent prisoners who should be serving time and who are now in a revolving door where they just go in and out, get a slap on the wrist and they are out again, and in again and out again. It does, indeed, mean something if you have a prison sentence awaiting you.

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 had some people working for you." 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 its 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 you found it?" "No, sir, Senator." 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 part of the Mayor's task force working with other young people in Washington, DC to try and prevent the spread of drugs and the sale of drugs.

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 to have his freedom taken away from him. He did not like any of that. He hated it so much that he has now signed 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 with a sentence carried out immediately at the end of it, if it is to mean anything.

I would say as far as the nonviolent prisoners go—let me just repeat that—

the nonviolent prisoners can be incarcerated in facilities 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 a life of crime, if they 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 wave off and just 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, we are going up to 100,000 police initially. I support that. So this vigil of having police out there on the corner does work. It will make for a little less crime over a period of time. It is not going to work by itself unless people know if they are apprehended they are going to absolutely and certainly go through that criminal justice system and wind up in jail. They are going to do their time. So that is a requirement for more jails.

State and local law enforcement is covered in this bill. It supports police, corrections, drug treatment, authorizes money for military-style boot camps for nonviolent offenders, trying to get them while they are young, which I support. All of this requires more prison space. It authorizes drug court programs; it requires testing, treatment, alternative punishments; and expands the death penalty.

The death penalty—many people in the Senate love to hang their hats on the death penalty. We are making the largest ever expansion of the Federal death penalty—50 new death penalty offenses. It sounds as if we are really getting tough on this, except over the last 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 dragnet-type door closed with all the sound effects. We do not need all of that for the nonviolent prisoners.

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 see if we cannot 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 today. We are talking about a lot of 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, if convicted, gives them a sentence. I favor beefing that up. But I submit that not 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, increasing 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 went after it. Why should they not be 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 these offenders. We need practical solutions to help alleviate a very serious crisis that faces America. We all get up and say crime is a crisis in this country. If it is a crisis, let us treat it that way. If it is a crisis, let us say we are going to put people behind bars who need to be behind bars—or behind secure fences. They do indeed lose their freedom if they have been judged as the type people in our society who do not have any claim to being out in the open as long as they are committing

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 play a sort of a Russian roulette, if 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 nonviolent 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 nonviolent 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 of 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 staff 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 set upon. We lived quite reasonably well there. Would I have preferred a big permanent home someplace on a base? Yes; sure 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 families in the tropics 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 prefab housing 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 got 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. Imagine that. They did it at a low cost, and they did it quickly. Just as important, they did it themselves.

A hammer in a man's hand, I feel, can be a real character builder. And so can a hoe. I would have 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 as little as 90 days. They might learn something. They can eat their own food and can 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 clear message to criminals. 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 build 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. 1127

(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. . 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 for housing nonviolent criminals.

(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.

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 his 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.

VOTE ON AMENDMENT NO. 1126, AS MODIFIED

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the amendment (No. 1126), as modified, of the Senator from Mississippi [Mr. LOTT].

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arizona [Mr. DECONCINI], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Ohio [Mr. METZENBAUM], and the Senator from Alabama [Mr. SHELBY] are necessarily absent.

I further announce that, if present and voting, the Senator from Arizona [Mr. DECONCINI] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Rhode Island [Mr. CHAFEE], the Senator from Georgia [Mr. COVERDELL], and the Senator from Vermont [Mr. JEFFORDS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 91, nays 1, as follows:

[Rollcall Vote No. 357 Leg.]

YEAS—91

Akaka	Daschle	Inouye
Baucus	Dodd	Johnston
Bennett	Dole	Kassebaum
Biden	Domenici	Kempthorne
Bingaman	Dorgan	Kerrey
Bond	Durenberger	Kerry
Boren	Exon	Kohl
Boxer	Faircloth	Lautenberg
Bradley	Feingold	Leahy
Breaux	Feinstein	Levin
Brown	Ford	Lieberman
Bryan	Glenn	Lott
Bumpers	Gorton	Lugar
Burns	Graham	Mack
Byrd	Gramm	Mathews
Campbell	Grassley	McCain
Coats	Gregg	McConnell
Cochran	Harkin	Mikulski
Cohen	Hatch	Mitchell
Conrad	Hatfield	Moseley-Braun
Craig	Heflin	Moynihan
D'Amato	Helms	Murkowski
Danforth	Hutchison	Murray
Nickles	Rockefeller	Stevens
Nunn	Roth	Thurmond
Pell	Sarbanes	Wallop
Pressler	Sasser	Warner
Pryor	Simon	Wellstone
Reid	Simpson	Wofford
Riegle	Smith	
Robb	Specter	

NAYS—1

Packwood

NOT VOTING—8

Chafee	Hollings	Metzenbaum
Coverdell	Jeffords	Shelby
DeConcini	Kennedy	

So the amendment (No. 1126), as modified, was agreed to.

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

The PRESIDING OFFICER (Mr. LIEBERMAN). Is there a motion to lay on the table?

Mr. GLENN. May we have order, please?

The PRESIDING OFFICER. The Senate is not in order.

There is a motion to reconsider.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Chair now recognizes the Senator from North Carolina [Mr. HELMS].

Mr. HELMS. I thank the Chair. In a moment I shall call up an unprinted amendment which is at the desk. But, first, I will make a few comments.

The amendment which I shall shortly call up will put an end to killers, and others who have been incarcerated after having been declared insane, from collecting millions of dollars in Social Security disability benefits. If this amendment sounds familiar to Senators, it is because 94 U.S. Senators voted for this very amendment on September 29, 4 Senators voted against it, and 2 Senators were absent. Notwithstanding that overwhelming vote, when the bill went to conference with the House, the Senate conferees were not very anxious to defend any Senate amendment, and this very sensible amendment was dropped. There has been an outcry from all across the country because of the action of the conference committee, and that is why I am here to submit, in just a moment, this amendment.

Mr. President, I ask unanimous consent that the rollcall vote on September 29 be printed in the RECORD at this point.

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

[Rollcall Vote No. 294 Leg.]

YEAS—94

Akaka, Baucus, Bennett, Bingaman, Bond, Boren, Boxer, Bradley, Breaux, Brown, Bryan, Bumpers, Burns, Byrd, Campbell, Chafee, Coats, Cochran, Cohen, Conrad, Coverdell, Craig, D'Amato, Danforth, Daschle, DeConcini, Dodd, Dole, Dorgan, Durenberger, Exon, Faircloth, Feingold, Feinstein, Ford, Glenn, Gorton, Graham, Gramm, Grassley, Gregg, Harkin, Hatch, Hatfield, Heflin, Helms, Hollings, Hutchison, Jeffords, Johnston, Kassebaum, Kempthorne, Kennedy, Kerrey, Kerry, Kohl, Lautenberg, Leahy, Levin, Lieberman, Lott, Lugar, Mack, Mathews.

McCain, McConnell, Metzenbaum, Mikulski, Mitchell, Moseley-Braun, Moynihan, Murkowski, Murray, Nickles, Nunn, Packwood, Pell, Pressler, Reid, Riegle, Robb, Rockefeller, Roth, Sarbanes, Sasser, Shelby, Simpson, Smith, Specter, Stevens, Thurmond, Wallop, Warner, Wofford.

NAYS—4

Domenici, Inouye, Simon, Wellstone.

NOT VOTING—2

Biden, Pryor.

So the amendment (No. 976) was agreed to.

AMENDMENT NO. 1128

(Purpose: To prohibit Social Security disability payments to individuals confined to public institutions pursuant to court order based on a verdict that the individual is guilty, but insane or not guilty by reason of insanity or similar finding)

Mr. HELMS. Mr. President, I have an unprinted amendment at the desk for which I ask its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 1128.

Mr. HELMS. 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:

To be added at the end of the bill:

"SEC. . 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.

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)

(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 similar finding, such as a mental disease, a mental defect, or mental incompetence), unless the payment is made directly 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 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.

The PRESIDING OFFICER. Under the previous agreement, there are 15 minutes allocated for debate on this amendment, divided in the customary manner.

Mr. HELMS. Mr. President, I offered this amendment, as I stated a moment ago, to the Labor-HHS appropriations bill and, as I also mentioned earlier, the Senate approved it 94 to 4. But when the bill went to conference, it was dropped by the House conferees, and the Senate conferees did little or nothing to defend this sensible and necessary amendment.

So it had been overwhelmingly approved by the Senate. Among other things, this may illustrate the difficulty in cutting Federal spending and reducing the Federal deficit. Congress so often talks a good game, but does so little, so often, really to cut Federal spending.

There is a distinguished gentleman in the House of Representatives, ANDY JACOBS of Indiana, who has introduced an amendment almost identical to mine in the House. Mr. JACOBS was the author of successful legislation some years ago to forbid convicted felons from receiving Social Security payments. So he and I have been on the same wavelength all the way.

I spoke to ANDY JACOBS over the weekend. I called him in Indiana. When I apologized for intruding on his afternoon, he replied, "I appreciate it, because my wife had me out raking leaves." We discussed this legislation. He said, "Please do offer it, and I support it fully."

So he urged me to proceed with it, and here I am proceeding with it.

How did all this begin as far as JESSE HELMS is concerned? Back in September, a very fine constituent in Raleigh, NC, John Sisson, wrote to me. Let me read his letter.

DEAR SENATOR HELMS: The old saying, "Crime doesn't pay" is no longer true, and I hope you will do all you can to reverse this trend.

On September 21, "The News and Observer" in Raleigh carried a headline on page 3A which read "Insane Killer's Federal Checks Challenged." The article reports on Michael Charles Hayes who is incarcerated for killing four people in Winston-Salem, NC. Mr. Hayes receives $536 a month from Social Security while he is incarcerated because he is "disabled."

He is classified "disabled" by reason of insanity, Mr. President. But let me proceed with Mr. Sisson's letter. He says:

While incarcerated in Dorothy Dix Hospital he has purchased a motorcycle, two leather jackets worth $300 apiece, a wardrobe of 40 knit shirts and television sets and VCR's.

Mr. Sisson says:

Here is a loophole which should be immediately stopped. * * * Please do what you can.

Stop Mr. Hayes' payments.

Close the deficit spending by removing disability pay for all who are criminally insane and incarcerated.

Thank you for listening. Above all, we must reduce the deficit spending.

Sincerely,

JOHN 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 fired 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 sentenced 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 earlier, 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 act.

According to the father of one of the four victims who were killed, Hayes is living in hog heaven. I think Mr. Nicholson, the father with whom we have been in contact, gave the best description 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 20 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 leather coats, all purchased with the Social Security 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 Olsen tried to kill his parents; he was found to be insane, and he has collected $8,646 in retroactive disability payments and then began receiving $678 a month thereafter. Then he escaped and went to New York to buy drugs, subsidized by you know whom—the taxpayers of the United States.

Mr. President, as Congressman JACOBS has said, as so many of us have said, Social Security disability payments are intended to provide food and shelter for the disabled. Inmates of mental institutions are already receiving food and shelter, and they should not be allowed to double dip into the pockets ofthe taxpayers.

Mr. President, the law already prohibits such payments to convicted felons in prison. This amendment merely expands the current law and will save the taxpayers at least $10 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 already had a rollcall vote, taken back in September. But I do seek assurance from the managers of the bill that, this time, the Senate conferees will stand up for this and other worthwhile amendments, including the Glenn amendment which has just been discussed.

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 7½ minutes.

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

Mr. HELMS. Pardon me.

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

Mr. HELMS. I ask unanimous consent that my time be extended by 5 minutes, which I will not use if and when I will get an affirmative response to my inquiry.

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 5 minutes.

Is there objection?

Without objection, it is so ordered.

Mr. HATCH. I understand the Senator 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 provision 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 everybody 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 minutes, and I ask we proceed with the vote.

The PRESIDING OFFICER. Is all time yielded back?

Does the Senator from North Carolina 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 occurs on the amendment 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 read 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. . 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 as to the victim of an offense under this section 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 Clark (Sheek) * * * to Amanda York and Michael York are hereby terminated, henceforth and forever." The family court had found evidence relating to physical abuse and neglect of both 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, SC.

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 who accompanied her 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 courts 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 criminalizes kidnaping but exempts kidnaping of a minor by the parent thereof. The Federal district court dismissed the courts 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 parents 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 after 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 they support 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 in a loving home with your adoptive child. Then your adoptive child is kidnaped 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. Our

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 bipartisan 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—agree on 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.

AMENDMENT NO. 1130

(Purpose: To strike provisions repealing minimum mandatory sentencing, and to provide for increased minimum mandatory sentencing)

Mr. GRAMM. Mr. President, I send an 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 (Mrs. MURRAY). Without objection, it is so ordered.

The amendment is as follows:

Beginning on page 399, strike line 13 and all that follows through the period on line 11, page 404; and insert in lieu thereof the following:

SEC. . INCREASED MANDATORY MINIMUM SENTENCES FOR CRIMINALS USING FIREARMS.

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 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 (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 such crime of violence or drug trafficking crime—

"(A) be punished by imprisonment for not less than 10 years;

"(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. . MANDATORY MINIMUM PRISON SENTENCES FOR THOSE WHO SELL ILLEGAL DRUGS TO MINORS OR WHO USE MINORS IN DRUG TRAFFICKING ACTIVITIES.

(a) DISTRIBUTION TO PERSONS UNDER AGE 18.—Section 418 of the Controlled Substances Act (21 U.S.C. 859) 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 bysection 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 Substance 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 the preceding sentence."; 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 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 this subparagraph or of section 418, 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 or of section 418, 419, or 420 (21 U.S.C. 859, 860, and 861) or a crime of violence after 2 or more prior convictions for a felony drug offense or crime of violence or for any combination thereof have become final, such person shall be sentenced to not less than 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 may be used in the course of committing the offense.".

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 will assure we are not just promising 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. So, 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. Then when 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 has to do with firearms. 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 sentence they get for 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 a 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 todistribute drugs. All of us have read too many accounts of drug lords who, in trying to protect themselves, use minors 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 the Federal penitentiary and you are going to serve every single day of that sentence. If you use minors in a drug conspiracy, if you use minors to deliver drugs and you are apprehended and convicted, you are going to spend 10 years without parole in the Federal penitentiary.

The final provision is similar to an amendment that was offered before, but I think it has a better, stronger definition. I think it encompasses more, so I included it in this one single amendment. This is what we normally call the three-time loser provision. But unlike the amendment that was offered before, this would include both drug felonies and major violent crimes. What it says simply is this: If you commit any combination of three major drug felonies or serious violent crimes, on the third conviction you get life imprisonment without parole.

We have had an ongoing discussion about mandatory minimum sentencing. We have all seen stories that have been written by those who oppose mandatory minimum sentencing. I would like to relate two that have appeared in the newspaper before I talk about what to do about first-time offenders.

There have been two stories that have been used as examples of where mandatory minimum sentencing for drug felons is unfair. The first one was an AP story, and it was a story about a lady who went to visit her husband who was a fugitive from justice in Panama. While she was in Panama, in what the author of the story called desperate straits, she put 4 pounds of cocaine in her girdle and attempted to smuggle the cocaine back into the United States. She was apprehended and was given a mandatory minimum sentence, and she is in the Federal penitentiary.

The logic of the story was that this was a lady who basically had troubles, this was her first offense, and the fact that she was smuggling cocaine into the country was a relatively minor thing and it was outrageous that she was given a mandatory minimum sentence.

My guess is, had the author's child been the target of that cocaine, the author might have felt differently about it. Frankly, I believe anybody smuggling cocaine into the United States ought to get a mandatory minimum sentence and probably should be grateful that the sentence is no greater than it is.

The second story I have read used this example of how unfair mandatory minimum sentences are: A student in junior college was working with her boyfriend to sell drugs into a high school, and she met with an undercover agent and arranged the delivery of drugs to be delivered by her boyfriend to be sold into a high school. She was apprehended because she was not talking to somebody who was buying drugs to use but instead was talking to an agent. And the point of the story was, this poor lady who was a good student in junior college, is now in the Federal penitentiary because she was involved in a drug conspiracy, trying to sell drugs to children in high school.

Again, I submit, if those were your children that probably was not a nonviolent offense. If they were your children this was probably not a minor matter. Obviously, the person writing this story saw this as an example of the unfairness of mandatory minimum sentences.

I would simply like to relate some data that, at least to me, put this in perspective. The one thing I know as an old schoolteacher is that you can use data about any way you want to. This is my effort to try to look at this problem.

The question is, How many people who were given mandatory minimum

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 on 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 committing a major drug felony but 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 conditions 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 vote 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 of the committee 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 not 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 am willing to sit down and talk with others who are concerned about what many or some at least feel to be an injustice.

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 gunviolations, 10 years for possession, 20 years for discharge, life imprisonment without parole for killing somebody, 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 three-time loser provision for 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. These are 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 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)

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 read 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 reading 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. 2911. 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:

"(f) 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 does not have—

"(i) more than 1 criminal history point under the sentencing guidelines; or

"(ii) any prior conviction 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 criminal offense, that resulted in the defendant's being taken into State custody);

"(C) the offense did not result in death or serious bodily injury (as defined in section 1365) 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;

"(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 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.".

(b) HARMONIZATION.—

(1) 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(f) 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 guildelines, 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 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960) 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 3553(f) 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 of 1987 (Public Law 100–182; 101 Stat. 1271), as though the authority under that section had not expired.

(c) EFFECTIVE DATE.—the amendment made by subsection (a) and any amendments to the sentencing guidelines made by the United States Sentencing Commission pursuant to subsection (b) shall apply with respect to sentences imposed for offenses committed on or after the date that is 60 days after the date of enactment of this Act.

SEC. . INCREASED MANDATORY MINIMUM SENTENCES FOR CRIMINALS USING FIREARMS.

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 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 (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 such crime of violence or drug trafficking crime—

"(A) be punished by imprisonment for not less than 10 years;

"(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. . MANDATORY MINIMUM PRISON SENTENCES FOR THOSE WHO SELL ILLEGAL DRUGS TO MINORS OR WHO USE MINORS IN DRUG TRAFFICKING ACTIVITIES.

(a) DISTRIBUTION TO PERSONS UNDER AGE 18.—Section 418 of the Controlled Substances Act (21 U.S.C. 859) 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 this 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 mandatory term of life imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or spend 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 the preceding sentence."; 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 spend the sentence of any person sentenced under the preceding sentence.".

SEC. . 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 this subparagraph or of section 418, 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 or of section 418, 419, or 420 (21 U.S.C. 859, 860, and 861) or a crime of violence after 2 or more prior convictions for a felony drug offense or crime of violence of for any combination thereof have become final, such person shall be sentenced to not less than 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 may be used in the course of committing the offense.".

Mr. HATCH. Madam President, this is a very, very important amendment the distinguished Senator from Texas brought to the floor. If we adopt his amendment and his tripartite part of this amendment as part of our amendment that was sent to the desk, we write some flexibility in the case of first-time offenders, nonviolent offenders who have not sold drugs in the schools and to children.

I have talked with judges all over this country, and they have all indicated to me, most all have indicated to me—and I do not know of any objections—that they need more flexibility in some of these cases because the mandatory minimums are resulting in injustices. So this amendment will bring a greater measure of credibility to our criminal justice system. I can think of no issue more vital to our national interest than the control of drug abuse and violent crime. The Hatch amendment, which, of course, includes the Gramm amendments, will help restore credibility in our criminal justice system by ensuring that violent offenders and recidivists will face enhanced mandatory minimum sentences, by returning a measured degree of discretion to the courts in cases involving first-time, nonviolent drug offenders.

The American dream that every American has an opportunity to improve his or her lot in life and that our children will do better than their parents is threatened if we continue to fear for our safety in our neighborhoods, if innocent people continue to fall prey to criminals, and if young men and women are forever dragged down by drug addiction. Essential to our ability to improve our 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

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 1989, 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 power 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 term of imprisonment.

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, BIDEN, 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 goals of sentencing.

The most revolutionary aspect of the 1984 act was the creation of the U.S. Sentencing Commission. The commission produced a guidance system which furthered the Congress' stated 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 1990, Congress enacted 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 share this view. My view on this subject is that we need to take a close 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. Firing 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 populationis responsible for a large amount of the violent crime 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. Common sense dictates that the imprisonment of the violent chronic offender will reduce the amount of violent crime. The evidence indicates that mandatory minimum penalties for violent offenses are being applied in a uniform manner, thereby deterring crime, incapacitating deserving criminals and reducing unwarranted sentencing disparity.

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 share this view. Mandatory minimum penalties for violent offenders, if applied uniformly, are entirely appropriate and accomplish Congress' stated goals of predictability and uniformity in sentencing.

Due 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 no disputing the 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 minimum sentences failed to receive those 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 actually be imposed.

Quite often more comparable defendants higher 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.

For these reasons, I believe Congress must return a limited degree of discretion to the courts for sentencing first-time nonviolent offenders in certain nonviolent drug offenses.

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, WARNER, 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.

Before the court can even consider going below the mandatory minimum, the court would have to find that each of the following factors have been met:

First, the offense must be the defendants first felony conviction. The exception to this is if the defendant has one prior conviction which did not result in any sentence or imprisonment or incarceration, yet acts of delinquency committed by a juvenile would be considered prior convictions for purposes of this legislation.

Old convictions which did not result in a prison sentence are not counted.

Second, if the act does not result in death or serious bodily injury to any person. This would cover reasonably foreseeable acts committed by conspirators which result in death or injury, as well as serious injuries or death resulting from the use of drugs.

Third, the defendant does not carry or possess a firearm or did not carry or possess a firearm or other dangerous weapon during the course of the offense, or direct another to do so. In my view, if a defendant carried a knife or firearm, he is violent and should face the mandatory minimum penalty.

Fourth, the defendant was not an organizer, leader, manager, or supervisor as defined under existing sentencing guidelines. This ensures that a first-time offender who is nevertheless a major dealer or trafficker, would still face the mandatory minimum sentence.

Fifth, the offender was nonviolent—if he or she did not use force against the person of another during the offense. Any person who uses or credibly threatens violence should face the mandatory minimum penalty.

According to the Sentencing Commission, far less than 5 percent of mandatory minimum drug defendants will meet all of these factors. If all of these factors are met, a sentencing judge would then be permitted to apply the guidelines without being bound by the mandatory minimum.

Mr. President, I will finish the remainder of my remarks during the course of this debate.

So, at this particular point I hope that our fellow Senators will recognize the amount of effort and time and thought that has gone into the amendment that I am proposing, because I think it is the right amendment to show the necessary discretion, and yet the necessary toughness in these matters so that this bill is enhanced, not hurt by that.

So, with that, I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Madam President, I came over here, but I have not had a chance to examine, except very briefly, the Gramm amendment, and I have not had a chance to look at the Hatch amendment. We are talking about something that can affect the lives of a great many citizens in our country.

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.

The assistant legislative clerk proceeded to 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 civil and political 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, Iraq, Iran, 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 clearlywrong 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.

I could go on into other cases. 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.

I hope—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, lessened the safeguards built into the process whereby you significantly diminish the prospect that you do not put to death 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 last week that called for a 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 idea.

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 this 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 own amendment, 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 that 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, Iraq, Iran, 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 18 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 Convention of Human Rights; 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 there should be stiff and severe punishment for youths who commit these serious violent crimes that some States have chosen to reserve the death penalty for. But the idea of imposing the death penalty, to me, in these situations is outrageous. What purpose does it serve? The threat of execution, in my view, does not deter adults. Why would it deter a juvenile who is even less likely than an adult to think ahead to the consequences of his or her behavior?

I have been told by some who have worked in the environment that it is more dangerous to work in a juvenile maximum securityfacility 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 reasons and alternatives that will help 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 the death business; 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, we 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 PRESIDING OFFICER (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 cannot support it. There is one simple and very solitary 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 regard to something as important as capital 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 beltway" amendment.

Frankly, I do not think we should support an amendment that would impose upon the States this type of an obligation. I haveto say that I have some empathy for the Senator's amendment if we limit it to the Federal Government. I would probably support it if it was limited to the Federal Government. But when we start getting to the point where we start dictating to the States how they can handle these problems, 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 covenant, 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. Nevertheless, 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 offenses 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 nations 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 punishment 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 impose capital punishment on young people 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 object to is based on the principles of federalism. I object to us here in the Federal Government telling the States that they cannot do anything with regard to cleaning up crime in their own States with regard to capital punishment.

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 increasing 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 heroes 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 constitutionally.

In article I, clause 8, paragraph 10, Congress has the power to define offenses as on the basis of the law of nations.

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 offensive 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 dozens, if not 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 and do not seem to have any consideration for it.

In those situations where the crimes are particularlyheinous, where they clearly have evidence of guilt, and where there is no evidence of any 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 that important for them to do that in certain exemplary cases where it is really deserved.

So I hope our 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.

The PRESIDING OFFICER. Who yields time?

The Senator from Illinois [Mr. SIMON] is recognized.

The Senator has 5 minutes 58 seconds.

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 reinforce 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 and Iran are two of them. I do 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 not it 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-Americans, Hispanic-Americans, 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. HATCH. Mr. President, I move to table the amendment and 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. Does the Senator yield back the remaining time?

Mr. HATCH. I yield back the remainder of my time.

Mr. SIMON. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the motion to lay on the table the amendment of the Senator from Illinois. On this question, the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arizona [Mr. DECONCINI], the Senator from Indiana [Mr. DORGAN], the Senator from Hawaii [Mr. INOUYE], and the Senator from Alabama [Mr. SHELBY], are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Georgia [Mr. COVERDELL], the Senator from Texas [Mrs. HUTCHISON], and the Senator from Mississippi [Mr. LOTT], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 52, nays 41, as follows:

[Rollcall Vote No. 358 Leg.]

YEAS—52

Baucus	Gorton	Nickles
Bennett	Graham	Nunn
Bond	Gramm	Packwood
Breaux	Grassley	Pressler
Brown	Hatch	Pryor
Bryan	Heflin	Reid
Burns	Helms	Riegle
Byrd	Johnston	Roth
Cochran	Kassebaum	Sasser
Craig	Kempthorne	Simpson
D'Amato	Kerrey	Smith
Daschle	Lieberman	Specter
Dole	Lugar	Stevens
Domenici	Mack	Thurmond
Exon	Mathews	Wallop
Faircloth	McCain	Warner
Feinstein	McConnell	
Ford	Murkowski	

NAYS—41

Akaka	Durenberger	Metzenbaum
Biden	Feingold	Mikulski
Bingaman	Glenn	Mitchell
Boren	Gregg	Moseley-Braun
Boxer	Harkin	Moynihan
Bradley	Hatfield	Murray
Bumpers	Hollings	Pell
Campbell	Jeffords	Robb
Chafee	Kennedy	Rockefeller
Coats	Kerry	Sarbanes
Cohen	Kohl	Simon
Conrad	Lautenberg	Wellstone
Danforth	Leahy	Wofford
Dodd	Levin	

NOT VOTING—7

Coverdell	Hutchison	Shelby
DeConcini	Inouye	
Dorgan	Lott	

So the motion to lay on the table the amendment (No. 1132) was agreed to.

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Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1131 TO AMENDMENT NO. 1030

The PRESIDING OFFICER. The question before the Senate now is amendment No. 1131.

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 intervening action 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, one way or the other, we will have a 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 the death penalty; a Lieberman 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 on.

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 for overtime—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 aroundand 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 those.

Mr. DOLE. Will the manager 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 manager 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 stay here. 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 absence of a quorum.

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.

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 now 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 12:15, 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 30 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 tonight—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 CHAFEE, 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 debate 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.

Mr. HATCH. What I want to do is modify my amendment.

Mr. President?

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 1131, 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 life imprisonment 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 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:

"(f) 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 does not have—

"(i) more than 0 criminal history point under the sentencing guidelines; or

"(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 1365) 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 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 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) 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(f) 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, 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 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960) 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 3553(f) 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 of 1987 (Public Law 100–182; 101 Stat. 1271), as though the authority under that section had not expired.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) and any amendments to the sentencing guidelines made by the United States Sentencing Commission pursuant to subsection (b) shall apply with respect to sentences imposed for offenses committed on or after the date that is 60 days after the date of enactment of this Act. Notwithstanding any other provision of law, any defendant who has been sentenced pursuant to 3553(f) who is subsequently convicted of a violation of the Controlled Substances Act or any crime of violence for which imposition of a mandatory minimum term of imprisonment is required, he or she shall be sentenced to an additional 5 years imprisonment.

SEC. . INCREASED MANDATORY MINIMUM SENTENCES FOR CRIMINALS USING FIREARMS.

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 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 (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 such crime of violence or drug trafficking crime—

"(A) be punished by imprisonment for not less than 10 years;

"(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. . MANDATORY MINIMUM PRISON SENTENCES FOR THOSE WHO SELL ILLEGAL DRUGS TO MINORS OR WHO USE MINORS IN DRUG TRAFFICKING ACTIVITIES.

(a) DISTRIBUTION TO PERSONS UNDER AGE 18.—Section 418 of the Controlled Substances Act (21 U.S.C. 859) 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 the preceding sentence."; 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 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 this subparagraph or of section 418, 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 or of section 418, 419, or 420 (21 U.S.C. 859, 860, and 861) or a crime of violence after 2 or more prior convictions for a felony drug offense or crime of violence or for any combination thereof have become final, such person shall be sentenced to not less than 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 may be used 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 side is completely happy. 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 everybody and everyone'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 in 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, nonviolent 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.

But I do 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 guns that come across 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. President. 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 either accept it or 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 theParliamentarian, to amend the amendment that the underlying amendment, the Hatch amendment, dealt with, as Senator GRAMM'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 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. 1133

(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 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read 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:

At the appropriate place in the bill, add the following:

"SEC. . PARENTAL ACCOUNTABILITY.

(a) IN GENERAL.—Chapter 43 of title 18, United States Code, is amended by adding at the end the following new section:

"SEC. 5043. CIVIL PENALTIES FOR PARENTS OF CERTAIN JUVENILE OFFENDERS.

(a) 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

(2) if the court finds that the legal 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) may be ordered by the court to perform community service not to exceed 2 hours 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. 1134 TO AMENDMENT NO. 1133

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 read 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:

Strike all beginning on line 9 and insert in lieu thereof the following:

"(2) Except 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.

(b) EXERCISE OF PARENTAL RESPONSIBILITY.—The court may decline to enforce if it would cause undue hardship (a)(1) or to impose a fine under subsection (a)(2) if the court makes an affirmative determination that under the circumstances, the parents or legal guardians exercised reasonable care, supervision and control of the juvenile and counseled the juvenile that criminal activity is not acceptable.

(c) AMOUNT OF FINE.—

(1) MANDATORY MINIMUM.—In no case shall a fine imposed under subsection (a) be less than $100.

(2) FINANCIAL HARDSHIP.—In no case shall a fine imposed under subsection (a) be less than $500 unless the court makes a finding that a fine in that amount would impose a severe financial hardship on the family of the parent or legal guardians.

(3) If the court determines that the parents or legal guardians are not financially able to pay the fine immediately, the court may set a schedule by which the fine will be paid over time.

(d) COMMUNITY SERVICE OR PARENTING CLASSES IN LIEU OF CIVIL PENALTY.—A parent or legal guardian ordered to pay a civil penalty under this Section may petition the court to perform such community service or attend and successfully complete parenting classes, as the court determines to be appropriate, in lieu of the civil penalty.

(e) DEFINITIONS.—

(1) 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 juvenile at the time the crime was committed.

(f) TECHNICAL AMENDMENT.—The chapter analysis for chapter 403 of title 18, United States Code, is amended by adding at the end the following new item:

"5043. 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 legal 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 amendment at the desk does 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 reports that 9 percent of eighth graders 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 littering.

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:

> Age of violence—Youth Crime Is Rising Fast, And Everyone Is A Victim—More Children Are Killing Others, Or Themselves. Can Anything Be Done?

The article states that in 1991, according to the Washington State Department of Community 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 25 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 gun as the tool of choice to solve 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 can and should only be taught by parents. Justice will not prevail unless it is taught to our children.

Dr. Deborah Prothrow-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 got this kind of aggressive 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 from society, then the courts can make the parents perform community service to pay back our communities.

This is not a new or 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.

While we are debating sweeping national policy issues, it is the local cop on the beat who is actually making a difference. It is the local city council member, county official, and State Governor who is truly confronting the problem of crime. It saddens me that far too often these hallowed marble walls that surround this body seem to cut it off from the reality of life back home.

Thus I charge my colleagues, listen to the 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

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."

If we cannot hold 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 guardians 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 and successfully complete parenting classes in lieu of a monetary fine.

I yield to the Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, I thank the Senator from Arizona. We have worked well together with this concept. Essentially, it is a concept that calls for parental responsibility in the enforcement of our juvenile laws.

Essentially, this is a sanction that allows for us to use the law to bring parents into the process. So where a juvenile is charged with a crime, where there is a trial, the parents will be called on to participate in the trial. The parents will be called on to participate in the proceeding by themselves, and to—when appropriate—have responsibility for fines which may be waived in cases of undue hardship.

I urge the support of our colleagues for this parental responsibility legislation.

Mr. McCAIN. Mr. President, I again thank the Senator from Illinois. It has been a pleasure working with her. I will make an important point here. Everybody in America agrees that crime is a serious problem in our society. Everybody believes that the root cause of that is a breakdown of the family unit. What this amendment does is places responsibility on the parents of these children.

This amendment states that the responsibility for the actions of children lays in the laps of the parent. If we are going to restore the family unit, there are many steps we need to take. One of the most important is that we emphasize parental responsibility, and that is an area that we are all in agreement on. I again thank Senator MOSELEY-BRAUN for her help in this. I think she has made a significant contribution.

I understand this amendment is acceptable to the distinguished managers of the bill. I know they have many other things to do tonight. I would like to talk for a long time regarding this issue, and I know that the Senator from Illinois does, because crime committed by juveniles is affecting every aspect of my community and State, as it is hers. In the interest of time, however, I yield the floor, and I hope the managers of the bill will accept the amendment.

Mr. BIDEN. Mr. President, I understand what our distinguished colleagues are attempting to do. I think it is a worthwhile attempt. I am prepared to accept the amendment. But we should understand—and I know there is reason for the exception here—a significant number of children committing these crimes have no parents, and they are predators wandering the streets. We find, for example, in the city of New York, there are 175,000 drug-addicted children under the age of 17 who have no mother, no father, who in fact commit, on average, 200 crimes a year, and there is going to be no one to put in jail or to have community service for except these individuals. But it is a worthwhile and notable effort, as long as we do not overpromise what this will do; it will not do a whole lot, but it will do something positive. I am prepared to accept the amendment.

Mr. HATCH. Mr. President, I am also prepared to accept the amendment. I associate myself with the chairman of the committee. I appreciate what these two distinguished Senators are trying to do here this evening. I understand and I think it is a worthwhile amendment. I am prepared to accept it.

The PRESIDING OFFICER. The question is on the second-degree amendment.

The amendment (No. 1134) 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.

The PRESIDING OFFICER. The question is on amendment No. 1133, as amended.

The amendment (No. 1133), as amended, was agreed to.

AMENDMENT NO. 1131

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. HATCH. Mr. President, what is the parliamentary situation right now? Is it the Hatch-Gramm-Dole amendment?

The PRESIDING OFFICER. The Senator 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 propound a unanimous-consent agreement relative to time. I ask that on the Dole amendment relating to gangs, there be 20 minutes equally divided in the usual form, with no second-degree amendments.

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.

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 (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 NOS. 1135 THROUGH 1139

Mr. HATCH. 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 Senator from Utah [Mr. HATCH] proposes amendments numbered 1135 through 1139.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 1135

Strike Title II and insert the following:

TITLE II—DEATH PENALTY

SEC. 201. 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

"§ 3591. Sentence of death

"A defendant who has been found guilty of—

"(1) an offense described in section 794 or section 2381;

"(2) an offense described in section 1751(c), if the offense, 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

"(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—

"(A) intentionally killed the victim;

"(B) intentionally inflicted serious bodily injury that resulted in the death of the victim;

"(C) intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act; or

"(D) intentionally and specifically engaged in an act, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who 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

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is to be imposed on a defendant, the finder of fact shall consider any mitigating factor, including the following:

"(1) IMPAIRED CAPACITY.—The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform conduct 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 substantial duress, 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 the 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 TREASON.—In determining 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.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3591 (2) or (3), 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) DEATH DURING COMMISSION OF ANOTHER CRIME.—The death, or injury resulting in death, occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 32 (destruction of aircraft or aircraft facilities), section 33 (destruction of motor vehicles or motor vehicle facilities), section 36 (violence at international airports), section 351 (violence against Members of Congress, Cabinet officers, or Supreme Court Justices), an offense under section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property by explosives), section 1118 (prisoners serving life term), section 1201 (kidnaping), section 844(i) (destruction of property affecting interstate commerce by explosives), section 1116 (killing or attempted killing of diplomats), section 1203 (hostage taking), section 1992 (wrecking trains), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2381 (treason) of this title, or section 902 (i) or (n) of the Federal Aviation Act of 1958 (49 U.S.C. 1472 (i) or (n)) (aircraft piracy).

"(2) INVOLVEMENT OF FIREARM OR PREVIOUS CONVICTION OF VIOLENT FELONY INVOLVING FIREARM.—For any offense, other than an offense for which a sentence of death is sought on the basis of section 924(c), the defendant—

"(A) during and in relation to the commission of the offense or in escaping or attempting to escape apprehension used or possessed a firearm (as defined in section 921); or

"(B) has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than 1 year, involving the use or attempted or threatened use of a firearm (as defined in section 921) against another person.

"(3) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(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 escaping apprehension for the violation of the offense, knowingly created a grave risk of death to 1 or more persons in addition to the victim of the offense.

"(6) HEINOUS, 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) PROCUREMENT 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 or commit an act of terrorism.

"(10) CONVICTION FOR TWO FELONY DRUG OFFENSES.—The defendant has previously been convicted of 2 or more State or Federal 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 a sentence of 5 or more years may be imposed or had previously been convicted of engaging in a continuing criminal enterprise.

"(13) CONTINUING CRIMINAL ENTERPRISE INVOLVING DRUG SALES TO MINORS.—The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of section 408(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. 859).

"(14) HIGH PUBLIC OFFICIALS.—The defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice-President-elect, 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)(A), if the official is in the United States on official business; or

"(D) a Federal public servant who is a judge, a law enforcement officer, or an employee of a United States penal or correctional institution—

"(i) while he or she is engaged in the performance of his or her official duties;

"(ii) because of the performance of his or her official duties; or

"(iii) because of his or her status as a public servant.

For purposes of this subparagraph, a 'law enforcement officer' is a public servant authorized by law or by a Government agency 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 whether any other aggravating factor for which notice has been given exists.

"§ 3593. 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 believes that the circumstances of the offense are such that a sentence of death is justified under this chapter, the attorney shall, 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 and the victim's family, 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 amend the notice upon a showing of good cause.

"(b) 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, the judge who presided at the trial or before whom the guilty plea was entered, or 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 upon a plea of guilty;

"(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

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

"(3) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government.

A jury impaneled pursuant to paragraph (2) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—Notwithstanding rule 32(c) of 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 may include the trial transcript and exhibits. The defendant may present any information relevant to a mitigating factor. The government may present any information relevant to an aggravating factor for which notice has been provided under subsection (a). Information is admissible regardless of its admissibility under the rules governing admission of evidence at criminal trials except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, 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.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by 1 or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591(1), an aggravating factor required to be considered under section 3592(b) is found to exist; or

"(2) an offense described in section 3591 (2) or (3), an aggravating factor required to be considered under section 3592(c) is found to exist,

the jury, or if there is no jury, 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 to justify a sentence of death, 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 by unanimous vote, 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 PRECAUTION TO ENSURE AGAINST DISCRIMINATION.—In a hearing held 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 is justified, it shall not consider the race, color, religious beliefs, national origin, or sex of the defendant or of 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 may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or any victim may be.

"§ 3594. Imposition of a sentence of death

"Upon a recommendation under section 3593(e) that the defendant should be sentenced to death or life imprisonment without possibility of release, the court shall sentence the defendant accordingly. Otherwise, the court shall impose any lesser sentence that is authorized by law. Notwithstanding any other law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without possibility of release.

"§ 3595. 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.—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) DECISION AND DISPOSITION.—

"(1) The court of appeals shall address all substantive and procedural issues raised on the appeal of a sentence of death, and shall consider whether 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.

"(2) 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;

"(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 was properly preserved for appeal under the rules of criminal procedure,

the court shall remand the case for reconsideration under section 3593 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 an aggravating factor, where the 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.

"§ 3596. 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, the law of which does provide 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. A sentence of death shall not be carried out upon a person who, as a result of mental disability, lacks the mental capacity to understand the death penalty and why it was imposed on that person.

"§ 3597. Use of State facilities

"(a) IN GENERAL.—A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate 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 of corrections, the United States Department of Justice, the Federal Bureau of Prisons, or the United States Marshals Service, and no employee providing services to that department, bureau, or service under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any prosecution or execution under this section if such participation is contrary to the moral or religious convictions of the employee. In this subsection, 'participation in executions' includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.

"§ 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) and which has occurred 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 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 directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.".

(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(i) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

(4) 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;".

(5) KILLING OF 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".

(6) KIDNAPING.—Section 1201(a) of title 18, United States Code, is amended by inserting after "or for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

(7) NONMAILABLE INJURIOUS ARTICLES.—The last paragraph of section 1716 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 paragraph.

(8) PRESIDENTIAL ASSASSINATIONS.—Subsection (c) of section 1751 of title 18, United States Code, is amended to read as follows:

"(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section, shall be punished—

"(1) by imprisonment for any term of years or for life; or

"(2) if the conduct constitutes an attempt to intentionally kill the President of the United States and results 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.".

(9) WRECKING TRAINS.—The second to the last undesignated paragraph of section 1992 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.

(10) BANK ROBBERY.—Section 2113(e) of title 18, United States Code, is amended by striking "or punished by death if the verdict of the jury shall so direct" and inserting "or if death results shall be punished by death or life imprisonment".

(11) HOSTAGE TAKING.—Section 1203(a) of title 18, United States Code, is amended by inserting after "or for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

(12) MURDER FOR HIRE.—Section 1958 of title 18, United States Code, is amended by striking "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both" and inserting "and if death results, shall be punished by death or life imprisonment, or shall be fined not more than $250,000, or both".

(13) RACKETEERING.—Section 1959(a)(1) of title 18, United States Code, is amended to read as follows:

"(1) for murder, by death or life imprisonment, or a fine of not more than $250,000, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine of not more than $250,000, or both;".

(14) GENOCIDE.—Section 1091(b)(1) of title 18, United States Code, is amended by striking "a fine of not more than $1,000,000 or imprisonment for life," and inserting ", where death results, by death or imprisonment for

life and a fine of not more than $1,000,000, or both;".

(15) CARJACKING.—Section 2119(3) of title 18, United States Code, is amended by striking the period after "both" and inserting ", or sentenced to death.".

(b) CONFORMING AMENDMENT TO FEDERAL AVIATION ACT OF 1954.—Section 903 of the Federal Aviation Act of 1958 (49 U.S.C. 1473) is amended by striking subsection (c).

SEC. 204. APPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE.

Chapter 228 of title 18, United States Code, as added by this title, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801).

SEC. 205. DEATH PENALTY FOR MURDER BY A FEDERAL PRISONER.

(a) IN GENERAL.—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 any Federal prison, Federal correctional facility, Federal community program 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 commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1118. Murder by a Federal prisoner.".

SEC. 206. DEATH PENALTY FOR CIVIL RIGHTS MURDERS.

(a) CONSPIRACY AGAINST RIGHTS.—Section 241 of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting ", or may be sentenced to death.".

(b) DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.—Section 242 of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting ", or may be sentenced to death.".

(c) FEDERALLY PROTECTED ACTIVITIES.—Section 245(b) of title 18, United States Code, is amended in the matter following paragraph (5) by inserting ", or may be sentenced to death" after "or for life".

(d) DAMAGE TO RELIGIOUS PROPERTY; OBSTRUCTION OF THE FREE EXERCISE OF RELIGIOUS RIGHTS.—Section 247(c)(1) of title 18, United States Code, is amended by inserting ", or may be sentenced to death" after "or both".

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, by a sentence of death or life imprisonment as provided under section 1111, or, in the case of manslaughter, a sentence as provided under section 1112.".

SEC. 208. NEW OFFENSE FOR THE INDISCRIMINATE USE OF WEAPONS TO FURTHER DRUG CONSPIRACIES.

(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 403(c) of the Controlled Substances Act (21 U.S.C. 848(c));

"(2) a conspiracy to distribute controlled substances punishable under section 406 of the Controlled Substances Act (21 U.S.C. 846) section 1013 of the Controlled Substances Import and Export Control Act (21 U.S.C. 963); and

"(3) an offense involving major quantities of drugs and punishable under section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) or section 1010(b)(1) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)).

"(b) OFFENSE AND PENALTIES.—(1) A person who, in furtherance or to escape detection of 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, 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 both.

"(2) A person who, in furtherance or to escape detection of a major drug offense and with the intent to intimidate, harass, injure, or maim, fires a weapon into a group of 2 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, fined under this title, or both; or

"(B) is a murder other than a first degree murder (as defined in section 1111(a)), be fined under this title, imprisoned for any term of years or for life, or both.".

(c) TECHNICAL AMENDMENT.—The chapter analysis for chapter 2 of title 18, United States Code, is amended by adding at the end the following new item:

"36. Drive-by shooting.".

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:

"§ 1118. Foreign murder of United States nationals

"(a) DEFINITION.—In this section, 'national of the United States' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

"(b) OFFENSE.—A person who, being a national of the United States, kills or attempts to kill a national of the United States while such national is outside the United States but within the jurisdiction of another country shall be punished as provided under sections 1111, 1112, and 1113.

"(c) LIMITATIONS ON PROSECUTION.—(1) No prosecution may be instituted against any person under this section except upon the written approval of the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, which function of approving prosecutions may not be delegated. No prosecution shall be approved if prosecution has been previously undertaken by a foreign country for the same conduct.

"(2) No prosecution shall be approved under this section unless the Attorney General, in consultation with the Secretary of State, determines that the conduct took place in a country in which the person is no longer present, and the country lacks the ability to lawfully secure the person's return. A determination by the Attorney General under this paragraph is not subject to judicial review.".

(b) TECHNICAL AMENDMENTS.—(1) Section 1117 of title 18, United States Code, is amended by striking "or 1116" and inserting "1116, or 1118".

(2) The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1118. Foreign murder of United States nationals.".

SEC. 210. DEATH PENALTY FOR RAPE AND CHILD MOLESTATION MURDERS.

(a) OFFENSE.—Chapter 109A of title 18, United States Code, is amended—

(1) by redesignating section 2245 as section 2246; and

(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, is amended by striking the item for section 2245 and inserting the following:

"2245. Sexual abuse resulting in death.

"2246. Definitions for chapter.".

SEC. 211. DEATH PENALTY FOR SEXUAL EXPLOITATION OF CHILDREN.

Section 2251(d) of title 18, United States Code, is amended by adding at the end the following: "Whoever, in the course of an offense under this section, 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.".

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:

"§ 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 the person was confined under a sentence for a term of life imprisonment, kills another shall be punished as provided in sections 1111 and 1112.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, as amended by section 109(b)(2), is amended by adding at the end the following new item:

"1119. Murder by escaped prisoners.".

SEC. 213. DEATH PENALTY FOR GUN MURDERS DURING FEDERAL CRIMES OF VIOLENCE AND DRUG TRAFFICKING CRIMES.

Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(i) 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—

"(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

"(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.".

SEC. 214. HOMICIDES AND ATTEMPTED HOMICIDES INVOLVING FIREARMS IN FEDERAL FACILITIES.

Section 930 of title 18, United States Code, is amended—

(1) by redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (f), and (g), respectively;

(2) in subsection (a) by striking "(c)" and inserting "(d)"; and

(3) by inserting after subsection (b) the following new subsection:

"(c) 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 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: ": *Provided further*, That if during and in relation to an offense described in paragraph (1) the person causes serious bodily injury to, or places in jeopardy the life of, any alien, such person shall be subject to 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.".

AMENDMENT NO. 1136

(Purpose: To limit participation in the drug court program under title XI of the bill to nonviolent offenders)

On page 260, strike line 15 and all that follows through page 262, line 11, and insert the following:

SEC. 1201. COORDINATED ADMINISTRATION OF PROGRAMS.

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) identify related governmental 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 by grantees, recordkeeping by grantees, and access to books, records, and documents maintained by grantees or other persons for purposes of audit or examination.

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.

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, in addition to any evaluations that grantees may be required to carry out pursuant to subsection (b).

USE OF COMPONENTS.—The Attorney General may utilize any component or components of the Department of Justice in carrying out this section or other provisions of this title, or in coordinating activities under the programs authorized by this title.

GAO STUDY.—

IN GENERAL.—The Comptroller General of the United States shall study and assess the effectiveness and impact of grants authorized by this title and report to Congress the results of the study on or before January 1, 1997.

(2) DOCUMENTS AND INFORMATION.—The Attorney General and grant recipients shall provide the Comptroller General with all relevant documents and information that the Comptroller General deems necessary to conduct the study under paragraph (1), including the identities and criminal records of program participants.

(3) CRITERIA.—In assessing the effectiveness of the grants made under programs authorized by this title, the Comptroller General shall consider, among other things—

(A) recidivism rates of program participants;

(B) completion rates among program participants;

(C) drug use by program participants; and

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

(f) DEFINITION.—In this title, "violent offender" means a person charged with or convicted of an offense (or charged with or adjudicated as a delinquent by reason of conduct that, if engaged in by an adult would constitute an offense), during the course of which offense of conduct—

(1) 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 deliquent.

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. Nearly one in four State prison inmates have participated in a drug treatment program before entering prison. [Bureau of Justice Statistics, Survey of State Prison Inmates, 1991.]

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 programs might be ripe for abuse. 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 unproven and largely anecdotal. At least 40 percent of offenders completing the program in Dade County, Florida, has been rearrested. 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 you throw the offenders back 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 Coale, 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 holds 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 recidivists. [Los Angeles Times, May 17, 1993.] Thus, alternative sanctions—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.] Over a fourth of those who escape are never caught. Those who are caught are often arrested for other crimes. The poor capture rate is not surprising considering reports that it takes the corrections department an average of 9 weeks to obtain arrest warrants for escapees. [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 35-year-old man who escaped from a halfway house in June has been 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 suspects 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 owner during a robbery.

In May, a 33-year-old man was charged with the kidnaping and rape of a 74-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 out 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—off the streets. If a proposal 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 2 and all that follows through page 310, line 7, 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)(9) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended to read as follows:

"(9) 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 1501(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".

SEC. 1402. RURAL CRIME AND DRUG ENFORCEMENT TASK FORCES.

(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this Act, tne 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 lands. Asset 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 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, 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 1502(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 lands and title 18 of the United States Code to the extent necessary to effect the purposes of this Act.

(b) ADEQUATE STAFFING.—The Attorney General shall, subject to the availability of appropriations, ensure that each of the task forces established in accordance with this title are adequately staffed with investigators and that additional investigators are provided when requested by the task force.

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 agencies in the investigation of drug trafficking and related crimes.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out subsection (a) $1,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.

SEC. 1405. MORE AGENTS FOR THE DRUG ENFORCEMENT ADMINISTRATION.

There are authorized to be appropriated for the hiring of additional Drug Enforcement Administration agents $20,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.

DRUG CONTROL AND RURAL CRIME

Mr. HATCH. Mr. President, more 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 13 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 35 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 District of Columbia, 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, these are alarming figures which demonstrate that rural America needs relief.

Utah has a growing problem of youth gangs, who are coming to Salt Lake City from California and bringing their 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 the Crips are present.

We know that much of the crime and violence we face is fueled by illegal drugs. In addition to the pernicious effects 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. Weiner, M. Wolfgang eds., 1989. Studies bear out these possibilities, and demonstrate a direct nexus between illegal drugs and crimes of violence. See generally id., at 16–48.

For example, 57 percent of a national sample of males 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 a national problem on our hands 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 war on too many fronts. While giving Director Brown a paper promotion to Cabinet level, this administration has slashed the drug czar's office to the bone—from 146 positions to 25. It has sought to cut funding in the drug war. It has recommended eliminating the Drug Enforcement Agency, which has a proven track record of success. Budget allocations for prosecutors have been reduced, prison construction is being cut, and it appears interdiction efforts will be cut back. The administration has been inadequate on both demand and supply reduction.

Finally 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 various Clintonadministration proposals 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 presences, 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 decline of drug use 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 havefocused on the crime in more urban areas. Yet, rural States problems need greater Federal attention. The number of Federal prosecutors and law enforcement agents 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 busted 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 5 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 rural crime and drug enforcement 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 andlocal 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 agencies 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 help 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 civility 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 suburban 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 calls 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 maintain their ability 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 Senate. I am glad to join with my colleagues in cosponsoring this important amendment.

AMENDMENT NO. 1139

(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. 1031. IMPROVED TRAINING AND TECHNICAL AUTOMATION.

(a) GRANTS.—

(1) IN GENERAL.—The Attorney General shall, subject to the availability of appropriations, make grants to units of State and local law enforcement for the purposes of improving law enforcement agency efficiency through computerized automation and technological improvements.

(2) TYPES OF PROGRAMS.—Grants under this section may include programs to—

(A) increase use of mobile digital terminals;

(B) improve communications systems;

(C) accomplish paper-flow reduction;

(D) establish or improve ballistics identification programs;

(E) increase the application of automated fingerprint identification systems and their communications on an interstate and intrastate basis and

(F) improve computerized collection of criminal records.

(3) No fund under this subtitle may be used to implement a cryptographic or digital telephone programs.

(b) TRAINING AND INVESTIGATIVE ASSISTANCE.—

(1) IN GENERAL.—The Attorney General shall, subject to the availability of appropriations—

(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 of violent serial crimes.

(2) IMPROVEMENT OF FACILITIES.—The improvement described in subsection (a) shall include improvements of the training facilities of the Federal Bureau of Investigation Academy at Quantico, Virginia.

(3) 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 Violent Criminal Apprehension Program.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal year 1994—

(1) $100,000,000 to carry out subsection (a);

(2) $40,000,000 to carry out subsection (b)(1)(A); and

(3) $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 $150 million 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 out from behind their desks. 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 some of the resources it needs to do so. This grant program provides $100 million for programs to improve law enforcement efficiency through technological improvements. Funds can be used to purchase mobil 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 have enhanced the quality of investigative and operation techniques of law enforcement. The academy also provides, at regional locations, specialized and technical training to approximately 150,000 police officers everyyear. Virtually every community in America benefits directly from the training conducted at the National Academy.

At Quantico, the FBI also runs the National Executive Institute which trains new police executives, chiefs, commanders, and other high level administrators, on important management techniques. Chief Ruben Ortega of the Salt Lake City Police Department attended the National Executive Institute and has told me that it is one of the finest management law enforcement programs he has ever participated in. Chief Ortega shares my view that the FBI, through its various training programs at Quantico, has improved the efficiency and quality of police departments nationwide.

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 investigate violent serial crimes. The National Center for the Analysis of Violent Crime, through its VICAP program [Violent Criminal Apprehension Program], is blazing new trails into the field of law enforcement behavioral sciences. Their expertise is profiling and assisting the States in their investigation of serial crimes is unmatched.

My amendment directs the Department to build upon the work being done by the center. The amendment establishes a pilot program which will consolidate the knowledge and expertise of those who work in this field into an artificial intelligence system which can better provide investigative support to State and local officials investigating violent serial crimes. At the outset, only 10 cities will participate. If it works, and I believe it will, the program could be expanded nationwide.

I believe that we must begin to link the abilities and resources of our serial crime investigators at the State level. We must improve the delivery of the intelligence and expertise which has been endowed upon the national center. In my view, for a relatively small investment, the national center has the potential to prevent an untold number of serial crimes and assist in the apprehension of those responsible for these reprehensible crimes.

In closing, this amendment is an investment for the future. The Hatch amendment furthers the interest of improving the efficiency, training, and delivery of services of our Nation's nearly 550,000 police officers.

For these reasons, I urge my colleagues to support this amendment.

Mr. President, this package of amendments includes the following.

No. 1, a Biden-Hatch amendment (No. 1135) which improves the death penalty procedures.

No. 2, a Hatch amendment (No. 1136) to prohibit violent offenders from participating in the drug courts program.

No. 3, a Hatch amendment (No. 1137) to lower the age of eligible participants in the drug courts alternative sanctions program from individuals who are 28 or younger to 25 or younger.

No. 4, a Hatch-Biden-Pressler-Kempthorne-Leahy amendment (No. 1138) on—I understand Senator LEAHY is on that—am I right on that? A Hatch-Pressler-Kempthorne amendment on rural crime control.

And, No. 5, a Hatch amendment (No. 1139) on funding for technological improvements for law enforcement, for improvements to Quantico and a pilot serial crimes program.

Mr. President, these are excellent amendments that I think will strengthen this package. In particular, we have worked hard to improve the death penalty procedures, and I want to compliment my distinguished colleague from Delaware for his energetic and very persuasive improvements and approaches to this particular subject. We have worked hard, I think, to bring both sides together. I believe this amendment does it.

With regard to amendment No. 2, the same thing applies; the same with amendment No. 3.

The rural crime control amendment is one I am particularly proud of because we have rural crime all over this country and we are not giving much, other than lip service, to it. This amendment will provide for a whole raft of help to people in the rural areas and to State anticrime facilities and personnel in rural areas, to help bring down rural crime and keep it under control.

With regard to No. 5, the amendment for technological improvements for law enforcement and for improvements at Quantico, the Quantico Police Academy is the single most important police academy training program for law enforcement officials all over the world. It is a unique program. They have their own city down there. They need to have their own courts, their own jails, everything to provide for actual training of law enforcement personnel in how to handle all kinds of situations as they arise.

In addition, the pilot serial crimes program, which applies to the psychiatric section down there, is one of the most important programs I can think of, because that particular section is having a real, dramatic impact in helping State and local law enforcement people and Federal law enforcement people all over this country. So we provide for specific moneys from an authorizing standpoint to that as well.

It is about time that we have, because they are doing some remarkable things that can help to dampen some of the criminal activities in this country, and even in a greater way than they are right now.

So, Mr. President, I am very proud to submit this package. We are prepared to move this.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I will be very brief. Let me say the underlying Biden bill, the crime bill, has death penalties procedures changes in it, and safeguards built in. The Senator from Utah raised some legitimate concerns. We amended it in several ways.

Second, with regard to the drug courts, which is contained in the underlying bill, that is a $1 billion-plus piece of this bill. There are two amendments that clarify the intent of the drug court program, which I believe is already clear, but my colleague from Utah wanted to see some more clarification.

On rural crime, we have a major chunk for rural crime in the bill already, but under the leadership of the Senator from Utah, he has beefed it up considerably in terms of the moneys that are allocated to rural crime in particular, and the allocation to drug enforcement agencies to deal with the drug problem.

I think they are very valuable additions to the bill, also the law enforcement technology in Quantico. This is a brand new addition. I think the Senator is absolutely right. I think it should be in the bill.

I urge the package of the amendments that are before the Senate.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the en bloc amendments.

The amendments (Nos. 1135 through 1139) were agreed to en bloc.

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.

The PRESIDING OFFICER. The Republican leader is recognized.

AMENDMENT NO. 1140

(Purpose: To substitute provisions relating to gangs, juveniles, drugs, and prosecutors)

Mr. DOLE. 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 Kansas [Mr. DOLE] for himself and Mr. HATCH, proposes an amendment numbered 1140.

Mr. DOLE. 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 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".

Subtitle A—Criminal Youth Gangs

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 gangs.
"1931. Prohibited activity.
"1932. Penalties.
"1933. Investigative authority.

"§ 1930. Crimes in furtherance of gangs

"(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.

"(2) The major activities of criminal street gangs are crimes of violence and the distribution and use of illegal drugs. It is through these activities that criminal street gangs directly affect interstate and foreign commerce, even when their particular activities, viewed in isolation, appear to be purely intrastate in character.

"(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 execution the powers of Congress to regulate commerce and to establish criminal law.

"§ 1931. Prohibited activity

"(a) DEFINITIONS.—In this chapter—

"'criminal street gang' means an organization 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, with a purpose that any of those persons alone, or in any combination, commit or will commit, 2 or more predicate gang crimes, 1 of which must occur after the date of enactment of this chapter and the last of which occurred within 10 years (excluding any period of imprisonment) after the commission of a prior predicate gang crime.

"'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—

"(A) any act or threat, or attempted act or threat, which is chargeable under Federal or State law and punishable by imprisonment for more than 1 year, involving murder, attempted murder, kidnapping, robbery, extortion, arson, obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or manufacturing, importing, receiving, concealing, purchasing, selling, possessing, or otherwise dealing in a controlled substance or controlled substance analogue (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(B) any act punishable by imprisonment for more than 1 year under section 922 or 924 (a)(2), (b), (c), (g), or (h) (relating to receipt, possession, and transfer of firearms), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1512 (relating to tampering with a witness, victim, or informant), or section 1513 (relating to retaliating against a witness, victim, or informant); or

"(C) any act punishable under subsection (b)(5).

"'State' means a State, the District of Columbia, and any commonwealth, territory, or possession of the United States.

"(b) UNLAWFUL ACTS.—It shall be unlawful—

"(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 participate, or attempt to participate, in a criminal street gang, or 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 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

"(5) to use any communication facility, as defined in section 403(b) of the Controlled Substances act (21 U.S.C. 843(b)), in causing or facilitating the commission, or attempted 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.

"§ 1932. Penalties

"(a) PENALTIES OF UP TO 20 YEARS OR LIFE IMPRISONMENT.—A person who violates section 1931(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 includes life imprisonment, and if a person commits such a violation after 1 or more prior convictions for such a predicate gang crime, that is not part of the instant violation, such person shall be sentenced to a term of imprisonment which shall not be less than 10 years and which may be for any term of years exceeding 10 years or for life.

"(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 10 years. A term of imprisonment under this subsection shall run consecutively to any other term of imprisonment, including that imposed for any other violation of this chapter.

"(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) IN GENERAL.—In addition to the other penalties authorized by this section—

"(A) a person who violates section 1931(b) (1) or (2), 1 of whose predicate gang crimes involves murder or conspiracy to commit murder which results in the taking of a life, and who commits, counsels, commands, induces, procures, or causes that murder, shall be punished by death or by imprisonment for life;

"(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 sentenced to a term of imprisonment which shall not be less than 20 years and which may be for any term of years exceeding 20 years or for life; and

"(C) a person who violates section 1931(b) (1) or (2), and who at the time of the offense occupied a position of organizer or supervisor, or other position of management in that street gang, shall be sentenced to a term of imprisonment which shall not be less than 15 years and which may be for any term of years exceeding 15 years or for life.

"(2) PRESUMPTION.—For purposes of paragraph (1)(C), if it is shown that the defendant counseled, commanded, induced, or procured 5 or more individuals to participate in a street gang, there shall be a rebuttable presumption that the defendant occupied a position of organizer, supervisor, or other position of management in the gang.

"(e) FORFEITURE.—

"(1) IN GENERAL.—A person who violates section 1931(b) (1) or (2) shall, in addition to any other penalty and irrespective of any provision of State law, forfeit to the United States—

"(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as a result of the violation; and

"(B) any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the violation.

"(2) APPLICATION OF CONTROLLED SUBSTANCES ACT.—Section 413 (b), (c), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), and (p) of the Controlled Substances Act (21 U.S.C. 853 (b), (c), and (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), and (p)) shall apply to a forfeiture under this section.

(c) SENTENCING GUIDELINES INCREASE FOR GANG CRIMES.—The United States Sentencing Commission shall at the earliest opportunity amend the sentencing guidelines to increase by at least 4 levels the base offense level for any felony committed for the purpose of gaining entrance into, or maintaining or increasing position in, a criminal street gang. For purposes of this subsection, "criminal street gang" means any organization, or group, of 5 or more individuals, whether formal or informal, who act in concert, or agree to act in concert, for a period in excess of 30 days, with the intent that any of those individuals alone, or in any combination, commit or will commit, 2 or more acts punishable under State or Federal law by imprisonment for more than 1 year.

SEC. 612. CRIMES INVOLVING THE USE OF MINORS AS RICO PREDICATES.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or" before "(E)"; and

(2) by inserting before the semicolon at the end of the paragraph the following: ", or (F) any offense against the United States that is punishable by imprisonment for more than 1 year and that involved the use of a person below the age of 18 years in the commission of the offense".

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" at the end of clause (i);

(2) by striking "and" at the end of clause (ii) and inserting "or"; and

(3) by adding at the end the following:

"(iii) any act of juvenile delinquency that if committed by an adult would be a serious drug offense described in this paragraph; and".

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), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3)),," and inserting "an offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844, or 846), section 1002(a), 1003, 1005, 1009, 1010(b)(1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C.

952(a), 953, 955, 959, 960(b)(1), (2), or (3), or 963),"; and

(B) by striking "922(p)" and inserting "924(b), (g), or (h)";

(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), or 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 offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), 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 924(b), (g), or (h) of this title,"; and

(B) by striking "subsection (b)(1)(A), (B), or (C), (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 "or an offense (or conspiracy or attempt to commit an offense) described in section 401(b)(1)(A), (B), or (C), (d), or (e), or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), (B), or (C), (d), or (e), 844, 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 at the end 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 preclude such a transfer.".

SEC. 615. INCREASED PENALTIES FOR EMPLOYING CHILDREN TO DISTRIBUTE DRUGS NEAR SCHOOLS AND PLAYGROUNDS.

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 official,

is punishable by a term of imprisonment, a fine, or both, up to triple those authorized by section 401.".

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 TRAVEL ACT CRIMES INVOLVING VIOLENCE AND CONSPIRACY TO COMMIT CONTRACT KILLINGS.

(a) TRAVEL ACT PENALTIES.—Section 1952(a) of title 18, United States Code, is amended by striking "and thereafter performs or attempts 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 five years, or both." and inserting "and thereafter performs or attempts to perform—

"(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned 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) MURDER CONSPIRACY PENALTIES.—Section 1958(a) of title 18, United States Code, is amended by inserting "or who conspires to do so" before "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) 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, 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 a juvenile delinquency proceeding or 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 BYRNE 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" 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 PROSECUTORS.

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 violent youth gangs.

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 gang-related 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 FUNDING FORMULA.

Section 504(a)(1) of title I of the Omnibus Crime and Safe Streets Act of 1968 (42 U.S.C. 3754(a)(1)) is amended by striking "1992" and inserting "1993".

SEC. 624. GRANTS FOR MULTIJURISDICTIONAL DRUG TASK FORCES.

Section 504(f) of title I of the Omnibus Crime and Safe Streets Act of 1968 (42 U.S.C. 3754(f)) is amended by inserting "and gang" after "Except for grants awarded to State and local governments for the purpose of participating in multijurisdictional drug".

Subtitle C—Antigang Provisions

SEC. 631. GRANT PROGRAM.

Part B of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5631 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-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 juveniles.

"(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 juveniles in drug-related crimes (including drug trafficking and drug use), particularly in and around elementary and secondary schools.

"(2) To reduce juvenile involvement in organized crime, drug and gang-related activity, particularly activities that involve the distribution of drugs by or to juveniles.

"(3) To develop within the juvenile justice system, including the juvenile corrections system, innovative means to address the problems of juveniles convicted of 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 personnel and agencies responsible for the adjudicatory and corrections components of the juvenile justice system to—

"(A) identify drug-dependent or gang-involved juvenile offenders; and

"(B) provide appropriate counseling and treatment to such offenders.

"(7) To promote the involvement of all juveniles in lawful activities, including in-school and after-school programs for academic, athletic, or artistic enrichment 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 through programs establishing 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 drug-dependent juvenile mothers.

"(11) To provide education and treatment programs for juveniles exposed to severe violence in their homes, schools, or neighborhoods.

"(12) To establish sports mentoring and coaching programs in which athletes serve as role models for juveniles to teach that athletics provides a positive alternative to drug and gang involvement.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 232. There are authorized to be appropriated $100,000,000 for fiscal year 1994 and such sums as are necessary for fiscal year 1995 to carry out this subpart.

"ALLOCATION OF FUNDS

"SEC. 233. The amounts appropriated for this subpart for any fiscal year shall be allocated as follows:

"(1) $500,000 or 1.0 percent, whichever is greater, shall be allocated to each of the States.

"(2) Of the funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount that bears the same ratio to the amount of remaining funds described in this paragraph as the population of juveniles residing in the State bears to the population of juveniles residing in all the States.

"APPLICATION

"SEC. 234. (a) IN GENERAL.—Each State or entity applying for a grant under section 231 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 subpart I of this part and subpart II of part C, including the regulations relating to competition.".

SEC. 632. CONFORMING REPEALER AND AMENDMENTS.

(a) REPEAL OF PART D.—Part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5667 et seq.) is repealed, and part E of title II of that Act is redesignated as part D.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 291 of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671) is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking "(1)" and by striking "(other than part D)"; and

(B) by striking paragraph (2); and

(2) in subsection (b) by striking "(other than part D)".

Mr. DOLE. Mr. President, I ask there be 30 minutes equally divided on the amendment.

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

Mr. DOLE. It may not take 30 minutes. I know the Senator from Connecticut is ready to go. It may be acceptable.

The PRESIDING OFFICER. Without objection, the pending amendment of the Senator from Texas will be set aside.

Mr. DOLE. Mr. President, I am pleased to join with my distinguished colleague, Senator HATCH, in offering this amendment to address the rising level of gang-related violence in our country.

In fact, not long ago, the Washington Post ran a front page story on the problem of youth gangs in Wichita, KS. Anytime that crime in Wichita, KS, is front page news in Washington, you know there is a big problem out there. It is not just in the cities, it is everywhere.

In my own State of Kansas, gang activity is on the rise, not only in Wichita, but in Topeka and Kansas City as well.

The Kansas Bureau of Investigation has identified 2,895 gang members in the State. And if you include those who call Kansas City, MO, their home, the number of gang members wreaking havoc in Kansas exceeds 3,300.

This amendment takes a balanced approach—focusing both on law enforcement and prevention. It was crafted with the assistance of the Justice Department during the Bush administration, and with the help of Federal prosecutors who are on the front lines in the war against violent crime. The amendment reflects the antigang provisions of the Neighborhood Security Act, which Senate Republicans introduced earlier this year.

On the law enforcement side, the amendment would give Federal prosecutors clear-cut authority to prosecute illegal gang activity by creating a new Federal antigang statute.

The amendment specifically makes it a Federal criminal offense to commit, or attempt to commit, a predicate gang crime with the intent to promote or further a criminal street gang. The amendment defines predicate gang crime as any act, or attempted act, which is chargeable under Federal or State law and punishable for imprisonment for more than 1 year, involving murder, attempted murder, kidnaping, 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.

I might say 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 tough mandatory minimum penalties would apply to those who violate these provisions of the new Federal antigang statute.

The amendment also 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 presumption in favor of adult prosecution of 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. Moneys 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 coddle gang members, but to help them get on the right path through mentoring, role-model, 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 our streets. 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 stick with it, and let us pass a tough 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 Los 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 my State. According to the Salt Lake Area Gang Project, a multijurisdictional task force created in 1989 to fight gang crime in the Salt Lake area, there are at least 215 identified gangs in our region with over 1,700 members. That is hard to believe, but that is true.

The project informs me that gang-related crime incidents have risen from 388 in 1991 to over 3,100 in the first 7 months of this year. While many of these offenses are property crimes, I have to say assaults and shootings continue to grow as well. In fact, there were over 62 drive-by shootings and 3 homicides attributable to gang violence in Utah in the first 7 months of this year.

Juvenile involvement in Utah's gangs is substantial, accounting for 34 percent of gang membership, and members usually range from 15 to 22 years of age. The young people of our inner cities need to be steered away from gang involvement. As well, law enforcement needs tools to intervene early in the lives of these troubled minors. Gang intervention efforts are critical to the Salt Lake Valley, the entire State of Utah and, frankly, to every State of the Union. That is why we need to ensure continued funding for projects like the Salt Lake Area Gang Project.

The project has worked to interdict gang activity, mobilize communities, and provide gang intelligence to police agencies. Salt Lake City, Sandy City, Murray City, and other surrounding cities all contribute manpower to this effort. The Hatch-Dole amendment ensures continued funding for this 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 makes it a Federal offense to engage in gang-related crime 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 Racketeering 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 crimes.

Our amendment also provides for adult 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 of the States 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 juveniles residing in the 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 to be of any practical use to 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 bindover 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 jails, and make schools 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 am unaware of a single State 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

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 federalizing 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 40-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 62 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 in the Senate. The more conservative you are and the more Republican you are, the more you want to eliminate federalism and States rights. It is a phenomenal and fascinating undertaking 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 them how they should act is in terms of education and in terms of 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, counterproductive. First, Senators HATCH and DOLE provide 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 investigating and prosecuting complex multi-State, 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 targets such significant aid to local police.

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 prosecute 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 the community, 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 very badly, put Federal agents on the street in these local communities, and make them Federal crimes?

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 officers. On top of that, we are going to federalize these crimes.

Why would you have a burglary committed 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.

Let us keep the 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 kidnapping, robbery, attempted robbery, extortion, attempted extortion, arson, 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 out while someone else buys drugs 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 5 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 5 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 and sentenced as adults.

So my bill provides that grants could be made to States to bind over programs to treat 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 sense of helplessness 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. MATHEWS). 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.

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.

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 is 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 time agreement on that 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 ", possessing a firearm as defined in section 921 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 this bill.

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 pleased that the chairman of the Judiciary Committee 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 heinous 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 provide that if a 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 carjacked car, leaving her house in her neighborhood. As I recall, she was stopped at a stop sign and individuals ran out and carjacked the car, not even aware, as I recall—although I am not sure—that there was an infant in the car. And the mother, as the car pulled away, doing what any of us would do, terrified about what would happen to her child, grabs onto the 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.

Ironically, 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 wasused, 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 of our cities and towns 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 idle 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.

For example, in Hartford, CT, a woman was dragged along the streets as she clung to her car in which her small children were strapped, an experience painfully similar to that tragedy in suburban Maryland.

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, woke to the sound of carjackers smashing 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 but all 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 need to know 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 PRESIDING OFFICER. The Senator from Delaware.

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 this debate.

The truth of the matter is every one 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 chairman 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—what we are responding to is the lack of faith, 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 constitutionally some nexus between the thing out there that we are trying to outlaw 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 a local problem.

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 therequirement of 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. Right now, if there is 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 I came here over 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 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.

This is the last point I will 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, because at least he still has the car 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."

I 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 the crime. That is not something of consequence, in my view, that we are doing in this bill. What we are doing of consequence in this bill is we are providing 100,000 local police officers; we are providing 6 billion dollars' worth of help to the States in order to house violent criminals; 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 my violence-against-women legislation, all of which is significant in a big, big, big way.

But I hope no one thinks 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 Federal Government. 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 the 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.

Let me give the Senator 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. The 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, halfway—is the last good train to leave, I often drive home, because I occasionally have a car down here.

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 on the lights. If I can see a 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 at 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 all the help that is here in Washington, when I drive my automobile home, riding through the neighborhoods, I must go through to get to I-95, if I do not let my car ever come to a full stop—and I am hopefully still an able-bodied person in a position to handle myself relatively well—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 or works in those neighborhoods? 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. I get a room in one of those 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 park land,beautiful, stately Federal buildings owned by and revered 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 gutter, 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 Sergeant at Arms. They insisted I go down. The former Capitol Hill policeman driving me down told me that, on his way home in his neighborhood, he stopped 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 police officer—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 old rule of giving 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 work with him—always thoughtful, always eloquent, 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 it cannot go 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 that on 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 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. 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. Thank you, Mr. President.

I yield the floor.

AMENDMENT NO. 1142

(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 Program)

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.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. DOMENICI, proposes an amendment numbered 1142.

Mr. HATCH. 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:

SECTION 1. DRIVING WHILE INTOXICATED PROSECUTION PROGRAM.

Section 501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751), as amended by section 621, is amended—

(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 other 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 Bryne 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 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.

Mr. LIEBERMAN. 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. 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.

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. I thank the Chair and thank the Senator from Delaware.

AMENDMENT NO. 1143

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 Senator from Connecticut [Mr. LIEBERMAN] proposes an amendment numbered 1143.

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. . 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.—

(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 officers 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, States, or the District of Columbia may submit a joint 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 tosave 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 mignitude 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 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 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 timetables; 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 receiving the 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, supplies, facilities, financial assistance, 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; and

(h) DURATION OF FEDERAL ASSISTANCE.—

(1) IN GENERAL.—Federal assistance under this section shall not be provided to a Violent Crime or Drug Emergency Area for more than 1 year.

(2) 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) 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) NO EFFECT ON EXISTING AUTHORITY.—Nothing in this Section shall diminish or detract from existing authority possessed by the President or Attorney General.

Mr. LIEBERMAN. Mr. President, this amendment would give the mayors and Governors of our country, chief elected officials of States and localities, the opportunity to petition the President of the United States to declare a violent crime or drug emergency in their States or locality, making them eligible for special Federal assistance to fight back against local crime problems that have simply gone beyond their ability in the short term to control.

Crime is reaching unprecedented levels across our Nation. Over the past three decades, the number of crimes reported has increased from one crime per police officer in 1961 to five crimes per officer in 1991. The rise in the number of violent crimes has been particularly shocking. Violent crimes rose 14 percent between 1980 and 1988, and then 23 percent between 1988 and 1991. In addition, during the last 4 years, rapes have jumped 17 percent, robberies 33 percent, and aggravated assaults 28 percent.

Even more startling and disturbing is the callous disregard for human life which is evidenced in existing data on crime. Last year, 24,000 Americans were murdered, many in drug and gang-related activities.

We clearly must do everything in our power to reverse these disturbing trends. Crime is literally ripping apart the social fabric of our communities. As noted, in the Public Policy Institute's "Mandate for Change, crime * * * turns strangers into enemies, unfamiliar ground into dangerous turf, and random social contact into risky business. When crime afflicts a neighborhood, those who can avoid it, stay away; those who cannot, suffer alone. The former become isolated, the latter abandoned."

So many of our neighbors, particularly our elderly citizens, are prisoners in their homes, especially at night, when the world outside becomes a forbidden zone. Just glance at the news on any given night reveals this growing madness in our society.

During the last several months, I travelled throughout my home State of Connecticut and met with police, prosecutors, prison officials, community officials, and countless citizen to discuss the problem of crime and Government's response to it. The underlying message conveyed to me in these meetings was the public's fear and yearning for Government to secure and protect their personal safety.

We in Congress have a special responsibility to take crime seriously and return to the public the sense of security that has been snatched from them in recent years. Indeed, we have a constitutional responsibility to ensure domestic tranquility. We must restore their faith in Government's ability and capacity to deal effectively with the crime problem. I believe my amendment takes an important step in that direction by increasing Federal support for the war on crime.

Mr. President, there are times and places when criminals get the upper hand in a neighborhood or a city, and local and State authorities do not have the resources to adequately safeguard people's lives. That is when the Federal Government must be able to rush in with the personnel, equipment and other resources needed by law enforcement agencies to strike back against gangs, drug traffickers, and other violent criminals.

In these instances, this amendment will give the President, upon consultation with the Attorney General, the power to declare that a violent crime or drug emergency exists in a State, community, or neighborhood. In doing so, the President would direct the agencies of the Federal 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.

That assistance can come in the form of personnel, equipment, supplies, facilities, financial assistance, and managerial, technical and, advisory services, including communications support and law enforcement-related intelligence information. Requests for declaration of an emergency must be made in writing by the Governor and chief executive officer of any affected State and local government. The President must act on these requests within 30 days.

I believe the case for this is reinforced by recent events in Hartford, CT. Facing a particularly violent rash of gang activity in Hartford, city government and law enforcement officials launched Operation Liberty—an aggressive State and local effort to reduce violence in a number of targeted neighborhoods throughout the city. In an attempt to supplement and bolster local law enforcement efforts in dealing with this emergency, the State has provided additional police officers and other forms of tactical support sorely needed in certain areas of the city.

While there is still much work to be done, preliminary reports are encouraging. The Hartford Courant recently reported that there is little dispute that violence and gang activity has been reduced dramatically. As a result of these coordinated efforts, citizens in affected areas are regaining a sense of security that was stripped from them by these gangs. There has also been a drop in the number of assaults against police officers.

I believe that the priorities outlined in this amendment must be enacted into law if we are serious about fighting crime on a national basis. Declaring a neighborhood, a city, or a State a violent crime or drug emergency area will have two immediate, positive effects:

First, it would be a powerful signal to lawbreakers that all of society takes their crimes seriously—not just their victims, not just the local cops. But everyone up to and including the President of the United States and the Attorney General knows that they are up to, and are willing to fight back. I have every confidence that it would send a chill down the spines of wrongdoers, just as it would give a sigh of relief to the beleaguered citizens living under the yoke of crime.

The second benefit of this strategy would be an immediate infusion of added resources, including manpower, equipment, financial assistance, and other logistical assistance, into a crime-plagued region, quickly bolstering the limited scope of local police, and giving the law enforcement overwhelming force to use against lawbreakers. Too often, our local police are in unfair fights.

While there will be critics of the medicine I prescribe to help remedy this national ailment, I fully expect the biggest supporters of this idea will be the people who live in those neighborhoods where crime has taken over. It is they who would welcome the arrival of the Federal help with hope and open arms.

As the Senator from Delaware said earlier, in this bill we are taking the Federal Government into a new cooperative relationship with the States and localities in trying to fulfill our constitutional responsibility to provide for domestic tranquility, which certainly does not exist in too many neighborhoods of our country now.

Clearly, as the Senator from Delaware said, there is a limit to how far we can go in federalizing the criminal law. But we have taken the right step

in recognizing that we have this authority, 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 proposals real. Thus, this extraordinary 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 provided these billions of dollars to put 100,000 more police out onto the streets. And we have also added to the Federal criminal law, providing the extra deterrent that the Federal system enables us to provide.

I have spent a fair amount of time in recent months around my State talking 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 federalization of the criminal law, when I talk to the local police and the local prosecutors they say to me 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 task forces throughout this country bringing together Federal, State and local investigators, enforcers, prosecutors. 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 Federal 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 Federal law they almost always will be taken to trial, because the Federal courts have that capacity. And, if convicted, they will almost always go to jail, and they will go to jail for a good long period of time as they should under the mandatory minimum sentencing provisions of Federal law.

So we have taken some serious steps forward in bringing the Federal Government to a reasonable partnership with the States in protecting law-abiding citizens from crime. This is the next step I am proposing.

It says that when a community and its police officers are simply outgunned and outmanned—as has happened in too many areas of our country—by the criminals, that the chief elected officials of the local areas and of the States can turn to the President and say, as they do in the case of a natural disaster—a flood, a hurricane, a fire—"Mr. President, we need the help of the Federal 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 Federal resources and send them in to help people in the local area. We have a special responsibility, I think, Mr. President, to help to make that happen.

This amendment will give the President, upon consultation with the Attorney General, the power to declare that a violent crime or drug emergency exists in a State, community or neighborhood. In doing so, the President would direct the agencies of the Federal 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 President, and the Attorney General will be able to rush in with the personnel, equipment, financial assistance and other resources needed by local law enforcement agencies to strike back against gangs, drug traffickers or other violent criminals.

Requests for declaration of an emergency 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 those 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 enforcement, 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 jurisdiction, pursuant to terms negotiated prior to deployment among the parties.

Mr. President, I believe the case for this amendment was reinforced by recent events in the capital city of my State of Connecticut. Facing a particularly violent rash of gang activity in Hartford, literally a war between two gangs that effectively took over control of one of the great historic neighborhoods of Hartford, CT, city government and law enforcement officials turned to the State of Connecticut and said: "We need help."

The State responded under a new law that Connecticut has that enables the Governor and the public safety commissioner to dispatch State troopers to help local law enforcement officials in much the same way this amendment would authorize the President of the United States and the Attorney General to send Federal help to local law enforcement officials.

In Hartford, State and local officials formed something called Operation Liberty, an aggressive joint effort to reduce violence in a number of these targeted neighborhoods throughout the city. In an attempt to supplement and bolster local law enforcement efforts in dealing with this emergency, the State provided additional police officers and other forms of tactical support.

While there was much work to be done, I am pleased to say that the reports of what happened were encouraging. The Hartford Current reported in an editorial that there was little dispute that violence in gang activity as a result of the additional personnel and equipment in that neighborhood was reduced. In fact, the crime rate generally dropped by more than 15 percent. As a result of these coordinated efforts, citizens in affected areas regained a sense of security for that period of time, a sense of security that was taken away from them by those gangs.

I must say that I spoke to a woman in one of those neighborhoods during one of my walks through one of those neighborhoods and she said to me:

Senator, I know that when the State troopers arrived and when the extra police came into our neighborhood, some people might say that this place looks like a police state. But you know what, Senator, I felt comfortable. I felt secure for the first time in too long a time. I felt that I could go out of my house, walk in my neighborhood without fear of being the victim of crime, without fear of being an unintended bystander caught in a crossfire.

I believe that the priorities outlined in this amendment should be enacted into law to continue the expression that is so much a part of this bill, that we are really serious about fighting crime on a national basis.

Declaring a neighborhood or a city or a State a violent crime or drug emergency area will have at least two effects that go beyond the direct help that will be provided by Federal personnel and perhaps even Federal financial assistance.

First, I believe it would be a powerful signal to the lawbreakers that all of society takes their crime seriously, not just their local victims, not just the local cops, but everyone up to and including the President of the United States and the Attorney General of the United States know what those criminals are up to and that we are willing to fight back. I am hopeful that it will send a chill down the spines of these criminals, just as it would give a sigh of relief to the beleaguered citizens living under the yoke of crime.

Mr. President, the second benefit of this strategy, I think, would be an immediate infusion of added resources, including, again, personnel, equipment, financial assistance and other logistical assistance into a crime-plagued region, giving the President the power, as he does in a natural disaster, to effectively say that these violent crime and drug emergency areas have become unnatural disasters, man-made disasters, and to take the resources provided to the President, to the Justice Department 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 biggest 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 national drug strategy should be, we 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—nor 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 Santa Ana winds combining to rob them of their homes and their livelihoods and their lives. No one thinks twice when Hurricane Andrew comes ripping through the State of Florida and all the way through Louisiana, wreaking havoc on anything in its path. They are true national natural disasters and emergencies.

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 street, 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 an example of what 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 far exceeds any State capability. 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 through my neighborhood 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 use 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 cancer 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 like 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 these movie channels on. 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 Robocop or some supercop 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 these 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 local-State-Federal task forces. 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 states 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 from various 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 embarrassed to believe that this was America. You would think it was another country that we too often have looked down on, or we say, OK, that happened somewhere else. Frankly, it looked like a war zone.

The situation I will describe briefly to the Senator is this: The day before, a gang that controlled this particular neighborhood for the purpose of drug sales and distribution had its quarters raided by the local police. I believe—I am not sure—that the BATF may have been involved. The target of the raid was the weapons possessed by this gang. A tremendous arsenal was seized. Word got out that this had occurred. These gang members apparently were fearful that other gangs, hearing that they had been disarmed, would come in to try to take over their territory in this neighborhood. I do not know the means, but they either went out and acquired another arsenal immediately that day or they had something else hidden that the police did not find.

And there you see on the streets of Bridgeport, CT—and this tape was taken by a citizen, a videotape—individuals walking with semiautomatics, long guns, on the streets in clear view essentially, and on the sidewalks, walking in the streets as if to say this is our territory, stay out of it.

Mr. BIDEN. Looked like Somalia.

Mr. LIEBERMAN. Looked like Somalia, looked like Beirut at an earlier time, at one point they were shooting up at the streetlights, lights that the local police had just replaced because they had earlier been shot out as a way to maintain darkness which would provide the cover for drug sales.

Incidentally, one of the terrifying—we laughed but it was a rueful laugh. It took one of these guys probably 10 shots to knock out the streetlight, not a very good shot, and yet possessing a very powerful weapon. Obviously, you worry about the impact if he were shooting at another individual on the street.

You see in this film a mother walking by with a child, apparently coming from shopping. These guys are walking around with automatic weapons strung over their shoulders.

Mr. President, that is an extreme case, but too often in too many neighborhoods of our country that case is replicated or comes close to it. That is what this is all about.

I would add just a few points again just to stress this. The Federal, State, and local task forces that have been set up in part by the former director of the FBI, Judge Sessions, who came under some criticism on different matters. Nonetheless, it showed some real leadership in setting up these task forces, playing a key role in establishing, along with the previous Attorney General—which have worked magnificently with State and local police, bringing to bear FBI agents, DEA agents, when appropriate Immigration or Customs agents, using the U.S. attorneys, working State and local police. And, basically, in Connecticut State and local police saying this gang is controlling this neighborhood, Federal Government, we need your help, come in with your extra surveillance capacity, your sophisticated investigative help.

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 residents would not object, and also because 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 suburbs—took it over, and victimized the people in the project. Ultimately, the local police acknowledged they could not deal with it, and brought the Federal agents in.

It is a long and complicated story. But basically they made several arrests, and sent the two leaders of this gang away to Federal prison for 21 and 28 years, respectively.

That is 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 amendment gives authority to the President and the Attorney General to utilize resources available under law.

My hope is that some of the resources that are, in fact, made available under this law would be used by the President to respond to a local violent 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 become violent crime and drug emergency areas. The words that the chairman 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 Delaware.

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 will not 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 tomorrow, I assure him if he wants a vote, he will get a vote on this.

Mr. LIEBERMAN. I thank the Senator. 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 significant increase in the number of FBI agents and prosecutors. It is my intention, and we are working out the details now at the urging of my friend from Connecticut and others, that in this bill we provide for over 5 years and up to $1 billion for additional Federal assistance relative to prosecutors and FBI agents in order to accommodate the kind of things he is talking about.

I really do think this is, as characterized by the Senator from Utah, what we have done so far if we pass it, the most significant, sweeping, and bold effort that the Federal Government has ever undertaken relative to dealing with crime in America.

I might add it is also probably the most often-called-for help that we have had as Senators from our people.

I understand that my friend from Connecticut had another amendment that both sides are prepared to accept. I do not know whether it is appropriate at the moment. But if the Senator is prepared to move on that amendment, we would be delighted to accept that amendment.

Mr. LIEBERMAN. Mr. President, I am prepared to move, and with the approval of the Senator from Delaware, I will send the amendment to the desk at this time.

The PRESIDING OFFICER. Is there objection to temporarily laying aside the pending amendment? Without objection, it is so ordered.

AMENDMENT NO. 1144

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 Senator from Connecticut [Mr. LIEBERMAN], for himself and Senator D'AMATO, proposes an amendment numbered 1144.

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. . 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 section 36(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 or members of the immediate family of the 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 25 in any fiscal year.

"(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 the basis of an application for withholding of deportation, any action for deportation of the alien instituted before the alien obtains lawful permanent resident status, (ii) is not convicted of any criminal offense in the United States since the date of such admission, and (iii) shall report not less often than quarterlyto the Commissioner of the Immigration and Naturalization Service such information concerning the alien's whereabouts and activities as the Secretary of State and the Attorney General may require.

"(B) The Secretary of State and the Attorney General shall submit a report annually to the Committees on the Judiciary of the House of Representatives and of the Senate concerning (i) the number of such aliens admitted, (ii) the number of terrorist acts prevented, frustrated, or thwarted or prosecutions or investigations resulting from cooperation of such aliens, and (iii) the number of such aliens who have failed to report quarterly (as required under paragraph (3)(A)(i)(I) or who have been convicted of crimes in the United States after the date of their admission.

"(4) ADJUSTMENT TO PERMANENT RESIDENT STATUS.—(A) If, in the opinion of the Attorney General, in consultation with the Secretary of State, the alien admitted into the United States under section 36(e) of the State Department Basic Authorities Act has supplied information that has contributed to the prevention, frustration, or favorable resolution of a terrorist act or has substantially contributed to an authorized investigation or the prosecution of an individual described in section 36(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 paragraph (3)(A) above, such 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) (i) through (iii) have been met.

"(B) Upon the approval of adjustment of status under subparagraph (A), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(4) of the Immigration and Nationality Act for the fiscal year then current."

(b) EXCLUSIVE MEANS OF ADJUSTMENT.—Section 245(c) of the Immigration and Nationality Act (8 U.S.C. 1255(c)), as amended by section 725, is further amended by striking "or" before "(5)" and by inserting before the period the following: "; or (6) an alien who was admitted pursuant to section 36(e) of the State Department Basic Authorities Act".

(c) EXTENDING PERIOD OF DEPORTATION FOR CONVICTION OF A CRIME.—Section 241(a)(2)(A)(i)(I) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(2)(A)(i)(I)), as amended by section 725, is further amended by inserting "or section 36(e)(4)(A) of the State Department Basic Authorities Act" after section 245(h) in the parenthetical "(or 10 years in the case of an alien provided lawful permanent resident status under section 245(h))".

Mr. LIEBERMAN. Mr. President, may I say that I am pleased to be joined in offering this amendment by my friend and colleague from New York, Senator D'AMATO.

The amendment concerns terrorism. Unfortunately, Senator D'AMATO has not only been a great fighter 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 informants, and of witnesses, those involved directly, as has been the case as we know in the World Trade Center bombing.

Frequently, these are not American citizens. But they are critically important in providing information that, one, can allow law enforcement to stop the terrorist act before it occurs, or two, if it does occur, can enable law enforcement to prosecute the terrorists and bring them to justice.

There is currently a small interagency program that provides financial rewards to those who assist the United States. But no amount of money is likely to persuade a person to come forward with information, unless he or she has the confidence that they will be protected against reprisals by the terrorists. Outside of the United States, where most of these potential defectors, informants, and witnesses 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 very 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, including close family members. Once in the United States, participants would have to comply with all laws and follow even stricter Immigration and Naturalization Service procedures than those applicable to any alien lawfully admitted to the United States.

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, my hearing focused on one terrorist defector, whom I consider to be one of the true heroes of the international battle against terrorism.

At the cost of his freedom, his safety and his identity, 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 gulf 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 advocateon 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.

I thank the Chair and I yield the floor.

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 question is on agreeing to the amendment.

The amendment (No. 1144) was agreed to.

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.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 1145

(Purpose: To encourage States to establish registration and tracking procedures and community notification with respect to released sexually violent predators)

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 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 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 sexually violent 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 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 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 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.

(2) STATE COMPLIANCE.—

(A) IMPLEMENTATION DATE.—A State that does not implement a program described in paragraph (1) by the date that is 3 years after the date of enactment of this Act, and maintain the implementation thereafter, shall be ineligible for funds in accordance with subparagraph (B).

(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. 3756).

(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.—

(1) IN GENERAL.—An approved State program established in accordance with this section shall contain the requirements described in this section.

(2) The determination that a person is a "sexually violent predator" and 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.

(3) NOTIFICATION.—If a person who is required to register under this section is anticipated to be released from prison, paroled, or 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—

(A) inform the person of the duty to register;

(B) inform the person that if the person changes residence address, the person shall give the new address to a designated State law enforcement agency in writing not later than 10 days after the change of address;

(C) obtain the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person; 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.

(4) TRANSFER OF INFORMATION TO STATE AND THE FBI.—Not later than 3 days after the receipt of the information described 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 expects to reside; and

(B) transmit the information to the Identification Division of the Federal Bureau of Investigation.

(5) QUARTERLY VERIFICATION.—

(A) MAILING TO PERSON.—Not less than every 90 days after the date of the release or commencement of parole of a person under paragraph (2), the designated State law enforcement agency shall mail a nonforwardable verification form to the last reported address of the person.

(B) RETURN OF VERIFICATION FORM.—

(i) IN GENERAL.—The person shall return, by mail, the verification form to the agency not later than 10 days after the receipt of the form. The verification form shall be signed by the person, and shall state that the person continues to reside at the address last reported to the designated State law enforcement agency.

(ii) FAILURE TO RETURN.—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 by the person, the person shall be in violation of this section unless the person proves that the person has not changed the residence address of the person.

(6) NOTIFICATION OF LOCAL LAW ENFORCEMENT AGENCIES OF CHANGES IN ADDRESSES.—Any change of address by a person required to register under this section that is reported to the designated State law enforcement agency shall as soon as practicable be reported to the appropriate law enforcement agency that has jurisdiction over the area in which the person is residing.

(7) PENALTY.—A person required to register under a State program established pursuant to this section who knowingly fails to register and keep the registration current shall be subject to criminal penalties in the State. It is the sense of Congress that the penalties should include imprisonment for not less than 180 days.

(8) TERMINATION OF OBLIGATION TO REGISTER.—The obligation of a person to register under this section shall terminate on a determination made in accordance with the provision of paragraph (2) of this section that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

(c) COMMUNITY NOTIFICATION.—The designated State law enforcement agency may release relevant information that is necessary to protect the public concerning a specific sexually violent predator required to register under this section.

(d) IMMUNITY FOR GOOD FAITH CONDUCT.—Law enforcement agencies, employees of law enforcement agencies, and State officials shall be immune from liability for any good faith conduct under this section.

The PRESIDING OFFICER. Without objection, amendment No. 1143 will be set aside temporarily.

Mr. GORTON. Mr. President, the purpose of the amendment is to encourage States to establish registration and tracking procedures and community notification with respect to released sexually violent predators.

A sexually violent predator is 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 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.

The amendment also provides for community notification of released sexual predators and immunity for law enforcement officials in notifying communities of the presence of a sexually violent predator.

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 are a continued 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 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 movements locally, and the FBI who can monitor their interstate movements.

The Washington State law was inspired by the grisly crimes to repeat sexual offender Earl Shriner who had a 24-year history of violent sexual assaults on young people. Shriner had never been judged incompetent to stand trial, so he was tried and convicted for his criminal acts. Each time he was convicted of a crime, he served his sentence, was released back into society, and proceeded to commit crimes similar to ones for which he had previously been convicted. Law enforcement officials knew he was still a threat but were powerless to protect the community. After a series of other crimes committed by repeat sexual offenders, the State legislature met in special session and passed the Sexually Violent Predators Act which provided for post-incarceration indefinite civil commitment of a small group of sexually violent predators.

The Washington State Supreme Court has recently upheld this statute.

In its original form, this amendment would have provided an analogous procedure, but it is clearly at the cutting edge and troubled a number of Members of this body, including the distinguished chairman. So that portion has been removed from the amendment as it has been presented to the body here.

It does, however, include the registration and the tracking provisions which will enable communities to care for themselves and police to track such people in the way in which they cannot 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 for confirmation of that proposition by the chairman, at which point I trust we can pass the amendment.

The PRESIDING OFFICER. The Senator from Delaware.

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.

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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 40 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 go 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 am happy to yield for a question.

Mr. WARNER. 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 run the Senator from Wisconsin. I said to the manager of the bill that I recognize he has done work in this area, and I had done work independently.

I first read his 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.

Mr. BIDEN. 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 agreements by which we will take up 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 Ipersonally 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 Virginia. Were the Senator from Delaware, at 9:30 at night when the Senator from Wisconsin is not on the floor, to participate in allowing an amendment to come up that, although different, deals with the same subject matter—children and guns—I think it would be appropriate for the Senator from Wisconsin to assume that not the Senator from Virginia but 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 based on subject 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 view 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.

This is not an original idea. I think many Members of this body are trying to figure out means by which to prevent the transfer 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 am willing to take my name off it 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 begun 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:

(s)(1) It shall be unlawful for any person to sell or otherwise transfer for consideration——

That is the key and operative phrase—

for consideration to a juvenile, or to a person who the transferor knows or has reasonable cause to believe is ajuvenile—

(A) a handgun; or,

(B) ammunition that is suitable for use only 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 otherwise 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 takes place 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, wham, 10 years.

Now both of these penalties are left, in terms of the minimum, to the discretion of the judge. I did that intentionally 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 today. This was an idea imparted to me not only by the members of the judiciary, but I met with the prosecutors and chiefs of police. So I am here speaking on their behalf today. This is something that is badly needed in our Federal Code.

This is a simple, direct approach to selling guns to juveniles. It makes it a crime to sell or otherwise transfer—because 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 consideration. 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 amendment 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 affected 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 later I served in the Marines and trained many marines under the age of 18, 17-year-old marines. This amendment 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 transactions 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 provides two penalties.

So I want to accommodate the managers. I want to accommodate any of my colleagues who can come up with a better idea. I take no great pride of authorship.

As I said, this idea came to me—yes, I have thought about it, as each of you have. But I really began to formulate how we do it in law by sitting with 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 judiciary in their State. These individuals are struggling from dawn to dusk with their problems associated with crime. In many instances, they are being overwhelmed. So I thank them. I thank the managers of this bill.

Mr. President, I ask unanimous consent to insert in the RECORD tonight for printing a copy of my amendment and a copy of the bill by the Senator from Wisconsin, as it was reported by a Judiciary Subcommittee, so that Senators can compare the two. I find them quite distinct and, therefore, in no way was I trying to invade the workmanship of one of my most respected colleagues 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 material was ordered to be printed in the RECORD, as follows:

WARNER AMENDMENT

(Purpose: To amend chapter 44 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 following new section:

SEC. . PROHIBITION OF THE SALE AND TRANSFER FOR CONSIDERATION OF A HANDGUN OR HANDGUN AMMUNITION TO A JUVENILE.

(a) DEFINITION.—Section 921(a) of title 18, United States Code, is amended by adding at the end thereof the following new paragraph:

"(29) 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.".

(b) OFFENSE.—Section 922 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(s)(1) It shall be unlawful for any person to sell or otherwise transfer for consideration to a juvenile, or to a person who the transferor knows or has reasonable cause to believe is a juvenile—

"(A) a handgun; or

"(B) ammunition that is suitable for use only in a handgun.

"(2) For purposes of this subsection, the term 'juvenile' means a person who is less than 18 years of age.".

(c) PENALTIES.—Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking out "paragraph (2) or (3) of"; and

(2) by adding at the end the following new paragraph;

"(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 otherwise 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.".

KOHL BILL

SECTION 1. SHORT TITLE.

This Act may be cited as the "Youth Handgun Safety Act of 1993".

SEC. 2. FINDINGS AND DECLARATIONS.

The Congress finds and declares that—

(1) Crime, particularly crime involving drugs and 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) In fact, even before the sale of a handgun, the gun, its component parts, ammunition, and the raw materials from which they are made have 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 exposure to drugs at a young age, violent criminals often start 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 States and localities that have made a strong effort to prevent, detect, and punish crime find their effort unavailing due in part to the failure 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 combat 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 by adding at the end the following new paragraph:

"(29) 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.".

(b) OFFENSE.—Section 922 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(s)(1) It shall be unlawful for any person to sell, deliver, or transfer to a juvenile, or to anyone who the person has reason to believe is a juvenile—

"(A) a handgun; or

"(B) ammunition that is suitable for use only in a handgun.

"(2) It shall be unlawful for any person who is a juvenile to possess—

"(A) a handgun; or

"(B) ammunition that is suitable for use only in a handgun.

"(3) This subsection does not apply to—

"(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

"(i) for target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

"(ii) under the personal supervision and in the presence of an adult who is not prohibited by Federal, State, or local law from possessing a firearm;

"(iii) with the permission of the juvenile's parent or legal guardian; and

"(iv) in accordance with State and local law;

"(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty; or

"(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile.

"(4) For purposes of this subsection, the term 'juvenile' means a person who is less than 18 years of age.".

(c) PENALTY.—Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking "paragraph (2) or (3) of"; and

(2) by adding at the end the following new paragraph:

"(5) A person who knowingly violates section 922(s) shall be fined under this title, imprisoned not more than 1 year, or both.".

(d) TECHNICAL AMENDMENT OF JUVENILE DELINQUENCY PROVISIONS.—

(1) SECTION 5031.—Section 5031 of title 18, United States Code, is amended by inserting "or a violation by such a person of section 922(s)" before the period at the end.

(2) SECTION 5032.—Section 5032 of title 18, United States Code, is amended—

(A) in the first undesignated paragraph by inserting "or (s)" after "922(p)"; and

(B) in the fourth undesignated paragraph by inserting "or section 922(s) of this title," before "criminal prosecution on the basis".

(e) MODEL LAW.—The Attorney General, acting through the Director of the National Institute of Justice, shall—

(1) evaluate existing and proposed juvenile handgun legislation in each State;

(2) develop model juvenile handgun legislation that is constitutional and enforceable;

(3) prepare and disseminate to State authorities the findings made as the result of the evaluation; and

(4) report to Congress by December 31, 1994, findings and recommendations concerning the need or appropriateness of further action by the Federal Government.

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. HATCH, for the work they have done.

I will be guided by the wishes of the managers and others as to when and how this amendment that I have can be brought up, how it can be approved. 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 children are born each year into a world without fathers and to mothers who are simply unprepared for the responsibilities of motherhood.

The corrosive impact of family breakdown on inner-city life 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. President, I ask 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 unmarried mothers, with a high of 30% of all live births. How high is 30%? About four percentage points higher than the black illegitimacy rate in the early 1960s that motivated Daniel Patrick Moynihan to write his famous memorandum on the breakdown of the black family.

The 1991 story for blacks is that illegitimacy has now reached 68% of births to black women. In inner cities, the figures is typically in excess of 80%. 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 68%.

Impossible, we would have said. But if the proportion of fatherless boys in a given community were to reach such levels, surely the culture must be "Lord of the Flies" writ large, the values of unsocialized male adolescents made norms—physical violence, immediate gratification and predatory sex. That is the culture now taking over the black inner city.

But the black story, however dismaying, is old news. The new trend that threatens the U.S. is white illegitimacy. Matters have not yet quote gotten out of hand, but they are on the brink. If we want to act, now is the time.

In 1991, 707,502 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 Browns were pushing the trendline. Thus, a few months ago, a Census Bureau study of fertility among all American women got headlines for a few days because it showed that births to single women with college degrees doubled in the last decade to 6% from 3%. This is an interesting trend, but of minor social importance. The real news of that 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 incomes under $20,000 contribute 69%.

The National Longitudinal Study of Youth, a Labor Department study that has tracked more than 10,000 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 illegitimate, compared with only 6% for women above the poverty line. White illegitimacy is overwhelmingly a lower-class phenomenon.

This brings us to the emergence of a white underclass. In raw numbers, European-American whites are the ethnic group with the most people in poverty, most illegitimate 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 of town, 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%. The figure in low-income, working-class communities may be twice that. How much illegitimacy can a community tolerate? Nobody knows, but the historical fact is that the trendlines on black crime, dropout from the labor force, and illegitimacy all shifted sharply upward as the overall black illegitimacy rate passed 25%.

The causal connection is murky—I blame the revolution in social policy during that period, while others blame the sexual revolution, broad shifts in cultural norms, or structural changes in the economy. But the white illegitimacy rate is approaching that same problematic 25% region at a time when social policy is more comprehensively wrongheaded than it was in the mid-1960s, and the cultural and sexual norms are still more degraded.

The white underclass will begin to show its face in isolated ways. Look for certain schools in white neighborhoods to get a reputation as being unteachable, with large numbers of disruptive students and indifferent parents. Talk to the police; listen for stories about white neighborhoods where the incidence of domestic disputes and casual violence has been shooting up. Look for white neighborhoods with high concentrations of drug activity and large numbers of men who have dropped out of the labor force. Some readers will recall reading the occasional news story about such places already.

As the spatial concentration of illegitimacy reaches critical mass, we should expect the deterioration to be as fast among low-income whites in the 1990s as it was among low-income blacks in the 1960s. My proposition is that illegitimacy is the single most important social problem of our time—more important than crime, drugs, poverty, illiteracy, welfare or homelessness because it drives everything else. Doing something about it is not just one more item on the American policy agenda, but should be at the top. Here is what to do:

In the calculus of illegitimacy, the constants are that boys like to sleep with girls and that girls think babies are endearing. Human societies have historically channeled these elemental forces of human behavior via thick walls of rewards and penalties that 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.

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 broad legal freedoms depends crucially on strong nongovernmental institutions to temper and restrain behavior. Of these, marriage is paramount. Either we reverse the current trends in illegitimacy—especially white illegitimacy—or America must, willy-nilly, become an unrecognizably authoritarian, socially segregated, centralized state.

To restore the awards and penalties of marriage does not require social engineering. Rather, it requires that the state stop interfering with the natural forces that have done the job quite effectively for millennia. Some of the changes I will describe can occur at the federal level; others would involve state laws. For now, the important thing is to agree on what should be done.

I begin with the penalties, of which the most obvious are economic. Throughout human history, a single woman with a small child has not been a viable economic unit. Not being a viable economic unit, neither have the single woman and child been a legitimate social unit. In small numbers, they must be a net drain on the community's resources. In large numbers, they must destroy the community's capacity to sustain itself. Mirabile dictu, communities everywhere have augmented the economic penalties of single parenthood with severe social stigma.

Restoring economic penalties translates into the first and central policy prescription:

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 or for food stamps. An assortment of other subsidies and in-kind benefits disappear. Since universal medical coverage appears to be an idea whose time has come, I will stipulate that all children have medical coverage. But with that exception, the signal is loud and unmistakable: From society's perspective, to have a baby that you cannot 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, boyfriend, siblings, neighbors, 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 great good in itself.

Second, the need to find support forces a self-selection process. One of the most shortsighted excuses made for current behavior 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 a young single woman who keeps her child is doing so volitionally and thoughtfully. Forcing her to find a way of supporting the child does this. It will lead many young women who shouldn't be mothers to place their babies for adoption. This is good. It will lead others, watching what happens to their sisters, to take steps not to get pregnant. This is also good. Many others will get abortions. Whether this is good depends on what one thinks of abortion.

Third, stigma will regenerate. The pressure on relatives and communities to pay for the folly of their children will make an illegitimate birth the socially horrific act it used to be, and getting a girl pregnant something boys do at the risk of facing a shotgun. Stigma and shotgun marriages may or may not be good for those on the receiving end, but their deterrent effect on others is wonderful—and indispensable.

What about women who can find no support but keep the baby anyway? There are laws already on the books about the right of the state to take a child from a neglectful parent. We have some 360,000 children in foster care because of them. Those laws would still apply. Society's main response, however, should be to make it as easy as possible for those mothers to place their children for adoption at infancy. To that end, state governments must strip adoption of the nonsense that has encumbered it in recent decades.

The first step is to make adoption easy for any married couple who can show reasonable evidence of having the resources and stability to raise a child. Lift all restrictions on interracial adoption. Ease age limitations for adoptive parents.

The second step is to restore the traditional legal principle that placing a child for adoption means irrevocably relinquishing all legal rights to the child. The adoptive parents are parents without qualification. Records are sealed until the child reaches adulthood, at which time they may be unsealed only with the consent of biological child and parent.

Given these straightforward changes—going back to the old way, which worked—there is reason to believe that some extremely large proportion of infants given up by their mothers will be adopted into good homes. This is true not just for flawless blue-eyed blond infants but for babies of all colors and conditions. The demand for infants to adopt is huge.

Some small proportion of infants and larger proportion of older children will not be adopted. For them, the government should spend lavishly on orphanages. I am not recommending Dickensian barracks. In 1993, we know a lot about how to provide a warm, nurturing environment for children, and getting rid of the welfare system frees up lots of money to do it. Those who find the word "orphanages" objectionable may think of them as 24-hour-a-day preschools. Those who prattle about the importance of keeping children with their biological mothers may wish to spend some time in a patrol car or with a social worker seeing what the reality of life with welfare-dependent biological mothers can be like.

Finally, there is the matter of restoring the rewards of marriage. Here, I am pessimistic about how much government can do and optimistic about how little it needs to do. The rewards of raising children within marriage are real and deep. The main task is to shepherd children through adolescence so that they can reach adulthood—when they are likely to recognize the value of those rewards—free to take on marriage and family. The main purpose of the penalties for single parenthood is to make that task easier.

One of the few concrete things that the government can do to increase the rewards of marriage is to make the tax code favor marriage and children. Those of us who are nervous about using the tax code for social purposes can advocate making the tax code at least neutral.

A more abstract but ultimately crucial step in raising the rewards of marriage is to make marriage once again the sole legal institution through which parental rights and responsibilities are defined and exercised.

Little boys should grow up knowing from their earliest memories that if they want to have any rights whatsoever regarding a child that they sire—more vividly, if they want to grow up to be a daddy—they must marry. Little girls should grow up knowing from their earliest memories that if they want to have any legal claims whatsoever on the father of their children, they must marry. A marriage certificate should establish that a man and a woman have entered into a unique legal relationship. The changes in recent years that have blurred the distinctiveness of marriage are subtly but importantly destructive.

Together, these measures add up to a set of signals, some with immediate and tangible consequences, others with long-term consequences, still others symbolic. They should be supplemented by others based on a re-examination of divorce law and its consequences.

VIRTUE AND TEMPERANCE

That these policy changes seem drastic and unrealistic is a peculiarity of our age, not of the policies themselves. With embellishments, I have endorsed the policies that were the uncontroversial law of the land as recently as John Kennedy's presidency. Then, America's elites accepted as a matter of course that a free society such as America's can sustain itself only through virtue and temperance depend centrally on the socialization of each new generation, and that the socialization of each generation depends on the matrix of care and resources fostered by marriage.

Three decades after that consensus disappeared, we face an emerging crisis. The long, steep climb in black illegitimacy has been calamitous for black communities and painful for the nation. The reforms I have described will work for blacks as for whites, and have been needed for years. But the brutal truth is that American society as a whole could survive when illegitimacy became epidemic within a comparatively small ethnic minority. It cannot survive the same epidemic among whites.

AMENDMENT NO. 1131

Mr. KENNEDY. Mr. President, I am disappointed that the Senator from Utah would offer an amendment to revise the mandatory minimum safety valve that we negotiated with Senators SIMPSON and THURMOND and other Members of the Senate. Those negotiations resulted in the introduction of a free-standing bill, S. 1596, that had been included in the crime bill.

Now the Senator from Utah proposes a much narrower version of the safety valve. In fact, this version is so narrow that it is effectively meaningless. It is called mandatory minimum reform, but it will have no practical effect on the day-to-day injustices that are created by mandatory minimums.

I will first describe the basis for the underlying safety valve provision, and then explain why that version is preferable to the Hatch version.

Section 2404 of the crime bill creates a narrow safety valve in the mandatory minimum sentencing laws. As I have noted, this was a bipartisan effort to remedy some of the worst injustices created by mandatory minimum sentencing statutes.

It also reflects a growing recognition that mandatory minimum sentences are unnecessary and unhelpful now that we have a fully functioning sentencing guidelines system in the Federal courts.

This provision would permit a small number of low-level, nonviolent defendants who would otherwise be subject to mandatory minimum laws to be sentenced under the guideline system instead. Basically, the defendants exempted from mandatory sentencing would be low-level drug trafficking defendants with very minimal criminal records who did not possess a firearm or cause death during the commission of the offense, and who did not have an aggravating role in the offense as defined by the guidelines.

The imposition of lengthy mandatory prison terms on such relatively minor defendants has led to an outcry of disapproval from judges, prosecutors, defense attorneys and other knowledgeable observers. These cases are clogging up our courts and our prisons. It is expensive, counterproductive and unjust to keep these small-time, non-violent defendants in prison for 10 or 20 years, especially when some dangerous, career criminals are serving less time.

Mandatory minimum sentences cause these irrational results, and enactment of S. 1596 would be a sensible initial response to the obvious flaws in current law. My personal preference would have been for more comprehensive reform of mandatory sentencing laws, but I have cosponsored this bill because I recognize 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, the product of more than a decade of congressional debate, created the U.S. Sentencing Commission, established the guidelines 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 legislative 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 a 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 limit judicial sentencing discretion, but the guidelines offer a more sophisticated opportunity to channel judicial discretion.

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 court to consider the 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'sprecisely what's wrong with mandatories.

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 that resulted in a 2-day jail sentence will mean the difference between whether a defendant is subject to a 20-year mandatory minimum prison sentence.

Similarly, a 55-year-old defendant with no criminal history, but who was adjudicated a delinquent for a fist fight 40 years ago would be ineligible for the safety valve. These are just silly distinctions.

The Hatch amendment would make a defendant ineligible for the safety valve if the offense involved a death, whether or not the defendant had anything to do with, or even knew about the death.

Our safety valve would not apply to anyone who caused, threatened to cause, or credibly threatened to cause serious bodily injury or death. But the Hatch amendment would exclude anyone who threatens physical injury—a slap, a punch, or a threat to slap or punch someone would spell the difference between a mandatory minimum or not.

These are just some of the ways in which the Hatch amendment is unreasonably and unnecessarily narrower than the version that is in the bill now.

I also oppose both the Hatch second degree amendment and the underlying Gramm amendment because they propose new mandatory minimums and a new death penalty authorization. But I am especially pained that the safety valve proposal—which was so carefully negotiated—has now been effectively emasculated.

I hope that we can work in conference to improve the mandatory minimum safety valve that will be included in the Senate-passed bill.

PROGRAM

Mr. BIDEN. Mr. President, the following votes have been ordered for tomorrow after we dispose of the cloture vote.

One is the Dole amendment, relative to gangs; the Lieberman amendment relating to carjacking; and pending is a Lieberman amendment on drug enforcement areas for tomorrow, on which we hope we can get a time agreement and have a vote ordered.

The following Senators have indicated they would like to speak tomorrow on the following amendments:

The distinguished Senator from Wisconsin, Senator KOHL, on an amendment on children and guns.

Senator D'AMATO and the death penalty for drug kingpins. He has agreed 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 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 484. Joseph Swerdzewski, to be General Counsel of the Federal Labor Relations Authority;

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;

Calendar 498. Gen. Jimmy D. Ross, to be general on the retired list;

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 in the Air Force, Army, Marine Corps, and Navy.

I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read, that upon confirmation, the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF COMMERCE

Jeffrey E. Garten, of New York, to be Under Secretary of Commerce for International Trade.

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 Swerdzewski, of Colorado, to be General Counsel of the Federal Labor Relations Authority for a term of 5 years.

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 HUMANITIES

Diane B. Frankel, of California, to be Director of the Institute of Museum Services.

[New Reports]

DEPARTMENT OF DEFENSE

IN THE AIR FORCE

The following-named officer for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. Gary H. Mears, [redacted] U.S. Air Force.

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

Gen. Jimmy D. Ross, [redacted] U.S. Army.

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

Maj. Gen. Johnnie E. Wilson, [redacted] U.S. Army.

The following-named officers for promotion in the Regular Army of the United States to the grade indicated, under the provisions of title 10, United States Code, sections 611(a) and 624:

To be permanent brigadier general

Col. Edwin P. Smith, [redacted]
Col. Neil N. Snyder, II, [redacted]
Col. Mark R. Hamilton, [redacted]
Col. Emmitt E. Gibson, [redacted]
Col. Robert D. Shadley, [redacted]
Col. Charles R. Vialet, [redacted]
Col. George F. Close, Jr., [redacted]
Col. Dale R. Nelson, [redacted]
Col. Joseph E. Oder, [redacted]
Col. Michael W. Ackerman, [redacted]
Col. Boyd E. King, Jr., [redacted]
Col. John M. Le Moyne, [redacted]
Col. Michael L. Dodson, [redacted]
Col. John J. Rynesk, [redacted]
Col. Roy E. Beauchamp, [redacted]
Col. Richard A. Black, [redacted]
Col. John B. Sylveste, [redacted]
Col. James P. O'Nea, [redacted]
Col. Thomas W. Garret, [redacted]
Col. John D. Thomas, Jr., [redacted]
Col. James E. Shane, Jr., [redacted]
Col. John G. Meyer, Jr., [redacted]
Col. Joseph M. Cosumano, Jr., [redacted]
Col. Robert B. Flowers, [redacted]
Col. Robert R. Ivany, [redacted]
Col. Michael T. Byrne, [redacted]
Col. David S. Weisman, [redacted]
Col. Ralph G. Wooten, [redacted]
Col. Julian H. Burns, Jr., [redacted]
Col. Robert T. Clark, [redacted]
Col. Christopher C. Shoemake, [redacted]
Col. Kevin P. Byrnes, [redacted]
Col. John M. McDuffie, [redacted]
Col. Gregory A. Rountree, [redacted]
Col. Larry J. Lust, [redacted]
Col. Peter C. Franklin, [redacted]
Col. David L. Grange, [redacted]
Col. Kenneth R. Bowra, [redacted]

The following U.S. Army Reserve officers for promotion to the grades indicated in the Reserve of the Army of the United States, under the provisions of sections 593(a), 3371 and 3384, title 10, United States Code:

To be major general

Brig. Gen. Donald F. Campbell, [redacted]
Brig. Gen. Peter W. Clegg, [redacted]
Brig. Gen. Lindsay M. Freeman, [redacted]
Brig. Gen. Leonard L. Hoch, [redacted]
Brig. Gen. Thomas P. Jones, [redacted]
Brig. Gen. Howard T. Mooney, [redacted]
Brig. Gen. Thomas J. Plewes, [redacted]
Brig. Gen. Richard F. Reeder, [redacted]
Brig. Gen. Richard E. Storat, [redacted]

Brig. Gen. Francis D. Terrell, xxx-xx-xxxx
Brig. Gen. John M. Vest, xxx-xx-xxxx
Brig. Gen. Robert H. G. Waudby, xxx-xx-xxxx xxx-...

To be brigadier general

Col. Michael E. Dunlavey, xxx-xx-xxxx
Col. James L. Bauerle, xxx-xx-xxxx
Col. Melvin R. Johnson, xxx-xx-xxxx
Col. Bruce B. Bingham, xxx-xx-xxxx
Col. Michael R. Mayo, xxx-xx-xxxx
Col. Robert J. Winzinger, xxx-xx-xxxx
Col. John G. Kulhavi, xxx-xx-xxxx
Col. Rodney D. Ruddock, xxx-xx-xxxx
Col. Robert L. Lennon, xxx-xx-xxxx
Col. John J. Green, Jr., xxx-xx-xxxx
Col. James C. Larson, xxx-xx-xxxx
Col. Clifford L. Massengale, xxx-xx-xxxx
Col. Robert A. Lee, xxx-xx-xxxx
Col. Norman B. Burdett, xxx-xx-xxxx

IN THE NAVY

The following-named captains of the Reserve of the U.S. Navy for permanent promotion to the grade of rear admiral (lower half) in the line and staff corps, as indicated, pursuant to the provision of title 10, United States Code, section 5912:

UNRESTRICTED LINE OFFICER

To be rear admiral (lower half)

Capt. James Wayne Eastwood, xxx-xx-xxxx 1115, U.S. Naval Reserve.
Capt. Timothy O'Neil Fanning, Jr., xxx-xx-xx... xxx-xx-xxxx U.S. Naval Reserve.
Capt. John Edwin Kerr, xxx-xx-xxxx xxx-xx... U.S. Naval Reserve.
Capt. John Benjamin Totushek, xxx-xx-xxxx 1315, U.S. Naval Reserve.

SPECIAL DUTY OFFICER (CRYPTOLOGY)

To be rear admiral (lower half)

Capt. Robert Hulburt Weidman, Jr., xxx-xx-x... xxx-xx-xxxx U.S. Naval Reserve.

MEDICAL CORPS OFFICER

To be rear admiral (lower half)

Capt. Macea Eugene Fussell, xxx-xx-xxxx 2105, U.S. Naval Reserve.

SUPPLY CORPS OFFICER

To be rear admiral (lower half)

Capt. Brian Nelson McCarthy, xxx-xx-xxxx 3105, U.S. Naval Reserve.

CHAPLAIN CORPS OFFICER

To be rear admiral (lower half)

Capt. William Ashley Will, Jr., xxx-xx-xxxx 4105, U.S. Naval Reserve.

The following-named rear admirals (lower half) of the Reserve of the U.S. Navy for permanent promotion to the grade of rear admiral in the line, as indicated, pursuant to the provision of title 10, United States Code, section 5912:

UNRESTRICTED LINE OFFICER

To be rear admiral

Rear Adm. (lh) Grant Thomas Hollett, Jr., xxx-xx-xxxx 1115, U.S. Naval Reserve.
Rear Adm. (lh) Tim McCall Jenkins xxx-x... xxx-xx-xxxx U.S. Naval Reserve.
Rear Adm. (lh) John Jacob Mumaw xxx-xx-... xxx-xx-xxxx U.S. Naval Reserve.

UNRESTRICTED LINE OFFICER (TRAINING AND ADMINISTRATION OF RESERVE)

TO BE REAR ADMIRAL

Rear Adm. (lh) James Duane Olson II xxx... xxx-xx-xxxx U.S. Naval Reserve.

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 vice admiral

Vice Adm. Jerry O. Tuttle, U.S. Navy, xxx-... xxx-xx...

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. Owens, xxx-xx-xxxx 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-xxxx U.S. Navy.

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 Ernest G. Weeks, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 1993.

Air Force nominations beginning Kenneth F. Abel, and ending Sheila 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. Bordner, and ending Lynnette D. Kennison, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 19, 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.

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 nominations 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 Yoffee, 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 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.

Navy 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.

Navy nominations beginning Ronald David Abate, and ending Reuben Teruo 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 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 Doreen E. Tate, 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 E. JURADO

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 E. Jurado to be Assistant Secretary for Public and Intergovernmental Affairs.

These 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 28, 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 90 percent within the last 23 years to the present level of of less than 10,000 animals, and the tiger population has declined 95 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 enforcement that effectively eliminates 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 yet to yield 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 penalties; prompt termination of amnesty periods for illegal holding and commercialization; and establishment of regional law enforcement arrangements. I would 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, import 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 1:59 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.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2151. An act to amend the Merchant Marine Act, 1936, 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. 616. An act to amend title 38, United States Code, to provide a cost-of-living adjustment in the rates of disability compensation for veterans with service connected disabilities 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 280 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 times by unanimous consent and referred as indicated:

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 list of General Accounting Office reports from the month of September, 1993; 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 to Congress on direct spending or receipts 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 to Congress on appropriations legislation within five days of enactment; to the Committee on the Budget.

EC–1739. A communication from the Director of the Administrative Office of the United States Courts, transmitting, pursuant to law, a draft of proposed legislation to make improvements in the operation and administration of the Federal courts, and for other purposes; to the Committee on the Judiciary.

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 Depository Institution 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. EXON:

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. MACK:

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 *Later*; 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. LEAHY:

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. 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.

REGULATORY CONSOLIDATION ACT OF 1993

• Mr. RIEGLE. Mr. President, I rise to introduce the Regulatory Consolidation Act of 1993 together with the ranking Republican on the Senate Banking, Housing, and Urban Affairs Committee, Senator ALFONSE D'AMATO. This legislation addresses three important needs in America's financial regulatory system: First, 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 had its roots in 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 instead to support well-intentioned—but only marginally successful—efforts at complying with multiple agency mandates.

In fact, our current bank regulatory system has virtually no defenders outside the regulatory agencies themselves. As former FDIC Chairman William Seidman recently acknowledged:

The financial institutions regulatory system is complex, inefficient, outmoded and archaic. It needs to be reformed with a single independent federal regulator. (Do not bother to ask regulators about it; their turf is their only message.)

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 William Proxmire and 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

Reforming our bank 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 posting record profits, and both the Congress and the administration are committed to cost-saving, deficit reduction and a more efficient government. This issue must be addressed in the administration's ongoing efforts 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:

William Proxmire, chairman of the Senate Committee on Banking, Housing, and Urban Affairs from 1975 to 1980 and 1987 to 1989:

We have the most bizarre, entangled regulatory system in the world. It never ceases to amaze me that it has lasted this long.

* * * I should like to add the recommendation that at an absolute minimum the Congress consolidate the bank regulatory functions of the Comptroller of the Currency, the Federal Reserve Board and the FDIC in a single agency * * * [T]he minimum consolidation of bank regulation should also include the bank regulating 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, Federal Reserve, FDIC and OTS] into a single, independent regulator would result in many benefits.

L. William Seidman, chairman of the Federal Deposit Insurance Corporation from 1985 to 1991:

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 uniform; to make it 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 banking 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 return 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 create a Federal Banking 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 1986 to 1988; 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:

* * * Uneven bank examination standards—growing out of our fragmented Federal Bank Regulatory Apparatus—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 all be abolished.

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 from 1982–85:

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 depository 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 thrift 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 mechanism.

Government has the opportunity to make the regulatory world over again not for regulation's sake, but for America's safety and competitiveness. Regulatory agency restructuring has been studied for years. Almost every report issued over the last three decades has recognized 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 since the Great Depression makes 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 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. We discovered at least three major problems with the existing regulatory structure.

Lack of independence: Like monetary 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 leadership, they have a continuity of mission and purpose with dedicated professional staffs, and a clear mandate. Regulatory agencies that are parts of 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 and supervision.

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 banking and financial system is undergoing 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 proposal of the Nation's eighth largest banking organization, Wells Fargo, to trade its bank charter for a savings and loan charter in order to take advantage of less restrictive rules on interstate branching and permissible activities. The story went on to note that the proposal would have put Federal regulators on the spot and was dropped because it might be too controversial.

As Fed Chairman Arthur Burns stated in the early 1970's:

The present system is conducive to subtle competition among the regulatory authorities, sometimes to relax constraints, sometimes to delay corrective measures.

Wolfgang Reinicke of the Brookings Institution, testifying in 1991 before the Banking Committee agreed:

The fewer the number of Government agencies, the lesser the regulatory overlap and the lower the chance that short-term institutional competition will override long-term public policy.

Regulatory consolidation is not a new or radical idea. The need to merge the Federal bank regulatory agencies has been widely acknowledged for decades. In 1949, the Hoover Commission was the first of a series of high-level commissions to recommend consolidation of the bank regulatory apparatus. In 1962, the Commission on Money and Credit did the same. In the mid-1970's, my predecessor, Chairman Proxmire, held hearings on regulatory consolidation and introduced legislation on three occasions. In the early 1980's, the Reagan administration embraced regulatory consolidation as a cost-saving measure. And the Bush administration included a stripped-down regulatory 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. At a news conference, Mr. Sandner called the current Federal system of financial regulation "an expensive morass of duplication and inefficiency." And just recently in an interview with the American Banker, 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 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 vehemently opposed the legislation. Privately, however, each agency let it be known it would withdraw its objections if it could assume the powers of the other two.

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 bank and thrift customers and the general public, regulatory consolidation means a more accountable, more responsive bank regulatory system. Citizens will no longer have to guess which faceless 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, cost-effective, and competitive banking 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.

The 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

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 5 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 Board 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 reinvent and reengineer Government in a major, 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 my remarks.

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

S. 1633

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 "Regulatory Consolidation Act of 1993".

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

SEC. 2. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) APPOINTED COMMISSIONER.—The term "appointed commissioner" means a commissioner appointed by the President under section 102(3).

(2) CHAIRPERSON.—The term "Chairperson" means the Chairperson of the Federal Banking Commission.

(3) COMMISSION.—The term "Commission" means the Federal Banking Commission.

(4) DESIGNATED TRANSFER DATE.—The term "designated transfer date" means the date designated under section 106.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(6) CERTAIN OTHER TERMS.—The terms "company", "control" (when used with respect to an insured depository institution), and "insured depository institution" have the same meaning as in section 3 of the Federal Deposit Insurance Act.

TITLE I—FEDERAL BANKING COMMISSION

SEC. 101. ESTABLISHMENT.

There is established the Federal Banking Commission as an independent establishment in the executive branch.

SEC. 102. MANAGEMENT.

The management of the Commission shall be vested in 5 commissioners, including—

(1) the Secretary of the Treasury (or the Secretary's designee);

(2) 1 member of the Board of Governors of the Federal Reserve System designated as a commissioner by resolution of the Board of Governors; and

(3) 3 commissioners appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

SEC. 103. FEDERAL BANKING COMMISSIONERS.

(a) POLITICAL AFFILIATION.—Not more than 3 commissioners may be members of the same political party.

(b) CHAIRPERSON AND VICE CHAIRPERSON.—

(1) CHAIRPERSON.—The President shall, by and with the advice and consent of the Senate, designate 1 of the appointed commissioners, at the time of that person's appointment to the Commission, to serve as the Chairperson of the Commission for a term of 6 years (or, in the case of any appointment under subsection (c)(2), for the remainder of the commissioner's term as a commissioner).

(2) VICE CHAIRPERSON.—The President shall, by and with the advice and consent of the Senate, designate 1 of the appointed commissioners, at the time of that person's appointment to the Commission, to serve as the Vice Chairperson of the Commission for a term of 6 years (or, in the case of any appointment under subsection (c)(2), for the remainder of the commissioner's term as a commissioner).

(3) ACTING CHAIRPERSON.—The Vice Chairperson shall act as Chairperson if—

(A) the position of Chairperson is vacant; or

(B) the Chairperson is absent or disabled.

(c) 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(3)—

(A) 1 shall be appointed for a term to expire 6 years after the designated transfer date;

(B) 1 shall be appointed for a term to expire 4 years after the designated transfer date; and

(C) 1 shall be appointed for a term to expire 2 years after the designated transfer date,

as designated by the President at the time of the appointment.

(d) VACANCY.—Any vacancy on the Commission 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) hold stock or other securities 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 organization other than a nonprofit organization organized for charitable, educational, or other public purposes.

(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) APPOINTED 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 SERVE FULL TERMS.—Subparagraph (A) does not apply to any commissioner who has served the full term for which that commissioner was appointed.

(f) 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 5314 of title 5, United States Code, is amended by adding at the end the following new item:

"Presidentially appointed members of the Federal Banking Commission (2).".

SEC. 104. POWERS AND DUTIES OF THE COMMISSION.

(a) REGULATION OF NATIONAL BANKS.—

(1) TRANSFER OF FUNCTIONS.—All functions of the Comptroller of the Currency are transferred to the Commission.

(2) 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.

(b) REGULATION OF SAVINGS ASSOCIATIONS AND SAVINGS AND LOAN HOLDING COMPANIES.—

(1) TRANSFER OF FUNCTIONS.—All functions of the Director of the Office of Thrift Supervision are transferred to the Commission.

(2) COMMISSION'S AUTHORITY.—The Commission shall have all powers and duties that were vested in the Director of the Office of Thrift Supervision before the designated transfer date.

(c) REGULATION OF MEMBER BANKS, BANK HOLDING COMPANIES AND AFFILIATES, AND VARIOUS INTERNATIONAL BANKING ENTITIES.—

(1) 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.

(C) Companies operating under the International Banking Act of 1978 and sections 25 and 25A of the Federal Reserve Act.

(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, before the designated transfer date, were vested in the Board of Governors of the Federal Reserve System under the following provisions of law:

(A) Sections 6 (other than the 1st and 2d paragraphs), 9, 19(h), 23, 23A, 23B, 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.

(D) The International Banking Act of 1978.

(E) Sections 20, 31, and 32 of the Banking Act of 1933.

(F) The Federal Deposit Insurance Act.

(G) Any title of the Consumer Credit Protection Act.

(H) The Bank Protection Act of 1968.

(I) The Home Mortgage Disclosure Act of 1975.

(J) The Community Reinvestment Act of 1977.

(K) The Depository Institution Management Interlocks Act.

(L) The Bank Service Corporation Act.

(M) The Federal Financial Institutions Examination Council Act of 1978.

(N) The Right to Financial Privacy Act of 1978.

(O) The Alternative Mortgage Transaction Parity Act of 1982.

(P) The International Lending Supervision Act of 1983.

(Q) The Expedited Funds Availability Act.

(R) The Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(S) The Federal Deposit Insurance Corporation Improvement Act of 1991.

(T) The Depository Institutions Disaster Relief Act of 1992.

(d) REGULATION OF STATE NONMEMBER BANKS.—

(1) TRANSFER OF FUNCTIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), all functions of the Federal Deposit Insurance Corporation (and its Board of Directors) relating to the supervision and regulation of State nonmember banks are transferred to the Commission.

(B) INSURANCE-RELATED FUNCTIONS EXCEPTED.—The functions of the Federal Deposit Insurance Corporation relating to insurance, conservatorship, or receivership functions shall not be transferred to the Commission.

(2) COMMISSION'S AUTHORITY.—The Commission shall have all powers and duties that, before the designated transfer date, were vested in the Federal Deposit Insurance Corporation under the following provisions of law:

(A) Sections 7(a), 20, 21, 22, 27, 30(c), 32, 33, 34, 35, 36, 37, and 39, subsections (b) through (n), (r), (s), (u), and (v) of section 8, subsections (b)(2)(A), (c), (d), and (e) of section 10, and subsections (c) (other than paragraph (1)), (d), (g), (i), (j), (l), (o), and (p) of section 18 of the Federal Deposit Insurance Act.

(B) Any title of the Consumer Credit Protection Act.

(C) The Depository Institution Management Interlocks Act.

(D) The Federal Financial Institutions Examination Council Act of 1978.

(E) The Home Mortgage Disclosure Act of 1975.

(F) The Right to Financial Privacy Act of 1978.

(G) The Alternative Mortgage Transaction Parity Act of 1982.

(H) The Bank Service Corporation Act.

(I) The Expedited Funds Availability Act.

(J) The Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(K) The Community Reinvestment Act of 1977.

(L) The Federal Deposit Insurance Corporation Improvement Act of 1991.

(M) The Depository Institutions Disaster Relief Act of 1992.

(e) SCHOOLS FOR EXAMINERS.—All functions of the Federal Financial Institutions Examination Council relating to the conduct of schools for examiners and assistant examiners pursuant to section 1006(d) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3305(d)) are transferred to the Commission.

(f) EFFECTIVE DATE.—Subsections (a) through (e) shall become effective on the designated transfer date.

(g) 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 TRANSFERS OF FUNCTIONS.

Effective on the designated transfer date, section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) is amended to read as follows:

"(q) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' means the Federal Banking Commission.".

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 subsection (a).

(c) PERMISSIBLE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under this section shall be not earlier than 120 days nor later than 300 days after the date of enactment of this Act.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is later 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 together with—

(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—

(i) within the period described in paragraph (1); or

(ii) if the Secretary has previously designated a date under this paragraph, before that date; and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this Act.

(3) EXTENSION LIMITATION.—In no case shall any date designated under this section be later than 450 days after the date of enactment of this Act.

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

qualified not later than 20 days before the designated transfer date; and

(2) accordingly—

(A) the President should transmit those commissioners' appointments to the Senate not later than 90 days before the designated transfer date; and

(B) the Committee on Banking, Housing, and Urban Affairs of the Senate should act on those appointments not later than 45 days before the designated transfer date.

SEC. 108. ACCESS BY THE FEDERAL RESERVE BOARD TO THE COMMISSION'S RECORDS.

For the purpose of carrying out its functions under the Federal Reserve Act, the Board of Governors of the Federal Reserve System shall have access to—

(1) all books, accounts, records, reports, files, memoranda, papers, things, property belonging to or in use by the Commission; and

(2) all reports of examination;

that relate to insured depository institutions or other depository institutions (as defined in section 19(b)(1)(A) of the Federal Reserve Act) or companies having control of insured depository institutions or other depository institutions; and together with related work papers and correspondence files, and all without any deletions.

TITLE II—ABOLITION OF FEDERAL BANKING AGENCIES

SEC. 201. OFFICE OF COMPTROLLER OF THE CURRENCY AND POSITION OF COMPTROLLER OF THE CURRENCY ABOLISHED.

(a) IN GENERAL.—Effective on the designated transfer date, the Office of the Comptroller of the Currency and the position of Comptroller of the Currency are abolished.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Effective—

(1) on the designated transfer date—

(A) chapter 9 of title VII of the Revised Statutes is amended by striking sections 324, 325, and 326; and

(B) subchapter I of chapter 3 of title 31, United States Code, is amended by striking section 307; and

(2) 90 days after the designated transfer date, section 5314 of title 5, United States Code, is amended by striking "Comptroller of the Currency.".

SEC. 202. OFFICE OF THRIFT SUPERVISION AND POSITION OF DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION ABOLISHED.

(a) IN GENERAL.—Effective on the designated transfer date, the Office of Thrift Supervision and the position of Director of the Office of Thrift Supervision are abolished.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Effective—

(1) on the designated transfer date—

(A) the Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by striking section 3; and

(B) subchapter I of chapter 3 of title 31, United States Code, is amended by striking section 309; and

(2) 90 days after the designated transfer date, section 5314 of title 5, United States Code is amended by striking "Director of the Office of Thrift Supervision.".

SEC. 203. SAVINGS PROVISIONS.

(a) SAVINGS PROVISIONS RELATING TO THE COMPTROLLER OF THE CURRENCY.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 104(a)(1) and 201 shall not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office 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 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 DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 104(b)(1) and 202 shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, 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 the Office of Thrift Supervision, except that the Commission shall be substituted for the Director or the Office as a party to any such proceeding as of the designated transfer date.

(c) SAVINGS PROVISIONS RELATING TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 104(c)(1) shall not affect the validity of any right, duty, or obligation of the United States, the Board of Governors of the Federal Reserve System, or any other person that—

(A) arises under any provision of law referred to in section 104(c)(1); and

(B) existed on the day before the date of enactment of this Act.

(2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding commenced by or against the Board of Governors of the Federal Reserve System with respect to any function transferred to the Commission, except that the Commission shall be substituted for the Board of Governors as a party to any such proceeding as of the designated transfer date.

(d) SAVINGS PROVISIONS RELATING TO THE FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 104(d)(1) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance Corporation, the Board of Directors of that Corporation, or any other person, that—

(A) arises under any provision of law referred to in section 104(d)(2); and

(B) 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 Federal Deposit Insurance Corporation or the Board of Directors of that Corporation with respect to any function transferred to the Commission, except that the Commission shall be substituted for the Corporation or Board of Directors, as the case may be, as a party to any such proceeding as of the designated transfer date.

(e) CONTINUATION OF ORDERS, RESOLUTIONS, DETERMINATIONS, AND REGULATIONS.—All orders, resolutions, determinations, and regulations, which have been issued, made, prescribed, or allowed to become effective by the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation (including orders, resolutions, determinations, and regulations that relate to the conduct of conservatorships and receiverships), or by a court of competent jurisdiction, in the performance of functions that are transferred by this Act and that are in effect on the designated transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, and regulations and shall be enforceable by or against the Federal Banking Commission until modified, terminated, set aside, or superseded in accordance with applicable law by the Commission, by any court of competent jurisdiction, or by operation of law.

SEC. 204. REFERENCES IN FEDERAL LAW TO FEDERAL BANKING AGENCIES.

(a) COMPTROLLER OF THE CURRENCY AND DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—Any reference in any Federal law to the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or the Office of Thrift Supervision shall be deemed to be a reference to the Federal Banking Commission.

(b) BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—Any reference in any Federal law to the Board of Governors of the Federal Reserve System in connection with any function of the Board of Governors under any provision of law referred to in section 104(c)(2) shall be deemed to be a reference to the Federal Banking Commission.

(c) FEDERAL DEPOSIT INSURANCE CORPORATION.—Any reference in any Federal law to the Federal Deposit Insurance Corporation or the Board of Directors of such Corporation in connection with any function of the Corporation or Board of Directors under any provision of law referred to in section 104(d)(2) shall be deemed to be a reference to the Federal Banking Commission.

SEC. 205. DISPOSITION OF AFFAIRS.

(a) IN GENERAL.—During the 90-day period beginning on the designated transfer date, the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Director of the Office of Thrift Supervision—

(1) shall, solely for the purpose of winding up the affairs of their respective agencies related to any functions transferred to the Commission under this Act—

(A) manage the employees of those agencies and provide for the payment of the compensation and benefits of any such employee which accrue before the designated transfer date; and

(B) manage any property of those agencies until the property is transferred under section 209; and

(2) may take any other action necessary to wind up the affairs of their respective agencies relating to the transferred functions.

(b) AUTHORITY AND STATUS OF EXECUTIVES.—

(1) IN GENERAL.—Notwithstanding the transfers of functions under this Act, the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the designated transfer date, have any authority vested in those persons before that date that is necessary to carry out the requirements of this Act during that period.

(2) OTHER PROVISIONS.—For purposes of paragraph (1), the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall continue—

(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.

(a) STATUS OF EMPLOYEES BEFORE 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.

(b) CONTINUATION OF SERVICES.—

(1) 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.

(2) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and 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 connection 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 engaged in performing functions transferred to the Commission on the designated transfer date, shall be transferred to the Commission.

(d) RIGHTS OF EMPLOYEES.—Employees transferred under subsection (c) shall have the following rights:

(1) TRANSFER.—Each employee shall be transferred to the Commission for employment not later than 90 days after the designated transfer date, and the transfer shall be deemed a transfer of function for the purpose of section 3503 of title 5, United States Code.

(2) EQUAL POSITION.—Each transferred employee shall be guaranteed a position with not less than the same status, tenure, and pay as that held December 31, 1992.

(3) 1-YEAR PRESERVATION OF PERMANENT POSITIONS.—No employee holding a permanent position shall be involuntarily separated or reduced in grade or compensation for 1 year after the date of transfer, except for cause.

(4) SPECIAL APPOINTMENT AUTHORITY.—In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred.

(5) WORK FORCE REORGANIZATION.—If the Commission determines, after the end of the 1-year period beginning on the designated transfer date, that a reorganization of the combined work force is required, that reorganization shall be deemed a "major reorganization" for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(6) 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 insurance, 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 election or notice, without regard to any regularly scheduled open season.

(7) SENIOR EXECUTIVE SERVICE EMPLOYEES.—A transferring employee in the Senior Executive Service shall be placed in a comparable position at the agency or entity to which the employee is transferred.

(8) 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.

(a) IN GENERAL.—Not later than the end of the 90-day period beginning on the designated transfer date—

(1) the property of the Office of the Comptroller of the Currency and the Office of Thrift Supervision shall be transferred to the Commission; and

(2) 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.

(b) PRESERVATION OF PROPERTY.—Property transferred under this section shall not be altered, destroyed, or deleted before transfer under this section.

(c) PROPERTY DEFINED.—For purposes of this section, the term "property" includes all real property, books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers and correspondence related to such reports, and any other information or materials of the agencies specified in subsection (a) on the designated transfer date.

(d) ADMINISTRATIVE PROVISION.—For purposes of this section, the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation shall determine what property is used in performing functions to be transferred under this Act.

SEC. 208. CONFORMING CHANGES IN FEDERAL DEPOSIT INSURANCE CORPORATION BOARD OF DIRECTORS.

(a) IN GENERAL.—Subparagraphs (A) and (B) of section 2(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1812(a)(1)) are amended to read as follows:

"(A) 1 of whom is the Secretary of the Treasury (or the Secretary's designee);

"(B) 1 of whom is the Chairperson of the Federal Banking Commission; and".

(b) VACANCY.—Section 2(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1812(d)(2)) is amended to read as follows:

"(2) ACTING OFFICIAL MAY SERVE.—

"(A) SECRETARY OF THE TREASURY.—In the event of a vacancy in the position of the Secretary of the Treasury or during the absence or disability of the Secretary of the Treasury, the acting Secretary or the acting Secretary's designee shall serve as a member of the Board of Directors.

"(B) CHAIRPERSON OF THE FEDERAL BANKING COMMISSION.—In the event of a vacancy in the position of Chairperson of the Federal Banking Commission or during the absence or disability of the Chairperson, the acting Chairperson shall serve as a member of the Board of Directors.".

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 5203 (12 U.S.C. 87).
(B) Section 5206 (12 U.S.C. 88).
(C) Section 5196 (12 U.S.C. 89).
(D) Section 5158 (12 U.S.C. 102).
(E) Section 5159 (12 U.S.C. 101a).
(F) Section 5172 (12 U.S.C. 104).
(G) Section 5173 (12 U.S.C. 107).
(H) Section 5174 (12 U.S.C. 108).
(I) Section 5182 (12 U.S.C. 109).
(J) Section 5183 (12 U.S.C. 110).
(K) Section 5195 (12 U.S.C. 123).
(L) Section 5184 (12 U.S.C. 124).
(M) Section 5226 (12 U.S.C. 131).
(N) Section 5227 (12 U.S.C. 132).
(O) Section 5228 (12 U.S.C. 133).
(P) Section 5229 (12 U.S.C. 134).
(Q) Section 5230 (12 U.S.C. 137).
(R) Section 5231 (12 U.S.C. 138).
(S) Section 5232 (12 U.S.C. 135).
(T) Section 5233 (12 U.S.C. 136).
(U) Section 5185 (12 U.S.C. 151).
(V) Section 5186 (12 U.S.C. 152).
(W) Section 5160 (12 U.S.C. 168).
(X) Section 5161 (12 U.S.C. 169).
(Y) Section 5162 (12 U.S.C. 170).
(Z) Section 5163 (12 U.S.C. 171).
(AA) Section 5164 (12 U.S.C. 172).
(BB) Section 5165 (12 U.S.C. 173).
(CC) Section 5166 (12 U.S.C. 174).
(DD) Section 5167 (12 U.S.C. 175).
(EE) Section 5222 (12 U.S.C. 183).
(FF) Section 5223 (12 U.S.C. 184).
(GG) Section 5224 (12 U.S.C. 185).
(HH) Section 5225 (12 U.S.C. 186).
(II) Section 5237 (12 U.S.C. 195).

(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. 103).

(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 currency, and for other purposes." and approved June 20, 1874:

(1) Section 5 (12 U.S.C. 105).

(ii) Section 3 (12 U.S.C. 121).
(iii) Section 8 (12 U.S.C. 126).
(iv) Section 4 (12 U.S.C. 176).
(D) The following sections of the Act entitled "An Act to enable national-banking associations to extend their corporate existence, and for other purposes." and approved July 12, 1882:
(i) Section 8 (12 U.S.C. 177).
(ii) Section 9 (12 U.S.C. 178).
(3) OTHER STATUTES REPEALED.—
(A) The Act entitled "An Act to amend the National Bank Act in providing for redemption of national bank notes stolen from or lost by banks of issue." and approved July 28, 1892 (12 U.S.C. 125) is repealed.
(B) The Act entitled "An Act authorizing the conversion of national gold banks." and approved February 14, 1880 (12 U.S.C. 153) is repealed.
(b) FEDERAL RESERVE ACT AND OTHER LAWS AMENDED.—
(1) FEDERAL RESERVE ACT.—
(A) The 1st sentence of the 8th undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 418) is amended by striking "the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury," and inserting "the Secretary of the Treasury shall".
(B) The 9th undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 419) is amended to read as follows: "When such notes have been prepared, the notes shall be delivered to the Board of Governors of the Federal Reserve System subject to the order of the Secretary of the Treasury for the delivery of such notes in accordance with this Act.".
(C) The 10th undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 420) is amended—
(i) by striking "Comptroller of the Currency" and inserting "Secretary of the Treasury"; and
(ii) by striking "Federal Reserve Board" and inserting "Board of Governors of the Federal Reserve System".
(D) The 11th undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 421) is amended to read as follows: "The Secretary of the Treasury may examine the plates, dies, bed pieces, and other material used in the printing of Federal Reserve notes and may issue regulations relating to such examinations.".
(2) OTHER LAWS.—
(A) The Act entitled "An Act to provide for the redemption of national-bank notes, Federal Reserve notes, and Federal Reserve notes which cannot be identified as to the bank of issue." and approved June 13, 1933, is amended—
(i) in the 1st section (12 U.S.C. 121a)—
(I) by striking "whenever any national-bank notes, Federal Reserve bank notes," and inserting "whenever any Federal Reserve bank notes"; and
(II) by striking ", and the notes, other than Federal Reserve notes, so redeemed shall be forwarded to the Comptroller of the Currency for cancellation and destruction"; and
(ii) in the 2d section (12 U.S.C. 122a)—
(I) by striking "National-bank notes and"; and
(II) by striking "national-bank notes and".
(B) The 1st section of the Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes." and approved March 3, 1875 (12 U.S.C. 106), is amended in the first paragraph that appears under the heading "NATIONAL CURRENCY." by striking "Secretary of the Treasury: *Provided*, That" and all that follows through the period and inserting "Secretary of the Treasury.".
(C) The Act entitled "An Act to simplify the accounts of the Treasurer of the United States, and for other purposes." and approved October 10, 1940 (12 U.S.C. 177a) is amended by striking all after the enacting clause and inserting the following: "The cost of transporting and redeeming outstanding national bank notes and Federal Reserve bank notes as may be presented to the Treasurer of the United States for redemption shall be paid from the regular annual appropriation for the Department of the Treasury.".
(D) Section 5234 of the Revised Statutes (12 U.S.C. 192) is amended by striking "has refused to pay its circulating notes as therein mentioned, and".
(E) Section 5236 of the Revised Statutes (12 U.S.C. 194) is amended by striking ", after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association,".
(F) Section 5238 of the Revised Statutes (12 U.S.C. 196) is amended by striking the first sentence.
(G) Section 5119(b)(2) of title 31, United States Code, is amended by adding at the end the following: "The Secretary shall not be required to reissue United States currency notes upon redemption.".

SEC. 210. FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ABOLISHED.

(a) IN GENERAL.—The Federal Financial Institutions Examination Council is abolished.
(b) CONFORMING AMENDMENTS.—
(1) IN GENERAL.—The Federal Financial Institutions Examination Council Act of 1978 is amended by striking sections 1002, 1004, 1005, 1007, 1008, 1009, and 1009A.
(2) TRAINING.—Section 1006 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3305) is amended by striking subsections (a), (b), (c), (e), and (f).
(3) DEFINITION.—Section 1003 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302) is amended—
(A) by inserting "and" at the end of paragraph (1);
(B) by striking paragraph (2); and
(C) by redesignating paragraph (3) as paragraph (2).
(c) REDESIGNATION OF APPRAISAL SUBCOMMITTEE.—
(1) IN GENERAL.—The Appraisal Subcommittee established by section 1011 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3310) shall be redesignated the "Appraisal Committee".
(2) AMENDMENT TO SECTION 1011.—The first sentence of section 1011 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3310) is amended to read as follows: "There shall be a committee to be known as the 'Appraisal Committee', which shall consist of the designees of the Chairperson of the Federal Banking Commission, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairman of the National Credit Union Administration Board.".
(3) AMENDMENT TO SECTION HEADING.—The heading of section 1011 of the Federal Financial Institutions Examination Council Act of 1978 is amended to read as follows:

"SEC. 1011. ESTABLISHMENT OF APPRAISAL COMMITTEE.".

(d) REFERENCES IN OTHER LAW.—Any reference in any Federal law to the Federal Financial Institutions Examination Council shall be deemed to be a reference to the Commission.
(e) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the designated transfer date.

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 commissioners 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 consolidation of regulatory functions 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 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 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,
Washington, DC, November 8, 1993.

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 us state as clearly as we can that we strongly believe that the time is now for the 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, archaic and must be re-engineered and modernized. 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 bureaucracy is long overdue. Now is the time to address this issue head on. Banks and thrifts are posting record profits, and both the Congress and the Administration are committed to cost saving, deficit reduction, and a more efficient government.

Consolidation of the regulatory agencies is not a new idea. Virtually every independent study of our federal bank regulatory system since 1949 has recognized the need for major consolidation. Consolidation has been advocated by, among others, The Hoover Commission, the Hunt Commission, the FINE Study, the Grace Commission, the Task Group on Regulation of Financial Services, and the recently completed National Commission on Financial Institution Reform, Recovery, and Enforcement.

Most recently, on September 14, 1993, the Senate Banking Committee received testimony from a bi-partisan group of six former financial agency regulators. The witnesses were unanimous and unequivocal that major consolidation would benefit consumers; benefit industry; and improve the safety and soundness of the financial services industry. For the banking industry, consolidation holds the promise of reduced examination fees and an end to duplicative examinations and conflicting regulations. For the general public, regulatory consolidation means a more accountable, more responsive bank regulatory system. And for the American economy, regulatory consideration means a more vital, more competitive banking system.

We believe that a streamlined regulatory system will allow America's banks to put more effort into productive business activities and less into coping with their regulators. We also believe that the consolidation and streamlining of our supervisory and regulatory system into a single Federal Banking Commission will do much to reduce the paperwork burden facing the industry while at the same time increasing the safety and soundness of the system.

Mr. President, full consolidation of the supervisory and regulatory responsibilities of all four of our bank and thrift regulatory agencies is a top priority for us in this Congress. We look forward to working closely with you and your Administration on this issue. Given the similarity of approaches contained in the bills we have introduced in the House and Senate, we urge your administration to seize this unique and historic opportunity to fundamentally improve the way our bank and thrift regulatory agencies operate and to reinvent and re-engineer this area of our government in a major, meaningful way.

Sincerely,

HENRY B. GONZALEZ,
Chairman,
House Banking Committee.

ALFONSE M. D'AMATO,
Ranking Member,
Senate Banking Committee.

DONALD W. RIEGLE, JR.,
Chairman,
Senate Banking Committee.●

● Mr. D'AMATO. Mr. President, I am pleased to join Senator RIEGLE, the distinguished chairman of the Senate Committee on Banking, Housing, and Urban Affairs, in introducing the Regulatory Consolidation Act of 1993. Before explaining the importance and purpose of the legislation, I want to acknowledge his determination and outstanding leadership in formulating a bipartisan and coherent legislative approach to modernizing and rationalizing the regulation of financial institutions.

Mr. President, the bill we are introducing today would consolidate into a single, independent Federal Bank Commission the supervisory and regulatory functions currently scattered among the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision. The Federal Bank Commission would assume the regulatory and supervisory functions of the Comptroller of the Currency over national banks; the Federal Reserve Board over bank holding companies and State-chartered banks that belong to the Federal Reserve System; the Fed with respect to other State-chartered banks; and the Office of Thrift Supervision concerning savings associations and their holding companies. The FDIC would retain back-up enforcement authority in its capacity as insurer. The Fed would continue its historical and critical roles as central bank and lender of last resort. The bill would not address or change the present regulation and insurance of credit unions.

Mr. President, several weeks ago amidst great fanfare the administration released the "National Performance Review" containing many recommendations for reinventing Government. The report proposes to streamline, decentralize, reorient and even eliminate agencies and programs in order to create a more responsive, effective and efficient Government. But the report conspicuously avoids any attempt to achieve these laudable goals in the context of the bank regulatory structure. This must be an oversight or a subject still under review within the administration because it has been proposed—but not accomplished—byindependent commissions, think tanks and prominent experts since the late 1930's.

Mr. President, the Regulatory Consolidation Act of 1993 would, in the words of Vice President GORE, move our bank regulatory system from "redtape to results * * *". With the administration's support, and building upon the bipartisan enthusiasm for consolidation in the House and Senate, an independent Federal Bank Commission can be established in this Congress. I urge the administration witnesses to support the bill when they testify before the committee later this month.

Mr. President, the regulatory system for depository institutions has developed more by accident than by design. Bank executives have expressed frustration over what they have called a "revolving door of examiners." And among the most notable causes of the credit crunch is the burdensome, confusing, and costly regulation that has resulted from the present labyrinthine framework of overlapping and uncoordinated examinations, duplicative reports, and differing and inconsistent interpretations. The current system of regulation is archaic, cumbersome, costly and confusing to both the regulated and the regulators.

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. The purpose of this bill is to recognize and consolidate the four regulatory agencies into a Federal Bank Commission, and it is entirely consistent with the committee's overall approach to simplifying and streamlining regulation while strengthening the banking system. Mr. President, Chairman RIEGLE and I intend to make regulatory consolidation 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 comprehensible 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 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.

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 it essential that 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 their 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 this 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 overflow 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 to provide for future disposal capacity. Bondholders will be protected. This legislation will also have the result of discouraging wholesale interstate transportation of garbage because it will encourage local communities to plan for and 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 project is to consist of a regional disposal facility and three waste transfer stations financed by revenue bonds. Revenues from tipping fees are tosupport 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 involved communities. A firm wishing to transport trash to a competing landfill filed suit 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 aspects from 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. And yet, RCRA requires them to do just this for good reasons of environmental policy. If we in Congress expect local communities to continue to carry out this vital responsibility for public health and safety, we are going to have to step up to the plate and clarify to the satisfaction of the courts that we mean for communities to have this legal authority.

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 in my view 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. 1635. A bill to authorize a certificate of documentation for certain vessels; to the Committee on Commerce, Science, and Transportation.

WAIVERS TO THE JONES ACT

• Mr. MACK. Mr. President, the Commerce Subcommittee on Merchant Marine has been working on legislation to phase out bare boat charters. Currently, the law provides an exception under a bare boat provision which allows foreign built vessels to operate as de facto passenger charters. 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. They have made economic decisions based upon exceptions which the law provides. However, as that law is now being changed, as a matter of equity, the owners of these vessels should be granted waivers to the Jones Act.

I don't believe it's fair to change the rules of the game for our business men and women and take away their jobs and their way of life because we in the Congress have decided to change the law.

The Bare Boat Association has provided the committee a list of five of their vessels which need Jones Act waivers. As it is my understanding the committee 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 1983, for a period of 5 years. In July 1986, the Federation of Japan Salmon Fisheries Cooperative Association applied for a 5-year general permit to allow the incidental taking of Dall's porpoise, northern fur seals, and sea lions in the course of its Bering Sea salmon drift net fishery. The National Oceanic and Atmospheric Administration [NOAA] issued a permit allowing the take of Dall's porpoise, but denied one for northern fur seals and sea lions because adequate information was unavailable to assess the status of those populations. NOAA believed that it had discretion under the MMPA to authorize the taking of Dall's porpoise, which were at the optimum sustainable population [OSP] level, even though some other species would be taken occasionally as well.

After the issuance of this general permit, lawsuits to enjoin the permit were filed by the Kokechik FisheriesAssociation. On June 15, 1987, the U.S. District Court for the District of Columbia ruled that issuance of the permit violated the MMPA. The court's decision, Kokechik Fishermen's Association versus Secretary of Commerce, held that NOAA could not issue the permit to take Dall's porpoise if it were likely that northern fur seals also would be taken because the act prohibits the issuance of a permit and any taking of a population that is below its OSP level. The decision affected NOAA's discretion to issue or renew general permits to U.S. fishermen for the incidental taking of small numbers of marine mammals from depleted populations or from those for which the status is uncertain.

The 1988 MMPA authorization legislation addressed the Kokechik decision and provided for the issuance of a new 5-year interim exemption for commercial fisheries. The provision implemented a negotiated agreement between commercial fishing operations and conservation groups, exempting most commercial fishing operations from the permit requirements of the act. The 5-year exemption allowed the nonintentional killing of marine mammals during fishing operations and required fishermen to carry observers and collect better scientific data on populations of marine mammals and the interactions between marine mammals and fisheries. This statutory exemption would expired on October 1, 1993. However, Congress recently passed legislation (Public Law 103-86) extending the exemption for an additional 6 months, until April 1, 1994.

Mr. President, this bill would extend the authorization of appropriations through fiscal year 1998 for the Department of Commerce, Department of Interior, and the Marine Mammal Commission. DOC would receive $21,636,000 for fiscal year 1994, DOI would receive $8,000,000 for fiscal year 1994, and the Marine Mammal Commission would receive $1,350,000 for fiscal year 1994. Funding levels have been adjusted for inflation in the outyears. With respect to fishery interactions, the primary focus of the legislation is to establish criteria for identifying and prioritizing marine mammal stocks most affected by interactions with 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 issued within 240 days after the date of enactment, with a final stock assessment published 90 days after the end of the public comment period.

Second, 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 would include a review 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 fishery effort. The Secretary may establish such a registration system only if no other Federal, State, or tribal registration system exists. Any fees charged for a registration 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 that fish 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 team would be mandated within 60 says 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 know critical stocks toward recovery.

In closing, I would like to comment on the efforts of the fishing community, conservation groups, and the administration. The task at hand 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:

S. 1636

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

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Marine Mammal Protection Act Amendments of 1993".

SEC. 2. PURPOSES.

The purposes of this Act are to—

(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 cause any species or stock of marine mammals to be reduced to 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);

(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 incidental 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 mortality and serious injury incidental to commercial fishing operations to insignificant levels approaching zero; and

(7) develop a cost-effective program for reliably monitoring (A) the levels of incidental take of marine mammals in commercial fisheries and (B) 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 I of the Marine Mammal Protection Act of 1972, $21,636,000 for fiscal year 1994, $22,502,000 for fiscal year 1995, $23,402,000 for fiscal year 1996, $24,338,000 for fiscal year 1997, and $25,311,000 for fiscal year 1998.".

(b) INTERIOR DEPARTMENT.—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 I of the Marine Mammal Protection Act of 1972, $8,000,000 for fiscal year 1994, $8,600,000 for fiscal year 1995, $9,000,000 for fiscal year 1996, $9,400,000 for fiscal year 1997, and $9,900,000 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 1994, $1,400,000 for fiscal year 1995, $1,450,000 for fiscal year 1996, $1,500,000 for fiscal year 1997, and $1,550,000 for fiscal year 1998.".

SEC. 4. INCIDENTAL TAKING OF ENDANGERED AND THREATENED SPECIES.

(a) IN GENERAL.—Section 101(a)(4) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(4)) is amended to read as follows:

"(4)(A) The Secretary may allow the incidental, but not the intentional, taking, by citizens of the United States while engaging in commercial fishing operations, of marine mammals from a species or stock designated under this Act as depleted because of its listing as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that such taking is pursuant to a statement issued by the Secretary for such taking under section 7 of such Act (16 U.S.C. 1536).

"(B) Section 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.".

(b) CONFORMING AMENDMENT.—Section 7(b)(4)(C) of the Endangered Species Act of 1973 (16 U.S.C. 1536(b)(4)(C)) is amended by inserting "101(a)(4) or" immediately before "101(a)(5)" each place it appears.

SEC. 5. CONSERVATION PLANS.

Section 115(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1383b(b)) is amended by adding at the end the following new paragraph:

"(4) If the Secretary determines that an incidental taking plan is necessary to reduce the incidental taking of marine mammals in the course of commercial fishing operations from a stock identified as a critical stock under section 118(c), any conservation plan required under this subsection for such stock shall only address non-incidental takings.".

SEC. 6. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.

Title I of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 et seq.) is amended by adding at the end the following new section:

"SEC. 118. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.

"(a) IN GENERAL.—(1) Except as provided in section 114 and in paragraphs (2), (3), and (4) of this section, and notwithstanding section 101, the provisions of this section shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)). The Secretary shall develop and implement incidental taking plans under this section to reduce the incidental lethal taking of marine mammals, from stocks listed as critical stocks under subsection (c), to a level below the calculated acceptable removal level.

"(2) Section 101(a)(4), and not this section, shall govern the incidental taking of marine mammals from species or stocks designated under this Act as depleted on the basis of their listing as threatened or endangered species under the Endangered Species Act of 1973.

"(3) Sections 104(h) and 306, and not this section, shall govern the taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

"(4) This section shall not govern the taking of marine mammals from an experimental population of California sea otters to which the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500) applies.

"(5) Sections 103 and 104 shall not apply to the incidental taking of marine mammals under the authority of this section.

"(b) SCIENTIFIC CONSULTATION.—In implementing the incidental taking program under this section, the Secretary shall seek the advice of individuals with expertise in marine mammal biology and ecology population dynamics and modeling, and commercial fishing technology and practices. Such advice should be sought with respect to information available, and actions proposed, for such implementation, including—

"(1) information provided in connection with stock assessments under this section;

"(2) studies needed to resolve uncertainties regarding stock separation, stock abundance, or trends and factors affecting distribution, size, or productivity of stocks;

"(3) studies needed to resolve uncertainties in determining marine mammal species, numbers, ages, and gender, and the reproductive status of stocks; and

"(4) research to identify modifications in fishing gear and fishing practices likely to reduce the mortality and serious injury of marine mammals incidental to commercial fishing operations.

"(c) STOCK ASSESSMENTS.—(1) Using the best scientific information available and in accordance with this subsection, the Secretary shall prepare and issue, and thereafter (as appropriate) revise, a stock assessment for each marine mammal stock which occurs in waters under the jurisdiction of the United States. The stock assessment shall include—

"(A) a definition of the stock by species or subspecies and its spatial and temporal distribution;

"(B) the best available estimates of the stock's population abundance, realistic minimum populations size, and current population trend;

"(C) estimates of the total lethal take from the stock by source and, for a stock designated under this subsection as a critical stock, other factors that may impede recovery of the stock, including impacts on marine mammal habitat and prey;

"(D) a description of any commercial fishery that interacts with the stock, including—

"(i) the approximate number of vessels participating in the fishery;

"(ii) the approximate incidental lethal and serious injury take from the from the stock by such fishery;

"(iii) seasonal or area differences in levels of such incidental lethal or serious injury take; and

"(iv) the rate of incidental mortality in the stock caused by such fishing, based on a unit of fishing effort;

"(E) a determination as to the status of the stock, including whether the stock is determined to be within its optimum sustainable population range, is designated as depleted under this Act, is listed as threatened or endangered under the Endangered Species Act of 1973, or is proposed for listing as a critical stock under subparagraph (G);

"(F) a determination of the calculated acceptable removal level for the stock and the factors used to calculate it, including a recovery factor if the stock is below its optimum sustainable population; and

"(G) designation of the stock (based on a scientific analysis of the stock's population trend and population size, the level of total lethal take from the stock from all sources, and the best available estimates of net productivity at the maximum net productivity level) for listing in one of the following categories:

"(i) Class 1, consisting of stocks whose population size is declining, or 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 net productivity of the population when it is at its maximum net productivity level.

"(ii) Class 2, consisting of stocks—

"(I) whose population size is declining, 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 20 percent and 100 percent of the net productivity of the stock's population when it is at its maximum net productivity level; or

"(II) whose population size is stable, or whose population trend is unknown and the realistic minimum population is greater than 10,000 but less than 100,000; and from which the total annual lethal take exceeds the net productivity of the stock's population when it is at its maximum net productivity level.

"(iii) Class 3, consisting of stocks—

"(I) whose population size is declining, 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 less than 20 percent of the net productivity of the stock's population when it is at its maximum net productivity level;

"(II) 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 20 percent and 100 percent of the net productivity of the stock's population when it is at its maximum net productivity level; or

"(III) 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 exceeds the net productivity of the stock's population when it is at its maximum net productivity level.

"(iv) Class 4, consisting of stocks—

"(I) whose population size is stable, or whose population trend is unknown and the 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

"(II) 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.

"(v) Class 5, consisting of stocks whose population size is increasing, or whose population trend is unknown and the realistic minimum population is greater than 100,000; and from which the total annual lethal take is less than 20 percent of the net productivity of the stock's population when it is at its maximum net productivity level.

"(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 to exceed 60 days.

"(3) Not later than 90 days after the close of the public comment period on such preliminary stock assessment, the Secretary shall publish in the Federal Register a final stock assessment, after consideration of advice, recommendations, and comments of experts and the general public and the best scientific information available.

"(4) The Secretary shall review stock assessments in accordance with this subsection, and obtain 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 listed as a critical stock and interacts with commercial fisheries. Such plan shall be developed in consultation with the incidental take team established for the plan under this subsection. If there is insufficient funding available to develop and implement an incidental taking plan for all critical stocks that interact with commercial fisheries, the Secretary shall give highest priority to the development and implementation of Class 1 stocks. Within a particular class of critical stocks that interact with commercial fisheries, the Secretary shall give highest priority to the development and implementation of plans for stocks 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 percentage of animals 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 rates approaching zero within 10 years, the incidental mortality and serious injury within the stock that results from commercial fishing operations.

"(3) 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 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.

"(4)(A) 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 take team for such critical stock and appoint the members of such team in accordance with subparagraph (C); and

"(ii) publish in the Federal Register a notice of the team's establishment, the names of the team's appointed members, the full geographic range of 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 may include representatives of Federal and State agencies, regional fishery management councils and commissions, academic and scientific organizations, environmental and fishery groups, and others as the Secretary considers appropriate. Incidental take teams shall, to the maximum extent practicable, consist of 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 such 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 covered by this subsection and exercising discretion (in consultation with scientific experts) to address such stocks in any fiscal year according to that priority.

"(5) Where the total lethal take from such a critical stock is estimated to be greater than the calculated acceptable removal level established in the stock assessment, the following procedures shall apply in the development of the incidental taking plan for the stock:

"(A) 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)(i) The Secretary shall take the draft incidental taking plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register a proposed incidental taking plan and proposed regulations to implement such plan, for public review and comment.

"(ii) In the event that the incidental take team does not submit a draft plan to the Secretary within 6 months, the Secretary shall, not later than 8 months after the establishment of the team, publish in the Federal Register a proposed incidental taking

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 and the incidental take team shall meet every 6 months to monitor the implementation of the final incidental taking plan until such time that the Secretary determines that meetings are no longer necessary.

"(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.

"(6) 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 for the stock:

"(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)(i) 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.

"(ii) 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 13 months after the establishment of the team, publish in the Federal Register a proposed incidental taking 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 and the incidental take team shall meet on an annual basis to monitor the implementation of the final incidental taking plan until such time that the Secretary determines that formal meetings are no longer necessary.

"(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.

"(7) If the Secretary finds, prior to the issuance of a final incidental taking plan, that the incidental taking of marine mammals in a commercial fishery is having an immediate and significant adverse impact on the stock to which the plan would apply, the Secretary may, after consultation with appropriate Regional Fishery Management Councils and State fishery managers, prescribe emergency regulations to reduce, to the maximum extent practicable, such incidental taking. In prescribing such emergency regulations, the Secretary shall take into account the economics of the fishery concerned and the availability of existing technology to prevent or minimize incidental taking of marine mammals, and shall conform such regulations, to the maximum extent practicable, with existing State of regional fishery management plans. Such regulations—

"(A) shall be published in the Federal Register together with the reasons therefor;

"(B) shall remain in effect for not more than 180 days, until such time as a final incidental taking plan for the stock is issued, or until the end of the applicable fishing season, whichever is earlier; and

"(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines the reasons for the emergency regulations no longer exist.

"(e) REGULATORY MEASURES.—(1)(A) The Secretary shall, after notice and opportunity for public comment, promulgate regulations to implement an incidental taking plan necessary to accomplish the objectives set forth in subsection (i).

"(B) Nothing in this paragraph shall be construed to limit the authority of the Secretary to modify the incidental taking plan at the request of the appropriate Regional Fishery Management Council or State or tribal management authority.

(2) In implementing an incidental taking plan issued pursuant to this section, the Secretary may promulgate regulations which include, but are not limited to, measures to—

"(A) Establish fishery-specific incidental lethal taking limits or restrict commercial fisheries by time or area;

"(B) register commercial fishing vessels as set forth in subsection (f);

"(C) require the use of alternative gear techniques and new technologies, encourage the development of such gear or technology, or convene expert skippers' panels;

"(D) educate commercial fishermen and other individuals, through workshops and other means, on the importance of reducing the incidental lethal taking of marine mammals from critical stocks; and

"(E) monitor the level of the incidental lethal taking of marine mammals in the course of commercial fishing operations, as set forth in subsection (h).

"(f) REGISTRATION OF VESSELS.—(1) Subject to the provisions of this subsection, the Secretary may develop a system to register commercial fishing vessels and to assess fishery effort, where such system is necessary, to understand the interaction between commercial fisheries and marine mammal stocks in a region.

"(2) In developing a registration system to understand such interactions, the Secretary shall rely upon existing Federal, State, or tribal data bases which provide the following information about an affected commercial fishery:

"(A) The approximate number of vessels participating in the fishery.

"(B) The identity of specific vessels to be registered.

"(C) The owner or operator, or both, of such vessels.

"(D) The time period in which the fishery occurs.

"(E) The approximate geographic location, or its official reporting area where the fishery occurs.

"(F) The description of fishing gear, including the appropriate unit of fishery effort.

"(3) The incidental take teams shall advise the Secretary as to whether existing Federal, State, or tribal data bases are capable of being utilized to understand the interaction between commercial fisheries and critical stocks in a region. If the Secretary determines, after consultation with such a team, that data bases for specific fisheries which provide the information required under paragraph (2) are not available to the Secretary or the team, the Secretary may require through regulation separate registration to obtain the information set forth in paragraph (2).

"(4)(A) The Secretary may, as a condition of accepting a Federal, State, or tribal registration as adequate for the purposes of this section, require such registration to be supplemented by the requirement that the vessels so registered display a decal or other evidence, issued by the registering authority, that indicates the registration is current.

"(B) To the extent the Secretary determines that separate registration is required for a specific fishery pursuant to paragraph (3), The Secretary is authorized to charge a fee for the issuance of a decal or other evidence indicating the registration is current. The fee charged under this subparagraph shall not exceed the administrative costs incurred in issuing the decal or other evidence. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the issuance of such decal or other evidence.

"(5) The costs of maintaining a separate registry system for a specific fishery pursuant to paragraph (3) shall be covered through Federal appropriations.

"(6) The Secretary may include within a registration system under this subsection only those vessels that fish in a fishery that has frequent or occasional incidental taking of marine mammals.

"(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 under this section. Such form shall be readable by computer or other machine and shall require the vessel owner or operator to provide the following:

"(1) The vessel name, and Federal, State, or tribal registration numbers of the registered vessel.

"(2) The name and address of the vessel owner or operator.

"(3) The name and description of the fishery.

"(4) The species of marine mammal incidentally killed or seriously injured, and the date and time of such incidental taking.

"(5) The time and period in which the fishery occurred.

"(6) The approximate geographic location of the incidental taking.

"(h) MONITORING.—(1) 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 and to verify reporting of incidental lethal and serious injury takings under subsection (g). Observers may perform other tasks including, but not limited to—

"(A) recording other sources of mortality;

"(B) recording the number of marine mammals sighted during the observation period; and

"(C) other scientific investigations, including collection of marine mammal tissues.

"(2) Commercial fishing vessels shall carry observers on board, when requested by the Secretary, to the extent that the vessel can

safely accommodate the observer. The owner or operator of a vessel who refuses to carry an observer shall be subject to a civil penalty, pursuant to subsection (j).

"(3)(A) The Secretary may establish an incidental take monitoring program to achieve the objectives of this paragraph which may include, but not be limited to, direct observation of fishing activities from vessels, airplanes, video observation, or points on shore.

"(B) Individuals engaged in such monitoring program shall collect scientific information on fisheries consistent with the requirements of this paragraph.

"(4) The cost of the monitoring program shall be funded by Federal appropriations, and the Secretary shall allocate available observers among fisheries consistent with the following priority:

"(A) The highest priority shall be given to fisheries that incidentally lethally take or seriously injure animals from (i) stocks designated as depleted on the basis of their listing as endangered or threatened species under the Endangered Species Act of 1993, or (ii) critical stocks.

"(B) The second highest priority shall be given to fisheries other than those described in subparagraph (A) in which the greatest incidental lethal take and serious injury of marine mammals occurs.

When the Secretary determines that sufficient observation of a specific fishery has occurred, the Secretary may discontinue such observation and direct available observer resources to the next fishery in priority. Nothing in this subsection precludes the Secretary from resuming observation of a fishery when necessary to achieve additional verification of the nature of interactions with marine mammal stocks.

"(5) Notwithstanding paragraph (4), the Secretary may initiate, where necessary, additional monitoring programs to gather information on the interaction between commercial fisheries and marine mammal stocks not identified as critical stocks. Such information may be used to verify—

"(A) the numbers of incidental lethal and serious injury takings of marine mammals in a commercial fishery, and the rate of such takings;

"(B) impacts on marine mammals of changes in fishing patterns or technologies; and

"(C) the accuracy of reporting, by vessel owners and operators, of the lethal and serious injury takings of commercial fishing vessels.

"(i) ZERO MORTALITY RATE GOAL.—(1) Commercial fisheries shall reduce their rates of incidental lethal or serious injury taking, to insignificant rates approaching zero within 10 years after the date of enactment of this section.

"(2) Fisheries which maintain insignificant serious injury and mortality rate levels approaching zero shall not be required to further reduce their mortality rates.

"(3) Three years after such date of enactment, the Secretary shall review the progress, by fishery, toward reducing mortality and serious injury rates to insignificant rates approaching zero. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report setting forth the results of such review within 1 year after commencement of the review. The Secretary shall note any fishery for which no information exists on its incidental serious injury or mortality rate of marine mammals.

"(4) If the Secretary determines after review under paragraph (3) that the rate of incidental lethal and serious injury taking in a fishery is not consistent with paragraph (1), then the Secretary shall make recommendations to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on further actions to achieve the goal specified in paragraph (1).

"(j) PENALTIES.—(1) Except as provided in paragraph (2), a person who violates this section, or any regulations thereunder, may be assessed a civil penalty of not more than $5,000 for each violation, and shall not be subject to penalty under any other provision of this Act. The penalty shall reflect the severity of the violation in relation to preventing the reduction of incidental lethal taking of marine mammals, or the accomplishment of other express objectives of this section.

"(2) Intentional killing of marine mammals, or failure to report incidental lethal takings of marine mammals as required by this section, shall be subject to the penalties in section 105.

"(3) Each owner or operator of a vessel engaged in a fishery that has a remote likelihood of or no known incidental taking of marine mammals, and the master and crew members of such vessel, shall not be subject to penalties under this section or any other provision of this Act for the incidental taking of marine mammals if such owner or operator reports to the Secretary in accordance with subsection (f)(4).

"(k) VOLUNTARY MEASURES.—Nothing in this section shall be construed to limit the Secretary's authority to permit voluntary measures to be utilized in reducing the incidental taking of marine mammals in commercial fisheries.

"(l) DEFINITIONS.—For purposes of this section—

"(1) The term 'calculated acceptable removal level' means the realistic minimum population of a stock, multiplied by the net productivity rate of the stock, multiplied (if applicable) by a recovery factor.

"(2) The term 'critical stock' means a marine mammal stock that is listed as a Class 1 or 2 stock pursuant to subsection (c)(1)(G).

"(3) The term 'incidental take team' means an incidental take team established under subsection (d)(4).

"(4) The term 'incidental taking plan' means an incidental taking plan developed under subsection (d).

"(5) The term 'maximum net productivity level' means the population size of a stock which results in the greatest net productivity.

"(6) The term 'net productivity' means the estimated or theoretical annual increase in population numbers resulting from additions to the population due to reproduction, less the losses due to mortality.

"(7) The term 'net productivity rate' means the net annual per capita rate of increase of a stock at its maximum net productivity level.

"(8) The term 'non-critical stock' means a marine mammal stock that is listed as a Class 3, 4, or 5 stock pursuant to subsection (c)(1)(G).

"(9) The term 'realistic minimum population' means an estimate of the number of animals in a stock that provides reasonable assurance that the population size is equal to or greater than the estimate.

"(10) The term 'recovery factor' means the number that is applied to the calculation of a calculated acceptable removal level to provide reasonable assurance that a stock will recover to its optimum sustainable population.".

SEC. 7. PENALTIES; PROHIBITIONS.

(a) CIVIL PENALTIES.—Section 105(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375(a)(1)) is amended by inserting ", except as provided in section 118(j)," immediately after "thereunder".

(b) CRIMINAL PENALTIES.—Section 105(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375(b)) is amended by inserting "(except as provided in section 118(j))" immediately after "thereunder".

(c) PROHIBITIONS.—Section 102(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1372(a)) is amended by striking "and 114" and inserting in lieu thereof "114, and 118".

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 seal stock in Alaska and for the harbor porpoise stock in the Gulf of Maine, within 60 days after the date of enactment of this Act. The incidental take teams 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 scientific experts as described in subsection (b) of such section 118 and after notice and opportunity for public comment, and shall be approved and implemented as quickly as practicable.

SEC. 9. AUTHORIZATION TO DETER MARINE 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:

"(d)(1) 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) damaging the gear or catch of commercial or recreational fishermen;

"(B) damaging private or public property; or

"(C) endangering personal safety,

so long as such measures do not result in marine mammal death or serious injury.

"(2) If the Secretary determines, using 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.

SEC. 11. TRANSITION RULE.

Section 114(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1383a(a)(1)) is amended by striking "ending April 1, 1994," and inserting in lieu thereof "until superseded by regulations prescribed under section 118,".

SEC. 12. TECHNICAL AMENDMENTS.

(a) DEFINITIONS.—Section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C.

1362) is amended by redesignating the last three paragraphs as paragraphs (16), (17), and (18), respectively.

(b) MARINE MAMMAL HEALTH AND STRANDING RESPONSE.—The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 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 1421h) as sections 401 through 409, respectively.

• 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 community in my State about 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. 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.

DEPARTMENTS OF ENERGY AND INTERIOR REFORM AND SAVINGS ACTS OF 1993

• Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Department of Interior Reform and Savings Act of 1993 and the Department of Energy Reform and Savings Act of 1993 be introduced and printed in the CONGRESSIONAL RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 1637

Be it enacted by the Senate and House of Representatives of the United States of American 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 HELIUM PROGRAM

SEC. 101. AMENDMENTS TO HELIUM ACT AMENDMENTS OF 1960.

(a) Section 4 of the Helium Act Amendments of 1960 (74 Stat. 920, 50 U.S.C. 167b) is amended to insert after "lands acquired, leased, or reserved;" the following: "reduce costs and increase operational efficiencies, especially in operations that do not produce revenue; establish and adjust fees charged private industry for storage, transmission, and withdrawal of privately-owned helium from Government storage facilities to compensate fully for all costs incurred;".

(b) Section 6 of the Helium Act Amendments of 1960 (74 Stat. 921, 50 U.S.C. 167d) is amended—

(1) by amending subsection (b) to read:

"(b) The Secretary is authorized to sell helium for Federal, medical, scientific, and commercial uses in such quantities and under such terms and conditions as the Secretary determines. Sales shall be made in quantities and a manner to avoid undue disruption of the usual markets of producers, processors, and consumers of helium and to protect the United States against avoidable loss."; and

(2) by amending subsection (c) to read:

"(c) Sales of helium by the Secretary shall be at prices, as established by the Secretary, that are adequate to cover all costs incurred in carrying out the provisions of this Act. Helium shall be sold at prices comparable to helium sold by private industry. An annual review of price comparability shall be made and adjustments shall be made accordingly.".

SEC. 102. LONG-TERM COMPREHENSIVE PLAN.

The Secretary of the Interior shall prepare and develop a long-term, comprehensive plan to (1) cancel the outstanding debt owed to the Treasury by the Department of the Interior related to the Federal helium program; and (2) improve Federal helium program operations over a multi-year period. The plan should analyze various options to accomplish (1) and (2) above, with emphasis on ways to minimize adverse impacts on Federal employment, Federal helium purchasers, and U.S. private sector helium markets. The plan, with the Secretary's preferred options, shall be presented to the President within 4 months of enactment of this Act. The President may adopt the plan, in whole or in part, and is authorized to cancel thestanding debt upon a finding that such debt cancellation is in the national interest.

TITLE II—IMPROVE MINERALS MANAGEMENT SERVICE ROYALTY COLLECTION

SEC. 201. IMPROVEMENT OF MINERALS MANAGEMENT SCIENCE ROYALTY COLLECTION.

(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 business information system to provide to its auditors a lease history that includes reference, royalty, production, financial, compliance history, pricing and valuation, and other information; (2) the optimum 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 erroneous reporting and underreporting; and (4) such other actions as may be necessary to reduce royalty underpayment and increase revenue to the U.S. Treasury by an estimated total of $28 million for fiscal year 1999.

(b) The Federal Oil and Gas Royalty Management Act of 1982 (Public Law No. 97-451), 30 U.S.C. 1701 et seq.) is amended by adding a new subsection 111(h) as follows:

"PENALTY ASSESSMENT FOR SUBSTANTIAL UNDERREPORTING OF ROYALTY"

"SEC. 111. (h)(1) If there is any underreporting of royalty owned 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) If 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 inland 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 substandial underreporting.

"(3) 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 theproduction which was reported. An underreporting constitutes a 'substantial 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 paragraphs (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, or before 90 days after the date of enactment of this section, whichever is later.

"(5) The Secretary shall waive any portion of an assessment provided in paragraphs (1) or (2) attributable to that portion of the underreporting for which the person demonstrates that—

"(1) 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, or

"(ii) the person had substantial authority for reporting royalty on the value of the production on the basis on which it was reported, or

"(iii) the person previously had notified the Secretary, in such manner as the Secretary may by rule prescribe, of relevant reasons or 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 subsection shall be deposited to the same accounts in the Treasury or 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. 301. PHASE OUT OF 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 1984, Public Law 98-409, as amended (98 Stat. 1536 through 1541 and 102 Stat. 2339 through 2341, 30 U.S.C. 1221 through 1230). There are hereby authorized to be appropriated under the Act of the following amounts: fiscal year 1995—$6.5 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 Seante 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 EKLUTNA 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 February 10, 1989, Snettisham Purchase Agreement between the Alaska Power Administration of the United States Department of Energy and the Authority.

(b) The Secretary of Energy may sell the Eklutna Hydroelectric Project (referred to in this subtitle as "Eklutna") to the Municipality 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 "Eklutna Purchasers") in accordance with the August 2, 1989, Eklutna Purchase Agreement between the United States Department of Energy and the Eklutna Purchasers.

(c) The heads of other affected Federal departments and agencies, including the Secretary of the Interior, shall assist the Secretary of Energy in implementing the sales authorized by this Act.

(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 such sums as are necessary to prepare or acquire Eklutna and Snettisham assets for sale and conveyance, such preparations to provide sufficient title to ensure the beneficial use, enjoyment, and occupancy to the purchasers of the assets to be sold.

(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 the Purchase Agreements, the Secretary of Energy shall—

(1) complete the business of, and close out, the Alaska Power Administration; and

(2) prepare and submit to Congress a report documenting the sales.

SEC. 103. ASSESSMENT OF ALTERNATIVE OPTIONS.

Before taking any action authorized in section 102, the Secretary shall assess the feasibility of alternative options for maximizing 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 804(2)(B) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)(B)) is amended by striking ", excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities.".

TITLE III—POWER MARKETING ADMINISTRATION DEBT BUYOUT

PART 1—BONNEVILLE POWER ADMINISTRATION DEBT BUYOUT

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 fiscal year limitation—

(1) in addition to the authority in section 13 of the Federal Columbia River Transmission System Act (16 U.S.C. 838k), the Administrator 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 Bonneville Power Administration, to—

(A) satisfy the unpaid repayment obligation associated with the appropriated capital investment made in the Federal Columbia River Power System before the issuance of the Bonds authorized under this part takes place, but not including Federal irrigation investments assigned to be repaid from power revenues; and

(B) refund Bonds;

(2) the Administrator shall transfer, and the Secretary of the Treasury shall accept for the account of the General Fund, the net proceeds of the Bonds referred to in paragraph (1)(A), and when the Secretary of the Treasury receives the net proceeds, the repayment obligation associated with the part of the appropriated capital investment in the Federal Columbia River Power System covered by the Bonds is considered to be satisfied forever;

(3) the Secretary of the Treasury, in consultation with the Administrator, shall establish the amount of proceeds needed to satisfy the unpaid repayment obligation associated with the part of the capital investment referred to in paragraph (1)(A) as the amount necessary to increase the sum of the net proceeds and the discounted present value of the remaining Federal debt service of the Federal Columbia River Power System by $100 million relative to the discounted present value of the total Federal debt service of the Federal Columbia River Power System as provided by the Administrator based upon the repayment schedule that would have been paid under repayment policy and practices in effect on September 1, 1993;

(4) to determine the discounted present values in paragraph (3), the Secretary of the Treasury shall use discount rates based on the secondary market's average yield for the most recently issued 30-year Treasury bonds when the Bonds authorized in paragraph (1) are issued;

(5) these Bonds shall be in the forms and denominations, bear the maturities (without respect to the remaining average service life of the capital investment associated with the repayment obligation satisfied by the Bonds issued under this part), be issued and sold at the times, prices, discounts, and yields, and be subject to other terms and conditions (including variable rates) as the Administrator considers appropriate;

(6) under section 2(f) of the Bonneville Project Act of 1937 (16 U.S.C. 832a(f)) and this part, the Administrator may enter into any contract that the Administrator considers necessary for the purposes of carrying out this part including, but not limited to, contracts for—

(A) the payment of the principal, interest, and premium, if any, on Bonds issued under this part;

(B) the purchase or redemption of those Bonds;

(C) the payment of costs and expenses incidental to this payment, purchase, and redemption; or

(D) the creation of reserve and other funds to be held by a trustee, which funds the Administrator may pledge exclusively to pay those costs for which the funds were created and establish a lien on the funds in favor of the beneficiaries of the funds under any indenture, resolution, or other agreement entered into in connection with the issuance of Bonds under this part;

(7) Bonds issued under this part—

(A) shall be issuable and payable through the Federal wire system;

(B) are negotiable instruments that may be accepted as security for all 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;

(8) Bonds issued under this part are not intended to be and are not secured by the full faith and credit of the United States;

(9) 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;

(10) 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;

(11) 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 (2 U.S.C. 900 et seq.); and

(C) are not subject to apportionment under subchapter II of chapter 15 of title 31, United States Code;

(12) in all future contracts for the sale of electric power, transmission, or other services, the Administrator shall include provisions specifying that after the repayment obligation is fully and forever satisfied, the Administrator's rates for electric power, transmission, or other services shall not include any form of economic rent to be returned to the United States Government, including, without limitation, a falling water charge or any other fee for use of Federal facilities for power generation or transmission, that relates to a project, facility, or separable unit of a project or facility associated with the satisfied repayment obligation, other than a charge necessary to repay the new indebtedness incurred under this part. Amounts provided under section 1304 of title 31, United States Code, shall be the sole source for payment of a judgment against the Administrator or the United States on a claim for a violation of the contract provision required by this paragraph;

(13) the Administrator shall offer to amend the Administrator's existing contracts for the sale of electric power, transmission, or other services to include the provisions described in paragraph (12); and

(14) the Administrator shall consult with the Secretary of the Treasury regarding the timing and structure of the bonds issued under this part.

SEC. 303. PAYMENT OF BOND COSTS.

Section 11(b)(6) of the Federal Columbia River Transmission System Act (16 U.S.C. 838i(b)(6)), is amended by striking "or" before "(iv)" and by inserting before the semicolon ", or (v) to pay the cost of financing and debt service, including premiums, if any, on Bonds issued by the Bonneville Power Administration".

SEC. 304. COMBINED REPAYMENT STUDY.

Section 7(a) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 893e(a)), is amended by adding after paragraph (2) the following:

"(3) In establishing power and transmission rates, the Administrator may base them on a single, combined generation and transmission repayment study which demonstrates that all indebtedness is repaid by its due date. The use of such a study is sufficient for the commission to approve the rates as meeting repayment requirements.".

SEC. 305. DEFINITIONS.

For the purposes of this part—

(1) "Administrator" means the Administrator of the Bonneville Power Administration; and

(2) "appropriated capital investment made in the Federal Columbia River Power System" means an investment made by the United States that—

(A) is made using Federal appropriations;

(B) is for a project or separable feature of a project that is placed in service;

(C) is allocated to power and required by law to be repaid from the power revenues by the Administrator;

(D) is not allocated or suballocated to irrigation; and

(E) excludes an investment made using funds borrowed under section 13 of the Federal Columbia River Transmission System Act.

PART 2—OTHER POWER MARKETING ADMINISTRATIONS DEBT BUYOUT

SEC. 306. SHORT TITLE.

This part may be cited as the "Power Marketing Administrations Financing Act".

SEC. 307. DEFINITIONS.

For the purposes of this part—

(1) "Administrator" means the Administrator of the Southeastern Power Administration, the Administrator of the Southwestern Power Administration, and the Administrator of the Western Area Power Administration;

(2) "Fund" means the Power Marketing Administration Sinking Fund established under section 309; and

(3) "Power marketing administration" means the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration.

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, and shall implement a plan for paying the United States Treasury the discounted present value of principal and interest payments on power investments scheduled to be paid to the United States Treasury as provided by the Administrator under existing law and repayment practices by that power marketing administration, as well as a one-time additional payment of $12,500,000 by the Southeastern Power Administration, $12,500,000 by the Southwestern Power Administration, and $50,000,000 by the Western Area Power Administration. Each Administrator shall issue revenue bonds as provided in section 310 to pay the obligation to the United States Treasury addressed in this section, except that the issuance of these bonds shall occur only if each Administrator determines by means of financial studies that the refinancing will not cause an increase in power rates over existing repayment practices. When the Treasury receives full payment from an Administrator, it shall consider the repayment obligation of the Administration associated with the payment fully and forever discharged.

(b) In all future contracts for the sale of electric power, transmission, or other services, each Administrator shall include provisions agreeing that when the repayment obligation is fully and forever discharged under subsection (a), the Administrator's rates for electric power, transmission, or other services shall not, other than is necessary to repay the new indebtedness incurred under this Act, include any charge in place of the satisfied obligation or include any other similar form of economic rent by or returned to the United States (including, without limitation, a falling water charge or any other type of user fee for use of Federal facilities for the purpose of power generation and transmission) on account of any project, facility, or separable unit of a project or facility associated with the repayment obligation satisfied.

(c) Each Administrator shall offer to amend existing contracts for the sale of electric power, transmission, or other services to include the provision described in subsection (b).

SEC. 309. POWER MARKETING ADMINISTRATION SINKING FUND.

(a) There is established in the Treasury of the United States a Power Marketing Administration Sinking Fund. The Secretary of the Treasury, acting as trustee for the power marketing administrations, shall establish and maintain a separate account in the Fund for each power marketing administration, and monies of one power marketing administration shall not be commingled with monies of another power marketing administration. Within the separate account for each power marketing administration, separate projects or systems shall be accounted for separately. An Administrator may deposit into the Fund the monies derived from revenues that the Administrator considers appropriate to ensure that the bonds issued under section 310 are refunded in a timely manner.

(b) Balances in the Fund shall earn interest at a rate determined by the Secretary of the Treasury.

(c) An Administrator may make expenditures from the Administrator's account in the Fund without further appropriation and without fiscal year limitation to pay indebtedness incurred from bonds issued under section 310.

(d) Each power marketing administration shall maintain its books of account in substantial conformance with the Uniform System of Accounts of the Federal Energy Regulatory Commission.

(e) The financial transactions of an Administrator shall be audited by independent financial auditors, and reports of the results of each audit shall be made to the Congress within 6½ months following the end of the fiscal year covered by the audit.

SEC. 310. REVENUE BONDS.

(a) Each Administrator, in consultation with the Secretary of the Treasury, may issue and sell from time to time in the name of, and for and on behalf of, the respective power marketing administration bonds, notes, and other evidences of indebtedness (in this section collectively referred to as "bonds") to refinance existing indebtedness as provided in section 308 and to issue and sell bonds to refund those bonds. The bonds shall be in the forms and denominations, bear maturities (without respect to the remaining average service life of facilities), and be subject to terms and conditions as prescribed by the Administrator taking into account terms and conditions prevailing in the market for similar bonds and financing practices of the utility industry. Provisions for early retirement of bonds may be prescribed by each Administrator. The bonds shall bear interest at a rate determined by the Administrator.

(b) Each Administrator may enter into any contract that the Administrator considers necessary for the purposes of carrying out this part including, but not limited to, contracts for—

(1) the payment of the principal, interest, and premium, if any, on bonds issued under this part;

(2) their purchase or redemption;

(3) the payment of costs and expenses incidental to their payment, purchase, and redemption; or

(4) the creation of reserve and other funds to be held by the Secretary of the Treasury as trustee, which funds the Administrator may pledge exclusively to pay those costs for which the funds were created and may establish a lien on the funds in favor of the beneficiaries of the funds under any indenture, resolution, or other agreement entered into in connection with the issuance of bonds under this part.

(c) Bonds issued under this part—

(1) shall be issuable and negotiable through the Federal wire system;

(2) are negotiable instruments that may be accepted as security for all 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;

(3) may be held, without limitation, by national banks;

(4) qualify as legal instruments for banks, savings and loan institutions, and credit unions; and

(5) are eligible collateral for Federal advances and discounts, for deposits of the

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 a 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, any portion of the Fund established under section 310 related to these bonds, all receipts and disbursements of the Fund related to these bonds, 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 supplement to the Federal reclamation laws.●

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.

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 1962.

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 lease negotiations for Presidio 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 the type normally administered by the National Park Service. It will be responsible for leasing, maintenance, and property management—all within the provisions of the final National Park Service plan for the Presidio. The open space, forests, and recreational land will be managed by the Park Service as they are doing in other parts of the GGNRA.

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 qualified in financial management. It would be accountable to the public through a public-private governing board of directors, annual auditing and reporting requirements, and a statutory requirement to adhere to the publicly approved general management plan for the Presidio.

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 its 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 carry out 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 a half-million hazmat movements 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 bill reauthorizes 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 response are added to the basic hazmat law. The bill requires the retention of shipping papers. In addition, to prevent retaliation fromour 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.

As the Nation deploys intelligent vehicle highway systems IVHS the 1993 hazmat bill requires that the promotion of safe hazardous materials transportation become a top IVHS priority.

On the issue of rail tank car safety, it is fair to say that the previous administration took its time in responding to the repeated congressional concern, inquiry, and legislation. Incomplete rule makings on rail tank car safety issues have been pending for several years. Explanations and excuses from the executive branch must be replaced with action. This legislation requires that the Department of Transportation issue final rules within 12 months with regard to two pending rail tank car safety rulemakings.

Mr. President, one provision of which I am very proud attempts to motivate safe behavior at rail-highway grade crossings. Under the 1993 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.

The final provision I will mention creates 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. 1640

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Hazardous Materials Transportation Authorization Act of 1993".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

Section 115(a) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1812(a)) is amended by striking all after "not to exceed" and inserting in lieu thereof "$12,600,000 for fiscal year 1994, $13,100,000 for fiscal year 1995, and $13,600,000 for fiscal year 1996.".

SEC. 3. EXEMPTIONS FROM REQUIREMENT TO FILE REGISTRATION STATEMENT.

Section 106(c) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1805(c)) is amended by adding at the end the following new paragraph:

"(16) FOREIGN OFFERORS.—A person who is domiciled outside the United States and who offers, solely from a location outside the United States, hazardous materials for transportation in commerce does not have to file a registration statement under this subsection.".

SEC. 4. PLANNING GRANTS FOR INDIAN TRIBES.

(a) AUTHORITY TO MAKE GRANTS.—Section 117A(a)(1) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1815(a)(1)) is amended—

(1) in the introductory matter, by inserting "and Indian tribes" immediately after "States"; and

(2) in subparagraph (A), by striking "within a State and between a State and another State" and inserting in lieu thereof "within the lands under the jurisdiction of a State or Indian Tribe, and between the lands under the jurisdiction of a State or Indian tribe and the lands of another State or Indian tribe".

(b) MAINTENANCE OF EFFORT.—Section 117A(a)(2) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1815(a)(2)) is amended by inserting "or Indian tribe" immediately after "State" each place it appears.

(c) COORDINATION OF PLANNING.—Section 117A(a) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1815(a)) is amended by adding at the end the following new paragraph:

"(4) COORDINATION OF PLANNING.—A State or Indian tribe receiving a grant under this subsection shall ensure that planning under the grant is coordinated with emergency planning conducted by adjacent States and Indian tribes.".

SEC. 5. TRAINING CRITERIA FOR SAFE HANDLING AND TRANSPORTATION.

Sectin 106(b)(3) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1805(b)(3)) is amended—

(1) in the paragraph heading, by striking "EMERGENCY RESPONSE" and insert in lieu thereof "EMPLOYEE";

(2) by inserting "or duplicate" immediately after "conflict with"; and

(3) by striking all after "Labor relating to" through "(and amendments thereto) and" and inserting in lieu thereof "hazard communication, and hazardous waste operations and emergency response, contained in part 1910 of title 29 of the Code of Federal Regulations (and amendments thereto) or".

SEC. 6. DISCLOSURE OF FEES LEVIED BY STATES, POLITICAL SUBDIVISIONS, AND INDIAN TRIBES.

Section 112(b) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1811(b)) is amended—

(1) by inserting immediately after "(b) FEES.—" the following heading:

"(1) RESTRICTION.—"; and

(2) by adding at the end the following new paragraph:

"(2) DISCLOSURE. —A State or political subdivision thereof or Indian tribe that levies a fee in connection with the transportation of hazardous materials shall, upon the Secretary's request, report to the Secretary on—

"(A) the basis on which the fee is levied upon persons involved in such transportation;

"(B) the purposes for which the revenues from the fee are used;

"(C) the annual total amount of the revenues collected from the fee; and

"(D) such other matters as the Secretary requests.".

SEC. 7. ANNUAL REPORT.

Section 109 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1808(e) is amended by striking the first sentence and inserting in lieu thereof the following: "The Secretary shall, once every 2 years, prepare and submit to the President for transmittal to the Congress a comprehensive report on the transportation of hazardous materials during the preceding 2 calendar years.".

SEC. 8. INTELLIGENT VEHICLE-HIGHWAY SYSTEMS.

In implementing the Intelligent Vehicle-Highway Systems Act of 1991 (23 U.S.C. 307 note), the Secretary of Transportation shall ensure that the National Intelligent Vehicle-Highway Systems Program addresses, in a comprehensive and coordinated manner, the use of intelligent vehicle-highway system technologies to promote hazardous materials transportation safety. The Secretary of Transportation shall ensure that one or more operational tests funded under such Act shall promote such safety and advance technology for providing information to persons who provide emergency response to hazardous materials transportation incidents.

SEC. 9. RAIL TANK CAR SAFETY.

Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue final regulations under the following:

(1) The rulemaking proceeding under Docket NM–175A entitled "Crashworthiness Protection Requirements for Tank Cars".

(2) The rulemaking proceeding under Docket HM–201 entitled "Detection and Repair of Cracks, Pits, Corrosion, Lining Flaws, Thermal Protection Flaws and Other Defects of Tank Car Tanks".

SEC. 10. SAFE PLACEMENT OF TRAIN CARS.

The Secretary of Transportation shall conduct a study of existing practices regarding the placement of cars on trains, with particular attention to the placement of cars that carry hazardous materials. In conducting the study, the Secretary shall consider whether such placement practices increased the risk of derailment, hazardous materials, spills, or tank ruptures or have any other adverse effect on safety. The results of the study shall besubmitted to Congress within 1 year after the date of enactment of this Act.

SEC. 11. GRADE CROSSING SAFETY.

The Secretary of Transportation shall, within 6 months after the date of enactment of this Act, amend regulations—

(1) under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.) to prohibit the driver of a motor vehicle transporting hazardous materials in commerce, and

(2) under the Motor Carrier Safety Act of 1984 (49 App. U.S.C. 2501 et seq.) to prohibit the driver of any commercial motor vehicle, from driving the motor vehicle onto a highway-rail grade crossing without having sufficient space to drive completely through the crossing without stopping.

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(k) of title 49, 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) include information 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) AMENDMENT OF 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;

(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 specified 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 rehabilitation program under section 12020 of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701) after being found to have used, in violation of law or Federal regulation, alcohol or a controlled substance;

(3) any use by the driver, during the preceding 3 years, in violation of law or Federal regulation, of alcohol or a controlled substance subsequent to completing such a rehabilitation 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 105(g) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1804 (g)) is amended by adding at the end the following new paragraph:

"(5) RETENTION OF PAPERS.—After the hazardous material to which a shipping paper provided to a carrier under paragraph (1) applies is no longer in transportation, the person who provided the shipping paper and the carrier required to maintain it under paragraph (1) shall retain the paper at their respective principal places of business. Such person and carrier shall, upon request, make the shipping paper available to a Federal, State, or local government agency at reasonable times and locations.".

(b) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall issue regulations implementing the requirements of paragraph (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 transporters 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.) or any order or regulation issued under the Act.

SEC. 16. TECHNICAL CORRECTIONS.

(a) AMENDMENTS RELATING TO PACKAGING.—(1) Sections 103(5)(B), 103(6)(A)(iii), and 109(c) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1802(5)(B), 1802(6)(A)(iii), 1808(c)) are each amended by striking "packages" and inserting in lieu thereof "packaging".

(2) Sections 105(a)(3), 105(a)(4)(B)(v), 110(a)(1), and 120 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1804(a)(3), 1804(a)(4)(B)(v), 1809(a)(1), 1818) are each amended by striking "a package" and inserting in lieu thereof "packaging".

(3) Sections 106(c)(1)(B) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1805(c)(1)(B)) is amended—

(A) by striking "a bulk package" and inserting in lieu thereof "bulk packaging"; and

(B) by striking "the package" and inserting in lieu thereof "the bulk packaging".

(b) OTHER.—(1) Section 105(a)(3) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1804(a)(3)) is amended by inserting "hazardous materials" immediately after "shipped".

(2) Section 105(e)(1) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1804(e)(1)) is amended by striking "or package" and inserting in lieu thereof ", package, or packaging (or a component of a container, package, or packaging)".

SEC. 17. EXEMPTION FROM HOURS OF SERVICE REQUIREMENTS.

The Secretary of Transportation shall exempt farmers and retail farm suppliers 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.

By Mr. LEAHY:

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.

FOOD STAMP FRAUD REDUCTION ACT OF 1993

Mr. LEAHY. Mr. President, today I am introducing a bill which should greatly reduce the potential for food stamp fraud. The bill is based on a report issued by the Office of Technology Assessment of the U.S. Congress. The report is entitled "Making Government Work."

OTA has spent over a year studying the opportunities offered by the electronic transfer of food stamp benefits—rather than using paper coupons.

Under the current program, USDA prints more than 375 million food stamp booklets per year, which amounts to 2.5 billion paper food coupons for food stamp households to use at retail stores.

These coupons are used once, except for one dollar coupons printed, which may be used to make change. The 2.5 billion coupons per year are printed, mailed, or otherwise issued to participants, shipped, counted, canceled, redeemed through the banking system by Treasury, shipped again, stored, and then destroyed. That cost can reach up to $60 million per year in total costs, Federal and State.

Issuing coupons is expensive. Some States mail them out each month and pay the postage for which they receive a partial Federal reimbursement. Some States hire staff to issue coupons at offices. Coupons are lost or stolen in the mail.

Also, food stamp recipients can get cash change in food stamp transactions if the cash does not exceed one dollar per purchase. This allows food stamp benefits to be diverted to the purchase of nonfood items.

In addition, food stamp coupons can be the subject of trafficking or outright theft.

The OTA report notes, on page 98, by eliminating cash change for food stamps and reducing the opportunity for trafficking in benefits, that a national electronic benefits transfer [EBT] system might reduce levels of food stamp benefit diversion by as much as 80 percent.

Let me repeat that—a national EBT system might reduce levels of food stamp benefit diversion by as much as 80 percent.

However, OTA issued a warning. OTA stated that Congress and the President need to act quickly on EBT if opportunities for integrating services and capturing economies of scale are to be realized.

OTA made several very important determinations regarding how this electronic benefits transfer [EBT] of food stamp benefits can greatly reduce fraud and assist participants.

OTA determined that EBT promises to reduce theft and fraud, as well as reduce errors, reduce paperwork, save time, and reduce delays and the stigma attached to food stamp coupons.

OTA stated that EBT can yield significant cost savings to retailers, recipients, financial institutions, and Government agencies. They also concluded that recipients, retailers, and financial institutions, and local program administrators who have tried EBT prefer it to coupons.

Food stamp recipients are also winners under an EBT system. OTA found that using EBT provided an added sense of dignity and security to food stamp families.

The bill calls for the Secretary of Agriculture, in coordination with the Secretary of 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 offline 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 a nationwide EBT system, 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 eliminate 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.

Will there 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 misuse. This system will of course eliminate cash change since the system will store the declining balance of benefits allowed to be used down to the last penny.

In some stores with laser scanners, the system has the potential of allowing the purchase of only approved food items.

Prior to the conversion to EBT, the ability of States to voluntarily implement EBT systems is enhanced by requiring USDA to take into account the potential reductions in fraud associated with EBT.

Mr. President, I am very pleased that this 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 full speed ahead. Under this bill, most of the key decisions are entrusted to the Secretary of Agriculture or to the States within legislatively set time limits.

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,

SECTION 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 transfer of food stamps and other government benefits, the Office of Technology Assessment found that—

(1) by eliminating cash change and reducing the opportunity for trafficking in benefits, a nationwide electronic benefits transfer system might reduce levels of food stamp benefit diversion by as much as 80 percent;

(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) food stamp recipients using 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 2,500,000,000 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, canceled, shipped, redeemed 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 $60,000,000 per year

SEC. 3. ELIMINATION OF FOOD STAMP COUPONS.

Section 4 of the Food Stamp Act of 1977 (7 U.S.C. 2013) 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, effective beginning on the date that is 3 years after the date of enactment of this subsection, no State may participate in the food stamp program if the State issues or uses food stamp coupons to carry out the program.

"(2) Paragraph (1) shall not apply 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 and disadvantages of centralized, as opposed to decentralized, electronic benefits transfer systems;

(3) determine the degree to which a nationwide electronic benefits transfer system could be integrated with commercial networks;

(4) ascertain the likely impact of a nationwide electronic benefits transfer system on recipients, State agencies, and local food stamp offices;

(5) examine the likely impact of a nationwide electronic benefits transfer system on the banking and retail food industries; and

(6) examine means of using laser scanner technology with electronic benefits transfer technology so that only eligible food items can be purchased by food stamp participants in stores that use scanners.

(b) INITIAL REPORT.—Not later than 290 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) means of ensuring the confidentiality of personal information in electronic benefits transfer systems and the applicability of section 552a 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 then current point of sale terminals and systems to reduce the costs of implementing a nationwide electronic benefits transfer system; and

(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.

(c) TWO-YEAR REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary of Agriculture shall report to the appropriate committees of Congress on the results of the feasibility test conducted under subsection (a).

SEC. 5. IMPLEMENTATION OF NATIONWIDE ELECTRONIC BENEFITS TRANSFER SYSTEM.

Section 7 of the Food Stamp Act of 1977 (7 U.S.C. 2016) is amended—

(1) in subsection (i)(2)(A), by inserting after "startup costs" the following: "less estimated savings achieved by reductions in fraud and other diversions of benefits"; and

(2) by adding at the end the following new subsection:

"(j)(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 service, 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 shall waive the application of any other provision of this Act, to the extent the waiver is necessary to carry out subparagraphs (B) and (C).

"(2) Not later than 18 months after the date of enactment of Food Stamp Fraud Reduction Act of 1993, the Secretary shall—

"(A) determine whether using the then current Food and Nutrition Service regions, or other regional configurations of State agencies, would be the most cost-effective means of establishing a nationwide electronic benefits transfer system; and

"(B) report to the appropriate committees of Congress on the determination made under subparagraph (A).

"(3) Not later than 30 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.

"(4)(A) Not later than 3 years after the date of enactment of Food Stamp Fraud Reduction Act of 1993, subject to subparagraph (B), the Secretary shall require, by regulation, a nationwide electronic benefits transfer system to carry out the food stamp program.

"(B) In establishing the system required under subparagraph (A), the Secretary—

"(i) shall take into account the results of the test, determination, and reports made under section 4 of the Food Stamp Fraud Reduction Act of 1993 and paragraph (2);

"(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.

"(C) 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 terms and conditions of participation by retail food stores, financial institutions, and other appropriate parties;

"(iii) system security;

"(iv) system transaction 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.

"(D) Administrative costs incurred in connection with activities under this subsection shall be eligible for reimbursement in accordance with section 16, subject to the limitations in section 16(g).".

SEC. 6. CONFORMING AMENDMENTS.

(a) Section 3 of the Food Stamp Act of 1977 (42 U.S.C. 2012) is amended—

(1) in subsection (a), by striking "coupons" and inserting "benefits";

(2) in the first sentence of subsection (c), by striking "authorization cards" and inserting "allotments";

(3) in subsection (d), by striking "the provisions of this Act" and inserting "section 7(g)";

(4) in subsection (e)—

(A) by striking "Coupon issuer" and inserting "Benefit issuer"; and

(B) by striking "coupons" and inserting "benefits";

(5) in the last sentence of subsection (i), by striking "coupons" and inserting "allotments"; and

(6) by adding at the end the following new subsection:

"(u) 'Electronic benefits transfer card' means a card issued to a household participating in the program that is used to purchase food.".

(b) Section 4(a) of such Act (7 U.S.C. 2013(a)) is amended—

(1) in the first and second sentences, by striking "coupons" each place it appears and inserting "electronic benefits transfer cards or coupons"; and

(2) by striking the third sentence and inserting the following new sentence: "The Secretary, through the facilities of the Treasury of the United States, shall reimburse the stores for food purchases made with electronic benefits transfer cards or coupons provided under this Act.".

(c) The first sentence of section 6(b)(1) of such Act (7 U.S.C. 2015(b)(1)) is amended—

(1) by striking "coupons or authorization cards" and inserting "electronic benefits transfer cards, coupons, or authorization cards"; and

(2) in clauses (ii) and (iii), by inserting "or electronic benefits transfer cards" after "coupons" each place it appears.

(d) Section 7 of such Act (7 U.S.C. 2016) is amended—

(1) by striking the section heading and inserting 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 "necessary, and" and inserting "Electronic benefits transfer cards or coupons";

(3) in subsection (b), by striking "Coupons" and inserting "Electronic benefits transfer cards";

(4) in subsection (f)—

(A) by striking "issuance of coupons" and inserting "issuance of electronic benefits transfer cards or coupons";

(B) by striking "coupon issuer" and inserting "electronic benefits transfer or coupon issuer"; and

(C) by striking "coupons and allotments" and inserting "electronic benefits transfer cards, coupons, and allotments";

(5) by striking subsections (g) through (i); and

(6) by redesignating subsection (j) (as added by section 5(2)) as subsection (g).

(e) Section 8(b) of such Act (7 U.S.C. 2017(b)) is amended by striking "coupons" and inserting "electronic benefits transfer cards or coupons".

(f) Section 9 of such Act (7 U.S.C. 2018) is amended—

(1) in subsections (a) and (b), by striking "coupons" each place it appears and inserting "coupons, or accept electronic benefits transfer cards,"; and

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(2) in subsection (a)(1)(B), by striking "coupon business" and inserting "electronic benefits transfer cards and coupon business".

(g) The first sentence of section 10 of such Act (7 U.S.C. 2019) is amended—

(1) by inserting after "provide for" the following: "reimbursing stores for purchases made with electronic benefits transfer cards and for"; and

(2) by inserting after "food coupons" the following: "or use their members' electronic benefits transfer cards".

(h) Section 11 of such Act (7 U.S.C. 2020) 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)—

(i) by striking "a coupon allotment" and inserting "an allotment"; and

(ii) by striking "issuing coupons" and inserting "issuing electronic benefits transfer cards or coupons";

(B) in paragraph (7), by striking "coupon issuance" and inserting "electronic benefits transfer card or coupon issuance";

(C) in paragraph (8)(C), by striking "coupons" and inserting "benefits";

(D) in paragraph (9), 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 coupons";

(G) in paragraph (20)—

(i) by striking "their coupons" and inserting "the electronic benefits transfer cards or coupons of the households";

(ii) by striking "a coupon issuer" and inserting "an electronic benefits transfer card or a coupon issuer"; and

(iii) by striking "face value of any coupons" and inserting "value of any benefits or coupons";

(H) in paragraph (21), by striking "coupons" 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 inserting "value of any benefits or coupons".

(i) Section 12 of such Act (7 U.S.C. 2021) 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—

(i) by inserting after "redeem coupons" the following: "and to accept electronic benefits transfer cards"; and

(ii) by striking "value of coupons" and inserting "value of benefits and coupons"; and

(B) in the third sentence, by striking "coupons" each place it appears and inserting "coupons or benefits"; and

(3) in the first sentence of subsection (f)—

(A) by inserting after "to accept and redeem food coupons" the following: "electronic benefits transfer cards, or to accept and redeem food coupons,"; and

(B) by inserting before the period at the end the following: "or program benefits".

(j) Section 13 of such Act (7 U.S.C. 2022) is amended by striking "coupons" each place it appears and inserting "benefits".

(k) Section 15 of such Act (7 U.S.C. 2024) is amended—

(1) in subsection (a), by striking "issuance or presentment for redemption" and inserting "issuance, presentment for redemption, or use of electronic benefits transfer cards or";

(2) in the first sentence of subsection (b)(1)—

(A) by inserting after "coupons, authorization cards," each place it appears the following: "electronic benefits transfer cards,"; and

(B) by striking "coupons or authorization cards" each place it appears and inserting 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,".

(l) Section 17 of such Act (7 U.S.C. 2026) 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 inserting "benefits";

(3) by striking subsection (f); and

(4) by redesignating subsections (g) through (k) as subsections (f) through (j), respectively.

(m) Section 21 of such Act (7 U.S.C. 2030) is amended—

(1) by striking "coupons" each place it appears (other than in subsections (b)(2)(A)(ii) and (d)) and inserting "benefits";

(2) in subsection (b)(2)(A)(ii), by striking "coupons" and inserting "electronic benefits transfer cards or coupons"; and

(3) in subsection (d)—

(A) in paragraph (2), by striking "Coupons" and inserting "Benefits"; and

(B) in paragraph (3), by striking "in food coupons".

(n) Section 22 of such Act (7 U.S.C. 2031) is amended—

(1) in subsection (b)—

(A) in paragraph (3)(D)—

(i) in clause (ii), by striking "coupons" and inserting "benefits"; and

(ii) in clause (iii), by striking "coupons" and inserting "electronic benefits transfer benefits";

(B) in paragraph (9), by striking "coupons" and inserting "benefits";

(C) in paragraph (10)(B)—

(i) in the second sentence of clause (i), by striking "Food coupons" and inserting "Program benefits"; and

(ii) in clause (ii)—

(I) in the second sentence, by striking "Food coupons" and inserting "Benefits"; and

(II) in the third sentence, by striking "food coupons" each place it appears and inserting "benefits";

(2) in subsection (d), by striking "coupons" each place it appears and inserting "benefits";

(3) in subsection (g)(1)(A), by striking "coupon"; and

(4) in subsection (h), by striking "food coupons" and inserting "benefits".

(o) Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting "electronic 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 implements a nationwide electronic benefits transfer system in accordance with section 7 of the Food Stamp Act of 1977 (7 U.S.C. 2016) (as amended by this Act).

ADDITIONAL COSPONSORS

S. 155

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 received by a cooperative telephone company.

S. 426

At the request of Mr. SHELBY, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 426, a bill to amend title 4, United States Code, to declare English as the official language of the Government of the United States.

S. 482

At the request of Mr. BOREN, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 482, a bill to amend title 38, United States Code, to require the Secretary of Veterans Affairs to furnish outpatient medical services for any disability of a former prisoner of war.

S. 993

At the request of Mr. KEMPTHORNE, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor 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 Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations.

S. 1329

At the request of Mr. D'AMATO, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor 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.

S. 1501

At the request of Mr. MCCAIN, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 1501, a bill to repeal certain provisions of law relating to trading with Indians.

S. 1527

At the request of Mr. RIEGLE, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 1527, a bill to provide for fair trade in financial services.

S. 1583

At the request of Mr. D'AMATO, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 1583, a bill to impose comprehensive economic sanctions against Iran.

S. 1618

At the request of Mr. MCCAIN, the name of the Senator from Colorado

[Mr. CAMPBELL] was added as a cosponsor of S. 1618, a bill to establish Tribal Self-Governance, and for other purposes.

S. 1622

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 55

At the request of Mr. HATCH, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of Senate Joint Resolution 55, a joint resolution to designate the periods commencing on November 28, 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 names of the Senator from Wyoming [Mr. SIMPSON], and the Senator from Texas [Mrs. HUTCHISON] were added as cosponsors of Senate Joint Resolution 148, a joint resolution proposing an amendment to the Constitution of the United States barring Federal unfunded mandates to the States.

SENATE CONCURRENT RESOLUTION 45

At the request of Mr. D'AMATO, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of Senate Concurrent Resolution 45, a concurrent resolution relating to the Republic of China on Taiwan's participation in the United Nations.

SENATE RESOLUTION 152

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 Senate Resolution 152, 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.

SENATE RESOLUTION 160

At the request of Mr. DURENBERGER, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of Senate Resolution 160, 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 Senate Resolution 162, a resolution relating to the treatment of Hugo Princz, a United States citizen by the Federal Republic of Germany.

AMENDMENT NO. 1113

At the request of Mr. WOFFORD his name was added as a cosponsor of amendment No. 1113 proposed to S. 1607, 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. WELLSTONE submitted an amendment intended to be proposed by him to the bill (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.—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—

"(i) has as an element 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

"(ii) by its nature, involves a substantial risk that physical force against a person who is a spouse, former spouse, domestic partner, child, or former child of the person may be used in the course of committing the offense; or

"(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 described in subparagraph (A), to maintain a minimum distance from that person.".

(b) PROHIBITION AGAINST RECEIPT OF FIREARMS.—Section 922(g) of title 18, United States Code, is amended—

(1) by striking "or" at the end of paragraph (6);

(2) by inserting "or" at the end of paragraph (7); 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—

"(i) has as an element 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

"(ii) by its nature, involves a substantial risk that physical force against a person who is a spouse, former spouse, domestic partner, child, or former child of the person may be used in the course of committing the offense; or

"(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 described in subparagraph (A), to maintain a minimum distance from that person;".

WELLSTONE (AND OTHERS) AMENDMENT NO. 1124

Mr. WELLSTONE (for himself, Mr. DODD, and Mr. INOUYE) proposed an amendment to the bill S. 1607, supra; as follows:

At the appropriate place in the bill insert the following:

TITLE—

SECTION 01. SHORT TITLE.

This title may be cited as the "Child Safety 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 354,100 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 1976 to 1986.

(7) Approximately 90 percent children in homes in which their mothers are abused witness the abuse.

(8) Data indicates that women and children are at elevated risk for violence during the process of and after separation.

(9) Fifty to 70 percent of men who abuse their spouses or partners also abuse their children.

(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 do so after separation.

SEC. 03. PURPOSE.

The purpose of this Act is to authorize funding to enable supervised visitation centers to provide 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 with noncustodial parents, or to provide 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 injury or death of a child or parent.

(7) An environment for families to have healthy interaction activities, quality time, non-violent memory building experiences during visitation to help build the parent/child relationship.

(8) Parent and child education and support groups to 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 centers are needed locally;

(3) the relative need of the applicant; and

(4) the capacity of the applicant to make rapid and effective use of 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 03. In using such amounts, grantees shall target the economically disadvantaged and those individuals, who could not otherwise afford such 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 of 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) 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 PROJECTS.

(a) IN GENERAL.—Not later than 30 days after the end of each fiscal year, a recipient of 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 a combination 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 and custody violations;

(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 centers are created; and

(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 agreement with the court, the child protection social services division of the State, and local domestic violence agencies or State and local domestic violence coalitions to evaluate the supervised visitation center operated under the grant, contract or agreement. The entities conducting such evaluations shall submit 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 the grant, contract or agreement, the need for continued funding.

SEC. 07. SPECIAL GRANTS TO STUDY THE EFFECT OF SUPERVISED VISITATION 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 collecting clinical data for supervised visitation centers established under this Act to determine—

(1) the extent to which supervised visitation should be allowed between children who are sexually abused or severely physically abused by a parent, where the visitation is not predicated on the abusive parent having successively completed a specialized course of therapy for such abusers;

(2) the effect of supervised visitation on child victims of sexual abuse of severe physical abuse when the abusive parent exercising visitation has not completed specialized therapy and does not use the visitation to alleviate the child victim's guilt, fear, or confusion;

(3) the relationship between the type of abuse or neglect experienced by the child and the use of supervised visitation centers by the maltreating parent; and

(4) in cases of spouse or partner abuse only, the extent to which supervised visitation should be predicated on participation by the abusive spouse in a specialized treatment program.

(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 sub it to the appropriate committees of Congress a report containing the information collected under the reports received under sections 05 and 07, including recommendations made by the Secretary concerning whether or not the supervised visitation center demonstration 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 05; and

(2) not more than 20 percent shall be used to award grants under section 07.

(c) DISBURSEMENT.—Amounts appropriated under this section shall be disbursed as categorical grants through the 10 regional offices of the Department of Health and Human Services.

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. . REMOVAL OF ALIEN TERRORISTS.

The Immigration and Nationality Act (8 U.S.C. 1101 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 Classified Information Procedures Act (18 U.S.C. App. IV);

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

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

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

"(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 United States judicial 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 I.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 PROCEDURE.—(1) 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.

"(2) The judge shall invoke 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.

"(e) SPECIAL REMOVAL HEARING.—(1) Except as provided in paragraph (4), the special removal hearing authorized by a showing 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 camera and ex parte of any item of evidence for which the judge determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information.

"(5) With respect to any evidence described in paragraph (4), the judge shall cause to be delivered to the alien either—

"(A)(i) the substitution for such evidence of a statement admitting relevant facts that the specific evidence would tend to prove, or (ii) the substitution for such evidence of a summary of the specific evidence; or

"(B) if disclosure of even the substituted evidence described in subparagraph (A) 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 (4)(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 (5)(A) would create a substantial risk of death or serious bodily harm to any person,

then the determination of deportation (described in subsection (f)) may be made pursuant to this section.

"(f) DETERMINATION OF DEPORTATION.—(1) If the determination in subsection (e)(6)(A) has been made, the judge shall, considering the evidence on the record as a whole, require that the alien be deported if the Attorney General proves, by clear and convincing evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

"(2) If the determination in subsection (e)(6)(B) has been made, the judge shall, considering the evidence received (in camera and otherwise), 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 such subsection.

"(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.

"(3 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."

LOTT (AND OTHERS) AMENDMENT NO. 1126

Mr. LOTT (for himself, Mr. MCCAIN, Mr. GORTON, Mr. THURMOND, Mr. HELMS, and Mr. SMITH) proposed an amendment to the bill S. 1607, supra; as follows:

At the appropriate place insert the following:

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

GLENN (AND OTHERS) AMENDMENT NO. 1127

Mr. GLENN (for himself, Mr. HELMS, Mr. LIEBERMAN, Mr. ROBB, Mr. INOUYE, 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. . 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 for housing nonviolent criminals.

(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. . 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.

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)

(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 similar finding, such as a mental disease, a mental defect, or mental incompetence), unless the payment is made directly 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 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. SIMPSON, Mr. NICKLES, Mr. KENNEDY, Mr. HATCH, Mr. HELMS, Mr. CRAIG, Mr. KEMPTHORNE, and Mr. BIDEN) proposed an amendment to the bill S. 1607, supra; as follows:

At the appropriate place in the bill add the following:

SECTION . 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 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 399, strike line 13 and all that follows through the period on line 11, page 404; and insert in lieu thereof the following:

SEC. . INCREASED MANDATORY MINIMUM SENTENCES FOR CRIMINALS USING FIREARMS.

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 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 (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 such crime of violence or drug trafficking crime—

"(A) be punished by imprisonment for not less than 10 years;

"(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. . MANDATORY MINIMUM PRISON SENTENCES FOR THOSE WHO SELL ILLEGAL DRUGS TO MINORS OR WHO USE MINORS IN DRUG TRAFFICKING ACTIVITIES.

(a) DISTRIBUTION TO PERSONS UNDER AGE 18.—Section 418 of the Controlled Substances Act (21 U.S.C. 859) 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 bysection 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 the preceding sentence."; and

(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. . 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 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." and inserting "If any person commits a violation of this subparagraph or of section 418, 419, or 420 (21 U.S.C. 859, 860, and 861) or a crime of violence after 2 or more prior convictions for a felony drug offense or crime of violence or for any combination thereof have become final, such person shall be sentenced to not less than a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. For the purpose 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 may be used in the course of committing the offense.".

HATCH (AND OTHERS) AMENDMENT NO. 1131

Mr. HATCH (for himself, Mr. GRAMM, and Mr. DOLE) proposed an amendment to amendment No. 1130, proposed by Mr. GRAMM, to the bill S. 1607, supra; as follows:

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 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:

"(f) 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 does not have—

"(i) more than 1 criminal history point under the sentencing guidelines; or

"(ii) any prior conviction 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 criminal offense, that resulted in the defendant's being taken into State custody);

"(C) the offense did not result in death or serious bodily injury (as defined in section 1365) 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;

"(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 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.".

(b) HARMONIZATION.—

(1) 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(f) 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, 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 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960) 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 3553(f) 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 of 1987 (Public Law 100–182; 101 Stat. 1271), as though the authority under that section had not expired.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) and any amendments to the sentencing guidelines made by the United States Sentencing Commission pursuant to subsection (b) shall apply with respect to sentences imposed for offenses committed on or after the date that is 60 days after the date of enactment of this Act.

SEC. . INCREASED MANDATORY MINIMUM SENTENCES FOR CRIMINALS USING FIREARMS.

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 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 (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 such crime of violence or drug trafficking crime—

"(A) be punished by imprisonment for not less than 10 years;

"(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. . MANDATORY MINIMUM PRISON SENTENCES FOR THOSE WHO SELL ILLEGAL DRUGS TO MINORS OR WHO USE MINORS IN DRUG TRAFFICKING ACTIVITIES.

(a) DISTRIBUTION TO PERSONS UNDER AGE 18.—Section 418 of the Controlled Substances Act (21 U.S.C. 859) 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 the preceding sentence."; 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 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 this subparagraph or of section 418, 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 or of section 418, 419, or 420 (21 U.S.C. 859, 860, and 861) or a crime of violence after 2 or more prior convictions for a felony drug offense or crime of violence or for any combination thereof have become final, such person shall be sentenced to not less than 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 may be used in the course of committing the offense.".

SIMON AMENDMENT NO. 1132

Mr. SIMON (for himself and Mr. KOHL) proposed an amendment to the bill S. 1607, supra; as follows:

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 proceedings for injunctive and equitable relief to enforce this section.

McCAIN AMENDMENT NO. 1133

Mr. McCAIN proposed an amendment to the bill S. 1607, supra; as follows:

At the appropriate place in the bill, add the following:

"SEC. . PARENTAL ACCOUNTABILITY.

(a) IN GENERAL.—Chaper 43 of title 18, United States Code, is amended by adding at the end the following new section:

"SEC. 5043. CIVIL PENALTIES FOR PARENTS OF CERTAIN JUVENILE OFFENDERS.

(a) 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

(2) if the court finds that the legal 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) may be ordered by the court to perform community service not to exceed 2 hours of service for each seven days of incarceration ordered for the juvenile if community service is not ordered for the juvenile if community service is not ordered to be performed by the juvenile.

(3) Paragraphs (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.

MOSELEY-BRAUN AMENDMENT NO. 1134

Ms. MOSELEY-BRAUN proposed an amendment to the amendment No. 1133, proposed by Mr. McCAIN to the bill S. 1607, supra; as follows:

Strike all beginning on line 9 and insert in lieu thereof the following:

"(2) Except 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.

(b) EXCERCISE OF PARENTAL RESPONSIBILITY.—The court may decline to enforce (a)(1) if it would cause undue hardship or to impose a fine under subsection (a)(2) if the court makes an affirmative determination that under the circumstances, the parents or legal guardians exercised reasonable care, supervision and control of the juvenile and counseled the juvenile that criminal activity is not acceptable.

(c) AMOUNT OF FINE.—

(1) MANDATORY MINIMUM.—In no case shall a fine imposed under subsection (a) be less than $100.

(2) FINANCIAL HARDSHIP.—In no case shall a fine imposed under subsection (a) be less than $500 unless the court makes a finding that a fine in that amount would impose a severe financial hardship on the family of the parent or legal guardians.

(3) If the court determines that the parents or legal guardians are not financially able to pay the fine immediately, the court may set a schedule by which the fine will be paid over time.

(d) COMMUNITY SERVICE OR PARENTING CLASSES IN LIEU OF CIVIL PENALTY.—A parent or legal guardian ordered to pay a civil penalty under this section may petition the court to perform such community service or attend and successfully complete parenting classes, as the court determines to be appropriate, in lieu of the civil penalty.

(e) DEFINITIONS.—

(1) 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 juvenile at the time the crime was committed.

(f) TECHNICAL AMENDMENT.—The chapter analysis for chapter 403 of title 18, United States Code, is amended by adding at the end the following new item:

"5043. Civil penalties for parents of certain juvenile offenders.".

BIDEN (AND HATCH) AMENDMENT NO. 1135

Mr. HATCH (for Mr. BIDEN for himself and Mr. HATCH) proposed an amendment to the bill S. 1607, supra; as follows:

AMENDMENT NO. 1135

Strike Title II and insert the following:

TITLE II—DEATH PENALTY

SEC. 201. 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

"§ 3591. Sentence of death

"A defendant who has been found guilty of—

"(1) an offense described in section 794 or section 2381;

"(2) an offense described in section 1751(c), if the offense, 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

"(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—

"(A) intentionally killed the victim;

"(B) intentionally inflicted serious bodily injury that resulted in the death of the victim;

"(C) intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act; or

"(D) intentionally and specifically engaged in an act, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who 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

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is to be imposed on a defendant, the finder of fact shall consider any mitigating factor, including the following:

"(1) IMPAIRED CAPACITY.—The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform conduct 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 substantial duress, 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 the 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 TREASON.—In determining 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.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3591 (2) or (3), 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) DEATH DURING COMMISSION OF ANOTHER CRIME.—The death, or injury resulting in death, occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 32 (destruction of aircraft or aircraft facilities), section 33 (destruction of motor vehicles or motor vehicle facilities), section 36 (violence at international airports), section 351 (violence against Members of Congress, Cabinet officers, or Supreme Court Justices), an offense under section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property by explosives), section 1118 (prisoners serving life term), section 1201 (kidnaping), section 844(i) (destruction of property affecting interstate commerce by explosives), section 1116 (killing or attempted killing of diplomats), section 1203 (hostage taking), section 1992 (wrecking trains), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2381 (treason) of this title, or section 902 (i) or (n) of the Federal Aviation Act of 1958 (49 U.S.C. 1472 (i) or (n)) (aircraft piracy).

"(2) INVOLVEMENT OF FIREARM OR PREVIOUS CONVICTION OF VIOLENT FELONY INVOLVING FIREARM.—For any offense, other than an offense for which a sentence of death is sought on the basis of section 924(c), the defendant—

"(A) during and in relation to the commission of the offense or in escaping or attempting to escape apprehension used or possessed a firearm (as defined in section 921); or

"(B) has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than 1 year,

involving the use or attempted or threatened use of a firearm (as defined in section 921) against another person.

"(3) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(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 escaping apprehension for the violation of the offense, knowingly created a grave risk of death to 1 or more persons in addition to the victim of the offense.

"(6) HEINOUS, 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) PROCUREMENT 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 or commit an act of terrorism.

"(10) CONVICTION FOR TWO FELONY DRUG OFFENSES.—The defendant has previously been convicted of 2 or more State or Federal 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 a sentence of 5 or more years may be imposed or had previously been convicted of engaging in a continuing criminal enterprise.

"(13) CONTINUING CRIMINAL ENTERPRISE INVOLVING DRUG SALES TO MINORS.—The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of section 408(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. 859).

"(14) HIGH PUBLIC OFFICIALS.—The defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice-President-elect, 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)(A), if the official is in the United States on official business; or

"(D) a Federal public servant who is a judge, a law enforcement officer, or an employee of a United States penal or correctional institution—

"(i) while he or she is engaged in the performance of his or her official duties;

"(ii) because of the performance of his or her official duties; or

"(iii) because of his or her status as a public servant.

For purposes of this subparagraph, a 'law enforcement officer' is a public servant authorized by law or by a Government agency 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 whether any other aggravating factor for which notice has been given exists.

"§ 3593. 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 believes that the circumstances of the offense are such that a sentence of death is justified under this chapter, the attorney shall, 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 and the victim's family, 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 amend the notice upon a showing of good cause.

"(b) 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, the judge who presided at the trial or before whom the guilty plea was entered, or 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 upon a plea of guilty;

"(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

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

"(3) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government.

A jury impaneled pursuant to paragraph (2) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—Notwithstanding rule 32(c) of 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 may include the trial transcript and exhibits. The defendant may present any information relevant to a mitigating factor. The government may present any information relevant to an aggravating factor for which notice has been provided under subsection (a). Information is admissible regardless of its admissibility under the rules governing admission of evidence at criminal trials except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, 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.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by 1 or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591(1), an aggravating factor required to be considered under section 3592(b) is found to exist; or

"(2) an offense described in section 3591 (2) or (3), an aggravating factor required to be

considered under section 3592(c) is found to exist,

the jury, or if there is no jury, 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 to justify a sentence of death, 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 by unanimous vote, 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 PRECAUTION TO ENSURE AGAINST DISCRIMINATION.—In a hearing held 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 is justified, it shall not consider the race, color, religious beliefs, national origin, or sex of the defendant or of 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 may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or any victim may be.

"§ 3594. Imposition of a sentence of death

"Upon a recommendation under section 3593(e) that the defendant should be sentenced to death or life imprisonment without possibility of release, the court shall sentence the defendant accordingly. Otherwise, the court shall impose any lesser sentence that is authorized by law. Notwithstanding any other law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without possibility of release.

"§ 3595. 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.—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) DECISION AND DISPOSITION.—

"(1) The court of appeals shall address all substantive and procedural issues raised on the appeal of a sentence of death, and shall consider whether 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.

"(2) 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;

"(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 was properly preserved for appeal under the rules of criminal procedure,

the court shall remand the case for reconsideration under section 3593 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 an aggravating factor, where the 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.

"§ 3596. 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, the law of which does provide 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. A sentence of death shall not be carried out upon a person who, as a result of mental disability, lacks the mental capacity to understand the death penalty and why it was imposed on that person.

"§ 3597. Use of State facilities

"(a) IN GENERAL.—A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate 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 of corrections, the United States Department of Justice, the Federal Bureau of Prisons, or the United States Marshals Service, and no employee providing services to that department, bureau, or service under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any prosecution or execution under this section if such participation is contrary to the moral or religious convictions of the employee. In this subsection, 'participation in executions' includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.

"§ 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) and which has occurred 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 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 directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.".

(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(i) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

(4) 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;".

(5) KILLING OF 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".

(6) KIDNAPPING.—Section 1201(a) of title 18, United States Code, is amended by inserting after "or for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

(7) NONMAILABLE INJURIOUS ARTICLES.—The last paragraph of section 1716 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 paragraph.

(8) PRESIDENTIAL ASSASSINATIONS.—Subsection (c) of section 1751 of title 18, United States Code, is amended to read as follows:

"(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section, shall be punished—

"(1) by imprisonment for any term of years or for life; or

"(2) if the conduct constitutes an attempt to intentionally kill the President of the United States and results 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.".

(9) WRECKING TRAINS.—The second to the last undesignated paragraph of section 1992 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.

(10) BANK ROBBERY.—Section 2113(e) of title 18, United States Code, is amended by striking "or punished by death if the verdict of the jury shall so direct" and inserting "or if death results shall be punished by death or life imprisonment".

(11) HOSTAGE TAKING.—Section 1203(a) of title 18, United States Code, is amended by inserting after "or for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

(12) MURDER FOR HIRE.—Section 1958 of title 18, United States Code, is amended by striking "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both" and inserting "and if death results, shall be punished by death or life imprisonment, or shall be fined not more than $250,000, or both".

(13) RACKETEERING.—Section 1959(a)(1) of title 18, United States Code, is amended to read as follows:

"(1) for murder, by death or life imprisonment, or a fine of not more than $250,000, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine of not more than $250,000, or both;".

(14) GENOCIDE.—Section 1091(b)(1) of title 18, United States Code, is amended by striking "a fine of not more than $1,000,000 or imprisonment for life," and inserting ", where death results, by death or imprisonment for life and a fine of not more than $1,000,000, or both;".

(15) CARJACKING.—Section 2119(3) of title 18, United States Code, is amended by striking the period after "both" and inserting "; or sentenced to death.".

(b) CONFORMING AMENDMENT TO FEDERAL AVIATION ACT OF 1954.—Section 903 of the Federal Aviation Act of 1958 (49 U.S.C. 1473) is amended by striking subsection (c).

SEC. 204. APPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE.

Chapter 228 of title 18, United States Code, as added by this title, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801).

SEC. 205. DEATH PENALTY FOR MURDER BY A FEDERAL PRISONER.

(a) IN GENERAL.—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 any Federal prison, Federal correctional facility, Federal community program 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 commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1118. Murder by a Federal prisoner.".

SEC. 206. DEATH PENALTY FOR CIVIL RIGHTS MURDERS.

(a) CONSPIRACY AGAINST RIGHTS.—Section 241 of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting ", or may be sentenced to death.".

(b) DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.—Section 242 of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting ", or may be sentenced to death.".

(c) FEDERALLY PROTECTED ACTIVITIES.—Section 245(b) of title 18, United States Code, is amended in the matter following paragraph (5) by inserting ", or may be sentenced to death" after "or for life".

(d) DAMAGE TO RELIGIOUS PROPERTY; OBSTRUCTION OF THE FREE EXERCISE OF RELIGIOUS RIGHTS.—Section 247(c)(1) of title 18, United States Code, is amended by inserting ", or may be sentenced to death" after "or both".

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, by a sentence of death or life imprisonment as provided under section 1111, or, in the case of manslaughter, a sentence as provided under section 1112.".

SEC. 208. NEW OFFENSE FOR THE INDISCRIMINATE USE OF WEAPONS TO FURTHER DRUG CONSPIRACIES.

(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 403(c) of the Controlled Substances Act (21 U.S.C. 848(c));

"(2) a conspiracy to distribute controlled substances punishable under section 406 of the Controlled Substances Act (21 U.S.C. 846) section 1013 of the Controlled Substances Import and Export Control Act (21 U.S.C. 963); and

"(3) an offense involving major quantities of drugs and punishable under section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) or section 1010(b)(1) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)).

"(b) OFFENSE AND PENALTIES.—(1) A person who, in furtherance or to escape detection of 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, 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 both.

"(2) A person who, in furtherance or to escape detection of a major drug offense and with the intent to intimidate, harass, injure, or maim, fires a weapon into a group of 2 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, fined under this title, or both; or

"(B) is a murder other than a first degree murder (as defined in section 1111(a)), be fined under this title, imprisoned for any term of years or for life, or both.".

(c) TECHNICAL AMENDMENT.—The chapter analysis for chapter 2 of title 18, United States Code, is amended by adding at the end the following new item:

"36. Drive-by shooting.".

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:

"§ 1118. Foreign murder of United States nationals

"(a) DEFINITION.—In this section, 'national of the United States' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

"(b) OFFENSE.—A person who, being a national of the United States, kills or attempts to kill a national of the United States while such national is outside the United States but within the jurisdiction of another country shall be punished as provided under sections 1111, 1112, and 1113.

"(c) LIMITATIONS ON PROSECUTION.—(1) No prosecution may be instituted against any person under this section except upon the written approval of the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, which function of approving prosecutions may not be delegated. No prosecution shall be approved if prosecution has been previously undertaken by a foreign country for the same conduct.

"(2) No prosecution shall be approved under this section unless the Attorney General, in consultation with the Secretary of State, determines that the conduct took place in a country in which the person is no longer present, and the country lacks the ability to lawfully secure the person's return. A determination by the Attorney General under this paragraph is not subject to judicial review.".

(b) TECHNICAL AMENDMENTS.—(1) Section 1117 of title 18, United States Code, is amended by striking "or 1116" and inserting "1116, or 1118".

(2) The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1118. Foreign murder of United States nationals.".

SEC. 210. DEATH PENALTY FOR RAPE AND CHILD MOLESTATION MURDERS.

(a) OFFENSE.—Chapter 109A of title 18, United States Code, is amended—

(1) by redesignating section 2245 as section 2246; and

(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, is amended by striking the item for section 2245 and inserting the following:

"2245. Sexual abuse resulting in death.
"2246. Definitions for chapter.".

SEC. 211. DEATH PENALTY FOR SEXUAL EXPLOITATION OF CHILDREN.

Section 2251(d) of title 18, United States Code, is amended by adding at the end the following: "Whoever, in the course of an offense under this section, 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.".

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:

"§ 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 the person was confined under a sentence for a term of life imprisonment, kills another shall be punished as provided in sections 1111 and 1112.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, as amended by section 109(b)(2), is amended by adding at the end the following new item:

"1119. Murder by escaped prisoners.".

SEC. 213. DEATH PENALTY FOR GUN MURDERS DURING FEDERAL CRIMES OF VIOLENCE AND DRUG TRAFFICKING CRIMES.

Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(i) 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—

"(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

"(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.".

SEC. 214. HOMICIDES AND ATTEMPTED HOMICIDES INVOLVING FIREARMS IN FEDERAL FACILITIES.

Section 930 of title 18, United States Code, is amended—

(1) by redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (f), and (g), respectively;

(2) in subsection (a) by striking "(c)" and inserting "(d)"; and

(3) by inserting after subsection (b) the following new subsection:

"(c) 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 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: ": *Provided further*, That if during and in relation to an offense described in paragraph (1) the person causes serious bodily injury to, or places in jeopardy the life of, any alien, such person shall be subject to 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 all that follows through page 262, line 11, 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) identify related governmental 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 by grantees, recordkeeping by grantees, and access to books, 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, in addition to any evaluations that grantees may be required to carry out pursuant to subsection (b).

(d) USE OF COMPONENTS.—The Attorney General may utilize any component or components of the Department of Justice in carrying out this section or other provisions of this title, or in coordinating activities under the programs authorized by this title.

(e) GAO STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall study and assess the effectiveness and impact of grants authorized by this title and report to Congress the results of the study on or before January 1, 1997.

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

(3) CRITERIA.—In assessing the effectiveness of the grants made under programs authorized by this title, the Comptroller General shall consider, among other things—

(A) recidivism rates of program participants;

(B) completion rates among program participants;

(C) drug use by program participants; and

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

(f) DEFINITION.—In this title, "violent offender" means a person charged with or convicted of an offense (or charged with or adjudicated as a delinquent by reason of conduct that, if engaged in by an adult would constitute an offense), during the course of which offense or conduct—

(1) 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.

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 "25".

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 308, strike line 2 and all that follows through page 310, line 7, 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)(9) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended to read as follows:

"(9) 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 1501(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".

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 lands. 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 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, 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 1502(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 lands and title 18 of the United States Code to the extent necessary to effect the purposes of this Act.

(b) ADEQUATE STAFFING.—The Attorney General shall, subject to the availability of appropriations, ensure that each of the task forces established in accordance with this title are adequately staffed with investigators and that additional investigators are provided when requested by the task force.

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 agencies in the investigation of drug trafficking and related crimes.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out subsection (a) $1,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.

SEC. 1405. MORE AGENTS FOR THE DRUG ENFORCEMENT ADMINISTRATION.

There are authorized to be appropriated for the hiring of additional Drug Enforcement Administration agents $20,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.

HATCH AMENDMENT NO. 1139

Mr. HATCH proposed an amendment to the bill S. 1607, supra; as follows:

On page 219, between lines 7 and 8, insert the following:

Subtitle D—Improved Training and Technical Automation

SEC. 1031. IMPROVED TRAINING AND TECHNICAL AUTOMATION.

(a) GRANTS.—

(1) IN GENERAL.—The Attorney General shall, subject to the availability of appropriations, make grants to units of State and local law enforcement for the purposes of improving law enforcement agency efficiency through computerized automation and technological improvements.

(2) TYPES OF PROGRAMS.—Grants under this section may include programs to—

(A) increase use of mobile digital terminals;

(B) improve communications systems;

(C) accomplish paper-flow reduction;

(D) establish or improve ballistics identification programs;

(E) increase the application of automated fingerprint identification systems and their communications on an interstate and intrastate basis; and

(F) improve computerized collection of criminal records.

(3) No funds under this subtitle may be used to implement a cryptographic or digital telephone program.

(b) TRAINING AND INVESTIGATIVE ASSISTANCE.—

(1) IN GENERAL.—The Attorney General shall, subject to the availability of appropriations—

(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 of violent serial crimes.

(2) IMPROVEMENT OF FACILITIES.—The improvement described in subsection (a) shall include improvements of the training facilities of the Federal Bureau of Investigation Academy at Quantico, Virginia.

(3) 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 Violent Criminal Apprehension Program.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal year 1994—

(1) $100,000,000 to carry out subsection (a);

(2) $40,000,000 to carry out subsection (b)(1)(A); and

(3) $10,000,000 to carry out subsection (b)(2)(B).

DOLE (AND OTHERS) AMENDMENT NO. 1140

Mr. DOLE (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 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".

Subtitle A—Criminal Youth Gangs

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 gangs.
"1931. Prohibited activity.
"1932. Penalties.
"1933. Investigative authority.

"§ 1930. Crimes in furtherance of gangs

"(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.

"(2) The major activities of criminal street gangs are crimes of violence and the distribution and use of illegal drugs. It is through these activities that criminal street gangs directly affect interstate and foreign commerce, even when their particular activities, viewed in isolation, appear to be purely intrastate in character.

"(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 execution the powers of Congress to regulate commerce and to establish criminal law.

"§ 1931. Prohibited activity

"(a) DEFINITIONS.—In this chapter—

"'criminal street gang' means an organization 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, with a purpose that any of those persons alone, or in any combination, commit or will commit, 2 or more predicate gang crimes, 1 of which must occur after the date of enactment of this chapter and the last of which occurred within 10 years (excluding any period of imprisonment) after the commission of a prior predicate gang crime.

"'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—

"(A) any act or threat, or attempted act or threat, which is chargeable under Federal or State law and punishable by imprisonment for more than 1 year, involving murder, attempted murder, kidnapping, robbery, extortion, arson, obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or manufacturing, importing, receiving, concealing, purchasing, selling, possessing, or otherwise dealing in a controlled substance or controlled substance analogue (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(B) any act punishable by imprisonment for more than 1 year under section 922 or 924 (a)(2), (b), (c), (g), or (h) (relating to receipt, possession, and transfer of firearms), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1512 (relating to tampering with a witness, victim, or informant), or section 1513 (relating to retaliating against a witness, victim, or informant); or

"(C) any act punishable under subsection (b)(5).

"'State' means a State, the District of Columbia, and any commonwealth, territory, or possession of the United States.

"(b) UNLAWFUL ACTS.—It shall be unlawful—

"(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 participate, or attempt to participate, in a criminal street gang, or 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 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

"(5) to use any communication facility, as defined in section 403(b) of the Controlled Substances act (21 U.S.C. 843(b)), in causing or facilitating the commission, or attempted 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.

"§ 1932. Penalties

"(a) PENALTIES OF UP TO 20 YEARS OR LIFE IMPRISONMENT.—A person who violates section 1931(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 includes life imprisonment, and if a person commits such a violation after 1 or more prior convictions for such a predicate gang crime, that is not part of the instant violation, such person shall be sentenced to a term of imprisonment which shall not be less than 10 years and which may be for any term of years exceeding 10 years or for life.

"(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 10 years. A term of imprisonment under this subsection shall run consecutively to any other term of imprisonment, including that imposed for any other violation of this chapter.

"(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) IN GENERAL.—In addition to the other penalties authorized by this section—

"(A) a person who violates section 1931(b) (1) or (2), 1 of whose predicate gang crimes involves murder or conspiracy to commit murder which results in the taking of a life, and who commits, counsels, commands, induces, procures, or causes that murder, shall be punished by death or by imprisonment for life;

"(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 sentenced to a term of imprisonment which shall not be less than 20 years and which may be for any term of years exceeding 20 years or for life; and

"(C) a person who violates section 1931(b) (1) or (2), and who at the time of the offense occupied a position of organizer or supervisor, or other position of management in that street gang, shall be sentenced to a term of imprisonment which shall not be less than 15 years and which may be for any term of years exceeding 15 years or for life.

"(2) PRESUMPTION.—For purposes of paragraph (1)(C), if it is shown that the defendant counseled, commanded, induced, or procured 5 or more individuals to participate in a street gang, there shall be a rebuttable presumption that the defendant occupied a position of organizer, supervisor, or other position of management in the gang.

"(e) FORFEITURE.—

"(1) IN GENERAL.—A person who violates section 1931(b) (1) or (2) shall, in addition to any other penalty and irrespective of any provision of State law, forfeit to the United States—

"(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as a result of the violation; and

"(B) any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the violation.

"(2) APPLICATION OF CONTROLLED SUBSTANCES ACT.—Section 413 (b), (c), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), and (p) of the Controlled Substances Act (21 U.S.C. 853 (b), (c), and (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), and (p)) shall apply to a forfeiture under this section.

(c) SENTENCING GUIDELINES INCREASE FOR GANG CRIMES.—The United States Sentencing Commission shall at the earliest opportunity amend the sentencing guidelines to increase by at least 4 levels the base offense level for any felony committed for the purpose of gaining entrance into, or maintaining or increasing position in, a criminal street gang. For purposes of this subsection, "criminal street gang" means any organization, or group, of 5 or more individuals, whether formal or informal, who act in concert, or agree to act in concert, for a period in excess of 30 days, with the intent that any of those individuals alone, or in any combination, commit or will commit, 2 or more acts punishable under State or Federal law by imprisonment for more than 1 year.

SEC. 612. CRIMES INVOLVING THE USE OF MINORS AS RICO PREDICATES.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or" before "(E)"; and

(2) by inserting before the semicolon at the end of the paragraph the following: ", or (F) any offense against the United States that is punishable by imprisonment for more than 1 year and that involved the use of a person below the age of 18 years in the commission of the offense".

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" at the end of clause (i);

(2) by striking "and" at the end of clause (ii) and inserting "or"; and

(3) by adding at the end the following:

"(iii) any act of juvenile delinquency that if committed by an adult would be a serious drug offense described in this paragraph; and".

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), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3))," and inserting "an offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844, or 846), section 1002(a), 1003, 1005, 1009, 1010(b)(1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), or (3), or 963),"; and

(B) by striking "922(p)" and inserting "924(b), (g), or (h)";

(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), or 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 offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), 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 924(b), (g), or (h) of this title,"; and

(B) by striking "subsection (b)(1)(A), (B), or (C), (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 "or an offense (or conspiracy or attempt to commit an offense) described in section 401(b)(1)(A), (B), or (C), (d), or (e), or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), (B), or (C), (d), or (e), 844, 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 at the end 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 preclude such a transfer.".

SEC. 615. INCREASED PENALTIES FOR EMPLOYING CHILDREN TO DISTRIBUTE DRUGS NEAR SCHOOLS AND PLAYGROUNDS.

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 official,
is punishable by a term of imprisonment, a fine, or both, up to triple those authorized by section 401.".

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 TRAVEL ACT CRIMES INVOLVING VIOLENCE AND CONSPIRACY TO COMMIT CONTRACT KILLINGS.

(a) TRAVEL ACT PENALTIES.—Section 1952(a) of title 18, United States Code, is amended by striking "and thereafter performs or attempts 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 five years, or both." and inserting "and thereafter performs or attempts to perform—

"(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned 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) MURDER CONSPIRACY PENALTIES.—Section 1958(a) of title 18, United States Code, is amended by inserting "or who conspires to do so" before "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) 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, 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 a juvenile delinquency proceeding or 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 BYRNE 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" 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 PROSECUTORS.

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 violent youth gangs.

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 gang-related 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 FUNDING FORMULA.

Section 504(a)(1) of title I of the Omnibus Crime and Safe Streets Act of 1968 (42 U.S.C. 3754(a)(1)) is amended by striking "1992" and inserting "1993".

SEC. 624. GRANTS FOR MULTIJURISDICTIONAL DRUG TASK FORCES.

Section 504(f) of title I of the Omnibus Crime and Safe Streets Act of 1968 (42 U.S.C. 3754(f)) is amended by inserting "and gang" after "Except for grants awarded to State and local governments for the purpose of participating in multijurisdictional drug".

Subtitle C—Antigang Provisions

SEC. 631. GRANT PROGRAM.

Part B of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5631 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-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 juveniles.

"(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 juveniles in drug-related crimes (including drug trafficking and drug use), particularly in and around elementary and secondary schools.

"(2) To reduce juvenile involvement in organized crime, drug and gang-related activity, particularly activities that involve the distribution of drugs by or to juveniles.

"(3) To develop within the juvenile justice system, including the juvenile corrections system, innovative means to address the problems of juveniles convicted of 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 personnel and agencies responsible for the adjudicatory and corrections components of the juvenile justice system to—

"(A) identify drug-dependent or gang-involved juvenile offenders; and

"(B) provide appropriate counseling and treatment to such offenders.

"(7) To promote the involvement of all juveniles in lawful activities, including in-school and after-school programs for academic, athletic, or artistic enrichment 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 through programs establishing 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 drug-dependent juvenile mothers.

"(11) To provide education and treatment programs for juveniles exposed to severe violence in their homes, schools, or neighborhoods.

"(12) To establish sports mentoring and coaching programs in which athletes serve as role models for juveniles to teach that athletics provides a positive alternative to drug and gang involvement.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 232. There are authorized to be appropriated $100,000,000 for fiscal year 1994 and such sums as are necessary for fiscal year 1995 to carry out this subpart.

"ALLOCATION OF FUNDS

"SEC. 233. The amounts appropriated for this subpart for any fiscal year shall be allocated as follows:

"(1) $500,000 or 1.0 percent, whichever is greater, shall be allocated to each of the States.

"(2) Of the funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount that bears the same ratio to the amount of remaining funds described in this paragraph as the population of juveniles residing in the State bears to the population of juveniles residing in all the States.

"APPLICATION

"SEC. 234. (a) IN GENERAL.—Each State or entity applying for a grant under section 231 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 subpart I of this part and subpart II of part C, including the regulations relating to competition.".

SEC. 632. CONFORMING REPEALER AND AMENDMENTS.

(a) REPEAL OF PART D.—Part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5667 et seq.) is repealed, and part E of title II of that Act is redesignated as part D.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 291 of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671) is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking "(1)" and by striking "(other than part D)"; and

(B) by striking paragraph (2); and

(2) in subsection (b) by striking "(other than part D)".

LIEBERMAN AMENDMENT NO. 1141

Mr. LIEBERMAN proposed an amendment to the bill S. 1607, supra; as follows:

On page 53, line 18, strike the period after "death." " and insert "; and by striking ", possessing a firearm as defined in section 921 of this title,"."

DOMENICI AMENDMENT NO. 1142

Mr. HATCH (for Mr. DOMENICI) proposed an amendment to the bill S. 1607, supra; as follows:

At the appropriate place, insert the following:

SECTION 1. DRIVING WHILE INTOXICATED PROSECUTION PROGRAM.

Section 501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751), as amended by section 621, is amended—

(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 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. 1607, supra; as follows:

At the appropriate place insert the following:

SEC. . 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, many 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 officers 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 submit a joint 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 also 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 this section, and as prerequisite 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 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 timetables; 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 receiving the 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 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; and

(h) DURATION OF FEDERAL ASSISTANCE.—

(1) IN GENERAL.—Federal assistance under this section shall not be provided to a Violent Crime or Drug Emergency Area area for more than 1 year.

(2) 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) 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) NO EFFECT ON EXISTING AUTHORITY.—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. 1607, supra; as follows:

At the appropriate place insert the following:

SEC. . 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 section 36(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 25 in any fiscal year.

"(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 the basis of an application for withholding of deportation, any action for deportation of the alien instituted before the alien obtains lawful permanent resident status, (ii) is not convicted of any criminal offense in the United States since the date of such admission, and (iii) shall report not less often than quarterly to the Commissioner of the Immigration and Naturalization Service such information concerning the alien's whereabouts and activities as the Secretary of State and the Attorney General may require.

"(B) The Secretary of State and the Attorney General shall submit a report annually to the Committees on the Judiciary of the House of Representatives and of the Senate concerning (i) the number of such aliens admitted, (ii) the number of terrorist acts prevented, frustrated, or thwarted or prosecutions or investigations resulting form cooperation of such aliens, and (iii) the number of such aliens who have failed to report quarterly (as required under paragraph (3)(A)(i)(I) or who have been convicted of crimes in the United States after the date of their admission.

"(4) ADJUSTMENT TO PERMANENT RESIDENT STATUS.—(A) If, in the opinion of the Attorney General, in consultation with the Secretary of State, the alien admitted into the United States under section 36(e) of the State Department Basic Authorities Act has supplied information that has contributed to the prevention, frustration, or favorable resolution of a terrorist act or has substantially contributed to an authorized investigation or the prosecution of an individual described in section 36(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 paragraph (3)(A) above, such 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) (i) through (iii) have been met.

"(B) Upon the approval of adjustment of status under subparagraph (A), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(4) of the Immigration and Nationality Act for the fiscal year then current.".

(b) EXCLUSIVE MEANS OF ADJUSTMENT.—Section 245(c) of the Immigration and Nationality Act (8 U.S.C. 1255(c)), as amended by section 725, is further amended by striking "or" before "(5)" and by inserting before the period the following: "; or (6) an alien who was admitted pursuant to section 36(e) of the State Department Basic Authorities Act".

(c) EXTENDING PERIOD OF DEPORTATION FOR CONVICTION OF A CRIME.—Section 241(a)(2)(A)(i)(I) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(2)(A)(i)(I)), as amended by section 725, is further amended by inserting "or section 36(e)(4)(A) of the State Department Basic Authorities Act" after section 245(h) in the parenthetical "(or 10 years in the case of an alien provided lawful permanent resident status under section 245(h))".

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 new subtitle:

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 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 sexually violent 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. 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) PREDATORY.—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 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. 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 shall approve each State program that complies with the guidelines.

(2) STATE COMPLIANCE.—

(A) IMPLEMENTATION DATE.—A State that does not implement a program described in paragraph (1) by the date that is 3 years after the date of enactment of this Act, and maintain the implementation thereafter, shall be ineligible for funds in accordance with subparagraph (B).

(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. 3756).

(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.—

(1) IN GENERAL.—An approved State program established in accordance with this section shall contain the requirements described in this section.

(2) The determination that a person is a "sexually violent predator" and 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.

(3) NOTIFICATION.—If a person who is required to register under this section is anticipated to be released from prison, paroled, or 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—

(A) inform the person of the duty to register;

(B) inform the person that if the person changes residence address, the person shall give the new address to a designated State law enforcement agency in writing not later than 10 days after the change of address;

(C) obtain the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person; 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.

(4) TRANSFER OF INFORMATION TO STATE AND THE FBI.—Not later than 3 days after the receipt of the information described 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 expects to reside; and

(B) transmit the information to the Identification Division of the Federal Bureau of Investigation.

(5) QUARTERLY VERIFICATION.—

(A) MAILING TO PERSON.—Not less than every 90 days after the date of the release or commencement of parole if a person under paragraph (2), the designated State law enforcement agency shall mail a nonforwardable verification form to the last reported address of the person.

(B) RETURN OF VERIFICATION FORM.—

(i) IN GENERAL.—The person shall return, by mail, the verification form to the agency not later than 10 days after the receipt of the form. The verification form shall be signed by the person, and shall state that the person continues to reside at the address last

reported to the designated State law enforcement agency.

(ii) FAILURE TO RETURN.—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 by the person, the person shall be in violation of this section unless the person proves that the person has not changed the residence address of the person.

(6) NOTIFICATION OF LOCAL LAW ENFORCEMENT AGENCIES OF CHANGES IN ADDRESSES.—Any change of address by a person required to register under this section that is reported to the designated State law enforcement agency shall as soon as practicable be reported to the appropriate law enforcement agency that has jurisdiction over the area in which the person is residing.

(7) PENALTY.—A person required to register under a State program established pursuant to this section who knowingly fails to register and keep the registration current shall be subject to criminal penalties in the State. It is the sense of Congress that the penalties should include imprisonment for not less than 180 days.

(8) TERMINATION OF OBLIGATION TO REGISTER.—

The obligation of a person to register under this section shall terminate on a determination made in accordance with the provision of paragraph (2) of this section that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

(c) COMMUNITY NOTIFICATION.—The designated State law enforcement agency may release relevant information that is necessary to protect the public concerning a specific sexually violent predator required to register under this section.

(d) IMMUNITY FOR GOOD FAITH CONDUCT.—Law enforcement agencies, employees of law enforcement agencies, and State officials shall be immune from liability for any good faith conduct under this section.

NOTICES OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce that I am introducing titles IV and VII of the President's Government Reform and Savings Act of 1993, which contain the President's reform proposals for the Department of Energy and the Department of the Interior, as separate bills. I would also like to announce that the Committee on Energy and Natural Resources will hold a hearing on these two titles, which contain provisions on the Alaska Power Administration, Federal-private cogeneration of electricity, Power Marketing Authority debt buyouts, the Federal Helium Program, the Minerals Management Service, and the Mineral institute Program.

The hearing will take place on Tuesday, November 16, 1993, at 9:30 a.m. in room SD–366 of the Dirksen Senate Office Building, First and C Streets, NE, Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the printed hearing record should send their comments to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510, Attention: Sam Fowler.

For further information, please contact Sam Fowler of the committee staff at (202) 224–7569.

NOTICE OF ADDITION TO HEARING SCHEDULE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BUMPERS. Mr. President, I would like to announce for the public that an additional measure has been added to the hearing previously announced for November 18, 1993, before the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources. The additional measure to be considered is S. 1631, a bill to amend the Everglades National Park Protection and Expansion Act of 1989, and for other purposes.

The hearing will take place on Thursday, November 18, 1993, beginning at 9:30 a.m. in room 366 of the Dirksen Senate Office Building in Washington, DC.

For further information regarding this hearing, please contact David Brooks of the subcommittee staff at (202) 224–8115.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Monday, November 8, 1993, at 10 a.m. to hold ambassadorial nomination hearings on Edward Djerejian to be Ambassador to Israel and Marc Ginsberg to be Ambassador to the Kingdom of Morocco.

The PRESIDING OFFICER. Without objection, it so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on mental health and substance abuse under the Health Security Act of 1993, during the session of the Senate on November 8, 1993, at 12 p.m.

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

SUBCOMMITTEE ON AVIATION

Mr. BIDEN. Mr. President, I ask unanimous consent that the Aviation Subcommittee of the Committee on Commerce, Science, and Transportation be authorized to meet on November 8, 1993, at 2 p.m. on S. 1469, S. 787, and S. 1458, legislation related to aviation competition and safety.

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

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 meet today at 1:30 p.m. to hear testimony on the subject of trade negotiations between the United States and Japan.

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

ADDITIONAL STATEMENTS

HEDWIG 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 23 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 large 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 to those who needed her help. Today, her memory is carried on by the people she nursed back to health, as well as 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 courage that these women displayed also helped keep many soldiers from falling into despair. These women deserve recognition for their important

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 their tremendous courage and let them know that this Nation is grateful for their service.

The women who served in Vietnam were willing to give their lives in service to others and their country; Heddy was 1 of 8 who sacrificed their lives to save the lives of others. The Women's Vietnam Veterans Memorial can never completely 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 Opportunity. Out of this work was borne 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 reform 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 bill, which he had originally drafted at an ADA convention 15 years before.

Although he retired from ADA 8 years ago, today Leon remains a stellar volunteer. He serves as the legislative and grassroots coordinator for ADA's work in support of a single-payer health care plan, for full employment, and for realigning our national budget priorities. Over the years this indefatigable man has been right in the middle of ADA efforts to spread the message on civil rights and economic justice. Leon's distinguished career and many contributions is a cause for celebration. Just this past Friday evening, former president of ADA and other friends of Leon's gathered at a dinner celebration in his honor at the Omni Shoreham Hotel and shared their memories of his wonderful work over the years. It was a very meaningful celebration, and much deserved. I am proud to recognize his outstanding work; his commitment to American ideals is an inspiration to all of us.

As he commemorates this significant milestone it is an honor for me to join with Leon's family, many friends and colleagues in conveying my warmest birthday wishes. Congratulations, Leon, on your 80th birthday. May you have continued good health, success, and happiness.•

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 PRESIDING OFFICER. Without objection, it is so ordered.

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 from 21 States, the District of Columbia, and United States citizens living abroad:

ARKANSAS: Frederick Sanford Phillips;

CALIFORNIA: Jerry Don Avritt, Surinder Mohan Bhatia, Stacie Denise Franklin, Matthew Kevin Gannon, Paul Isaac Garrett, Barry Joseph Valentino, Jonathan White;

COLORADO: Steven Lee Butler;

CONNECTICUT: Scott Marsh Cory, Patricia Mary Coyle, Shannon Davis, Turhan Ergin, Thomas Britton Schultz, Amy Elizabeth Shapiro;

DISTRICT OF COLUMBIA: Nicholas Andreas Vrenios;

FLORIDA: John Binning Cummock;

ILLINOIS: Janina Jozefa Waido;

KANSAS: Lloyd David Ludlow;

MARYLAND: Michael Stuart Bernstein, Jay Joseph Kingham, Karen Elizabeth Noonan, Anne Lindsey Otenasek, Anita Lynn Reeves, Louise Ann Rogers, George Watterson Williams, Miriam Luby Wolfe;

MASSACHUSETTS: Julian MacBain Benello, Nicole Elise Boulanger, Nicholas Bright, Gary Leonard Colasanti, Joseph Patrick Curry, Mary Lincoln Johnson, Julianne Frances Kelly, Wendy Anne Lincoln, Daniel Emmett O'Connor, Sarah Susannah Buchanan Philipps, James Andrew Campbell Pitt, Cynthia Joan Smith, Thomas Edwin Walker;

MICHIGAN: Lawrence Ray Bennett, Diane Boatman-Fuller, James Ralph Fuller, Kenneth James Gibson, Pamela Elaine Herbert, Khalid Nazir Jaafar, Gregory Kosmowski, Louis Anthony Marengo, Anmol Rattan, Garima Rattan, Suruchi Rattan, Mary Edna Smith, Arva Anthony Thomas, Jonathan Ryan Thomas, Lawanda Thomas;

MINNESOTA: Philip Vernon Bergstrom;

NEW HAMPSHIRE: Stephen John Boland, James Bruce MacQuarrie;

NEW JERSEY: Thomas Joseph Ammerman, Michael Warren Buser, Warren Max Buser, Frank Ciulla, Eric Michael Coker, Jason Michael Coker, William Allan Daniels, Gretchen Joyce Dater, Michael Joseph Doyle, John Patrick Flynn, Kenneth Raymond Garczynski, William David Giebler, Roger Elwood Hurst, Robert Van Houten Jeck, Timothy Baron Johnson, Patricia Ann Klein, Robert Milton Leckburg, Alexander Lowenstein, Richard Paul Monetti, Martha Owens, Sarah Rebecca Owens, Laura Abigail Owens, Robert Plack Owens, William Pugh, Diane Marie Rencevicz, Saul Mark Rosen, Irving Stanley Sigal, Elia Stratis, Alexia Kathryn Tsairis, Raymond Ronald Wagner, Dedera Lynn Woods, Chelsea Marie Woods, Joe Nathan Woods, Joe Nathan Woods, Jr.;

NEW YORK: John Michael Gerard Ahern, Rachel Maria Asrelsky, Harry Michael Bainbridge, Kenneth John Bissett, Paula Marie Bouckley, Colleen Renee Brunner, Gregory Capasso, Richard Anthony Cawley, Theodora Eugenia Cohen, Joyce Christine Dimauro, Edgar Howard Eggleston III, Arthur Fondiler, Robert Gerard Fortune, Amy Beth Gallagher, Andre Nikolai Guevorgian, Lorraine Buser Halsch, Lynne Carol Hartunian, Katherine Augusta Hollister, Melina Kristina Hudson, Karen Lee Hunt, Kathleen Mary Jermyn, Christopher Andrew Jones, William Chase Leyrer, William Edward Mack, Elizabeth Lillian Marek, Daniel Emmet McCarthy, Suzanne Marie Miazga, Joseph Kenneth Miller, Jewell Courtney Mitchell, Eva Ingeborg Morson, John Mulroy, Mary Denice O'Neill, Robert Italo Pagnucco, Christos Michael Papadopoulos, David Platt, Walter Leonard Porter, Pamela Lynn Posen, Mark Alan Rein, Andrea Victoria Rosenthal, Daniel Peter Rosenthal, Joan Sheanshang, Martin Bernard Carruthers Simpson, James Alvin Smith, James Ralph Stow, Mark Lawrence Tobin, David William Trimmer-Smith, Asaad Eidi Vejdany, Kesha Weedon, Jerome Lee Weston, Bonnie Leigh Williams, Brittany Leigh Williams, Eric Jon Williams, Stephanie Leigh Williams, Mark James Zwynenburg;

NORTH DAKOTA: Steven Russell Berrell;

OHIO: John David Akerstrom, Shanti Dixit, Douglas Eugene Malicote, Wendy Gay Malicote, Peter Raymond Peirce, Michael Pescatore, Peter Vulcu;

PENNSYLVANIA: Martin Lewis Apfelbaum, Timothy Michael Cardwell, David Scott Dornstein, Anne Madelene Gorgacz, Linda Susan Gordon-Gorgacz, Loretta Anne Gorgacz, David J. Gould, Rodney Peter Hilbert, Beth Ann Johnson, Robert Eugene McCollum, Elyse Jeanne Saraceni, Scott Christopher Saunders;

RHODE ISLAND: Bernard Joseph McLaughlin, Robert Thomas Schlageter;

TEXAS: Willis Larry Coursey, Michael Gary Stinnett, Charlotte Ann Stinnett, Stacey Leanne Stinnett;

VIRGINIA: Ronald Albert Lariviere, Charles Dennis McKee;

WEST VIRGINIA: Valerie Canady;

UNITED STATES CITIZENS LIVING ABROAD: Sarah Margaret Aicher, Judith Bernstein Atkinson, William Garretson Atkinson III, Noelle Lydie Berti, Charles Thomas Fisher IV, Lilibeth Tobila Macalolooy, Diane Marie Maslowski, Jane Susan Melber, Jane Ann Morgan, Sean Kevin Mulroy, Jocelyn Reina, Myra Josephine Royal, Irja Syhnove Skabo, Milutin Velimirovich;

Whereas 15 active duty members and at least 10 veterans of the United States Armed Forces and members of their families were among those who lost their lives in this tragedy;

Whereas the terrorist bombing of Flight 103 was unquestionably an attack on the United States;

Whereas a memorial cairn honoring the victims of the bombing of Flight 103 has been donated to the people of the United States by the people of Scotland;

Whereas a small, vacant plot of land, unsuitable for gravesites, has been located in Arlington National Cemetery, Arlington, Virginia; and

Whereas Arlington National Cemetery, Arlington, Virginia, is a fitting and appropriate place for a memorial in honor of those who perished in the Flight 103 bombing: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to place in Arlington National Cemetery, Arlington, Virginia, a memorial cairn, donated by the people of Scotland, honoring the 270 victims of the terrorist bombing of Pan Am Flight 103 who died on December 21, 1988, over Lockerbie, Scotland.

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 the 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

"§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.

"(b) 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 supersede, 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 for such person in this chapter.

"(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 any 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.

"(2) 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, insurance coverage and 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 has control 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) a State;

"(iv) any successor in interest to a person, institution, organization, or other entity referred to in this subparagraph; and

"(v) 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 709 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 nonappropriated 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, medical or hospital 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.

"(8) The term 'notice' means (with respect to subchapter II) any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service or by the uniformed service in which such service is to be performed.

"(9) The term 'qualified', with respect to an employment position, means having the ability to perform the essential tasks of the position.

"(10) The term 'reasonable efforts', in the case of actions required of an employer under this chapter, means actions, including training provided by an employer, that do not place an undue hardship on the employer.

"(11) The term 'Secretary' means the Secretary of Labor or any person designed by such Secretary to carry out an activity under this chapter.

"(12) The term 'seniority' means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

"(13) The term 'service in the uniformed services' means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

"(14) The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories of the United States (including the agencies and political subdivisions thereof).

"(15) The term 'undue hardship', in the case of actions taken by an employer, means actions requiring significant difficulty or expense, when considered in light of—

"(A) the nature and cost of the action needed under this chapter;

"(B) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

"(C) the overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; the number, type, and location of its facilities; and

"(D) the type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

"(16) The term 'uniformed services' means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

"§ 4304. Character of service

"A person's entitlement to the benefits of this chapter by reason of the service of such person in one of the uniformed services terminates upon the occurrence of any of the following events:

"(1) A separation of such person from such uniformed service with a dishonorable or bad conduct discharge.

"(2) A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary concerned.

"(3) A dismissal of such person permitted under section 1161(a) of title 10.

"(4) 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 who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of 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 the absence of such membership, application for membership, performance, service, application for service, or obligation.

"(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 a 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 incorporated and located in a foreign country, any practice prohibited by this chapter that is engaged in by such corporation shall be presumed to be engaged in by such employer.

"(3)(A) The prohibitions of this section shall not apply to a foreign employer not controlled by an American employer.

"(B) For purposes of this paragraph the determination of whether an employer controls a corporation shall be based on—

"(i) the interrelation of operations;

"(ii) the common management;

"(iii) the centralized control of labor relations; and

"(iv) the common ownership or financial control of the employer and the corporation.

"§4312. Reemployment rights of persons who serve in the uniformed services

"(a) Subject to subsections (b), (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 and 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 notice of such service to such person's employer;

"(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) 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) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that 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) during which such person was unable 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 inability was through no fault of such person;

"(3) performed as required pursuant to section 270 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

"(4) performed by a member of a uniformed service who is—

"(A) ordered to or retained on active duty under section 672(a), 672(g), 673, 673b, 673c, or 688 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

"(B) ordered to or retained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or the Congress;

"(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 673b of title 10;

"(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services; or

"(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 3500 or 8500 of title 10.

"(d)(1) An employer is not required to reemploy a person under this chapter if—

"(A) the employer's circumstances have so changed as to make such reemployment impossible or unreasonable; or

"(B) in the case of a person entitled to reemployment under 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.

"(2) In any proceeding involving an issue of whether—

"(A) any reemployment referred to in paragraph (1) is impossible or unreasonable because of a change in an employer's circumstances, or

"(B) any accommodation, training, or effort referred to in subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313 of this title would impose an undue hardship on the employer,

the employer shall have the burden of proving the impossibility or unreasonableness or undue hardship.

"(e)(1) Subject to paragraph (2), a person referred to in subsection (a) shall, upon the completion of a period of service in the uniformed

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, by reporting to the employer—

"(i) not later than the beginning of the first full regularly scheduled work period on the first full calendar day 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 to the person's residence; or

"(ii) as soon as possible after the expiration of the eight-hour period referred to in clause (i), if reporting within the period referred to in such clause is impossible or unreasonable through no fault of the person.

"(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 30 days but less than 181 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 180 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 for, 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 such employer (in the case of a person described in subparagraph (C) or (D) of such paragraph). Except as provided in subparagraph (B), such period of recovery may not exceed two years.

"(B) Such two-year period shall be extended by the minimum time required to accommodate the circumstances beyond such person's control which make reporting within the period specified in subparagraph (A) impossible or unreasonable.

"(3) 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 subsection (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 (C) or (D) of subsection (e)(1) or subsection (e)(2) shall provide to the person's employer (upon the request of such employer) documentation to establish that—

"(A) the person's application is timely;

"(B) the person has not exceeded the service limitations set forth in subsection (a)(2) (except as permitted under subsection (c)); and

"(C) the person's entitlement to the benefits under this chapter has not been terminated pursuant to section 4304 of this title.

"(2) Documentation of any matter referred to in paragraph (1) that satisfies regulations prescribed by the Secretary shall satisfy the documentation requirements in such paragraph.

"(3)(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 this chapter if the failure occurs because such documentation does not exist or is not readily available at the time of the request of the employer. If, after such reemployment, documentation becomes available that establishes that such person does not meet one or more of the requirements referred to in subparagraphs (A), (B), and (C) of paragraph (1), the employer of such person may terminate the employment of the person and the provision of any rights or benefits afforded the person under this chapter.

"(B) An employer who reemploys a person absent from a position of employment for more than 90 days may require that the person provide the employer with the documentation referred to in subparagraph (A) before beginning to treat the person as not having incurred a break in service for pension purposes under section 4317(a)(2)(A) of this title.

"(4) An employer may not delay or attempt to defeat a reemployment obligation by demanding documentation that does not then exist or is not then readily available.

"(g) The right of a person to reemployment under this section shall not entitle such person to retention, preference, or displacement rights over any person with a superior claim under the provisions of title 5, United States Code, relating to veterans and other preference eligibles.

"(h) 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 (a)(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 upon completion of a period of service in the uniformed services shall be promptly reemployed in a position of employment in accordance with the following order of priority:

"(1) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for less than 31 days—

"(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, the duties of which the person is qualified to perform; or

"(B) if the person is not qualified to perform the duties of the 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.

"(2) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for more than 30 days—

"(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status, and pay, the duties of which the person is qualified to perform; or

"(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.

"(3) In the case of a person who has a disability incurred in, or aggravated by, such service, and who (after reasonable efforts by the employer to accommodate the disability) is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service—

"(A) in any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer; or

"(B) if not employed under subparagraph (A), in a position which is the nearest approximation to a position referred to in subparagraph (A) in terms of seniority, status, and pay consistent with circumstances of such person's case.

"(4) In the case of a person who (A) is not qualified to be employed in (i) the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or (ii) in the position of employment in which such person was employed on the date of the commencement of the service in the uniform services for any reason (other than disability incurred in, or aggravated by, service in the uniformed services), and (B) cannot become qualified with reasonable efforts by the employer, in any other position of lesser status and pay which such person is qualified to perform, with full seniority.

"(b)(1) If two or more persons are entitled to reemployment under section 4312 of this title in the same position of employment and more than one of them has reported for such reemployment, the person who left the position first shall have the prior right to reemployment in that position.

"(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 be reemployed as follows:

"(A) Except as provided in subparagraph (B), in any other position of employment referred to in subsection (a)(1) or (a)(2), as the case may be (in the order of priority set out in the applicable subsection), that provides a similar status and pay to a position of employment referred to in paragraph (1) of this subsection, consistent with circumstances of such person's case, with full seniority.

"(B) In the case of a person who has a disability incurred in, or aggravated by, service in the uniformed services that requires reasonable efforts by the employer for the person to be able to perform the duties of the position of employment, in any position referred to in subsection (a)(3) (in the order of priority set out in that subsection) that provides a similar status and pay to a position referred to in paragraph (1), consistent with circumstances of such person's case, with full seniority.

"§4314. Reemployment by the Federal Government

"(a) Except as provided in subsections (b), (c), and (d), if a person is entitled to reemployment by the Federal Government under section 4312 of this title, such person shall be reemployed in a position of employment as described in section 4313 of this title.

"(b)(1) If the Director of the Office of Personnel Management makes a determination described in paragraph (2) with respect to a person who was employed by a Federal executive agency 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, status, and pay at another Federal executive agency that satisfies the requirements of section 4313 of this title and for which the person is qualified; 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 employed the person referred to in such paragraph no longer exists and the functions of such agency 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 entered the service from which such person seeks reemployment under this section, a part of the judicial branch or the legislative branch of the Federal Government, and such employer determines that it is impossible or unreasonable for such employer to reemploy such person, such person shall, upon application to the Director of the Office of Personnel Management, be ensured an offer of employment in an alternative position in a Federal executive agency on the basis described in subsection (b).

"(d) If the adjutant general of a State determines that it is impossible or unreasonable to reemploy a person who was a National Guard technician employed under section 709 of title 32, such person shall, upon application to the Director of the Office of Personnel Management, be ensured an offer of employment 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 subsection (a), the head of an agency referred to in that subsection shall ensure, to the maximum extent 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 similar to the manner of reemployment described in section 4313 of this title.

"(c)(1) The regulations prescribed under subsection (a) shall designate an official at the agency who shall determine whether or not the reemployment of a person referred to in subsection (b) by the agency is impossible or unreasonable.

"(2) Upon making a determination that the reemployment by the agency of a person referred to in subsection (b) is impossible or unreasonable, the official referred to in paragraph (1) shall notify the person and the Director of the Office of Personnel Management of such determination.

"(3) A determination pursuant to this subsection shall not be subject to judicial review.

"(4) The head of each agency referred to in subsection (a) shall submit to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives on an annual basis a report on the number of persons whose reemployment with the agency was determined under this subsection to be impossible or unreasonable during the year preceding the report, including the reason for each such determination.

"(d)(1) Except as provided in this section, nothing in this section, section 4313 of this title, or section 4324 of this title shall be construed to exempt any agency referred to in subsection (a) from compliance with any other substantive provision of this chapter.

"(2) This section may not be construed—

"(A) as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary regarding assistance in seeking reemployment from the agency under this chapter, alternative employment in the Federal Government under this chapter, or information relating to the rights and obligations of employee and Federal agencies under this chapter; or

"(B) as prohibiting such an agency from voluntarily cooperating with or seeking assistance in or of clarification from the Secretary or the Director of the Office of Personnel Management of any matter arising under this chapter.

"(e) The Director of the Office of Personnel Management shall ensure the offer of employment to a person in a position in a Federal executive agency on the basis described in subsection (b) if—

"(1) the person was an employee of an agency referred to in section 2302(a)(2)(C)(ii) of title 5 at the time the person entered the service from which the person seeks reemployment under this section;

"(2) the appropriate officer of the agency determines under section 4315(c) of this title that reemployment of the person by the agency is impossible or unreasonable; and

"(3) the person submits an application to the Director for an offer of employment under this subsection.

"§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 uniformed services is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of such service plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.

"(b)(1)(A) Subject to paragraphs (2) through (6), a person who performs service in the uniformed services shall be—

"(i) deemed to be on furlough or leave of absence while performing such service; and

"(ii) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a practice, policy, agreement, or plan in effect at the commencement of such service or established while such person performs such service.

"(B) Such person may be required to pay the employee cost, if any, of any funded benefit continued pursuant to subparagraph (A) to the extent other employees on furlough or leave of absence are so required. In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), any liability of the plan arising under this paragraph shall be allocated by the plan in such manner as the sponsor maintaining 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).

"(2) A person deemed to be on furlough or leave of absence under this subsection while serving in the uniformed services shall not be entitled under this subsection to any benefits which the person would not otherwise be entitled if the person were not on a furlough or leave of absence.

"(3) A person is not entitled under this subsection to coverage under a health plan to the extent that the person is entitled to care or treatment from the Federal Government as a result of such person's service in the uniformed services.

"(4) A person is not entitled under this subsection to coverage, under a disability insurance policy, of an injury or disease incurred or aggravated during a period of active duty service in excess of 31 days to the extent such coverage is excluded or limited by a provision of such policy.

"(5) A person is not entitled under this subsection to coverage, under a life insurance policy, of a death incurred by the person as a result of the person's participation in, or assignment to an area of, armed conflict to the extent that such coverage is excluded or limited by a provision of such policy.

"(6) The requirement that an employer provide rights or benefits under paragraph (1) to a person deemed to be on furlough or leave of absence shall expire on the earlier of—

"(A) the date of the end of the 18-month period that begins on the date on which the person commences the performance of the service referred to in paragraph (1); 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 4312(e) of this title.

"(7) 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 employer-sponsored health-plan coverage would otherwise terminate 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.

"(B) A person who elects to continue health-plan coverage under this paragraph may be required to pay not more than 102 percent of the full premium (determined in the same manner as the applicable premium under section 4980B(f)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 4980B(f)(4))) associated with such coverage for the employer's other employees, except that in the case of a person who performs a period of service in the uniformed services for less than 31 days, such person may not be required to pay more than the employee share, if any, for such coverage.

"(C) In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), any liability of the plan arising under this paragraph shall be allocated by the plan in such manner as the sponsor maintaining 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).

"(2) A person who elects to continue health-plan coverage under this subsection shall not be entitled to coverage under the plan to the extent that the person is entitled to care or treatment from the Federal Government as a result of such person's service in the uniformed services.

"(3) The period of coverage of a person and the person's dependents under a continuation of health-plan coverage elected by the person under this subsection shall be the lesser of—

"(A) the 18-month period beginning on the date on which the absence referred to in paragraph (1) begins; or

"(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's employer of the person's intent to return to a position of employment under section 4312(e) of this title.

"(d)(1) Except as 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, or in connection with any other individual who is covered by the health plan by reason of the reinstatement of the coverage of such person upon reemployment, if an exclusion or waiting period would not have been imposed under such 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 vacation or annual leave with pay accrued by the person before the commencement of such service.

"(2) 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 63 of title 5.

"§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 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) 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 8432b of title 5. This subparagraph shall not be construed to affect any other right or benefit under this chapter.

"(2)(A) Except as provided in section 4312(f)(3)(B) 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 such 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 deemed to constitute service with the employer or employers maintaining the plan for purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

"(b)(1) An employer reemploying a person 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)(2). For purposes of determining the amount of such liability and for purposes of section 515 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1145) or any similar Federal or State law governing pension benefits for governmental employees, service in the uniformed services that is deemed under subsection (a) to be service with the employer shall be deemed to be service with the employer under the terms of the plan or any applicable collective bargaining agreement. In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), any liability of the plan described in this paragraph shall be allocated by the plan in such manner as the sponsor maintaining 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 described in subsection (a)(2)(B)).

"(2) A person reemployed under this chapter shall be entitled to accrued benefits pursuant to subsection (a) that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the person elects to make employee contributions or elective deferrals that are attributable to the period of service described in subsection (a)(2)(B). No such contributions or deferrals may exceed the amount the person or employer would have been permitted or required to make had the person remained continuously employed by the employer throughout the period of service described in subsection (a)(2)(B). Any employee contribution or deferral to the plan described in this paragraph shall be made during any reasonable continuous period (beginning with the date of reemployment) as the employer and the person may agree but in no event shall such person be afforded a payment period shorter than the length of absence for service for which the payments are due.

"(3) For purposes of computing an employer's liability under paragraph (1) or the employee's contributions under paragraph (2), the employee's compensation during the period of service described in subsection (a)(2)(B)—

"(A) shall be computed at the rate the employee would have received but for the absence during the period of service; or

"(B) if the employee's compensation was not based on a fixed rate, shall be computed on the basis of the employee's average rate of compensation during the 12-month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

"(4) Notwithstanding any other provision of this section—

"(A) no earnings shall be credited to an employee with respect to any contribution prior to such contribution being made; and

"(B) any forfeitures during the period described in subsection (a)(2)(B) shall not be allocated to persons reemployed under this chapter.

"(c) Any employer who reemploys a person under this chapter and who is an employer contributing to a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), under which benefits are or may be payable to such person by reason of the obligations set forth in this chapter, shall, within 30 days after the date of such reemployment, provide notice of such reemployment to the administrator of such plan.

"(d) No provision of this section shall apply to the extent it—

"(1) requires any action to be taken which would cause the plan, any of its participants, or employer to suffer adverse tax or other consequences under the Internal Revenue Code of 1986; or

"(2) requires contributions to be returned or reallocated, or additional contributions to be made, with respect to employees not reemployed under this chapter.

"SUBCHAPTER III—PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND INVESTIGATION

"§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) A person may submit a complaint under subparagraph (A) if the person claims—

"(i) to be entitled under this chapter to employment or reemployment rights or benefits with respect to employment by an employer; and

"(ii) 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 as a result of the investigation that the action alleged in such complaint occurred, the Secretary shall resolve the complaint by making reasonable efforts to ensure that the person or entity named in 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 person submitting a complaint 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) This subchapter 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 a State or private employer

"(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)

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 referred is entitled to the rights or benefits sought, 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.

"(2)(A) A person referred to in subparagraph (B) may commence an action for appropriate relief in an appropriate United States district court.

"(B) A person entitled to commence an action for relief with respect to a complaint under subparagraph (A) is a person who—

"(i) has chosen not to apply to the Secretary for assistance regarding the complaint under section 4321(c) of this title;

"(ii) has chosen not to request that the Secretary refer the complaint to the Attorney General under paragraph (1); or

"(iii) has been refused representation by the Attorney General with respect to the complaint under such paragraph.

"(b) In the case of an action against a State as an employer, the appropriate district court is the court for any district in which the State exercises any authority or carries out any function. In the case of a private employer the appropriate district court is the district court for any district in which the private employer of the person maintains a place of business.

"(c)(1)(A) The district courts of the United States shall have jurisdiction, upon the filing of a complaint, motion, petition, or other appropriate pleading by or on behalf of the person entitled to a right or benefit under this chapter—

"(i) to require the employer to comply with the provisions of this chapter;

"(ii) to require the State or private employer, as the case may be, to compensate the person for any loss of wages or benefits suffered by reason of such employer's failure to comply with the provisions of this chapter; and

"(iii) to require the employer to pay the person an amount equal to the amount referred to in clause (ii) as liquidated damages, if the court determines that the employer's failure to comply with the provisions of this chapter was willful.

"(B) Any compensation under clauses (ii) and (iii) of subparagraph (A) shall be in addition to, and shall not diminish, any of the other rights and benefits provided for in this chapter.

"(2)(A) No fees or court costs shall be charged or taxed against any person claiming rights under this chapter.

"(B) In any action or proceeding to enforce a provision of this chapter by a person under subsection (a)(2) who obtained private counsel for such action or proceeding, the court may award any such person who prevails in such action or proceeding reasonable attorney fees, expert witness fees, and other litigation expenses.

"(3) The court may use its full equity powers, including temporary or permanent injunctions and temporary restraining orders, to vindicate fully the rights or benefits of persons under this chapter.

"(4) An action under this chapter may be initiated only by a person claiming rights or benefits under this chapter, and not by an employer, prospective employer, or other entity with obligations under this chapter.

"(5) In any such action, only a State and local government (as an employer), an employer, or a potential employer, as the case may be, shall be a necessary party respondent.

"(6) No State statute of limitations shall apply to any proceeding under this chapter.

"(7) A State shall be subject to the same remedies, including prejudgment interest, as may be imposed upon any private employer under this section.

"§4323. Enforcement of rights with respect to Federal executive agencies

"(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 Federal executive agency may request that the Secretary refer the complaint for litigation before the Merit Systems Protection Board. The Secretary shall refer the complaint to the Office of Special Counsel established by section 1211 of title 5.

"(2)(A) If the Special Counsel is reasonably satisfied that the person on whose behalf a complaint is referred under paragraph (1) is entitled to the rights or benefits sought, the Special Counsel (upon the request of the person submitting the complaint) may appear on behalf of, and act as attorney for, the person and initiate an action regarding such complaint before the Merit Systems Protection Board.

"(B) If the Special Counsel decides not to initiate an action and represent a person before the Merit Systems Protection Board under subparagraph (A), the Special Counsel shall notify such person of that decision.

"(b)(1) A person referred to in paragraph (2) may submit a complaint against a Federal executive agency under this subchapter directly to the Merit Systems Protection Board. A person who seeks a hearing or adjudication by submitting such a complaint under this paragraph may be represented at such hearing or adjudication in accordance with the rules of the Board.

"(2) A person entitled to submit a complaint to the Merit Systems Protection Board under paragraph (1) is a person who—

"(A) has chosen not to apply to the Secretary for assistance regarding a complaint under section 4321(c) of this title;

"(B) has received a notification from the Secretary under section 4321(e) of this title;

"(C) has chosen not to be represented before the Board by the Special Counsel pursuant to subsection (a)(2)(A); or

"(D) has received a notification of a decision from the Special Counsel under subsection (a)(2)(B).

"(c)(1) The Merit Systems Protection Board shall adjudicate any complaint brought before the Board pursuant to subsection (a)(2)(A) or (b)(1).

"(2) If the Board determines that a Federal executive agency has not complied with the provisions of this chapter relating to the employment or reemployment of a person by the agency, the Board shall enter an order requiring the agency or employee to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by such person by reason of such lack of compliance.

"(3) Any compensation received by a person pursuant to an order under paragraph (1) shall be in addition to any other right or benefit provided for by this chapter and shall not diminish any such right or benefit.

"(4) If the Board determines as a result of a hearing or adjudication conducted pursuant a complaint submitted by a person directly to the Board pursuant to subsection (b)(1) that such person is entitled to an order referred to in paragraph (2), the Board may, in its discretion, award such person reasonable attorney fees, expert witness fees, and other litigation expenses.

"(d) A person adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board under subsection (c) may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision. Such petition and review shall be in accordance with the procedures set forth in section 7703 of title 5.

"(e) A person may be represented by the Special Counsel in an action for review of a final order or decision issued by the Merit Systems Protection Board pursuant to subsection (c) that is brought pursuant to section 7703 of title 5 unless the person was not represented by the Special Counsel before the Merit Systems Protection Board regarding such order or decision.

"§4324. Enforcement of rights with respect to certain Federal agencies

"(a) This section applies to any person who alleges that—

"(1) the reemployment of such person by an agency referred to in subsection (a) of section 4315 of this title was not in accordance with procedures for the reemployment of such person under subsection (b) of such section; or

"(2) the failure of such agency to reemploy the person under such section was otherwise wrongful.

"(b) Any person referred to in subsection (a) may submit a claim relating to an allegation referred to in that subsection to the inspector general of the agency which is the subject of the allegation. The inspector general shall investigate and resolve the allegation pursuant to procedures prescribed by the head of the agency.

"(c) In prescribing procedures for the investigation and resolution of allegations under subsection (b), the head of an agency shall ensure, to the maximum extent practicable, that the procedures are similar to the procedures for investigating and resolving complaints utilized by the Secretary under section 4321(d) of this title.

"(d) This section may not be construed—

"(1) as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary regarding assistance in seeking reemployment from the agency under this chapter, alternative employment in the Federal Government under this chapter, or information relating to the rights and obligations of employee and Federal agencies under this chapter; or

"(2) as prohibiting such an agency from voluntarily cooperating with or seeking assistance in or of clarification from the Secretary or the Director of the Office of Personnel Management of any matter arising under this chapter.

"§4325. Conduct of investigation; subpoenas

"(a) In carrying out any investigation under this chapter, the Secretary's duly authorized representatives shall, at all reasonable times, have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or employer that the Secretary considers relevant to the investigation.

"(b) In carrying out any investigation under this chapter, the Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of disobedience of the subpoena or contumacy and on request of the Secretary, the Attorney General may apply to any district court of the United States in whose jurisdiction such disobedience or contumacy occurs for an order enforcing the subpoena.

"(c) Upon application, the district courts of the United States shall have jurisdiction to issue writs commanding any person or employer to comply with the subpoena of the Secretary or to comply with any order of the Secretary made pursuant to a lawful investigation under this chapter and district courts shall have jurisdiction to punish failure to obey a subpoena or other lawful order of the Secretary as a contempt of court.

"(d) Subsections (b) and (c) shall not apply to the legislative branch or the judicial branch of the United States.

"SUBCHAPTER IV—MISCELLANEOUS

"§4331. Regulations

"(a) The Secretary (in consultation with the Secretary of Defense) may prescribe regulations

implementing the provisions of this chapter with respect to States and local governments (as employers) and private employers.

"(b)(1) The Director of the Office of Personnel Management (in consultation with the Secretary and the Secretary of Defense) may prescribe regulations implementing the provisions of this chapter with regard to the application of this chapter to Federal executive agencies (other than the agencies referred to in paragraph (2)) as employers. Such regulations shall be consistent with the regulations pertaining to the States as employers and private employers.

"(2) The following entities may prescribe regulations to carry out the activities of such entities under this chapter:

"(A) The Merit Systems Protection Board.

"(B) The Office of Special Counsel.

"(C) The agencies referred to in section 2303(a)(2)(C)(ii) of title 5.

"§ 4332. Outreach

"The Secretary, the Secretary of Defense, and the Secretary of Veterans Affairs shall take such actions as such Secretaries determine are appropriate to inform persons entitled to rights and benefits under this chapter and employers of the rights, benefits, and obligations of such persons and employers under this chapter.".

(b) TABLE OF CHAPTERS.—The tables of chapters at the beginning of title 38, United States Code, and the beginning of part III of such title are each amended by striking out the item relating to chapter 43 and inserting in lieu thereof the following:

"43. Employment and reemployment rights of members of the uniformed services ..... 4301".

(c) REPORT RELATING TO IMPLEMENTATION OF REEMPLOYMENT RIGHTS PROVISIONS.—Not later than one year after the date of the enactment of this Act, the Secretary of Labor, the Attorney General of the United States, and the Special Counsel referred to in section 4323(a)(1) of title 38, United States Code (as added by subsection (a)), shall each submit a report to the Congress relating to the implementation of chapter 43 of such title (as added by such subsection).

SEC. 3. EXEMPTION FROM MINIMUM SERVICE REQUIREMENTS.

Section 5303A(b)(3) of title 38, United States Code, is amended—

(1) by striking out "or" at the end of subparagraph (E);

(2) by striking out the period at the end of subparagraph (F) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new subparagraph:

"(G) to an entitlement to rights and benefits under chapter 43 of this title.".

SEC. 4. REPEAL OF TITLE 5 PROVISIONS RELATING TO REEMPLOYMENT RIGHTS OF RESERVISTS.

(a) REPEAL.—Subchapter II of chapter 35 of title 5, 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 RETIREMENT BENEFIT PROGRAM FOR RESERVISTS.

(a) CREDITABLE MILITARY SERVICE UNDER CSRS.—Section 8331(13) of title 5, United States Code, 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 subchapter 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) PAY DEDUCTIONS FOR MILITARY SERVICE UNDER CSRS.—Section 8334(j)(1) of such title is amended—

(1) by striking out "Each employee" and inserting in lieu thereof "(A) Except as provided in subparagraph (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 subchapter and reemployment pursuant to chapter 43 of title 38 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 8401(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 subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990" before the semicolon.

(d) PAY DEDUCTIONS FOR MILITARY SERVICE UNDER FERS.—Section 8422(e)(1) of such title is amended—

(1) by striking out "Each employee" and inserting in lieu thereof "(A) Except as provided in subparagraph (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 subchapter and reemployment pursuant to chapter 43 of title 38 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(11), by striking out "1954" in the flush matter above clause (i) and inserting in lieu thereof "1986".

(2) In section 8422(a)(2)(A)(ii), by striking out "1954" and inserting in lieu thereof "1986".

(3) In section 8432(d), by striking out "1954" in the first sentence and inserting in lieu thereof "1986".

(4) In section 8433(i)(4), by striking out "1954" and inserting in lieu thereof "1986".

(5) In section 8440—

(A) by striking out "1954" in subsection (a) and inserting in lieu thereof "1986"; and

(B) by striking out "1954" in subsection (c) and inserting in lieu thereof "1986".

SEC. 6. 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—

"(1) separates or enters leave-without-pay status in order to perform military service; and

"(2) 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 (2).

"(2) The maximum amount which an employee may contribute under this subsection is equal to—

"(A) the contributions under section 8432(a) which would have been made, over the period beginning on date of separation or commencement of leave-without-pay status (as applicable) and ending on the day before the date of restoration or reemployment (as applicable); reduced by

"(B) any contributions under section 8432(a) actually made by such employee over the period described in subparagraph (A).

"(3) Contributions under this subsection—

"(A) shall be made at the same time and in the same manner as would any contributions under section 8432(a);

"(B) shall be made over the period of time specified by the employee under paragraph (4)(B); and

"(C) shall be in addition to any contributions then actually being made under section 8432(a).

"(4)(A) The Executive Director shall prescribe the time, form, and manner in which an employee may specify—

"(i) the total amount such employee wishes to contribute under this subsection with respect to any particular period referred to in paragraph (2)(B); and

"(ii) the period of time over which the employee wishes to make contributions under this subsection.

"(B) The employing agency may place a maximum limit on the period of time referred to in subparagraph (A)(ii), which cannot be shorter than two times the period referred to in paragraph (2)(B) and not longer than four times such period.

"(c) If an employee makes contributions under subsection (b), the employing agency shall make contributions to the Thrift Savings Fund on such employee's behalf—

"(1) in the same manner as would be required under section 8432(c)(2) if the employee contributions were being made under section 8432(a); and

"(2) disregarding any contributions then actually being made under section 8432(a) and any agency contributions relating thereto.

"(d) An employee to whom this section applies is entitled to have contributed to the Thrift Savings Fund on such employee's behalf an amount equal to—

"(1) 1 percent of such employee's basic pay (as determined under subsection (e)) for the period referred to in subsection (b)(2)(B); reduced by

"(2) any contributions actually made on such employee's behalf under section 8432(c)(1) with respect to the period referred to in subsection (b)(2)(B).

"(e) For purposes of any computation under this section, an employee shall, with respect to the period referred to in subsection (b)(2)(B), be considered to have been paid at the rate which would have been payable over such period had such employee remained continuously employed in the position which such employee last held before separating or entering leave-without-pay status to perform military service.

"(f) Amounts paid under subsection (c) or (d) shall be paid—

"(1) by the agency to which the employee is restored or in which such employee is reemployed;

"(2) from the same source as would be the case under section 8432(e) with respect to sums required under section 8432(c); and

"(3) within the time prescribed by the Executive Director.

"(g)(1) For purposes of section 8432(g), in the case of an employee to whom this section applies—

"(A) a separation from civilian service in order to perform the military service on which the 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)(2)(B).

"(2)(A) An employee to whom this section applies may elect, for purposes of section 8433(d), or paragraph (1) or (2) of section 8433(h), as the case may be, to have such employee's separation (described in subsection (a)(1)) treated as if it had never occurred.

"(B) 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 prescribes.

"(h) The Executive Director shall prescribe regulations to carry out this section.".

(2) The table of sections at the beginning of chapter 84 of title 5, United States Code, is amended by inserting after the item relating to section 8432a the following:

"8432b. 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 "subsection (e)." and inserting "subsection (e), unless an election under section 8432b(g)(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(g)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred.".

(c) ELECTION TO RESUME REGULAR CONTRIBUTIONS UPON RESTORATION OR REEMPLOYMENT.—Section 8432 of title 5, United States Code, is amended by adding at the end the following:

"(i)(1) This subsection applies to any employee—

"(A) to whom section 8432b applies; and

"(B) who, during the period of such employee's absence from civilian service (as referred to in section 8432b(b)(2)(B))—

"(i) is eligible to make an election described in subsection (b)(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 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 (b)(1)(A).".

(d) APPLICABILITY TO EMPLOYEES UNDER CSRS.—Section 8351(b) of title 5, United States Code, is amended by adding at the end the following:

"(11) In applying section 8432b to an employee contributing to the Thrift Savings Fund after being restored to or reemployed in a position subject to this subchapter, pursuant to chapter 43 of title 38—

"(A) any reference in such section to contributions under section 8432(a) shall be considered a reference to employee contributions under this section;

"(B) the contribution rate under section 8432b(b)(2)(A) shall be the maximum percentage allowable under subsection (b)(2) of this section; and

"(C) subsections (c) and (d) of section 8432b shall be disregarded.".

(e) EFFECTIVE DATE; APPLICABILITY.—This section and the amendments made by this section—

(1) shall take effect on the date of enactment of this Act; and

(2) shall apply to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of title 38, United States Code (as added by section 2(a)), occurs on or after August 1, 1990.

(f) RULES FOR APPLYING AMENDMENTS TO EMPLOYEES RESTORED OR REEMPLOYED BEFORE EFFECTIVE DATE.—In the case of any employee (described in subsection (e)(2)) who is restored or reemployed in a position of employment (in the circumstances described in section 8432b(a) of title 5, United States Code, as amended by this section) before the date of enactment of this Act, the amendments made by this section shall apply to such employee, in accordance with their terms, subject to the following:

(1) The employee shall be deemed not to have been reemployed or restored until—

(A) the date of enactment of this Act, or

(B) the first day following such employee's reemployment or restoration on which such employee is or was eligible to make an election relating to contributions to the Thrift Savings Fund,

whichever occurs or occurred first.

(2) If the employee changed agencies during the period between date of actual 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 subsection (e) of such section, except that, with respect to the period described in subparagraph (B), actual pay attributable to such period shall be used.

(B) The period described in this subparagraph 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 5.—Section 1204(a)(1) of title 5, United States Code, is amended by striking out "section 4323" and inserting in lieu thereof "chapter 43".

(b) TITLE 10.—Section 706(c)(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) TECHNICAL AMENDMENT.—Section 9(d) of Public Law 102–16 (105 Stat. 55) is amended by striking out "Act" the first place it appears and inserting in lieu thereof "section".

(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 DATES.

(a) REEMPLOYMENT.—(1) Except as otherwise provided in this Act, the amendments made by this Act shall be effective with respect to reemployments initiated on or after the first day after 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.

(3) In determining the number of years of service that may not be exceeded in an employee-employer relationship with respect to which a person seeks reemployment under chapter 43 of title 38, United States Code, as in effect before or after the date of enactment of this Act, there shall be included all years of service without regard to whether the periods of service occurred before or after such date of enactment unless the period of service is exempted by the chapter 43 that is applicable, as provided in paragraphs (1) and (2), to the reemployment concerned.

(4) A person who initiates reemployment under chapter 43 of title 38, United States Code, during or after the 60-day period beginning on the date of enactment of this Act and whose reemployment is made in connection with a period of service in the uniform services that was initiated before the end of such period shall be deemed to have satisfied the notification requirement 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, as in effect on the day before the date of enactment of this Act.

(b) DISCRIMINATION.—The provisions of section 4311 of title 38, United States Code, as provided in the amendments made by this Act, and the provisions of subchapter III of chapter 43 of such title, as provided in the amendments made by this Act, that are necessary for the implementation of such section 4311 shall become effective on the date of enactment of this Act.

(c) INSURANCE.—(1) Except as provided in paragraph (2), the provisions of section 4316(c) of title 38, United States Code, as provided in the amendments made by this Act, concerning insurance coverage shall become effective on the date of enactment of this Act.

(2) A person on active duty on the date of enactment of this Act, or a family member or personal representative of such person, may, after the date of enactment of this Act, elect to reinstate or continue insurance coverage as provided in such section 4316. If such an election is made, insurance coverage shall remain in effect for the remaining portion of the 18-month period that began on the date of such person's separation from civilian employment or the period of the person's service in the uniformed service, whichever is the period of lesser duration.

(d) DISABILITY.—(1) Section 4313(a)(3) of chapter 43 of title 38, United States Code, as provided in the amendments made by this Act, shall apply to reemployments initiated on or after August 1, 1990.

(2) Effective as of August 1, 1990, section 4307 of title 38, United States Code (as in effect on the date of enactment of this Act), is repealed, and the table of sections at the beginning of chapter 43 of such title (as in effect on the date of enactment of this Act) is amended by striking out the item relating to section 4307.

(e) INVESTIGATIONS AND SUBPOENAS.—The provisions of section 4325 of title 38, United States Code, as provided in the amendments made by this Act, shall become effective on the date of the enactment of this Act and apply to any matter pending with the Secretary of Labor under section 4305 of title 38, United States Code, as of that date.

(f) PREVIOUS ACTIONS.—Except as otherwise provided, the amendments made by this Act do not affect reemployments that were initiated, rights, benefits, and duties that matured, penalties that were incurred, and proceedings that begin before the end of the 60-day period referred to in subsection (a).

(g) DEFINITION.—For the purposes of this section, the term "service in the uniformed services" shall have the meaning given such term in section 4303(13) of title 38, United States Code, as provided in the amendments made by this Act.

SEC. 10. INCREASE IN AMOUNT OF LOAN GUARANTY 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 "$46,000" and inserting in lieu thereof "$50,750".

ORDERS FOR TUESDAY, NOVEMBER 9, 1993

Mr. BIDEN. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate

completes its business today, it stand in recess until 9 a.m., Tuesday, November 9; that following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; that immediately following the announcement of the Chair, the Senate resume consideration of the motion to invoke cloture on the Interior Appropriations conference report, with 1 hour for debate, the time equally divided and controlled between Senators REID and NICKLES, or their designees; that once the hour has been used on the motion to invoke cloture, the Senate then resume consideration of S. 1607, the crime bill; that on Tuesday, the Senate stand in recess from 12:30 p.m. until 2:15 p.m., in order to accommodate the respective party conferences; that at 2:15 p.m., the Senate, without intervening action or debate, vote on a motion to invoke cloture on the Interior Appropriations conference report, to be followed, without intervening action or debate, by a vote on, or in relation to, the DOLE amendment No. 1140; that upon disposition of the Dole amendment, and without intervening action or debate, the Senate vote on, or in relation to, the Lieberman amendment.

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

RECESS UNTIL TUESDAY, NOVEMBER 9, 1993, AT 9 A.M.

Mr. BIDEN. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 9:58 p.m., recessed until Tuesday, November 9, 1993, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate November 8, 1993:

DEPARTMENT OF ENERGY

CHRISTINE ERVIN, OF OREGON, TO BE AN ASSISTANT SECRETARY OF ENERGY (ENERGY EFFICIENCY AND RENEWABLE ENERGY), VICE J. MICHAEL DAVIS, RESIGNED.

COMMODITY FUTURES TRADING COMMISSION

BARBARA PEDERSEN HOLUM, OF MARYLAND, TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION FOR THE TERM EXPIRING APRIL 13, 1997, VICE FOWLER C. WEST, RESIGNED.

DEPARTMENT OF AGRICULTURE

WALLY B. BEYER, OF NORTH DAKOTA, TO BE ADMINISTRATOR OF THE RURAL ELECTRIFICATION ADMINISTRATION FOR A TERM OF TEN YEARS, VICE JAMES B. HUFF, SR.

DEPARTMENT OF STATE

STUART GEORGE MOLDAW, OF CALIFORNIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FORTY-EIGHTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 8, 1993:

DEPARTMENT OF COMMERCE

JEFFREY E. GARTEN, OF NEW YORK, TO BE UNDER SECRETARY OF COMMERCE FOR INTERNATIONAL TRADE.

FEDERAL LABOR RELATIONS AUTHORITY

JOSEPH SWERDZEWSKI, 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

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).

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 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.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

DIANE B. FRANKEL, OF CALIFORNIA, TO BE DIRECTOR OF THE INSTITUTE OF MUSEUM SERVICES.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. GARY H. MEARS [redacted] UNITED STATES AIR FORCE

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

GEN. JIMMY D. ROSS [redacted] UNITED STATES ARMY

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

MAJ. GEN. JOHNNIE E. WILSON, [redacted] UNITED STATES ARMY

THE FOLLOWING NAMED OFFICERS FOR PROMOTION IN THE REGULAR ARMY OF THE UNITED STATES TO THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 611(A) AND 624:

To be permanent brigadier general

COL. EDWIN P. SMITH [redacted]
COL. NEIL N. SNYDER II [redacted]
COL. MARK R. HAMILTON [redacted]
COL. EMMITT E. GIBSON [redacted]
COL. ROBERT D. SHADLEY [redacted]
COL. CHARLES R. VIALE [redacted]
COL. GEORGE F. CLOSE, JR. [redacted]
COL. DALE R. NELSON [redacted]
COL. JOSEPH E. ODEN [redacted]
COL. MICHAEL W. ACKERMAN [redacted]
COL. BOYD E. KING, JR. [redacted]
COL. JOHN M. LE MOYNE [redacted]
COL. MICHAEL L. DODSON [redacted]
COL. JOHN J. RYNESKA [redacted]
COL. ROY E. BEAUCHAMP [redacted]
COL. RICHARD A. BLACK [redacted]
COL. JOHN B. SYLVESTER [redacted]
COL. JAMES P. O'NEAL [redacted]
COL. THOMAS W. GARRETT [redacted]
COL. JOHN D. THOMAS, JR. [redacted]
COL. JAMES E. SHANE, JR. [redacted]
COL. JOHN G. MEYER, JR. [redacted]
COL. JOSEPH M. COSUMANO, JR. [redacted]
COL. ROBERT B. FLOWERS [redacted]
COL. ROBERT R. IVANY [redacted]
COL. MICHAEL T. BYRNES [redacted]
COL. DAVID S. WEISMAN [redacted]
COL. RALPH G. WOOTEN [redacted]
COL. JULIAN H. BURNS, JR. [redacted]
COL. ROBERT T. CLARK [redacted]
COL. CHRISTOPHER C. SHOEMAKER [redacted]
COL. KEVIN P. BYRNES [redacted]
COL. JOHN M. MCDUFFIE [redacted]
COL. GREGORY A. ROUNTREE [redacted]
COL. LARRY J. LUST [redacted]
COL. PETER C. FRANKLIN [redacted]
COL. DAVID L GRANGE [redacted]
COL. KENNETH R. BOWRA [redacted]

THE FOLLOWING U.S. ARMY RESERVE OFFICERS FOR PROMOTION TO THE GRADES INDICATED IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF SECTIONS 593(A), 3371 AND 3384, TITLE 10, UNITED STATES CODE:

To be major general

BRIG. GEN. DONALD F. CAMPBELL [redacted]
BRIG. GEN. PETER W. CLEGG [redacted]
BRIG. GEN. LINDSAY M. FREEMAN [redacted]
BRIG. GEN. LEONARD L. HOCH [redacted]
BRIG. GEN. THOMAS P. JONES [redacted]
BRIG. GEN. HOWARD T. MOONEY [redacted]
BRIG. GEN. THOMAS J. PLEWES [redacted]
BRIG. GEN. RICHARD F. REEDER [redacted]
BRIG. GEN. RICHARD E. STORAT [redacted]
BRIG. GEN. FRANCIS D. TERRELL [redacted]
BRIG. GEN. JOHN M. VEST [redacted]
BRIG. GEN. ROBERT H. G. WAUDBY [redacted]

To be brigadier general

COL. MICHAEL E. DUNLAVEY [redacted]
COL. JAMES L. BAUERLE [redacted]
COL. MELVIN R. JOHNSON [redacted]
COL. BRUCE B. BINGHAM [redacted]
COL. MICHAEL R. MAYO [redacted]
COL. ROBERT J. WINZINGER [redacted]
COL. JOHN G. KULHAVI [redacted]
COL. RODNEY D. RUDDOCK [redacted]
COL. ROBERT L. LENNON [redacted]
COL. JOHN J. GREEN, JR. [redacted]
COL. JAMES C. LARSON [redacted]
COL. CLIFFORD L. MASSENGALE [redacted]
COL. ROBERT A. LEE [redacted]
COL. NORMAN B. BURDETT [redacted]

IN THE NAVY

THE FOLLOWING NAMED CAPTAINS OF THE RESERVE OF THE U.S. NAVY FOR PERMANENT PROMOTION TO THE GRADE OF REAR ADMIRAL (LOWER HALF) IN THE LINE AND STAFF CORPS, AS INDICATED, PURSUANT TO THE PROVISION OF TITLE 10, UNITED STATES CODE, SECTION 5912:

Unrestricted line officer to be rear admiral (lower half)

CAPT. JAMES WAYNE EASTWOOD [redacted] U.S. NAVAL RESERVE
CAPT. TIMOTHY O'NEIL FANNING, JR [redacted] U.S. NAVAL RESERVE
CAPT. JOHN EDWIN KERR [redacted] U.S. NAVAL RESERVE
CAPT. JOHN BENJAMIN TOTUSHEK, [redacted] U.S. NAVAL RESERVE

SPECIAL DUTY OFFICER (CRYPTOLOGY)

To be rear admiral (lower half)

CAPT. ROBERT HULBURT WEIDMAN, JR., [redacted] U.S. NAVAL RESERVE

MEDICAL CORPS OFFICER

To be read admiral (lower half)

CAPT. MACEA EUGENE FUSSELL, [redacted] U.S. NAVAL RESERVE

SUPPLY CORPS OFFICER

To be rear admiral (lower half)

CAPT. BRIAN NELSON MCCARTHY [redacted] U.S. NAVAL RESERVE

CHAPLAIN CORPS OFFICER

To be rear admiral (lower half)

CAPT. WILLIAM ASHLEY WILL, JR [redacted] U.S. NAVAL RESERVE

THE FOLLOWING NAMED REAR ADMIRALS (LOWER HALF) OF THE RESERVE OF THE U.S. NAVY FOR PERMANENT PROMOTION TO THE GRADE OF REAR ADMIRAL IN THE LINE, AS INDICATED, PURSUANT TO THE PROVISION OF TITLE 10, UNITED STATES CODE, SECTION 5912:

Unrestricted line officer to be rear admiral

REAR ADM. (LH) GRANT THOMAS HOLLETT, JR. [redacted] U.S. NAVAL RESERVE
REAR ADM. (LH) TIM MCCALL JENKIN [redacted] U.S. NAVAL RESERVE
REAR ADM. (LH) JOHN JACOB MUMAW [redacted] U.S. NAVAL RESERVE

Unrestricted line officer (training and administration of reserve) to be rear admiral

REAR ADM. (LH) JAMES DUANE OLSON, II, [redacted] U.S. NAVAL RESERVE

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 vice admiral

VICE ADM. JERRY O. TUTTLE, U.S. NAVY [redacted]

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBLY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be admiral

VICE ADM. WILLIAM A. OWENS 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 BHOWMICK, AND ENDING ERNEST G WEEKS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 19, 1993

AIR FORCE NOMINATIONS BEGINNING KENNETH F. ABEL, AND ENDING SHEILA J ZRIMM, 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 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. BORDNER, AND ENDING LYNNETTE D. KENNISON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 19, 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 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 NOMINATIONS 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 YOFFEE, 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

IN THE NAVY

NAVY 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

NAVY NOMINATIONS BEGINNING RONALD DAVID ABATE, AND ENDING REUBEN TERUO 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 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 DOREEN E TATE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 19, 1993