

signed into law by the President. S. 493 is the first in a series of anticrime initiatives I introduced that are aimed at modernizing U.S. law to reflect changes in technology.

It is estimated that the cellular telecommunications industry lost \$650 million due to fraud in 1995, much of it as a result of cloning. Cloned phones are popular among the most vicious criminal element. The feature story from the July/August edition of *Time* Digital, "Lethal Weapon: How Your Cell Phone Became Gangland's Favorite Gadget" quotes James Kallstrom, head of the FBI's New York office as describing cloners as "hard-core criminals, child pornographers and pedophiles * * * violent criminals who use technology to avoid the law."

On September 11, Representative BILL MCCOLLUM, chairman of the House Judiciary Crime Subcommittee, held a very useful hearing on cellular phone cloning. The hearing discussed legislative proposals to combat cellular phone fraud. Representatives of the Secret Service, FBI, and DEA all testified that legislation resembling S. 493 would be helpful in thwarting cell phone cloning.

The hearing revealed that cloned phones have become a staple of the major drug trafficking organizations. Anthony R. Bocchichio, of the DEA stated that, "[International drug trafficking organizations] utilize their virtually unlimited wealth to purchase the most sophisticated electronic equipment available on the market to facilitate their illegal activities. We have begun to see that this includes widespread use of cloned cellular telephones."

The Secret Service—the Federal agency charged with investigating cloning offenses—has doubled the number of arrests in the area of wireless telecommunications fraud every year since 1991, with 800 individuals charged for their part in the cloning of cellular phones last year. While the cell phone law (18 U.S.C. 1029) has been useful in prosecuting some cloners, the statute has not functioned well in stopping those who manufacture and distribute cloning devices.

In testimony before Mr. MCCOLLUM's Crime Subcommittee, Michael C. Stenger of the U.S. Secret Service stressed the need to revise our current cell phone statute:

Due to the fact that the statute presently requires the proof of "intent to defraud" to charge the violation, the distributors of the cloning equipment have become elusive targets. These distributors utilize disclaimers in their advertising mechanisms aimed at avoiding a finding of fraudulent intent. This allows for the continued distribution of the equipment permitting all elements of the criminal arena to equip themselves with free, anonymous phone service.

Consistent with Mr. Stenger's recommendation, the Cellular Telephone Protection Act provides that—except for law enforcement and telecommunications carriers—there is no lawful purpose for which to possess, produce,

or sell the "copycat boxes" for cloning a wireless telephone or its electronic serial number.

For S. 493 to apply, a prosecutor would need to prove that an individual "knowingly uses, produces, traffics in, has control or custody of, or possesses hardware or software, knowing it has been configured for altering or modifying a telecommunications instrument so that such instrument may be used to obtain unauthorized access to telecommunications services." Someone who does not know that a telecommunications device has been altered to modify a telecommunications instrument would not be criminally liable under this section.

To be clear, except for law enforcement and telecommunication carriers, there is no legitimate purpose for which to possess equipment used to modify cellular phones. Representatives from the Secret Service, DEA, and FBI testified to this point at the cellular fraud hearing. As Special Agent Stenger put it, "There is no legitimate use for the equipment such as that designed to alter the electronic serial numbers in wireless telephones."

The removal of the "intent to defraud" language in 18 U.S.C. 1029 only applies to the possession and use of the hardware and software configured to alter telecommunications instruments. This narrowly targeted proposal does not apply to those who are in the possession of cloned phones. Nor does it apply to those in the possession of scanning receivers, which do have some legitimate uses.

The Senate bill enjoys broad bipartisan support. Senators CLELAND, DEWINE, DORGAN, DURBIN, GORTON, HELMS, LOTT, MIKULSKI, and THURMOND have cosponsored S. 493. And a bipartisan House companion bill (H.R. 2460) has been introduced by Representatives SAM JOHNSON, BILL MCCOLLUM, and CHARLES SCHUMER.

I am hopeful that my colleagues will join in supporting this important piece of legislation.

LAW ENFORCEMENT TECHNOLOGY ADVERTISEMENT CLARIFICATION ACT OF 1997

Mr. LOTT. Mr. President, I ask unanimous consent the Judiciary Committee be discharged from further consideration of H.R. 1840 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1840) to provide a law enforcement exception to the prohibition on the advertising of certain electronic devices.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. LOTT. Mr. President, I ask unanimous consent the bill be considered read a third time and passed, the mo-

tion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 1840) was considered read the third time and passed.

ALLOWING REVISION OF VETERANS BENEFITS DECISIONS BASED ON CLEAR AND UNMISTAKABLE ERROR

Mr. LOTT. I ask unanimous consent that the Veterans Committee be discharged from further consideration of H.R. 1090, and, further, the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1090) to amend title 38, United States Code, to allow the revision of Veterans benefits decisions based on clear and unmistakable error.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mrs. MURRAY. Mr. President, I rise to encourage the Senate to adopt H.R. 1090. This legislation is identical to my bill, S. 464, to address the issue of clear and unmistakable error. S. 464 was unanimously reported by the Veterans' Affairs Committee on which I proudly serve. I want to extend my thanks to both the chairman and ranking member of our committee for moving this important legislation in a timely and bipartisan manner.

Importantly, this legislation has been adopted by the House in three consecutive Congresses. Congressman LANE EVANS has long championed this legislation; I commend him for his persistent and determined leadership. This legislation has also long been a priority issue to the Disabled American Veterans. It has been a pleasure for me to work with the DAV here in Washington, DC and with local DAV representatives in Washington State.

Clear and unmistakable errors are errors that have deprived and continue to deprive veterans of benefits for which their entitlement is undeniable. The status quo denies benefits to a small number of veterans who are legally entitled to the benefits in question. To deny a veteran a legally entitled benefit due to a bureaucratic error or other mistake is beyond comprehension in my mind.

In recent months, I've handled several cases with the Department of Veterans Affairs that directly involved clear and unmistakable error. In one case, a veteran with a serious shoulder injury dating back to the Vietnam war was rated incorrectly for more than 20 years. In another case, a veteran with PTSD also dating to service in Vietnam was misdiagnosed for a lengthy period affecting his disability rating and benefits and the treatment he received. My legislation seeks to correct

this. I believe that we must make available every opportunity to right a wrong on behalf of a veteran.

To the VA's credit, some cases of clear and unmistakable error are reversible but it depends on where the veteran is in the VA process. S. 464 and H.R. 1090 will codify the VA's current regulatory authority to review ratings decision based on claim of clear and unmistakable error.

Unfortunately, some cases of clear and unmistakable error no longer offer recourse to the veteran. S. 464 and H.R. 1090 will allow a veteran to request that the Board of Veterans' Appeals review its prior decision based on a claim of clear and unmistakable error. A veteran would also have the opportunity to challenge the Board of Veterans' Appeals decision at the Court of Veterans' Appeals.

The Congressional Budget Office has determined that this legislation is budget neutral. This legislation will not require additional resources for the VA or take needed resources from other VA programs or benefits.

So often we in Congress talk about providing for veterans or about meeting our obligations to veterans. That is what this bill is all about; it gives a veteran the right to request a review rather than subjecting an ailing vet to a sometimes faceless bureaucracy hesitant to correct its mistakes. In passing this legislation, the Senate will stand with veterans that have been deprived of benefits for which their entitlement is undeniable.

Many veterans have waited decades for this day. The Senate should end this wait now with a strong vote. A strong vote will also send a message to President Clinton. In closing, I call upon President Clinton to bring this legislative effort to a successful conclusion; to join us all to ensure that the system errs on behalf of a deserving veteran rather than the Federal Government.

Mr. LOTT. I ask unanimous consent the bill be considered read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 1090) was considered read the third time and passed.

VETERANS' BENEFITS DENIAL ACT OF 1997

Mr. LOTT. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on (S. 923) to deny veterans benefits to persons convicted of Federal capital offenses.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 923) entitled "An Act to deny veterans benefits to persons convicted of Federal capital offenses," do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. DENIAL OF ELIGIBILITY FOR INTERMENT OR MEMORIALIZATION IN CERTAIN CEMETERIES OF PERSONS COMMITTING FEDERAL CAPITAL CRIMES.

(a) PROHIBITION AGAINST INTERMENT OR MEMORIALIZATION IN CERTAIN FEDERAL CEMETERIES.—Chapter 24 of title 38, United States Code, is amended by adding at the end the following new section:

"§2411. Prohibition against interment or memorialization in the National Cemetery System or Arlington National Cemetery of persons committing Federal or State capital crimes

"(a)(1) In the case of a person described in subsection (b), the appropriate Federal official may not—

"(A) inter the remains of such person in a cemetery in the National Cemetery System or in Arlington National Cemetery; or

"(B) honor the memory of such person in a memorial area in a cemetery in the National Cemetery System (described in section 2403(a) of this title) or in such an area in Arlington National Cemetery (described in section 2409(a) of this title).

"(2) The prohibition under paragraph (1) shall not apply unless written notice of a conviction or finding under subsection (b) is received by the appropriate Federal official before such official approves an application for the interment or memorialization of such person. Such written notice shall be furnished to such official by the Attorney General, in the case of a Federal capital crime, or by an appropriate State official, in the case of a State capital crime.

"(b) A person referred to in subsection (a) is any of the following:

"(1) A person who has been convicted of a Federal capital crime for which the person was sentenced to death or life imprisonment.

"(2) A person who has been convicted of a State capital crime for which the person was sentenced to death or life imprisonment without parole.

"(3) A person who—

"(A) is found (as provided in subsection (c)) to have committed a Federal capital crime or a State capital crime, but

"(B) has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution.

"(c) A finding under subsection (b)(3) shall be made by the appropriate Federal official. Any such finding may only be made based upon a showing of clear and convincing evidence, after an opportunity for a hearing in a manner prescribed by the appropriate Federal official.

"(d) For purposes of this section:

"(1) The term 'Federal capital crime' means an offense under Federal law for which the death penalty or life imprisonment may be imposed.

"(2) The term 'State capital crime' means, under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which the death penalty or life imprisonment without parole may be imposed.

"(3) The term 'appropriate Federal official' means—

"(A) the Secretary, in the case of the National Cemetery System; and

"(B) the Secretary of the Army, in the case of Arlington National Cemetery."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 24 of such title is amended by adding at the end the following new item:

"2411. Prohibition against interment or memorialization in the National Cemetery System or Arlington National Cemetery of persons committing Federal or State capital crimes."

(c) EFFECTIVE DATE.—Section 2411 of title 38, United States Code, as added by subsection (a),

shall apply with respect to applications for interment or memorialization made on or after the date of the enactment of this Act.

SEC. 2. CONDITION ON GRANTS TO STATE-OWNED VETERAN CEMETERIES.

Section 2408 of title 38, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

"(d)(1) In addition to the conditions specified in subsections (b) and (c), any grant made on or after the date of the enactment of this subsection to a State under this section to assist such State in establishing, expanding, or improving a veterans' cemetery shall be made on the condition described in paragraph (2).

"(2) For purposes of paragraph (1), the condition described in this paragraph is that, after the date of the receipt of the grant, such State prohibit the interment or memorialization in that cemetery of a person described in section 2411(b) of this title, subject to the receipt of notice described in subsection (a)(2) of such section, except that for purposes of this subsection—

"(A) such notice shall be furnished to an appropriate official of such State; and

"(B) a finding described in subsection (b)(3) of such section shall be made by an appropriate official of such State."

Amend the title so as to read "An Act to amend title 38, United States Code, to prohibit interment or memorialization in certain cemeteries of persons committing Federal or State capital crimes."

Mr. LOTT. Mr. President, I move that the Senate concur in the amendments of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. LOTT. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 714) to extend and improve the Native American Veteran Housing Loan Pilot Program of the Department of Veterans Affairs, to extend certain authorities of the Secretary of Veterans Affairs relating to services for homeless veterans, to extend certain other authorities of the Secretary, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 714) entitled "An Act to extend and improve the Native American Veteran Housing Loan Pilot Program of the Department of Veterans Affairs, to extend certain authorities of the Secretary of Veterans Affairs relating to services for homeless veterans, to extend certain other authorities of the Secretary, and for other purposes," do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Veterans' Benefits Act of 1997".

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

Sec. 1. Short title; table of contents.

Sec. 2. References to title 38, United States Code.

TITLE I—EQUAL EMPLOYMENT OPPORTUNITY PROCESS IN THE DEPARTMENT OF VETERANS AFFAIRS

Sec. 101. Equal employment responsibilities.

Sec. 102. Discrimination complaint adjudication authority.