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109TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 109–74

GANG DETERRENCE AND COMMUNITY PROTECTION ACT OF 2005

MAY 5, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1279]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1279) to amend title 18, United States Code, to reduce violent gang crime and protect law-abiding citizens and communities from violent criminals, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Gang Deterrence and Community Protection Act of 2005".

TITLE I—CRIMINAL LAW REFORMS AND ENHANCED PENALTIES TO DETER AND PUNISH ILLEGAL STREET GANG ACTIVITY AND RELATED CRIMINAL LAW REFORMS

SEC. 101. REVISION AND EXTENSION OF PENALTIES RELATED TO CRIMINAL STREET GANG ACTIVITY.

(a) IN GENERAL.—Chapter 26 of title 18, United States Code, is amended to read as follows:

"CHAPTER 26—CRIMINAL STREET GANGS

"Sec.
"521. Criminal street gang prosecutions.

"§ 521. Criminal street gang prosecutions

"(a) STREET GANG CRIME.—Whoever commits, or conspires, threatens or attempts to commit, a gang crime for the purpose of furthering the activities of a criminal street gang, or gaining entrance to or maintaining or increasing position in such a gang, shall, in addition to being subject to a fine under this title—

"(1) if the gang crime results in the death of any person, be sentenced to death or life in prison;

"(2) if the gang crime is kidnapping, aggravated sexual abuse, or maiming, be imprisoned for life or any term of years not less than 30;

"(3) if the gang crime is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or any term of years not less than 20; and

"(4) in any other case, be imprisoned for life or for any term of years not less than 10.

"(b) FORFEITURE.—

"(1) IN GENERAL.—The court, in imposing sentence on any person convicted of a violation of this section, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States such person's interest in—

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

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

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

"(c) DEFINITIONS.—The following definitions apply in this section:

"(1) CRIMINAL STREET GANG.—The term 'criminal street gang' means a formal or informal group or association of 3 or more individuals, who commit 2 or more gang crimes (one of which is a crime of violence other than an offense punishable under subparagraphs (A), (B), or (C) of section 401(b)(1) of the Controlled Substances Act), in 2 or more separate criminal episodes, in relation to the group or association, if any of the activities of the criminal street gang affects interstate or foreign commerce.

"(2) GANG CRIME.—The term 'gang crime' means conduct constituting any Federal or State crime, punishable by imprisonment for more than one year, in any of the following categories:

"(A) A crime of violence.

"(B) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or burglary.

"(C) A crime involving the manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemical (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(D) Any conduct punishable under section 844 (relating to explosive materials), subsection (a)(1), (d), (g)(1) (where the underlying conviction is a violent felony (as defined in section 924(e)(2)(B) of this title) or is a serious drug offense (as defined in section 924(e)(2)(A))), (g)(2), (g)(3), (g)(4), (g)(5), (g)(8), (g)(9), (i), (j), (k), (n), (o), (p), (q), (u), or (x) of section 922 (relating to unlawful acts), or subsection (b), (c), (g), (h), (k), (l), (m), or (n) of section 924 (relating to penalties), section 930 (relating to possession of firearms and dangerous weapons in Federal facilities), section 931 (relating to purchase, ownership, or possession of body armor by violent felons), sections 1028 and 1029 (relating to fraud and related activity in connection with identification documents or access devices), section 1952 (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 (relating to interstate transportation of stolen motor vehicles or stolen property).

"(E) Any conduct punishable under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) of the Immigration and Nationality Act.

"(3) AGGRAVATED SEXUAL ABUSE.—The term 'aggravated sexual abuse' means an offense that, if committed in the special maritime and territorial jurisdiction would be an offense under section 2241(a).

"(4) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(b) AMENDMENT RELATING TO PRIORITY OF FORFEITURE OVER ORDERS FOR RESTITUTION.—Section 3663(c)(4) of title 18, United States Code, is amended by striking "chapter 46 or chapter 96 of this title" and inserting "section 521, under chapter 46 or 96,".

(c) MONEY LAUNDERING.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting ", section 521 (relating to criminal street gang prosecutions)" before ", section 541".

SEC. 102. INCREASED PENALTIES FOR INTERSTATE AND FOREIGN TRAVEL OR TRANSPORTATION IN AID OF RACKETEERING.

(a) SUBSTANTIVE CHANGES TO OFFENSE.—Section 1952(a) of title 18, United States Code, is amended—

(1) so that the heading for the section reads as follows:

"§ 1952. Interstate or foreign commerce-related aid to racketeering";

(2) by inserting "(1)" after "(a)";

(3) by striking "travels" and all that follows through "intent to" and inserting ", in or affecting interstate or foreign commerce";

(4) by striking "(1) distribute" and inserting "(A) distributes";

(5) by striking "(2) commit" and inserting "(B) commits";

(6) by striking "(3) otherwise promote, manage, establish, carry on, or facilitate" and inserting "(C) otherwise promotes, manages, establishes, carries on, or facilitates"; and

(7) by striking "and thereafter" and all that follows through the end of the subsection and inserting the following:

"or attempts or conspires to do so, shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under this subsection is—

"(A) in the case of a violation of subparagraph (A) or (C) of paragraph (1), a fine under this title and imprisonment for not less than 5 nor more than 20 years; and

"(B) in the case of a violation of subparagraph (B) of paragraph (1), a fine under this title and imprisonment for not less than 10 nor more than 30 years, but if death results the offender shall be sentenced to death, or to imprisonment for any term of years or for life.".

(b) CLERICAL AMENDMENT.—The item relating to section 1952 in the table of sections at the beginning of chapter 95 of title 18, United States Code, is amended to read as follows:

"1952. Interstate or foreign commerce-related aid to racketeering.".

SEC. 103. AMENDMENTS RELATING TO VIOLENT CRIME.

(a) CARJACKING.—Section 2119 of title 18, United States Code, is amended—

(1) by striking ", with the intent to cause death or serious bodily harm" in the matter preceding paragraph (1);

(2) by inserting "or conspires" after "attempts" in the matter preceding paragraph (1);

(3) by striking "15" and inserting "20" in paragraph (1); and

(4) by striking "or imprisoned not more than 25 years, or both" and inserting "and imprisoned not less than 10 years nor more than 30 years" in paragraph (2).

(b) CLARIFICATION OF ILLEGAL GUN TRANSFERS TO COMMIT DRUG TRAFFICKING CRIME OR CRIMES OF VIOLENCE.—Section 924(h) of title 18, United States Code, is amended to read as follows:

"(h) Whoever, in or affecting interstate or foreign commerce, knowingly transfers a firearm, knowing or intending that the firearm will be used to commit, or possessed in furtherance of, a crime of violence or drug trafficking crime, shall be fined under this title and imprisoned not less than 5 years nor more than 20 years.".

(c) AMENDMENT OF SPECIAL SENTENCING PROVISION RELATING TO LIMITATIONS ON CRIMINAL ASSOCIATION.—Section 3582(d) of title 18, United States Code, is amended—

(1) by inserting "section 521 (criminal street gang prosecutions), in" after "felony set forth in";

(2) by striking "specified person, other than his attorney, upon" and inserting "specified person upon"; and

(3) by inserting "a criminal street gang or" before "an illegal enterprise".

(d) CONSPIRACY PENALTY.—Section 371 of title 18, United States Code, is amended by striking "five" and inserting "20".

SEC. 104. INCREASED PENALTIES FOR USE OF INTERSTATE COMMERCE FACILITIES IN THE COMMISSION OF MURDER-FOR-HIRE AND OTHER FELONY CRIMES OF VIOLENCE.

(a) IN GENERAL.—Section 1958 of title 18, United States Code, is amended—

(1) by striking the section heading and inserting the following:

"§ 1958. Use of interstate commerce facilities in the commission of murder-for-hire and other felony crimes of violence";

(2) in subsection (a), by inserting "or other crime of violence, punishable by imprisonment for more than one year," after "intent that a murder"; and

(3) in subsection (a), by striking "shall be fined" the first place it appears and all that follows through the end of such subsection and inserting the following: "shall, in addition to being subject to a fine under this title

"(1) if the crime of violence or conspiracy results in the death of any person, be sentenced to death or life in prison;

"(2) if the crime of violence is kidnapping, aggravated sexual abuse (as defined in section 521), or maiming, or a conspiracy to commit such a crime of violence, be imprisoned for life or any term of years not less than 30;

"(3) if the crime of violence is an assault, or a conspiracy to assault, that results in serious bodily injury (as defined in section 1365), be imprisoned for life or any term of years not less than 20; and

"(4) in any other case, be imprisoned for life or for any term of years not less than 10.".

(b) CLERICAL AMENDMENT.—The item relating to section 1958 in the table of sections at the beginning of chapter 95 of title 18, United States Code, is amended to read as follows:

"1958. Use of interstate commerce facilities in the commission of murder-for-hire and other felony crimes of violence.".

SEC. 105. INCREASED PENALTIES FOR VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

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

"(a) Whoever commits, or conspires, threatens, or attempts to commit, a crime of violence for the purpose of furthering the activities of an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in, such an enterprise, shall, unless the death penalty is otherwise imposed, in addition and consecutive to the punishment provided for any other violation of this chapter and in addition to being subject to a fine under this title—

"(1) if the crime of violence results in the death of any person, be sentenced to death or life in prison;

"(2) if the crime of violence is kidnapping, aggravated sexual abuse (as defined in section 521), or maiming, be imprisoned for life or any term of years not less than 30;

"(3) if the crime of violence is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or for any term of years not less than 20; and

"(4) in any other case, be imprisoned for life or for any term of years not less than 10.".

(b) VENUE.—Section 1959 of title 18, United States Code, is amended by adding at the end the following: —

"(c) A prosecution for a violation of this section may be brought in—

"(1) the judicial district in which the crime of violence occurred; or

"(2) any judicial district in which racketeering activity of the enterprise occurred.".

SEC. 106. MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME.

(a) IN GENERAL.—Part D of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end the following:

"MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME

"SEC. 424. (a) IN GENERAL.—Whoever commits, or conspires, or attempts to commit, a crime of violence during and in relation to a drug trafficking crime, shall, unless the death penalty is otherwise imposed, in addition and consecutive to the punishment provided for the drug trafficking crime and in addition to being subject to a fine under this title—

"(1) if the crime of violence results in the death of any person, be sentenced to death or life in prison;

"(2) if the crime of violence is kidnapping, aggravated sexual abuse (as defined in section 521), or maiming, be imprisoned for life or any term of years not less than 30;

"(3) if the crime of violence is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or any term of years not less than 20; and

"(4) in any other case, be imprisoned for life or for any term of years not less than 10.

"(b) VENUE.—A prosecution for a violation of this section may be brought in—

"(1) the judicial district in which the murder or other crime of violence occurred; or

"(2) any judicial district in which the drug trafficking crime may be prosecuted.

"(c) DEFINITIONS.—As used in this section—

"(1) the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code; and

"(2) the term 'drug trafficking crime' has the meaning given that term in section 924(c)(2) of title 18, United States Code.".

(b) CLERICAL AMENDMENT.—The table of contents for the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 423, the following:

"Sec. 424. Murder and other violent crimes committed during and in relation to a drug trafficking crime.".

SEC. 107. MULTIPLE INTERSTATE MURDER.

(a) OFFENSE.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1123. Use of interstate commerce facilities in the commission of multiple murder

"(a) IN GENERAL.—Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility of interstate or foreign commerce, or who conspires or attempts to do so, with intent that 2 or more intentional homicides be committed in violation of the laws of any State or the United States shall, in addition to being subject to a fine under this title—

"(1) if the offense results in the death of any person, be sentenced to death or life in prison;

"(2) if the offense results is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or any term of years not less than 20; and

"(3) in any other case, be imprisoned for life or for any term of years not less than 10.

"(b) DEFINITION.—The term 'State' means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51 of title 18, United States Code, is amended by adding at the end the following:

"1123. Use of interstate commerce facilities in the commission of multiple murder.".

SEC. 108. ADDITIONAL RACKETEERING ACTIVITY.

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

(1) in subparagraph (A), by inserting ", or would have been so chargeable if the act or threat had not been committed in Indian country (as defined in section 1151) or in any other area of exclusive Federal jurisdiction," after "chargeable under State law"; and

(2) in subparagraph (B), by inserting "section 1123 (relating to interstate murder)," after "section 1084 (relating to the transmission of gambling information),".

SEC. 109. EXPANSION OF REBUTTABLE PRESUMPTION AGAINST RELEASE OF PERSONS CHARGED WITH FIREARMS OFFENSES.

Section 3142 of title 18, United States Code, is amended—

(1) in subsection (e), in the matter following paragraph (3), by inserting "an offense under subsection (g)(1) (where the underlying conviction is a drug trafficking crime (as defined in section 924(c))), (g)(2), (g)(4), (g)(5), (g)(8), or (g)(9) of section 922, or a crime of violence," after "that the person committed"; and

(2) in subsection (g), by amending paragraph (1) to read as follows:

"(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, or involves a controlled substance, firearm, explosive, or destructive devise;".

SEC. 110. VENUE IN CAPITAL CASES.

Section 3235 of title 18, United States Code, is amended to read as follows:

"§ 3235. Venue in capital cases

"(a) The trial for any offense punishable by death shall be held in the district where the offense was committed or in any district in which the offense began, continued, or was completed.

"(b) If the offense, or related conduct, under subsection (a) involves activities which affect interstate or foreign commerce, or the importation of an object or person into the United States, such offense may be prosecuted in any district in which those activities occurred.".

SEC. 111. STATUTE OF LIMITATIONS FOR VIOLENT CRIME.

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

"§ 3298. Violent crime offenses

"No person shall be prosecuted, tried, or punished for any noncapital felony, crime of violence, including any racketeering activity or gang crime which involves any crime of violence, unless the indictment is found or the information is instituted not later than 15 years after the date on which the alleged violation occurred or the continuing offense was completed.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 213 of title 18, United States Code, is amended by adding at the end the following:

"3298. Violent crime offenses.".

SEC. 112. MODIFICATION OF DEFINITION OF CRIME OF VIOLENCE.

Section 16(b) of title 18, United States Code, is amended to read as follows:

"(b) any other offense that is an offense punishable by imprisonment for more than one year and that, by its nature, involves a substantial risk that physical force may be used against the person or property of another, or is an offense punishable under subparagraphs (A), (B), or (C) of section 401(b)(1) of the Controlled Substances Act.".

SEC. 113. CLARIFICATION TO HEARSAY EXCEPTION FOR FORFEITURE BY WRONGDOING.

Rule 804(b)(6) of the Federal Rules of Evidence is amended to read as follows:

"(6) FORFEITURE BY WRONGDOING.—A statement offered against a party who has engaged or acquiesced in wrongdoing, or who could reasonably foresee such wrongdoing would take place, if the wrongdoing was intended to, and did, procure the unavailability of the declarant as a witness.".

SEC. 114. INCREASED PENALTIES FOR CRIMINAL USE OF FIREARMS IN CRIMES OF VIOLENCE AND DRUG TRAFFICKING.

(a) IN GENERAL.—Section 924(c) of title 18, United States Code, is amended—

(1) in paragraph (1)(A)—

(A) by striking "shall" and inserting "or conspires to commit any of the above acts, shall, for each instance in which the firearm is used, carried, or possessed";

(B) in clause (i), by striking "5 years" and inserting "7 years"; and

(C) by striking clauses (ii) and (iii) and inserting the following:

"(ii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 15 years; and

"(iii) if the firearm is used to wound, injure, or maim another person, be sentenced to a term of imprisonment of not less than 20 years."; and

(2) by striking paragraph (4).

(b) CONFORMING AMENDMENT.—Section 924 of title 18, United States Code, is amended by striking subsection (o).

SEC. 115. TRANSFER OF JUVENILES.

The 4th undesignated paragraph of section 5032 of title 18, United States Code, is amended—

(1) by striking "A juvenile" where it appears at the beginning of the paragraph and inserting "Except as otherwise provided in this chapter, a juvenile" ;

(2) by striking "as an adult, except that, with" and inserting "as an adult. With"; and

(3) by striking "However, a juvenile" and all that follows through "criminal prosecution." at the end of the paragraph and inserting "The Attorney General may prosecute as an adult a juvenile who is alleged to have committed an act after that juvenile's 16th birthday which if committed by an adult would be a crime of violence that is a felony, an offense described in subsection (d), (i), (j), (k), (o), (p), (q), (u), or (x) of section 922 (relating to unlawful acts), or subsection (b), (c), (g), (h), (k), (l), (m), or (n) of section 924 (relating to penalties), section 930 (relating to possession of firearms and dangerous weapons in Federal facilities), or section 931 (relating to purchase, ownership, or possession of body armor by violent felons). The decision whether or not to prosecute a juvenile as an adult under the immediately preceding sentence is not subject to judicial review in any court. In a prosecution under that sentence, the juvenile may be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted as an adult of any lesser included offense.".

TITLE II—INCREASED FEDERAL RESOURCES TO DETER AND PREVENT AT-RISK YOUTH FROM JOINING ILLEGAL STREET GANGS

SEC. 201. DESIGNATION OF AND ASSISTANCE FOR "HIGH INTENSITY" INTERSTATE GANG ACTIVITY AREAS.

(a) DEFINITIONS.—In this section the following definitions shall apply:

(1) GOVERNOR.—The term "Governor" means a Governor of a State or the Mayor of the District of Columbia.

(2) HIGH INTENSITY INTERSTATE GANG ACTIVITY AREA.—The term "high intensity interstate gang activity area" means an area within a State that is designated as a high intensity interstate gang activity area under subsection (b)(1).

(3) STATE.—The term "State" means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(b) HIGH INTENSITY INTERSTATE GANG ACTIVITY AREAS.—

(1) DESIGNATION.—The Attorney General, after consultation with the Governors of appropriate States, may designate as high intensity interstate gang activity areas, specific areas that are located within 1 or more States.

(2) ASSISTANCE.—In order to provide Federal assistance to high intensity interstate gang activity areas, the Attorney General shall—

(A) establish criminal street gang enforcement teams, consisting of Federal, State, and local law enforcement authorities, for the coordinated investigation, disruption, apprehension, and prosecution of criminal street gangs and offenders in each high intensity interstate gang activity area;

(B) direct the reassignment or detailing from any Federal department or agency (subject to the approval of the head of that department or agency, in the case of a department or agency other than the Department of Justice) of personnel to each criminal street gang enforcement team;

(C) provide all necessary funding for the operation of the criminal street gang enforcement team in each high intensity interstate gang activity area; and

(D) provide all necessary funding for national and regional meetings of criminal street gang enforcement teams, and all other related organizations, as needed, to ensure effective operation of such teams through the sharing of intelligence, best practices and for any other related purpose.

(3) COMPOSITION OF CRIMINAL STREET GANG ENFORCEMENT TEAM.—The team established pursuant to paragraph (2)(A) shall consist of agents and officers, where feasible, from—

(A) the Federal Bureau of Investigation;

(B) the Drug Enforcement Administration;

(C) the Bureau of Alcohol, Tobacco, Firearms, and Explosives;

(D) the United States Marshals Service;

(E) the Directorate of Border and Transportation Security of the Department of Homeland Security;

(F) the Department of Housing and Urban Development;

(G) State and local law enforcement; and

(H) Federal, State, and local prosecutors.

(4) CRITERIA FOR DESIGNATION.—In considering an area for designation as a high intensity interstate gang activity area under this section, the Attorney General shall consider—

(A) the current and predicted levels of gang crime activity in the area;

(B) the extent to which violent crime in the area appears to be related to criminal street gang activity, such as drug trafficking, murder, robbery, assaults, carjacking, arson, kidnapping, extortion, and other criminal activity;

(C) the extent to which State and local law enforcement agencies have committed resources to—

(i) respond to the gang crime problem; and

(ii) participate in a gang enforcement team;

(D) the extent to which a significant increase in the allocation of Federal resources would enhance local response to the gang crime activities in the area; and

(E) any other criteria that the Attorney General considers to be appropriate.

(c) ADDITIONAL ASSISTANT U.S. ATTORNEYS.—The Attorney General is authorized to hire 94 additional Assistant United States attorneys to carry out the provisions of this section. Each attorney hired under this subsection shall be assigned to a high intensity interstate gang activity area.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) $50,000,000 for each of the fiscal years 2006 through 2010 to carry out subsection (b); and

(2) $7,500,000 for each of the fiscal years 2006 through 2010 to carry out subsection (c).

SEC. 202. GRANTS TO STATE AND LOCAL PROSECUTORS TO COMBAT VIOLENT CRIME AND TO PROTECT WITNESSES AND VICTIMS OF CRIMES.

(a) IN GENERAL.—Section 31702 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13862) is amended —

(1) in paragraph (3), by striking "and" at the end;

(2) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(5) to hire additional prosecutors to—

"(A) allow more cases to be prosecuted; and

"(B) reduce backlogs;

"(6) to fund technology, equipment, and training for prosecutors and law enforcement in order to increase accurate identification of gang members and violent offenders, and to maintain databases with such information to facilitate coordination among law enforcement and prosecutors; and

"(7) to fund technology, equipment, and training for prosecutors to increase the accurate identification and successful prosecution of young violent offenders.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 31707 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13867) is amended to read as follows:

"SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated $20,000,000 for each of the fiscal years 2006 through 2010 to carry out this subtitle.".

PURPOSE AND SUMMARY

H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005," is a comprehensive bill to increase gang prosecutions and prevent gang-related crimes. The bill authorizes increased Federal funding to support Federal, State and local law enforcement efforts against violent gangs, and to coordinate law enforcement agencies' efforts to share intelligence and jointly prosecute violent gangs. The act also creates new criminal gang prosecution offenses, enhances existing gang and violent crime penalties to deter and punish illegal street gangs, proposes violent crime reforms needed to prosecute effectively gang members, and reforms the Federal juvenile justice system to authorize prosecution of 16- and 17-year-old gang members who commit violent crimes.

BACKGROUND AND NEED FOR THE LEGISLATION

The problem of gang violence in America is not a new one.[1] Nor is it a problem that is limited to major urban areas. Once thought to be only a problem in our Nation's largest cities, gangs have invaded smaller communities.[2] According to the Department of Justice there are currently over 25,000 gangs that are active in more than 3,000 jurisdictions in the United States.[3] Every city with a population of 250,000 or more has reported gang activity in their communities.[4] Based on the latest available National Youth Gang Survey, it is now estimated that there are over 750,000 gang members.[5]

Gangs now resemble organized crime syndicates who commit gun violence, illegal gun trafficking, illegal drug trafficking and other serious crimes. More and more communities are suffering from gang violence, leading to rival gang battles, where all too often innocent bystanders are tragically shot, and law-abiding members of communities are prisoners in their own homes in fear of being caught in the cross-fire of gang violence.

There has been rapid growth in national and international gangs as well. In particular, many communities have seen a rapid increase in the membership and presence of "MS-13," a violent gang comprised of alien criminals from El Salvador (most, if not all of

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[1] U.S. Department of Justice Office of Justice Programs—Office of Juvenile Justice and Delinquency Prevention, *Modern-Day Youth Gangs (June 2002), available at http://www.ncjrs.org/pdffiles1/ojjdp/191524.pdf.*

[2] U.S. Department of Justice Office of Justice Programs—Office of Juvenile Justice and Delinquency Prevention Fact Sheet, *National Youth Gang Survey Trends from 1996 to 2000 (February 2003), available at http://www.west.asu.edu/ckatz/gangclass/Section—1/current.pdf.*

[3] U.S. Department of Justice Office of Justice Programs—Office of Juvenile Justice and Delinquency Prevention, *Highlights of the 2002 National Youth Gang Survey (April 2004), available at http://www.ncjrs.org/pdffiles1/ojjdp/fs200401.pdf.*

[4] *See Id.*

[5] *See Id.*

whom, are illegally in this country)—which has been estimated to include 8,000 to 10,000 members operating in 31 States.[6]

Gang violence in America is a growing problem. While national figures have shown a decline in violent crime generally, the proportion of violent crimes committed by gang members has increased. In 2003, juvenile gang members committed over 800 murders across the nation.[7] Gangs have been directly linked to illegal drug trafficking, human trafficking, identification documentation falsification, violent maimings, assault and murder, and the increased use of firearms to commit deadly crimes.

In response to this problem, the "Gang Deterrence and Community Protection Act of 2005," seeks to build on strategies that work, including: (1) mandatory-minimum penalties for crimes of violence to incapacitate violent gang members and to gain leverage from less culpable gang members in order to secure cooperation of insiders to solve gang crimes and prosecute higher-ups in the organization; (2) joint task forces of Federal, State and local law enforcement and prosecutors that will join Federal resources with local intelligence in order to target the most serious gangs in a community; (3) the promotion of intelligence sharing among Federal, State and local law enforcement agencies; and (4) limited juvenile justice reform to ensure that violent juvenile gang members are prosecuted for acts of violence.

The bill is premised on the need for a national, comprehensive, and coordinated approach to reducing gang violence in our communities. Such an approach is analogous to the national effort in the 1960's and 1970's to eliminate organized crime syndicates through aggressive Federal law enforcement efforts. The gang bill applies these same principles, some of which already have started and are in place—to increase significantly the ability of Federal, State and local task forces to investigate and prosecute violent gangs.

As in the case of organized crime, Federal law enforcement has the ability to conduct long-term and complex criminal investigations which are designed to prosecute large organizations—akin to national gangs (*e.g.* "MS-13," "Bloods," "Crips," "Latin Kings"). There is no national coordinated infrastructure for conducting such investigations, nor is there a means to share intelligence among law enforcement agencies to coordinate such an effort.

The bill will create a national infrastructure by: (1) designating High Intensity Gang Areas ("HIGAs") and authorizing Federal funding to combat gang activity by creating Federal, State and local Gang Enforcement Task Forces that bring together local intelligence and Federal resources; (2) creating a national means by which to share gang intelligence among Federal, State and local law enforcement agencies; and (3) authorizing $20 million per year over 5 years to help States hire prosecutors, purchase technology, equipment and training for gang enforcement.

When attacking organized crime syndicates, prosecutors were given new and effective tools to prosecute and convict members of organized crime families. The Justice Department aggressively prosecuted such cases, and used a new and valuable tool for attacking organized crime, the RICO statute ("Racketeer Influenced Cor-

[6] *See http://www.house.gov/forbes/documents/gangcliques.pdf.*
[7] *See http://www.fbi.gov/ucr/cius—03/xl/03tbl2-11.xls.*

rupt Organizations"). The RICO statute gave Federal prosecutors broad jurisdiction to charge members of organized crime syndicates with a variety of State and Federal crimes typically committed by members of such organizations (*e.g.* State and local crimes involving murder, robbery, extortion, gambling). Without such a new tool, and enhanced criminal penalties, investigators and prosecutors would not have been able to dismantle and bring down the significant organized crime figures.

(A) THE NEW GANG CRIME SECTION 521 OF TITLE 18

Section 521 of title 18 is the existing gang prosecution statute. It has been on the books for 10 years and has been used in less than 10 prosecutions. Gang prosecutors have been forced to use RICO and other Federal statutes—*e.g.* narcotics laws and illegal gun prosecutions to target gangs and gang members. Each of these approaches suffers from deficiencies which hamstring law enforcement efforts to dismantle gangs, particularly those that are now becoming national in scope.

The new Section 521 creates a new gang crime statute (hereinafter "Gang Crime statute") prohibiting a person from committing a gang crime that is for the purpose of furthering the gang's activities, gaining entrance to or maintaining or increasing position in such a gang. A criminal street gang is defined to be a formal or informal group or association of three or more individuals, who commit two or more gang crimes (one of which is a crime of violence) in 2 separate criminal episodes, in relation to the group or association, if any of the activities of the criminal street gang affects interstate or foreign commerce. This provision is intended to reach as far as possible to regulate intrastate and interstate activities under Congress' well-established power to regulate interstate commerce under article I, section 8 of the Constitution. If death results from the gang crime, the perpetrator can be punished by death or life imprisonment; if the gang crime is kidnaping, aggravated sexual abuse or maiming, the perpetrator would be sentenced to a minimum of 30 years imprisonment; if the gang crime resulted in serious bodily injury (life threatening), the perpetrator would be sentenced to a minimum of 20 years; and for other crimes gang-related, the perpetrator would be sentenced to a minimum of 10 years.

Gang crimes are defined to include a crime of violence, drug trafficking, firearms and explosive violations, money laundering, interstate transportation of stolen motor vehicles, illegal alien and human trafficking, and aggravated sexual abuse. The new Gang Crime statute would add a significant tool to law enforcement's arsenal against gangs. Rather than trying to shoehorn such cases into the RICO statute, the new gang crime statute is narrowly tailored to address the specific problem of gangs. Gang investigations and prosecutions take time and resources. Civilian witnesses are not typically familiar with the inner workings of a gang, and are not usually present to observe and identify gang members when committing crimes. Moreover, as mentioned by National District Attorneys Association ("NDAA") President Elect, Paul Logli at the hearing on this bill, witness intimidation, retaliation and killings are huge problems in gang prosecutions.

Typically, gang cases are built through the cooperation of gang members—not simply informants who wear wires or conduct undercover operations, but more typically from cooperating witnesses, who themselves committed acts of violence or were close enough to other gang members to observe or hear about such incidents. Homicides and shootings are solved not through traditional means but more from insider knowledge, insider testimony, and members who plead guilty to serious offenses in the hopes of getting a reduced sentence. These witnesses usually are incarcerated pending testifying and are not available to conduct undercover work.

Given the complexity of these investigations, it is simplistic to argue that gang members can simply be prosecuted at the State level for single-incident crimes. Gangs are not eliminated by prosecution for a single incident. Moreover, such prosecutions are difficult, if not impossible, given the absence of witnesses, or insiders who are willing to testify against violent gangs for fear of retribution by gang members or witness intimidation. Indeed, four MS-13 members are now on trial in Federal court in the Eastern District of Virginia for killing a female cooperating witness in order to preserve he testimony—stabbing her repeatedly over and over to silence her. To suggest that witnesses will simply walk into court, freely testify and walk out without fear or, retribution is contradicted by the real world. Recent press reports noted that in Baltimore witnesses are so afraid to testify that they have to be jailed rather than freed to return and testify against violent gangs and criminal in Baltimore. Nearly 40 percent of all homicide cases in Baltimore are dropped because of the lack of witness cooperation. It takes time, just like the mafia cases of old, to build a case, secure cooperation, and to present a complex criminal case to a jury and rid a neighborhood of an entire gang and its members. The prosecutors, or are different from single-incident crimes where defendants are often acquitted, return to the neighborhood and continue their ways of intimidation and domestic terrorism against law-abiding individuals.

In reality, complex gang cases are prosecuted against a large number of defendants "in a one-time trial" where all of the evidence, historical, undercover operations, wiretaps, if any, are presented so that a jury can see the full-scope of the illegal gang's criminal activities. Organized crime cases were prosecuted in the same way with long and complex trials designed to take out a number of defendants in one single prosecution.

(B) ADVANTAGES OF A NEW GANG CRIME STATUTE OVER RICO

As noted, RICO was enacted to bring together in one criminal prosecution the entire picture of a criminal organization. Gangs are no different. Juries need to know all of the illegal activities of a gang and gangs need to be punished for all of their illegal activities—not just one, not just two criminal episodes.

The new law—Section 521—is designed to address violent gangs with a tailored statute addressing crimes typically committed by violent gangs. The new Gang Crime statute, Section 521, has four significant advantages over RICO.

First, RICO imposes a maximum penalty of 20 years imprisonment (unless the underlying racketeering activity carries a higher

penalty),[8] while the Gang Crime statute sets out clear result oriented mandatory minimum penalties—10 years for a gang crime, 20 years for a gang crime that causes serious bodily injury, 30 years for kidnaping, aggravated sexual assault or maiming, and life or death for a killing;

Second, RICO does not provide for a death penalty (except for Violent Crimes in Aid of Racketeering Activity).[9] The Gang Crime statute has a death penalty for any gang crime committed which results in the death of another person;

Third, RICO requires proof beyond a reasonable doubt of a structured "enterprise"—that is an organization with a heirchy, an organization with levels of responsibilities and an organized structure,[10] which is difficult to establish in national gang prosecutions where gangs consist of an overarching structure but have loosely affiliated smaller groups. The Gang Crime statute defines a gang to mean a formal or informal group or association of three or more individuals who commit two or more gang crimes (one of which is a crime of violence); and

Fourth, RICO requires proof beyond a reasonable doubt that the defendant engaged in a "pattern of racketeering activity"[11] while the Gang Crime statute only requires that the defendant committed a gang crime to further the activities of the gang or to gain entrance or maintain position in such a gang.

(C) THE NEED FOR JUVENILE JUSTICE REFORM

Sec. 115 of the bill gives the Attorney General the *discretion* to charge as an adult in Federal court a juvenile who is 16 years or older who commits a crime of violence, such as 16- and 17-year-olds who commit murder, aggravated sexual abuse, maiming, kidnaping, drive-by shootings, assaults with intent to kill, assaults with intent to maim, armed robberies, and other similar violent crimes would be eligible for prosecution as an adult.

According to the Department of Justice Homicide Trends Report for the years 1976–2002, juveniles are especially implicated as homicide offenders in gang related killings.[12] One out of every three murders committed by a juvenile during this period of 1976 to 2002 was committed by a juvenile for gang-related reasons.[13]

This limited reform, as U.S. Attorney Fitzgerald testified, would only result in a relatively small number of juveniles, mostly violent juvenile gang members, being prosecuted in Federal court, along with co-defendants who are adult members of such gangs.

The current juvenile transfer provisions in title 18 are simply unworkable—Federal prosecutors avoid prosecution of juvenile violent gang members. First, under the existing transfer provision, the Court must hold a hearing to determine if such a transfer should occur; if the answer is yes, then defendant has a right to an interlocutory appeal. The juvenile gang member is inevitably severed from a joint trial with his gang member co-defendants and Federal

[8] 18 U.S.C. 1963.
[9] 18 U.S.C. 1959.
[10] 18 U.S.C. 1961.
[11] 18 U.S.C. 1961.
[12] U.S. Department of Justice Office of Justice Programs—Bureau of Justice Statistics, *Homicide trends in the United States (September 2004), available at http://www.ojp.usdoj.gov/bjs/homicide/homtrnd.htm.*
[13] *Id.*

prosecutors are required to burden the system, by conducting two separate Federal criminal trials at which the victims, the witnesses and other members of the community are required to testify at a great cost and expense, and without any consideration of the impact of such an ordeal on the victims and their families.

The proposed direct filing provision gives prosecutors the *discretion* to charge the violent juvenile gang members in Federal court. A right to appeal on jurisdictional grounds would always exist—such as when the defendant is 15 or did not commit an act of violence, as defined under section 16 of title 18. More importantly, such a provision will ensure that all the gang members are tried at one time—together and in the same courtroom—which will impose less of a burden on crime victims while ensuring that a fair trial is conducted. (Obviously, the government will not be able to seek the death penalty against the juvenile offender).

Section 115 is a more limited reform than most State laws governing adult treatment of juvenile violent offenders. According to a 2003 Justice Department report, every State allows juveniles to be tried as adults in criminal courts under certain circumstances.[14] In more than half of the States—29 to be exact—the legislature has decided that in certain cases, typically serious violent offenses and other offenses against persons, juveniles *must* be tried as adult criminal offenders.[15] In a smaller number of states, 15, prosecutors have discretion to file such cases in criminal court to treat juveniles as adults.[16] In 34 States, juveniles who have been tried as adults must be prosecuted in criminal court for any subsequent offenses (if convicted of first offense).[17]

There is a strong need to hold serious, violent and habitual offenders accountable for their crimes. In many cases, doing so involves the need to prosecute such offenders as adults. All too often we hear that prevention is the answer, that more government programs, more education, more psychiatric services, more job training will eliminate the problem. All that may be true but to the innocent and law abiding citizens the bullets that are fired at them are no different whether fired by an adult of a 16 or 17 year old gang member.

(D) THE NEED FOR OTHER VIOLENT CRIME REFORMS

The bill includes a number of provisions enhancing penalties for certain Federal offenses typically committed by gang members as well as other related reforms including: (1) interstate travel in aid of racketeering activity; (2) carjacking; (3) illegal gun trafficking; (4) murder-for-hire; violent crimes in aid of racketeering; (5) murder and other violent crimes committed during and in relation to a drug trafficking crime; (6) multiple interstate murder. In addition, the bill includes reforms of the statute of limitations for violent crimes, modification of venue statute for capital cases; pre-trial

[14] The National Center for Juvenile Justice and U.S. Department of Justice Office of Justice Programs—Office of Juvenile Justice and Delinquency Prevention, *Technical Assistance to the Juvenile Court—Special Project Bulletin, Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws (October 2003), available at http://ncjj.servehttp.com/NCJJWebsite/pdf/transferbulletin.pdf.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

detention of armed gang members; and increased penalties for use of a firearm in a crime of violence and drug trafficking.

The bill is designed to respond to the criminal versatility among serious gangs. Assaults, crack cocaine trafficking, graffiti, intimidation, vandalism, violence as a means of discipline, and violence as a means of retaliation and furthering a gangs' illegal activities are common to gang activity in the United States. Each gang type favors certain sorts of crime—entrepreneurial gangs, violent gangs and drug trafficking gangs, all rely on different combinations of illegal activities.

Some may complain that the bill will only fill our prisons with more criminals. We expect that, if enacted, such a result would enhance public safety. By reducing gang violence, we expect that significant cost savings will accrue from the reduction of crime and harm to victims and their communities. Further, this bill will not result in any significant expansion of Federal prosecution of gangs. Rather, we anticipate that the Federal role here will be limited to increasing at the margin complex gang prosecutions using all available tools. States will continue to prosecute 90 percent of criminal cases. Paul Logli testified that District Attorneys need help particularly in prosecution of national and international gangs. A coordinated national effort will increase shared intelligence and provide resources to State and local law enforcement to develop intelligence gathering and sharing systems on gang membership and gang crimes.

(E) MANDATORY-MINIMUM PENALTIES: BENEFITS TO THE LAW-ABIDING PUBLIC

Finally, the bill includes a number of new mandatory minimum criminal penalties with respect to violent gang crimes and other violent offenses. As explained here, mandatory minimum penalties are effective means for ensuring consistency in sentencing, and promote public safety by deterring violent criminals and incapacitating violent criminals who are likely to commit additional violent crimes.

The Supreme Court's recent *Booker*[18] decision in has eviscerated long-standing and effective sentencing policies adopted by Congress as part of the Sentencing Reform Act of 1984. The evidence is starting to come in, and the picture is not a good one. Federal judges have begun to hand out sentences below the guideline recommended range, citing the discretion they now have under the *Booker* decision. The Sentencing Reform Act of 1984 was designed to provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted disparities among defendants with similar records who have been found guilty of similar criminal conduct. Sentencing judges have started to deviate, and some have announced even prospectively that they intend to do so in more cases. Given the elimination of an effective determinate sentencing guideline system, Congress will need to act quickly in certain areas by imposing mandatory-minimum sentences to protect the public, particularly when it comes to violent gang crimes.

Mandatory minimum penalties send a clear message to violent gang offenders—if you commit the crime—you will do the time.

[18] *U.S. v. Booker,* 125 S.Ct. 738 (2005).

Such an approach has proven effective in other gun violence reduction programs such as "Project Exile" in Virginia and nationwide in the Administration's Project Safe Neighborhoods. A similar approach is needed here now with our national effort against violent gangs.

Moreover, mandatory minimum penalties provide the tools for prosecutors to secure the cooperation of gang members to dismantle violent gang organizations and solve violent crimes where the witnesses may only be other gang members. Without such a penalty, gang members will not cooperate with law enforcement; they will simply turn their back on cooperation, do the time, and gang violence will continue to expand and to threaten our communities.

Sentencing reforms—mandatory minimum penalties along with determinate sentencing requirements—have lead to dramatic reductions in violent crime in the last 30 years. There is growing research to show that laws such as—truth-in-sentencing, determinate sentencing practices, "three-strikes and you're out," and mandatory sentencing requirements resulted in dramatic reductions in crime since the 1970's. Violent crime victimization rates have dropped from 47.7 per 1,000 population in 1973 to 22.8 in 2002—that drop in crime has coincided with an increase in the number of prisoners, including substantial increases in the number of Federal prisoners.[19] While some would say that is coincidence, statistical researchers have shown to the contrary. For example, increases in prison population have incapacitated recidivists and deterred others from committing crime. According to Justice Department statistics on criminal offenders, 4 out of every 10 jailed offenders had a current or past sentence for a violent offense.[20] Violent offenders have significant recidivism rates—particularly those convicted of robbery and burglary.

Professor Steven Levitt conducted a study to show that a significant part of the decline in violent crime is attributable to increased incarceration.[21] In a more recent study, Joanna Shepherd, demonstrated that truth-in-sentencing laws—determinate and certain sentences—have had a dramatic impact on reducing serious violent crimes.[22] Since 1994, Congress has provided incentive grants to States which can demonstrate that violent offenders serve at least 85 percent of their sentences. Professor Shepherd conducted a sophisticated regression analysis comparing States with and without such truth-in-sentencing laws and her conclusions are astounding: in those States with determinate sentencing laws—murders fell by 16 percent, aggravated assaults by 12 percent, robberies by 24 percent, rapes by 12 percent and larcenies by 3 percent.[23]

Other studies confirm the obvious point—incarcerating an offender prevents him from repeating his crimes while he is in prison.[24] Again, Joanna M. Shepherd, a leading expert in this field, es-

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[19] U.S. Department of Justice Office of Justice Programs—Bureau of Justice Statistics, *Homicide trends in the United States (September 2004), available at http://www.ojp.usdoj.gov/bjs/homicide/homtrnd.htm.*

[20] *See http://www.ojp.usdoj.gov/bjs/crimoff.htm#recidivism.*

[21] Steven D. Levitt, *Understanding Why Crime Fell in the 1990's: Four Factors That Explain the Decline and Seven That Do Not,* 18 J.Econ. Perspectives 163 (2004).

[22] Joanna M. Shepherd, *Police, Prosecutors, Criminals and Determinate Sentencing: The Truth about Truth-in-Sentencing Laws,* 45 J.L. & Econ. 509 (2002).

[23] *Id.*

[24] Peter W. Greenwood et al., *Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory-Sentencing Law, in Three Strikes and You're Out: Vengeance as Public Policy* (David Schichor & Dale K. Sechrest eds. 1996).

tablished that California's "Three Strikes" law had significant public benefits by deterring criminals from committing additional violent crimes. Her study demonstrated that in the first 2 years of California's three strikes law—eight murders, 3,952 aggravated assaults, 10, 672 robberies and 384,488 burglaries were deterred in California.[25] The "Three Strikes" law deterred crimes not only in counties where such sentences were imposed but in surrounding counties, and that criminals seek to avoid not only the third and last crime, but also the first and second crimes.[26] More generally, estimates of both a deterrent and an incapacitative effect have suggested that each 1% increase in the prison population produces approximately 0.10% to 0.30% fewer crimes.[27]

Balanced against these reductions in crime from deterrence and incapacitation, there are significant cost savings to society from reducing the occurrence of crime. The available data suggests that the costs are high. In a 1996 study conducted by the National Institute of Justice, the calculated loss per criminal victimization (tangible and intangible losses) range from $2.9 million for various forms of murder to $87,000 for rape and sexual assault, to $8,000 for robbery, to $14,000 for burglary and $370 for larceny.[28] They also computed the aggregate annual victim cost in the United States from crime—$450 billion as of 1990, or more than $1800 per United States resident.[29] Another more recent analysis using a different methodology reported an even higher aggregate burden from crime on the United States—in the neighborhood of $1 trillion annually.[30]

Considered in this context, balancing these obvious public benefits from swift and certain punishments, opponents to mandatory-minimums offer little evidence to the contrary—they ignore the research showing clear public benefits from such sentencing policies, and trumpet cases of claimed injustice as a means to obfuscate the issue, ultimately to the detriment of public safety, and the rights of law-abiding citizens to live in a crime-free secure community.

HEARINGS

The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held a legislative hearing on H.R. 1279 on April 5, 2005. Testimony was received from four witnesses, representing the United States Department of Justice, the National District Attorney's Association, Michelle Guess, a victim of gang violence, and Professor Robert Shepard, University of Richmond Law School, Richmond, Virginia, with additional material submitted by various organizations.

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[25] Joanna M. Shepherd, *Fear of First Strike: The Full Deterrent Effect of California's Two- and Three-Strikes Legislation,* 31 J. Legal Stud. 159 (2002).

[26] *Id.*

[27] John J. Donahue III & Peter Siegelman, *Allocating resources Among Prisons and Social Programs in the Battle Against Crime,* 27 J. Legal STUD. 1, 12–14 (1998); James Q. Qilson, *Prisons in a Free Society,* 117 Pub. Interest 37, 38 (Fall 1994); Thomas Marvell & Carlisle Moody, *Prison Population Growth and Crime Reduction,* 10 J. Quantitative Criminal. 109 (1994).

[28] U.S. Dept. of Justice, National Institute of Justice, *Victim Costs and Consequences: A New Look* (1996).

[29] *Id.*

[30] David A. Anderson, *The Aggregate Burden of Crime,* 42 J.L. & Econ. 611 (1999).

COMMITTEE CONSIDERATION

On April 12, 2005, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered favorably reported the bill H.R. 1279, by a vote of 5 to 3, with one member voting present, a quorum being present. On April 20, 2005, the Committee met in open session and ordered favorably reported the bill H.R. 1279 with an amendment by a recorded vote of 16 to 11, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that the following rollcall votes occurred during the Committee's consideration of H.R. 1279, the Committee passed an amendment in the nature of a substitute offered by Rep. Forbes by a rollcall vote of 15 to 10.

1. Representative Schiff offered an amendment in the nature of a substitute to the Forbes amendment in the nature of a substitute. By a rollcall vote of 3 yeas and 22 nays, the amendment was defeated.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren			
Mr. Jenkins			
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler			
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Conyers		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler	X		
Mr. Weiner			
Mr. Schiff	X		
Ms. Sánchez		X	
Mr. Smith (Washington)			
Mr. Van Hollen	X		

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Sensenbrenner, Chairman		X	
Total	3	22	

2. Representatives Conyers and Chris Van Hollen offered an amendment to the amendment in the nature of a substitute. By a rollcall vote of 7 yeas and 18 nays, the amendment was defeated.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren			
Mr. Jenkins			
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler			
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Mr. Weiner			
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Smith (Washington)			
Mr. Van Hollen	X		
Mr. Sensenbrenner, Chairman		X	
Total	7	18	

3. Representative Schiff offered an amendment to the Forbes amendment in the nature of a substitute. By a rollcall vote 8 yeas and 18 nays, the amendment as defeated.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren			
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler			
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler			
Mr. Weiner			
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Smith (Washington)			
Mr. Van Hollen	X		
Mr. Sensenbrenner, Chairman		X	
Total	8	18	

4. Representative Forbes offered an amendment in the nature of a substitute. By a rollcall vote 15 yeas and 10 nays, the amendment was agreed to.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren			
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler			
Mr. Green	X		

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Keller	X		
Mr. Issa	X		
Mr. Flake			
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Conyers		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler		X	
Mr. Weiner			
Mr. Schiff			
Ms. Sánchez		X	
Mr. Smith (Washington)			
Mr. Van Hollen		X	
Mr. Sensenbrenner, Chairman	X		
Total	15	10	

5. On a motion to report H.R. 1279, as amended by an amendment in the nature of a substitute, as amended. By a roll all vote of 16 yeas and 11 nays, the motion was agreed to.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren			
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler			
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Flake			
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Conyers		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler		X	
Mr. Weiner		X	
Mr. Schiff			
Ms. Sánchez		X	
Mr. Smith (Washington)			
Mr. Van Hollen		X	
Mr. Sensenbrenner, Chairman	X		
Total	16	11	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3c(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3c(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1279, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

MAY 5, 2005.

Hon. F. JAMES SENSENBRENNER, JR.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has completed the enclosed cost estimate for H.R. 1279, the Gang Deterrence and Community Protection Act of 2005.

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs) and Melissa Merrell (for the impact on state and local governments).

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure.

H.R. 1279—Gang Deterrence and Community Protection Act of 2005

Summary: H.R. 1279 would authorize the appropriation of nearly $80 million annually over the 2006–2010 period for Department of Justice (DOJ) programs to investigate and prosecute criminal street gangs and to protect witnesses and victims of gang-related crimes. The bill also would establish mandatory minimum prison sentences for certain crimes committed by members of criminal street gangs.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1279 would cost about $370 million over the 2006–2010 period. This total includes roughly $60 million to incarcerate individuals in the federal prison system for longer periods of time than they would serve under current law. The bill could affect direct spending and receipts, but CBO estimates that any such effects would not be significant.

H.R. 1279 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). State and local governments would benefit from the authorization of funds for certain programs to reduce participation in criminal street gangs; any costs to those governments would be incurred voluntarily.

H.R. 1279 contains no new private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1279 is shown in the following table. The cost of this legislation falls within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2005	2006	2007	2008	2009	2010
SPENDING SUBJECT TO APPROPRIATION [1]						
Spending Under Current Law for the Federal Prison System and for Programs Funded by H.R. 1279:						
Budget Authorization [2]	5,653	5,838	6,004	6,183	6,364	6,552
Estimated Outlays	5,743	5,943	6,037	6,208	6,361	6,538
Proposed Changes:						
High Intensity Interstate Gang Activity Areas:						
Authorization Level	0	50	50	50	50	50
Estimated Outlays	0	11	30	50	50	50
Project Safe Neighborhoods Program:						
Authorization Level	0	8	8	8	8	8
Estimated Outlays	0	6	8	8	8	8
Grants to Combat Violent Crimes and Protect Witnesses and Victims of Crimes:						
Authorization Level	0	20	20	20	20	20
Estimated Outlays	0	4	12	20	20	20
Total DOJ Programs to Combat Gangs:						
Authorization Level	0	78	78	78	78	78
Estimated Outlays	0	22	50	78	78	78
Federal Prison System:						
Estimated Authorization Level	0	1	9	13	15	25
Estimated Outlays	0	1	9	13	15	25
Total Changes:						
Estimated Authorization Level	0	79	87	91	93	103
Estimated Outlays	0	23	59	91	93	103
Spending Under H.R. 1279:						
Estimated Authorization Level	5,653	5,916	6,090	6,273	6,457	6,654
Estimated Outlays	5,743	5,965	6,095	6,298	6,454	6,640

[1] In addition to the amounts shown above, enacting H.R. 1279 also could affect revenues and direct spending, but CBO estimates that any such effects would not be significant in any year.

[2] The 2005 level is the amount appropriated for that year for the federal prison system and for the DOJ programs funded by H.R. 1279. Figures over the 2006–2010 period are CBO's baseline estimate for those programs, constructed by adjusting the 2005 level for anticipated inflation.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the beginning of fiscal year 2006. CBO estimates that implementing H.R. 1279 would cost about $370 million over the 2006–2010 period, assuming appropriation of the necessary funds. We also estimate that enacting the bill could increase both direct spending and receipts, but any such effects would not be significant in any year.

Spending subject to appropriation

For this estimate, CBO assumes that the necessary amounts will be appropriated by the start of each fiscal year and that spending will follow the historical spending patterns for these or similar activities.

DOJ Programs to Combat Gang-Related Crimes. H.R. 1279 would authorize the appropriation of:

- $50 million for each of the fiscal years 2006 through 2010 for the Attorney General to establish teams of federal, state, and local law enforcement agents to investigate and prosecute criminal street gangs in selected areas considered to be "high intensity interstate gang activity areas" and to make grants for community-based programs to prevent gang activities in those areas;
- $7.5 million for each of the fiscal years 2006 through 2010 for the Attorney General to expand the Project Safe Neighborhoods program, which requires United States Attorneys to investigate and prosecute criminal street gangs; and
- $20 million for each of the fiscal years 2006 through 2010 for grants to state and local governments to combat violent crime and to protect witnesses and victims of crimes.

Federal Prison System. H.R. 1279 would establish mandatory minimum prison sentences for a wide range of offenses committed by criminal street gangs under specified circumstances. The bill would define street gangs as groups of three or more individuals who commit two or more designated crimes, including a crime of violence, that affect interstate or foreign commerce. Under the bill, gang members who commit certain crimes would, in many cases, be required to serve sentences of at least 10 years.

The U.S. Sentencing Commission analyzed the impact on the federal prison population of the bill's provisions that would require minimum prison sentences; by far, the greatest impact would result from drug trafficking offenses. The commission's analysis was limited, however, because information about defendants' status as criminal street gang members is not available and because considerable uncertainty exists as to how the bill's mandatory minimum sentences might affect defendants' willingness to accept plea bargains.

Based on several analyses prepared by the U.S. Sentencing Commission, CBO estimates that the longer sentences required under the bill would increase the prison population by 100 prisoners a year initially, and that this number would grow to roughly 900 prisoners a year by fiscal year 2010. However, the increase in prison population resulting from H.R. 1279 could be higher or lower than these figures, depending on the number of defendants determined to be street gang members and thus subject to minimum

sentences. (If the increase in prison population is significantly higher than estimated, construction of a new federal prison might be required.) According to the Bureau of Prisons, for an increase in the federal prison population of this magnitude, it would spend about $24,000 a year (at 2005 prices) to house each additional prisoner. CBO estimates that the cost to support these additional prisoners would total $62 million over the 2006–2010 period.

Direct spending and receipts

H.R. 1279 would establish new and increased criminal penalties for various crimes involving criminal street gangs. Thus, the federal government might collect additional fines if the bill is enacted. Collections of criminal fines are deposited in the Crime Victims Fund and later spent. CBO expects that any additional receipts and direct spending would not be significant.

Estimated impact on state, local, and tribal governments: This bill contains no intergovernmental mandates as defined by UMRA. Assuming appropriation of the authorized amounts, state and local law enforcement and prosecutors could receive up to $100 million in federal assistance over the next five years to combat gang activity; any costs to those governments would be incurred voluntarily. Those governments also would benefit from expanded programs of the Federal Bureau of Investigation and the United States Attorneys to identify and prosecute criminal street gangs.

Estimated impact on the private sector: H.R. 1279 contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Mark Grabowicz. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3c(4) of Rule XIII of the Rules of the House of Representatives, H.R. 1279, is intended to reduce the incidence of violent gang crimes and deter and punish criminal gang activity by providing stronger penalties for such crimes and by providing additional resources to Federal, State and local law enforcement to combat gang violence.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

TITLE I—CRIMINAL LAW REFORMS AND ENHANCED PENALTIES TO DETER AND PUNISH ILLEGAL STREET GANG ACTIVITY AND RELATED REFORMS

Sec. 101. Revision and Extension of Penalties Related to Criminal Street Gang Activity. This section revises existing section 521 of

title 18, United State Code, to prohibit gang crimes that are committed in order to further the activities of a criminal street gang. A "criminal street gang" is defined to mean a formal or informal group or association who commit 2 or more predicate gang crimes, one of which is a crime of violence. The term "gang crime" is defined to include violent and other serious State and Federal felony crimes. The penalty for committing a gang crime depends on the seriousness of the offense: (a) death or life imprisonment for any crime resulting in death; (b) mandatory minimum of 30 years with a maximum of life for kidnapping, aggravated sexual abuse or maiming; c mandatory minimum of 20 years to life for an assault resulting in serious bodily injury; and (d) mandatory minimum of 10 years to life imprisonment for any other gang crime.

Sec. 102. Increased Penalties for Interstate and Foreign Travel or Transportation in Aid of Racketeering. This section expands existing section 1952 of title 18, United States Code, to increase penalties and simplifies the elements of the offense.

Sec. 103. Amendments Relating to Violent Crime. This section amends criminal statutes relating to definition and penalties for carjacking (section 2119), illegal gun transfers to drug traffickers or violent criminals (section 924(g)), special sentencing provisions (section 3582(d)), and conspiracy to defraud the United States (section 371).

Sec. 104. Increased Penalties for Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire and Other Felony Crimes of Violence. This section amends existing section 1958 of title 18, United States Code, to increase penalties for use of interstate commerce facilities in the commission of a murder-for-hire and other felony crimes of violence.

Sec. 105. Increased Penalties for Violent Crimes in Aid of Racketeering Activity. This section amends existing section 1959(a) of title 18, United States Code, to increase penalties and expand the prohibition to include aggravated sexual abuse.

Sec. 106. Murder and Other Violent Crimes Committed During and In Relation to a Drug Trafficking Crime. This section fills a gap in existing Federal law and creates a new criminal offense for violent acts committed during and in relation to a drug trafficking crime.

Sec. 107. Multiple Interstate Murder. This section creates a new criminal offense for traveling in or causing another to travel in interstate or foreign commerce or to use any facility in interstate or foreign commerce with the intent that 2 or more murders be committed in violation of the laws of any State or the United States.

Sec. 108. Additional Racketeering Activity. This section modifies the list of RICO predicates to clarify applicability of predicate offense which occur on Indian country (as defined in section 1151) or in any other area of exclusive Federal jurisdiction.

Sec. 109. Expansion of Rebuttable Presumption Against Release of Persons Charged with Firearms. This section applies the rebuttable presumption in pre-trial release detention hearings to cases in which a defendant is charged with firearms offenses after having previously been convicted of a prior crime of violence or a serious drug offense.

Sec. 110. Venue in Capital Cases. This section amends section 3235 of title 18 to clarify venue in capital cases where murder, or related conduct, occurred. The existing venue provision restricts venue in criminal cases where murder occurs in relation to racketeering, drug conspiracy, or criminal street gangs

Sec. 111. Statute of Limitations for Violent Crime. This section extends the statute of limitations for violent crime cases from 5 years to 15 years after the offense occurred or the continuing offense was completed.

Sec. 112. Clarification of Definition of Crime of Violence. This section amends the definition of a crime of violence in response to recent restrictive court decisions and broadens the definition to include certain drug trafficking crimes.

Sec. 113. Clarification to Hearsay Exception for Forfeiture by Wrongdoing. This section codifies the holding in *United States v. Cherry,* 217 F.3d 811 (10th Cir. 2000), which permits admission of statements of a murdered witness to be introduced against the defendant who caused a witness' unavailability and the members of the conspiracy if such actions were foreseeable to the other members of the conspiracy.

Sec. 114. Increased Penalties for Criminal Use of Firearms in Crimes of Violence and Drug Trafficking. This section increases the penalty for the use or discharge of a firearm in a crime of violence or drug trafficking crime. The penalties are increased further if the firearm injures a person.

Sec. 115. Transfer of Violent Juvenile Offenders. This section authorizes the Attorney General to charge as an adult in Federal court a juvenile who is 16 years or older and commits a crime of violence.

TITLE II—INCREASED FEDERAL RESOURCES TO DETER AND PREVENT AT-RISK YOUTH FROM JOINING ILLEGAL STREET GANGS

Sec. 201. Designation of and Assistance for "High Intensity" Interstate Gang Activity Areas. This section requires the Attorney General, after consultation with the Governors of appropriate states, to designate certain locations as high intensity interstate gang activity areas and provides assistance in the form of criminal street gang enforcement teams made up of local, state and Federal law enforcement authorities to investigate and prosecute criminal street gangs in each high intensity interstate gang activity area. Subsection (e) authorizes funding of $50 million for each fiscal year 2005 through 2009.

Sec. 202. Grants to States and Local Prosecutors to Combat Violent Crime. This section authorizes $20 million for each of the fiscal years 2005 to 2009 to allow for the hiring of additional state and local prosecutors, and the purchasing of technological equipment to increase the accurate identification and prosecution of violent offenders

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * * * *

PART I—CRIMES

* * * * * * *

CHAPTER 1—GENERAL PROVISIONS

* * * * * * *

§ 16. Crime of violence defined

The term "crime of violence" means—

(a) * * *

[(b) any other offense that is a felony and that, 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.]

(b) any other offense that is an offense punishable by imprisonment for more than one year and that, by its nature, involves a substantial risk that physical force may be used against the person or property of another, or is an offense punishable under subparagraphs (A), (B), or (C) of section 401(b)(1) of the Controlled Substances Act.

* * * * * * *

CHAPTER 19—CONSPIRACY

* * * * * * *

§ 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than [five] *20* years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

* * * * * * *

[CHAPTER 26—CRIMINAL STREET GANGS

[Sec.
[521. Criminal street gangs

[§ 521. Criminal street gangs

[(a) DEFINITIONS.—

[“conviction” includes a finding, under State or Federal law, that a person has committed an act of juvenile delinquency involving a violent or controlled substances felony.

[“criminal street gang” means an ongoing group, club, organization, or association of 5 or more persons—

[(A) that has as 1 of its primary purposes the commission of 1 or more of the criminal offenses described in subsection (c);

[(B) the members of which engage, or have engaged within the past 5 years, in a continuing series of offenses described in subsection (c); and

[(C) the activities of which affect interstate or foreign commerce.

[“State” means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

[(b) PENALTY.—The sentence of a person convicted of an offense described in subsection (c) shall be increased by up to 10 years if the offense is committed under the circumstances described in subsection (d).

[(c) OFFENSES.—The offenses described in this section are—

[(1) a Federal felony involving a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which the maximum penalty is not less than 5 years;

[(2) a Federal felony crime of violence that has as an element the use or attempted use of physical force against the person of another; and

[(3) a conspiracy to commit an offense described in paragraph (1) or (2).

[(d) CIRCUMSTANCES.—The circumstances described in this section are that the offense described in subsection (c) was committed by a person who—

[(1) participates in a criminal street gang with knowledge that its members engage in or have engaged in a continuing series of offenses described in subsection (c);

[(2) intends to promote or further the felonious activities of the criminal street gang or maintain or increase his or her position in the gang; and

[(3) has been convicted within the past 5 years for—

[(A) an offense described in subsection (c);

[(B) a State offense—

[(i) involving a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which the maximum penalty is not less than 5 years’ imprisonment; or

[(ii) that is a felony crime of violence that has as an element the use or attempted use of physical force against the person of another;

[(C) any Federal or State felony offense that by its nature involves a substantial risk that physical force against the person of another may be used in the course of committing the offense; or

[(D) a conspiracy to commit an offense described in subparagraph (A), (B), or (C).]

CHAPTER 26—CRIMINAL STREET GANGS

Sec.
521. Criminal street gang prosecutions.

§ 521. Criminal street gang prosecutions

(a) STREET GANG CRIME.—Whoever commits, or conspires, threatens or attempts to commit, a gang crime for the purpose of furthering the activities of a criminal street gang, or gaining entrance to or maintaining or increasing position in such a gang, shall, in addition to being subject to a fine under this title—

(1) if the gang crime results in the death of any person, be sentenced to death or life in prison;

(2) if the gang crime is kidnapping, aggravated sexual abuse, or maiming, be imprisoned for life or any term of years not less than 30;

(3) if the gang crime is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or any term of years not less than 20; and

(4) in any other case, be imprisoned for life or for any term of years not less than 10.

(b) FORFEITURE.—

(1) IN GENERAL.—The court, in imposing sentence on any person convicted of a violation of this section, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States such person's interest in—

(A) any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the violation; and

(B) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as a result of the violation.

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

(c) DEFINITIONS.—The following definitions apply in this section:

(1) CRIMINAL STREET GANG.—The term "criminal street gang" means a formal or informal group or association of 3 or more individuals, who commit 2 or more gang crimes (one of which is a crime of violence other than an offense punishable under subparagraphs (A), (B), or (C) of section 401(b)(1) of the Controlled Substances Act), in 2 or more separate criminal episodes, in relation to the group or association, if any of the activities of the criminal street gang affects interstate or foreign commerce.

(2) GANG CRIME.—The term "gang crime" means conduct constituting any Federal or State crime, punishable by imprisonment for more than one year, in any of the following categories:

(A) A crime of violence.

(B) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or burglary.

(C) A crime involving the manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemical (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(D) Any conduct punishable under section 844 (relating to explosive materials), subsection (a)(1), (d), (g)(1) (where the underlying conviction is a violent felony (as defined in section 924(e)(2)(B) of this title) or is a serious drug offense (as defined in section 924(e)(2)(A))), (g)(2), (g)(3), (g)(4), (g)(5), (g)(8), (g)(9), (i), (j), (k), (n), (o), (p), (q), (u), or (x) of section 922 (relating to unlawful acts), or subsection (b), (c), (g), (h), (k), (l), (m), or (n) of section 924 (relating to penalties), section 930 (relating to possession of firearms and dangerous weapons in Federal facilities), section 931 (relating to purchase, ownership, or possession of body armor by violent felons), sections 1028 and 1029 (relating to fraud and related activity in connection with identification documents or access devices), section 1952 (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 (relating to interstate transportation of stolen motor vehicles or stolen property).

(E) Any conduct punishable under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) of the Immigration and Nationality Act.

(3) AGGRAVATED SEXUAL ABUSE.—The term "aggravated sexual abuse" means an offense that, if committed in the special maritime and territorial jurisdiction would be an offense under section 2241(a).

(4) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

* * * * * * *

CHAPTER 44—FIREARMS

* * * * * * *

§ 924. Penalties

(a) * * *

* * * * * * *

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United

States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, [shall] *or conspires to commit any of the above acts, shall, for each instance in which the firearm is used, carried, or possessed*, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than [5] *7* years;

[(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

[(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.]

(ii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 15 years; and

(iii) if the firearm is used to wound, injure, or maim another person, be sentenced to a term of imprisonment of not less than 20 years.

* * * * * * *

[(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.]

* * * * * * *

[(h) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.]

(h) Whoever, in or affecting interstate or foreign commerce, knowingly transfers a firearm, knowing or intending that the firearm will be used to commit, or possessed in furtherance of, a crime of violence or drug trafficking crime, shall be fined under this title and imprisoned not less than 5 years nor more than 20 years.

* * * * * * *

[(o) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.]

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CHAPTER 51—HOMICIDE

Sec.
1111. Murder

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1123. Use of interstate commerce facilities in the commission of multiple murder.

* * * * * * *

§ 1123. Use of interstate commerce facilities in the commission of multiple murder

(a) IN GENERAL.—Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or

uses or causes another (including the intended victim) to use the mail or any facility of interstate or foreign commerce, or who conspires or attempts to do so, with intent that 2 or more intentional homicides be committed in violation of the laws of any State or the United States shall, in addition to being subject to a fine under this title—

(1) if the offense results in the death of any person, be sentenced to death or life in prison;

(2) if the offense results is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or any term of years not less than 20; and

(3) in any other case, be imprisoned for life or for any term of years not less than 10.

(b) DEFINITION.—The term "State" means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

* * * * * * *

CHAPTER 95—RACKETEERING

Sec.
1951. Interference with commerce by threats or violence.
[1952. Interstate and foreign travel or transportation in aid of racketeering enterprises.]
1952. Interstate or foreign commerce-related aid to racketeering.

* * * * * * *

[1958. Use of interstate commerce facilities in the commission of murder-for-hire.]
1958. Use of interstate commerce facilities in the commission of murder-for-hire and other felony crimes of violence.

* * * * * * *

[§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises]

§ 1952. Interstate or foreign commerce-related aid to racketeering

(a)*(1)* Whoever [travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to], *in or affecting interstate or foreign commerce—*

[(1) distribute] *(A) distributes* the proceeds of any unlawful activity; or

[(2) commit] *(B) commits* any crime of violence to further any unlawful activity; or

[(3) otherwise promote, manage, establish, carry on, or facilitate] *(C) otherwise promotes, manages, establishes, carries on, or facilitates* the promotion, management, establishment, or carrying on, of any unlawful activity,

[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.]

or attempts or conspires to do so, shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is—

(A) in the case of a violation of subparagraph (A) or (C) of paragraph (1), a fine under this title and imprisonment for not less than 5 nor more than 20 years; and

(B) in the case of a violation of subparagraph (B) of paragraph (1), a fine under this title and imprisonment for not less than 10 nor more than 30 years, but if death results the offender shall be sentenced to death, or to imprisonment for any term of years or for life.

* * * * * * *

§ 1956. Laundering of monetary instruments

(a) * * *

* * * * * * *

(c) As used in this section—

(1) * * *

* * * * * * *

(7) the term "specified unlawful activity" means—

(A) * * *

* * * * * * *

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities*), section 521 (relating to criminal street gang prosecutions)*, section 541 (relating to goods falsely classified), section 542 relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), sec-

tion 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), or section 2339A or 2339B (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)

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[§ 1958. Use of interstate commerce facilities in the commission of murder-for-hire]

§ 1958. Use of interstate commerce facilities in the commission of murder-for-hire and other felony crimes of violence

(a) Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility of interstate or foreign commerce, with intent that a murder *or other crime of violence, punishable by imprisonment for more than one year,* be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, or who conspires to do so, [shall be fined under this title or imprisoned for not more than ten years, or both; and if personal injury results, shall be fined under this title or imprisoned for not more than twenty years, or both; and if death results, shall be punished by death or life imprisonment, or shall be fined not more than $250,000, or both.] *shall, in addition to being subject to a fine under this title*

(1) if the crime of violence or conspiracy results in the death of any person, be sentenced to death or life in prison;

(2) if the crime of violence is kidnapping, aggravated sexual abuse (as defined in section 521), or maiming, or a conspiracy to commit such a crime of violence, be imprisoned for life or any term of years not less than 30;

(3) if the crime of violence is an assault, or a conspiracy to assault, that results in serious bodily injury (as defined in section 1365), be imprisoned for life or any term of years not less than 20; and

(4) in any other case, be imprisoned for life or for any term of years not less than 10.

* * * * * * *

§ 1959. Violent crimes in aid of racketeering activity

[(a) Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires so to do, shall be punished—

[(1) for murder, by death or life imprisonment, or a fine under this title, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine under this title, or both;

[(2) for maiming, by imprisonment for not more than thirty years or a fine under this title, or both;

[(3) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than twenty years or a fine under this title, or both;

[(4) for threatening to commit a crime of violence, by imprisonment for not more than five years or a fine under this title, or both;

[(5) for attempting or conspiring to commit murder or kidnapping, by imprisonment for not more than ten years or a fine under this title, or both; and

[(6) for attempting or conspiring to commit a crime involving maiming, assault with a dangerous weapon, or assault resulting in serious bodily injury, by imprisonment for not more than three years or a fine of under this title, or both.]

(a) Whoever commits, or conspires, threatens, or attempts to commit, a crime of violence for the purpose of furthering the activities of an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in, such an enterprise, shall, unless the death penalty is otherwise imposed, in addition and consecutive to the punishment provided for any other violation of this chapter and in addition to being subject to a fine under this title—

(1) if the crime of violence results in the death of any person, be sentenced to death or life in prison;

(2) if the crime of violence is kidnapping, aggravated sexual abuse (as defined in section 521), or maiming, be imprisoned for life or any term of years not less than 30;

(3) if the crime of violence is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or for any term of years not less than 20; and

(4) in any other case, be imprisoned for life or for any term of years not less than 10.

* * * * * * *

(c) A prosecution for a violation of this section may be brought in—

(1) the judicial district in which the crime of violence occurred; or

(2) any judicial district in which racketeering activity of the enterprise occurred.

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CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

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§ 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law*, or would have been so chargeable if the act or threat had not been committed in Indian country (as defined in section 1151) or in any other area of exclusive Federal jurisdiction,* and

punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), *section 1123 (relating to interstate murder),* section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581–1591 (relating to peonage, slavery, and trafficking in persons)., section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property) , section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating

to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), sections 175–178 (relating to biological weapons), sections 229-F (relating to chemical weapons), section 831 (relating to nuclear materials),(C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B).

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CHAPTER 103—ROBBERY AND BURGLARY

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§ 2119. Motor vehicles

Whoever[, with the intent to cause death or serious bodily harm] takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts *or conspires* to do so, shall—

(1) be fined under this title or imprisoned not more than [15] *20* years, or both,

(2) if serious bodily injury (as defined in section 1365 of this title, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title) results, be fined under this title [or imprisoned not more than 25 years, or both] *and imprisoned not less than 10 years nor more than 30 years*, and

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PART II—CRIMINAL PROCEDURE

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CHAPTER 207—RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS

* * * * * * *

§ 3142. Release or detention of a defendant pending trial

(a) * * *

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(e) DETENTION.—If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial. In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—

(1) * * *

* * * * * * *

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed *an offense under subsection (g)(1) (where the underlying conviction is a drug trafficking crime (as defined in section 924(c))), (g)(2), (g)(4), (g)(5), (g)(8), or (g)(9) of section 922, or a crime of violence,* an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), an offense under section 924(c), 956(a), or 2332b of this title, or an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed or an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

* * * * * * *

(g) FACTORS TO BE CONSIDERED.—The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

[(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed or involves a narcotic drug;**]**

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, or involves a controlled substance, firearm, explosive, or destructive devise;

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CHAPTER 211—JURISDICTION AND VENUE

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[§ 3235. Venue in capital cases

[The trial of offenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience.]

§ 3235. Venue in capital cases

(a) The trial for any offense punishable by death shall be held in the district where the offense was committed or in any district in which the offense began, continued, or was completed.

(b) If the offense, or related conduct, under subsection (a) involves activities which affect interstate or foreign commerce, or the importation of an object or person into the United States, such offense may be prosecuted in any district in which those activities occurred.

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CHAPTER 213—LIMITATIONS

Sec.
3281. Capital offenses.

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3298. Violent crime offenses.

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§ 3298. Violent crime offenses

No person shall be prosecuted, tried, or punished for any noncapital felony, crime of violence, including any racketeering activity or gang crime which involves any crime of violence, unless the indictment is found or the information is instituted not later than 15 years after the date on which the alleged violation occurred or the continuing offense was completed.

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CHAPTER 227—SENTENCES

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SUBCHAPTER D—IMPRISONMENT

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§ 3582. Imposition of a sentence of imprisonment

(a) * * *

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(d) INCLUSION OF AN ORDER TO LIMIT CRIMINAL ASSOCIATION OF ORGANIZED CRIME AND DRUG OFFENDERS.—The court, in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in *section 521 (criminal street gang prosecutions), in* chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title or in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.), or at any time thereafter upon motion by the Director of the Bureau of Prisons or a United States attorney, may include as a part

of the sentence an order that requires that the defendant not associate or communicate with a [specified person, other than his attorney, upon] *specified person upon* a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in *a criminal street gang or* an illegal enterprise.

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CHAPTER 232—MISCELLANEOUS SENTENCING PROVISIONS

* * * * * * *

§ 3663. Order of restitution

(a) * * *

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(c)(1) * * *

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(4) The court shall not make an award under this subsection if it appears likely that such award would interfere with a forfeiture under [chapter 46 or chapter 96 of this title] *section 521, under chapter 46 or 96,* or under the Controlled Substances Act (21 U.S.C. 801 et seq.).

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PART IV—CORRECTION OF YOUTHFUL OFFENDERS

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CHAPTER 403—JUVENILE DELINQUENCY

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§ 5032. Delinquency proceedings in district courts; transfer for criminal prosecution

A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or 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)), section 922(x) or section 924(b), (g), or (h) of this title, and that

there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State. For purposes of this section, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

If an alleged juvenile delinquent is not surrendered to the authorities of a State pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information or as authorized under section 3401(g) of this title, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.

[A juvenile] *Except as otherwise provided in this chapter, a juvenile* who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless he has requested in writing upon advice of counsel to be proceeded against [as an adult, except that, with] *as an adult. With* respect to a juvenile fifteen years and older alleged to have committed an act after his fifteenth birthday which if committed by an adult would be a felony that is a crime of violence or 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), or section 922(x) of this title, or in section 924(b), (g), or (h) of this title, criminal prosecution on the basis of the alleged act may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the interest of justice. In the application of the preceding sentence, if the crime of violence is an offense under section 113(a), 113(b), 113(c), 1111, 1113, or, if the juvenile possessed a firearm during the offense, section 2111, 2113, 2241(a), or 2241(c), "thirteen" shall be substituted for "fifteen" and "thirteenth" shall be substituted for "fifteenth". Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to the preceding sentence for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151), and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that the preceding sentence have effect over land and persons subject to its criminal jurisdiction. [However, a juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense that has as an element thereof the use, attempted use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another may be used in committing the offense, or would be an offense described in section 32, 81, 844(d), (e), (f), (h), (i) or 2275 of this title, 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 who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this paragraph or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred to the appropriate district court of the United States for criminal prosecution.] *The Attorney General may prosecute as an adult a juvenile who is alleged to have committed an act after that juvenile's 16th birthday which if committed by an adult would be a crime of violence that is a felony, an offense described in subsection (d), (i), (j), (k), (o), (p), (q), (u), or (x) of section 922 (relating to unlawful acts), or subsection (b), (c), (g), (h), (k), (l), (m), or (n) of section 924 (relating to penalties), section 930 (relating to possession of firearms and dangerous weapons in Federal facilities), or section 931 (relating to purchase, ownership, or possession of body armor by violent felons). The decision whether or not to prosecute a juvenile as an adult under the immediately preceding sentence is not subject to judicial review in any court. In a prosecution under that sentence, the juvenile may be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted as an adult of any lesser included offense.*

Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer would be in the interest of justice: the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavioral problems. 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 in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer.

Reasonable notice of the transfer hearing shall be given to the juvenile, his parents, guardian, or custodian and to his counsel. The juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions.

Whenever a juvenile transferred to district court under this section is not convicted of the crime upon which the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged with that crime, further pro-

ceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter.

A juvenile shall not be transferred to adult prosecution nor shall a hearing be held under section 5037 (disposition after a finding of juvenile delinquency) until any prior juvenile court records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile's record is unavailable and why it is unavailable.

Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter, the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile's official record.

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COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

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TITLE II—CONTROL AND ENFORCEMENT

SHORT TITLE

SEC. 100. This title may be cited as the "Controlled Substances Act".

* * * * * * *

PART D—OFFENSES AND PENALTIES

* * * * * * *

MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME

SEC. 424. (a) IN GENERAL.—Whoever commits, or conspires, or attempts to commit, a crime of violence during and in relation to a drug trafficking crime, shall, unless the death penalty is otherwise imposed, in addition and consecutive to the punishment provided for the drug trafficking crime and in addition to being subject to a fine under this title—

(1) if the crime of violence results in the death of any person, be sentenced to death or life in prison;

(2) if the crime of violence is kidnapping, aggravated sexual abuse (as defined in section 521), or maiming, be imprisoned for life or any term of years not less than 30;

(3) if the crime of violence is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or any term of years not less than 20; and

(4) in any other case, be imprisoned for life or for any term of years not less than 10.

(b) VENUE.—A prosecution for a violation of this section may be brought in—

(1) the judicial district in which the murder or other crime of violence occurred; or

(2) any judicial district in which the drug trafficking crime may be prosecuted.

(c) DEFINITIONS.—As used in this section—

(1) the term "crime of violence" has the meaning given that term in section 16 of title 18, United States Code; and

(2) the term "drug trafficking crime" has the meaning given that term in section 924(c)(2) of title 18, United States Code.

* * * * * * *

RULE 804 OF THE FEDERAL RULES OF EVIDENCE

Rule 804. Hearsay Exceptions; declarant unavailable

(a) * * *

(b) HEARSAY EXCEPTIONS.—The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) * * *

* * * * * * *

[(6) FORFEITURE BY WRONGDOING.—A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.]

(6) FORFEITURE BY WRONGDOING.—A statement offered against a party who has engaged or acquiesced in wrongdoing, or who could reasonably foresee such wrongdoing would take place, if the wrongdoing was intended to, and did, procure the unavailability of the declarant as a witness.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

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TITLE III—CRIME PREVENTION

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Subtitle Q—Community-Based Justice Grants for Prosecutors

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SEC. 31702. USE OF FUNDS.

Grants made by the Attorney General under this section shall be used—

(1) * * *

* * * * * * *

(3) to fund programs that coordinate criminal justice resources with educational, social service, and community resources to develop and deliver violence prevention programs, including mediation and other conflict resolution methods, treatment, counseling, educational, and recreational programs that create alternatives to criminal activity; **[**and**]**

(4) in rural States (as defined in section 1501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796bb(B)), to fund cooperative efforts between State and local prosecutors, victim advocacy and assistance groups, social and community service providers, and law enforcement agencies to investigate and prosecute child abuse cases, treat youthful victims of child abuse, and work in cooperation with the community to develop education and prevention strategies directed toward the issues with which such entities are concerned**[**.**]***;*

(5) to hire additional prosecutors to—

(A) allow more cases to be prosecuted; and

(B) reduce backlogs;

(6) to fund technology, equipment, and training for prosecutors and law enforcement in order to increase accurate identification of gang members and violent offenders, and to maintain databases with such information to facilitate coordination among law enforcement and prosecutors; and

(7) to fund technology, equipment, and training for prosecutors to increase the accurate identification and successful prosecution of young violent offenders.

* * * * * * *

[SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated to carry out this subtitle—

[(1) $7,000,000 for fiscal year 1996;

[(2) $10,000,000 for fiscal year 1997;

[(3) $10,000,000 for fiscal year 1998;

[(4) $11,000,000 for fiscal year 1999; and

[(5) $12,000,000 for fiscal year 2000.**]**

SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $20,000,000 for each of the fiscal years 2006 through 2010 to carry out this subtitle.

* * * * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, APRIL 13, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

[Intervening business.]

Chairman SENSENBRENNER. The next item on the agenda is the adoption of H.R. 1279, the "Gang Deterrence and Community Protection Act." The Chair recognizes the gentleman from North Carolina, Mr. Coble, Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security, for a motion. The gentleman from North Carolina.

Mr. COBLE. I move the—the Subcommittee on Crime, Terrorism, and Homeland Security reports favorably, Mr. Chairman, H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005." This is an important piece of legislation that was marked up yesterday.

Chairman SENSENBRENNER. Does the gentleman move its favorable recommendation to the House?

Mr. COBLE. I do indeed.

Chairman SENSENBRENNER. Without objection, H.R. 1279 will be considered as read and open for amendment at any point.

[The bill, H.R. 1279, follows:]

I

109TH CONGRESS
1ST SESSION

H. R. 1279

To amend title 18, United States Code, to reduce violent gang crime and protect law-abiding citizens and communities from violent criminals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 14, 2005

Mr. FORBES (for himself, Mr. WOLF, Mr. GOODLATTE, Mr. GOODE, Mrs. JO ANN DAVIS of Virginia, Mrs. DRAKE, Mr. TOM DAVIS of Virginia, and Mr. ALEXANDER) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 18, United States Code, to reduce violent gang crime and protect law-abiding citizens and communities from violent criminals, and for other purposes.

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 "Gang Deterrence and Community Protection Act of 2005".

TITLE I—CRIMINAL LAW REFORMS AND ENHANCED PENALTIES TO DETER AND PUNISH ILLEGAL STREET GANG ACTIVITY AND RELATED CRIMINAL LAW REFORMS

SEC. 101. REVISION AND EXTENSION OF PENALTIES RELATED TO CRIMINAL STREET GANG ACTIVITY.

(a) IN GENERAL.—Chapter 26 of title 18, United States Code, is amended to read as follows:

"CHAPTER 26—CRIMINAL STREET GANGS

"521. Criminal street gang prosecutions.

"§ 521. Criminal street gang prosecutions

"(a) STREET GANG CRIME.—Whoever commits, or conspires, threatens or attempts to commit, a gang crime in order to further the activities of a criminal street gang, or in order to gain entrance to or maintain or increase position in such a gang, shall, in addition to being subject to a fine under this title—

"(1) if the gang crime results in the death of any person, be sentenced to death or life in prison;

"(2) if the gang crime is kidnapping, aggravated sexual abuse, or maiming, be imprisoned for life or any term of years not less than 30;

"(3) if the gang crime is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or any term of years not less than 20; and

"(4) in any other case, be imprisoned for life or for any term of years not less than 10.

"(b) FORFEITURE.—

"(1) IN GENERAL.—Whoever violates this section shall, in addition to any other penalty, 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.—Subsections (b), (c), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), and (p) of section 413 of the Controlled Substances Act (21 U.S.C. 853) shall apply to a forfeiture under this section as though it were a forfeiture under that section.

"(c) DEFINITIONS.—The following definitions apply in this section:

"(1) CRIMINAL STREET GANG.—The term 'criminal street gang' means a formal or informal group or association of 3 or more individuals, who commit 2 or more gang crimes (one of which is a crime of violence other than an offense punishable under subparagraphs (A), (B), or (C) of section 401(b)(1) of the Controlled Substances Act), in 2 or more separate criminal episodes, in relation to the group or association, if any of the activities of the criminal street gang affects interstate or foreign commerce.

"(2) GANG CRIME.—The term 'gang crime' means conduct constituting any Federal or State crime, punishable by imprisonment for more than one year, in any of the following categories:

"(A) A crime of violence.

"(B) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or burglary.

"(C) A crime involving the manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemical (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(D) Any conduct punishable under section 844 (relating to explosive materials), subsection (d), (g)(1) (where the underlying conviction is a violent felony (as defined in section 924(e)(2)(B) of this title) or is a serious drug offense (as defined in section 924(e)(2)(A)), (i), (j), (k), (o), (p), (q), (u), or (x) of section 922 (relating to unlawful acts), or subsection (b), (c), (g), (h), (k), (l), (m), or (n) of section 924 (relating to penalties), section 930 (relating to possession of firearms and dangerous weapons in Federal facilities), section 931 (relating to purchase, ownership, or possesion of body armor by violent felons), sections 1028 and 1029 (relating to fraud and related activity in connection with identification documents or access devices), section 1952 (relating to interstate and foreign travel or transporation in aid of racketeering enterprises), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 (relating to interstate transpor-

tation of stolen motor vehicles or stolen property).

"(E) Any conduct punishable under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) of the Immigration and Nationality Act.

"(3) AGGRAVATED SEXUAL ABUSE.—The term 'aggravated sexual abuse' means an offense that, if committed in the special maritime and territorial jurisdiction would be an offense under section 2241(a).

"(4) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(b) AMENDMENT RELATING TO PRIORITY OF FORFEITURE OVER ORDERS FOR RESTITUTION.—Section 3663(c)(4) of title 18, United States Code, is amended by striking "chapter 46 or chapter 96 of this title" and inserting "section 521, under chapter 46 or 96,".

SEC. 102. INCREASED PENALTIES FOR INTERSTATE AND FOREIGN TRAVEL OR TRANSPORTATION IN AID OF RACKETEERING.

(a) SUBSTANTIVE CHANGES TO OFFENSE.—Section 1952(a) of title 18, United States Code, is amended—

(1) so that the heading for the section reads as follows:

"§ 1952. Interstate or foreign commerce-related aid to racketeering";

(2) by inserting ''(1)'' after ''(a)'';

(3) by striking ''travels'' and all that follows through ''intent to'' and inserting ''in or affecting interstate or foreign commerce'';

(4) by striking '' (1) distribute'' and inserting ''(A) distributes'';

(5) by striking ''(2) commit'' and inserting ''(B) commits'';

(6) by striking ''(3) otherwise promote, manage, establish, carry on, or facilitate'' and inserting ''(C) otherwise promotes, manages, establishes, carries on, or facilitates''; and

(7) by striking ''and thereafter'' and all that follows through the end of the subsection and inserting the following:

''or attempts or conspires to do so, shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under this subsection is—

"(A) in the case of a violation of subparagraph (A) or (C) of paragraph (1), a fine under this title and imprisonment for not less than 5 nor more than 20 years; and

"(B) in the case of a violation of subparagraph (B) of paragraph (1), a fine under this title and imprisonment for not less than 10 nor more than 30 years, but if death results the offender shall be sentenced to death, or to imprisonment for any term of years or for life.".

(b) CLERICAL AMENDMENT.—The item relating to section 1952 in the table of sections at the beginning of chapter 95 of title 18, United States Code. is amended to read as follows:

SEC. 103. AMENDMENTS RELATING TO VIOLENT CRIME.

(a) CARJACKING.—Section 2119 of title 18, United States Code, is amended—

(1) by striking ", with the intent to cause death or serious bodily harm";

(2) by inserting "or conspires" after "attempts";

(3) by striking "15" and inserting "20"; and

(4) by striking ''or imprisoned not more than 25 years, or both'' and inserting ''and imprisoned not less than 10 years nor more than 30 years''.

(b) CLARIFICATION OF ILLEGAL GUN TRANSFERS TO COMMIT DRUG TRAFFICKING CRIME OR CRIMES OF VIOLENCE.—Section 924(g) of title 18, United States Code, is amended to read as follows:

''(g) Whoever knowingly transfers a firearm, knowing or intending that the firearm will be used to commit, or possessed in furtherance of, a crime of violence or drug trafficking crime, shall be fined under this title and imprisoned not less than 5 years nor more than 20 years.''.

(c) AMENDMENT OF SPECIAL SENTENCING PROVISION RELATING TO LIMITATIONS ON CRIMINAL ASSOCIATION.—Section 3582(d) of title 18, United States Code, is amended—

(1) by inserting ''section 521 (criminal street gang prosecutions), in'' after ''felony set forth in'';

(2) by striking ''specified person, other than his attorney, upon'' and inserting ''specified person upon''; and

(3) by inserting ''a criminal street gang or'' before ''an illegal enterprise''.

(d) CONSPIRACY PENALTY.—Section 371 of title 18, United States Code, is amended by striking ''five'' and inserting ''20''.

SEC. 104. INCREASED PENALTIES FOR USE OF INTERSTATE COMMERCE FACILITIES IN THE COMMISSION OF MURDER-FOR-HIRE AND OTHER FELONY CRIMES OF VIOLENCE.

Section 1958 of title 18, United States Code, is amended—

(1) by striking the section heading and inserting the following:

''§ 1958. Use of interstate commerce facilities in the Commission of murder-for-hire and other felony crimes of violence'';

(2) by inserting ''or other crime of violence, punishable by imprisonment for more than one year,'' after ''intent that a murder''; and

(3) by striking ''shall be fined'' the first place it appears and inserting the following:

''shall, in addition to being subject to a fine under this title

''(1) if the crime of violence results in the death of any person, be sentenced to death or life in prison;

"(2) if the crime of violence is kidnapping, aggravated sexual abuse (as defined in section 521), or maiming, be imprisoned for life or any term of years not less than 30;

"(3) if the crime of violence is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or any term of years not less than 20; and

"(4) in any other case, be imprisoned for life or for any term of years not less than 10.".

SEC. 105. INCREASED PENALTIES FOR VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

Section 1959(a) of title 18, United States Code, is amended to read as follows:

"(a) Whoever commits, or conspires, threatens, or attempts to commit, a crime of violence in order to further the activities of an enterprise engaged in racketeering activity, or in order to gain entrance to or maintain or increase position in, such an enterprise, shall, unless the death penalty is otherwise imposed, in addition and consecutive to the punishment provided for any other violation of this chapter and in addition to being subject to a fine under this title—

"(1) if the crime of violence results in the death of any person, be sentenced to death or life in prison;

"(2) if the crime of violence is kidnapping, aggravated sexual abuse (as defined in section 521), or maiming, be imprisoned for life or any term of years not less than 30;

"(3) if the crime of violence is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or for any term of years not less than 20; and

"(4) in any other case, be imprisoned for life or for any term of years not less than 10.".

SEC. 106. MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME.

(a) IN GENERAL.—Part D of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end the following:

"MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME

"SEC. 424. (a) IN GENERAL.—Whoever commits, or conspires, or attempts to commit, a crime of violence during and in relation to a drug trafficking crime, shall, unless the death penalty is otherwise imposed, in addition

1 and consecutive to the punishment provided for the drug
2 trafficking crime and in addition to being subject to a fine
3 under this title—

4 "(1) if the crime of violence results in the death
5 of any person, be sentenced to death or life in pris-
6 on;

7 "(2) if the crime of violence is kidnapping, ag-
8 gravated sexual abuse (as defined in section 521), or
9 maiming, be imprisoned for life or any term of years
10 not less than 30;

11 "(3) if the crime of violence is assault assault
12 resulting in serious bodily injury (as defined in sec-
13 tion 1365), be imprisoned for life or any term of
14 years not less than 20; and

15 "(4) in any other case, be imprisoned for life or
16 for any term of years not less than 10.

17 "(b) VENUE.—A prosecution for a violation of this
18 section may be brought in—

19 "(1) the judicial district in which the murder or
20 other crime of violence occurred; or

21 "(2) any judicial district in which the drug traf-
22 ficking crime may be prosecuted.

23 "(c) DEFINITIONS.—As used in this section—

"(1) the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code; and

"(2) the term 'drug trafficking crime' has the meaning given that term in section 924(c)(2) of title 18, United States Code.".

(b) CLERICAL AMENDMENT.—The table of contents for the Controlled Substances Act is amended by inserting after the item relating to section 423, the following:

"Sec. 424. Murder and other violent crimes committed during and in relation to a drug trafficking crime.".

SEC. 107. MULTIPLE INTERSTATE MURDER.

Part I of chapter 51 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1123. Use of interstate commerce facilities in the Commission of multiple murder

"(a) IN GENERAL.—Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility of interstate or foreign commerce, or who conspires or attempts to do so, with intent that 2 or more intentional homicides be committed in violation of the laws of any State or the United States shall, in addition to being subject to a fine under this title—

"(1) if the offense results in the death of any person, be sentenced to death or life in prison;

"(2) if the offense results is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or any term of years not less than 20; and

"(3) in any other case, be imprisoned for life or for any term of years not less than 10.

"(b) DEFINITION.—The term 'State' means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

SEC. 108. ADDITIONAL RACKETEERING ACTIVITY.

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

(1) in subparagraph (A), by inserting ", or would have been so chargeable if the act or threat had not been committed in Indian country (as defined in section 1151) or in any other area of exclusive Federal jurisdiction," after "chargeable under State law"; and

(2) in subparagraph (B), by inserting "section 1123 (relating to interstate murder)," after "section 1084 (relating to the transmission of wagering information),".

SEC. 109. EXPANSION OF REBUTTABLE PRESUMPTION AGAINST RELEASE OF PERSONS CHARGED WITH FIREARMS OFFENSES.

Section 3142 of title 18, United States Code, is amended—

(1) in subsection (e), in the matter following paragraph (3)—

(A) by inserting ''an offense under section 922(g)(1) where the underlying conviction is a drug trafficking crime (as defined in section 924(c)) or a crime of violence,'' after ''that the person committed''; and

(B) by inserting ''or'' before ''the Maritime''; and

(2) in subsection (g), by amending paragraph (1) to read as follows:

''(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, or involves a controlled substance, firearm, explosive, or destructive devise;''.

SEC. 110. VENUE IN CAPITAL CASES.

Section 3235 of title 18, United States Code, is amended to read as follows:

''§ 3235. Venue in capital cases

''(a) The trial for any offense punishable by death shall be held in the district where the offense was com-

1 mitted or in any district in which the offense began, con-
2 tinued, or was completed.

3 ''(b) If the offense, or related conduct, under sub-
4 section (a) involves activities which affect interstate or for-
5 eign commerce, or the importation of an object or person
6 into the United States, such offense may be prosecuted
7 in any district in which those activities occurred.''.

8 **SEC. 111. STATUTE OF LIMITATIONS FOR VIOLENT CRIME.**

9 (a) IN GENERAL.—Chapter 214 of title 18, United
10 States Code, is amended by adding at the end the fol-
11 lowing:

12 **''§ 3296. Violent crime offenses**

13 ''No person shall be prosecuted, tried, or punished
14 for any noncapital felony, crime of violence, including any
15 racketeering activity or gang crime which involves any
16 crime of violence, unless the indictment is found or the
17 information is instituted not later than 15 years after the
18 date on which the alleged violation occurred or the con-
19 tinuing offense was completed.''.

20 (b) CLERICAL AMENDMENT.—The table of sections
21 at the beginning of chapter 214 of title 18, United States
22 Code, is amended by adding at the end the following:

''3296. Violent crime offenses.''.

SEC. 112. MODIFICATION OF DEFINITION OF CRIME OF VIOLENCE.

Section 16(b) of title 18, United States Code, is amended to read as follows:

''(b) any other offense that is an offense punishable by imprisonment for more than one year and that, by its nature, involves a substantial risk that physical force may be used against the person or property of another, or is an offense punishable under subparagraphs (A), (B), or (C) of section 401(b)(1) of the Controlled Substances Act.''.

SEC. 113. CLARIFICATION TO HEARSAY EXCEPTION FOR FORFEITURE BY WRONGDOING.

Rule 804(b)(6) of the Federal Rules of Evidence is amended to read as follows:

''(6) FORFEITURE BY WRONGDOING.—A statement offered against a party who has engaged or acquiesced in wrongdoing, or who could reasonably foresee such wrongdoing would take place, if the wrongdoing was intended to, and did, procure the unavailability of the declarant as a witness.''.

SEC. 114. INCREASED PENALTIES FOR CRIMINAL USE OF FIREARMS IN CRIMES OF VIOLENCE AND DRUG TRAFFICKING.

(a) IN GENERAL.—Section 924(c)(1)(A) of title 18, United States Code, is amended—

(1) in paragraph (1)(A)—

(A) by striking ''shall'' and inserting ''or conspires to commit any of the above acts, shall, for each instance in which the firearm is used, carried, or possessed'';

(B) in clause (i), by striking ''5 years'' and inserting ''7 years''; and

(C) by striking clauses (ii) and (iii) and inserting the following:

''(ii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 15 years; and

''(iii) if the firearm is used to wound, injure, or maim another person, be sentenced to a term of imprisonment of not less than 20 years.''; and

(2) by striking paragraph (4).

(b) CONFORMING AMENDMENT.—Section 924 of title 18, United States Code, is amended by striking subsection (o).

SEC. 115. TRANSFER OF JUVENILES.

The 4th undesignated paragraph of section 5032 of title 18, United States Code, is amended—

(1) by striking ''A juvenile'' where it appears at the beginning of the paragraph and inserting ''Ex-

cept as otherwise provided in this chapter, a juvenile'' ;

(2) by striking ''as an adult, except that, with'' and inserting ''as an adult. With''; and

(3) by striking ''However, a juvenile'' and all that follows through ''criminal prosecution.'' at the end of the paragraph and inserting ''The Attorney General may prosecute as an adult a juvenile who is alleged to have committed an act after that juvenile's 16th birthday which if committed by an adult would be a crime of violence that is a felony, an offense described in subsection (d), (i), (j), (k), (o), (p), (q), (u), or (x) of section 922 (relating to unlawful acts), or subsection (b), (c), (g), (h), (k), (l), (m), or (n) of section 924 (relating to penalties), section 930 (relating to possession of firearms and dangerous weapons in Federal facilities), or section 931 (relating to purchase, ownership, or possesion of body armor by violent felons). The decision whether or not to prosecute a juvenile as an adult under the immediately preceding sentence is not subject to judicial review in any court. In a prosecution under that sentence, the juvenile may be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal

Procedure, and may also be convicted as an adult of any lesser included offense.''.

TITLE II—INCREASED FEDERAL RESOURCES TO DETER AND PREVENT AT-RISK YOUTH FROM JOINING ILLEGAL STREET GANGS

SEC. 201. DESIGNATION OF AND ASSISTANCE FOR "HIGH INTENSITY" INTERSTATE GANG ACTIVITY AREAS.

(a) DEFINITIONS.—In this section the following definitions shall apply:

(1) GOVERNOR.—The term ''Governor'' means a Governor of a State or the Mayor of the District of Columbia.

(2) HIGH INTENSITY INTERSTATE GANG ACTIVITY AREA.—The term ''high intensity interstate gang activity area'' means an area within a State that is designated as a high intensity interstate gang activity area under subsection (b)(1).

(3) STATE.—The term ''State'' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(b) HIGH INTENSITY INTERSTATE GANG ACTIVITY AREAS.—

(1) DESIGNATION.—The Attorney General, after consultation with the Governors of appropriate States, may designate as high intensity interstate gang activity areas, specific areas that are located within 1 or more States.

(2) ASSISTANCE.—In order to provide Federal assistance to high intensity interstate gang activity areas, the Attorney General shall—

(A) establish criminal street gang enforcement teams, consisting of Federal, State, and local law enforcement authorities, for the coordinated investigation, disruption, apprehension, and prosecution of criminal street gangs and offenders in each high intensity interstate gang activity area;

(B) direct the reassignment or detailing from any Federal department or agency (subject to the approval of the head of that department or agency, in the case of a department or agency other than the Department of Justice) of personnel to each criminal street gang enforcement team;

(C) provide all necessary funding for the operation of the criminal street gang enforcement team in each high intensity interstate gang activity area; and

(D) provide all necessary funding for national and regional meetings of criminal street gang enforcement teams, and all other related organizations, as needed, to ensure effective operation of such teams through the sharing of intelligence, best practices and for any other related purpose.

(3) COMPOSITION OF CRIMINAL STREET GANG ENFORCEMENT TEAM.—The team established pursuant to paragraph (2)(A) shall consist of agents and officers, where feasible, from—

(A) the Federal Bureau of Investigation;

(B) the Drug Enforcement Administration;

(C) the Bureau of Alcohol, Tobacco, Firearms, and Explosives;

(D) the United States Marshals Service;

(E) the Directorate of Border and Transportation Security of the Department of Homeland Security;

(F) the Department of Housing and Urban Development;

(G) State and local law enforcement; and

(H) Federal, State, and local prosecutors.

(4) CRITERIA FOR DESIGNATION.—In considering an area for designation as a high intensity interstate gang activity area under this section, the Attorney General shall consider—

(A) the current and predicted levels of gang crime activity in the area;

(B) the extent to which violent crime in the area appears to be related to criminal street gang activity, such as drug trafficking, murder, robbery, assaults, carjacking, arson, kidnapping, extortion, and other criminal activity;

(C) the extent to which State and local law enforcement agencies have committed resources to—

(i) respond to the gang crime problem; and

(ii) participate in a gang enforcement team;

(D) the extent to which a significant increase in the allocation of Federal resources would enhance local response to the gang crime activities in the area; and

(E) any other criteria that the Attorney General considers to be appropriate.

(c) ADDITIONAL ASSISTANT U.S. ATTORNEYS.—The Attorney General is authorized to hire 94 additional Assistant United States attorneys to carry out the provisions of this section. Each attorney hired under this subsection shall be assigned to a high intensity interstate gang activity area.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) $50,000,000 for each of the fiscal years 2006 through 2010 to carry out subsection (b); and

(2) $7,500,000 for each of the fiscal years 2006 through 2010 to carry out subsection (c).

SEC. 202. GRANTS TO STATE AND LOCAL PROSECUTORS TO COMBAT VIOLENT CRIME AND TO PROTECT WITNESSES AND VICTIMS OF CRIMES.

(a) IN GENERAL.—Section 31702 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13862) is amended —

(1) in paragraph (3), by striking ''and'' at the end;

(2) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(5) to hire additional prosecutors to—

"(A) allow more cases to be prosecuted; and

"(B) reduce backlogs;

"(6) to fund technology, equipment, and training for prosecutors and law enforcement in order to increase accurate identification of gang members and violent offenders, and to maintain databases with such information to facilitate coordination among law enforcement and prosecutors; and

"(7) to fund technology, equipment, and training for prosecutors to increase the accurate identification and successful prosecution of young violent offenders.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 31707 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13867) is amended to read as follows:

"SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated $20,000,000 for each of the fiscal years 2006 through 2010 to carry out this subtitle.".

○

Chairman SENSENBRENNER. The Chair recognizes the gentleman from North Carolina to strike the last word.

Mr. COBLE. I thank the Chairman.

On April the 5th, Mr. Chairman, the Subcommittee held a hearing on the bill, which was introduced by Representative Forbes, Representative Wolf, and other members of the Virginia delegation. The hearing examined the growing problem of gang violence in our country and the need to address the problem.

The problem of gang violence in America, Mr. Chairman and colleagues, is not a new one, nor is it a problem that is limited to major urban areas, as was once the general belief. Gangs have now invaded smaller communities, even penetrating into rural areas of our country.

Mr. Chairman, I was not able to attend the hearing, which was chaired by Representative Forbes, and this is his bill, and with the Chair's permission I would like for Mr. Forbes to handle the bill.

Chairman SENSENBRENNER. Does the gentleman yield the balance of his time to the gentleman from Virginia?

Mr. COBLE. I yield the balance of my time to the gentleman from Virginia.

Chairman SENSENBRENNER. The gentleman from Virginia?

Mr. FORBES. Thank you, Mr. Chairman.

Mr. Chairman, we have a substitute that we're offering, if the Chair would like to recognize that at this particular point in time.

Chairman SENSENBRENNER. The Chair wishes to have two opening statements on each side, and then the Chair will recognize the gentleman from Virginia for purposes of a substitute after Mr. Scott is done with his opening statement.

Mr. FORBES. Then, Mr. Chairman, I would simply echo what the distinguished Chairman of the Crime Subcommittee has said in that the crime problem in the United States has grown dramatically over the last several years. It is totally different than the old West Side Story that we used to think about where we had two criminal gangs fighting with each other. Today there are approximately 750,000 to 850,000 criminal gang members in the United States. To put that in perspective, if it was an army, it would be the sixth largest army in the world, and it is about a number equal to the active-duty members we have in the army and navy combined.

In addition, they have changed enormously. Many of these people are equipped to do guerrilla warfare. They have boards of directors. They are operating across the country. You will see from the headlines that we have that they're cutting off people's arms, they're cutting out the larynxes of individuals, they're murdering people, they're raping people, and they're spreading all across the country.

Mr. Chairman, one of the things that we are recognizing is that the only way we're going to be able to deal with this problem is to reach out with a bill like this which brings the resources of the Federal Government, the State government, and the local government into the same organized activity that we have when we broke up organized crime in the United States. We think the benefit of this bill is that it reaches at the heart of the criminal network and rips that criminal gang network out so it's not continuing to recruit individuals and to make this gang problem more severe.

Mr. Chairman, I am looking forward to the debate on this bill and the questions that my friends from the other side I'm sure will have in support of this great piece of legislation.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott?

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, sorry to see this markup of H.R. 1279, the so-called "Gang Deterrence and Community Protection Act of 2005." This bill is in no way like the last bill we considered to address crime and violence by youth. That bill was cosponsored by all of the Members of the Subcommittee on Crime and was based on the combined wisdom and expertise of law enforcement, juvenile court judges and administrators, researchers, criminologists, and juvenile justice advocates along the entire political spectrum. That bill was full of collaborative efforts by local law enforcement officials aimed at addressing the problem caused by young people early when they first entered the system with sufficient sanctions and/or services to keep them on the straight and narrow; and if they do come back, to hit them with graduated sanctions and services to the extent required to address the problem.

Unfortunately, after all this agreement, we failed the most important aspect of our agreement, to provide an adequate level of funding for the bill. While this Committee initially authorized $500 million a year, the House settled on $350 million for the first year, but the most money we've been able to get appropriated for the bill was $55 million a year, about one-tenth of the amount we thought originally necessary.

Now that we're seeing youth gang crime and violence rise, we're willing to abandon what we know and agreed upon but never funded to spend billions of dollars to prosecute and look up youth up under long mandatory—to lock up youth under long mandatory minimum sentences, which allowed no consideration for the relative roles of the crimes or the background of the offender.

This bill is chock full of new mandatory minimum sentences ranging from a mandatory minimum of 10 years to mandatory life or death and other provisions which have been proven to be counterproductive in the fight against crime.

For some time now, we have known that mandatory minimum sentences disrupt orderly proportionality in sentencing, discriminate against minorities, waste money, compared to sentencing schemes where the court can actually look at the seriousness of the crime, the offender's role in the crime, and the offender's background.

The Judicial Conference of the United States, which sees the impact of mandatory minimums on an individual—on individual cases as well as on the criminal justice system as a whole has told us time and time again that mandatory sentences create more harm than good from any kind of rational evaluation. In its recent letter, the Conference told us that mandatory minimum sentences create the opposite of their intended effect. Far from fostering certainty in punishment mandatory minimums result in unwarranted sentencing disparities. Mandatory minimums treat dissimilar offenders in a similar manner, although those offenders can be quite different in respect to the seriousness of their conduct or their danger to society. And they require the sentencing court to impose the

same sentence on offenders when sound policy and common sense call for reasonable differences in punishment.

Both the Federal Judicial Center in its report entitled "The General Effects of Mandatory Minimum Prison Terms: A Longitudinal Study," and the Sentencing Commission in its study, "Mandatory Minimum Penalties in the Federal Criminal Justice System," found that minorities were substantially more likely than whites under comparable circumstances to receive the mandatory minimum sentences. And the RAND Corporation recent report showed that mandatory minimum sentences are far less effective than either regular sentences or drug treatment in reducing drug-related crime and, thus, far more costlier than either.

Just how costly this bill will be is yet to be seen, but the Sentencing Commission has estimated a need for an additional 23,600 prison beds over the next 10 years. That would be about $2 billion in addition to the annual upkeep of about $750 million based on $30,000 per inmate per year. And that's over and above what's already scheduled to be spent for prison construction and upkeep.

For proven evidence-based juvenile crime prevention and intervention services, we're spending about half, less than $400 million annually, of the annual prison upkeep; this bill will cost in addition to what we're already paying. The worst problem with the bill is that it provides for more juveniles tried as adults. For years now, every study of juveniles tried as adults has shown that such juveniles commit more crimes, and more violent crimes in particular, when they're released. It is easy to understand when you consider the juveniles who go to prison will have as their role models hardcore murderers, rapists, and robbers, whereas in juvenile detention they're required to receive education and training.

Mr. Chairman, an additional minute?

Chairman SENSENBRENNER. Without objection.

Mr. SCOTT. Counseling and drug treatment and other assistance. On March 1st of this year, coincidentally the same day H.R. 1279 was introduced, the Coalition of Juvenile Justice released its study, "Childhood on Trial: The Failure of Trying and Sentencing Youth in Adult Criminal Court," showed even more definitively that trying juveniles as adults increases rather than decreases the prospects that they will reoffend when released, and the more serious—and with the more serious offenses as compared to youths tried in juvenile court. Already without this bill, juveniles who commit serious violent offenses are already tried as adults. The difference with this bill is that the judge can look at them individually in most cases and determine which ones will not require such treatment and put them in the juvenile justice system where they will be less likely to commit an additional crime.

This bill eliminates individual considerations in favor of sound bites, and I hope we will defeat the bill and get back to doing what we know works in dealing with juvenile crime.

Chairman SENSENBRENNER. The time of the gentleman has expired.

Without objection, all Members may include opening statements in the record at this point.

The Chair recognizes the gentleman from Virginia for purposes of offering a substitute amendment.

Mr. FORBES. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Does the gentleman from Virginia have an amendment at the desk?

Mr. FORBES. Yes, sir, I do, Mr. Chairman.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment in the nature of a substitute to H.R. 1279, offered by Mr. Forbes of Virginia——

Chairman SENSENBRENNER. Without objection, the amendment in the nature of a substitute is considered as read.

[The amendment in the nature of a substitute follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1279 OFFERED BY MR. FORBES OF VIRGINIA

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Gang Deterrence and Community Protection Act of 2005''.

TITLE I—CRIMINAL LAW REFORMS AND ENHANCED PENALTIES TO DETER AND PUNISH ILLEGAL STREET GANG ACTIVITY AND RELATED CRIMINAL LAW REFORMS

SEC. 101. REVISION AND EXTENSION OF PENALTIES RELATED TO CRIMINAL STREET GANG ACTIVITY.

(a) IN GENERAL.—Chapter 26 of title 18, United States Code, is amended to read as follows:

''CHAPTER 26—CRIMINAL STREET GANGS

''521. Criminal street gang prosecutions.

"§ 521. Criminal street gang prosecutions

"(a) STREET GANG CRIME.—Whoever commits, or conspires, threatens or attempts to commit, a gang crime for the purpose of furthering the activities of a criminal street gang, or gaining entrance to or maintaining or increasing position in such a gang, shall, in addition to being subject to a fine under this title—

"(1) if the gang crime results in the death of any person, be sentenced to death or life in prison;

"(2) if the gang crime is kidnapping, aggravated sexual abuse, or maiming, be imprisoned for life or any term of years not less than 30;

"(3) if the gang crime is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or any term of years not less than 20; and

"(4) in any other case, be imprisoned for life or for any term of years not less than 10.

"(b) FORFEITURE.—

"(1) CRIMINAL.—

"(A) The court, in imposing sentence on any person convicted of a violation of this section, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States such person's interest in—

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

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

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

"(2) CIVIL.—

"(A) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

"(i) any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of a violation of this section; and

"(ii) any property constituting, or derived from, any proceeds the person ob-

tained, directly or indirectly, as a result of the violation.

"(B) The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection

"(c) DEFINITIONS.—The following definitions apply in this section:

"(1) CRIMINAL STREET GANG.—The term 'criminal street gang' means a formal or informal group or association of 3 or more individuals, who commit 2 or more gang crimes (one of which is a crime of violence other than an offense punishable under subparagraphs (A), (B), or (C) of section 401(b)(1) of the Controlled Substances Act), in 2 or more separate criminal episodes, in relation to the group or association, if any of the activities of the criminal street gang affects interstate or foreign commerce.

"(2) GANG CRIME.—The term 'gang crime' means conduct constituting any Federal or State crime, punishable by imprisonment for more than one year, in any of the following categories:

"(A) A crime of violence.

"(B) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or burglary.

"(C) A crime involving the manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemical (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(D) Any conduct punishable under section 844 (relating to explosive materials), subsection (a)(1), (d), (g)(1) (where the underlying conviction is a violent felony (as defined in section 924(e)(2)(B) of this title) or is a serious drug offense (as defined in section 924(e)(2)(A))), (g)(2), (g)(3), (g)(4), (g)(5), (g)(8), (g)(9), (i), (j), (k), (n), (o), (p), (q), (u), or (x) of section 922 (relating to unlawful acts), or subsection (b), (c), (g), (h), (k), (l), (m), or (n) of section 924 (relating to penalties), section 930 (relating to possession of firearms and dangerous weapons in Federal facilities), section 931 (relating to purchase, ownership, or possession of body armor by violent felons), sections 1028 and 1029 (relating to fraud and re-

lated activity in connection with identification documents or access devices), section 1952 (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 (relating to interstate transportation of stolen motor vehicles or stolen property).

"(E) Any conduct punishable under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) of the Immigration and Nationality Act.

"(3) AGGRAVATED SEXUAL ABUSE.—The term 'aggravated sexual abuse' means an offense that, if committed in the special maritime and territorial jurisdiction would be an offense under section 2241(a).

"(4) STATE.—The term 'State' means each of the several States of the United States, the District

of Columbia, and any commonwealth, territory, or possession of the United States.''.

(b) AMENDMENT RELATING TO PRIORITY OF FORFEITURE OVER ORDERS FOR RESTITUTION.—Section 3663(c)(4) of title 18, United States Code, is amended by striking ''chapter 46 or chapter 96 of this title'' and inserting ''section 521, under chapter 46 or 96,''.

(c) MONEY LAUNDERING.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting '', section 521 (relating to criminal street gang prosecutions)'' before '', section 541''.

SEC. 102. INCREASED PENALTIES FOR INTERSTATE AND FOREIGN TRAVEL OR TRANSPORTATION IN AID OF RACKETEERING.

(a) SUBSTANTIVE CHANGES TO OFFENSE.—Section 1952(a) of title 18, United States Code, is amended—

(1) so that the heading for the section reads as follows:

''§ 1952. Interstate or foreign commerce-related aid to racketeering'';

(2) by inserting ''(1)'' after ''(a)'';

(3) by striking ''travels'' and all that follows through ''intent to'' and inserting ''in or affecting interstate or foreign commerce'';

(4) by striking " (1) distribute" and inserting "(A) distributes";

(5) by striking "(2) commit" and inserting "(B) commits";

(6) by striking "(3) otherwise promote, manage, establish, carry on, or facilitate" and inserting "(C) otherwise promotes, manages, establishes, carries on, or facilitates"; and

(7) by striking "and thereafter" and all that follows through the end of the subsection and inserting the following:

"or attempts or conspires to do so, shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under this subsection is—

"(A) in the case of a violation of subparagraph (A) or (C) of paragraph (1), a fine under this title and imprisonment for not less than 5 nor more than 20 years; and

"(B) in the case of a violation of subparagraph (B) of paragraph (1), a fine under this title and imprisonment for not less than 10 nor more than 30 years, but if death results the offender shall be sentenced to death, or to imprisonment for any term of years or for life.".

(b) CLERICAL AMENDMENT.—The item relating to section 1952 in the table of sections at the beginning of chapter 95 of title 18, United States Code. is amended to read as follows:

SEC. 103. AMENDMENTS RELATING TO VIOLENT CRIME.

(a) CARJACKING.—Section 2119 of title 18, United States Code, is amended—

(1) by striking ", with the intent to cause death or serious bodily harm";

(2) by inserting "or conspires" after "attempts";

(3) by striking "15" and inserting "20"; and

(4) by striking "or imprisoned not more than 25 years, or both" and inserting "and imprisoned not less than 10 years nor more than 30 years".

(b) CLARIFICATION OF ILLEGAL GUN TRANSFERS TO COMMIT DRUG TRAFFICKING CRIME OR CRIMES OF VIOLENCE.—Section 924(h) of title 18, United States Code, is amended to read as follows:

"(h) Whoever, in or affecting interstate or foreign commerce, knowingly transfers a firearm, knowing or intending that the firearm will be used to commit, or possessed in furtherance of, a crime of violence or drug trafficking crime, shall be fined under this title and imprisoned not less than 5 years nor more than 20 years.".

(c) AMENDMENT OF SPECIAL SENTENCING PROVISION RELATING TO LIMITATIONS ON CRIMINAL ASSOCIATION.—Section 3582(d) of title 18, United States Code, is amended—

(1) by inserting ''section 521 (criminal street gang prosecutions), in'' after ''felony set forth in'';

(2) by striking ''specified person, other than his attorney, upon'' and inserting ''specified person upon''; and

(3) by inserting ''a criminal street gang or'' before ''an illegal enterprise''.

(d) CONSPIRACY PENALTY.—Section 371 of title 18, United States Code, is amended by striking ''five'' and inserting ''20''.

SEC. 104. INCREASED PENALTIES FOR USE OF INTERSTATE COMMERCE FACILITIES IN THE COMMISSION OF MURDER-FOR-HIRE AND OTHER FELONY CRIMES OF VIOLENCE.

Section 1958 of title 18, United States Code, is amended—

(1) by striking the section heading and inserting the following:

"§ 1958. Use of interstate commerce facilities in the Commission of murder-for-hire and other felony crimes of violence";

(2) by inserting ''or other crime of violence, punishable by imprisonment for more than one year,'' after ''intent that a murder''; and

(3) by striking ''shall be fined'' the first place it appears and inserting the following:

''shall, in addition to being subject to a fine under this title

''(1) if the crime of violence or conspiracy results in the death of any person, be sentenced to death or life in prison;

''(2) if the crime of violence is kidnapping, aggravated sexual abuse (as defined in section 521), or maiming, or a conspiracy to commit such a crime of violence, be imprisoned for life or any term of years not less than 30;

''(3) if the crime of violence is an assault, or a conspiracy to assault, that results in serious bodily injury (as defined in section 1365), be imprisoned for life or any term of years not less than 20; and

''(4) in any other case, be imprisoned for life or for any term of years not less than 10.''.

SEC. 105. INCREASED PENALTIES FOR VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

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

''(a) Whoever commits, or conspires, threatens, or attempts to commit, a crime of violence for the purpose of furthering the activities of an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in, such an enterprise, shall, unless the death penalty is otherwise imposed, in addition and consecutive to the punishment provided for any other violation of this chapter and in addition to being subject to a fine under this title—

''(1) if the crime of violence results in the death of any person, be sentenced to death or life in prison;

''(2) if the crime of violence is kidnapping, aggravated sexual abuse (as defined in section 521), or maiming, be imprisoned for life or any term of years not less than 30;

''(3) if the crime of violence is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or for any term of years not less than 20; and

''(4) in any other case, be imprisoned for life or for any term of years not less than 10.''.

(b) VENUE.—Section 1959 of title 18, United States Code, is amended by adding at the end the following: —

"(c) A prosecution for a violation of this section may be brought in—

"(1) the judicial district in which the crime of violence occurred; or

"(2) any judicial district in which racketeering activity of the enterprise occurred.".

SEC. 106. MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME.

(a) IN GENERAL.—Part D of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end the following:

"MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME

"SEC. 424. (a) IN GENERAL.—Whoever commits, or conspires, or attempts to commit, a crime of violence during and in relation to a drug trafficking crime, shall, unless the death penalty is otherwise imposed, in addition and consecutive to the punishment provided for the drug trafficking crime and in addition to being subject to a fine under this title—

"(1) if the crime of violence results in the death of any person, be sentenced to death or life in prison;

"(2) if the crime of violence is kidnapping, aggravated sexual abuse (as defined in section 521), or maiming, be imprisoned for life or any term of years not less than 30;

"(3) if the crime of violence is assault resulting in serious bodily injury (as defined in section 1365), be imprisoned for life or any term of years not less than 20; and

"(4) in any other case, be imprisoned for life or for any term of years not less than 10.

"(b) VENUE.—A prosecution for a violation of this section may be brought in—

"(1) the judicial district in which the murder or other crime of violence occurred; or

"(2) any judicial district in which the drug trafficking crime may be prosecuted.

"(c) DEFINITIONS.—As used in this section—

"(1) the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code; and

"(2) the term 'drug trafficking crime' has the meaning given that term in section 924(c)(2) of title 18, United States Code.".

(b) CLERICAL AMENDMENT.—The table of contents for the Controlled Substances Act is amended by inserting after the item relating to section 423, the following:

"Sec. 424. Murder and other violent crimes committed during and in relation to a drug trafficking crime.".

SEC. 107. MULTIPLE INTERSTATE MURDER.

Part I of chapter 51 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1123. Use of interstate commerce facilities in the Commission of multiple murder

"(a) IN GENERAL.—Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility of interstate or foreign commerce, or who conspires or attempts to do so, with intent that 2 or more intentional homicides be committed in violation of the laws of any State or the United States shall, in addition to being subject to a fine under this title—

"(1) if the offense results in the death of any person, be sentenced to death or life in prison;

"(2) if the offense results is assault resulting in serious bodily injury (as defined in section 1365), be

imprisoned for life or any term of years not less than 20; and

"(3) in any other case, be imprisoned for life or for any term of years not less than 10.

"(b) DEFINITION.—The term 'State' means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

SEC. 108. ADDITIONAL RACKETEERING ACTIVITY.

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

(1) in subparagraph (A), by inserting ", or would have been so chargeable if the act or threat had not been committed in Indian country (as defined in section 1151) or in any other area of exclusive Federal jurisdiction," after "chargeable under State law"; and

(2) in subparagraph (B), by inserting "section 1123 (relating to interstate murder)," after "section 1084 (relating to the transmission of wagering information),".

SEC. 109. EXPANSION OF REBUTTABLE PRESUMPTION AGAINST RELEASE OF PERSONS CHARGED WITH FIREARMS OFFENSES.

Section 3142 of title 18, United States Code, is amended—

(1) in subsection (e), in the matter following paragraph (3)—

(A) by inserting ''an offense under subsection (g)(1) (where the underlying conviction is a drug trafficking crime (as defined in section 924(c))), (g)(2), (g)(4), (g)(5), (g)(8), or (g)(9) of section 922, or a crime of violence,'' after ''that the person committed''; and

(B) by inserting ''or'' before ''the Maritime''; and

(2) in subsection (g), by amending paragraph (1) to read as follows:

''(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, or involves a controlled substance, firearm, explosive, or destructive devise;''.

SEC. 110. VENUE IN CAPITAL CASES.

Section 3235 of title 18, United States Code, is amended to read as follows:

"§ 3235. Venue in capital cases

''(a) The trial for any offense punishable by death shall be held in the district where the offense was committed or in any district in which the offense began, continued, or was completed.

''(b) If the offense, or related conduct, under subsection (a) involves activities which affect interstate or foreign commerce, or the importation of an object or person into the United States, such offense may be prosecuted in any district in which those activities occurred.''.

SEC. 111. STATUTE OF LIMITATIONS FOR VIOLENT CRIME.

(a) IN GENERAL.—Chapter 214 of title 18, United States Code, is amended by adding at the end the following:

"§ 3296. Violent crime offenses

''No person shall be prosecuted, tried, or punished for any noncapital felony, crime of violence, including any racketeering activity or gang crime which involves any crime of violence, unless the indictment is found or the information is instituted not later than 15 years after the date on which the alleged violation occurred or the continuing offense was completed.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 214 of title 18, United States Code, is amended by adding at the end the following:

''3296. Violent crime offenses.''.

SEC. 112. MODIFICATION OF DEFINITION OF CRIME OF VIOLENCE.

Section 16(b) of title 18, United States Code, is amended to read as follows:

"(b) any other offense that is an offense punishable by imprisonment for more than one year and that, by its nature, involves a substantial risk that physical force may be used against the person or property of another, or is an offense punishable under subparagraphs (A), (B), or (C) of section 401(b)(1) of the Controlled Substances Act.".

SEC. 113. CLARIFICATION TO HEARSAY EXCEPTION FOR FORFEITURE BY WRONGDOING.

Rule 804(b)(6) of the Federal Rules of Evidence is amended to read as follows:

"(6) FORFEITURE BY WRONGDOING.—A statement offered against a party who has engaged or acquiesced in wrongdoing, or who could reasonably foresee such wrongdoing would take place, if the wrongdoing was intended to, and did, procure the unavailability of the declarant as a witness.".

SEC. 114. INCREASED PENALTIES FOR CRIMINAL USE OF FIREARMS IN CRIMES OF VIOLENCE AND DRUG TRAFFICKING.

(a) IN GENERAL.—Section 924(c)(1)(A) of title 18, United States Code, is amended—

(1) in paragraph (1)(A)—

(A) by striking ''shall'' and inserting ''or conspires to commit any of the above acts, shall, for each instance in which the firearm is used, carried, or possessed'';

(B) in clause (i), by striking ''5 years'' and inserting ''7 years''; and

(C) by striking clauses (ii) and (iii) and inserting the following:

''(ii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 15 years; and

''(iii) if the firearm is used to wound, injure, or maim another person, be sentenced to a term of imprisonment of not less than 20 years.''; and

(2) by striking paragraph (4).

(b) CONFORMING AMENDMENT.—Section 924 of title 18, United States Code, is amended by striking subsection (o).

SEC. 115. TRANSFER OF JUVENILES.

The 4th undesignated paragraph of section 5032 of title 18, United States Code, is amended—

(1) by striking ''A juvenile'' where it appears at the beginning of the paragraph and inserting ''Ex-

1 cept as otherwise provided in this chapter, a juve-
2 nile'' ;
3 (2) by striking ''as an adult, except that, with''
4 and inserting ''as an adult. With''; and
5 (3) by striking ''However, a juvenile'' and all
6 that follows through ''criminal prosecution.'' at the
7 end of the paragraph and inserting ''The Attorney
8 General may prosecute as an adult a juvenile who is
9 alleged to have committed an act after that juve-
10 nile's 16th birthday which if committed by an adult
11 would be a crime of violence that is a felony, an of-
12 fense described in subsection (d), (i), (j), (k), (o),
13 (p), (q), (u), or (x) of section 922 (relating to unlaw-
14 ful acts), or subsection (b), (c), (g), (h), (k), (l), (m),
15 or (n) of section 924 (relating to penalties), section
16 930 (relating to possession of firearms and dan-
17 gerous weapons in Federal facilities), or section 931
18 (relating to purchase, ownership, or possession of
19 body armor by violent felons). The decision whether
20 or not to prosecute a juvenile as an adult under the
21 immediately preceding sentence is not subject to ju-
22 dicial review in any court. In a prosecution under
23 that sentence, the juvenile may be prosecuted and
24 convicted as an adult for any other offense which is
25 properly joined under the Federal Rules of Criminal

Procedure, and may also be convicted as an adult of any lesser included offense.''.

TITLE II—INCREASED FEDERAL RESOURCES TO DETER AND PREVENT AT-RISK YOUTH FROM JOINING ILLEGAL STREET GANGS

SEC. 201. DESIGNATION OF AND ASSISTANCE FOR "HIGH INTENSITY" INTERSTATE GANG ACTIVITY AREAS.

(a) DEFINITIONS.—In this section the following definitions shall apply:

(1) GOVERNOR.—The term ''Governor'' means a Governor of a State or the Mayor of the District of Columbia.

(2) HIGH INTENSITY INTERSTATE GANG ACTIVITY AREA.—The term ''high intensity interstate gang activity area'' means an area within a State that is designated as a high intensity interstate gang activity area under subsection (b)(1).

(3) STATE.—The term ''State'' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

1 (b) HIGH INTENSITY INTERSTATE GANG ACTIVITY
2 AREAS.—
3 (1) DESIGNATION.—The Attorney General,
4 after consultation with the Governors of appropriate
5 States, may designate as high intensity interstate
6 gang activity areas, specific areas that are located
7 within 1 or more States.
8 (2) ASSISTANCE.—In order to provide Federal
9 assistance to high intensity interstate gang activity
10 areas, the Attorney General shall—
11 (A) establish criminal street gang enforce-
12 ment teams, consisting of Federal, State, and
13 local law enforcement authorities, for the co-
14 ordinated investigation, disruption, apprehen-
15 sion, and prosecution of criminal street gangs
16 and offenders in each high intensity interstate
17 gang activity area;
18 (B) direct the reassignment or detailing
19 from any Federal department or agency (sub-
20 ject to the approval of the head of that depart-
21 ment or agency, in the case of a department or
22 agency other than the Department of Justice)
23 of personnel to each criminal street gang en-
24 forcement team;

(C) provide all necessary funding for the operation of the criminal street gang enforcement team in each high intensity interstate gang activity area; and

(D) provide all necessary funding for national and regional meetings of criminal street gang enforcement teams, and all other related organizations, as needed, to ensure effective operation of such teams through the sharing of intelligence, best practices and for any other related purpose.

(3) COMPOSITION OF CRIMINAL STREET GANG ENFORCEMENT TEAM.—The team established pursuant to paragraph (2)(A) shall consist of agents and officers, where feasible, from—

(A) the Federal Bureau of Investigation;

(B) the Drug Enforcement Administration;

(C) the Bureau of Alcohol, Tobacco, Firearms, and Explosives;

(D) the United States Marshals Service;

(E) the Directorate of Border and Transportation Security of the Department of Homeland Security;

(F) the Department of Housing and Urban Development;

(G) State and local law enforcement; and

(H) Federal, State, and local prosecutors.

(4) CRITERIA FOR DESIGNATION.—In considering an area for designation as a high intensity interstate gang activity area under this section, the Attorney General shall consider—

(A) the current and predicted levels of gang crime activity in the area;

(B) the extent to which violent crime in the area appears to be related to criminal street gang activity, such as drug trafficking, murder, robbery, assaults, carjacking, arson, kidnapping, extortion, and other criminal activity;

(C) the extent to which State and local law enforcement agencies have committed resources to—

(i) respond to the gang crime problem; and

(ii) participate in a gang enforcement team;

(D) the extent to which a significant increase in the allocation of Federal resources would enhance local response to the gang crime activities in the area; and

(E) any other criteria that the Attorney General considers to be appropriate.

(c) ADDITIONAL ASSISTANT U.S. ATTORNEYS.—The Attorney General is authorized to hire 94 additional Assistant United States attorneys to carry out the provisions of this section. Each attorney hired under this subsection shall be assigned to a high intensity interstate gang activity area.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) $50,000,000 for each of the fiscal years 2006 through 2010 to carry out subsection (b); and

(2) $7,500,000 for each of the fiscal years 2006 through 2010 to carry out subsection (c).

SEC. 202. GRANTS TO STATE AND LOCAL PROSECUTORS TO COMBAT VIOLENT CRIME AND TO PROTECT WITNESSES AND VICTIMS OF CRIMES.

(a) IN GENERAL.—Section 31702 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13862) is amended —

(1) in paragraph (3), by striking ''and'' at the end;

(2) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(5) to hire additional prosecutors to—

"(A) allow more cases to be prosecuted; and

"(B) reduce backlogs;

"(6) to fund technology, equipment, and training for prosecutors and law enforcement in order to increase accurate identification of gang members and violent offenders, and to maintain databases with such information to facilitate coordination among law enforcement and prosecutors; and

"(7) to fund technology, equipment, and training for prosecutors to increase the accurate identification and successful prosecution of young violent offenders.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 31707 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13867) is amended to read as follows:

"SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated $20,000,000 for each of the fiscal years 2006 through 2010 to carry out this subtitle.".

Chairman SENSENBRENNER. And the gentleman from Virginia is recognized for 5 minutes.

Mr. FORBES. Thank you, Mr. Chairman.

Mr. Chairman, I'm offering a substitute amendment to H.R. 1279, which incorporates several technical changes to the original bill as introduced, and I'd like to thank Congressman Wolf for his help in this bill, and also Congressman Gallegly, who has been working on the gang problem for years now and his input in helping to get this bill forward. Let me briefly outline the technical changes that the substitute makes.

First, in Sections 101 and 105 relating to gang crimes and violent crimes and aid of racketeering enterprise, I've substituted "for the purpose of" for "in order to" to ensure that those provisions are broadly construed to address the prohibited motive for gang crime or violent crime in aid of racketeering enterprise.

Second, Section 101 is revised to add civil forfeiture of property used or acquired in relation to gang crimes, added gang crimes as a predicate money-laundering offense, and added some predicate firearms offenses when committed in relation to furthering gangs' illegal activities; modified Section 103(b) to add an interstate commerce element to that offense.

Fourth, we modified Section 104, the murder for hire statute, to conspiracies to commit kidnapping, aggravated sexual assault, or maiming.

Five, modified Section 105 to broaden venue for prosecutions of VICAR cases.

And, six, modified Section 109 relating to offenses for which a rebuttable presumption shall exist for detention prior to trial.

Mr. Chairman, I move the substitute amendment, and I yield back my time.

Chairman SENSENBRENNER. Are there any second-degree amendments to the amendment in the nature of a substitute? The gentleman from California, Mr. Schiff?

Mr. SCHIFF. Mr. Chairman, I have an amendment in the nature of a substitute to the amendment in the nature of a substitute.

Chairman SENSENBRENNER. The clerk will report the amendment in the nature of a substitute to the amendment in the nature of a substitute.

The CLERK. Amendment in the nature of a substitute to the amendment in the nature of a substitute to H.R. 1279, offered by Mr. Schiff of California. Strike all after the enacting——

Chairman SENSENBRENNER. Without objection, the amendment in the nature of a substitute to the amendment in the nature of a substitute is considered as read.

[The amendment in the nature of a substitute follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1279 OFFERED BY MR. SCHIFF OF CALIFORNIA

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 "Gang Prevention and Effective Deterrence Act of 2005".

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

Sec. 1. Short title; table of contents.

TITLE I—CRIMINAL STREET GANG ABATEMENT ACT

Sec. 100. Findings.

Subtitle A—Criminal Law Reforms and Enhanced Penalties to Deter and Punish Illegal Street Gang Activity

Sec. 101. Solicitation or recruitment of persons in criminal street gang activity.
Sec. 102. Criminal street gangs.
Sec. 103. Violent crimes in furtherance or in aid of criminal street gangs.
Sec. 104. Interstate and foreign travel or transportation in aid of criminal street gangs.
Sec. 105. Amendments relating to violent crime in areas of exclusive Federal jurisdiction.
Sec. 106. Increased penalties for use of interstate commerce facilities in the commission of murder-for-hire and other felony crimes of violence.
Sec. 107. Increased penalties for violent crimes in aid of racketeering activity.
Sec. 108. Murder and other violent crimes committed during and in relation to a drug trafficking crime.

Subtitle B—Increased Federal Resources to Deter and Prevent At-risk Youth From Joining Illegal Street Gangs

Sec. 110. Designation of and assistance for "high intensity" interstate gang activity areas.

Sec. 111. Enhancement of project safe neighborhoods initiative to improve enforcement of criminal laws against violent gangs.
Sec. 112. Additional resources needed by the Federal Bureau of Investigation to investigate and prosecute violent criminal street gangs.
Sec. 113. Grants to State and local prosecutors to combat violent crime and to protect witnesses and victims of crimes.
Sec. 114. Reauthorize the gang resistance education and training projects program.

TITLE II—VIOLENT CRIME REFORMS NEEDED TO DETER AND PREVENT ILLEGAL GANG CRIME

Sec. 201. Multiple interstate murder.
Sec. 202. Expansion of rebuttable presumption against release of persons charged with firearms offenses.
Sec. 203. Venue in capital cases.
Sec. 204. Statute of limitations for violent crime.
Sec. 205. Predicate crimes for authorization of interception of wire, oral, and electronic communications.
Sec. 206. Clarification to hearsay exception for forfeiture by wrongdoing.
Sec. 207. Clarification of venue for retaliation against a witness.
Sec. 208. Amendment of sentencing guidelines relating to certain gang and violent crimes.
Sec. 209. Increased penalties for criminal use of firearms in crimes of violence and drug trafficking.
Sec. 210. Possession of firearms by dangerous felons.
Sec. 211. Conforming amendment.

TITLE III—JUVENILE CRIME REFORM FOR VIOLENT OFFENDERS

Sec. 301. Treatment of Federal juvenile offenders.
Sec. 302. Notification after arrest.
Sec. 303. Release and detention prior to disposition.
Sec. 304. Speedy trial.
Sec. 305. Federal sentencing guidelines.

TITLE I—CRIMINAL STREET GANG ABATEMENT ACT

SEC. 100. FINDINGS.

Congress finds that—

(1) violent crime and drug trafficking are pervasive problems at the national, State, and local level;

(2) the crime rate is exacerbated by the association of persons in gangs to commit acts of violence and drug offenses;

(3) according to the most recent National Drug Threat Assessment, criminal street gangs are responsible for the distribution of much of the cocaine, methamphetamine, heroin, and other illegal drugs being distributed in rural and urban communities throughout the United States;

(4) gangs commit acts of violence or drug offenses for numerous motives, such as membership in or loyalty to the gang, for protecting gang territory, and for profit;

(5) gang presence has a pernicious effect on the free flow of commerce in local businesses and directly affects the freedom and security of communities plagued by gang activity;

(6) gangs often recruit and utilize minors to engage in acts of violence and other serious offenses out of a belief that the criminal justice systems are more lenient on juvenile offenders;

(7) gangs often intimidate and threaten witnesses to prevent successful prosecutions;

(8) gang recruitment can be deterred through increased vigilance, strong criminal penalties, equal

partnerships with State and local law enforcement, and proactive intervention efforts, particularly targeted at juveniles, prior to gang involvement;

(9) State and local prosecutors, in hearings before the Committee on the Judiciary of the Senate, enlisted the help of Congress in the prevention, investigation, and prosecution of gang crimes and in the protection of witnesses and victims of gang crimes; and

(10) because State and local prosecutors and law enforcement have the expertise, experience, and connection to the community that is needed to combat gang violence, consultation and coordination between Federal, State, and local law enforcement is critical to the successful prosecutions of criminal street gangs.

Subtitle A—Criminal Law Reforms and Enhanced Penalties to Deter and Punish Illegal Street Gang Activity

SEC. 101. SOLICITATION OR RECRUITMENT OF PERSONS IN CRIMINAL STREET GANG ACTIVITY.

Chapter 26 of title 18, United States Code, is amended by adding at the end the following:

"§ 522. Recruitment of persons to participate in a criminal street gang

"(a) PROHIBITED ACTS.—It shall be unlawful for any person to recruit, employ, solicit, induce, command, or cause another person to be or remain as a member of a criminal street gang, or conspire to do so, with the intent to cause that person to participate in an offense described in section 521(a).

"(b) DEFINITION.—In this section:

"(1) CRIMINAL STREET GANG.—The term 'criminal street gang' shall have the same meaning as in section 521(a) of this title.

"(2) MINOR.—The term 'minor' means a person who is less than 18 years of age.

"(c) PENALTIES.—Any person who violates subsection (a) shall—

"(1) be imprisoned not more than 5 years, fined under this title, or both; or

"(2) if the person recruited, solicited, induced, commanded, or caused to participate or remain in a criminal street gang is under the age of 18—

"(A) be imprisoned for not more than 10 years, fined under this title, or both; and

"(B) at the discretion of the sentencing judge, be liable for any costs incurred by the Federal Government, or by any State or local

government, for housing, maintaining, and treating the person until the person attains the age of 18 years.''.

SEC. 102. CRIMINAL STREET GANGS.

(a) CRIMINAL STREET GANG PROSECUTIONS.—Section 521 of title 18, United States Code, is amended to read as follows:

"§ 521. Criminal street gang prosecutions

''(a) DEFINITIONS.—As used in this chapter:

''(1) CRIMINAL STREET GANG.—The term 'criminal street gang' means a formal or informal group, club, organization, or association of 3 or more individuals, who individually, jointly, or in combination, have committed or attempted to commit for the direct or indirect benefit of, at the direction of, in furtherance of, or in association with the group, club organization, or association at least 2 separate acts, each of which is a predicate gang crime, 1 of which occurs after the date of enactment of the Gang Prevention and Effective Deterrence Act of 2004, and the last of which occurs not later than 10 years (excluding any period of imprisonment) after the commission of a prior predicate gang crime, and 1 predicate gang crime is a crime of violence or involves manufacturing, importing, distrib-

uting, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemicals (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) provided that the activities of the criminal street gang affect interstate or foreign commerce, or involve the use of any facility of, or travel in, interstate or foreign commerce.

"(2) PREDICATE GANG CRIME.—The term 'predicate gang crime' means—

"(A) any act, threat, conspiracy, or attempted act, which is chargeable under Federal or State law and punishable by imprisonment for more than 1 year involving—

"(i) murder;

"(ii) manslaughter;

"(iii) maiming;

"(iv) assault with a dangerous weapon;

"(v) assault resulting in serious bodily injury;

"(vi) gambling;

"(vii) kidnapping;

"(viii) robbery;

"(ix) extortion;

"(x) arson;

"(xi) obstruction of justice;

"(xii) tampering with or retaliating against a witness, victim, or informant;

"(xiii) burglary;

"(xiv) sexual assault (which means any offense that involves conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction);

"(xv) carjacking; or

"(xvi) manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemicals (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—

"(i) section 844 (relating to explosive materials);

"(ii) section 922(g)(1) (where the underlying conviction is a violent felony (as defined in section 924(e)(2)(B) of this

title) or is a serious drug offense (as defined in section 924(e)(2)(A) of this title));

''(iii) subsection (a)(2), (b), (c), (g), or (h) of section 924 (relating to receipt, possession, and transfer of firearms);

''(iv) sections 1028 and 1029 (relating to fraud and related activity in connection with identification documents or access devices);

''(v) section 1503 (relating to obstruction of justice);

''(vi) section 1510 (relating to obstruction of criminal investigations);

''(vii) section 1512 (relating to tampering with a witness, victim, or informant), or section 1513 (relating to retaliating against a witness, victim, or informant);

''(viii) section 1708 (relating to theft of stolen mail matter);

''(ix) section 1951 (relating to interference with commerce, robbery or extortion);

''(x) section 1952 (relating to racketeering);

"(xi) section 1956 (relating to the laundering of monetary instruments);

"(xii) section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity);

"(xiii) section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire); or

"(xiv) sections 2312 through 2315 (relating to interstate transportation of stolen motor vehicles or stolen property); or

"(C) any act involving the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose).

"(3) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

"(b) PARTICIPATION IN CRIMINAL STREET GANGS.—It shall be unlawful—

"(1) to commit, or conspire or attempt to commit a predicate crime—

"(A) in furtherance or in aid of the activities of a criminal street gang;

"(B) for the purpose of gaining entrance to or maintaining or increasing position in such a gang; or

"(C) for the direct or indirect benefit of the criminal street gang, or in association with the criminal street gang; or

"(2) 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—

"(A) in furtherance or in aid of the activities of a criminal street gang;

"(B) for the purpose of gaining entrance to or maintaining or increasing position in such a gang; or

"(C) for the direct or indirect benefit or the criminal street gang, or in association with the criminal street gang.

"(c) PENALTIES.—Whoever violates paragraph (1) or (2) of subsection (b)—

"(1) shall be fined under this title, imprisoned for not more than 30 years, or both; and

"(2) if the violation is based on a predicate gang crime for which the maximum penalty includes life imprisonment, shall be fined under this title, imprisoned for any term of years or for life, or both.

"(d) FORFEITURE.—

"(1) IN GENERAL.—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

"(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

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

"(2) CRIMINAL PROCEDURES.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

"(3) CIVIL PROCEDURES.—Property subject to forfeiture under paragraph (1) may be forfeited in

a civil case pursuant to the procedures set forth in chapter 46 of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 26 of title 18, United States Code, is amended to read as follows:

''521. Criminal street gang prosecutions.''.

SEC. 103. VIOLENT CRIMES IN FURTHERANCE OR IN AID OF CRIMINAL STREET GANGS.

(a) VIOLENT CRIMES AND CRIMINAL STREET GANG RECRUITMENT.—Chapter 26 of title 18, United States Code, as amended by section 101, is amended by adding at the end the following:

''§ 523. Violent crimes in furtherance or in aid of a criminal street gang

''(a) Any person who, for the purpose of gaining entrance to or maintaining or increasing position in, or in furtherance or in aid of, or for the direct or indirect benefit of, or in association with a criminal street gang, or as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value to or from a criminal street gang, murders, kidnaps, sexually assaults (which means any offense that involved conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction), maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, commits

any other crime of violence or threatens to commit a crime of violence against any individual, or attempts or conspires to do so, shall be punished, in addition and consecutive to the punishment provided for any other violation of this chapter—

"(1) for murder, by death or imprisonment for any term of years or for life, a fine under this title, or both;

"(2) for kidnapping or sexual assault, by imprisonment for any term of years or for life, a fine under this title, or both;

"(3) for maiming, by imprisonment for any term of years or for life, a fine under this title, or both;

"(4) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 30 years, a fine under this title, or both;

"(5) for any other crime of violence, by imprisonment for not more than 20 years, a fine under this title, or both;

"(6) for threatening to commit a crime of violence specified in paragraphs (1) through (4), by imprisonment for not more than 10 years, a fine under this title, or both;

"(7) for attempting or conspiring to commit murder, kidnapping, maiming, or sexual assault, by imprisonment for not more than 30 years, a fine under this title, or both; and

"(8) for attempting or conspiring to commit a crime involving assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 20 years, a fine under this title, or both.

"(b) DEFINITION.—In this section, the term 'criminal street gang' has the same meaning as in section 521 of this title.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 26 of title 18, United States Code, is amended by adding at the end the following:

"522. Recruitment of persons to participate in a criminal street gang.
"523. Violent crimes in furtherance of a criminal street gang.".

SEC. 104. INTERSTATE AND FOREIGN TRAVEL OR TRANSPORTATION IN AID OF RACKETEERING ENTERPRISES AND CRIMINAL STREET GANGS.

Section 1952 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "and thereafter performs or attempts to perform" and inserting "and

thereafter performs, or attempts or conspires to perform''; and

(B) by striking ''5 years'' and inserting ''10 years'';

(2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(3) by inserting after subsection (a) the following:

''(b) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with the intent to kill, assault, bribe, force, intimidate, or threaten any person, to delay or influence the testimony of, or prevent from testifying, a witness in a State criminal proceeding and thereafter performs, or attempts or conspires to perform, an act described in this subsection, shall—

''(1) be fined under this title, imprisoned for any term of years, or both; and

''(2) if death results, be punished by imprisonment for any term of years or for life.''; and

(4) in subsection (c)(2), as redesignated under subparagraph (B), by inserting ''intimidation of, or retaliation against, a witness, victim, juror, or informant,'' after ''extortion, bribery,''.

SEC. 105. AMENDMENTS RELATING TO VIOLENT CRIME IN AREAS OF EXCLUSIVE FEDERAL JURISDICTION.

(a) ASSAULT WITHIN MARITIME AND TERRITORIAL JURISDICTION OF UNITED STATES.—Section 113(a)(3) of title 18, United States Code, is amended by striking ''with intent to do bodily harm, and without just cause or excuse,''.

(b) MANSLAUGHTER.—Section 1112(b) of title 18, United States Code, is amended by—

(1) striking ''ten years'' and inserting ''20 years''; and

(2) striking ''six years'' and inserting ''10 years''.

(c) OFFENSES COMMITTED WITHIN INDIAN COUNTRY.—Section 1153(a) of title 18, United States Code, is amended by inserting ''an offense for which the maximum statutory term of imprisonment under section 1363 is greater than 5 years,'' after ''a felony under chapter 109A,''.

(d) RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS.—Section 1961(1) of title 18, United States Code, is amended—

(1) in subparagraph (A), by inserting '', or would have been so chargeable if the act or threat (other than lawful forms of gambling) had not been

committed in Indian country (as defined in section 1151) or in any other area of exclusive Federal jurisdiction,'' after ''chargeable under State law''; and

(2) in subparagraph (B), by inserting ''section 1123 (relating to multiple interstate murder),'' after ''section 1084 (relating to the transmission of wagering information),''.

(e) CARJACKING.—Section 2119 of title 18, United States Code, is amended by striking '', with the intent to cause death or serious bodily harm''.

(f) CLARIFICATION OF ILLEGAL GUN TRANSFERS TO COMMIT DRUG TRAFFICKING CRIME OR CRIMES OF VIOLENCE.—Section 924(h) of title 18, United States Code, is amended to read as follows:

''(h) ILLEGAL TRANSFERS.—Whoever knowingly transfers a firearm, knowing that the firearm will be used to commit, or possessed in furtherance of, a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)), shall be imprisoned for not more than 10 years, fined under this title, or both.''.

(g) AMENDMENT OF SPECIAL SENTENCING PROVISION.—Section 3582(d) of title 18, United States Code, is amended—

(1) by striking ''chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title'' and inserting ''section 521 (criminal street gangs) or 522 (violent crimes in furtherance or in aid of criminal street gangs), in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations),''; and

(2) by inserting ''a criminal street gang or'' before ''an illegal enterprise''.

(h) CONFORMING AMENDMENT RELATING TO ORDERS FOR RESTITUTION.—Section 3663(c)(4) of title 18, United States Code, is amended by striking ''chapter 46 or chapter 96 of this title'' and inserting ''section 521, under chapter 46 or 96,''.

(i) SPECIAL PROVISION FOR INDIAN COUNTRY.—No person subject to the criminal jurisdiction of an Indian tribal government shall be subject to section 3559(e) of title 18, United States Code, for any offense for which Federal jurisdiction is solely predicated on Indian country (as defined in section 1151 of such title 18) and which occurs within the boundaries of such Indian country unless the governing body of such Indian tribe elects to subject the persons under the criminal jurisdiction of the tribe to section 3559(e) of such title 18.

SEC. 106. INCREASED PENALTIES FOR USE OF INTERSTATE COMMERCE FACILITIES IN THE COMMISSION OF MURDER-FOR-HIRE AND OTHER FELONY CRIMES OF VIOLENCE.

Section 1958 of title 18, United States Code, is amended—

(1) by striking the header and inserting the following:

"§ 1958. Use of interstate commerce facilities in the Commission of murder-for-hire and other felony crimes of violence";

and

(2) by amending subsection (a) to read as follows:

"(a) Any person who travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility in interstate or foreign commerce, with intent that a murder or other felony crime of violence be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, or who conspires to do so—

"(1) may be fined under this title and shall be imprisoned not more than 20 years;

"(2) if personal injury results, may be fined under this title and shall be imprisoned for not more than 30 years; and

"(3) if death results, may be fined under this title, and shall be imprisoned for any term of years or for life.".

SEC. 107. INCREASED PENALTIES FOR VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

Section 1959(a) of title 18, United States Code, is amended to read as follows:

"(a) Any person who, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, or in furtherance or in aid of an enterprise engaged in racketeering activity, murders, kidnaps, sexually assaults (which means any offense that involved conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction), maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires to do so, shall be

1 punished, in addition and consecutive to the punishment
2 provided for any other violation of this chapter—
3 "(1) for murder, by death or imprisonment for
4 any term of years or for life, a fine under this title,
5 or both;
6 "(2) for kidnapping or sexual assault, by im-
7 prisonment for any term of years or for life, a fine
8 under this title, or both;
9 "(3) for maiming, by imprisonment for any
10 term of years or for life, a fine under this title, or
11 both;
12 "(4) for assault with a dangerous weapon or as-
13 sault resulting in serious bodily injury, by imprison-
14 ment for not more than 30 years, a fine under this
15 title, or both;
16 "(5) for threatening to commit a crime of vio-
17 lence, by imprisonment for not more than 10 years,
18 a fine under this title, or both;
19 "(6) for attempting or conspiring to commit
20 murder, kidnapping, maiming, or sexual assault, by
21 imprisonment for not more than 30 years, a fine
22 under this title, or both; and
23 "(7) for attempting or conspiring to commit as-
24 sault with a dangerous weapon or assault which
25 would result in serious bodily injury, by imprison-

ment for not more than 20 years, a fine under this title, or both.''.

SEC. 108. MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME.

(a) IN GENERAL.—Part D of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end the following:

''MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME

''SEC. 424. (a) IN GENERAL.—Any person who, during and in relation to any drug trafficking crime, murders, kidnaps, sexually assaults (which means any offense that involved conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction), maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, commits any other crime of violence or threatens to commit a crime of violence against, any individual, or attempts or conspires to do so, shall be punished, in addition and consecutive to the punishment provided for the drug trafficking crime—

''(1) in the case of murder, by death or imprisonment for any term of years or for life, a fine under title 18, United States Code, or both;

"(2) in the case of kidnapping or sexual assault by imprisonment for any term of years or for life, a fine under such title 18, or both;

"(3) in the case of maiming, by imprisonment for any term of years or for life, a fine under such title 18, or both;

"(4) in the case of assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment not more than 30 years, a fine under such title 18, or both;

"(5) in the case of committing any other crime of violence, by imprisonment for not more than 20 years, a fine under this title, or both;

"(6) in the case of threatening to commit a crime of violence specified in paragraphs (1) through (4), by imprisonment for not more than 10 years, a fine under such title 18, or both;

"(7) in the case of attempting or conspiring to commit murder, kidnapping, maiming, or sexual assault, by imprisonment for not more than 30 years, a fine under such title 18, or both; and

"(8) in the case of attempting or conspiring to commit a crime involving assault with a dangerous weapon or assault resulting in serious bodily injury,

by imprisonment for not more than 20 years, a fine under such title 18, or both.

"(b) VENUE.—A prosecution for a violation of this section may be brought in—

"(1) the judicial district in which the murder or other crime of violence occurred; or

"(2) any judicial district in which the drug trafficking crime may be prosecuted.

"(c) APPLICABLE DEATH PENALTY PROCEDURES.—A defendant who has been found guilty of an offense under this section for which a sentence of death is provided shall be subject to the provisions of chapter 228 of title 18, United States Code.

"(d) DEFINITIONS.—As used in this section—

"(1) the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code; and

"(2) the term 'drug trafficking crime' has the meaning given that term in section 924(c)(2) of title 18, United States Code.".

(b) CLERICAL AMENDMENT.—The table of contents for the Controlled Substances Act is amended by inserting after the item relating to section 423, the following:

"Sec. 424. Murder and other violent crimes committed during and in relation to a drug trafficking crime.".

Subtitle B—Increased Federal Resources to Suppress, Deter, and Prevent At-risk Youth From Joining Illegal Street Gangs

SEC. 110. DESIGNATION OF AND ASSISTANCE FOR "HIGH INTENSITY" INTERSTATE GANG ACTIVITY AREAS.

(a) DEFINITIONS.—In this section the following definitions shall apply:

(1) GOVERNOR.—The term ''Governor'' means a Governor of a State or the Mayor of the District of Columbia.

(2) HIGH INTENSITY INTERSTATE GANG ACTIVITY AREA.—The term ''high intensity interstate gang activity area'' means an area within a State that is designated as a high intensity interstate gang activity area under subsection (b)(1).

(3) STATE.—The term ''State'' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States. The term ''State'' shall include an ''Indian tribe'', as defined by section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

(b) HIGH INTENSITY INTERSTATE GANG ACTIVITY AREAS.—

(1) DESIGNATION.—The Attorney General, after consultation with the Governors of appropriate States, may designate as high intensity interstate gang activity areas, specific areas that are located within 1 or more States. To the extent that the goals of a high intensity interstate gang activity area (HIIGAA) overlap with the goals of a high intensity drug trafficking area (HIDTA), the Attorney General may merge the 2 areas to serve as a dual-purpose entity. The Attorney General may not make the final designation of a high intensity interstate gang activity area without first consulting with and receiving comment from local elected officials representing communities within the State of the proposed designation.

(2) ASSISTANCE.—In order to provide Federal assistance to high intensity interstate gang activity areas, the Attorney General shall—

(A) establish criminal street gang enforcement teams, consisting of Federal, State, and local law enforcement authorities, for the coordinated investigation, disruption, apprehension, and prosecution of criminal street gangs

and offenders in each high intensity interstate gang activity area;

(B) direct the reassignment or detailing from any Federal department or agency (subject to the approval of the head of that department or agency, in the case of a department or agency other than the Department of Justice) of personnel to each criminal street gang enforcement team; and

(C) provide all necessary funding for the operation of the criminal street gang enforcement team in each high intensity interstate gang activity area.

(3) COMPOSITION OF CRIMINAL STREET GANG ENFORCEMENT TEAM.—The team established pursuant to paragraph (2)(A) shall consist of agents and officers, where feasible, from—

(A) the Bureau of Alcohol, Tobacco, Firearms, and Explosives;

(B) the Department of Homeland Security;

(C) the Department of Housing and Urban Development;

(D) the Drug Enforcement Administration;

(E) the Internal Revenue Service;

(F) the Federal Bureau of Investigation;

(G) the United States Marshal's Service;

(H) the United States Postal Service;

(I) State and local law enforcement; and

(J) Federal, State and local prosecutors.

(4) CRITERIA FOR DESIGNATION.—In considering an area for designation as a high intensity interstate gang activity area under this section, the Attorney General shall consider—

(A) the current and predicted levels of gang crime activity in the area;

(B) the extent to which violent crime in the area appears to be related to criminal street gang activity, such as drug trafficking, murder, robbery, assaults, carjacking, arson, kidnapping, extortion, and other criminal activity;

(C) the extent to which State and local law enforcement agencies have committed resources to—

(i) respond to the gang crime problem; and

(ii) participate in a gang enforcement team;

(D) the extent to which a significant increase in the allocation of Federal resources

1 would enhance local response to the gang crime
2 activities in the area; and
3 (E) any other criteria that the Attorney
4 General considers to be appropriate.
5 (c) AUTHORIZATION OF APPROPRIATIONS.—
6 (1) IN GENERAL.—There are authorized to be
7 appropriated $100,000,000 for each of the fiscal
8 years 2005 to 2009 to carry out this section.
9 (2) USE OF FUNDS.—Of amounts made avail-
10 able under paragraph (1) in each fiscal year—
11 (A) 50 percent shall be used to carry out
12 subsection (b)(2); and
13 (B) 50 percent shall be used to make
14 grants available for community-based programs
15 to provide crime prevention, research, and
16 intervention services that are designed for gang
17 members and at-risk youth in areas designated
18 pursuant to this section as high intensity inter-
19 state gang activity areas.
20 (3) REPORTING REQUIREMENTS.—By February
21 1st of each year, the Attorney General shall provide
22 a report to Congress which describes, for each des-
23 ignated high intensity interstate gang activity
24 area—

(A) the specific long-term and short-term goals and objectives;

(B) the measurements used to evaluate the performance of the high intensity interstate gang activity area in achieving the long-term and short-term goals;

(C) the age, composition, and membership of ''gangs'';

(D) the number and nature of crimes committed by ''gangs''; and

(E) the definition of the term ''gang'' used to compile this report.

SEC. 111. ENHANCEMENT OF PROJECT SAFE NEIGHBORHOODS INITIATIVE TO IMPROVE ENFORCEMENT OF CRIMINAL LAWS AGAINST VIOLENT GANGS.

(a) IN GENERAL.—While maintaining the focus of Project Safe Neighborhoods as a comprehensive, strategic approach to reducing gun violence in America, the Attorney General is authorized to expand the Project Safe Neighborhoods program to require each United States attorney to—

(1) identify, investigate, and prosecute significant criminal street gangs operating within their district;

(2) coordinate the identification, investigation, and prosecution of criminal street gangs among Federal, State, and local law enforcement agencies; and

(3) coordinate and establish criminal street gang enforcement teams, established under section 110(b), in high intensity interstate gang activity areas within a United States attorney's district.

(b) ADDITIONAL STAFF FOR PROJECT SAFE NEIGHBORHOODS.—

(1) IN GENERAL.—The Attorney General may hire Assistant United States attorneys, non-attorney coordinators, or paralegals to carry out the provisions of this section.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $7,500,000 for each of the fiscal years 2005 through 2009 to carry out this section.

SEC. 112. ADDITIONAL RESOURCES NEEDED BY THE FEDERAL BUREAU OF INVESTIGATION TO INVESTIGATE AND PROSECUTE VIOLENT CRIMINAL STREET GANGS.

(a) RESPONSIBILITIES OF ATTORNEY GENERAL.—The Attorney General is authorized to require the Federal Bureau of Investigation to—

(1) increase funding for the Safe Streets Program; and

(2) support the criminal street gang enforcement teams, established under section 110(b), in designated high intensity interstate gang activity areas.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—In addition to amounts otherwise authorized, there are authorized to be appropriated to the Attorney General $5,000,000 for each of the fiscal years 2005 through 2009 to carry out the Safe Streets Program.

(2) AVAILABILITY.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 113. GRANTS TO PROSECUTORS AND LAW ENFORCEMENT TO COMBAT VIOLENT CRIME AND TO PROTECT WITNESSES AND VICTIMS OF CRIMES.

(a) IN GENERAL.—Section 31702 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13862) is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(5) to hire additional prosecutors to—

''(A) allow more cases to be prosecuted; and

''(B) reduce backlogs;

''(6) to fund technology, equipment, and training for prosecutors and law enforcement in order to increase accurate identification of gang members and violent offenders, and to maintain databases with such information to facilitate coordination among law enforcement and prosecutors; and

''(7) to create and expand witness and victim protection programs to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 31707 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13867) is amended to read as follows:

''SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There are authorized to be appropriated $20,000,000 for each of the fiscal years 2005 through 2009 to carry out this subtitle.

"(b) USE OF FUNDS.—Of the amounts made available under subsection (a), in each fiscal year 60 percent shall be used to carry out section 31702(7) to create and expand witness and victim protection programs to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes.".

SEC. 114. REAUTHORIZE THE GANG RESISTANCE EDUCATION AND TRAINING PROJECTS PROGRAM.

Section 32401(b) of the Violent Crime Control Act of 1994 (42 U.S.C. 13921(b)) is amended by striking paragraphs (1) through (6) and inserting the following:

"(1) $20,000,000 for fiscal year 2005;

"(2) $20,000,000 for fiscal year 2006;

"(3) $20,000,000 for fiscal year 2007;

"(4) $20,000,000 for fiscal year 2008; and

"(5) $20,000,000 for fiscal year 2009.".

TITLE II—VIOLENT CRIME REFORMS NEEDED TO DETER AND PREVENT ILLEGAL GANG CRIME

SEC. 201. MULTIPLE INTERSTATE MURDER.

Chapter 51 of title 18, United States Code, is amended by adding at the end of the new section:

"§ 1123. Multiple murders in furtherance of common scheme of purpose

"(a) IN GENERAL.—Whoever, having committed murder in violation of the laws of any State or the United States, moves or travels in interstate or foreign commerce with the intent to commit one or more murders in violation of the laws of any State or the United States, and thereafter commits one or more murders in violation of the laws of any State or the United States in furtherance of a common scheme or purpose, or who conspires to do so—

"(1) shall be fined under this title, imprisoned for not more than 30 years, or both, for each murder; and

"(2) if death results, may be fined not more than $250,000 under this title, and shall be punished by death or imprisoned for any term of years or for life for each murder.

"(b) DEFINITION.—The term 'State' means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

SEC. 202. EXPANSION OF REBUTTABLE PRESUMPTION AGAINST RELEASE OF PERSONS CHARGED WITH FIREARMS OFFENSES.

Section 3142 of title 18, United States Code, is amended—

(1) in subsection (e), in the matter following paragraph (3)—

(A) by inserting ''an offense under section 922(g)(1) where the underlying conviction is a serious drug offense as defined in section 924(e)(2)(A) of title 18, United States Code, for which a period of not more than 10 years has elapsed since the date of the conviction or the release of the person from imprisonment, whichever is later, or is a serious violent felony as defined in section 3559(c)(2)(F) of title 18, United States Code,'' after ''that the person committed''; and

(B) by inserting ''or'' before ''the Maritime'';

(2) in subsection (f)(1)—

(A) in subparagraph (C), by striking ''or'' at the end; and

(B) by adding at the end the following:

''(E) an offense under section 922(g); or''; and

(3) in subsection (g), by amending paragraph (1) to read as follows:

''(1) the nature and circumstances of the offense charged, including whether the offense is a

crime of violence, or involves a drug, firearm, explosive, or destructive devise;''.

SEC. 203. VENUE IN CAPITAL CASES.

Section 3235 of title 18, United States Code, is amended to read as follows:

''§ 3235. Venue in capital cases

''(a) The trial for any offense punishable by death shall be held in the district where the offense was committed or in any district in which the offense began, continued, or was completed.

''(b) If the offense, or related conduct, under subsection (a) involves activities which affect interstate or foreign commerce, or the importation of an object or person into the United States, such offense may be prosecuted in any district in which those activities occurred.''.

SEC. 204. STATUTE OF LIMITATIONS FOR VIOLENT CRIME.

(a) IN GENERAL.—Chapter 214 of title 18, United States Code, is amended by adding at the end the following:

''§ 3297. Violent crime offenses

''Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any noncapital felony, crime of violence (as defined in section 16), including any racketeering activity or gang crime which

1 involves any violent crime, unless the indictment is found
2 or the information is instituted by the later of—
3 "(1) 10 years after the date on which the al-
4 leged violation occurred;
5 "(2) 10 years after the date on which the con-
6 tinuing offense was completed; or
7 "(3) 8 years after the date on which the alleged
8 violation was first discovered.".
9 (b) CLERICAL AMENDMENT.—The table of sections
10 at the beginning of chapter 214 of title 18, United States
11 Code, is amended by adding at the end the following:
"3296. Violent crime offenses.".

12 **SEC. 205. PREDICATE CRIMES FOR AUTHORIZATION OF**
13 **INTERCEPTION OF WIRE, ORAL, AND ELEC-**
14 **TRONIC COMMUNICATIONS.**

15 Section 2516(1) of title 18, United States Code, is
16 amended—
17 (1) in paragraph (q), by striking "or'.";
18 (2) by redesignating paragraph (r) as para-
19 graph (u); and
20 (3) by inserting after paragraph (q) the fol-
21 lowing:
22 "(r) any violation of section 424 of the Con-
23 trolled Substances Act (relating to murder and other
24 violent crimes in furtherance of a drug trafficking
25 crime);

"(s) any violation of 1123 of title 18, United States Code (relating to multiple interstate murder);

"(t) any violation of section 521, 522, or 523 (relating to criminal street gangs); or".

SEC. 206. CLARIFICATION TO HEARSAY EXCEPTION FOR FORFEITURE BY WRONGDOING.

Rule 804(b)(6) of the Federal Rules of Evidence is amended to read as follows:

"(6) FORFEITURE BY WRONGDOING.—A statement offered against a party that has engaged, acquiesced, or conspired, in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.".

SEC. 207. CLARIFICATION OF VENUE FOR RETALIATION AGAINST A WITNESS.

Section 1513 of title 18, United States Code, is amended by—

(1) redesignating subsection (e) beginning with "Whoever conspires" as subsection (f); and

(2) adding at the end the following:

"(g) A prosecution under this section may be brought in the district in which the official proceeding (whether or not pending, about to be instituted or was completed) was intended to be affected or was completed, or in which the conduct constituting the alleged offense occurred.".

SEC. 208. AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN GANG AND VIOLENT CRIMES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements to conform to the provisions of title I and this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) establish new guidelines and policy statements, as warranted, in order to implement new or revised criminal offenses created under this title;

(2) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious gang and violent crimes, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(3) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for gang and violent crimes—

(i) are sufficient to deter and punish such offenses; and

(ii) are adequate in view of the statutory increases in penalties contained in the Act; and

(B) whether any existing or new specific offense characteristics should be added to reflect congressional intent to increase gang and violent crime penalties, punish offenders, and deter gang and violent crime;

(4) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(5) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(6) make any necessary conforming changes to the sentencing guidelines; and

(7) assure that the guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.

SEC. 209. INCREASED PENALTIES FOR CRIMINAL USE OF FIREARMS IN CRIMES OF VIOLENCE AND DRUG TRAFFICKING.

(a) IN GENERAL.—Section 924(c)(1)(A) of title 18, United States Code, is amended—

(1) by striking ''shall'' and inserting ''or conspires to commit any of the above acts, shall, for each instance in which the firearm is used, carried, or possessed'';

(2) in clause (i), by striking ''5 years'' and inserting ''7 years''; and

(3) by striking clause (ii).

(b) CONFORMING AMENDMENTS.—Section 924 of title 18, United States Code, is amended—

(1) in subsection (c), by striking paragraph (4); and

(2) by striking subsection (o).

SEC. 210. POSSESSION OF FIREARMS BY DANGEROUS FELONS.

(a) IN GENERAL.—Section 924(e) of title 18, United States Code, is amended to read as follows:

''(e)(1) In the case of a person who violates section 922(g) of this title and has previously been convicted by any court referred to in section 922(g)(1) for a violent felony or a serious drug offense shall—

"(A) in the case of 1 such prior conviction, where a period of not more than 10 years has elapsed since the date of conviction or release of the person from imprisonment for that conviction, be subject to imprisonment for not more than 15 years, a fine under this title, or both;

"(B) in the case of 2 such prior convictions, committed on occasions different from one another, and where a period of not more than 10 years has elapsed since the date of conviction or release of the person from imprisonment for that conviction, be subject to imprisonment for not more than 20 years, a fine under this title, or both; and

"(C) in the case of 3 such prior convictions, committed on occasions different from one another, be subject to imprisonment for not less than 15 years, a fine under this title, or both, and notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

"(2) As used in this subsection—

"(A) the term 'serious drug offense' means—

"(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Con-

trolled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), punishable by a maximum term of imprisonment of not less than 10 years; or

"(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), punishable by a maximum term of imprisonment of not less than 10 years;

"(B) the term 'violent felony' means any crime punishable by a term of imprisonment exceeding 1 year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by a maximum term of imprisonment for such term if committed by an adult, that—

"(i) has, as an element of the crime or act, the use, attempted use, or threatened use of physical force against the person of another; or

"(ii) is burglary, arson, or extortion, involves the use of explosives, or otherwise in-

volves conduct that presents a serious potential risk of physical injury to another; and

"(C) the term 'conviction' includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.".

(b) AMENDMENT TO SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal Sentencing Guidelines to provide for an appropriate increase in the offense level for violations of section 922(g) of title 18, United States Code, in accordance with section 924(e) of such title 18, as amended by subsection (a).

SEC. 211. CONFORMING AMENDMENT.

The matter before paragraph (1) in section 922(d) of title 18, United States Code, is amended by inserting ", transfer," after "sell".

TITLE III—JUVENILE CRIME REFORM FOR VIOLENT OFFENDERS

SEC. 301. TREATMENT OF FEDERAL JUVENILE OFFENDERS.

(a) IN GENERAL.—Section 5032 of title 18, United States Code, is amended to read as follows:

"§ 5032. Delinquency proceedings in district courts; juveniles tried as adults; transfer for criminal prosecution

"(a) DELINQUENCY PROCEEDINGS IN DISTRICT COURTS.—

"(1) IN GENERAL.—A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed 6 months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that—

"(A) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over that juvenile with respect to such alleged act of juvenile delinquency;

"(B) the State does not have available programs and services adequate for the needs of juveniles; or

"(C) the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act

(21 U.S.C. 841), 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)), section 922(x), or section 924 (b), (g), or (h) of this title, and there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

"(2) FAILURE TO CERTIFY.—If the Attorney General does not certify under paragraph (1), the juvenile shall be surrendered to the appropriate legal authorities of such State.

"(3) FEDERAL PROCEEDINGS.—If an alleged juvenile delinquent is not surrendered to the authorities of a State pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information or as authorized under section 3401(g) of this title, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.

"(b) TRANSFER FOR FEDERAL CRIMINAL PROSECUTION.—

"(1) IN GENERAL.—A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless—

"(A) the juvenile has requested in writing upon advice of counsel to be proceeded against as an adult;

"(B) with respect to a juvenile 15 years and older alleged to have committed an act after his fifteenth birthday which if committed by an adult would be a felony that is a crime of violence or 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), or section 922(x) of this title, or in section 924 (b), (g), or (h) of this title, the Attorney General makes a motion to transfer the criminal prosecution on the basis of the alleged act in the appropriate district court of the United States and the court finds, after hearing, such transfer

1 would be in the interest of justice as provided
2 in paragraph (2); or
3 "(C) with respect to a juvenile 13 years
4 and older alleged to have committed an act
5 after his thirteenth birthday which if committed
6 by an adult would be a felony that is the crime
7 of violence under section 113 (a), (b), (c), 1111,
8 1113, or, if the juvenile possessed a firearm
9 during the offense, an offense under section
10 2111, 2113, 2241(a), or 2241(c), the Attorney
11 General makes a motion to transfer the crimi-
12 nal prosecution on the basis of the alleged act
13 in the appropriate district court of the United
14 States and the court finds, after hearing, such
15 transfer would be in the interest of justice as
16 provided in paragraph (2).
17 Notwithstanding sections 1152 and 1153, no person
18 subject to the criminal jurisdiction of an Indian trib-
19 al government shall be subject to subparagraph (C)
20 for any offense the Federal jurisdiction for which is
21 predicated solely on Indian country (as defined in
22 section 1151), and which has occurred within the
23 boundaries of such Indian country, unless the gov-
24 erning body of the tribe has elected that the pre-

ceding sentence have effect over land and persons subject to its criminal jurisdiction.

"(2) FACTORS.—

"(A) IN GENERAL.—Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer under subparagraph (B) or (C) of paragraph (1), and paragraph (4) of subsection (d), would be in the interest of justice:

"(i) The age and social background of the juvenile.

"(ii) The nature of the alleged offense, including the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities.

"(iii) Whether prosecution of the juvenile as an adult would protect public safety.

"(iv) The extent and nature of the juvenile's prior delinquency record.

"(v) The juvenile's present intellectual development and psychological maturity.

"(vi) The nature of past treatment efforts and the juvenile's response to such efforts.

"(vii) The availability of programs designed to treat the juvenile's behavioral problems.

"(B) NATURE OF THE OFFENSE.—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 in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer.

"(C) NOTICE.—Reasonable notice of the transfer hearing under subparagraph (B) or (C) of paragraph (1) shall be given to the juvenile, the juvenile's parents, guardian, or custodian and to the juvenile's counsel. The juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

"(c) MANDATORY TRANSFER OF JUVENILE 16 OR OLDER.—A juvenile who is alleged to have committed an act on or after his sixteenth birthday, which if committed by an adult would be a felony offense, that has an element thereof the use, attempted use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another, may be used in committing the offense or would be an offense described in section 32, 81, or 2275 or subsection (d), (e), (f), (h), or (i) of section 844 of this title, subsection (d) or (e) or subparagraphs (A), (B), (C), (D), or (E) of subsection (b)(1) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, or 1009, or paragraphs (1), (2), or (3) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b) (1), (2), and (3)), and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this subsection or subsection (b), or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred, upon notification by the United States, to the appropriate district court of the United States for criminal prosecution.

"(d) SIXTEEN AND SEVENTEEN YEAR OLDS CHARGED WITH THE MOST SERIOUS VIOLENT FELONIES.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, a juvenile may be prosecuted as an adult if the juvenile is alleged to have committed, conspired, solicited or attempted to commit, on or after the day the juvenile attains the age of 16 any offense involving—

"(A) murder;

"(B) manslaughter;

"(C) assault with intent to commit murder;

"(D) sexual assault (which means any offense that involves conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction);

"(E) robbery (as described in section 2111, 2113, or 2118);

"(F) carjacking with a dangerous weapon;

"(G) extortion;

"(H) arson;

"(I) firearms use;

"(J) firearms possession (as described in section 924(c);

"(K) drive-by shooting;

"(L) kidnapping;

"(M) maiming;

"(N) assault resulting in serious bodily injury; or

"(O) obstruction of justice (as described in 1512(a)(1)) on or after the day the juvenile attains the age of 16.

"(2) OTHER OFFENSES.—In a prosecution under this subsection the juvenile may be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted as an adult of a lesser included offense.

"(3) REVIEWABILITY.—Except as otherwise provided by this subsection, a determination to approve or not to approve, or to institute or not to institute, a prosecution under this subsection shall not be reviewable in any court.

"(4) PROSECUTION.—(A) In any prosecution of a juvenile under this subsection, upon motion of the defendant, the court in which the criminal charges have been filed shall after a hearing determine whether to issue an order that the defendant should be transferred to juvenile status.

"(B) A motion by a defendant under this paragraph shall not be considered unless filed no later than 30 days after the date on which the defendant initially appears through counsel or expressly waives the right to counsel and elects to proceed pro se.

"(C) The court shall not order the transfer of a defendant to juvenile status under this paragraph unless the defendant establishes by the preponderance of the evidence that removal to juvenile status would be in the interest of justice. In making a determination under this paragraph, the court shall consider the factors specified in subsection (b)(2) of this section.

"(5) ORDER.—An order of the court made in ruling on a motion by a defendant to transfer a defendant to juvenile status under this subsection shall not be a final order for the purpose of enabling an appeal, except that an appeal by the United States shall lie to a court of appeals pursuant to section 3731 of this title from an order of a district court removing a defendant to juvenile status. Upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis. The court of appeals shall give due regard to the opportunity of

the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous, and the court of appeals shall review de novo the district court's application of the law to the facts.

"(e) SIXTEEN AND SEVENTEEN YEAR OLDS CHARGED WITH OTHER SERIOUS VIOLENT FELONIES.—

"(1) IN GENERAL.—Except as provided by subsection (d), a juvenile may be prosecuted as an adult if the juvenile is alleged to have committed an act on or after the day the juvenile attains the age of 16 which is committed by an adult would be a serious violent felony as described in paragraphs (2) and (3) of section 3559(a).

"(2) OTHER OFFENSES.—In a prosecution under this subsection the juvenile may be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted as an adult of a lesser included offense.

"(3) REVIEWABILITY.—Except as otherwise provided by this subsection, a determination to approve or not to approve, or to institute or not to institute, a prosecution under this subsection shall not be reviewable in any court.

"(4) PROSECUTION.—(A) In any prosecution of a juvenile under this subsection, upon motion of the defendant, the court in which the criminal charges have been filed shall after a hearing determine whether to issue an order that the defendant should be transferred to juvenile status.

"(B) A motion by a defendant under this paragraph shall not be considered unless filed no later than 30 days after the date on which the defendant initially appears through counsel or expressly waives the right to counsel and elects to proceed pro se.

"(C) The court shall not order the transfer of a defendant to juvenile status under this paragraph unless the defendant establishes by the preponderance of the evidence that removal to juvenile status would be in the interest of justice. In making a determination under this paragraph, the court shall consider the factors specified in subsection (b)(2) of this section.

"(5) ORDER.—An order of the court made in ruling on a motion by a defendant to transfer a defendant to juvenile status under this subsection shall be a final order for the purpose of enabling an appeal. Upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear

and determine the appeal on an expedited basis. The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous, and the court of appeals shall review de novo the district court's application of the law to the facts.

"(f) PROCEEDINGS.—

"(1) SUBSEQUENT PROCEEDING BARRED.—Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

"(2) STATEMENTS.—Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions except for impeachment purposes or in a prosecution for perjury or making a false statement.

"(3) FURTHER PROCEEDINGS.—Whenever a juvenile transferred to district court under subsection (b) or (c) is not convicted of the crime upon which

the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged with that crime, further proceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter.

"(4) RECEIPT OF RECORDS.—A juvenile shall not be transferred to adult prosecution under subsection (b) nor shall a hearing be held under section 5037 (disposition after a finding of juvenile delinquency) until any prior juvenile court records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile's record is unavailable and why it is unavailable.

"(5) SPECIFIC ACTS DESCRIBED.—Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter, the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile's official record.

"(g) STATE.—For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(b) CONFORMING AMENDMENT.—The analysis for chapter 403 of title 18, United States Code, is amended by striking the item relating to section 5032 and inserting the following:

"5032. Delinquency proceedings in district courts; juveniles tried as adults; transfer for criminal prosecution.".

SEC. 302. NOTIFICATION AFTER ARREST.

Section 5033 of title 18, United States Code, is amended in the first sentence, by striking "immediately notify the Attorney General and" and inserting "immediately, or as soon as practicable thereafter, notify the Attorney General and shall promptly take reasonable steps to notify".

SEC. 303. RELEASE AND DETENTION PRIOR TO DISPOSITION.

(a) DUTIES OF MAGISTRATE JUDGE.—Section 5034 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph, by striking "The magistrate judge shall insure" and inserting the following:

"(a) IN GENERAL.—

"(1) REPRESENTATION BY COUNSEL.—The magistrate judge shall ensure";

(2) in the second undesignated paragraph, by striking "The magistrate judge may appoint" and inserting the following:

"(2) GUARDIAN AD LITEM.—The magistrate judge may appoint";

(3) in the third undesignated paragraph, by striking "If the juvenile" and inserting the following:

"(b) RELEASE PRIOR TO DISPOSITION.—Except as provided in subsection (c), if the juvenile"; and

(4) by adding at the end the following:

"(c) RELEASE OF CERTAIN JUVENILES.—

"(1) IN GENERAL.—A juvenile, who is to be tried as an adult under section 5032, shall be released pending trial in accordance with the applicable provisions of chapter 207.

"(2) CONDITIONS.—A release under paragraph (1) shall be conducted in the same manner, and shall be subject to the same terms, conditions, and sanctions for violation of a release condition, as provided for an adult under chapter 207.

"(d) PENALTY FOR AN OFFENSE COMMITTED WHILE ON RELEASE.—

"(1) IN GENERAL.—A juvenile alleged to have committed, while on release under this section, an offense that, if committed by an adult, would be a Federal criminal offense, shall be subject to prosecution under section 5032.

"(2) APPLICABILITY OF CERTAIN PENALTIES.—Section 3147 shall apply to a juvenile who is to be tried as an adult under section 5032 for an offense committed while on release under this section.".

(b) DETENTION PRIOR TO DISPOSITION.—Section 5035 of title 18, United States Code, is amended—

(1) by striking "A juvenile" and inserting the following:

"(a) IN GENERAL.—Except as provided in subsection (b), a juvenile"; and

(2) by adding at the end the following:

"(b) DETENTION OF CERTAIN JUVENILES.—A juvenile who is to be tried as an adult under section 5032 shall be subject to detention in accordance with chapter 207.".

SEC. 304. SPEEDY TRIAL.

Section 5036 of title 18, United States Code, is amended to read as follows:

"§ 5036. Speedy trial

"(a) IN GENERAL.—If an alleged delinquent, who is to be proceeded against as a juvenile pursuant to section 5032 and who is in detention pending trial, is not brought to trial within 70 days from the date upon which such detention began, the information shall be dismissed on mo-

tion of the alleged delinquent or at the direction of the court.

"(b) PERIODS OF EXCLUSION.—The periods of exclusion under section 3161(h) shall apply to this section.

"(c) JUDICIAL CONSIDERATIONS.—In determining whether an information should be dismissed with or without prejudice, the court shall consider—

"(1) the seriousness of the alleged act of juvenile delinquency;

"(2) the facts and circumstances of the case that led to the dismissal; and

"(3) the impact of a reprosecution on the administration of justice.".

SEC. 305. FEDERAL SENTENCING GUIDELINES.

(a) APPLICATION OF GUIDELINES TO CERTAIN JUVENILE DEFENDANTS.—Section 994(h) of title 28, United States Code, is amended by inserting ", or in which the defendant is a juvenile who is tried as an adult," after "old or older".

(b) GUIDELINES FOR JUVENILE CASES.—Section 994 of title 28, United States Code, is amended by adding at the end the following:

"(z) GUIDELINES FOR JUVENILE CASES.—Not later than May 1, 2006, the Commission, pursuant to its rules and regulations and consistent with all pertinent provi-

1 sions of any Federal statute, shall promulgate and dis-
2 tribute, to all courts of the United States and to the
3 United States Probation System, guidelines, as described
4 in this section, for use by a sentencing court in deter-
5 mining the sentence to be imposed in a criminal case if
6 the defendant committed the offense as a juvenile, and is
7 tried as an adult pursuant to section 5032 of title 18.''.

Chairman SENSENBRENNER. And the gentleman from California, Mr. Schiff, is recognized for 5 minutes.

Mr. SCHIFF. Mr. Chairman, I want to thank you and the Ranking Member and the Ranking Member of the Subcommittee for allowing me to take this up as the first amendment on the Democratic side of the aisle.

Since my days as a prosecutor in California, I've been concerned with the growing threat posed by organized street gangs. I've also seen the destructive impact that street gangs continue to have on families, on our youth, and our communities. Unfortunately, gangs have strong links to youth in our country, taking a heavy toll on adolescent social development and life course experiences. An end result often is the continued involvement of criminal activity throughout life.

For this reason, a couple months ago I introduced a bipartisan gang bill along with Representative Mary Bono, the Gang Prevention and Effective Deterrence Act of 2005. Our legislation represents a comprehensive effort to increase gang prosecution and prevention efforts. The bill is virtually identical to the bipartisan legislation that was reported out of the Senate Judiciary Committee in the 108th Congress and has since been reintroduced by Senators Feinstein, Hatch, Kyl, Cornyn, and Grassley.

The gang problem is no longer a local issue but a national one requiring a national strategy. The Schiff-Bono bill is designed to facilitate this effort by bringing together Federal, State, and local law enforcement, providing them with new tools to combat gang violence, making available new funds to keep kids out of gangs to begin with. Street gangs are increasingly focusing on running full-service criminal enterprises in the neighborhoods where they reside, terrorizing those who live in the community. Some have shown increasing levels of sophistication, exhibiting characteristics common to organized crime, and will likely continue to expand their criminal enterprises in new ways and places throughout the country.

This requires new and creative ways to attack the problem. In 2002, in the city of Los Angeles, it was announced that street gangs would be prosecuted in the same way that law enforcement brought down traditional organized crime figures using the Federal racketeering statute, RICO, to its full capacity. However, these racketeering laws were designed to prosecute organized crime with Mafia-style organizations in mind. The Schiff-Bono bill represented by this substitute would create a similar tool, but tailored specifically to violent street gangs by criminalizing violent crimes in furtherance of or in aid of criminal street gangs.

The most lucrative criminal enterprise for street gangs has been the retail distribution of illicit narcotics. Our legislation would attack this problem by making murder and other violent crimes committed in connection with drug trafficking a Federal crime. And, unfortunately, gangs also have strong links to the youth in our country. The FBI has reported increasing numbers of youth involvement in gangs and the problem is getting worse.

In order to effectively prosecute an entire gang, it is sometimes necessary to prosecute multiple defendants in the same case, including juvenile gang members. The Schiff-Bono bill in this substitute provides a limited reform of the juvenile justice system to

facilitate Federal prosecution of 16- and 17-year-old gang members who commit serious acts of violence. However, this substitute, unlike the other substitute, provides an important reverse waiver procedure whereby juvenile—the juvenile can petition the court for transfer back to juvenile status by establishing by a preponderance of the evidence that this is in the interest of justice. So our substitute would also allow the filing against 16- and 17-year-old gang members who commit serious violent crimes, but it does allow the court to have some role in a reverse waiver procedure.

Our legislation also provides resources to bolster the fight against gangs and to attack the problem at its roots. My substitute, unlike the now-base bill, authorizes $650 million over the next 5 years to support Federal, State, and local law enforcement efforts against violent gangs, including the funding of witness protection programs. But also unlike the base bill, it specifically provides funding for intervention and prevention programs for at-risk youth. The bill also increases funding for Federal prosecutors and FBI agents to increase coordinated enforcement efforts against violent gangs.

Finally, the Schiff-Bono bill represented in this substitute does not include the broad changes that are unrelated to the purpose of gang prevention and prosecution, and, namely, our bill does not include the 22 mandatory minimum provisions within now the base bill.

While I strongly believe that Congress should closely examine the issue of sentencing in light of the *Booker* decision, I do not believe we should respond to the Supreme Court decision in a piecemeal fashion such as we find in the base bill.

On a final note, Mr. Chairman, regarding the process, for my Democratic colleagues I recognize there are parts of what's in my substitute that you may not be comfortable with. I ask you to support a vote to make this the base bill because it is better than the current base bill, and it still gives you the flexibility to vote against my bill on final passage out of the Committee.

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. SCHIFF. Mr. Chairman, may I have an additional 30 seconds?

Chairman SENSENBRENNER. Without objection.

Mr. SCHIFF. I just wanted to make one entreaty to my colleagues on the other side of the aisle, and that is, this bill has bipartisan support in the Senate, this substitute. It has bipartisan support here in the House. And I would urge you to support the bill as authored by Senators Feinstein, Hatch, Kyl, Cornyn, and others, which is represented in my substitute. The choice, I think, for the majority in this Committee is between a bill that has already earned bipartisan support in the Senate and in the House or a bill that is to this point limited to partisan support. And I would urge your support for the bipartisan work product of both Houses.

Thank you, Mr. Chairman. I yield back.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Forbes.

Mr. FORBES. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FORBES. Thank you, Mr. Chairman.

Mr. Chairman, I hope we will reject this substitute, and let me tell you why. The choice that we really have here is between whether or not we want to go after the lower-tier criminals in these criminal crime networks or whether we want to go into the crime network itself and rip that network out.

If you look at this chart that I've got up here, as I mentioned to you, we've got approximately 750,000 to 850,000 criminal gang members in the United States. Just pull one of those gangs out. MS–13, this represents the States that MS–13 is in, which is probably the most vicious, fast-growing gang in the country. And you can see how widespread they are in nature.

Tinisha, if you would put that second chart up, the second chart that we have here shows one gang member and his travels across the country. Now, we didn't sit down with other Members of Congress particularly and talk about how we'd solve this problem. What we did is talk to the ATF, talk to the FBI, talk to the police around the country, and talk to people who are trying to break up these criminal gang networks. And what they've told us is this: that they understand the system. And in Mr. Schiff's bill, what he does is he doesn't get at the 16- and 17-year-olds, but one of the things that we are told is that these gangs understand how to work the system. So we'll have people in L.A. that are allowing the crimes to be done in Virginia and other places, and they know if they use the 16- and 17-year-olds, they're not going to get tough penalties. They're not going to get tough crimes. And one of the things that they're telling us, if we don't have the mandatory penalties—and I, too, agree sometimes that I don't like mandatory penalties, but the importance of the mandatory penalties here is that only when the prosecutors can get into these individuals and say you're going to go to jail for X number of years, this is a mandatory penalty, do they find that they're willing to help break those networks up.

And when we talk about prevention programs, I'm very supportive of many of the prevention programs that Mr. Schiff has talked about. I can show you how many dollars we're spending in prevention programs. That's not what this bill is doing. What this bill is doing is laying in on breaking up those networks, and I'll tell you that the strongest prevention program we have is breaking down the criminal networks which are recruiting these young people and recruiting more and more people to violent crimes.

If you look at MS–13 alone, they didn't start out as a vicious, tough gang. They started out in the 1980's because they had to form because our good intentions led us to not dealing with the gang problem that we had in some areas of the country, particularly in L.A. and some other places, and they had to form for protecting themselves. And all of our studies and all the people in the street suggest that the best prevention program we'll have is to reach up and pull these networks out and strip the networks out.

This bill goes to the networks. It doesn't wait until they've committed the crimes and continuing to punish the crimes and have a revolving door where they're back on the street and we're punishing them over and over again.

So, Mr. Chairman, I hope we will reject this substitute and keep with the base bill.

Ms. WATERS. Mr. Chairman?

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers?

Mr. CONYERS. Mr. Chairman, we've been put in quite a quandary here. We've got a bill 3 weeks old that has come up—at most, maybe less—with one hearing, and today we have a substitute by the gentleman from California, Mr. Schiff, which contains not as many mandatory minimums, and—but not too few. They have way too many. It's all going in the wrong direction.

And we're talking about, I presume, a multi-billion-dollar that's coasting on the strength of one hearing, plus a substitute. So this leaves us to discuss again the fact that the studies, as has been pointed out by the gentleman from Virginia, Mr. Scott, mandatory minimums have always shown to be ineffective in preventing crime.

Now, I don't know what the problem is here that we just keep going the same way over and over again and getting essentially the same result. And so I'd like to just put in for the record the statements—and I just happen to have been at the American Bar Association meeting in San Francisco when Justice Kennedy made his dramatic about-face on mandatory sentencing. And I'd like unanimous consent to put that in the record.

Chairman SENSENBRENNER. Without objection.

[The information follows:]

SPEECH AT THE AMERICAN BAR ASSOCIATION ANNUAL MEETING

An Address by Anthony M. Kennedy
Associate Justice, Supreme Court of the United States

August 9, 2003

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Mayor Brown, President Carlton, President-elect Archer, and my fellow adherents to the Rule of Law. Thank you for your gracious welcome and for your friendship.

Since we last met in San Francisco, momentous and tragic events have occurred. Some say these events changed the world. Perhaps it is more accurate to say the world is the same, but we now have a clearer understanding of what the world is. It is a world where in every nation many people seek freedom above all, but where new enemies of freedom vow to attack it. In a sense this is nothing new. In the last century free societies were attacked from within, attacked by their own citizens, by men such as Stalin, Hitler, and Mussolini. They attacked free institutions because they did not believe an open society, committed to democracy, could provide for the security and welfare of its citizens. In this century democracy's enemies come from outside the countries they seek to destroy. They, too, see a free and open society as a threat. Once again we face an assault on freedom. Once again we can prevail.

Americans may find the new challenge surprising and disappointing. We tend to think the case has been made that a free society is a stable society, that a free society is the birthright of all people. We do not know why we must make the case all over again when judgment has been given in our favor. History, however, does not acknowledge *res judicata*. History teaches that freedom must make its case, again and again, from one generation to the next. The work of freedom is never done.

Embedded in democracy is the idea of progress. Democracy addresses injustice and corrects it. The progress is not automatic. It requires a sustained

exercise of political will; and political will is shaped by rational public discourse. One of the ABA's missions is to stimulate that discourse.

The impressive, pluralistic assembly of the American Bar Association reflects many groups and interests in our society. That is fortunate, for a disproportionate share of the responsibility for moving toward progress in public affairs falls, in the first instance at least, on those who are trained in the law. The Bar is an essential catalyst for the discourse we must commence to come closer to a more just society.

You have many issues to address. Please permit me to talk with you about two of them. The first concerns the inadequacies -- and the injustices -- in our prison and correctional systems. The second is the continuing need to teach the principles of freedom to our young people, who soon must become the principal trustees of our constitutional heritage and our most treasured institutions.

The subject of prisons and corrections may tempt some of you to tune out. You may think, "Well, I am not a criminal lawyer. The prison system is not my problem. I might tune in again when he gets to a different subject." In my submission you have the duty to stay tuned in. The subject is the concern and responsibility of every member of our profession and of every citizen. This is your justice system; these are your prisons. The Gospels' promise of mitigation at judgment if one of your fellow citizens can say, "I was in prison, and ye came unto me," does not contain an exemption for civil practitioners, or transactional lawyers, or for any other citizen. And, as I will suggest, the energies and diverse talents of the entire Bar are needed to address this matter.

Even those of us who have specific professional responsibilities for the criminal justice system can be neglectful when it comes to the subject of corrections. The focus of the legal profession, perhaps even the obsessive focus, has been on the process for determining guilt or innocence. When someone has been judged guilty and the appellate and collateral review process has ended, the legal profession seems to lose all interest. When the prisoner is taken way, our attention turns to the next case. When the door is locked against the prisoner, we do not think about what is behind it.

We have a greater responsibility. As a profession, and as a people, we should know what happens after the prisoner is taken away. To be sure the prisoner has violated the social contract; to be sure he must be punished to vindicate the law, to acknowledge the suffering of the victim, and to deter future crimes. Still, the prisoner is a person; still, he or she is part of the family of humankind.

Were we to enter the hidden world of punishment, we should be startled by what we see. Consider its remarkable scale. The nationwide inmate population today is about 2.1 million people. In California, even as we meet, this State alone keeps over 160,000 persons behind bars. In countries such as England, Italy, France and Germany, the incarceration rate is about 1 in 1,000 persons. In the United States it is about 1 in 143.

We must confront another reality. Nationwide, more than 40% of the prison population consists of African-American inmates. About 10% of African-American men in their mid-to-late 20s are behind bars. In some cities more than 50% of young African-American men are under the supervision of the criminal justice system.

While economic costs, defined in simple dollar terms, are secondary to human costs, they do illustrate the scale of the criminal justice system. The cost of housing, feeding and caring for the inmate population in the United States is over 40 billion dollars per year. In the State of California alone, the cost of maintaining each inmate in the correctional system is about $26,000 per year. And despite the high expenditures in prison, there remain urgent, unmet needs in the prison system.

To compare prison costs with the cost of educating school children is, to some extent, to compare apples with oranges, because the State must assume the full burden of housing, subsistence, and medical care for prisoners. Yet the statistics are troubling. When it costs so much more to incarcerate a prisoner than to educate a child, we should take special care to ensure that we are not incarcerating too many persons for too long.

It requires one with more expertise in the area than I possess to offer a complete analysis, but it does seem justified to say this: Our resources

are misspent, our punishments too severe, our sentences too long.

In the federal system the sentencing guidelines are responsible in part for the increase in prison terms. In my view the guidelines were, and are, necessary. Before they were in place, a wide disparity existed among the sentences given by different judges, and even among sentences given by a single judge. As my colleague Justice Breyer has pointed out, however, the compromise that led to the guidelines led also to an increase in the length of prison terms. We should revisit this compromise. The Federal Sentencing Guidelines should be revised downward.

By contrast to the guidelines, I can accept neither the necessity nor the wisdom of federal mandatory minimum sentences. In too many cases, mandatory minimum sentences are unwise and unjust.

Consider this case: A young man with no previous serious offense is stopped on the George Washington Memorial Parkway near Washington D. C. by United States Park Police. He is stopped for not wearing a seatbelt. A search of the car follows and leads to the discovery of just over 5 grams of crack cocaine in the trunk. The young man is indicted in federal court. He faces a mandatory minimum sentence of five years. If he had taken an exit and left the federal road, his sentence likely would have been measured in terms of months, not years.

United States Marshals can recount the experience of leading a young man away from his family to begin serving his term. His mother says, "How long will my boy be gone?" They say "Ten years" or "15 years." Ladies and gentlemen, I submit to you that a 20-year-old does not know how long ten or fifteen years is. One day in prison is longer than almost any day you and I have had to endure. Alexander Solzhenitsyn describes just one day in prison in the literary classic "One Day in the Life of Ivan Denisovich." Ivan Denisovich had a ten-year sentence. At one point he multiplies the long days in these long years by ten. Here is his final reflection: "The end of an unclouded day. Almost a happy one. Just one of the three thousand six hundred and fifty-three days of his sentence, from bell to bell. The extra three were for leap years."

Under the federal mandatory minimum statutes a sentence can be mitigated by a prosecutorial decision not to charge certain counts. There

is debate about this, but in my view a transfer of sentencing discretion from a judge to an Assistant U. S. Attorney, often not much older than the defendant, is misguided. Often these attorneys try in good faith to be fair in the exercise of discretion. The policy, nonetheless, gives the decision to an assistant prosecutor not trained in the exercise of discretion and takes discretion from the trial judge. The trial judge is the one actor in the system most experienced with exercising discretion in a transparent, open, and reasoned way. Most of the sentencing discretion should be with the judge, not the prosecutors.

Professor James Whitman considers some of these matters in his recent book *Harsh Justice*. He argues that one explanation for severe sentences is the coalescence of two views coming from different parts of the political spectrum. One view warns against being soft on crime; the other urges a rigid, egalitarian approach to sentence uniformity. Both views agree on severe sentences, and both agree on mandatory minimum sentences. Whatever the explanation, it is my hope that after those with experience and expertise in the criminal justice system study the matter, this Association will say to the Congress of the United States: "Please do not say in cases like these the offender must serve five or ten years. Please do not use our courts but then say the judge is incapable of judging. Please, Senators and Representatives, repeal federal mandatory minimums."

The legislative branch has the obligation to determine whether a policy is wise. It is a grave mistake to retain a policy just because a court finds it constitutional. Courts may conclude the legislature is permitted to choose long sentences, but that does not mean long sentences are wise or just. Few misconceptions about government are more mischievous than the idea that a policy is sound simply because a court finds it permissible. A court decision does not excuse the political branches or the public from the responsibility for unjust laws.

To help those who are serving under the minimums, the ABA should consider a recommendation to reinvigorate the pardon process at the state and federal levels. The pardon process, of late, seems to have been drained of its moral force. Pardons have become infrequent. A people confident in its laws and institutions should not be ashamed of mercy.

The greatest of poets reminds us that mercy is "mightiest in the mightiest. It becomes the throned monarch better than his crown." I hope more lawyers involved in the pardon process will say to Chief Executives, "Mr. President," or "Your Excellency, the Governor, this young man has not served his full sentence, but he has served long enough. Give him what only you can give him. Give him another chance. Give him a priceless gift. Give him liberty."

The debate over the goals of sentencing is a difficult one, but we should not cease to conduct it. Prevention and incapacitation are often legitimate goals. Some classes of criminals commit scores of offenses before they are caught, so one conviction may reflect years of criminal activity. There are realistic limits to efforts at rehabilitation. We must try, however, to bridge the gap between proper skepticism about rehabilitation on the one hand and improper refusal to acknowledge that the more than two million inmates in the United States are human beings whose minds and spirits we must try to reach. We should not ignore the efforts of the countless workers and teachers and counselors who are trying to instill some self-respect and self-reliance and self-discipline in convicted offenders. Credit must be given to the dedicated persons who conduct prison education programs. Over 90% of state prisons and 100% of federal prisons offer some kind of educational program. And about one in four state prison inmates attains a GED while in prison.

Professor Whitman concludes that the goal of the American corrections system is to degrade and demean the prisoner. That is a grave and serious charge. A purpose to degrade or demean individuals is not acceptable in a society founded on respect for the inalienable rights of the people. No public official should echo the sentiments of the Arizona sheriff who once said with great pride that he "runs a very bad jail."

It is no defense if our current prison system is more the product of neglect than of purpose. Out of sight, out of mind is an unacceptable excuse for a prison system that incarcerates over two million human beings in the United States. To that end, I hope it is not presumptuous of me to suggest that the American Bar Association should ask its President and the President-elect to instruct the appropriate committees to study these matters, and to help start a new public discussion about the prison

system. It is the duty of the American people to begin that discussion at once.

In seeking to improve our corrections system, the Bar can use the full diversity of its talents. Those of you in civil practice who have expertise in coordinating groups, finding evidence, and influencing government policies have great potential to help find more just solutions and more humane policies for those who are the least deserving of our citizens, but citizens nonetheless. A decent and free society, founded in respect for the individual, ought not to run a system with a sign at the entrance for inmates saying, "Abandon Hope, All Ye Who Enter Here."

Let us turn now from the subject of those who have broken the social contract to those who soon will assume the full duty to keep it. I refer to the splendid young people in this nation who will become the next trustees of our legal and constitutional tradition. It is my pleasure to extend formal thanks to this Association for sponsoring the program for high school students, the program called "The Dialogue on Freedom." Past-President Hirshon, President Carlton, and President-elect Archer have all devoted their personal attention to it.

This is an exercise for high school seniors or first-year college students. It could be the foundation of a full semester course, perhaps, but the exercise we suggested took one session of about 90 minutes. Our figures are imprecise, but we estimate that to date over 140,000 students have taken the class.

The students were asked to assume they were stranded in a third-world country with strong suspicions, or active hostility, to America, to its republican principles, and to its commitment to freedom. Our objective was to show young people that our heritage can endure and spread only as a conscious act. An informed understanding of the foundations of freedom is not a genetic, inherited characteristic. It is taught. Each generation must learn and then teach it again.

I spoke with many of the instructors who presented the program. As is so often the case when we work with young people, there is good news and bad news. There is cause for concern; and there is much to inspire confidence and

optimism.

The principle that often motivated the students' instinctive reaction to questions about basic principles of government was tolerance. At one level this is reassuring. Tolerance, properly understood, stems from the ideas of the Declaration of Independence and the principles embraced by the founders of the Republic. In our legal tradition, and in our constitutional heritage, tolerance follows from the premise that all persons have inalienable rights, including the right to life, liberty, and pursuit of happiness. The exercise of those rights should be respected. Hence the idea of tolerance.

The problem is that all too many young people seem to equate the idea of tolerance with the concept of relativism. This is a grave error. Unbounded relativism as a civic philosophy soon becomes passivity and indifference: No judgments can be made, for it is impossible to place one set of values over another. This is a far cry from toleration derived from a belief in universal rights. If, in the civic sphere, relativism swallows tolerance whole, belief in universal rights turns into no belief at all. According to this view, we cannot judge others because our view of rights has no greater validity than any other. Were this muddled mindset to prevail, America could not teach or transmit the principles of freedom. Some students understand this; others do not. Some teachers understand this; others do not.

Here is an example. We asked students if, when discussing political philosophy in this imaginary place, they have a civic duty to try to persuade other young people not to surrender power to an authoritarian regime. A surprising number of students believed other nations should be allowed to adopt any system and pursue any domestic policy a majority wants. We overreach, they said, if we try to influence the result by offering our views as to what is just. Then we posed a series of problems, leading to the question whether it would be wrong to intervene to prevent genocide or a holocaust. A few students persisted in saying this is not our concern. I was astounded.

This is but callous indifference masquerading as tolerance. This is the distortion of tolerance, not fidelity to the individual dignity from which tolerance springs. By this calculus, the principles espoused by Washington, Hamilton, Madison, and Jefferson mean little.

When a few students persisted in saying those who believe in freedom should just mind their own business as to other countries, even in the case of a holocaust, the rest of the class was deeply troubled. They saw the problem. The legitimacy of a legal order based on universal values and respect for all persons at this point became more apparent. At a conceptual level, however, many had difficulty trying to escape the relativist grip.

In our profession we can appreciate that answers are not always easy when we seek to resolve concrete problems by general principles. Life generates tough cases. And tough cases require careful, mature deliberation. That is why we can make a contribution to the public discourse. Still, we must remember that the legal order rests on certain fundamental truths. These truths must be taught. We must guard against the easy slide into neglect and passivity. The Rule of Law will mean little in a society too apathetic to know that vigilance is the price of liberty.

Respect for individual dignity is a universal challenge. Trying to illustrate the point by important books the students selected was one technique used in the high school dialogues. Let me describe, though, a real instance when the choice of one book made all the difference. A few years ago, a member of the bar from California named Ed Villmoare volunteered to serve in Kosovo under the auspices of the ABA's successful CEELI program. His wife, Paula Huntley, decided to go with him and teach English to high school students in that impoverished, suffering place. She has written a fine account of the experience in a volume called *The Hemingway Book Club of Kosovo.*

She wanted to teach English but had no book. In the only store in Prishtina with any books in English she found one copy of Hemingway's *The Old Man and the Sea*. It is short, and of course is distinguished by its clear and powerful prose. She bought the book and copied it for the class. It was the only game in town. But it proved to be an excellent choice. The students in her class in Kosovo were inspired by the story of the old man, down on his luck. You will recall the story. The old man had not caught a fish for eighty-four days, and the townspeople thought he was finished. Then, when he hooked a huge fish, he had to battle forces far greater than he. The young people in a war-torn nation related to that. They understood, too, what it means to encounter defeat but remain unbroken and dignified by the struggle.

The children in Kosovo understood that liberty means the right to search for dignity. So they respected the old man's struggle. By their ready acceptance of these universal ideas they taught their teacher, and they teach us, that individuals must always be willing to contend against greater forces to build a better world. Thus, the formal principles of freedom must be taught to preserve our heritage; but we will find that the desire for freedom is the birthright and the natural aspiration of all decent people.

Our own legal tradition has been shaped by persons who know there is injustice but must resort to the law to establish the general principles for righting it. Over 115 years ago, in this city, a man called Yick Wo went to court when local officials denied him a permit for his laundry business. He came to the Supreme Court of the United States. His case generated one of the most important equal protection decisions ever written. It is a tribute to our law and to our profession that a case involving a foreign national gave meaning and scope to the equal protection rights of all Americans. Our case law system is built on the idea that individuals in any era can strive to vindicate personal rights, and that by their effort our law emerges stronger than before.

In this process, lawyers know that every battle does not bring victory. There will be defeats, but the defeats will not break our will. In day-to-day debates on how to relate the law to our civic discourse and our lasting traditions, we must insist on rational, principled judgment. By doing so we advance the mission of a free people.

I hope that during this time in San Francisco you will find new ideas, new insights, and new inspiration for your work. Jefferson talked often of freedom and self-government. One cannot exist without the other. It is the mission of our profession to help preserve the role of this nation as the guardian of what Jefferson called the sacred fire of freedom and self-government, keeping it in trust for those other nations benign and enlightened enough to seek it for themselves. Thank you for being united in this historic cause.

Mr. CONYERS. And so I'd like the Members of the Committee to consider this course of action. How about let's voting all of these bills down? Both substitutes are unacceptable. Let's get rid of them both and let's have a series of hearings that deal more rationally with this subject matter.

I'd yield to the gentlelady from California, if she needs any of this time.

Ms. WATERS. Well, I thank you, Mr. Chairman. I do need time, Mc. Conyers, to ask the Members of this Committee to vote against this substitute, as well as when we get to the bill, to vote against the bill. I think that both of these bills are going in the wrong direction.

It is interesting that Members who sit here in their suit and ties talking about gangs, gang members and neighborhood and cities and where they operate, really don't know very much about what is really happening with these gangs.

I would invite this Committee, if they dare—Members of this Committee go to Iran, they go to Afghanistan, they go all over the world. But I would invite you to come to South Los Angeles to deal with this gang issue. I would invite you to come because many of the Members of Congress have been playing politics with issue for far too long. I know it makes some Members look very, very good, and they enhance their law and order credentials by talking about getting rid of gangs in America. However, those of us who have been suffering with this problem for a long time have not really gotten any real serious attention from the Congress of the United States dealing with gangs.

I appreciate that the President of the United States has appointed his wife to deal with the gang issue, and I'm looking forward to her coming to South Los Angeles or somebody coming to South Los Angeles, where there's a proliferation of gangs, because this is a serious problem. It's a serious problem that does not appear to have the real understanding of public policymakers who should be formulating good public policy, yes, to get rid of dangerous people on the streets, whether they're gang members or not, I support that. And there are some folks who need to be in prison. I support that. But then there are children who live in communities that are gang-infested, who are not members of gangs, but they——

Chairman SENSENBRENNER. The time of the gentleman from Michigan has expired.

The question——

Ms. WATERS. Mr. Chairman, on my own time, I request 5 minutes to——

Chairman SENSENBRENNER. Anybody on the Republican side seek recognition? The gentleman from California, Mr. Gallegly.

Ms. WATERS. Thank you.

Mr. GALLEGLY. I thank the Chairman for yielding, and I would just like to respond quickly to my good friend from South Central Los Angeles, and I would like to remind her that this Member was born and raised in that area. I lived through the Watts riots in 1965 when the gentlelady was living in St. Louis, and I have very close ties to that area, spend a great deal of time there, and I can tell you that I can't understand for the life of me, when I know that you care about your constituents, the only way those young people

that you're talking about will ever be protected from the scourge of the gangs that are going on down there is for us to take tough action like Mr. Forbes is advocating to protect the innocent ones that are living and surrounded by the gangs.

I would yield back.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. Does the gentleman yield back? Does the gentleman from California yield back?

Mr. GALLEGLY. Yes, I do yield back.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you very much. Before I continue with my perspective on this, I would like to say to the gentleman who just addressed me, again, you don't know what you're talking about. I was in South Los Angeles in 1965. I was not in St. Louis. And it's not about whether or not you were born or raised there. It's about what you know about what is or is not taking place with those gangs in South Los Angeles.

So, again, let me just say that there are a lot of young people who live in areas, who live in communities, who are not gang members but who must identify in some ways because of where they live. And these young people are about to be caught up in public policy as we design it here that's going to send them to prison, that's going to get them involved with the criminal justice system, even though the don't deserve it. And this kind of legislation does not recognize the difference between hard-core gang members and innocent young people who live in these neighborhoods.

Secondly, let me say this: I do not support mandatory minimum sentencing under any conditions or the enhancement of mandatory minimum sentences as is done in the substitute amendment. Nor do I support the idea that in order to even talk about prevention that somehow you have got to come up with these draconian laws, again, that's going to harm what I consider some young people who need but some attention, some investment by this country in their possibility.

We have a lot of young people who would like to stay in school, who would like to have a job, who would like to have some job training. Nowhere do I see a real commitment to dealing with young people, some of whom by no fault of their own are victims of a system and victims of a situation where maybe their parents were involved with drugs, who are in prison, who are dead, and grandmothers who are trying to raise these children without any real assistance. We need job training programs with stipends to support these young people while they're in job training. We need to have after-school programs where these young people can go who need to be able to prepare their clothing to go to school the next morning, who will have some food, some tutorial assistance. We need a real effort, a sincere effort by Democrats and Republicans alike, if we are going to deal with the gang problems of America.

And you're absolutely right, while I'm sitting here begging you, literally begging you to come to South Los Angeles—and I know you're not going to do it because I question the sincerity of those who say they want to deal with this issue. Again, I'm going to say it one more time. You can get on planes and you can go all over the world, but you can't come to South Los Angeles or other areas

that are gang-infested to give some sincere attention to this issue and stop playing politics with it.

I'm against this bill, and I resent even my colleague on this side of the aisle talking about this great bipartisan bill. There's no great bipartisan over here. I don't support this bill because, again, you're simply trying to talk about what you're going to do with law enforcement. Law enforcement has a long way to go to deal with this mess. If they had ever wanted to really break up gangs, they would have, number one, recruited and trained young people to get involved with law enforcement so that there could be some undercover work to identify who the real problems are in the communities. But they haven't done that. All that you have, every year or so, is someone who comes and runs a campaign on the backs of so-called gang members, scaring the heck out of folks that somehow they're going to save them.

The police, the criminal justice system who have not done the work that is necessary to get in there and find out who the real perpetrators are, the lack of resources for young people who want a way out, who are desperate for some assistance, really has not been done. And as Mr. Scott identified, it is shameful the amount of dollars that we claim that we have spent toward a bill that started out for $500 million and ended up with $55 million.

We should reject this substitute and the base bill because it does not deal with the problem, stop and have some hearings, spend some time going across this country, come to South Los Angeles, go to Virginia——

Chairman SENSENBRENNER. The gentlewoman's time——

Ms. WATERS.—wherever we need to go——

Chairman SENSENBRENNER.—has expired. The Chair recognizes himself.

I think it's about time to break for lunch. Let me say two things.

First of all, there has been an agreement that has been reached on the counterfeiting bill, which means, I think, that that bill can go through with relatively little debate. And when we come back after lunch, it is the Chair's intention to ask unanimous consent to bring that bill up out of order so that we can dispose of that and get it moving along.

Secondly, it does—I have been informed by the floor that there will be some votes at approximately 1:30. I would ask all of the Members to return to this markup as soon as they can after the conclusion of the votes at 1:30. And I'd like to start the markup within about 10 minutes after the conclusion of the last vote at 1:30 p.m.

The Committee stands recessed until after the last vote in the series at 1:30.

[Whereupon, at 11:57, the Committee was recessed, to reconvene this same day.]

AFTERNOON SESSION [2:34 p.m.]

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

Pending when the Committee recessed was a motion to report the bill H.R. 1279 favorably. There was an amendment in the nature of a substitute offered by the gentleman from Virginia, Mr. Forbes, and the pending question was another amendment in the

nature of a substitute to the amendment in the nature of a substitute by the gentleman from California, Mr. Schiff.

Without objection, the Committee will consider the bill H.R. 32, and we will get back to the other bill after completion of H.R. 32. Hearing none, so ordered.

[Intervening business.]

Chairman SENSENBRENNER. Now, we will go back to H.R. 1279. When the Committee recessed for lunch, pending was a motion to report the bill H.R. 1279, the "Gang Deterrence and Community Protection Act," favorably to the full House. Pending was an amendment in the nature of a substitute by the gentleman from Virginia, Mr. Forbes, and pending to that was another amendment in the nature of a substitute by the gentleman from California, Mr. Schiff. And the question is on agreeing to the Schiff amendment in the nature of a substitute to the Forbes amendment in the nature of a substitute.

The gentleman from Virginia, Mr. Scott?

Mr. SCOTT. Mr. Chairman, move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I have a couple of questions to ask to the sponsor of this amendment in the nature of a substitute.

First of all, I would ask if you—that this amendment has a reverse waiver, but does it not try more juveniles as adults?

Mr. SCHIFF. If the gentleman will yield, the substitute to the substitute does allow for the prosecutor to file against 16- and 17-year-olds who have committed serious violent offenses where it's necessary to have a multi-defendant criminal prosecution. However, unlike the base bill, it allows for a reverse waiver where after the prosecutor files the initial petition to have the juvenile treated in the Federal court system, the judge has the ability, upon proof by a preponderance of the evidence by the juvenile's counsel, to reverse the waiver. So there is a safety valve in that the unilateral action of the prosecutor alone is not sufficient to get the juvenile into Federal court.

When Mr. Fitzgerald, the U.S. Attorney, testified in the Subcommittee on this issue, he mentioned this is something that will be very seldom used. There will be seldom a reason to bring juveniles in the Federal court system. I think that's a very wise policy. We don't want to open a floodgate. But I think because prosecutors are very likely to only use this in extraordinary cases, the judges will uphold that decision——

Mr. SCOTT. Reclaiming my time——

Mr. SCHIFF. Yes.

Mr. SCOTT. Reclaiming my time, I guess we can question whether to try more juveniles as adults than we presently do is good policy. I think we can debate that. I think the evidence is clear.

Another question. Does this amendment in the nature of a substitute, the amendment, your amendment, include additional death penalties than we have now?

Mr. SCHIFF. It includes additional death penalties to those that are in existing law. I think it has an equivalent number, only a slight variation from my colleague's base bill.

Mr. SCOTT. And I would ask on mandatory minimums, in your opening statement you said you eliminated some of the mandatory minimums. Do you not increase some mandatory minimums?

Mr. SCHIFF. No. What I said was that we, I think, modify one of the mandatory minimums. We don't add new mandatory minimums, and that distinguished it from the base bill, which has, I think, 22 new mandatory minimums.

Mr. SCOTT. Does "modify" mean increase?

Mr. SCHIFF. I think one of the mandatory minimums is increased in the length of the mandatory minimum, but I don't believe we have added a new mandatory minimum.

Mr. SCOTT. Okay. Thank you. I think one of the mandatory minimums in your amendment increases the mandatory minimum for gun crimes, I believe.

Mr. Chairman, one thing this amendment has is some prevention authorization, but, unfortunately, insofar as we haven't fully funded the present authorization, any new authorization, I obviously would reflect an empty promise. The underlying bill and the amendment suggest that the criminal code is insufficient to deal with violent crime. I've talked to many law enforcement officers, and none have indicated that they don't know what to do with crooks they catch who have committed kidnapping, murder for hire, or other violent crimes. Present laws are sufficient. As a matter of fact, the criminal justice system is working all too well. The United States today has more people in jail per 100,000 population than any country on Earth. And in our inner cities, the rate is off the chart.

I would hope that we would defeat the underlying bill, defeat this amendment, and get back to what we know works, and that is an intensive effort for prevention and early intervention for those who are likely to get involved in gangs and rely on our present criminal justice system to continue arresting, prosecuting, and jailing those who are committing violent crimes.

I yield back.

Mr. INGLIS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from South Carolina, Mr. Inglis.

Mr. INGLIS. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. Gentleman is recognized for 5 minutes.

Mr. INGLIS. Reluctantly, I'm opposed to the substitute of the substitute, the substitute and the underlying bill. I think there are several problems.

One: We continue this pattern of federalizing State crimes. We need to think about that. Two: Mandatory minimums, I'm more and more uncomfortable with them. I voted for mandatory minimums a number of times on my tenure here on Judiciary Committee in the '93 through '98 time period, but I think we need to rethink those, and they're leading us to the wrong places I believe. Third: I'm concerned about setting up programs that frankly we all know will establish constituencies that will tell us, henceforth that you cannot eliminate them.

So the substitute to the substitute would establish a $650 million program which is a lot of money. The substitute would establish a $50 million program. The way things are in Washington, programs

grow like kudzu, and the result will be that that will turn into an indispensable program in the years to come, and Members of Congress will be lobbied by various people saying: You can't, whatever you do, Congresswoman or Congressman, eliminate this program. And the result will be it will never die. And before we establish new programs like that I think we need to think long and hard about whether is this the most effective way to deal with this problem?

I'm happy to yield back.

Chairman SENSENBRENNER. The question is on the——

Mr. WEXLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Florida, Mr. Wexler.

Mr. WEXLER. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEXLER. Yield to Mr. Schiff.

Mr. SCHIFF. I thank my colleague for yielding.

And I just want to take this opportunity to address some of the comments and criticisms that have been raised vis-a-vis the substitute to the substitute, which I'll refer to as the Schiff-Bono bill. First the objection is made by my colleague, author of the substitute proposal, that the Schiff-Bono proposal doesn't deal with the travel of the MS–13 gang, doesn't deal with 16- and 17-year-olds, doesn't provide a sufficient deterrent to people to commit gang activity. I don't think any of those objections are well founded.

Of course it does deal with the issue of gangs being national by establishing a criminal enterprise like RICO to go after gangs. That was the whole point of the bill. It does allow prosecutors to bring in 16- and 17-year-olds. It does have the overwhelming support of law enforcement, and I have a list of about 30 law enforcement groups that all supported this bill in the Senate last year.

So both bills really seek to accomplish the same goal vis-a-vis strengthening the prosecution of gang crime, vis-a-vis some of the criticisms on my side of the aisle, in particular, that some of us don't know the gang problem South Central. The reality is that the gang problem is everywhere now. The gang problem is in my district in Glendale, and in Pasadena, in Monterey Park, in Alhambra. It cuts across all ethnicities and all income levels. This is not a problem that is confined to any one district or any one ethnicity. It's unfortunately very widespread throughout the country.

Second, regarding the issue of trying juveniles in the Federal system or trying them as adults, this is a very legitimate and difficult issue. We often focus on the effect on the juvenile prosecuting them in adult court or confining them in adult facility, and there are some legitimate concerns there, but we often don't focus on the opposite problem, and that is confining the very serious, violent juvenile offenders with the much less serious juvenile offenders who are then exposed to predatory juveniles, and that is a problem as well. In addition, when you treat a juvenile as a juvenile and the juvenile reaches a certain age, the court no longer has jurisdiction over them, cannot even supervise them through parole or probation because they have left the jurisdiction of the court. And to allow juveniles who commit very serious, violent offense to go without su-

pervision once they're released is problematic. So not an easy issue either way.

So what then are the cardinal differences between the bipartisan bill that I'm offering that's been introduced in the House, the bipartisan bill in the Senate, the Feinstein-Hatch bill, and what has become the base bill? There are basically four or five differences and some similarities. First of all, the main similarity is we both have basically a RICO-like provision in our bills to use this new apparatus to go after criminal street gangs.

Second, we both allow very selectively the inclusion of juveniles, the difference being that in my bill we give the court some say into particular cases to bring juveniles in, in the base bill there is no say of the court whatsoever, it's purely prosecutorial discretion.

Third, both bills increase sentencing. The primary difference is that my colleague's base bill provides 22 mandatory minimums, our base bill increase sentences without increasing the number of mandatory minimums. I think the issue of mandatory minimums raised by the *Booker* decision must be addressed systematically and not piecemeal in this bill.

Third—and this is one of the most significant differences between the base bill and my substitute—and that is the preventive funding that was approved on a bipartisan basis in the Senate. Why is this so important? Because the punishment, the deterrence is only one part of the equation. We need to provide an equal effort of prevention. Only the two combined will be successful. When my colleague says this bill is not about prevention programs, he's right, and that's the flaw with the base building—with the base bill. It has to be about both suppression of crime and prevention of crime.

And finally, what is the difference between the two bills? One has bipartisan support in the Senate and can get through the Senate, the other has—and also has bipartisan support and was introduced in a bipartisan way before this base bill was even introduced in the House. The other has no bipartisan support and is a partisan vehicle on what should be a bipartisan solution.

Those are in sum the differences between the bills, and once again I'd urge my colleagues' support for the substitute, and I would be happy to yield back the balance of my time.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. CHABOT. Thank you. And I'll yield briefly to the gentleman from Virginia.

Mr. FORBES. Thank you, Mr. Chairman. Mr. Chairman, earlier today we had the word "insincerity" brought out when we were talking about these bills, and I just disagree with that. I think all the parties are sincere in what they're trying to do. The reality is that we look at the ferociousness and the viciousness of these gangs and their growing nature across the country, and really we have three approaches to it. There are some who feel that we don't need any other laws, that law enforcement in some manner or the other just isn't doing what they need to be doing, whether they

need more resources or they just won't get out there and do it, we don't need any additional laws to tackle the gang problem.

There are some people who think my bill is too tough and they want a softer bill, thinking that they can go after these gangs. The reality is you just can't. You will punish the crimes after they have taken place, but you will do nothing to bring down the crime networks. The prosecutors who come into us met with the ATF, the FBI, the prosecutors, Fraternal Order of Police. What we have got to do is we've got to be able to bring down the networks, and the only way we do that is with tough mandatory penalties, where we go in and we look at someone who has committed these crimes and say, "If you don't cooperate and help bring down the network, you're going to go to jail for a long time."

And I also want to make something clear too. We talk about all the people that are innocently getting caught up in these gangs. We need to be thinking about protection for those people who don't get caught up in the gangs but are caught up in the gang violence. Michelle Garst came in here supporting this bill, who had moved from Philadelphia because the gangs were tormenting them in the area they live there. She moved to Maryland with her 9 children, put them in charter schools, thinking she was escaping the gangs. Her husband was murdered by a gang member. Why? Just for initiation into a gang. And if you ask her do we need a softer bill, Michelle Garst will tell you no, we need a tough bill to bring down these criminal networks, and this will do it.

The final thing I'll tell you, the best prevention program we can have is to get rid of these gangs themselves because that's what's driving kids in by fear and intimidation. If you go into a doctor's office and you tell him you've got cancer, you don't want him to spend 30 minutes telling you how you could have prevented getting that cancer, you don't want him to spend 30 minutes telling you how your family can not get that cancer. What you want him to do then is laser in and get that cancer out of your body, and then you can deal with prevention programs. This bill does that. It lasers in and pulls out those crime networks. If you don't want to get the crime networks, if you just want to get the victims after they have already become victims, deal with a softer bill. I hope we'll reject the amendment and support the base bill, and I yield back the balance of my time.

Mr. CHABOT. Thank you. Reclaiming time, I yield back.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. Mr. Chairman, I haven't expressed myself on this bill yet, and I'm going to be very brief. I don't like the bill. I think the Schiff amendment is better than the bill, but I don't like it either, and I yield to the gentleman from Virginia.

Mr. SCOTT. Thank you, and I thank the gentleman for yielding. And I want to make it clear that I haven't questioned the sincerity of anybody. Maybe somebody else did. I haven't questioned the sincerity or the motives. I have questioned the provisions of the bill. The question's been raised whether somebody's being tough or somebody's being soft. I have said that I support initiatives that reduce crime. We know by every study that trying more juveniles as

adults increases crime, so when you describe all of these bad crimes, you can assume that there will be more of them because when you try more juveniles as adults not only do you increase crime, you increase violent crime in particular.

If somebody's going to be tough on crime, you ought to support the initiatives that reduce the incidence of crime and the incidence of violent crime, and you can call it soft or tough, but we're talking about increasing crime or decreasing crime, and the mandatory minimums in the bill have been described by the Judicial Conference as violating common sense. And how is that being tough, violating common sense and increasing crime? So we have to be careful how we use these adjectives like you're being soft or you're being tough. We're trying to—some of us are trying to reduce crime, and the provisions of the bill, by every study that's been done, will increase the crime rate, and that's why we're opposing it, not because we're trying to be either soft or tough.

I yield back.

Mr. NADLER. And I agree with Mr. Scott and I yield back.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Yeah. I'm just going to—I think we make a mistake if we start to characterize what we're all trying to accomplish as tough or as soft. That doesn't I think contribute to the debate. I believe that every Member of the Committee wants to do something about reducing gang violence, youth violence, and the incidence of violent crime in this country. The question ought to be framed in terms of what works, what's effective, what's going to do that? I believe in prevention. I believe in treatment, I believe in laws that exist, that when necessary to incarcerate an individual, for however long it takes.

And what the gentleman is referring to when he talks about ripping these networks apart, I agree. I'm sure Mr. Schiff agrees. I think everybody on the Committee agrees. But what I would suggest is that the laws that are utilized by prosecutors to rip apart those networks already exist. There is the CCE, there is the RICO statute. There are conspiracy statutes. What I would suggest is that if the resources that are unavailable to law enforcement, that, yes, we provide law enforcement with the resources to do their job, which is to investigate and prosecute crime, and to rip those networks apart.

I just don't understand, Mr. Forbes, why your bill, as opposed to the Schiff bill, does a better job of ripping apart networks.

Mr. FORBES. Will the gentleman yield so I can tell you?

Mr. DELAHUNT. Of course.

Mr. FORBES. The basic thing that we're hearing from prosecutors and those people who are trying to rip these networks apart out in the field is this. First of all, the gangs today that we're talking about are not local gangs, they're national gangs, and they have activities across the country. And many times you need a broader network if you're going to be able to bring them in. It's not activity in just one State. They're all telling us——

Mr. DELAHUNT. Let me just reclaim my time, because let me respond to that.

Mr. FORBES. Okay.

Mr. DELAHUNT. We have the ability to do that now. We work—we have joint task forces between local, State and Federal investigative agencies all over this country. What does your bill do to enhance that?

Mr. FORBES. If you'll let me respond I'll be glad to tell you.

Mr. DELAHUNT. Sure.

Mr. FORBES. What they're telling us is that when they bring these people in, the gang members know how to work the system now, the leaders, and so they're not actually committing the crimes many times. What they're doing is sending lower tier people in the crime networks out to commit the crime. When they capture them in doing it and they bring them in, the prosecutors say that in many instances they're looking at them and they realize that it's a flip of the dice when they go in for trial as to whether or not they're going to get a year or 2 years or even 3 years, and they're telling us that they are not going to help and cooperate because, as you know, the gang members are sitting there telling them, and threatening and intimidating them, as just being witnesses.

The prosecutors tell us, however, when they have the tough and the hard mandatory sentences, they can walk in and look at those individuals, and they will give up the networks. And then they can put them in witness protection.

Mr. DELAHUNT. Reclaiming my time, reclaiming my time, I've heard that argument over and over and over again. I was a prosecutor for 22 years, a good prosecutor. If he or she wishes to develop and informant or wishes to develop a cooperating witness can do it. I don't know what prosecutors you're talking to, okay, but I know my own experience and experience of people that are prominent in law enforcement will tell you that there are many ways to achieve the development of a cooperating witness, and please do not overstate the sophistication of these national gangs. I can assure you most juvenile offenders, most gang members do not carry with them a copy of the United States Criminal Code. They simply don't do that.

Chairman SENSENBRENNER. The time of the gentleman has expired.

Ms. SÁNCHEZ. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Sánchez.

Ms. SÁNCHEZ. I move to strike the last word, and I would yield to the gentleman from California, Mr. Schiff.

Chairman SENSENBRENNER. The gentlewoman's recognized for 5 minutes.

Mr. SCHIFF. I thank the gentlewoman for yielding.

I just want to respond again to a couple of comments made by my colleague from Massachusetts and my colleague from Virginia. How does the base bill differ from the substitute in terms of the ability to go after crime networks? It doesn't really. Both bills are designed exactly to go after these national and indeed now international crime networks. They both use the same prosecutorial tool in establishing a new RICO-like statute for criminal street gangs. That's the heart of the bill.

What are the differences? I've gone through some of them, but it seems like my colleague is very fixated on one in particular, and that is mandatory minimums, which bill has got more mandatory

minimums, as if that's the linchpin for any success in dealing with gangs, and that's simply not the case.

This bill is not new. It wasn't, it wasn't born a month ago when my colleague introduced it, or 2 months ago when I introduced the Schiff-Bono bill. This bill was introduced in the Senate over a year ago, and it had none of the mandatory minimums my colleague is arguing for. It had the support of over 30 law enforcement organizations. My colleague says his base bill is supported by the Fraternal Order of Police. They endorsed my bill before they even endorsed my colleague's bill. Plainly, both approaches have law enforcement support.

Now, I realize that *Booker* has changed the equation to some degree, but nonetheless, with the enhanced sentencing capability in the substitute prosecutors have a great deal of bargaining authority over gang members and defendants and potential defendants, so they both accomplish the same objective.

And I would just urge my colleague to be a little circumspect in his attacks on the substitute. My guess is the bill that comes back from the Senate is going to look a lot more like this substitute than the base bill, and you'll probably support it. So let's not demean too much the work product because it probably will look a lot like what I'm advocating.

In any event, one of the last items I'd like to emphasize is something in Pat Fitzgerald's testimony before the Subcommittee on this bill. He talked about the success that his office had had in keeping kids out of trouble, and the tremendous decline in violence, gang violence that they had been able to achieve. And what he attributed that to was the proactive work of his office, and the base bill cuts the funding for that proactive work. It cuts the funding for the Project Safe Neighborhoods, which the National District Attorneys Association testified we should retain. And so some of the——

Mr. FORBES. Would the gentleman yield?

Mr. SCHIFF. Yes.

Mr. FORBES. Can the gentleman show me in the bill where it cuts funding to any other program?

Mr. SCHIFF. I'd be delighted. If you're asking me how does it cut existing funding, what I'm referring to is what it cuts out of the Senate bipartisan bill.

Mr. FORBES. No, but this bill doesn't do anything to cut any existing programs, as you just stated.

Mr. SCHIFF. Well, I'll have to get back to the gentleman on that to find out whether it goes beyond cutting the amounts out of the Senate bill——

Mr. FORBES. Can the gentleman yield?

Mr. SCHIFF. I don't have much time left. I'm sure one of your colleagues would be happy to yield to you.

But the fact of the matter is that of the 650 million that is in the bill to be divided in the substitute equally between prevention programs by community based organizations and law enforcement, your base bill I think only has 50 million, and it is devoted to the law enforcement side. And this is, you know, one of the principal differences. I think a balanced bill has to have increased deterrence and increased prevention. I think both are necessary. Either alone is inadequate, and that I think is the heart and soul of the dif-

ference between the two bills. That's what I think makes the substitute a better bill, and I will yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the Schiff amendment in the nature of a substitute to the Forbes amendment in the nature of a substitute. Those in favor will say aye.

Opposed, no.

The noes appear to have it.

Mr. SCHIFF. Mr. Chairman, I'd request a recorded vote.

Chairman SENSENBRENNER. A recorded vote is requested. Those in favor of the Schiff substitute to the Forbes substitute will as your names are called answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH OF TEXAS. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

[No response.]

The CLERK. Mr. Jenkins?

[No response.]

The CLERK. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

[No response.]

The CLERK. Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no. Mr. Hostettler?

[No response.]

The CLERK. Mr. Green?

[No response.]

The CLERK. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Mr. Issa?

[No response.]

The CLERK. Mr. Flake?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence?

[No response.]

The CLERK. Mr. Pence, no. Mr. Forbes?

Mr. FORBES. No.

The CLERK. Mr. Forbes, no. Mr. King?

Mr. KING. No.

The CLERK. Mr. King, no. Mr. Feeney?

[No response.]

The CLERK. Mr. Franks?

Mr. FRANKS. No.

The CLERK. Mr. Franks, no. Mr. Gohmert?

[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. No.
The CLERK. Mr. Nadler, no. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. No.
The CLERK. Ms. Waters, no. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
Mr. WEXLER. Yes.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. No.
The CLERK. Ms. Sánchez, no. Mr. Smith?
[No response.]
The CLERK. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members in the chamber who wish to cast or changes their votes? Gentleman from North Carolina, Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from California, Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Chairman SENSENBRENNER. Gentleman from Alabaman, Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Chairman SENSENBRENNER. Further Members who wish to cast or change their vote? Gentleman from Florida, Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.

Chairman SENSENBRENNER. Gentleman from Wisconsin, Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no.

Chairman SENSENBRENNER. The clerk will report.

The CLERK. Mr. Chairman, there are 3 ayes and 22 noes.

Chairman SENSENBRENNER. And the amendment in the nature of a substitute is not agreed to.

Mr. SCOTT. Before you announce the vote——

Chairman SENSENBRENNER. The vote has been announced.

Mr. SCOTT. [Inaudible.]

Chairman SENSENBRENNER. I said the amendment was not agreed to.

[Intervening business.]

Chairman SENSENBRENNER. We will now resume consideration of H.R. 1279. The current pending amendment is the Forbes amendment in the nature of a substitute. Are there any second degree amendments to the Forbes amendment in the nature of a——

Mr. CONYERS. I think I have one.

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. I've got the Conyers-Van Hollen amendment.

Chairman SENSENBRENNER. The clerk will report amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1279 offered by Mr. Conyers and Mr. Van Hollen. At the end of Title 1 add the following. Section 116——

Mr. CONYERS. I ask unanimous consent the amendment be considered as read.

Chairman SENSENBRENNER. Without objection the amendment is considered as read and the gentleman from Michigan is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 1279
OFFERED BY MR. CONYERS AND
MR. VAN HOLLEN

At the end of title I, add the following:

1 **SEC. 116. PREVENTING SUSPECTED GANG MEMBERS FROM**
2 **GAINING ACCESS TO DANGEROUS FIREARMS.**
3 Section 922(t) of title 18, United States Code, is
4 amended—
5 (1) in paragraph (1)(B)(ii), by inserting ", or
6 that the name of such other person appears in the
7 Violent Gang and Terrorist Organization File main-
8 tained by the Attorney General" before the semi-
9 colon;
10 (2) in paragraph (2), by inserting "and if the
11 name of the prospective recipient does not appear in
12 the Violent Gang and Terrorist Organization File
13 maintained by the Attorney General," after "State
14 law,";
15 (3) in paragraph (4), by inserting "and that the
16 name of such other person does not appear in the
17 Violent Gang and Terrorist Organization File main-
18 tained by the Attorney General," after "State law,";
19 and

(4) in paragraph (5), by inserting ''or that the name of such other person appears in the Violent Gang and Terrorist Organization File maintained by the Attorney General,'' after ''State law,''.

Mr. CONYERS. Thank you, Mr. Chairman. I'm going to divide my time with the gentleman from Maryland. It's a very straightforward amendment, closing a loophole that exists in our Federal gun laws by making it illegal—here's what the amendment does, make it illegal to transfer a firearm to anyone that the Federal Government has designated as a suspected or known gang member or terrorist. This may sound amazing to you, but 56 firearm purchase attempts were made by people known to be terrorists or suspected gang members, and 47 of them were forced—the sales were forced to proceed because under the present law only a prior felony conviction or a court determined finding of mental defect is the only way that anyone cannot be sold a weapon.

And so what we're doing is taking care of that problem, rather than dealing with after-the-fact penalties which are of little use after the victims have occurred.

So this is very important, and I close with this one observation, that we have a very regulated list of gang members, so this isn't just random——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. CONYERS. Of course.

Chairman SENSENBRENNER. I'm a little bit concerned about the due process questions involved here. People who have been convicted of a felony or adjudicated as mentally defective in a court are on the list of those who cannot purchase or possess firearms, and there there's been a court determination that ends up giving them this type of disability. In your amendment, there is simply an administrative placing of a name on a list, and doesn't that concern you that someone cannot get firearms simply because a bureaucrat has decided that question?

Mr. CONYERS. Well, I—this is a great day in America because your due process concerns appear to exceed mine, so this will go down—— [Laughter.]

Chairman SENSENBRENNER. If the gentleman will yield, I hope everybody in the room notes that fact, remembers it.

Mr. CONYERS. Yeah. But I don't know if it's accurate. Here's the problem, Mr. Chairman, and I'll get additional time for my colleague from Maryland. We have, we have already lists, and of course we're talking about the Administration that has gone over the top on violations of due process. I mean we can now arrest people, even American citizens, and make them enemy combatants on—not on the say of a court or due process or the Department of Justice, but the President of the United States, and I am convinced that our method of making sure that this is not exceeded allows me to do this. Besides, there is a provision that this can be appealed so that this isn't, you know, for all time.

So for those reasons I am very enthusiastic about getting not just the mental defective people, but there is a war on, you know, and we've got to deal with the terrorists and the known suspected gang members. And I yield to my colleague that's worked with me, the gentleman from Maryland, MR. Van Hollen.

Mr. VAN HOLLEN. Thank you. I thank Mr. Conyers for his leadership on this issue. We've been talking in the Committee on a bipartisan basis here about the importance of cracking down on gang activities and the danger of gangs, and the danger they pose to people in our communities. This is a pretty common sense bill. It says

if you have been identified by the Federal Government as somebody who is a dangerous gang member, then if you walk into your local gun store, that you shouldn't be able to immediately purchase a gun.

Now, to get to the issues raised by the Chairman, there's nothing to prevent somebody from going to the holders of this list, the list that shows, lists people as terrorists or gang members and say, "My name shouldn't be on this list." So does it mean that someone can't immediately get that gun? It would do so. And I would suggest the balance here should be in terms of——

Chairman SENSENBRENNER. The time of the gentleman from Michigan has expired.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. Without objection, the gentleman from Michigan will be given two more minutes.

Mr. CONYERS. I yield to the gentleman from Maryland.

Mr. VAN HOLLEN. I thank the gentleman from Michigan. Thank you, Mr. Chairman.

So the balance here is in terms of sending somebody into a gun store who we know is identified as a dangerous gang member on a Federal list, and saying to them that you can't get that gun immediately. Now, if they want to get their name removed from the list, they should do so, and we should make sure they understand how to do it. This came up in discussions with the Attorney General the other day.

But let me just say, as you know, with respect to the no-fly list, when someone's name is on the no-fly list it doesn't mean they've been convicted or a crime. It means that they've been identified as someone who poses a potential danger to public safety, and it's important to at least have the option of saying to that person, "We think that you should be denied access to the airplane." You can then go about getting your name off the list, and again you should.

But I see no reason to distinguish between someone who's denied access to an airplane because they're considered a public threat and letting that person get in their car, go to a local gun store and buy a bunch of semiautomatic assault weapons. It makes absolutely no sense. It's totally inconsistent. This brings some consistency to the policy.

Thank you.

Mr. FORBES. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Forbes.

Mr. FORBES. Mr. Chairman, move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. FORBES. Mr. Chairman, I hope we'll reject this amendment. The—several points. First of all, your due process point is very, very well on in that the people that are placed on this list have absolutely no litigation that takes place prior to that time, no opportunity to present their case before they're put on the list, and certainly it will be a due process violation.

Secondly, if we think that most of these violent gang criminals are going in and buying their guns at gun stores, let me just suggest to you that's not what a lot of the statistics say. They're trading them for narcotics which they're getting, and the way they get

the narcotics is by stealing cars and shipping cars out of the country in many instances.

But the second thing, Mr. Chairman, is 18 U.S.C. 922(g)(1), as you know, makes it a crime for a convicted felon to have a gun. If you pass the underlying bill we won't need this provision because we're going to put these violent criminal gang members away for mandatory sentences that are going to put them out of commission for a long period of time. They won't be going in and buying guns, and we don't need this provision.

I yield back.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters?

Ms. WATERS. Thank you very much, Mr. Chairman and members. I understand and recognize the need for civility and how Members do not like anyone to question another Member's motives or sincerity. And we've had a limited discussion about that today.

However, for those of us who are desperate to do something about gang violence and gang warfare in these communities that are just overwhelmed now with the gang problem, we will not understand, we cannot understand how any Member of Congress who claims to be concerned about getting rid of violence and stopping other gangs from having access to weapons and guns could be opposed to this amendment.

I would like to believe, I would sincerely like to believe that my friends on the opposite side of the aisle are concerned about due process rights. Everything that I have learned since I've been a Member of Congress leads me to conclude that many Members do not give a darn about due process rights, and I think you could not be any clearer than the Ranking Member, Mr. Conyers, in describing how due process rights have been violated in law as he described the enemy combatant situation that we have now that's being exercised by this President and this Administration.

Ladies and gentlemen, the maker of—the author of the legislation described how a father had been killed. Let me tell you, many innocent people are being killed. Children are being killed in drive-by shootings. Family members are being killed who are guilty of nothing simply because they are related to another gang member. Where there is a gang warfare going on, the guns are flowing in these communities. I don't know where they get them all from, and I don't care where they get them from. I want them stopped. I want our communities rid of guns. We have everything from AK-47s to handguns. They buy them from people who sell them in the back of cars. They trade them. They get them from so-called legitimate gun dealers.

If you are serious about doing something about violence, one of the things you must do is help get rid of the guns—the guns that are causing all of this terror in our communities.

So I am considered a liberal. I'm considered that bad name that's been demonized—a liberal, whose fight too often is about due process rights. You can't due process rights more than I can. That's what I do. I take care of people's due process rights. So you're not better than I, you're not better than Mr. Conyers, you don't care more than we do. We do this on a daily basis. So, please, don't use due process as your concern now when we're stepping on your precious area of guns. We want to get rid of the guns.

I support this amendment, and I think if we are not to question anybody's sincerity, then I think folks have to step up to the plate and do what must be done despite the influence of the right wing or the people who protect the gun owners. If you want to do something about stopping America's children from being killed, not only by gangs but in our schools and by terrorists who are entering this country by hook or crook, you cannot say that you are concerned about this violence, you want to stop gangs, that you want to stop the killing and the murdering and the slaughtering unless you're willing to help identify—and even if you want to use the word "profile," I don't care. You've got to help us get rid of the gangs, and this is just one small attempt, one small way to get at getting rid of these guns.

Now, if that—if you want to accuse me of questioning somebody's sincerity, I stand accused. I put it there before you. It's out. Either you're going to support getting rid of guns and you're going to allow us to take a look at this file that's already being kept, the violent gang and terrorist organization file that's already maintained by the Attorney General, the names are there. The names are there. We can identify the people. We don't want them to buy guns. There is no legitimate excuse that you can give——

Chairman SENSENBRENNER. The time of the gentlewoman has expired.

Ms. WATERS. Too bad. I had more to say.

Chairman SENSENBRENNER. For what reason does the gentleman from Iowa, Mr. King, seek recognition?

Mr. KING. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KING. I thank the Chairman with regard to his statement on the people who are denied access to firearms and without regard to the statements by the gentlelady from California, I would point out that everyone—everyone who has been denied a firearm, according to Federal statute, has had due process. And whether you can out-due process it or not, that is the fact of the law. And the fact of the Constitution is it's a constitutional right to keep and bear arms. And if we're going to deny access to those firearms, then we have to guarantee a due process.

Senator Kennedy didn't know that he was on the watchlist and was denied access to the plane at least three times and was allowed to board because someone knew him. We cannot ask people in this country to be checking the violent gang list and the terrorist organization file to determine if they can go to town and buy a gun.

And so if we're going to set up some kind of due process so that this endeavor on the part of this amendment is realized, then we need to let anyone and everyone know if they are on the terrorist organization list or the violent gang list, and we have to give them a due process to get themselves off the list before they find themselves without a gun.

Thank you, Mr. Chairman. I yield back.

Chairman SENSENBRENNER. The question is on the amendment to the amendment in the nature of a substitute offered by the gentleman from Michigan, Mr. Conyers. Those in favor will say aye? Opposed, no?

Mr. CONYERS. Record vote, sir.

Chairman SENSENBRENNER. Well, the noes do appear to have it, but all those in favor of the Conyers amendment to the Forbes substitute will as your names are called answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH OF TEXAS. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

Mr. CHABOT. Pass.

The CLERK. Mr. Chabot, pass. Mr. Lungren?

[No response.]

The CLERK. Mr. Jenkins?

[No response.]

The CLERK. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no. Mr. Hostettler?

[No response.]

The CLERK. Mr. Green?

[No response.]

The CLERK. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Mr. Issa?

Mr. ISSA. No.

The CLERK. Mr. Issa, no. Mr. Flake?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence?

[No response.]

The CLERK. Mr. Forbes?

Mr. FORBES. No.

The CLERK. Mr. Forbes, no. Mr. King?

Mr. KING. No.

The CLERK. Mr. King, no. Mr. Feeney?

Mr. FEENEY. No.

The CLERK. Mr. Feeney, no. Mr. Franks?

Mr. FRANKS. No.

The CLERK. Mr. Franks, no. Mr. Gohmert?

Mr. GOHMERT. No.

The CLERK. Mr. Gohmert, no. Mr. Conyers?

Mr. CONYERS. Aye.

The CLERK. Mr. Conyers, aye. Mr. Berman?

[No response.]

The CLERK. Mr. Boucher?

[No response.]

The CLERK. Mr. Nadler?

Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Smith?
[No response.]
The CLERK. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members who wish to cast or change their votes? The gentleman from Wisconsin, Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Chairman SENSENBRENNER. Further Members who wish to cast or change their vote? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 7 ayes and 18 noes.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments? The gentleman from Virginia, Mr. Scott?
Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, number 5.
Chairman SENSENBRENNER. The clerk will report amendment number 5.
The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1279, offered by Mr. Scott of Virginia. At the end

of the bill, add the following new section: Section 2, Study and report on evidence-based approaches proven to prevent crime——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO H.R. 1279

OFFERED BY MR. SCOTT OF VIRGINIA

At the end of the bill, add the following new section:

1 **SEC. 2___. STUDY AND REPORT ON EVIDENCE-BASED AP-**
2 **PROACHES PROVEN TO PREVENT CRIME.**

3 The Director of the Office of Justice Programs shall
4 carry out a study of evidence-based approaches that have
5 been proven to prevent crime, including gang crime and
6 violent crime, by youth and adults. The Director shall sub-
7 mit to the Committee on the Judiciary of the Senate and
8 the Committee on the Judiciary of the House of Rep-
9 resentatives a report on the study.

Chairman SENSENBRENNER. And the gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, this is a straightforward amendment. It requires the Director of the Office of Justice Programs to carry out an evidence-based study, a study of evidence-based approaches that have been proven to prevent crime, including gang crime and violent crime by youth and adults, and let us know the results.

Mr. Chairman, I think in the give and take in this bill, we have to be clear that some of us question whether or not the provisions of the bill will actually reduce crime. We've seen this kind of debate technique going on on other issues. We hear today, for example, you talk about gangs, then you present the bill. During the war in Iraq, you talk about 9/11, then you talk about the Iraqi war. Well, Iraq didn't have anything to do with 9/11. It doesn't matter. It's kind of inferred, and people go along with the war because you talked about 9/11 first.

And with Social Security, you talk about the shortfall, then you talk about private accounts. Well, private accounts don't have anything to do with the shortfall. Well, don't worry about it. If you agree there's a shortfall, you kind of get lulled into thinking you need some private accounts.

What this amendment does is see whether or not talking about gangs, whether or not then talking about the bill makes any sense. The studies that have been presented to us have shown that the provisions of the bill will increase crime. And I fully expect that the study done by the Director of the Office of Justice Programs will remind us of what we already know.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. SCOTT. I yield.

Chairman SENSENBRENNER. The amendment is drafted to the bill and not to the Forbes amendment in the nature of a substitute. Is the intention of the gentleman from Virginia to have this amendment be to the Forbes substitute?

Mr. SCOTT. Yes, Mr. Chairman.

Chairman SENSENBRENNER. Without objection, the first line of the amendment is modified to indicate that it adds language to the Forbes substitute.

The gentleman from Virginia, Mr. Forbes.

Mr. FORBES. Mr. Chairman, I hope we'll reject this amendment. First of all, my good friend and colleague from Virginia is not very supportive of our bill. I don't think this was one of those complementary amendments. It basically is not a relevant amendment to this particular bill.

If the Director of the Office of Justice Programs came back with a study, first of all, we'd argue what is evidence-based. I think my good friend would then say that that study was flawed and it was skewed and it was biased, and, you know, a number of things that might come back in.

He has stated that all of these studies disprove the bill. I have similar actual factual documents and statistics that show that the underlying bill will help reduce crime and it will work. But this is a bill and this is a study which might be appropriate in some other bill, if he wants to do a study. But we don't need it for this par-

ticular gang bill. I hope we will reject this bill and move on with the base bill.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters?

Ms. WATERS. Oh, I know.

Chairman SENSENBRENNER. For what purpose do you seek recognition?

Ms. WATERS. To irritate you. [Laughter.]

Chairman SENSENBRENNER. Well, you don't get recognized for 5 minutes to do that.

Ms. WATERS. No, that—to strike the last word.

Chairman SENSENBRENNER. You do get recognized for 5 minutes for that purpose.

Ms. WATERS. I'll do that. Thank you very much.

I simply would like to say to the gentleman who simply rejected my colleague's amendment based on the fact that he may interpret it in ways that won't help his legislation sometime down the line, I would ask him to show some sincere desire to cooperate with Members on this side of the aisle in addressing a very serious problem.

It does not help to take an amendment such as this one, which is simply a study of evidence-based approaches, so that we can band together pertinent and factual information about what it takes to prevent crime.

When you reject something as benign as this, you're sending a message to us. You're sending a signal that you do not wish to cooperate with us in any shape, form, or fashion. It is quite unfortunate that at a time when increasingly we have young people who are being killed in our schools and on our school yards, we have young people who have been killed with drive-by shootings, we have family members who are being killed simply because they happen to be a relative of a gang member, and we have young people killing each other about colors, about territories, that you would reject our efforts to be a part of fashioning public policy to get at these problems.

It seems to me when we are desirous of meeting our colleagues halfway in addressing a real issue that confronts us all, we would have at least the generosity of spirit to embrace a bill that would ask for a study that would help us to make determinations about how to prevent crime.

I am very sorry—and I know that what I say today will not influence you in any way—that you would still oppose this, and I suspect any other amendment that's brought before you today by those of us, no matter how well that amendment may be put together, how well-meaning that amendment or how much good that amendment could do, that it's going to be rejected because there is no intention by your or others to just work with us to try and get something done that makes good sense.

So I know that, Mr. Chairman, you'd perhaps rather not have to keep calling on those of us who want to comment on these amendments, but, of course, that's what we're elected to do, and that's our right to do it. And I appreciate your—the fact that it causes this Committee to have to go on a little bit longer, but I think it's im-

portant for us to say, and I'm going to be generous. I yield back the balance of my time.

Mr. GOHMERT. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Gohmert?

Mr. GOHMERT. Yes, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman. I appreciate the gentlewoman's comments, but with regard to not wanting to cooperate, let me tell you, there is an intense desire to cooperate. There is an intense desire to have due process. I've been speaking with Mr. Forbes about his act. I pored through it a number of times. I've gone through it with the staff. I have found them very cooperative in trying to work with language that will make it directed right at the people that this should go toward. But when you're wanting to propose a study when we have had decades of on-the-job studies, some of us, like myself, have sat in a courtroom, have handled thousands of cases, and let me tell you, when it comes to guns, you get rid of guns, the only people that won't have them will be the law-abiding people. The criminals get them. Out of thousands of cases, I don't recall a single case where anybody ever bought it at a gun show or bought it in a sporting goods store. They stole it, they traded, the bought it out of trunks, but they did not go to a gun store to get it.

So I am very concerned about stopping the process and having further study when some of us have so much on-the-job training, while there are people dying and there are people crying and there are people begging for help. And we're going to turn a blind eye to that and call for another study? I would encourage voting no against the amendment because we have the information. We need to move forward and help these poor people who are being killed and are being hurt. Thank you.

Ms. WATERS. Will the gentleman yield?

Mr. GOHMERT. I'm yielding back my time to the Chairman.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Yes, I want to acknowledge that I have respect for the new Member here, Mr. Gohmert. I think he has made since he's been here a good contribution. And I understand what he's saying. I think what we are—and I said it earlier, when I don't think you were in the room. What we're trying to do is accomplish something that works. That's the bottom line. Let's not call it tough, let's not call it soft. And you weren't here in the aftermath of the Columbine shooting, but there was a real concern among all Members what was happening in terms of youth violence. The speaker, this current speaker, Speaker Hastert, convened a bipartisan group, 12 on each side, that met on a rather frequent basis.

It was interesting. It was interesting in the sense that each of the Members of that task force was asked to bring somebody to the group and give his or her thinking and observations and provide the studies that were available. And not one of them—and many, of course, were brought by Members on the Republican side—not one of them would recommend anything that's incorporated in Mr.

Forbes's bill. Not out of ideological perspective, but based upon what works and what's effective.

You know, I see, for example, references in here to, you know, implicating murders. I mean, I was a State prosecutor. I know the Feds. They don't know how to try murder cases. And if they did, they'd screw it up in most cases. So the point is, is to try to do it in a way that makes sense. I think that's the point that the gentlelady is making. It's not a question of studies. We came out of that bipartisan task force and passed, I think, under the leadership of Mr. Scott and—who was your—was it—? Who was the chair at the time?

I forget who, but on the Republican chair, you know, Representative McCollum. We got a bill through almost unanimously. The problem is we didn't fund it. We didn't fund it. And that's what's missing here oftentimes. When we talk about these programs and we reach a consensus, and as authorizers we get it through and we all stand up and take a bow, but then it drifts off and no one wants to come in with the money.

Chairman SENSENBRENNER. The gentleman yields back.

The question is on the Scott of Virginia amendment to the Forbes of Virginia amendment in the nature of a substitute. Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments?

Mr. SCHIFF. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff.

Mr. SCHIFF. I have an amendment at the desk numbered 024.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1279, offered by Mr. Schiff of California. Page 26, strike lines 9 through 14 and insert the following: "(d) Authorization of appropriations. (1) In general. There are authorized"——

Mr. SCHIFF. Mr. Chairman, I would request that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

AMENDMENT TO H.R. 1279 To The Amendment in the nature of a Substitute

OFFERED BY MR. SCHIFF OF CALIFORNIA

Page 26, strike lines 9 through 14 and insert the following:

1 (d) AUTHORIZATION OF APPROPRIATIONS.—

2 (1) IN GENERAL.—There are authorized to be
3 appropriated $100,000,000 for each of the fiscal
4 years 2006 to 2010 to carry out this section.

5 (2) USE OF FUNDS.—Of amounts made avail-
6 able under paragraph (1) in each fiscal year—

7 (A) 50 percent shall be used to carry out
8 subsection (b)(2); and

9 (B) 50 percent shall be used to make
10 grants available for community-based programs
11 to provide crime prevention, research, and
12 intervention services that are designed for gang
13 members and at-risk youth in areas designated
14 pursuant to this section as high intensity inter-
15 state gang activity areas.

16 (3) U.S. ATTORNEYS.—In addition to the
17 amounts authorized by paragraph (1), there are au-
18 thorized to be appropriated $7,500,000 for each of

1 the fiscal years 2006 to 2010 to carry out subsection
2 (c).

At the end of the bill, add the following:

3 **SEC. 203. ENHANCEMENT OF PROJECT SAFE NEIGHBOR-**
4 **HOODS INITIATIVE TO IMPROVE ENFORCE-**
5 **MENT OF CRIMINAL LAWS AGAINST VIOLENT**
6 **GANGS.**

7 (a) IN GENERAL.—While maintaining the focus of
8 Project Safe Neighborhoods as a comprehensive, strategic
9 approach to reducing gun violence in America, the Attor-
10 ney General is authorized to expand the Project Safe
11 Neighborhoods program to require each United States at-
12 torney to—

13 (1) identify, investigate, and prosecute signifi-
14 cant criminal street gangs operating within their dis-
15 trict;

16 (2) coordinate the identification, investigation,
17 and prosecution of criminal street gangs among Fed-
18 eral, State, and local law enforcement agencies; and

19 (3) coordinate and establish criminal street
20 gang enforcement teams, established under section
21 201(b), in high intensity interstate gang activity
22 areas within a United States attorney's district.

23 (b) ADDITIONAL STAFF FOR PROJECT SAFE NEIGH-
24 BORHOODS.—

1 (1) IN GENERAL.—The Attorney General may
2 hire Assistant United States attorneys, non-attorney
3 coordinators, or paralegals to carry out the provi-
4 sions of this section.
5 (2) AUTHORIZATION OF APPROPRIATIONS.—
6 There are authorized to be appropriated $7,500,000
7 for each of the fiscal years 2006 through 2010 to
8 carry out this section.

9 **SEC. 204. ADDITIONAL RESOURCES NEEDED BY THE FED-**
10 **ERAL BUREAU OF INVESTIGATION TO INVES-**
11 **TIGATE AND PROSECUTE VIOLENT CRIMINAL**
12 **STREET GANGS.**

13 (a) RESPONSIBILITIES OF ATTORNEY GENERAL.—
14 The Attorney General is authorized to require the Federal
15 Bureau of Investigation to—
16 (1) increase funding for the Safe Streets Pro-
17 gram; and
18 (2) support the criminal street gang enforce-
19 ment teams, established under section 201(b), in
20 designated high intensity interstate gang activity
21 areas.
22 (b) AUTHORIZATION OF APPROPRIATIONS.—
23 (1) IN GENERAL.—In addition to amounts oth-
24 erwise authorized, there are authorized to be appro-
25 priated to the Attorney General $5,000,000 for each

of the fiscal years 2006 through 2010 to carry out the Safe Streets Program.

(2) AVAILABILITY.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 205. REAUTHORIZATION OF THE GANG RESISTANCE EDUCATION AND TRAINING PROJECTS PROGRAM.

Section 32401(b) of the Violent Crime Control Act of 1994 (42 U.S.C. 13921(b)) is amended by striking paragraphs (1) through (6) and inserting the following:

"(1) $20,000,000 for fiscal year 2006;

"(2) $20,000,000 for fiscal year 2007;

"(3) $20,000,000 for fiscal year 2008;

"(4) $20,000,000 for fiscal year 2009; and

"(5) $20,000,000 for fiscal year 2010.".

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes. And before starting the clock, we do have an Immigration Subcommittee hearing beginning at 4 o'clock. It was the intention of the Chair to recess the Committee at 4 o'clock. I'd like to have a show of hands of how many Members of the Committee intend to debate this, because I would just as soon not recess the Committee in the middle of the debate because that way I don't think everybody will have the full benefit of the arguments on both sides. So aside from Mr. Schiff, who wants to debate this? The Schiff amendment to the Forbes substitute. Ms. Waters wants——

Ms. WATERS. Yes, I am going to debate it.

Chairman SENSENBRENNER. Okay, she wants to debate everything. Anybody else? Mr. Forbes does. Well, let's try and see if we can get this done in 10 minutes.

And the gentleman's recognized for 5 minutes.

Mr. SCHIFF. Mr. Chairman, thank you. I'll try to be quick. You've been very generous on time in the hearing on this.

I think, as I mentioned in response to the debate on the substitute bill, that the bill really needs to have both components. It needs to have elements of suppression and deterrence, but it also has to have elements of prevention. The legislation—and this is an issue I worked on in the State legislature even after I was a prosecutor. In 2000 I introduced with one of my colleagues a bill in California that allocated for the first time as much money to prevention as to the suppression of crime, then $120 million for successful local juvenile crime prevention programs and an equivalent amount for cops. And it was very effective, that two-prong attack, suppression and prevention.

What I'm offering in this amendment are the prevention components that exist in a bill I introduced with Mary Bono as well as in the bipartisan Senate bill. First, the amendment doubles the authorization for funding to $100 million each year for the next 5 years, with the requirement that 50 percent of the funding be used to support criminal gang enforcement teams and 50 percent of the funding be available for community-based programs to provide for crime prevention and intervention services.

Second, the amendment would expand Project Safe Neighborhoods to require U.S. attorneys to identify and prosecute significant gangs within their district, coordinating such prosecutions among local, State, and Federal law enforcement, and coordinating criminal street gang enforcement teams in designated high-intensity interstate gang areas.

The amendment would also authorize $150 million over 5 years to support anti-gang efforts such as expansion of the Project Safe Neighborhoods program that engages U.S. attorneys in these efforts, and the National DAs Association that testified on this spoke in support of that program just last week.

The amendment also reauthorizes the Gang Resistance Education and Training program, GREAT. This is a school-based life skills program taught by police officers, and it has a very successful track record in teaching our youth in preventing gang crime. This amendment authorizes $20 million for each of the next 5 years for that program.

My colleague from Virginia is correct. The base bill doesn't cut existing funding. It does fail to reauthorize the GREAT program

and it is a significant departure from the Senate bill in that the bulk of the prevention funding of the Senate proposal is cut out of the base bill. It would be restored in this amendment. So by this amendment we would have an equivalent amount of preventive funding and a greater amount of funding for even gang prosecution team efforts. It would match the Senate bill, and I would urge my colleagues' support.

And I yield back——

Mr. CONYERS. Would the gentleman yield?

Mr. SCHIFF. I'd be happy to yield to the gentleman.

Mr. CONYERS. I want to indicate my support for the amendment.

Chairman SENSENBRENNER. Does the gentleman yields back?

Mr. SCHIFF. Yes, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Forbes.

Mr. FORBES. Thank you, Mr. Chairman. Mr. Chairman, I hope we'll reject this amendment. But let me first of all say that I agree with Mr. Schiff that many of the programs in here are very good programs, and that we need prevention. It's just this bill is about lasering in and taking down these criminal networks and not necessarily all the prevention programs. I put up a chart over here that shows almost 2.1—actually almost $2.2 billion of programs that we utilize currently for either prevention—some prosecution, but a lot of this is prevention. I can't include all of those programs in this particular bill, and if I leave out some of them, somebody else is going to be saying why isn't that program in this particular bill.

On your section (d) and the back section that you have where you have authorization, I think the appropriate place for that, your section 205, would be the DOJ reauthorization bill. And I'll certainly work with you on those programs and the DOJ reauthorization bill. And your section 203 and 204 are good programs that I'm happy to work and talk to you about. But we don't need these programs put in this bill at this particular point in time, and I hope that we will reject the amendment.

Mr. SCHIFF. Would the gentleman yield briefly?

Mr. FORBES. I'd be happy to yield.

Mr. SCHIFF. I appreciate the gentleman yielding.

My colleague says this isn't the place for the prevention funding. We passed numerous bills in the past which have had both deterrent components and prevention components. It's what makes a bill comprehensive. And plainly, as my colleague acknowledges, you really need both sides of the effort to have a successful approach at dealing with gang crime. So there's a well-worn path and tradition in the House of including both in the same bill. We would be departing from that tradition, and indeed I think that component is what has buoyed the bipartisan support in the Senate for the bill. It would have the same impact, I would hope, in the House. And I thank the gentleman for yielding.

Mr. FORBES. Well, I think first of all, in response to the gentleman, that while all these programs and many of the programs listed up here might be good, again that's not the purpose of this program. The purpose of this program is to laser in on the networks and pull them down. And just as my good friend from Virginia talks about determining what works and what doesn't and

have evidence-based approaches on what works, we don't have that on all the prevention programs. But what we know from all the prosecutors, all the law enforcement does work, what all of us agree will work, is if we pull down these criminal gang networks and get rid of the gangs, that's the best prevention program that we can do. That's what this bill lasers in on and that's what I hope we'll stick to, the base bill.

Chairman SENSENBRENNER. The gentleman yields back.

The gentlewoman from California, Ms. Waters.

Ms. WATERS. Yes. Mr. Chairman and Members, I think this is another example of a lack of cooperation from my friends on the opposite side of the aisle. Even though I don't support and did not support Mr. Schiff's substitute amendment because I think that his bill carried—I know that his bill carried with it mandatory minimum sentencing, death penalty, and some other things that I cannot embrace, but his bill certainly should have been embraced, his supplement should have been embraced, some of it, by the Members on the opposite side of the aisle. As I recall, early on in this debate my friends on the opposite side of the aisle talked about being concerned about prevention and even held out that their bill had in it, along with the law and order-type approach, some prevention. However, I don't see any real willingness to embrace prevention in any shape, form, or fashion here today. As a matter of fact, if you do not support Mr. Schiff's amendments that would put some money into prevention, then perhaps if Mr. Schiff had an amendment that would authorize funding for the juvenile justice bill that was referred to earlier today by Mr. Scott, that's known as the Juvenile Justice Accountability Block Grant Act, where he mentioned that we thought we had authorized a bill and tried to get $500 million, it turned out to get $55 million, perhaps if you don't want prevention in your bill, then perhaps this amendment could be rearranged so that we could authorize the full funding of the prevention that you don't have in your bill but you do embrace because you think that that is important.

I don't know, but I would put that out there as a suggestion. If in fact you believe in prevention but you don't want to muddy up your bill with prevention, perhaps you would support an amendment that would put the money into the other program.

Now, as for all the programs that you saw listed, we have no way of knowing exactly what you had up there. We do know that there is something called the CDBG, the Community Development Block Grant, that is being cut by this Administration by 35 percent. Much of that money goes to 501(c)(3)'s in cities and towns to deal with at-risk youth and to deal with gang problems. And so I would like to take a look that you put up there because we could easily evaluate that and see what that really is. But I want you to know that just in case CDBG was there, the block grant, that most of the cities depend on so very much to deal with some of these problems, is being cut. I mean it is being slaughtered by this Administration and perhaps even transferred out of HUD, which is quite unfortunate. And I suppose if I take a close look at the other programs that you have put up there, I can tell you exactly what they're getting, what that money is used for, and we'd be able to make a determination about whether or not that really is the kind of prevention money that this gentleman is referring to.

Mr. SCHIFF. Will the gentlewoman yield?

Ms. WATERS. I yield to the gentleman from California.

Mr. SCHIFF. I just wanted to say it's great to have you back on my side.

Ms. WATERS. Just for a moment.

Mr. SCHIFF. It's not a future commitment, I understand that. Thank you. And I yield back to the gentlelady.

Chairman SENSENBRENNER. Does the gentlelady yield back?

Ms. WATERS. Oh, yes. I'm sorry. Yes, I yield back.

Chairman SENSENBRENNER. Well, the Chair is going to put the question. If the gentleman from Virginia seeks recognition, then we're going to have to adjourn the Committee. Okay.

The question is on the amendment by the gentleman from California, Mr. Schiff, to the amendment in the nature of a substitute by the gentleman from Virginia, Mr. Forbes. Those in favor will say aye? Opposed, no?

The noes appear to have it.

Mr. SCHIFF. Mr. Chairman, on that I request a recorded vote.

Chairman SENSENBRENNER. A recorded vote is ordered. Those in favor of the Schiff amendment to the Forbes substitute will, as your names are called, answer aye. Those opposed, no. Immediately after this rollcall, the Committee will adjourn.

The clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

[No response.]

The CLERK. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no. Mr. Hostettler?

[No response.]

The CLERK. Mr. Green?

[No response.]

The CLERK. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Mr. Issa?

Mr. ISSA. No.

The CLERK. Mr. Issa, no. Mr. Flake?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Smith?
[No response.]
The CLERK. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members who wish to cast or change their vote? The gentleman from Wisconsin, Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Chairman SENSENBRENNER. Further Members who wish to cast or change their vote? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 8 ayes and 18 noes.

Chairman SENSENBRENNER. And the amendment is not agreed to.

The Committee stands adjourned.

[Whereupon, at 4:02 p.m., the Committee was adjourned.]

BUSINESS MEETING
(continued)
WEDNESDAY, APRIL 20, 2005

The Committee met, pursuant to notice, at 10:04 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

[Intervening business.]

Chairman SENSENBRENNER. When the Committee last recessed, pending was the adoption of H.R. 1279, the "Gang Deterrence and Community Protection Act." The gentleman from North Carolina, on behalf of the Subcommittee on Crime, Terrorism, and Homeland Security reported the bill favorably and moved its favorable recommendation to the full House. The gentleman from Virginia, Mr. Forbes, had offered an amendment in the nature of a substitute to which several second degree amendments were offered and defeated.

We will now resume consideration of the Forbes amendment in the nature of a substitute to H.R. 1279. Are there any further second degree amendments to the Forbes amendment in the nature of a substitute? Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I have an amendment at the desk——

Mr. CARSON. The clerk will report the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1279 officer by Mr. Scott of Virginia. Page 3, line 16, strike subsection "(b)(2)."

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1279
OFFERED BY MR. SCOTT OF VIRGINIA
#1

Page 3, line 16, strike subsection "(b)(2)"

Mr. SCOTT. Mr. Chairman, this amendment strikes a civil asset forfeiture provision added to the bill. I don't know where it came

from. It wasn't part of the bill when it left Subcommittee, but somewhere along the lines it got paper clipped onto the back of the bill. We already have a provision for criminal asset forfeiture which means that—which requires that we actually convict somebody before we take their property as proceeds of or used in furtherance of a crime. This provision just allows the Department of Justice to go after somebody's property whether they've been convicted or not.

We have been dealing with this issue over the last several years, Mr. Chairman, and I would hope that we would not just stick this onto a bill without any consideration, no Subcommittee hearings or anything else.

I would yield back the balance of my time. Wait a minute. I yield to the gentleman from Michigan.

Mr. CONYERS. Could we ask the author of this bill, Mr. Forbes, what he knows about the provision that you're commenting on, sir?

Mr. SCOTT. Reclaiming my time. Mr. Chairman, I will yield back my time. I think the gentleman, my colleague from Virginia is seeking his own time.

Chairman SENSENBRENNER. The other gentleman from Virginia, Mr. Forbes.

Mr. FORBES. Mr. Chairman, this is a provision that——

Chairman SENSENBRENNER. Do you move to strike the last word?

Mr. FORBES. Yes, move to strike the last word.

Chairman SENSENBRENNER. If so, you are recognized for 5 minutes.

Mr. FORBES. Mr. Chairman, this is a provision that is not absolutely essential for bringing down these criminal gang networks. In the spirit of cooperation with my colleague from Virginia, I hope that we'll accept this amendment.

Chairman SENSENBRENNER. The gentleman yield back?

Mr. FORBES. I yield back, Mr. Chairman.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Are there further amendments? Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I have an amendment at the desk, No. 2.

Chairman SENSENBRENNER. The clerk will report Scott No. 2.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1279 offered by Mr. Scott of Virginia.

On page 2, line 9 delete the phrase "to death or".

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentleman from Virginia is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1279
OFFERED BY MR. SCOTT OF VIRGINIA
#2

On page 2, line 9 delete the phrase "to death or".

On page 8, line 24 delete the phrase "to death, or".

On page 11, line ~~11-12~~ 13, delete the phrase "to death or".

On page 14, line 2, delete the phrase "to death or".

On page 15, line 22, delete the phrase "to death or".

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, this series of amendments deletes the death penalty from the bill. In 2000 the Federal Government identified serious problems of racial and geographic disparity in the Federal death penalty, and although we have passed the Innocence Protection Act, we haven't done anything about racial and geographical disparity in the death penalty. We need to fix that before we start adding new death penalties to the bill.

Just last week the New York legislature considered the death penalty. It didn't reinstate it. New Mexico, Connecticut and Montana are all considering repealing their death penalties. North Carolina, Maryland, New Jersey and Illinois all have or are considering moratoriums on executions. We know that there is a strong consensus amongst criminologists that the death penalty is not a deterrent to homicide, and in fact it may have a brutalizing effect and actually increase homicides, and whatever deterrent effect it has, it has even less effect on young adults that will be affected by this legislation. So we have already just recently provided a prohibition against executing juveniles. You have the same kinds of problems with younger adults in that it does not serve a useful purpose.

Many people are convicted and sentenced to death by error. About 2 out of every 3 capital judgments reviewed by courts has reversed the death penalty. We have inadequate legal representation that has a racially disparate impact.

And I would hope, Mr. Chairman, that we wouldn't, as we consider what to do about gangs, I would hope we would not load it up with this controversial idea that the death penalty might actually reduce the crimes.

I'll yield back.

Chairman SENSENBRENNER. Gentleman from Virginia, Mr. Forbes?

Mr. FORBES. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FORBES. Mr. Chairman, I hope that we will reject this amendment and the other amendments which would gut the death penalty our of this provision. As we are debating this bill, a Fed-

eral trial is going on in the Commonwealth of Virginia where one of these gang members and several of his compatriots bragged to law enforcement agents that he had the power to order the murder of anybody he wanted to and there would be nothing that they could do to stop him. Unfortunately, 4 months later he was successful in that, killed a witness that was going to be testifying against him in trial.

This is a debate over the death penalty. The one thing I would agree with my colleague over is that this is the essence of whether or not we're going to have a death penalty or not. If we're going to have a death penalty the people this applies to are the most heinous and worse people that we can be dealing with, and that's where we want the death penalty.

I would, however, strongly differ with him, no many how many times he says it, there is no consensus among criminologists that the death penalty is not a deterrent to additional crimes. In fact, just the opposite. There are numerous studies that show that the death penalty is an incredibly strong prevention and deterrent to criminal crimes. I hope that we will not rip it out of this bill, that we will leave the death penalty provisions intact, and that we will defeat this amendment.

Chairman SENSENBRENNER. Gentleman yield back?

Mr. FORBES. I yield back, Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from Michigan?

Mr. CONYERS. Mr. Chairman, I rise to support the amendment of the gentleman from Virginia.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CONYERS. First of all, I'd like to ask Mr. Scott, is this the main point in this bill, Mr. Scott, that we'll be discussing, the death penalty and its usefulness in fighting crime?

Mr. SCOTT. If the gentleman would yield. Mr. Chairman, the consensus amongst criminologists is that the death penalty will not serve a constructive purpose in the bill, will not reduce crime, may increase crime, and whatever good the death penalty does, it has even less effect with young people. That's why the death penalty was shown to unconstitutional as it applies to juveniles.

Again, if our goal is to reduce crime, the imposition of the death penalty in this case will not do it. In the case where somebody's ordering executions, they can already get life imprisonment. To suggest that that's a nothing, that you can't do anything to me but lock you up for life without parole, that's—and I don't think that position is well taken. You can lock somebody up for life, and I think that has shown to be a sufficient deterrent, whatever deterrent there may be.

Mr. CONYERS. Well, I've got a staff paper here that goes to the wrongful convictions of people who have been sentenced to death, over 100 in the United States, later to be exonerated. We remember that in Illinois former Governor Ryan declared a moratorium in his State after 13 people were released from death row because of their innocence.

We are confronted with the statistic that nearly 80 percent of those convictions, whose convictions were reversed, did not get the death penalty at retrial, and that more than 2 out of every 3 capital judgments reviewed by the courts during a 23-year period were

flawed. In other words, this paper goes on and on. The American Bar Association has pointed out inadequate legal representation in capital cases, and the fact that many of the people that are representing—court appointed attorneys representing these defendants are very poorly compensated, and many of them are new lawyers. And then the gentleman from Virginia mentioned the racially disproportionate impact of the death penalty. Current death row populations show racially discriminatory impact of death penalty sentencing. In Alabama 46 percent of those sentenced to death are black; California 36 percent; Florida the same number; Illinois 63 percent; Maryland 72 percent; Pennsylvania 63 percent; Virginia 39 percent. So a defendant's likelihood of receiving the death penalty correlates with the victim's race.

I was just wondering if my friend Mr. Forbes has had a chance to review any of this material either at the Subcommittee level or does it have any impact upon his insistence that the death penalty be kept in this legislation dealing with your offenders? I yield to him at this point.

Mr. FORBES. Thank you for yielding. First of all, let me respond to the first part of the question that my colleague from Virginia said. The individual that ordered the murders that I was referencing earlier was actually in jail and in prison when he did it. To say that a life sentence would have deterred him, would not have, but I would suggest capital punishment could have.

Also, Mr. Chairman, I would suggest that consistently the statistics show that capital punishment is a substantial deterrent. The most up to date and exhaustive study produced by researchers at Emory University in 2002 concludes that each execution prevents on average about 18 murders. The academic study's findings are confirmed by the recent experience of those States that actively enforce the death penalty and those States that do not allow capital punishment.

In 1984 this Nation's prisons held 810 inmates serving sentences for murder, who once before in their lives had been convicted of murder. Had these killers been executed for their first murder conviction, 821 innocent men, women and children would have lived.

I can go on, but I think my time has expired, Mr. Chairman, but we have numerous other studies that buttress the same conclusions.

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. ISSA. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, Mr. Issa.

Mr. ISSA. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. ISSA. Since we are going to talk about the death penalty I just wanted to pick up for clarification on something Mr. Scott said. I think perhaps you didn't mean what I heard, which was that the death penalty was somehow less of a deterrent to people under 18 and that's why the Supreme Court struck it down. That wasn't my understanding of the Supreme Court decision at all. You didn't mean to say that, did you, that that was the basis for the Supreme Court decision? And I yield to the gentleman.

Mr. SCOTT. Well, they said that the mind is not sufficiently formed and that you're not making long-range determinations, so it did not serve a—it didn't serve as a deterrent. Yeah, that's what I said, it does not serve as a deterrent.

Mr. ISSA. Okay. So reclaiming my time, in light of the Supreme Court decision, we're not talking about that group of people. They're not covered by this. We're talking about adults here in this gang activity.

Mr. SCOTT. If the gentleman would yield?

Mr. ISSA. Yes, I would.

Mr. SCOTT. The finding was that the mind was not fully developed until somewhere around 25, and so executing people 18 and under was unconstitutional. For the same rationale it is less effective for those 18 to 25 than those over 25. It is much less effective as a deterrent for those under 18, but the 18 to 25, the rationale in the bill would apply to a lesser extent 18 to 25.

Mr. ISSA. Reclaiming my time, I thank the gentleman. And without getting into the particulars of the death penalty, I certainly will be supporting—or opposing this amendment because I believe the Supreme Court has spoken, set a date for this purpose, and having been 18 to 25 and having a 24-year-old, who shows all signs of taking every minute of that to get to where he should be in maturity, I would certainly agree with the gentleman that older is better, but I think we also would find that people over 25 commit crimes dramatically lower too. That shouldn't be incarceration or enforcement if it leads to safer streets, and that's why I'll be opposing this amendment, but I do thank the gentleman for clarifying his position on youth.

I yield back the balance of my time. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from California, Mr. Berman.

Mr. BERMAN. Yes, Mr. Chairman. I support the amendment and I yield my time to the Ranking Member.

Mr. CONYERS. I thank the gentleman. I turn now to my friend, Mr. Forbes. Again, because I'm sorry he heard about this one fellow in prison who made this brash statement that motivates him so strongly, but what about the questions that I raised, Mr. Forbes, about the wrongful convictions, namely over 100 people that have been sentenced to death were later exonerated; that Governor Ryan of Illinois declared a moratorium after 13 people were released from death row because of their innocence; and that nearly 80 percent of those who were retried did not get the death penalty at retrial; that the American Bar Association finds there are gross inadequate legal misrepresentations or inadequate representations on the part of the new lawyers who are very frequently poorly compensated; and the racially disproportionate impact of the death penalty as it applies to young people?

And it seems to me that those four considerations require us to do a little bit more than worry about what one fellow in a prison bragged that he could do. I mean I think this has got to—the American Bar was taking a little wider view of this. The General Accounting Office reviewed numerous studies of patterns or racial discrimination in death penalty sentencing, and I would feel a little bit better if you at least acknowledged these considerations, and perhaps choose not to agree with them, but for us just to skip over

this, we're talking life and death here, and I think it's a pretty serious matter.

Mr. FORBES. Yield?

Mr. CONYERS. Of course, with pleasure.

Mr. FORBES. Thank you for yielding.

Mr. Chairman, I would say that I would equally feel better if we gave consideration to individuals like Michelle Guest, who was the witness who came in here whose husband was murdered and she was left a widow and she was left with 9 children without a father.

And if you continue looking, if there are procedural problems we have to look at, feel free to look at those. If there are competency for counsel problems to look at, look at those.

But also look at at the same time a May 2002 study by the University of Colorado at Denver, which is probably the most exhaustive study, 6,143 death sentences from 1997—1977 to 1997. And when they compared the changes in States murder rates to the probability of being executed for murder, they found not only that each execution has a significant deterrent effect, but that each commutation of death sentences increases homicides between 4 and 5.

So when I'm looking at individuals who are being murdered and killed by violent gang criminals, I want to give some consideration to them as well, and I believe that this death penalty will do that. As the gentleman from California mentioned, it will make our streets continue to be safer from some of these violent criminals. That's why I support the death penalty and the provisions that are included in this bill.

Mr. CONYERS. Do you have any comments about the racially disproportionate impact of the death penalty as it is visited upon our citizens here?

Mr. FORBES. Well, Mr. Chairman, if the gentleman would yield, I would say that if there are, as I mentioned, disparities, whether they be racial in nature or from incompetent counsel, I think certainly there are things that need to be explored and examined, but that doesn't mean that we should do away with the death penalty or that we should stop trying to seek the death penalty for violent murderers who are continuing to create more and more victims every single day that we continue to debate this bill.

Mr. CONYERS. Well, let me ask Mr. Scott of Virginia whether or not these matters have been adequately explored at the Subcommittee level because, look, no one is more sympathetic to Mrs. Guest—Ms. Guest, who was before the Committee——

Chairman SENSENBRENNER. The time of the gentleman from California has expired.

The gentleman from North Carolina, Mr. Watt?

Mr. WATT. Thank you, Mr. Chairman. As so often happens in this Committee, I think we are kind of talking past each other here, and I'm going to refrain from getting into the debate about whether the death penalty is a deterrent, an effective deterrent, a worthwhile deterrent. I think—I certainly have strong feelings about that issue, but I think we'll find that on that issue there have been reports that have—or studies or statistical analyses that have been all over the lot. And whenever I hear a defense of the death penalty as a deterrent I'm always struck by the accompanying argument that describes the most egregious kinds of crimes that have taken place, and it's hard to not feel some an-

guish and disappointment about the nature of the crimes that are being described.

What I think is uncontroverted, however, in this whole debate is the point that Mr. Conyers has been making. You can have studies, you do have studies all over the lot about whether the death penalty is a deterrent. What there aren't studies all over the lot about is that there have been just an untold number of mistakes made in the administration of the death penalty, people being put to death, being put on death row who were subsequently determined to be absolutely innocent of the crime with which they were charged.

What there is no dispute about in the research is that in the administration of the death penalty there is just absolute clarity to the fact that there is a racial bias that minorities, African-Americans tend, certainly in every case, in every study I've seen, have the death penalty administered against them disproportionately than members of the majority race.

so when I see a bill and look at the specific provisions that Mr. Scott in his amendment is proposing to delete, and I see time after time after time after time after time, there were five, six, five provisions I guess that Mr. Scott is proposing to delete. In every single one of those the word "shall" appears. There is no discretion about whether the death penalty will be administered in those cases, in every single one of those instances.

And when I know that behind that, before you get to the "shall administer the death penalty" there is racial bias and there are documented mistakes that have been made in whether the person is guilty or not. To have a long drawn out argument about whether the death penalty is a deterrent, it seems to me, misses the point. And so regardless of where you are in your beliefs about whether the death penalty is an effective deterrent or not, surely you don't want people put to death by mistake.

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. WATT. Mr. Chairman? Could I just finish my sentence? I ask for 30 seconds.

Chairman SENSENBRENNER. Without objection.

Mr. WATT. Surely my colleagues would not want the death penalty administered in the "shall" fashion on a racially discriminatory basis. And I just, you know, I think we're missing the point to have a long drawn out debate about deterrence. Until we can get the administration of the death penalty right racially and without mistakes, to talk about deterrence I think just misses the point.

Chairman SENSENBRENNER. Time of the gentleman has once again expired.

For what purpose does the gentleman from California seek recognition?

Mr. LUNGREN. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. LUNGREN. Mr. Chairman, on this issue it is important for us to have a debate and a record that is accurate and does not leave certain misimpressions on that record. As the Attorney General of the State of California I was required to represent the State in all criminal matters following conviction, including all death penalty

cases. I had a capital case project which specifically involved the prosecutors who were exclusively involved in death penalty cases or nearly exclusively involved in death penalty cases.

I had the opportunity to argue a death penalty case before the United States Supreme Court. Interestingly enough, I won that particular argument, and the death penalty was continued. Subsequently, that convicted murderer—multiple murderers—sentence was changed from death to life imprisonment based on what some would call a technicality. It had nothing to do with guilt or innocence, had nothing to do with exoneration. Had to do with the fact of a claim of lack of competent counsel. And the interesting thing is that I call it a technicality because the counsel's—the argument against the counsel's representation was that this public defender was involved in running for Congress at the time, and he was distracted by running for Congress such that he couldn't give enough time.

Well, I went back and looked at the record. The person he was running against at that time happened to be me. I know how much time that person spent in Congress, and I know there wasn't any possibility that the amount of time he spent in running for office distracted him from an appropriate time commitment to that defendant. And yet if we were to take what was stated by the gentleman on the other side at face value, they would say that there was a mistake, that this multiple murderer, who murdered two gang members because they looked at him the wrong way, then went back and murdered two witnesses because they could identify him following the murder, was somehow not in fact guilty of first degree murder, was not in fact guilty of first degree murder with special circumstances, was not in fact guilty of murder multiple times. In fact he was.

But what has just been presented on the record is that his case would be one of those suggesting that he had wrongly been sentenced to death, and that somehow this proves that the courts are not doing the proper thing in allowing people who do not deserve the death penalty to be sent to death.

Secondly, I would just suggest that some of the statements that say this mandatorily sentences someone to death is a misreading of the bill. If you look at page 2, lines 8 and 9, which the gentleman's amendment seeks to change, it says, "If the gang crime results in the death of any person he be sentenced to death or life in prison." That doesn't say he's mandatorily to receive death.

Thirdly, this is within the Federal system, so recitations of the problems with Illinois are not relevant here. This is in the Federal system.

Fourthly, for one to get the death penalty one has to go through a bifurcated trial in which guilt or innocence is determined in the first instance, and then there's a separate process by which a determination of whether the aggravating circumstances outweigh the mitigating circumstances. So even if you fit everything that is said in this bill, there is no suggestion that one is mandatorily sentenced to death.

Lastly, this idea that somehow the Supreme Court's recent decision on the death penalty should give us guidance in this case is kind of interesting because we received a communication, written communication from the Judicial Conference in which they suggest

we not pass this bill because this would put it in the Federal system, and according to the Judicial Conference, they have very little experience dealing with juveniles. So I find of interesting in this instance that we have the court on the one hand trying to tell us what we should do, or people trying to utilize their information or their comments on trying to tell us not to do it.

Mr. CONYERS. Would the distinguished gentleman from California yield?

Mr. LUNGREN. Now, the other side, them saying they really don't know what they're talking about in this regard.

Yes, I would be very happy to.

Mr. CONYERS. I thank the former Attorney General from California for yielding.

Is it your experience, Mr. Lungren, that the death penalty is unfair or that the death penalty is fair?

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. CONYERS. Can he respond, Mr. Chairman?

Chairman SENSENBRENNER. Without objection the gentleman will be given 10 seconds to respond.

Mr. LUNGREN. Fair.

Mr. CONYERS. I thank the gentleman.

Chairman SENSENBRENNER. The time of the gentleman has once again expired.

[Intervening business.]

Mr. CONYERS. Could I ask unanimous consent to put the American Civil Liberties Union statement immediately following my remarks?

Chairman SENSENBRENNER. Without objection, so ordered.

Mr. CONYERS. Thank you.

[The information follows:]

American Civil Liberties Union

www.aclu.org

URL: http://www.aclu.org/DeathPenalty/DeathPenalty.cfm?ID=16513&c=290

National Death Penalty Fact Sheet
February 16, 2005

States With the Death Penalty

* indicates number of executions since 1976

Alabama 30	Arizona 22	Arkansas 26	California 10
Colorado 1	Connecticut*	Delaware 13	Florida 59
Georgia 37	Idaho 1	Illinois 12	Indiana 11
Kansas*	Kentucky 2	Louisiana 27	Maryland 4
Mississippi 6	Missouri 61	Montana 2	Nebraska 3
Nevada 11	New Hampshire*	New Jersey*	New Mexico 1
New York*	N. Carolina 34	Ohio 14	Oklahoma 75
Oregon 2	Pennsylvania 3	S. Carolina 32	S. Dakota*
Tennessee 1	Texas 338	Utah 6	Virginia 94
Washington 4	Wyoming 1	U.S. Govt 3	U.S. Military*

States Without the Death Penalty

Alaska	Hawaii	Iowa	Maine
Mass.	Michigan	Minnesota	N. Dakota
Rhode Island	Vermont	W. Virginia	Wisconsin
D. of Columbia			

Total Number on Death Row as of October 1, 2004: 3,471 (NAACP Legal Defense & Education Fund, Inc.)

Total Executions Since 1976: 948

The Death Penalty is Unfair
1) The death penalty is unfair.
The death penalty has never been applied fairly across race, class, and gender lines. Who is sentenced to die often depends on the attitudes of prosecutors, where one lives, the prejudices of judges and juries, and the skills of defense lawyers.

2) The death penalty risks killing innocent people.
As of September 2004, 115 prisoners convicted of capital crimes and sentenced to death have been released from death row because of innocence, since the death penalty was reinstated in 1976. DNA tests play a major role in proving innocence.

Wrongful convictions often result from: false confessions, which are frequently coerced from juveniles and mentally retarded people; mistaken eyewitness evidence; jail house snitches; white-coat fraud and junk science; and prosecutorial abuse.

3) The death penalty punishes the poor.

Most defendants are poor must rely on publicly appointed attorneys who are sometimes unqualified, inexperienced or incompetent. Some lawyers have slept or appeared drunk during trials.

4) The death penalty is racially biased.
Many jurisdictions, which have studied their death penalty systems including Maryland, Georgia, Philadelphia, Indiana, and North Carolina, have found that people who kill white people are far more likely to get the death penalty than those who kill black people.

5) The death penalty costs more than life in prison.
Prosecuting a death penalty case is extremely expensive for a state and drains money that could be used for education and social programs. It costs more than sentencing a prisoner to life without parole.

The most comprehensive death penalty study in the country found that the death penalty costs North Carolina $2.16 million more per execution than a non-death penalty murder case with a sentence of life imprisonment (Duke University, May 1993). In its review of death penalty expenses, the State of Kansas concluded that capital cases are 70% more expensive than comparable non-death penalty cases.

6) The death penalty is opposed by a growing number of murdered victims' families.
Groups such as Murdered Victims Families for Reconciliation and Journey of Hope from Violence to Healing oppose the death penalty.

7) The death penalty is not a deterrent to crime.
Since the death penalty was reinstated, over 80% of all executions have occurred in the South, the region with the highest murder rate. The Northeast, the region with the lowest murder rate, has accounted for less than 1% of the executions.

8) The death penalty is not used in most countries around the world.
118 countries in the world have abolished the death penalty in either law or practice.

Supreme Court Cases That Highlight Flaws of the Death Penalty

Arbitrary--Furman v. Georgia, 1972: The Supreme Court declared the death penalty unconstitutional, as cruel and unusual punishment because the death penalty was arbitrarily and discriminatorily carried out against certain groups, particularly African-Americans. The Court held that the Eighth Amendment required the death penalty to be imposed consistently and fairly. States responded to the landmark decision by amending their statutes to create a bi-furcated trial with separate guilt stage and penalty phase trials.

A Broken System--Gregg v. Georgia, 1976: This case defines the beginning of the modern era of the death penalty with the Supreme Court upholding newly revised statutes in Georgia, Florida, and Texas. In effect, the Court declared that all the problems that it had recognized four years earlier had been resolved through implementation of the new procedures contained in the statutes of these three states. Almost three decades later, the Gregg ruling has not lived up to its promise. Defendants continue to be convicted and sentenced to death after being represented by inadequate counsel. Racial disparity in sentencing continues. The fact that well over 100 people have been released from death rows in recent years because they were wrongfully convicted is powerful evidence that the system is still broken.

Racial Bias (victim's race)--Coker vs. Georgia, 1977: The Supreme Court ruled that use of the death penalty in rape cases is unconstitutional because the sentence is disproportionate to the crime. The Coker case resulted in the removal from death row of 20 inmates - three whites and 17 blacks - awaiting execution.

Racial Bias (jury selection)--Batson v. Kentucky, 1986: The Supreme Court ruled that excluding jurors based solely on race was unconstitutional. In this case, Batson, a black man, was convicted of burglary and receipt of stolen goods after the prosecution dismissed all four black potential jurors. The Supreme Court ruled that this violated his right to a fair jury trial and to equal protection of the law in violation of the 6th and 14th Amendments. Potential jurors may not be struck from the jury solely because of their race.

Mentally Ill--Ford v. Wainwright, 1986: The Supreme Court prohibited the execution of the mentally insane and required an adversarial process for determining mental competency. However, insanity has proven to be an extremely difficult standard to meet and over the years numerous defendants exhibiting obvious signs of mental

illness have been executed.

Racial Bias (victim's race)--McClesky v. Kemp, 1987: In this Supreme Court case, counsel on behalf of death row prisoner Warren McClesky argued that death penalty sentences in Georgia were racially biased because defendants who killed white victims were significantly more likely to be sentenced to death than those who killed black victims. The court ruled that although McClesky had proven statistically that racial discrimination was occurring, it did not violate his constitutional right to "equal protection of the law." McClesky was executed by electrocution in 1991.

Due Process--Ring vs. Arizona, 2002: The Supreme Court ruled that the Sixth Amendment right to a jury trial requires that juries, not judges, determine whether aggravating factors exist to warrant the death penalty. The decision does not apply retroactively to cases.

Mentally Retarded--Atkins v. Commonwealth of Virginia, 2003: The Supreme Court found that executing mentally retarded offenders is cruel and unusual punishment prohibited by the Eighth Amendment of the Constitution.

Juveniles--Simmons v. Roper, 2003: The Missouri Supreme Court set aside Christopher Simmons' death sentence, ruling that the execution of those who committed crimes before the age of 18 violates evolving standards of decency as defined by the Court in Atkins. The Supreme Court will reexamine the constitutionality of executing juvenile offenders during the 2004-2005 session.

Commonly-used Death Penalty Terms

Death Row: The cellblock in a prison where those condemned to death await execution

Lethal Injection: The most commonly used method of execution. It gained popularity in the 20th century as a supposedly humane form of execution meant to substitute for methods such as electrocution, hanging, execution by firing squad or decapitation. The injection is intravenous and is usually a mixture of three compounds, designed to induce rapid unconsciousness followed by death through muscular paralysis of the lungs or heart. Death usually results within five minutes, although the entire procedure can take up to 45 minutes. The individual drugs are not mixed externally as that can cause them to precipitate; they are usually injected in sequence through one or two intravenous tubes.

Stay of Execution: Judges or governors (or the President in federal cases) have the power to issue a stay of execution to temporarily delay the imposition of a death sentence. A stay is issued to give more time to consider additional information. An inmate can receive multiple stays.

Moratorium: A temporary halt of executions. Statewide moratoriums have been considered in several states and issued in two states: Illinois under Governor George Ryan in 2000 and Maryland under Governor Paris Glendening in 2000 (MD's moratorium was overturned by Glendening's successor, Governor Robert Ehrlich). The moratoria were issued in order to study flaws in the state's death penalty systems. Prosecutors may still seek death sentences during a moratorium and people may still be sentenced to death.

Aggravating Factors: In order for a case to be considered a capital case, certain aggravating circumstances must exist. Although a prosecutor generally has nearly unrestricted authority to decide whether to seek the death penalty, he or she must establish the presence of aggravating factors in the murder case. Examples of aggravating factors are: multiple victims were murdered; the murder occurred during the course of another serious felony; the victim was less than 12 years old; the murder was especially heinous, atrocious, or cruel in that it involved serious physical abuse or torture; the murder was committed for money or the promise of money or other remuneration.

Mitigating Factors: Another important consideration the district attorney must determine before proceeding to ask for the death penalty is any mitigating circumstances that the defendant might present. These are factors that tend to offer some excuse for what the murderer has done. They are spelled out in the statutes but the judge or jury may consider any mitigating factor that the defendant proposes. Examples of mitigating factors include: the defendant has no significant criminal history or record; when the defendant committed murder, he or she was under extreme mental or emotional distress; the defendant had mental problems that would not be sufficient to amount to a defense to the crime of murder. If the district attorney decides that the aggravating factors outweigh any mitigating circumstances, he or she may seek the death penalty in the murder case. If the prosecutor decides to seek the death penalty, then certain trial procedures come into play.

Due Process: The regular course of administration of law through the courts. A constitutional guarantee of due process requires that every person have the protection of a day in court, representation by an attorney, and the benefit of procedures that are speedy, fair, and impartial.

Habeas Corpus: Latin term: a court petition requiring the government to produce a prisoner before a court and justify his or her imprisonment. Its purpose is to release someone who has been arrested unlawfully. It originated

in the Magna Carta and has stood as a basic individual right against arbitrary arrest and imprisonment. Today it is a legal petition used to ask federal courts to review state court cases.
Deterrence: Deterrence is an important penological concept that someone can be prevented from committing a crime by fear of the potential consequences. Most experts agree that the death penalty is not a deterrent to homicide.
Life without Parole: A prisoner serving a sentence of life imprisonment without parole can never be eligible for prison release.
Executive Clemency: The power, usually of a president or governor, but sometimes of a parole or pardons board to pardon or commute the sentence of someone convicted in that jurisdiction.
Commutation: The act of an executive changing a death sentence to another form of sentence, usually life without parole.
Exonerate: To clear a person of criminal charges.

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Chairman SENSENBRENNER. The question is on the Scott Amendment No. 2. Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it and the amendment is not agreed to.

Are there further amendments?

Ms. SÁNCHEZ. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Sánchez.

Ms. SÁNCHEZ. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment and the number of the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1279 offered by Ms. Sánchez of California.

Chairman SENSENBRENNER. And what's the number of the amendment so that——

The CLERK. Amendment No. 013.

Chairman SENSENBRENNER. The clerk will continue reporting the amendment.

The CLERK. At the end of the bill, insert the following new section:

Sec. 2.——

Ms. SÁNCHEZ. Mr. Chairman, may I ask if the amendment be considered as read?

Chairman SENSENBRENNER. Without objection, so ordered, and the gentlewoman is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO THE FORBES AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1279 OFFERED BY MS. LINDA T. SÁNCHEZ OF CALIFORNIA

At the end of the bill, insert the following new section:

1 **SEC. 2___. AMENDMENTS TO SAFE AND DRUG-FREE**
2 **SCHOOLS AND COMMUNITIES ACT REGARD-**
3 **ING BULLYING AND GANGS.**

4 (a) AMENDMENTS TO SAFE AND DRUG-FREE
5 SCHOOLS AND COMMUNITIES ACT.—Part A of title IV of
6 the Elementary and Secondary Education Act of 1965 (20
7 U.S.C. 7101 et seq.; commonly referred to as the ''Safe
8 and Drug-Free Schools and Communities Act'') is
9 amended—

10 (1) in the matter preceding paragraph (1) in
11 section 4002, and in sections 4112(a)(5)(A),
12 4115(b)(1)(C)(i), and 4115(b)(2)(A)(i), by striking
13 ''violence'' and inserting ''violence, bullying, and
14 gangs'';

15 (2) in clause (ii) of section 4112(c)(2)(D), by
16 striking ''violence that is associated'' and inserting
17 ''violence, bullying, and gangs that are associated'';

(3) by striking the term ''drug and violence prevention'' each place such term appears and inserting ''drug, violence, bullying, and gang prevention'', including in sections 4002(1), 4002(2), 4002(4), 4112(a)(3), 4112(a)(5), 4112(c)(2)(D), 4113(a)(4), 4113(a)(5), 4113(a)(9), 4113(a)(10), 4113(a)(14), 4114(a)(1), 4114(c)(1)(A), 4114(d)(2), 4114(d)(6), 4115(a)(1)(A), 4115(b)(2)(B), 4115(b)(2)(C), 4115(b)(2)(D), 4115(b)(2)(E), 4115(d), 4116(a)(1)(B), 4121(a)(1), 4121(a)(2), and 4121(a)(5);

(4) by striking the term ''drug use and violence'' each place such term appears and inserting ''drug use, violence, bullying, and gangs'', including in sections 4002(4), 4112(a)(2), 4112(c)(3)(B)(iv), 4113(a)(9)(A), 4115(b)(1)(C)(ii), 4116(a)(2)(B), and 4122(c);

(5) in section 4112(c)(3)(B)(ii), by striking ''violence and drug-related'' and inserting ''violence, bullying, gang, and drug-related'';

(6) in section 4114(d)(6), by striking ''acts of violence'' and inserting ''acts of violence, bullying, and gangs'';

(7) in sections 4115(a)(1)(A), 4115(a)(1)(C), 4115(a)(2)(A), 4115(b)(2)(E), and 4122(a), by

striking the term ''violence and illegal drug use'' each place such term appears and inserting ''violence, bullying, gangs, and illegal drug use'';

(8) in section 4115(b)(2)(B), by striking the term ''violence and illegal use of drugs'' each place such term appears and inserting ''violence, bullying, gangs, and illegal use of drugs'';

(9) in the matter preceding clause (i) in section 4115(b)(2)(E), and in section 4152(a), by striking the term ''Drug and violence prevention'' each place such term appears and inserting ''Drug, violence, bullying, and gang prevention'';

(10) in sections 4115(b)(2)(E)(vii) and 4122(b) by striking ''illegal drug use and violence'' and inserting ''violence, bullying, gangs, and illegal drug use'';

(11) in section 4115(b)(2)(E)(ix), by striking ''violent or drug abusing students'' and inserting ''violent, bullying, gang-affiliated, or drug abusing students'';

(12) in section 4115(b)(2)(E)(x), by striking ''violent behavior and illegal use of drugs'' and inserting ''violent behavior, bullying, gang affiliation, and illegal use of drugs'';

(13) in section 4115(b)(2)(E)(xiii)—

(A) by striking ''violence prevention and education programs'' and inserting ''violence, bullying, and gang prevention and education programs''; and

(B) by striking ''resolve conflicts without violence'' and inserting ''resolve conflicts without violence, bullying, or gangs'';

(14) in section 4115(b)(2)(E)(xv), by striking ''major accident, or a drug-related incident'' and inserting ''major accident, bullying incident, gang-related incident, or a drug-related incident'';

(15) in sections 4115(b)(2)(E)(xviii) and 4116(b)(1), by striking ''safety hotline'' and inserting ''safety, bullying prevention, and gang prevention hotline'';

(16) in section 4116(a)(1)(C), by striking ''violence and drug prevention'' and inserting ''drug, violence, bullying, and gang prevention'';

(17) in section 4121(a), by striking ''illegal use of drugs and violence'' and inserting ''violence, bullying, gang activity, and illegal drug use'';

(18) in section 4121(a)(4), by striking ''violence prevention and education'' and inserting ''violence, bullying, and gang prevention and education'';

(19) in sections 4121(a)(6) and 4121(a)(8), by striking ''drug and violence problems'' and inserting ''drug, violence, bullying, and gang problems'';

(20) in section 4122(a)(2), by striking ''and school violence'' and inserting ''school violence, bullying, gang activity,'';

(21) in sections 4124(a)(1)(B) and 4124(a)(3), by striking ''substance abuse and violence prevention'' and inserting ''violence, bullying, gang, and substance abuse prevention'';

(22) in section 4124(b)(4)(A)(i), by striking ''substance abuse and violence problem'' and inserting ''violence, bullying, gang, and substance abuse problem'';

(23) in section 4127(c), by striking ''school violence research'' and inserting ''school violence, bullying, and gang research'';

(24) in section 4128(b)(2), by striking ''such as substance abuse'' and inserting ''such as bullying, substance abuse'';

(25) in section 4128(b)(4), by striking ''school violence prevention'' and inserting ''school violence, bullying, and gang prevention'';

(26) in section 4130(b)(1)(B)(iv), by striking ''violence, use of dangerous weapons'' and inserting

"violence, bullying, gangs, use of dangerous weapons";

(27) in section 4130(b)(5)(B)(i), by striking "schools with violence problems" and inserting "schools with violence, bullying, or gang problems";

(28) in section 4151—

(A) in paragraph (3)—

(i) by striking "DRUG AND VIOLENCE PREVENTION" in the heading and inserting "DRUG, VIOLENCE, BULLYING, AND GANG PREVENTION";

(ii) by striking "drug and violence prevention" each place such term appears and inserting "drug, violence, bullying, and gang prevention"; and

(iii) in subparagraph (B), by striking "with respect to violence" and inserting "with respect to violence, bullying, and gangs"; and

(B) in paragraphs (6) and (7), by striking "violent behavior" and inserting "violent, bullying, or gang behavior"; and

(29) in section 4152(a), by striking "acts of violence" and inserting "acts of violence and bullying".

(b) AMENDMENT TO OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968.—Paragraph (13) of section 1801 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 2796ee; relating to juvenile accountability block grants) is amended to read as follows:

"(13) establishing and maintaining accountability-based programs that are designed to enhance school safety, which programs may include research-based bullying and gang prevention programs;".

Ms. SÁNCHEZ. Thank you, Chairman Sensenbrenner and Ranking Member Conyers.

I am offering the full text of a bill that I introduced called the Bullying and Gang Prevention for School Safety and Crime Reduction Act of 2005 as an amendment to H.R. 1279, the Gang Deterrence and Community Protection Act.

My piece of legislation addresses our gang epidemic through youth intervention, which H.R. 1279 completely neglects. There is nothing in this bill that will deter young people from joining gangs.

I agree with the supporters of this bill that gangs are a serious issue. However, the problem of gangs cannot be addressed simply by imposing death penalties. The problem of gangs must be addressed by using a two-pronged approach that utilizes both prevention and intervention.

My amendment would allow schools to fund gang prevention programs through these two existing Federal statutes, the Safe and Drug Free Schools and Communities Act and the Juvenile Accountability Block Grant Program.

It is well and good that President Bush says that he's going to fund gang prevention programs. That is hard to believe though when he cuts programs like Weed and Seed, COPS and the 21st Century After School Programs, which are under way and have proven to be effective at deterring gang activity. If this Administration means what it says, then programs like Weed and Seed, COPS and the 21st Century After School Program need to continue to be funded. This is where we need to start to begin to address the gang issue. Death or lengthy minimum sentences that imprison children for decades are not the answer. Everyone agrees, including law enforcement and gang experts, that youth intervention and counseling programs keep kids out of gangs. My bill is the type of gang prevention proposal that this Committee should be marking up.

Even if the Committee accepted my amendment, the mandatory minimum sentences directed at children are so harsh that I cannot support H.R. 1279. I urge Members on both sides of the aisle to review my bill, to consider joining me as a cosponsor of this legislation. I would appreciate an opportunity to work with my colleagues on the other side of the aisle on this bill.

And with that, Chairman, I will withdraw my amendment, because I cannot under any circumstances vote in favor of H.R. 1279.

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments? Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, No. 7.

Chairman SENSENBRENNER. The clerk will report Scott No. 7.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1279 offered by Mr. Scott of Virginia.

On page 4, lines 8–18, delete section 101 (1) CRIMINAL STREET GANG.

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1279
OFFERED BY MR. SCOTT OF VIRGINIA
#7

On page 4, lines 8-18, delete section 101 (1) CRIMINAL STREET GANG."

Mr. SCOTT. Mr. Chairman, there is already a definition in the law of a criminal street gang. In the current law has been defined as a criminal street gang, which is much better drafted than the one we have before us. It is narrowly tailored, requires a showing that the purpose of the group is to engage in illegal activity. The bill before us actually includes misdemeanors which could result in 10-year mandatory minimums. It's over expansive and I think unnecessary, and I would hope that we would stay with the definition that we have in other sections of the law.

I'll yield back.

Mr. FORBES. Mr. Chairman, move to strike the last word.

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. FORBES. Mr. Chairman, this bill, as we had mentioned before, is a comprehensive bill that has been worked out in coordination with law enforcement, agents, with prosecutors, with folks on the street. One of the things that we look at, as my good friend from Virginia indicates, that we've had this language around before in the bill. That language has not worked and that's why we need this new provision because even though the language in 521 has been around for 10 years, there have only been 10 prosecutions under it. And we believe that the statute that we have gets at the heart of what we need for violent criminal gangs. It hits the toughest of the penalties.

And, Mr. Chairman, I'd just like to point out that on the provisions of this bill it is supported by the National Latino Peace Officers Association. It is supported by the Newport News Police Department, the Chief from there. It is supported by the Fraternal Order of Police. It is supported by, in addition to that, the National Association of Police Organizations. It is also supported by the Major Cities Chief Association, which are the 63 members of the major cities and police chiefs across the country, and also by the National Troopers Coalition.

Mr. Chairman, without objection, I'd like to submit those records of—those letters of support to the record.

Chairman SENSENBRENNER. Without objection.

[The information follows:]

Eddie J. Jordan, Jr.
District Attorney of New Orleans ~ State of Louisiana

GAYNELL WILLIAMS
EXECUTIVE FIRST ASSISTANT DISTRICT ATTORNEY

619 SOUTH WHITE STREET
NEW ORLEANS, LOUISIANA 70119
(504)822-2414

April 18, 2005

Honorable F. James Sensenbrenner, Jr.
Chairman, House Committee on the Judiciary
Congress of the United States
2138 Rayburn House Office Building
Washington, DC 20515

RE: **HR 1279 and HR 1528**

Dear Chairman Sensenbrenner:

I am pleased to offer my support and encouragement for the passage of HR 1279, The Gang Deterrence and Community Protection Act of 2005, and HR 1528, Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005. As the current elected district attorney of New Orleans, and former United States Attorney for the Eastern District of Louisiana, I know firsthand the problems associated with gangs and drugs. I agree that more aggressive action from the Congress and federal law enforcement agencies is necessary to reduce gang related violence and to curb the spread of drug related criminal activity in our communities.

Thank you for sponsoring these important bills. I look forward to their passage in the coming months.

Sincerely,

Eddie J. Jordan, Jr.

ADM:VMS

Federal Criminal Investigators Association

Donald Baldwin, FCIA Washington Director
1620 Eye Street, NW Suite 210, Washington, D.C. 20006
Phone 202-331-1275, Fax 202-785-8949

April 22, 2005

The Honorable F. James Sensenbrenner
Chairman, House Judiciary Committee
2139 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

The Federal Investigators Association (FCIA), representing both active and retired federal investigators throughout our country, endorse HR 1275 and HR 1528.

The 25,000 gangs and estimated more than 750,000 gang members active in over 3,000 communities across our country must be stopped. HR 1275 provides the tools necessary to fight this crime so prevalent in our cities. "The Gang Deterrent and Community Protection Act of 2005" addresses the enforcement and protection needs for the battle against gang violence. HR 1528, "Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005" specifically addresses the dire need for protecting children from drug traffickers. The bill will enhance the law for punishing traffickers with penalities and will implement truth in sentensing.

We believe HR 1275 and HR 1528 will be strong deterrents against victimization of our children and help put a stop to gang violence in our country.

Sincerely yours,

Donald Baldwin
Washington Director

DB/aah

"Dedicated to Recognition of Criminal Investigation as a Profession"

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FOR
LOS ANGELES DEPUTY SHERIFFS, INC.

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April 20, 2005

VIA FACSIMILE – (202) 225-3737

The Honorable F. James Sensenbrenner, Jr.
Chairman
House Judiciary Committee
Washington, DC 20515

RE: HR 1279 – SUPPORT; HR 1528 – SUPPORT

Dear Chairman Sensenbrenner:

On behalf of the members of the Association for Los Angeles Deputy Sheriffs (ALADS), which represents over 7,000 deputy sheriffs and district attorney investigators in Los Angeles County, I am writing in support of HR 1279, The Gang Deterrence and Community Protection Act of 2005, and HR 1528, Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005.

HR 1279, The Gang Deterrence and Community Protection Act of 2005 not only designates high intensity gang areas and authorizes funds to combat gang activity, it creates a new gang prosecution statute; increases penalties for violent gang crimes; and limits a criminal street gang to a group or association of three or more individuals that commit two or more gang crimes.

HR 1528, Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005, provides for sound statutory reforms of ineffective anti-drug laws designed to protect children.

ALADS strongly supports both HR 1279, and HR 1528.

Sincerely,

Roy L. Burns
President

RB:ka

An Affiliate of the Marine Engineers Beneficial Association
AFL-CIO

GRAND LODGE
FRATERNAL ORDER OF POLICE®
309 Massachusetts Ave., N. E.
Washington, DC 20002
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CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

4 April 2005

RECEIVED
APR 12 2005
J. Randy Forbes, M.C.
Washington, DC

The Honorable J. Randy Forbes
U:S. House of Representatives
Washington, D.C. 20515

Dear Representative Forbes,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our strong support for H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005."

This legislation will attack the growing problem of criminal gang activity by providing increased Federal funding, almost $390 million, to support Federal, State and local law enforcement efforts to combat gang activity. The bill aims to facilitate greater cooperation between law enforcement officers and prosecutors at every level of government by providing for the designation of certain locations as "high intensity interstate gang activity areas." This strategy, modeled after the High Intensity Drug Trafficking Area (HIDTA) program, will enable law enforcement in these designated areas to build successful multijurisdictional efforts targeting criminal street gangs using Federal funds. Law enforcement agencies in these designated areas will be able to call on Federal resources to hire additional State and local prosecutors and purchase technology to increase their ability to identify and prosecute violent offenders.

The legislation also creates new criminal gang prosecution offenses and enhances existing gang and violent crime penalties to deter and punish illegal gang activity. The bill would also allow 16-year olds to be charged as adults in Federal court for crimes of violence.

We believe that our nation's law enforcement officers can be more effective at fighting the menace of criminal gangs if they have the necessary resources that this legislation provides. I want to commend you for your leadership on this issue. If I can be of any further help on this or any other issue, please do not hesitate to contact me or Executive Director Jim Pasco through my Washington office.

Sincerely,

Chuck Canterbury

Chuck Canterbury
National President

THE LAW ENFORCEMENT ALLIANCE OF AMERICA

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John W. Chapman
Former Juvenile Investigator,
Killeen, Texas Police Department
and FOP Lodge President

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Chief Operating Officer
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The Honorable James Sensenbrenner
Chairman
House Judiciary Committee
United States House of Representatives
Washington DC 20515

April 19, 2005

Dear Chairman Sensenbrenner,

On behalf of the more than 75,000 Members and Supporters of the Law Enforcement Alliance of America (LEAA), I am writing to express our strong support for the ***Gang Deterrence and Community Protection Act of 2005 (H.R. 1279).*** This legislation provides law enforcement and prosecutors with much needed tools to combat the growing organized threat of violence from criminal street gangs.

Today's gang violence problem is not one of neighborhoods, but increasingly an interstate and even international operation involving highly structured and extremely violent criminal enterprises. H.R. 1279 recognizes this growing menace and provides a much needed response.

By providing state and local law enforcement with the additional resources to pursue such criminals and giving prosecutors additional tools to punish such criminals, H.R. 1279 offers a significant opportunity to make an impact in the fight against violent crime. I respectfully ask for your support for this much needed federal initiative. If you have any questions about LEAA's position on H.R. 1279 or any other matter, feel free to have your staff contact our Legislative Director, Kevin Watson at (703) 847-2677.

Sincerely,

James J. Fotis
Executive Director

7700 Leesburg Pike • Suite 421 • Falls Church, VA 22043 • (703) 847-COPS • (800) 766-8578 Fax: (703) 556-6485 • www.leaa.org
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RECEIVED
APR 11 2005
J. Randy Forbes, M.C.
Washington, DC

NEWPORT NEWS POLICE DEPARTMENT
An Internationally Accredited Agency
James D. Fox, Chief of Police

March 29, 2005

Congressman J. Randy Forbes
307 Cannon House Office Building
Washington, D.C. 20515-4604

Dear Congressman Forbes:

As Chief of the Newport News Police Department, I read with great interest the recent article in ***The Daily Press*** (Forbes Proposes Anti-Gang Funds, March 17, 2005) detailing the "gangbusters" bill that you will be introducing shortly before Congress.

The City of Newport News has growing gang problem. To date we have identified 15 gangs with approximately 170 known gang members and numerous other affiliates or "wannabes" in Newport News. These gangs include members of the nationally known Mara Salvatrucha or MS-13 gang and The Bloods. In addition, we also have a growing population of "homegrown" gangs to include: the Newsome Park Boyz; Squad Up; Young Mafia; 33rd & Gunsmoke; Old Courthouse Way; Gangster Disciples; Garden Boyz; and Disciples Mafia Crips. All of these gangsters are fostering fear and commiting an ever-increasing number of violent crimes within our community.

As evidence of this growing problem, just earlier this month we arrested three juveniles on charges that they were among a dozen boys and girls - wearing red with red bandannas in their back pockets - who attacked an 18-year-old male and a 16-year-old female, hitting and kicking them near a Popeye's restaurant in the Denbigh area of the city.

I am very concerned that unless we get the resources to combat this increasing menace, we will find ourselves with the types of citizen intimidation and gang violence that we see on the nightly news in places such as California.

While long-term remedies and prevention efforts must be a part of the ultimate solution, we need immediate help in terms of personnel, technology and equipment that will allow us to combat this nuisance where it is occurring: the streets and neighborhoods of Newport News.

Should the "gangbuster" bill pass Congress, please know that I will be contacting both Representative Jo Ann Davis and Robert C. Scott in hopes of securing a large share of the funds available to assist us in developing the tools we need to put and end to the gangs and protect our citizens. In the interim, if your schedule permits I would be glad to meet with you to discuss our needs and have members of our Gang Unit present a more detailed overview of the gang problems we are facing in Newport News to you and members of your staff.

I appreciate your shared concern in this serious issue. Should I be able to assist you in any manner in moving this important piece of legislation forward, please contact me at (757) 926-8252.

Sincerely,

James D Fox
Chief of Police

JDF/MSC/msc
GANGLETTER0329 DOC

NATIONAL SHERIFFS' ASSOCIATION

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April 19, 2005

The Honorable James Sensenbrenner
U.S. House of Representative
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

I am writing on behalf of the National Sheriffs' Association and the 3,087 sheriffs across the country to express our full support for H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005." This much needed legislation takes a necessary step toward addressing the growing epidemic of gang violence that is affecting our entire nation and has even stretched into some of our most rural communities.

The Department of Justice estimates there are currently over 25,000 gangs and over 750,000 gang members who are active in more than 3,000 jurisdictions across the United States. Gang activity has been directly linked to the narcotics trade, human trafficking, identification documentation falsification and the use of firearms to commit deadly shootings.

H.R.1279 would effectively address the growing problem of gang violence by creating a rational strategy to identify, apprehend, and prosecute gangs across the nation. Specifically, the bill would provide for the designation of High Intensity Gang Areas (HIGAs) to identify, target and eliminate violent gangs in areas where gang activity is particularly prevalent.

The bill would also create a statute to prosecute criminal gangs similar to the Racketeer Influenced and Corrupt Organizations statute (RICO) that has proven so effective against organized crime, and would provide more than $385 million over the next five years in grants to support Federal, State, and local law enforcement efforts against violent gangs, and to coordinate law enforcement agencies' efforts to share intelligence and jointly prosecute violent gangs.

Finally, under H.R.1279, several categories of gang-related offense would be subject to mandatory minimum sentences of at least 30 years in prison for cases of kidnapping, aggravated sexual assault or maiming.

The "Gang Deterrence and Community Protection Act of 2005" is a comprehensive piece of legislation that addresses both the enforcement and prosecution aspects of the battle against gang violence.

The National Sheriffs' Association and its member sheriffs fully endorse H.R.1279 and thank you for your continued support of law enforcement.

Sincerely,

Thomas N. Faust
Executive Director

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VIA FACSIMILE : 202-225-3190

Honorable F. James Sensenbrenner, Jr., Chair
House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

RE: H.R. 1279 – Gang Deterrence and Community Protection Act of 2005

Dear Chairman Sensenbrenner:

As Chairman of the National Troopers Coalition, (NTC) I am writing to express our support for H.R. 1279, Gang Deterrence and Community Protection Act of 2005. The NTC represents over 40,000 state troopers and highway patrolmen throughout the United States.

We urge you to continue your work on fighting Gang Violence in America; we support all of the provisions contained in H.R. 1279.

Our members continue to deal with increased gang crimes and violence, as we have for years. The provisions of H.R. 1279, that in part deal with increased penalties, clarification of definitions, and increased resources and appropriations will greatly aid us and our law enforcement counterparts with gang investigations, deterrence and prevention.

Accordingly, on behalf of our members, we fully support and urge passage of H.R. 1279.

Sincerely,

Casey L. Perry
Chairman, National Troopers Coalition

National Latino Peace Officers Association
PO Box 1717
Las Vegas, NV 89125
Contact: Felipe A. Ortiz, National President
1-702-355-8704 e-mail: nlpoanv@yahoo.com
www.nlpoa.org

Honoring Family, Education and Community
Through Service and Mentorship since 1972

FAXED 202-225-3737 ATTN: Jennifer Gross
TO: Honorable F. James Sensenbrenner, Jr. Chair
U.S. House Judiciary Committee
H.R. 1279

April 18, 2005

Honorable F. James Sensenbrenner, Jr., Chair
House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

RE: Gang Deterrence and Community Protection Act H.R. 1279

Dear Representative Sensenbrenner:

As the House Judiciary Committee continues its work on Gang Violence in America, on behalf of the National Latino Peace Officers Association (NLPOA), we support all of the provisions contained in H.R. 1279 and ***urge the Committee to adopt all of the provisions*** to strengthen federal law enforcement's capabilities on combating the growing gang-violence in America:

- 18 U.S.C. 521 Criminal Street Gang Prosecutions, increasing the penalty for such criminal acts on behalf of a criminal gang;
- Defining Gang Crime for federal prosecution;
- Increased Penalties for Racketeering Crimes on behalf of the criminal gangs;
- Modification of the Definition of a Crime of Violence; and
- Increasing Resources and Appropriations in the newly defined High Intensity Interstate Gang Activity Areas.

NLPOA members have dealt with gang crimes and gang violence for the last 32 years and are experts in this arena; with respect to gang investigations, deterrence, and prevention. ***The NLPOA recognizes that many gangs are more sophisticated and have more resources than local police departments. Designating federal resources through increase penalties and federal task forces will help Keep America Safe!***

Sincerely,
Felipe A. Ortiz
NLPOA National President
www.nlpoa.com

NATIONAL LATINO PEACE OFFICERS ASSOCIATION ORGANIZATIONAL INFORMATION

Today, the *National Latino Peace Officers Association* is the largest Latino Law Enforcement Organization in the United States, with local chapters in many cities throughout the country. Its membership includes Chiefs of Police, Sheriffs, Police Officers, Parole Agents, and Federal Officers, all of whom are employed at the local, state, and federal levels.

NLPOA is a Public Benefit Association recognized as a Non-Profit Organization, IRS 501 (c) (3) Number 94-3165929. *NLPOA* does not discriminate against any individual because of race, color, sex, or religion and membership is open to all.

NLPOA was founded to create a fraternal/professional association that provides its members with training, promotional development, and mentoring. The specific purposes of the organization are to promote equality and develop professionalism in the criminal justice system, particularly Law Enforcement; to reduce community juvenile delinquency and to lessen citizen tension in predominantly Latino communities.

Law Enforcement Officers are faced with a variety of issues on a daily basis that impact their ability to effectively protect, serve and support their communities. These issues impact the perceptions of citizens whom bestow great power and authority upon their law enforcement organizations. Citizens expect and deserve accountability from their law enforcement public servants and demand that these organizations display a high degree of institutional integrity.

Law Enforcement Officers face new challenges in this decade. New issues are now being presented to Law Enforcement Officers that continually impact this organization's ability to serve its communities. In particular, the areas of terrorism, anti-terrorism measures, gang violence, and racial profiling. Law Enforcement Officers are also faced with difficulties of inter-agency communications in a more global society. Solutions to inter-agency communications are necessary to assist Law Enforcement Officers to carry out there appointed duties. *NLPOA* members are prepared to face these new challenges and are prepared to find solutions.

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April 20, 2005

The Honorable James Sensenbrenner
U.S. House of Representative
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

On behalf of the Major County Sheriffs' Association, I am writing to express our support for H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005." This much needed legislation takes a necessary step toward addressing the growing epidemic of gang violence that is affecting our entire nation and has even stretched into some of our most rural communities.

The Department of Justice estimates there are currently over 25,000 gangs and over 750,000 gang members who are active in more than 3,000 jurisdictions across the United States. Gang activity has been directly linked to the narcotics trade, human trafficking, identification documentation falsification and the use of firearms to commit deadly shootings.

H.R.1279 would address the growing problem of gang violence by creating a rational strategy to identify, apprehend and prosecute gangs across the nation. Specifically, the bill would provide for the designation of High Intensity Gang Areas (HIGAs) to identify, target and eliminate violent gangs in areas where gang activity is particularly prevalent.

The bill would also create a statute to prosecute criminal gangs similar to the Racketeer Influenced and Corrupt Organizations statute (RICO) that has proven so effective against organized crime, and would provide more than $385 million over the next five years in grants to support Federal, State, and local law enforcement efforts against violent gangs, and to coordinate law enforcement agencies' efforts to share intelligence and jointly prosecute violent gangs.

Finally, under H.R.1279, several categories of gang-related offense would be subject to mandatory minimum sentences of at least 30 years in prison for cases of kidnapping, aggravated sexual assault or maiming.

The "Gang Deterrence and Community Protection Act of 2005" is a comprehensive piece of legislation that addresses both the enforcement and prosecution aspects of the battle against gang violence.

Thank you for your time and attention, as well as your continued support of law enforcement.

Sincerely,

Michael J. Bouchard
Sheriff Michael J. Bouchard
MCSA VICE PRESIDENT - LEGISLATIVE AFFAIRS

James A. Karnes
Sheriff James A. Karnes
MCSA PRESIDENT

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NATIONAL HEADQUARTERS

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Executive Director

April 15, 2005

The Honorable F. James Sensenbrenner, Jr.
Chairman, Judiciary Committee
United States House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Sensenbrenner:

On behalf of the National Association of Police Organizations (NAPO), representing 236,000 rank-and-file police officers from across the United States, I would like to thank you for introducing the "Gang Deterrence and Community Protection Act of 2005," and advise you of our support for the legislation. If enacted, this legislation will greatly assist state and local law enforcement in their efforts against gang expansion and violence.

Recent studies on gangs have estimated that over 25,000 different gangs, comprising over 750,000 members are active across the United States. 100 percent of all cities larger than 250,000 have reported gang activity. Compounding this problem, gangs have been directly linked to narcotics trade, human trafficking, identification document falsification, violent maiming, assault and murder, and the use of firearms to commit deadly shootings. The "Gang Deterrence and Community Protection Act" works to reduce gang violence by designating High Intensity Gang Areas (HIGAs) and authorizing $20 million per year over five years to combat gang activity. It also creates a new gang prosecution statute focusing on street gangs and increases the penalties for violent gang crimes, strengthening prosecutors' ability to combat gang activities.

NAPO looks forward to fighting for this legislation's passage and I thank you for your continued support of law enforcement. If you have any questions, please feel free to contact me, or NAPO's Legislative Assistant, Andrea Mournighan, at (202) 842-4420.

Sincerely,

William J. Johnson
Executive Director

The National Association of Police Organizations (NAPO) *is a coalition of police unions and associations from across the United States that serves to advance the interests of America's law enforcement through legislative and legal advocacy, political action and education. Founded in 1978, NAPO now represents more than 2,000 police unions and associations, 236,000 sworn law enforcement officers, 11,000 retired officers and more than 100,000 citizens who share a common dedication to fair and effective crime control and law enforcement.*

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April 15, 2005

Chairman F. James Sensenbrenner, Jr.
United States House of Represenatives
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Re: Support for HR 1279, The Gang Deterrence and Community Protection Act of 2005, and HR 1528, Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005

Dear Chairman Sensenbrenner:

I write to you on behalf of President Harold Hurtt of the Houston Police Department, and the 63 members of the Major Cities Chiefs Association to express our support for HR 1279 and HR 1528.

Our members represent the chief executive officers of the 63 largest police departments in the United States and Canada and each is faced with the daunting task of policing an ever violent and treacherous landscape made even worse by the scourge of gang and drug violence. Some of our members, Los Angeles and New York are prime examples, have serious gang problems that require the most aggressive law enforcement measures imaginable. We are proud to support HR 1279 and its goals of imposing stiff mandatory sentences for gang violence, establishing task forces made up of all branches of law enforcement, insuring that gang intelligence is shared among all of the partners in this fight, and insuring aggressive prosecution of gang members who commit violent acts.

While emphasizing our fight against gang violence and our ever-present vigilance for terrorists, we cannot lose sight of the fight to rid our neighborhoods of drugs and to protect the most vulnerable clients—the children of our cities who represent our only hope for the future. HR 1528 is an important piece of legislation directed at imposing stiffer penalties for drug dealers who use children to ply their evil trade, or maintain a drug-involved premises affecting children.

c/o 242 W. 29th Street • Baltimore, Maryland 21211

Chairman F. James Sensenbrenner, Jr.
April 15, 2005
Page 2.

The Major Cities Chiefs strongly support HR 1279 and HR 1528. As we have in the past on these same issues and other strong law-enforcement bills, we stand ready to lend whatever support we can to insure the passage of these important bills. All of American law enforcement should support these efforts. We are proud to lend our name to this cause.

Again, on behalf of our President, Harold Hurtt, Chief of Police of the Houston Police Department, and the chiefs of police of the largest law enforcement agencies in America, we thank you for considering our interest.

Sincerely,

Michael A. Fry
General Counsel
Major Cities Chiefs Association

cc: Chief Harold Hurtt, President
Chief Darryl Stevens, First Vice President
Chief Gil Kerlikowske.

Mr. FORBES. I hope we will reject this amendment by my good friend from Virginia.

Mr. SCOTT. Will the gentleman yield?

Mr. FORBES. I'll be happy to yield.

Mr. SCOTT. I just wanted to comment that I find it surprising that the Chief of Police of Newport News would suggest that the criminal laws and definitions are insufficient. I talked to him about a week, about 2 weeks ago at a meeting, and he indicated that he did not believe that there was any need to change the criminal law in—to reduce gang violence. So I just point out that that comes as a complete surprise. And that under this bill misdemeanors can result in 10-year mandatory minimums.

Yield back. Thank the gentleman for yielding.

Chairman SENSENBRENNER. Gentleman from Virginia.

Mr. FORBES. Mr. Chairman, I can only say to the gentleman that I'm going by the written letter I have from the Chief, and to remind the gentleman that this is not just a bill that deals with one particular area, but we're also setting up enormous resources to State and local law enforcement. We are also dealing to bring down these gang networks. This is a definition that we believe will suffice to do that. Again, I hope that we won't weaken the definition, but will continue it as it's drafted in the bill.

Chairman SENSENBRENNER. Gentleman yield back?

The question is on the Scott amendment No. 7. Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments? The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I have an amendment at the desk, 7A.

Chairman SENSENBRENNER. The clerk will report amendment 7A.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1279 offered by Mr. Scott of Virginia.

On page 4, lines line 10, after "individuals"——

Chairman SENSENBRENNER. Without objection the amendment is considered as read, and the gentleman from Virginia is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1279
OFFERED BY MR. SCOTT OF VIRGINIA
#7A

On page 4, lines line 10, after "individuals," insert "whose primary purpose is to commit crime and".

On page 4, line 10, strike "3" and insert "5".

On page 4, line 17 before the words "affects" insert the word "significantly". "

Mr. SCOTT. Mr. Chairman, this amendment too seeks to clarify the definition of a criminal street gang. The amendment would clarify that the—well, as the bill now reads, any time three people get together and commit a crime, virtually any crime, they are by definition a criminal street gang. If three neighborhood kids get together and get into a fistfight, steal a car across State lines, that behavior would be considered a gang for purposes of Federal law. This amendment seeks to narrow the definition so that only groups whose purpose is to commit crimes are defined as gangs.

Lastly, this broadly drafted language in the bill would turn any criminal activity that crosses State lines or affects interstate commerce into a Federal offence. A crime is not Federal issue. The Federal Government should leave prosecution to the States and we should not have three people who commit a crime subject to these 10-year mandatory minimums because the language is so broad

that they were suddenly considered a gang for the purposes of these mandatory minimums.

I yield back.

Mr. FORBES. Mr. Chairman, move to strike the last word.

Chairman SENSENBRENNER. Gentleman from Virginia is recognized for 5 minutes.

Mr. FORBES. Mr. Chairman, I know my friend from Virginia has read the bill, and if he has read the bill he knows that the statement he made that three people can get together and commit a crime then qualifies them as a criminal gang is just not accurate. Under this bill, we have specifically made clear that what you have to have is three or more people in association together, but they have to have committed two crimes, one of which was a violent criminal act. In addition to that, they had to be over two different periods of time, and it had to be in furtherance of the gang activity.

And I want you to look at this chart that I've put up here on violent criminal gangs to just make sure because we have heard such a blending of apples and oranges because if you're outside of that black circle on there, and that's all the individuals before they become gang members, this bill doesn't seek to reach them. Even when they get inside of that gray area right in there and they're gang members, this bill doesn't get to reach them either, but once they have moved into the two inner circles where they have committed gang crimes—and also look at some of the gang crimes that we list in the bill, they're witness intimidation, maiming, machete attacks, drug trafficking, armed robbery, murder—they are the things that we're trying to go and bring down these networks. It's only when they've moved into those two inner circles does this bill reach out to grab them and to bring down those criminal networks.

So to suggest that three individuals can be together and commit one crime that's a misdemeanor crime and makes them a violent criminal gang just is not what this bill says. It is not what the intention of this bill is.

And, Mr. Chairman, I hope that we will vote against this amendment.

Mr. SCOTT. Will the gentleman yield?

Mr. FORBES. I'll be happy to yield.

Mr. SCOTT. Are misdemeanors included in the definition of crimes——

Mr. FORBES. These are crimes—the mandatory minimums apply to crimes that you're going to be receiving at least 1 year or more under State or Federal law.

Mr. SCOTT. I will ask the question again. Do some States have 1 year or more for misdemeanors?

Mr. FORBES. Well, if they do, then this would apply to them.

Mr. SCOTT. So in Massachusetts where you can get 2 years for a misdemeanor, you can commit a misdemeanor and get—be subjected to mandatory minimums of 10 years.

Mr. FORBES. But you would—to be a criminal gang you would have had to have had at least one offense which was a violent criminal offense in that gang.

Mr. SCOTT. A misdemeanor.

Mr. FORBES. A violent criminal offense.

Mr. SCOTT. A violent misdemeanor.

Mr. FORBES. Well, if it was a violent misdemeanor, then it would be a violent misdemeanor. That would be a violent criminal gang.

Chairman SENSENBRENNER. The gentleman yield back?

Mr. FORBES. I yield back.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye.

Opposed, no.

The noes appear to have it, the noes have it. The amendment is not agreed to.

Are there further amendments? Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have another amendment on the same section, No. 8.

Chairman SENSENBRENNER. The clerk will report Scott amendment No. 8.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1279 offered by Mr. Scott of Virginia.

On page 4, line 23, delete the phrase "crime of violence" and insert "serious violent felony".

Chairman SENSENBRENNER. Without objection the amendment is considered as read, and the gentleman from Virginia, Mr. Scott, will be recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1279
OFFERED BY MR. SCOTT OF VIRGINIA
#8

On page 4, line 23, delete the phrase "crime of violence" and insert "serious violent felony".

On page 5, line 3, after informant delete ", or burglary".

On page 5, line 9, delete the period at the end of the sentence and insert ", for which the maximum penalty is not less than 10 years.

Mr. SCOTT. Mr. Chairman, this—based on our prior discussion, it's obvious that even misdemeanors can be considered under the definition of criminal street gangs. This would at least require the predicate offense to be felonies. This would—the underlying bill would enormously expand what is currently considered to be a gang crime under Federal law. It would make any crime of violence or virtually any drug offense a gang crime, any burglary a gang crime, any misdemeanor—you get resisting arrest in the commission of a drug offense, I mean that's two offenses right there. One person commits a crime. Another person commits another crime, misdemeanors. All of a sudden you're a gang and everybody's up for 10 years mandatory minimum.

At least we ought to—if we're going to go after all those murderers and maiming and everything else that you name, you ought to limit I to felonies.

I yield back.

Chairman SENSENBRENNER. Gentleman from Virginia, Mr. Forbes.

Mr. FORBES. Thank you, Mr. Chairman. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FORBES. Mr. Chairman, again I come back to what this bill is designed to do, what the evidence was at our hearing from the prosecutors. They don't intend to go after every burglary. They don't intend to go after every crime. What this bill is designed to do is help them to do the same thing with criminal gangs in America that we did with organized crime. And that is to have large-scale investigations where we can have the networks brought down from these criminal gangs. Many times some of the intimidation, some of the threats, some of the terror that they put on witnesses and other individuals, is busting in doors, coming in robbing those individuals in their homes.

This bill says—and make it very clear—that we do not mind having a chilling effect on people joining criminal gangs. You know, we do not see any public policy reason why we want individuals joining criminal gangs in America. Once they have joined those criminal gangs, this bill still doesn't get at them. But if they commit a criminal gang crime, then it says that we are going to be tough on them and they're going to have an option. They can help cooperate with us in bringing down those gang leaders and gang network, or they're going to end up spending a long time in jail.

I hope we'll reject this provision and continue with the provisions that are in the bill.

Chairman SENSENBRENNER. The gentleman yield back?

The question is on agreeing to Scott amendment No. 8. Those in favor will say aye.

Opposed, no.

Noes appear to have it. Noes have it and the amendment is not agreed to.

Are there further amendments? Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Amendment No. 9.

Chairman SENSENBRENNER. The clerk will report Scott amendment No. 9.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1279 offered by Mr. Scott of Virginia.

On page 19, line 5–6 strike "an offense punishable by imprisonment for more than 1 year" and insert on line 5——

Chairman SENSENBRENNER. Without objection the amendment is considered as read and the gentleman from Virginia is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1279
OFFERED BY MR. SCOTT OF VIRGINIA
#9

On page 19, line 5-6 strike "an offense punishable by imprisonment for more than one year" and insert on line 5 after is "a felony"

On page 19, strike after "another" on line 8 through line 11 and insert "." after "another"

Mr. SCOTT. Mr. Chairman, section 112 of the legislation on page 19 would change the definition of "crime of violence" to include misdemeanors in some States and Federal drug offenses. Some States punish misdemeanors, as I indicated, for more than 1 year, and would convert those misdemeanors into crimes of violence that—where I think we're aiming at felonies.

Both Alabama and Massachusetts, for example, a relatively minor offense that could involve the risk of force, such as a simple assault or resisting arrest are both classified as misdemeanors. In Alabama a misdemeanor is punishable by no more than 1 year. In Massachusetts misdemeanors are punishable by up to 2½ years. So if you committed the same offense in Massachusetts, you're under section 112 as a crime of violence. If you commit it in Alabama, it's not considered under section 112 a crime of violence. I mean this is an important distinction because if you get busted for one of these you're looking at 10-year mandatory minimums, and you're converting what are misdemeanors into 10-year mandatory minimums.

And I would hope that we would be consistent and use the term "felony" or "misdemeanor" so that we would track what the States actually have designated as the important differences in seriousness.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Forbes.

Mr. FORBES. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FORBES. Mr. Chairman, it doesn't really much matter on the nomenclature that one State may use versus another. I think it's important that we have uniformity here, and what we're saying is if we have a violent criminal act that's punishable by more than a year in jail—but again, one of the things that my friend from Virginia continues to leave out when he's talking about this, it has to be in furtherance of the gang activity. And if they are committing a violent criminal act in furtherance of a criminal gang activity, then I don't have very much sympathy with that, and I think this bill comes down hard and it comes down tough on them, but it's what we're going to have to have if we're going to break down these criminal gang networks, and I hope we'll reject this amendment and continue with the bill as drafted.

Chairman SENSENBRENNER. The question is on agreeing to Scott amendment No. 9. Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments? The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, No. 4.

Chairman SENSENBRENNER. The clerk will report Scott amendment No. 4.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1279 offered by Mr. Scott of Virginia.

Starting on page 17, line 22, through page 18 line 10——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and the gentleman from Virginia will be recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1279
OFFERED BY MR. SCOTT OF VIRGINIA
#4

Starting on page 17, line 22, through page 18 line 10, delete section 110 "Venue in Capital Cases."

Mr. SCOTT. Mr. Chairman, this is a simple venue question of where you can bring a capital offense. There is no reason to amend the current law, and certainly good reasons not to. Under the bill a prosecutor could bring a capital case in a district that only had the most remote connection to the crime. If a murder occurred in Massachusetts with a gun stolen from Mississippi, the homicide case could be prosecuted under the bill in Mississippi. This allows prosecutors to forum shop and pick the location where they think they're most likely to obtain a death sentence. This would only exacerbate the racial and geographical disparities that already exist in the Federal death penalty, and I would hope we wouldn't use this bill to change the law in venue on death penalty cases.

Yield back.

Mr. FORBES. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Forbes.

Mr. FORBES. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. FORBES. Mr. Chairman, I hope that we'll defeat this provision because one of the most important things we're trying to do with this bill is not simply punish the individual who commits the crime at the lower-tier level. What we're trying to do is reach up and pull out the gang leaders.

As our witnesses have testified, as we have tried to make clear, these gang leaders know how to work the system. They know how to stay away from the States where they're committing the crimes and send other people there to do them. One of the things that we think is important is that the prosecutors have the discretion to be able to bring these cases where they can compile them in large

cases and bring down the networks at one time. We think to change the venue provision would limit that ability. I hope we'll reject this amendment, and I yield back.

Chairman SENSENBRENNER. The question is on agreeing to Scott amendment No. 4. Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, reference was made to the Chief of Police of the city of Newport News, and I indicated that I was surprised to hear that the Chief of Police was supporting changes in the criminal statutes because I had talked to him previously.

I have a copy of the letter now that was provided for the record, and the letter just indicates that the city of Newport News would like to get some money to help prosecute crimes. It doesn't say anything about changing the substantive law.

I think all police departments would like more money. That certainly doesn't come as a surprise, but I don't think the letter should be interpreted as supporting any of the underlying substantive changes in criminal law.

Mr. FORBES. Mr. Chairman?

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. SCOTT. I yield back.

Mr. FORBES. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. FORBES. Mr. Chairman, my statement wasn't that the police chief wanted to change underlying law. What my statement was, that he supported this bill and that he indicated in his letter the huge growing gang problem that they had in the city of Newport News.

I have put the—all of the letters of endorsement and support in the record, and I think the letters will speak for themselves, and I yield back.

Mr. SCOTT. Would the gentleman yield?

Mr. FORBES. I'll be glad to yield.

Mr. SCOTT. Where in the letter does he support the bill? I mean the only thing he says is, should the bill pass he hopes to get a share of the funds.

Mr. FORBES. Well, he writes in here the city of Newport News has a growing gang problem. He identifies the gang problem. He talks about the interest that he has in this bill, the need that they have for immediate terms of help, and that he had read with interest in the bill that I was introducing in Congress, and, you know, again, you can read the letter for what it's worth. And, you know, I'm not relying on the police chief for support or not support of this bill. I'm simply putting his letter in the record. It can speak for itself.

But I can tell you that I have numerous letters here from large organizations across the country that they state specifically that they support every provision in the bill, and that includes not just one police chief, but it includes, as I mentioned, major cities, 63 of the major cities across the country, their police chief. It includes the Fraternal Order of Police. It includes the National Association of Police Organizations. It includes the National Latino Police Officers Association, and they even write that they're going to fight to get the bill through, and look forward to fighting for it.

So you can draw whatever conclusions you want about an individual person, but I simply said that they were supportive of the bill. If you don't believe the letter's supportive of the bill, draw whatever interpretation you want.

Mr. SCOTT. I'm just reading the bill.

Chairman SENSENBRENNER. Gentleman from Virginia yield back?

Mr. FORBES. Mr. Chairman, just the last line, and this could be open. "Should I be able to assist you in any manner in moving this important piece of legislation forward, please contact me." Now maybe that's an indication that he doesn't support it, but normally says, can I assist you in moving a piece of legislation forward, I interpret that to mean that they're supportive of the legislation, but perhaps your interpretation of that phraseology is different, and, Mr. Chairman, I yield back.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. Are there further amendments? Gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I rise to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. I thank the distinguished Chairman very much. Let me indicate that I offer my support for an amendment that was offered by Mr. Scott, dealing with the definition, Mr. Chairman, of criminal activity for gangs.

I am concerned generally about the thrust of this legislation, because as I looked at the opening, or the explanation of the majority's memorandum, it focuses of course on some concerns expressed by its author in the State of Virginia.

My concern about this legislation is whether or not there is sufficient documentation that—it talks about the increase of gang activity over the last decade to 5 years, when we realize that gang activity has actually decreased. There is some concern about a gang by the name of MS-13, which I don't think should be the defining reason for passing this legislation to label all youngsters who have gone off, if you will, the beaten track.

One of the concerns I have is that where is the outreach and education dealing with youngsters who are engaged in gang activities for the very reasons we've heard over the decades, and that is to find friendship, alliances, comfort, guidance, where there is none.

And so we're taking a definition to suggest that three or four youngsters standing on a street corner, which is something that happens frequently in African-American neighborhoods and Hispanic neighborhoods, now ill be indicted as gang proponents, no alternative to their education, no other kind of support system in the community but locking them up.

Prosecuting 16- and 17-year-old who may be involved in a large order of individuals who may not actually have perpetrated the violent crime, now they will be subject to indictment and incarceration.

If my colleagues would look at the Nation's prison system, and as well look at the Federal prison system, they will find that there are throngs of individuals languishing in prisons who need not be there, obviously on the basis of, in the Federal system, drug crimes, in the State system, because they've had the three strikes you're out. There's a great movement to begin to release individuals who are nonviolent perpetrators. I know that this speaks to violence, but what it does is a broad brush with no solutions and no interest in rehabilitating young people who have their lives in front of them.

We're going to make a gang problem where there is none. Isolated responses to crises is important, but a broad-based approach to this whole idea that we have gangs taking over America I think is clearly misdirected. And I'd like my colleagues to show me the major statistics. Of course we're going to have a bunch of letters from law enforcement. Law enforcement are friends to all of us, and all of us have supported increased resources, better laws. Whenever you suggest to them that they'll have another tool allegedly to be able to lock people up, it's something they might be interested in, but that law enforcement were also interested in the Cops on the Beat Program that we extinguished, this Administration, and eliminated the resources for it.

Law enforcement is also interested in alternative programs for juveniles. The DARE programs, where our cities are being forced to eliminate the DARE program, where one of the officers approached me on the street and said, "We're taking the DARE officers and sitting them in a jailhouse so that we don't have DARE officers interacting with our kids in our community because somebody says that program does not work."

So I think that what we're doing here is padding laws and making enhanced criminal activity out of what may be misdirected juveniles who have no other resources, have no parks that are open, have no schools that understand them and are able to educate them, and certainly have no alternative programs dealing with juveniles in their community.

We made fun of the midnight basketball, which worked in some communities where kids were out in the street late into the night. I know it because I had my parks open as a member of the Houston City Council and I had it opened with people in there and mentors dealing with these youngsters.

So we may get some degree of excitement, Mr. Chairman, my colleague, out of this legislation, but I can assure you you're going to be making criminals where there are not, you're not going to be solving the overall violent gang program because it's not narrowly focused. You're just going to round up 3 and 4 people on the street corner and tell them they're bad guys and bad girls. I'd much prefer us invest our monies in helping these young people find their dream, get out of their predicament, get away from selling drugs because that's the only alternative.

That's not what we're doing here today. All we're doing is putting a Bandaid on a problem or even making a problem worse, and I am sorry that we're doing so.

I thank the gentleman and I yield back.

Chairman SENSENBRENNER. The time of the gentlewoman has expired. Are there further amendments?

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, No. 3.

Chairman SENSENBRENNER. The Clerk will report Scott amendment No. 3.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1279 offered by Mr. Scott of Virginia.

On page 2, line 8 insert the word "intention" before death.

On page——

Chairman SENSENBRENNER. Without objection the amendment is considered as read. The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1279
OFFERED BY MR. SCOTT OF VIRGINIA
#3

On page 2, line 8 insert the word "intentional" before death.

On page 8, line 23 insert the words "an intentional" before death.

On page 11, line 12, insert the word "intentional" before death.

On page 14, line 1, insert the word "intentional" before death.

On page 15, line 21, insert the word "intentional" before death.

Mr. SCOTT. Mr. Chairman, the bill provides for mandatory death or life imprisonment for a gang crime if a gang crime results in the death of any person. That includes accidents.

Now, to get the death penalty you have to have at least created a grave risk of death with reckless disregard for human life, but this provides for death or life imprisonment. If you—if somebody in the gang—I mean you can have an—go through a—inadvertently go through a stop sign, all of a sudden it's a gang crime. If there's an underlying gang crime and it results in death—it could have been an accident, could have been anything—I would hope that we're not mandating life in prison for what could under ordinary circumstances without this bill be an accident.

I think it violates common sense to have that kind of mandatory minimum for an accident, and that's why I put—want to put "intentional" before "death," and I yield back.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Forbes.

Mr. FORBES. Mr. Chairman, move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FORBES. Mr. Chairman, I hope that we will reject this amendment. I think 18 U.S.C clearly covers the situations where the death penalty would be applied, and actually covers the state of mind that's involved in there. We don't need to do any additional definitions or change that. It's already covered and I hope we'll reject this.

Mr. SCOTT. Would the gentleman yield?

Mr. FORBES. I'll be happy to yield.

Mr. SCOTT. That's imposition of death. What about life?

Mr. FORBES. Well, in the situation with life they have that ability to do it if it results in death, and I think if——

Mr. SCOTT. Accident.

Mr. FORBES. Well, I don't think it would be. I think they would have to have an intention to have done the criminal act that they did and have a criminal act that ended up resulting in death. It's not a strict liability provision.

Mr. SCOTT. Well, actually, if the gentleman would yield, actually it is. Whoever commits, conspires, conspires, threatens, or attempt to commit a gang crime which could be a misdemeanor shall in addition to being subject to a fine, if the gang crime results in the death.

Mr. FORBES. That's right.

Mr. SCOTT. It could be an accident.

Mr. FORBES. He would have had the intention of doing the criminal act. He couldn't have accidentally done the criminal act.

Mr. SCOTT. You could be escaping from an armed robbery and go through a stop sign.

Mr. FORBES. And he ended up killing someone.

Mr. SCOTT. Right, and inadvertently, accidentally killed somebody.

Mr. FORBES. I mean that's not my definition of an accident. I mean, again, once I say that if he's, if he's in that inner circle and he commits one of those crimes, he is at that particular point in time, if he kills somebody, you look at the victim and tell him——

Mr. SCOTT. Accident.

Mr. FORBES. I just disagree that it's an accident.

Mr. SCOTT. Well, if it is—if the gentleman yield—if it is an accident, unintentional, is life imprisonment for an accident——

Mr. FORBES. He had the intention of committing the criminal act when he was doing it, and if that results in death, I think that at this particular point in time he should have a mandatory provision to either have life or death. We just disagree.

Chairman SENSENBRENNER. Gentleman yield back?

Mr. FORBES. Yield back.

Chairman SENSENBRENNER. The question is on agreeing to the Scott amendment. Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

If there are no further amendments, a reporting quorum is present. The question is on agreeing to the amendment in the na-

ture of a substitute offerer by the gentleman from Virginia, Mr. Forbes. Those in favor will say aye.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. Those opposed, no.

The ayes appear to have it. The ayes have it, and the amendment in the nature——

Ms. JACKSON LEE. Recorded vote.

Chairman SENSENBRENNER. A recorded vote is requested on the Forbes amendment in the nature of a substitute. Those in favor of the Forbes amendment will as your names are called answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith?

Mr. SMITH OF TEXAS. Aye.

The CLERK. Mr. Smith, aye. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye. Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye. Mr. Lungren?

[No response.]

The CLERK. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon?

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye. Mr. Bachus?

[No response.]

The CLERK. Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no. Mr. Hostettler?

[No response.]

The CLERK. Mr. Green?

Mr. GREEN. Aye.

The CLERK. Mr. Green, aye. Mr. Keller?

Mr. KELLER. Aye.

The CLERK. Mr. Keller, aye. Mr. Issa?

Mr. ISSA. Aye.

The CLERK. Mr. Issa, aye. Mr. Flake?

[No response.]

The CLERK. Mr. Pence?

[No response.]

The CLERK. Mr. Forbes?

Mr. FORBES. Aye.

The CLERK. Mr. Forbes, aye. Mr. King?

Mr. KING. Aye.

The CLERK. Mr. King, aye. Mr. Feeney?

Mr. FEENEY. Aye.

The CLERK. Mr. Feeney, aye. Mr. Franks?

Mr. FRANKS. Aye.

The CLERK. Mr. Franks, aye. Mr. Gohmert?

[No response.]

The CLERK. Mr. Conyers?
[No response.]
The CLERK. Mr. Berman?
Mr. BERMAN. No.
The CLERK. Mr. Berman, no. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. No.
The CLERK. Mr. Nadler, no. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee, no. Ms. Waters?
Ms. WATERS. No.
The CLERK. Ms. Waters, no. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
[No response.]
The CLERK. Ms. Sánchez?
[No response.]
The CLERK. Mr. Smith?
[No response.]
The CLERK. Mr. Van Hollen?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Members who wish to cast or change their votes? Gentleman from Texas, Mr. Gohmert?
Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? Gentleman from Florida, Mr. Wexler?
Mr. WEXLER. No, please.
The CLERK. Mr. Wexler, no.
Chairman SENSENBRENNER. Gentleman from Virginia—excuse me—gentleman from Michigan, Mr. Conyers?
Mr. CONYERS. Mr. Chairman, no.
The CLERK. Mr. Conyers, no.
Chairman SENSENBRENNER. Gentlewoman from California, Ms. Sánchez?
Ms. SÁNCHEZ. No.
The CLERK. Ms. Sánchez, no.
Chairman SENSENBRENNER. Gentleman from Maryland, Mr. Van Hollen?

Mr. VAN HOLLEN. Thank you, Mr. Chairman. No.

The CLERK. Mr. Van Hollen, no.

Chairman SENSENBRENNER. Further Members who wish to cast or change their vote? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 15 ayes and 10 noes.

Chairman SENSENBRENNER. And the amendment in the nature of a substitute is agreed to. A reporting quorum is present.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California seek recognition?

Ms. WATERS. I have an amendment.

Chairman SENSENBRENNER. Once an amendment in the nature of a substitute is adopted no further amendments are in order.

Ms. WATERS. Thank you.

Chairman SENSENBRENNER. A reporting quorum is present.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California.

Ms. WATERS. I would ask unanimous consent that my—at least one of my three amendments be considered despite the fact that you have an amendment in the nature of a substitute.

Chairman SENSENBRENNER. Is there objection to the unanimous consent request of the gentlewoman from California, Ms. Water?

Mr. GOODLATTE. I object, Mr. Chairman.

Chairman SENSENBRENNER. Objection is heard.

A reporting quorum is still present. The question occurs on the motion to report the bill H.R. 1279 favorably as amended. All those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it and the bill is reported favorably as amended. Without objection the bill will be reported——

Mr. SCOTT. Mr. Chairman, recorded vote on the——

Chairman SENSENBRENNER. A recorded vote is requested on the motion to report the bill favorably. Those in favor will, as your names are called, answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith?

Mr. SMITH OF TEXAS. Aye.

The CLERK. Mr. Smith, aye. Mr. Gallegly?

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly, aye. Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye. Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye. Mr. Lungren?

[No response.]

The CLERK. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon?

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye. Mr. Bachus?

[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
[No response.]
The CLERK. Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye. Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye. Mr. Issa?
Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye. Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes?
Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye. Mr. King?
Mr. KING. Aye.
The CLERK. Mr. King, aye. Mr. Feeney?
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye. Mr. Franks?
Mr. FRANKS. Aye.
The CLERK. Mr. Franks, aye. Mr. Gohmert?
Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye. Mr. Conyers?
[No response.]
The CLERK. Mr. Berman?
Mr. BERMAN. No.
The CLERK. Mr. Berman, no. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee, no. Ms. Waters?
Ms. WATERS. No.
The CLERK. Ms. Waters, no. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
Mr. WEXLER. No.
The CLERK. Mr. Wexler, no. Mr. Weiner?
Mr. WEINER. No.
The CLERK. Mr. Weiner, no. Mr. Schiff?
[No response.]
The CLERK. Ms. Sánchez?
Ms. SÁNCHEZ. No.

The CLERK. Ms. Sánchez, no. Mr. Smith?

[No response.]

The CLERK. Mr. Van Hollen?

Mr. VAN HOLLEN. No.

The CLERK. Mr. Van Hollen, no. Mr. Chairman?

Chairman SENSENBRENNER. Aye.

The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? Gentleman from New York, Mr. Nadler?

Mr. NADLER. No.

The CLERK. Mr. Nadler, no.

Chairman SENSENBRENNER. Gentleman from Michigan, Mr. Conyers?

Mr. CONYERS. No.

The CLERK. Mr. Conyers, no.

Chairman SENSENBRENNER. Further Members who wish to cast or change their vote? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 16 ayes and 11 noes.

Chairman SENSENBRENNER. And the motion to report the bill favorably as amended is agreed to. Without objection the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted.

Without objection the staff is directed to make technical and conforming changes, and all Members will be given 2 days as provided by the House rules in which to submit additional dissenting supplemental or minority views.

[Intervening business.]

Chairman SENSENBRENNER. The Committee stands adjourned.

[Whereupon, at 12:23 p.m., the Committee was adjourned.]

DISSENTING VIEWS

We strongly dissent from H.R. 1279. The legislation would federalize a host of crimes currently and competently handled by the states and the District of Columbia; penalize even non-violent drug dealing and some misdemeanors as crimes of violence; expand without reason the definition of criminal street gang; unwisely leave to the sole discretion of the government the unreviewable decision to try juveniles as adults; impose unduly harsh and discriminatory mandatory minimum sentences; and expand the use of the federal death penalty to new offenses. The legislation is unnecessary as federal prosecutors are already armed with the Continuing Criminal enterprise ("CCE") and Racketeer Influenced and Corrupt Organizations Act ("RICO") statutes to combat gang crimes. The legislation also may be unconstitutional. Recent Supreme Court opinions strongly suggest that this legislation would exceed Congress's authority under the Commerce Clause.

H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005" (Gang Deterrence Act") has a deceptive title since its primary purpose is to punish more young people as adults to the extent possible.[1] The bill would largely federalize the prosecution of criminal street gang members and facilitate the federal prosecution of juvenile members. Research shows young people who are prosecuted as adults are more likely to commit a greater number of crimes upon release than youth who go to the juvenile justice system. Therefore locking young people up in adult prisons actually compromises public safety. Moreover, research demonstrates that increasing prison terms does not reduce youth violence. H.R. 1279 also authorizes substantial appropriations for law enforcement teams and technology, while providing nothing in the way of jobs or education for at-risk youth.

DESCRIPTION OF LEGISLATION

H.R. 1279 has several substantive provisions. Title I of the bill creates new offenses, broadens existing ones, increases existing maximum penalties, imposes twenty-four new mandatory minimum sentences, and authorizes the death penalty for a number of offenses. Section 101 of Title I creates new penalties with mandatory minimum sentences for committing gang crimes. The term "gang crime" is defined in the bill to include violent and nonviolent State and Federal crimes, including what are misdemeanors in some states.[2] The number and nature of "gang crimes" would be vastly expanded by Section 112, which would include garden variety state

[1] The Supreme Court recently struck down the death penalty for juveniles in *Roper* v. *Simmons*, 125 S. Ct. 1183 (2005).

[2] A "gang crime" is defined to mean any federal or state crime punishable by more than 1 year in prison and includes among others: crime of violence, obstruction of justice, drug trafficking, money laundering, identification fraud, and car and property theft.

offenses, like resisting arrest, into the definition of "crime of violence."[3] The new penalties, with mandatory minimum sentences and death penalties, for committing a gang crime depends on the seriousness of the offense as follows: (a) death or life imprisonment for any crime resulting in death; (b) a mandatory minimum of 30 years to life for kidnaping, aggravated sexual abuse or maiming; (c) a mandatory minimum of 20 years to life for assault resulting in serious bodily injury; or (d) a mandatory minimum of 10 years to life in any other case.

The legislation has numerous other provisions that enhance existing criminal penalties and apply them to existing offenses and much less serious conduct.

• Section 102 creates new mandatory minimums for the crime of interstate and foreign travel or transportation in aid of racketeering. Section 102 creates a new mandatory minimum of 5 years and increases the maximum sentence from 5 to 20 years for intending to distribute the proceeds of or to commit unlawful activity. It also creates a new mandatory minimum of 10 years for the intent to commit a crime of violence in furtherance of unlawful activity and increases the maximum from 20 to 30 years. Finally, the Section creates a new death penalty if death occurs (original life imprisonment).

• Section 103 increases the maximum for: carjacking from 15 to 20 years and creates a new mandatory minimum of 10 years; illegal gun transfers to drug traffickers or violent criminals from 10 to 20 years and creates a new mandatory minimum of 5 years; conspiracy to defraud the United States from 5 to 20 years.[4]

• Section 104 provides for increased penalties for use of interstate commerce facilities in the commission of murder-for-hire and "other felony crimes of violence." Specifically, Section 104 creates the following new penalties with new mandatory minimums and death penalties for the crime: death or life in prison if the crime of violence results in death; 30 to life for kidnaping, aggravated sexual abuse, or maiming; 20 to life for assault with serious bodily injury; and 10 to life for all other cases.[5]

• Section 105 provides for the following increased penalties for violent crimes in aid of racketeering activity: 30 to life for kidnaping, aggravated sexual abuse, or maiming (original 30 max for maiming; life for kidnaping); 20 to life for assault with serious bodily injury (original 20 max); 10 to life for all other crimes.[6]

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[3] The term "crime of violence" appears in Title 18 over 100 times. As far as we are aware, the sponsors of this legislation have not evaluated the effects this change in definition would have beyond this legislation.

[4] Section 103 would eliminate from the carjacking statute, 18 U.S.C. § 2119, the state of mind element, "intent to cause death or serious bodily harm" and would broaden the offense described in 18 U.S.C. § 924(h), to include transfers of firearms knowing that they will be "possessed" in furtherance of a "crime of violence" or drug trafficking crime.

[5] Section 104 would amend 18 U.S.C. 1958, which currently prohibits travel or use of the mails or other interstate facility with intent that a murder be committed, by adding "with intent that [any] other crime of violence" be committed. Under Section 112, this would include non-violent drug offenses, and state offenses that are misdemeanors under the law of some states.

[6] Section 105 would fundamentally change the nature of the offense under 18 U.S.C. 1959 to prohibit less serious conduct, while changing the penalty structure to one of consecutive mandatory minimum sentences. It would prohibit less serious conduct in at least three ways. First, it replaces a "crime of violence against any individual" with the revised definition of "crime of violence," which includes state misdemeanors and minor federal felonies that merely involve a substantial risk that force may be used against the person or property of another, and entirely non-violent drug crimes. Second, it replaces the requirement that the underlying offense be in "consideration for the receipt [or] promise or agreement to pay, anything of pecuniary value

• Section 114 increases the penalties including mandatory minimums for the use or discharge of a firearm in a crime of violence or drug trafficking crime.[7] The Section increases the existing mandatory minimum consecutive penalty for possession from 5 to 7 years. In addition, Section 114 increases the penalty for discharging from 10 to 15 years and creates a new penalty for wounding, injuring, or maiming at 20 years.

In addition to adding and enhancing penalties for existing and less serious conduct, H.R. 1279 creates the following new offenses:

• Section 106 creates a new criminal offense for violent acts committed during and in relation to a drug trafficking crime, with the following penalties: death penalty or life for the death of any person; 30 to life for kidnaping, aggravated sexual abuse, or maiming; 20 to life for assault with serious bodily injury; and 10 to life for all other cases.[8]

• Section 107 creates a new criminal offense involving interstate or foreign commerce or the mail with the intent that 2 or more murders be committed, with the following penalties: death penalty or life if a death occurs; 20 to life for assault with serious bodily injury; and 10 to life for all other cases.[9]

Section 110 would expand venue in capital cases so as to allow prosecutors to forum shop among jurisdictions where any part of the crime was committed. That is, Section 110 amends jurisdiction of cases punishable by death to include not only the district where the offense was committed, but any district involved in the entire timeline of the offense, from conception to completion.[10]

A section of particular significance in H.R. 1279 is Section 115. This section authorizes the Attorney General for the first time to charge as an adult in federal court a juvenile who is 16 or older and commits a crime of violence.[11] This Section prohibits judicial review of the Attorney General's decision to transfer juveniles.

Title II authorizes various appropriations. Section 201 of the bill requires the Attorney General, after consultation with the Gov-

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from an enterprise engaged in racketeering activity" with a requirement that the underlying offense be merely "to further the activities of the enterprise." Third, it subjects to the death penalty any offense that "results in death," rather than only "murder."

[7] Section 114 amends subsection A of Section 924(c)(1)(A) of title 18 to include conspiracy; if someone conspires to commit a crime of violence or drug trafficking crime and a firearm is involved, the defendant will receive a mandatory consecutive sentence each time the weapon is used, carried, or possessed.

[8] More specifically, Section 106 would add to the Controlled Substances Act a new offense, prohibiting the commission, conspiracy or attempt to commit a "crime of violence during and in relation to a drug trafficking crime." Under the new definition of "crime of violence," this would include offenses that are misdemeanors under the law of some states and non-violent drug trafficking crimes—during and in relation to a drug trafficking crime.

[9] Section 107 would create a new federal crime without a criminal act. Unlike the Travel Act as currently written, which requires travel or use of the mails or other facility in interstate or foreign commerce and one of several inherently illegal acts, this statute merely prohibits travel or use of the mails or other facility in interstate or foreign commerce "with intent that 2 or more intentional homicides be committed."

[10] The Section creates a new subsection allowing jurisdiction to fall in a district where related conduct occurred if the offense affects interstate or foreign commerce, or involves the importation of a person or object into the U.S.

[11] Any promotion of this approach by the Department of Justice (DOJ) makes no sense and has no credible foundation in light of the advice and counsel DOJ provides to state and local authorities on how to address youth violence, including youth gang violence. The DOJ website and the annual report for the Office of Justice Programs, promotes just the opposite approaches, recommending the appropriate evidence based crime prevention and crime response approaches for youth from age 2 to age 22, including responses to serious violent crimes. Nowhere in the DOJ protocols is there a call for mandatory minimum sentences or treating juveniles as adults as an evidenced-based response.

ernors of appropriate states, to designate certain locations as "high intensity interstate gang activity areas," and provides assistance in the form of criminal street gang enforcement teams consisting of numerous federal agencies, and state and local law enforcement authorities to investigate and prosecute criminal street gangs in each high intensity interstate gang activity area. It authorizes $5,750,000 for each fiscal year from 2006 through 2010 for this purpose. Section 202 authorizes $20,000,000 for each fiscal year from 2006 through 2010 for independent state and local efforts.[12]

Among the organizations that have opposed, or have expressed serious concerns with H.R. 1279 are:

(1) Judicial Conference of the United States;[13]

(2) Child advocacy groups including: Alliance for Children and Families; American Academy of Child & Adolescent Psychiatry; Campaign 4 Youth Justice; Child Welfare League of America; Children and Adults with Attention-Deficit/Hyperactivity Disorder (CHADD); Children's Defense Fund; Coalition for Juvenile Justice; Council of Juvenile Correctional Administrators; Federation of Families for Children's Mental Health Girls Incorporated; Juvenile Law Center; National Association of School Psychologists; National Collaboration for Youth; National Juvenile Defender Center; National Network for Youth; Society for Research in Child Development; and the Youth Law Center;[14]

(3) Criminal justice groups including: American Civil Liberties Union; American Correctional Association; Federal Public Defender; and the National Association of Criminal Defense Lawyers;[15]

(4) Industry and business-oriented groups including: Chamber of Commerce of the United States, the National Federation of Independent Business, and Business Civil Liberties, Inc;[16] and

(5) Religious, human rights and civil rights organizations including: Church Women United; Democracy Project; Justice Policy Institute; Legal Action Center; Mennonite Central Committee; Catholic Charities USA; National Alliance for the Mentally ill (NAMI); National Council of La Raza; National H.I.R.E. Network; National Mental Health Association; Physicians for Human Rights; Presbyterian Church (USA) Washington Office; School Social Work Association of America; United Church Of Christ; Volunteers of America; and Women of Reform Judaism.[17]

For these and the following reasons, we dissent from H.R. 1279.

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[12] No funds would be authorized for education, job training, or drug treatment.

[13] See Letter from Leonidas Ralph Mecham, Secretary, Judicial Conference of the United States to the Honorable Howard Coble, dated April 1, 2005.

[14] See Letter addressed to Chairman Sensenbrenner and Representative Conyers dated April 8, 2005.

[15] See Letter to Representatives Coble and Scott dated April 4, 2005; see also Letter addressed to Chairman Sensenbrenner and Representative Conyers dated April 8, 2005; Letter from Thomas W. Hiller II, Federal Public Defender to Chairman Sensenbrenner and Representative Conyers dated April 21, 2005.

[16] See Letter from Business Civil Liberties, Inc., Chamber of Commerce of the United States and National Federation of Independent Business to Representatives Coble and Scott dated April 5, 2005.

[17] See Letter to Representatives Coble and Scott dated April 4, 2005; see also Letter addressed to Chairman Sensenbrenner and Representative Conyers dated April 8, 2005.

I. The Transfer Provision Endangers Youth and Public Safety

Permitting the government unreviewable discretion to transfer juveniles to be tried as adults will not decrease crime among youth. Study after study have shown that such measures merely increase prison rape and assaults against youngsters incarcerated in adult prisons, disproportionately affect minority youth, and increase recidivism rates of released youthful offenders.

First, research conclusively demonstrates that prosecuting young people as adults does not reduce youth crime; it in fact increases crime, including violent crime.[18] Numerous studies including those conducted by the Coalition for Juvenile Justice, the National Institute of Justice (U.S. Department of Justice), and the Florida Department of Juvenile Justice conclude that youth transferred to adult court and tried as adults are more likely to: (a) commit a greater number of crimes upon release; (b) commit violent crimes upon release; and (c) commit crimes sooner upon release.[19] Miami Herald study of the Florida experience in 2001 concluded that "[s]ending a juvenile to prison increased by 35 percent the odds he'll re-offend within a year of release."[20] Thus, locking youth in adult prisons actually compromises public safety.

Second, juveniles incarcerated in adult prisons are also at greater risk of sexual and physical assaults. Studies demonstrate that such youth are five times as likely to report being a victim of rape, twice as likely to be beaten by staff, and 50% more likely to be assaulted with a weapon than youth in juvenile facilities, and are eight times more likely to commit suicide.[21] Moreover, policies that increase the transfer of juveniles to adult court also have a disproportionate impact on children of color. Recent studies demonstrate that eight out of every ten youth admitted to adult facilities across the country were youth of color, and minority youth are more likely to be treated as adults than white youth charged with the same offenses.[22]

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[18] Representative Scott offered an amendment ordering the Director of the Office of Justice Programs to carry out a study of evidence-based approaches that have proven to prevent crime. Prosecuting young people as adults does not reduce youth crime and it is necessary for an agency to further examine this point and to determine the mechanisms that do in fact reduce crime. However, this amendment was defeated.

[19] See e.g. Lanza-Kaduce, Lonn, Charles E. Frazier, Jodi Lane & Donna Bishop, Juvenile Transfers to Criminal Court Study: Final Report (Florida Department of Juvenile Justice, Office of Juvenile Justice and Delinquency Prevention (2002); Green, Ronnie & Geoff Dougherty, "Kids in Prison: Tried as Adults, They Find Trouble Instead of Rehabilitation," Miami Herald, March 18, 2001; Fagan, Jeffrey, The Comparative Impacts of Juvenile and Criminal Court Sanctions on Adolescent Felony Offenders (National Institute of Justice, U.S. Department of Justice) (1991); Mayers, David L., Adult Crime, Adult Time; Punishing Violent Youth in the Adult Criminal Justice System (Saga Publications, 2003); Podkopacz, Marcy R. & Barry Feld, "The End of the Line: An Empirical Study of Judicial Waiver," 86 Journal of Criminal Law & Criminology 449 (1996); Coalition for Juvenile Justice, Childhood on Trial: The Failure of Trying and Sentencing Youth in Adult Courts (2005).

[20] Green, Ronnie & Geoff Dougherty, "Kids in Prison: Tried as Adults, They Find Trouble Instead of Rehabilitation," Miami Herald, March 18, 2001.

[21] See e.g. Audi, Tamara, "Prison at 14: Teenage Girls Serve Time with Adult Inmates," Detroit Free Press, July 10, 2000; Forst, Martin, Jeffrey Fagan & T. Scott Vivona, "Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy," 40 Juvenile & Family Court Journal (1989).

[22] See e.g. Poe-Yamagata, E., and Justice for Some (National Council on Crime and Delinquency, 2000); see also The Coalition for Juvenile Justice, Childhood on Trial: The Failure of Trying and Sentencing Youth in Adult Criminal Court (revealing that over 250,000 youth are charged as adults every year and roughly 82% of youths tried as adults are youth of color).

Third, H.R. 1279 inexcusably removes judicial review of a prosecutor's decision to try a youth as an adult.[23] Current law requires an in-depth review of multiple considerations by a federal judge of whether such a transfer is in the interest of justice. This policy is unwise and will increase federal prosecution of youth for minor offenses. Presently, in both federal and state courts, juveniles who commit the most serious violent crimes are almost certain to be transferred to adult court through use of a judicial waiver. In effecting transfer to adult court, judicial waivers, as opposed to legislative or prosecutorial waivers, are the most common type of waiver device used. That is, the juvenile court judge decides whether or not to waive jurisdiction to adult court. However, Section 115 of H.R. 1279 takes the waiver decision out of the judge's discretion.[24] As the Judicial Conference of the United States points out, Section 115 "could result in the federal prosecution of juveniles for myriad offenses * * *"[25] Equally alarming, the legislation removes the current prerequisite that the transferred child have a prior conviction for an offense, that would be a serious violent felony if committed by an adult. Thus, a prosecutor could unilaterally decide to transfer a youthful offender with no prior criminal record who commits a simple drug trafficking offense, with no judicial review of whether such transfer serves the interests of justice. Moreover, a move toward federal prosecution causes us great concern because as the Judicial Conference acknowledges, "juvenile offenders require different and perhaps more extensive correctional and rehabilitative programs than adults and * * * there is not a single, federal correctional facility to meet these needs."

H.R. 1279 simply takes the wrong approach. Instead of focusing on correctional and rehabilitative programs, it attempts to throw more youth in crowded adult prisons where these programs are lacking.[26] H.R. 1279 reflects the politics of crime where you come up with a good slogan such as "the gang busters" bill and codify it. Until H.R. 1279, the Judiciary Committee had made great progress toward putting aside the politics of crime in favor of sound policy in the area of juvenile justice.

The last three Chairmen of the Subcommittee on Crime and the last two Chairmen of the Subcommittee on Children Youth and Families of the Education and Workforce Committee, worked on a bipartisan basis with Ranking Member Scott, a member of both subcommittees, to coauthor juvenile crime prevention and intervention bills in both subcommittees which all the members of both, respectively, cosponsored. These bills were based on the advice of juvenile judges, administrators, researchers, advocates and even law

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[23] In fact, the bill provides no exception to non-reviewability for jurisdictional issues such as non-age—a fifteen-year-old mistakenly identified as being older—or for young people who may not be competent to stand trial as an adult, a high risk scenario as many who engage in risky behaviors have mental health problems.

[24] Since juveniles can already be tried as adults for serious violent crimes, the only purpose of this legislation is to try more youth as adults for less serious crimes. Moreover, the legislation also allows any other offenses committed that are not covered by the bill to be tried as adult offenses, including lesser included offenses, thus putting some perhaps trivial charges in federal district courts as well.

[25] Letter from Leonidas Ralph Mecham, Secretary, Judicial Conference of the United States to the Honorable Howard Coble, dated April 1, 2005.

[26] The adult prison system is approaching full capacity. For example, the nation's prisons and jails held 2.1 million people in mid-2004, 2.3 percent more than the year before. See "Nation's Inmate Population Increased 2.3 Percent Last Year," The New York Times, 4/25/05.

enforcement officials representing the entire political spectrum. We held hearings where a number of witnesses were called by the majority and a number by the minority. They all said the same thing: the best way to prevent juvenile crime, and ultimately, adult crime, is through prevention and early intervention programs geared toward at-risk youth.

Moreover, following the Columbine school shooting incident, the Speaker of the House and the Minority Leader appointed a bi-partisan task force on youth crime consisting of 12 Republicans and 12 Democrats. We met for six weeks with each member having the right to call witnesses to tell us how to address youth crime and violence. They all said the same thing: through prevention and early intervention and treatment, or graduated sanctions, programs run by local law enforcement, private community based organizations and court personnel. Not one said through treating more kids as adults or through mandatory minimum sentences. The two bipartisan bills incorporated this advice and passed both the House and the Senate virtually unanimously. Unfortunately, these universally agreed upon crime prevention and early intervention approaches were never funded at their modest authorization levels, and even worse, have been cut by more than one-half compared to what the funding levels were for prevention and intervention programs when the bills were initially passed.

While there is no question that violent and dangerous youth need to be securely confined for our safety and theirs, incarcerating youth with more sophisticated adult prisoners renders them vulnerable to attack and more damaged when they return to society. This is tantamount to giving up on them—something we should never do. Recent data show a stark reduction in the rate and seriousness of juvenile delinquency in the past nine or ten years. Indeed, as we have learned more from the developmental and brain research in recent years, we know that rehabilitative programs work better in turning around these young lives and correcting their behavior.[27]

In our view, another preferable approach to youth crime would be to emphasize effective correctional and rehabilitative programs such as Head Start and Job Corps. Job Corps programs deter crime: about 75% of Job Corps participants move on to a job or full-time study; they earn about 15% more than those who do not participate in the program; and, not surprisingly, Job Corps participants are about one-third less likely to be arrested than non-participants. As the Head Start program demonstrates, early childhood education and job training programs not only reduce crime, they save money. Studies of the Head Start program, for example, estimate that about $3 is saved for every $1 spent on the program by reducing future costs of remedial education, welfare, and crime. Moreover, research demonstrates the effectiveness of focused family interventions such as:

[27] A report released last year by Fight Crime: Invest in Kids, a law enforcement-based group, points to the effectiveness of many current programs in preventing gangs—at the local and state level—and in interdicting violent gang activity. That report, Caught in the Crossfire: Arresting Gang Violence by Investing in Kids, offers much useful advice about programs that work with the help of federal investment in anti-gang programs through the JJDPA and other entities.

• Multi-Systemic Therapy (MST)—Chronic juvenile offenders who graduated from intensive family multisystemic therapy (MST) were one-third as likely to be re-arrested within four years (22%) as the graduates of individual therapy (71%);

• Functional Family Therapy—Youths whose families received family therapy (FFT) were half as likely to be rearrested as the youths whose families did not receive family therapy (26 percent vs. 50 percent); and

• Multidimensional Treatment Foster Care—The boys randomly assigned to treatment foster care averaged half as many new arrests as the boys placed in group-homes (2.6 arrests vs. 5.4 arrests). And six times as many boys in treatment foster care as boys in the group homes had successfully avoided any new arrests (41 percent vs. 7 percent).

II. Legislation Imposes Ineffective and Discriminatory Mandatory Minimums

H.R. 1279's heavy reliance on mandatory minimums is a flawed approach because mandatory minimums distort the sentencing process, discriminate against minorities in their application, and waste money.[28]

Mandatory minimum penalties have been studied extensively. The Judicial Conference of the United States and the U.S. Sentencing Commission have found that mandatory minimums distort the sentencing process and have the "opposite of their intended effect."[29] Mandatory minimums "destroy honesty in sentencing by encouraging charge and fact plea bargains." Moreover, mandatory minimums result in unwarranted sentencing disparity. That is, "mandatory minimums * * * treat dissimilar offenders in a similar manner, although those offenders can be quite different with respect to the seriousness of their conduct or their danger to society * * *" and * * * "require the sentencing court to impose the same sentence on offenders when sound policy and common sense call for reasonable differences in punishment."[30]

In addition, mandatory minimums tend to discriminate against minorities. Both the Judicial Center in its study report entitled "The General Effects of Mandatory Minimum Prison Terms: a Longitudinal Study of Federal Sentences Imposed" and the United States Sentencing Commission in its study entitled "Mandatory Minimum Penalties in the Federal Criminal Justice System" found that minorities were substantially more likely than whites under comparable circumstances to receive mandatory minimum sentences. The Sentencing Commission study also reflected that mandatory minimum sentences increased the disparity in sentencing of like offenders with no evidence that mandatory minimum sentences had any more crime-reduction impact than discretionary sentences.

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[28] H.R. 1279 misdirects its attention to mandatory minimums and enhanced penalties instead of addressing the real need to prevent gang members from obtaining guns. In this regard, Representatives Conyers and Van Hollen offered an amendment to close a current loophole that exists in the federal gun laws. The amendment would have made it illegal to transfer a firearm to anyone that the Federal Government has designated as a suspected or known gang member or terrorist. Unfortunately, the amendment was defeated.

[29] See U.S. Sentencing Commission, Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (August 1991).

[30] Ibid.

Finally, mandatory minimums are extremely costly because they keep minor role offenders locked up longer than necessary while the worst offenders get no more time than they would have received under a discretionary sentencing system.[31] In response to an inquiry by Ranking Member Scott's office, the U.S. Sentencing Commission estimated the potential prison impact of H.R. 1279 to require an additional 23,600 prison beds over the next 10 years. At $75,000 per cell, that amounts to prison construction costs of almost $2 billion. At a cost of $30,000 per inmate for annual upkeep, that amounts to an additional $700 million per year and over $7 billion dollars over a ten-year period. That is an additional $9 billion over and above the billions of dollars per year resulting from Congress' seemingly insatiable penchant for mandatory minimum sentences, with far less crime reduction value than much cheaper, proven approaches.

III. The Legislation Unjustifiably Expands the Federal Death Penalty

H.R. 1279 would create new death penalty provisions at a time when evidence continues to expose the fallibility of the system and its discriminatory effects.[32]

H.R. 1279 authorizes the death penalty for numerous offenses if "death results" in six different sections.[33] Numerous studies, including those conducted by the ACLU and the University of Michigan among others, have documented the exposure of innocent individuals to the death penalty system.[34] Last year, a University of Michigan study identified 199 murder exonerations since 1989, 73 of them in capital cases. The same study found that death row inmates represent a quarter of 1 percent of the prison population but 22 percent of the exonerated. Since 1973, 119 innocent people have been released from death row. An earlier study found that more

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[31] The cost issue was born out dramatically in a Rand Commission study report entitled "Mandatory Drug Sentences: Throwing Away the Key or the Taxpayers Money?" The study showed that mandatory minimum sentences were far less effective than either discretionary sentences or drug treatment in reducing drug-related crime and, thus, far more costly than either. For example, the study found that the results of spending a million dollars to impose federal mandatory minimum sentences for those arrested for drug dealing would reduce cocaine use by almost 13 kilograms. If, however, the money was used to arrest, confiscate the assets of, prosecute, and incarcerate dealers with prison terms under conventional sentencing schemes where judges could determine the sentences based on the seriousness of the offense and the offender's background, more offenders could be incarcerated and cocaine consumption would be reduced by over 27 kilograms.

[32] Representative Scott offered an amendment that would have deleted the death penalty from H.R. 1279. Numerous studies have pointed to a high number of wrongful convictions under the death penalty and to the racial and geographical disparities associated with the death penalty. The amendment was rejected. Another amendment offered by Representative Scott would have required a showing of an "intentional" death before a gang member was exposed to the death penalty. The amendment would have prevented a gang member from going to jail for life for an accidental death, but the amendment was rejected.

[33] *See* Sections 101 (gang crime resulting in death), 102 ("crime of violence" "to further" unlawful activity if death results), 104 (travel or use of interstate facilities with intent that "crime of violence" be committed if results in death), 105 (death for "crime of violence" if results in death), 106 ("crime of violence during and in relation to a drug trafficking crime" if results in death), and 107 (intent that 2 or more homicides be committed if results in death).

[34] *See* American Bar Association, "Gideon's Broken Promise: America's Continuing Quest for Equal Justice" (2005) (demonstrating that innocent people are wrongfully convicted in our criminal justice system due to the lack of effective defense representation for the poor). In fact, Governor Ryan of Illinois declared a moratorium in his state after 13 people were released from death row because of innocence. Ryan wanted assurances that the system was working before resuming executions. Some death penalty proponents have argued that the problems in Illinois are exceptional. In fact, however the error rate in Illinois is 66%, slightly lower than the national average of 68%.

than two out of every three capital judgments reviewed by the courts during a 23-year period were seriously flawed. Moreover, experts reviewed all the capital cases and appeals imposed in the United States between 1973 and 1995 at the state and federal levels. They found a national error rate of 68%. In other words, over two-thirds of all capital convictions and sentences are reversed because of serious error during trial or sentencing. This does not include errors that were not serious enough to warrant a reversal.[35]

In fact, due in part to the high number of wrongful convictions with respect to the death penalty, Congress passed the Justice for All Act of 2004,[36] which received strong bipartisan support. The Act increases federal resources available to state and local governments to combat crimes with DNA technology, and provides safeguards to prevent wrongful convictions and executions. Title III of the bill, the Innocence Protection Act, provides access to post-conviction DNA testing in federal cases, helps States improve the quality of legal representation in capital cases, and increases compensation in Federal cases of wrongful conviction. By increasing the number of federal death penalty provisions, H.R. 1279 runs counter to the spirit of the Innocence Protection Act and would actually prevent the IPA from achieving its full purpose. Even worse, these new death penalties are being proposed at a time when the Innocence Protection Act has not even been funded.

Furthermore, the death penalty has been shown to be racially and economically discriminatory.[37] Studies which examine the relationship between race and the death penalty have now been conducted in every active death penalty state. In 96% of these reviews, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both. After its careful study of the death penalty in the United States, the United Nations' Human Rights Commission in 1998 issued a report which rightly concludes: "Race, ethnic origin and economic status appear to be key determinants of who will, and who will not, receive a sentence of death."[38]

Finally, Section 110 of H.R. 1279 would expand venue in capital cases, to make any location even tangentially related to the crime a possible site for the trial. This change in law will increase the inequities that already exist in the federal death penalty system, giving prosecutors tremendous discretion to "forum shop" for the most death-friendly jurisdiction in which to try their case. The bill would allow the government to bring the death penalty to states whose citizens have rejected it, even if the offense was not committed there. It would violate both the defendant's rights and states' rights to accept or reject capital punishment.

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[35] See "A Broken System: Error Rates in Capital Cases", 1973–1995 (Retrieved April 26, 2005 from http://justice.policy.net/jpreport/).

[36] Pub. L. No. 108–405, s. 401–432 (2004).

[37] *See* Department of Justice Report, "The Federal Death Penalty System: A Statistical Survey" (1988–2000) (finding numerous racial and geographic disparities in the death penalty and revealing that 80% of the cases submitted by federal prosecutors for death penalty review in the past five years have involved racial minorities as defendants); *see also* University of Maryland Report, "An Empirical Analysis of Maryland's Death Sentencing System With Respect to the Influence of Race and Legal Jurisdiction" (concluding that defendants are much more likely to be sentenced to death if they have killed a caucasian).

[38] Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Mission to the United States of America, U.N. ESCOR, Hum. Rts. Comm., 54th Sess., Agenda Item 10, P 62, U.N. Doc. E/CN.4/1998/68/Add.3 (1998).

Article III of the Constitution requires that the "[t]rial of all Crimes * * * shall be held in the State where the said Crimes shall have been committed."[39] This is reinforced by the Sixth Amendment, which guarantees the accused a trial "by an impartial jury of the State and district wherein the crime shall have been committed.; which district shall have been previously ascertained by law."[40] Venue is constitutional only in the district where the acts constituting the charged offense were committed, not in any district where activities involved in the "offense, or related conduct * * * occurred."[41]

IV. Legislation is Not Necessary

H.R. 1279 is simply not needed because federal prosecutors are already armed with the RICO and CCE statutes to prosecute actual gang crimes. In spite of its name and origin, RICO is not limited to "mobsters" or members of "organized crime" as those terms are popularly understood. Rather it covers those activities which Congress felt characterized the conduct of organized crime no matter who actually engages in them. In fact, courts have frequently upheld prosecutions under RICO for criminal gang activity.[42]

Gangs were being prosecuted under RICO as early as the mid-1980s and by the early 1990s, the CCE statue was also being used against gangs engaged in drug trafficking.[43] As one recent commentator noted, "there is a national trend in fighting gang-related crime using the RICO statutes, and these efforts have been very successful . . . RICO may be used to target the managing forces of the gang, as well as its underlings."[44] Thus, if the point of the bill is to provide a greater role for federal law enforcement to combat gang violence, such a role already exists.

V. The Legislation is a Questionable Exercise of the Commerce Clause Power

H.R. 1279 is so intrusive that if enacted into law, it may well be found inconsistent with recent Supreme Court decisions interpreting the Congressional power to legislate under the Commerce Clause. The Commerce Clause of the U.S. Constitution provides that Congress shall have the power to regulate interstate and foreign commerce.[45] H.R. 1279 violates the Commerce Clause because it "completely obliterate[s] the Constitution's distinction between national and local authority."[46] The legislation unconstitutionally

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[39] U.S. Const. Art III, § 2, cl.3.

[40] U.S. Const. Amend. VI.

[41] See *United States* v. *Cabrales*, 524 U.S. 1,6–10 (1998) (venue for money laundering offenses was in the district where the money was laundered, not in the district where the money was illegally produced); *United States* v. *Salinas*, 373 F.3d 161, 163–170 (1st Cir. 2004) (venue for passport fraud was in the district where the defendant made the knowingly false statement, not where the application was processed).

[42] See *United States* v. *Coonan*, 938 F.2d 1553 (2d Cir. 1991) (affirming RICO conviction of members of the Westies gang); see also *United States* v. *Espinoza*, 52 Fed. Appx. 846 (7th Cir. 2003) (affirming RICO conviction of member of QC Bishops street gang).

[43] David R. Truman, The Jets And Sharks Are Dead: State Statutory Responses To Criminal Street Gangs, 73 Wash. U. L.Q. 683 (1995).

[44] Janice A. Petrella, Equal Protection—What Is In A Name? Sign? Symbol? Gang Members and RICO Considered, 34 Rutgers L.J. 1237 (2003).

[45] See U.S. Constitution, Art. I, s.8, cl. 3.

[46] *U.S.* v. *Morrison*, 529 U.S. 598 (2000).

reaches "gang activity" which does not have the requisite "substantial affect" on commerce.[47]

Five years ago in United States v. Morrison, the Court invalidated portions of the Violence Against Women Act, stating that Congress had overstepped its specific constitutional power to regulate interstate commerce.[48] Despite vast quantities of data illustrating the effects that violence against women has on interstate commerce, the Court essentially warned Congress not to extend its constitutional authority in order to, "completely obliterate the Constitution's distinction between national and local authority." The same concerns were brought in United States v. Lopez, which invalidated a federal law criminalizing the possession of firearms in a school zone. In that case, the Supreme Court cautioned Congress regarding its limited authority in matters traditionally left to the states, Congress's authority is not as broad.[49] This would be particularly true concerning H.R. 1279 which makes federal crimes of a host of traditional state offenses.

In both Lopez and Morrison, the Supreme Court also held that federal statutes that attempt to regulate intrastate activities are unconstitutional unless the conduct "substantially affects" commerce. For H.R. 1279 to avoid a constitutional problem under these cases would require that the criminal street gang itself be an economic enterprise, or at least that its activities "substantially" affect commerce. The effect of the new street gang offenses proposed by H.R. 1279 on interstate commerce is, like violence against women and gun possession in a school zone, too attenuated. Otherwise, virtually all local activity that could be characterized as "gang activity" would be federalized, upsetting the federal-state balance in criminal prosecution. The effect of gang activities would unlikely meet the "substantially affected" threshold under the Supreme Court rulings.

CONCLUSION

While there is no question that violent and dangerous youth need to be securely confined for our safety and theirs, the emphasis of H.R. 1279 on the death penalty and mandatory minimums is misplaced. Mandatory minimum sentences have been studied extensively and have been proven to be ineffective in preventing crime; proven to distort the sentencing process; and proven to be a considerable waste of taxpayers money. Moreover, the death penalty system has numerous deficiencies, not to mention its discriminatory effects. The bill also unwisely advocates for transferring a greater number of juveniles to adult court to be tried for youth-related crimes. This runs contrary to research which indicates that prosecuting young people as adults does not reduce youth crime. In fact, it's been proven to have the opposite effect.

In the alternative, we should emphasize prevention programs which discourage youth from joining gangs. Research indicates the effectiveness of focused family interventions, including functional family therapy. Youth whose families received family therapy, for example, were half as likely to be re-arrested as the youths whose

[47] *U.S.* v. *Lopez*, 514 U.S. 549 (1995).
[48] 529 U.S. 598 (2000).
[49] 514 U.S. 549 (1995).

families did not receive family therapy. Unfortunately, instead of investing in commonsense programs such as this, H.R. 1279 adopts a "lock 'em up and throw away the key" strategy to deal with the problem.

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