

103^D CONGRESS
2^D SESSION

S. 2431

To amend the Violent Crime Control and Law Enforcement Act of 1994
to reduce the amount of social spending, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13 (legislative day, SEPTEMBER 12), 1994

Mr. DOLE (for himself, Mr. HATCH, Mr. THURMOND, Mr. SIMPSON, Mr. GRASSLEY, Mrs. HUTCHISON, Mr. GRAMM, Mr. LOTT, Mr. BURNS, Mr. D'AMATO, Mr. NICKLES, Mr. COCHRAN, Mr. McCONNELL, and Mr. PRESSLER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Violent Crime Control and Law Enforcement
Act of 1994 to reduce the amount of social spending,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Crime Control Im-
5 provement Act of 1994”.

1 **SEC. 2. ELIMINATION OF MODEL INTENSIVE GRANT**
2 **PROGRAM.**

3 Title III of the Violent Crime Control and Law En-
4 forcement Act of 1994 is amended by striking subtitle C.

5 **SEC. 3. ELIMINATION OF LOCAL PARTNERSHIP GRANT**
6 **PROGRAM.**

7 Title III of the Violent Crime Control and Law En-
8 forcement Act of 1994 is amended by striking subtitle J.

9 **SEC. 4. ELIMINATION OF LOCAL CRIME PREVENTION**
10 **BLOCK GRANT PROGRAM, FAMILY AND COM-**
11 **MUNITY ENDEAVOR SCHOOLS PROGRAM,**
12 **COMMUNITY-BASED JUSTICE GRANT PRO-**
13 **GRAM, URBAN RECREATION PROGRAM, AT-**
14 **RISK YOUTH PROGRAM, AND POLICE RE-**
15 **CRUITMENT PROGRAM.**

16 Title III of the Violent Crime Control and Law En-
17 forcement Act of 1994 is amended by striking section
18 30402, section 30403(b)(2), and subtitles B, G, H, O, and
19 Q.

1 **SEC. 5. ELIMINATION OF NATIONAL COMMUNITY ECO-**
2 **NOMIC PARTNERSHIP PROGRAM, COMMU-**
3 **NITY SCHOOLS PROGRAM, OUNCE OF PRE-**
4 **VENTION PROGRAM, FAMILY UNITY DEM-**
5 **ONSTRATION PROJECT, GANG RESISTANCE**
6 **EDUCATION AND TRAINING PROGRAM, AND**
7 **DRUG COURTS PROGRAM.**

8 The Violent Crime Control and Law Enforcement Act
9 of 1994 is amended—

10 (1) in title III by striking section 30401, sec-
11 tion 30403(b)(1), and subtitles A, D, K, S, and X;
12 and

13 (2) by striking title V.

14 **SEC. 6. AMENDMENT OF VIOLENT OFFENDER INCARCER-**
15 **ATION AND TRUTH IN SENTENCING INCEN-**
16 **TIVE GRANT PROGRAM.**

17 Subtitle A of title II of the Violent Crime Control
18 and Law Enforcement Act of 1994 is amended to read
19 as follows:

20 **“Subtitle A—Violent Offender In-**
21 **carceration and Truth in Sen-**
22 **tencing Incentive Grants**

23 **“SEC. 20101. GRANTS FOR CORRECTIONAL FACILITIES.**

24 “(a) GRANT AUTHORIZATION.—The Attorney Gen-
25 eral may make grants to individual States and to States
26 organized as multi-State compacts to construct, develop,

1 expand, modify, operate, or improve conventional prisons
2 to ensure that prison cell space is available for the confine-
3 ment of violent offenders and to implement truth in sen-
4 tencing laws for sentencing violent offenders.

5 “(b) ELIGIBILITY.—To be eligible to receive a grant
6 under this subtitle, a State or States organized as multi-
7 State compacts shall submit an application to the Attorney
8 General that includes—

9 “(1) assurances that the State or States have
10 implemented, or will implement, correctional policies
11 and programs, including truth in sentencing laws
12 that ensure that violent offenders serve a substantial
13 portion of the sentences imposed, that are designed
14 to provide sufficiently severe punishment for violent
15 offenders, including violent juvenile offenders, and
16 that the prison time served is appropriately related
17 to the determination that the inmate is a violent of-
18 fender and for a period of time deemed necessary to
19 protect the public;

20 “(2) assurances that the State or States have
21 implemented policies that provide for the recognition
22 of the rights and needs of crime victims;

23 “(3) assurances that funds received under this
24 section will be used to construct, develop, expand,
25 modify, operate, or improve conventional correctional

1 facilities to ensure that prison cell space is available
2 for the confinement of violent offenders;

3 “(4) assurances that the State or States have
4 involved counties and other units of local govern-
5 ment, when appropriate, in the construction, devel-
6 opment, expansion, modification, operation or im-
7 provement of correctional facilities designed to en-
8 sure the incarceration of violent offenders, and that
9 the State or States will share funds received under
10 this section with counties and other units of local
11 government, taking into account the burden placed
12 on these units of government when they are required
13 to confine sentenced prisoners because of overcrowd-
14 ing in State prison facilities;

15 “(5) assurances that funds received under this
16 section will be used to supplement, not supplant,
17 other Federal, State, and local funds;

18 “(6) assurances that the State or States have
19 implemented, or will implement within 18 months
20 after the date of the enactment of this Act, policies
21 to determine the veteran status of inmates and to
22 ensure that incarcerated veterans receive the veter-
23 an’s benefits to which they are entitled; and

24 “(7) if applicable, documentation of the multi-
25 State compact agreement that specifies the construc-

1 tion, development, expansion, modification, oper-
2 ation, or improvement of correctional facilities.

3 **“SEC. 20102. TRUTH IN SENTENCING INCENTIVE GRANTS.**

4 “(a) TRUTH IN SENTENCING GRANT PROGRAM.—
5 Fifty percent of the total amount of funds appropriated
6 to carry out this subtitle for each of fiscal years 1995,
7 1996, 1997, 1998, 1999, and 2000 shall be made available
8 for Truth in Sentencing Incentive Grants. To be eligible
9 to receive such a grant, a State must meet the require-
10 ments of section 20101(b) and shall demonstrate that the
11 State—

12 “(1) has in effect laws which require that per-
13 sons convicted of violent crimes serve not less than
14 85 percent of the sentence imposed; or

15 “(2) since 1993—

16 “(A) has increased the percentage of con-
17 victed violent offenders sentenced to prison;

18 “(B) has increased the average prison time
19 which will be served in prison by convicted vio-
20 lent offenders sentenced to prison;

21 “(C) has increased the percentage of sen-
22 tence which will be served in prison by violent
23 offenders sentenced to prison; and

24 “(D) has in effect at the time of applica-
25 tion laws requiring that a person who is con-

1 victed of a violent crime shall serve not less
2 than 85 percent of the sentence imposed.

3 “(b) ALLOCATION OF TRUTH IN SENTENCING IN-
4 CENTIVE FUNDS.—The amount available to carry out this
5 section for any fiscal year under subsection (a) shall be
6 allocated to each eligible State in the ratio that the num-
7 ber of part 1 violent crimes reported by such State to the
8 Federal Bureau of Investigation for 1993 bears to the
9 number of part 1 violent crimes reported by all States to
10 the Federal Bureau of Investigation for 1993.

11 **“SEC. 20103. VIOLENT OFFENDER INCARCERATION GRANTS.**

12 “(a) VIOLENT OFFENDER INCARCERATION GRANT
13 PROGRAM.—Fifty percent of the total amount of funds ap-
14 propriated to carry out this subtitle for each of fiscal years
15 1995, 1996, 1997, 1998, 1999, and 2000 shall be made
16 available for Violent Offender Incarceration Grants. To be
17 eligible to receive such a grant, a State or States must
18 meet the requirements of section 20101(b).

19 “(b) ALLOCATION OF VIOLENT OFFENDER INCAR-
20 CERATION FUNDS.—

21 “(1) FORMULA ALLOCATION.—Eighty-five per-
22 cent of the sum of the amount available for Violent
23 Offender Incarceration Grants for any fiscal year
24 under subsection (a) for that fiscal year shall be al-
25 located as follows:

1 “(A) 0.25 percent shall be allocated to
2 each eligible State except that the United
3 States Virgin Islands, American Samoa, Guam,
4 and the Northern Mariana Islands each shall be
5 allocated 0.05 percent.

6 “(B) The amount remaining after applica-
7 tion of subparagraph (A) shall be allocated to
8 each eligible State in the ratio that the number
9 of part 1 violent crimes reported by such State
10 to the Federal Bureau of Investigation for 1993
11 bears to the number of part 1 violent crimes re-
12 ported by all States to the Federal Bureau of
13 Investigation for 1993.

14 “(2) DISCRETIONARY ALLOCATION.—Fifteen
15 percent of the sum of the amount available for Vio-
16 lent Offender Incarceration Grants for any fiscal
17 year under subsection (a) shall be allocated at the
18 discretion of the Attorney General to States that
19 have demonstrated the greatest need for such grants
20 and the ability to best utilize the funds to meet the
21 objectives of the grant program and ensure that
22 prison cell space is available for the confinement of
23 violent offenders.

1 **“SEC. 20104. MATCHING REQUIREMENT.**

2 “The Federal share of a grant received under this
3 subtitle may not exceed 75 percent of the costs of a pro-
4 posal described in an application approved under this sub-
5 title.

6 **“SEC. 20105. RULES AND REGULATIONS.**

7 “(a) The Attorney General shall issue rules and regu-
8 lations regarding the uses of grant funds received under
9 this subtitle not later than 90 days after the date of enact-
10 ment of this Act.

11 “(b) If data regarding part 1 violent crimes in any
12 State for 1993 is unavailable or substantially inaccurate,
13 the Attorney General shall utilize the best available com-
14 parable data regarding the number of violent crimes for
15 1993 for that State for the purposes of allocation of any
16 funds under this subtitle.

17 **“SEC. 20106. TECHNICAL ASSISTANCE AND TRAINING.**

18 “The Attorney General may request that the Director
19 of the National Institute of Corrections and the Director
20 of the Federal Bureau of Prisons provide technical assist-
21 ance and training to a State or States that receive a grant
22 under this subtitle to achieve the purposes of this subtitle.

23 **“SEC. 20107. EVALUATION.**

24 “The Attorney General may request the Director of
25 the National Institute of Corrections to assist with an

1 evaluation of programs established with funds under this
2 subtitle.

3 **“SEC. 20108. DEFINITIONS.**

4 “In this subtitle—

5 “‘part 1 violent crimes’ means murder and
6 nonnegligent manslaughter, forcible rape, robbery,
7 and aggravated assault as reported to the Federal
8 Bureau of Investigation for purposes of the Uniform
9 Crime Reports; and

10 “‘State’ or ‘States’ means a State, the District
11 of Columbia, the Commonwealth of Puerto Rico, the
12 United States Virgin Islands, American Samoa,
13 Guam, and the Northern Mariana Islands.

14 **“SEC. 20109. AUTHORIZATION OF APPROPRIATIONS.**

15 “There are authorized to be appropriated to carry out
16 this subtitle—

17 “(1) \$175,000,000 for fiscal year 1995;

18 “(2) \$750,000,000 for fiscal year 1996;

19 “(3) \$1,000,000,000 for fiscal year 1997;

20 “(4) \$1,900,000,000 for fiscal year 1998;

21 “(5) \$2,000,000,000 for fiscal year 1999; and

22 “(6) \$2,070,000,000 for fiscal year 2000.”.

1 **SEC. 7. INCREASED MANDATORY MINIMUM SENTENCES**
2 **FOR CRIMINALS USING FIREARMS.**

3 Section 924(c)(1) of title 18, United States Code, is
4 amended by inserting after the first sentence the follow-
5 ing: “Except to the extent a greater minimum sentence
6 is otherwise provided by the preceding sentence or by any
7 other provision of this subsection or any other law, a per-
8 son who, during and in relation to any crime of violence
9 or drug trafficking crime (including a crime of violence
10 or drug trafficking crime which provides for an enhanced
11 punishment if committed by the use of a deadly or dan-
12 gerous weapon or device) for which a person may be pros-
13 ecuted in a court of the United States, uses or carries a
14 firearm, shall, in addition to the punishment provided for
15 such crime of violence or drug trafficking crime—

16 “(A) be punished by imprisonment for not less
17 than 10 years;

18 “(B) if the firearm is discharged, be punished
19 by imprisonment for not less than 20 years; and

20 “(C) if the death of a person results, be pun-
21 ished by death or by imprisonment for not less than
22 life.

23 Notwithstanding any other law, the court shall not place
24 on probation or suspend the sentence of any person con-
25 victed of a violation of this subsection, nor shall the term
26 of imprisonment imposed under this subsection run con-

1 currently with any other term of imprisonment including
2 that imposed for the crime of violence or drug trafficking
3 crime in which the firearm was used or carried. No person
4 sentenced under this subsection shall be eligible for parole
5 during the term of imprisonment imposed under this sub-
6 section.”.

7 **SEC. 8. MANDATORY MINIMUM PRISON SENTENCES FOR**
8 **THOSE WHO USE MINORS IN DRUG TRAF-**
9 **FICKING ACTIVITIES.**

10 (a) EMPLOYMENT OF PERSONS UNDER 18 YEARS OF
11 AGE.—Section 420 of the Controlled Substances Act (21
12 U.S.C. 861) is amended—

13 (1) In subsection (b) by adding at the end the
14 following: “Except to the extent a greater minimum
15 sentence is otherwise provided, a term of imprison-
16 ment of a person 21 or more years of age convicted
17 of drug trafficking under this subsection shall be not
18 less than 10 years. Notwithstanding any other law,
19 the court shall not place on probation or suspend the
20 sentence of any person sentenced under the preced-
21 ing sentence.”; and

22 (2) in subsection (c) (penalty for second of-
23 fenses) by inserting after the second sentence the
24 following: “Except to the extent a greater minimum
25 sentence is otherwise provided, a term of imprison-

1 ment of a person 21 or more years of age convicted
2 of drug trafficking under this subsection shall be a
3 mandatory term of life imprisonment. Notwithstand-
4 ing any other law, the court shall not place on pro-
5 bation or suspend the sentence of any person sen-
6 tenced under the preceding sentence.”.

7 **SEC. 9. MANDATORY MINIMUM PRISON SENTENCES FOR**
8 **THOSE WHO SELL ILLEGAL DRUGS TO**
9 **MINORS.**

10 (a) DISTRIBUTION TO PERSONS UNDER AGE 18.—
11 Section 418 of the Controlled Substances Act (21 U.S.C.
12 859) is amended—

13 (1) in subsection (a) (first offense) by inserting
14 after the second sentence “Except to the extent a
15 greater minimum sentence is otherwise provided by
16 section 401(b), a term of imprisonment under this
17 subsection in a case involving distribution to a per-
18 son under 18 years of age by a person 21 or more
19 years of age shall be not less than 10 years. Not-
20 withstanding any other law, the court shall not place
21 on probation or suspend the sentence of any person
22 sentenced under the preceding sentence.”; and

23 (2) in subsection (b) (second offense) by insert-
24 ing after the second sentence “Except to the extent
25 a greater sentence is otherwise authorized by section

1 401(b), a term of imprisonment under this sub-
2 section in a case involving distribution to a person
3 under 18 years of age by a person 21 or more years
4 of age shall be a mandatory term of life imprison-
5 ment. Notwithstanding any other law, the court shall
6 not place on probation or suspend the sentence of
7 any person sentenced under the preceding sen-
8 tence.”.

9 **SEC. 10. DEPORTATION OF CRIMINAL ALIENS.**

10 (a) EXPANSION OF DEFINITION OF AGGRAVATED
11 FELONY.—

12 (1) EXPANSION OF DEFINITION.—Section
13 101(a)(43) of the Immigration and Nationality Act
14 (8 U.S.C. 1101(a)(43)) is amended to read as fol-
15 lows:

16 “(43) The term ‘aggravated felony’ means—

17 “(A) murder;

18 “(B) illicit trafficking in a controlled sub-
19 stance (as defined in section 102 of the Con-
20 trolled Substances Act), including a drug traf-
21 ficking crime (as defined in section 924(c) of
22 title 18, United States Code);

23 “(C) illicit trafficking in firearms or de-
24 structive devices (as defined in section 921 of
25 title 18, United States Code) or in explosive

1 materials (as defined in section 841(c) of that
2 title);

3 “(D) an offense described in section 1956
4 of title 18, United States Code (relating to
5 laundering of monetary instruments) or section
6 1957 of that title (relating to engaging in mon-
7 etary transactions in property derived from spe-
8 cific unlawful activity) if the amount of the
9 funds exceeded \$100,000;

10 “(E) an offense described in—

11 “(i) section 842 (h) or (i) of title 18,
12 United States Code, or section 844 (d),
13 (e), (f), (g), (h), or (i) of that title (relat-
14 ing to explosive materials offenses);

15 “(ii) section 922(g) (1), (2), (3), (4),
16 or (5), (j), (n), (o), (p), or (r) or 924 (b)
17 or (h) of title 18, United States Code (re-
18 lating to firearms offenses); or

19 “(iii) section 5861 of the Internal
20 Revenue Code of 1986 (relating to fire-
21 arms offenses);

22 “(F) a crime of violence (as defined in sec-
23 tion 16 of title 18, United States Code, but not
24 including a purely political offense) for which
25 the term of imprisonment imposed (regardless

1 of any suspension of imprisonment) is at least
2 5 years;

3 “(G) a theft offense (including receipt of
4 stolen property) or budgetary offense for which
5 the term of imprisonment imposed (regardless
6 of any suspension of such imprisonment) is at
7 least 33 months;

8 “(H) an offense described in section 875,
9 876, 877, or 1202 of title 18, United States
10 Code (relating to the demand for or receipt of
11 ransom);

12 “(I) an offense described in section 2251,
13 2251A, or 2252 of title 18, United States Code
14 (relating to child pornography);

15 “(J) an offense described in section 1962
16 of title 18, United States Code (relating to
17 racketeer influenced corrupt organizations) for
18 which a sentence of 5 years’ imprisonment or
19 more may be imposed;

20 “(K) an offense that—

21 “(i) relates to the owning, controlling,
22 managing, or supervising of a prostitution
23 business; or

24 “(ii) is described in section 1581,
25 1582, 1583, 1584, 1585, or 1588, of title

1 18, United States Code (relating to peon-
2 age, slavery, and involuntary servitude);

3 “(L) an offense relating to perjury or sub-
4 ornation of perjury if the offense involved caus-
5 ing or threatening to cause physical injury to a
6 person or damage to property;

7 “(M) an offense described in—

8 “(i) section 793 (relating to gathering
9 or transmitting national defense informa-
10 tion), 798 (relating to disclosure of classi-
11 fied information), 2153 (relating to sabo-
12 tage) or 2381 or 2382 (relating to treason)
13 of title 18, United States Code; or

14 “(ii) section 601 of the National Secu-
15 rity Act of 1947 (50 U.S.C. 421) (relating
16 to protecting the identity of undercover in-
17 telligence agents);

18 “(N) an offense that—

19 “(i) involves fraud or deceit in which
20 the loss to the victim or victims exceeds
21 \$200,000; or

22 “(ii) is described in section 7201 of
23 the Internal Revenue Code of 1986 (relat-
24 ing to tax evasion) in which the revenue
25 loss to the Government exceeds \$200,000;

1 “(O) an offense described in section
2 274(a)(1) of title 18, United States Code (relat-
3 ing to alien smuggling) for the purpose of com-
4 mercial advantage;

5 “(P) an offense described in section
6 1546(a) of title 18, United States Code (relat-
7 ing to document fraud) which constitutes traf-
8 ficking in the documents described in such sec-
9 tion;

10 “(Q) an offense relating to a failure to ap-
11 pear by a defendant for service of sentence if
12 the underlying offense is punishable by impris-
13 onment for a term of 15 years or more; and

14 “(R) an attempt or conspiracy to commit
15 an offense described in this paragraph,
16 including any such offense under Federal or State
17 law or the law of a foreign country for which the
18 term of imprisonment was completed within the pre-
19 vious 15 years.”.

20 (2) EFFECTIVE DATE.—The amendment made
21 by this section shall apply to convictions entered on
22 or after the date of enactment of this Act.

23 (b) DEPORTATION PROCEDURES FOR CERTAIN
24 CRIMINAL ALIENS WHO ARE NOT PERMANENT RESI-
25 DENTS.—

1 (1) ELIMINATION OF ADMINISTRATIVE HEARING
2 FOR CERTAIN CRIMINAL ALIENS.—Section 242A of
3 the Immigration and Nationality Act (8 U.S.C.
4 1252a) is amended by adding at the end the follow-
5 ing new subsection:

6 “(f) DEPORTATION OF ALIENS WHO ARE NOT PER-
7 MANENT RESIDENTS.—

8 “(1) Notwithstanding section 242, and subject
9 to paragraph (5), the Attorney General may issue a
10 final order of deportation against any alien described
11 in paragraph (2) whom the Attorney General deter-
12 mines to be deportable under section
13 241(a)(2)(A)(iii) (relating to conviction of an aggra-
14 vated felony).

15 “(2) An alien is described in this paragraph if
16 the alien—

17 “(A) was not lawfully admitted for perma-
18 nent residence at the time that proceedings
19 under this section commenced, or

20 “(B) had permanent resident status on a
21 conditional basis (as described in section 216 or
22 216A) at the time that proceedings under this
23 section commenced.

24 “(3) No alien described in this section shall be
25 eligible for any relief from deportation that the At-

1 torney General may grant in the Attorney General's
2 discretion.

3 “(4) The Attorney General may not execute any
4 order described in paragraph (1) until 14 calendar
5 days have passed from the date that such order was
6 issued, unless waived by the alien, in order that the
7 alien has an opportunity to apply for judicial review
8 under section 106.

9 “(5) Pending a determination of deportability
10 under this section, the Attorney General shall not
11 release the alien. An order of deportation entered
12 pursuant to this section shall be executed by the At-
13 torney General in accordance with section 243. Pro-
14 ceedings before the Attorney General under this sec-
15 tion shall be in accordance with such regulations as
16 the Attorney General shall prescribe and shall in-
17 clude requirements that provide that—

18 “(A) the alien is given reasonable notice of
19 the charges;

20 “(B) the alien has an opportunity to have
21 assistance of counsel at no expense to the gov-
22 ernment and in a manner that does not unduly
23 delay the proceedings;

1 “(C) the alien has a reasonable oppor-
2 tunity to inspect the evidence and rebut the
3 charges;

4 “(D) the determination of deportability is
5 supported by reasonable, substantial, and pro-
6 bative evidence; and

7 “(E) the final order of deportation is not
8 adjudicated by the same person who issued
9 such order.”.

10 (2) LIMITED JUDICIAL REVIEW.—Section 106
11 of the Immigration and Nationality Act (8 U.S.C.
12 1105a) is amended—

13 (A) in the first sentence of subsection (a),
14 by inserting “or pursuant to section 242A”
15 after “under section 242(b)”;

16 (B) in subsection (a)(1) and subsection
17 (a)(3), by inserting “(including an alien de-
18 scribed in section 242A)” after “aggravated fel-
19 ony”; and

20 (C) by adding at the end the following new
21 subsection:

22 “(d) Notwithstanding subsection (c), a petition for
23 review or for habeas corpus on behalf of an alien described
24 in section 242A(c) may only challenge whether the alien

1 is in fact an alien described in such section, and no court
2 shall have jurisdiction to review any other issue.”.

3 (3) TECHNICAL AMENDMENTS.—Section 242A
4 of the Immigration and Nationality Act (8 U.S.C.
5 1252a) is amended—

6 (A) in subsection (a)—

7 (i) by striking “(a) IN GENERAL.—”
8 and inserting the following:

9 “(b) DEPORTATION OF PERMANENT RESIDENT
10 ALIENS.—

11 “(1) IN GENERAL.—”; and

12 (ii) by inserting in the first sentence
13 “permanent resident” after “correctional
14 facilities for”;

15 (B) in subsection (b)—

16 (i) by striking “(b) IMPLEMENTA-
17 TION.—” and inserting “(2) IMPLEMENTA-
18 TION.—”; and

19 (ii) by striking “respect to an” and
20 inserting “respect to a permanent resi-
21 dent”;

22 (C) by striking subsection (c);

23 (D) in subsection (d)—

1 (i) by striking “(d) EXPEDITED PRO-
2 CEEDINGS.—(1)” and inserting “(3) EX-
3 PEDITED PROCEEDINGS.—(A)”;

4 (ii) by inserting “permanent resident”
5 after “in the case of any”; and

6 (iii) by striking “(2)” and inserting
7 “(B)”;

8 (E) in subsection (e)—

9 (i) by striking “(e) REVIEW.—(1)”
10 and inserting “(4) REVIEW.—(A)”;

11 (ii) by striking the second sentence;

12 and

13 (iii) by striking “(2)” and inserting
14 “(B)”;

15 (F) by redesignating subsection (f), as
16 added by paragraph (1) of this subsection, as
17 subsection (c);

18 (G) by inserting after the section heading
19 the following new subsection:

20 “(a) PRESUMPTION OF DEPORTABILITY.—An alien
21 convicted of an aggravated felony shall be deportable from
22 the United States.”; and

23 (H) by amending the section heading to
24 read as follows:

1 “EXPEDITED DEPORTATION OF ALIENS CONVICTED OF
2 COMMITTING AGGRAVATED FELONIES”.

3 (4) EFFECTIVE DATE.—The amendments made
4 by this subsection shall apply to all aliens against
5 whom deportation proceedings are initiated after the
6 date of enactment of this Act.

7 (c) JUDICIAL DEPORTATION.—

8 (1) JUDICIAL DEPORTATION.—Section 242A of
9 the Immigration and Nationality Act (8 U.S.C.
10 1252a) is amended by adding at the end the follow-
11 ing new subsection:

12 “(d) JUDICIAL DEPORTATION.—

13 “(1) AUTHORITY.—Notwithstanding any other
14 provision of this Act, a United States district court
15 shall have jurisdiction to enter a judicial order of de-
16 portation at the time of sentencing against an alien
17 whose criminal conviction causes such alien to be de-
18 portable under section 241(a)(2)(A)(iii) (relating to
19 conviction of an aggravated felony), if such an order
20 has been requested prior to sentencing by the United
21 States Attorney with the concurrence of the Com-
22 missioner.

23 “(2) PROCEDURE.—

24 “(A) The United States Attorney shall pro-
25 vide notice of intent to request judicial deporta-

1 tion promptly after the entry in the record of
2 an adjudication of guilt or guilty plea. Such no-
3 tice shall be provided to the court, to the Serv-
4 ice, to the alien, and to the alien’s counsel of
5 record.

6 “(B) Notwithstanding section 242B, the
7 United States Attorney, with the concurrence of
8 the Commissioner, shall file at least 20 days
9 prior to the date set for sentencing a charge
10 containing factual allegations regarding the
11 alienage of the defendant and satisfaction by
12 the defendant of the definition of aggravated
13 felony.

14 “(C) If the court determines that the de-
15 fendant has presented substantial evidence to
16 establish prima facie eligibility for relief from
17 deportation under section 212(c), the Commis-
18 sioner shall provide the court with a rec-
19 ommendation and report regarding the alien’s
20 eligibility for relief under such section. The
21 court shall either grant or deny the relief
22 sought.

23 “(D)(i) The alien shall have a reasonable
24 opportunity to examine the evidence against
25 him or her, to present evidence on his or her

1 own behalf, and to cross-examine witnesses pre-
2 sented by the Government.

3 “(ii) The court, for the purposes of deter-
4 mining whether to enter an order described in
5 paragraph (1), shall only consider evidence that
6 would be admissible in proceedings conducted
7 pursuant to section 242(b).

8 “(iii) Nothing in this subsection shall limit
9 the information a court of the United States
10 may receive or consider for the purposes of im-
11 posing an appropriate sentence.

12 “(iv) The court may order the alien de-
13 ported if the Attorney General demonstrates by
14 clear and convincing evidence that the alien is
15 deportable under this Act.

16 “(3) NOTICE, APPEAL, AND EXECUTION OF JU-
17 DICIAL ORDER OF DEPORTATION.—

18 “(A)(i) A judicial order of deportation or
19 denial of such order may be appealed by either
20 party to the court of appeals for the circuit in
21 which the district court is located.

22 “(ii) Except as provided in clause (iii),
23 such appeal shall be considered consistent with
24 the requirements described in section 106.

1 “(iii) Upon execution by the defendant of
2 a valid waiver of the right to appeal the convic-
3 tion on which the order of deportation is based,
4 the expiration of the period described in section
5 106(a)(1), or the final dismissal of an appeal
6 from such conviction, the order of deportation
7 shall become final and shall be executed at the
8 end of the prison term in accordance with the
9 terms of the order. If the conviction is reversed
10 on direct appeal, the order entered pursuant to
11 this section shall be void.

12 “(B) As soon as is practicable after entry
13 of a judicial order of deportation, the Commis-
14 sioner shall provide the defendant with written
15 notice of the order or deportation, which shall
16 designate the defendant’s country of choice for
17 deportation and any alternate country pursuant
18 to section 243(a).

19 “(4) DENIAL OF JUDICIAL ORDER.—Denial of a
20 request for a judicial order of deportation shall not
21 preclude the Attorney General from initiating depor-
22 tation proceedings pursuant to section 242 upon the
23 same ground of deportability or upon any other
24 ground of deportability provided under section
25 241(a).”.

1 (2) TECHNICAL AMENDMENT.—The ninth sen-
2 tence of section 242(b) of the Immigration and Na-
3 tionality Act (8 U.S.C. 1252(b)) is amended by
4 striking “The” and inserting “Except as provided in
5 section 242A(d), the”.

6 (3) RULE OF CONSTRUCTION.—Nothing in this
7 subsection may be construed to alter the privilege of
8 being represented at no expense to the Government
9 set forth in section 292 of the Immigration and Na-
10 tionality Act.

11 (4) EFFECTIVE DATE.—The amendments made
12 by this section shall apply to all aliens whose adju-
13 dication of guilt or guilty plea is entered in the
14 record after the date of enactment of this Act.

15 (d) RESTRICTING DEFENSES TO DEPORTATION FOR
16 CERTAIN CRIMINAL ALIENS.—

17 (1) DEFENSES BASED ON SEVEN YEARS OF
18 PERMANENT RESIDENCE.—The last sentence of sec-
19 tion 212(c) of the Immigration and Nationality Act
20 (8 U.S.C. 1182(c)) is amended by striking “has
21 served for such felony or felonies” and all that fol-
22 lows through the period and inserting “has been sen-
23 tenced for such felony or felonies to a term of im-
24 prisonment of at least 5 years, if the time for ap-
25 pealing such conviction or sentence has expired and

1 the sentence has become final. For purposes of this
2 section, the term ‘sentence’ does not include a sen-
3 tence the execution of which was suspended in its
4 entirety.’’.

5 (2) DEFENSES BASED ON WITHHOLDING OF
6 DEPORTATION.—Section 243(h)(2) of the Immigra-
7 tion and Nationality Act (8 U.S.C. 1253(h)(2)) is
8 amended—

9 (A) by striking the final sentence and in-
10 serting the following new subparagraph:

11 “(E) the alien has been convicted of an ag-
12 gravated felony.”; and

13 (B) by striking “or” at the end of subpara-
14 graph (C) and inserting “or” at the end of sub-
15 paragraph (D).

16 (e) ENHANCING PENALTIES FOR FAILING TO DE-
17 PART, OR REENTERING, AFTER FINAL ORDER OF DEPOR-
18 TATION.—

19 (1) FAILURE TO DEPART.—Section 242(e) of
20 the Immigration and Nationality Act (8 U.S.C.
21 1252(e)) is amended—

22 (A) by striking “paragraph (2), (3), or 4
23 of” the first time it appears; and

24 (B) by striking “shall be imprisoned not
25 more than ten years” and inserting “shall be

1 imprisoned not more than four years, or shall
2 be imprisoned not more than ten years if the
3 alien is a member of any of the classes de-
4 scribed in paragraph (1)(E), (2), (3), or (4) of
5 section 241(a).”.

6 (2) REENTRY.—Section 276(b) of the Immigra-
7 tion and Nationality Act (8 U.S.C. 1326(b)) is
8 amended—

9 (A) in paragraph (1)—

10 (i) by inserting after “commission of”
11 the following: “three or more misdemea-
12 nors involving drugs, crimes against the per-
13 son, or both, or”; and

14 (ii) by striking “5” and inserting
15 “10”;

16 (B) in paragraph (2), by striking “15” and
17 inserting “20”; and

18 (C) by adding at the end the following sen-
19 tence:

20 “For the purposes of this subsection, the term ‘deporta-
21 tion’ includes any agreement in which an alien stipulates
22 to deportation during a criminal trial under either Federal
23 or State law.”.

24 (3) COLLATERAL ATTACKS ON UNDERLYING
25 DEPORTATION ORDER.—Section 276 of the Immi-

1 gration and Nationality Act (8 U.S.C. 1326) is
2 amended by adding after subsection (b) the following
3 new subsection:

4 “(c) In a criminal proceeding under this section, an
5 alien may not challenge the validity of the deportation
6 order described in subsection (a)(1) or subsection (b) un-
7 less the alien demonstrates that—

8 “(1) the alien exhausted any administrative
9 remedies that may have been available to seek relief
10 against the order;

11 “(2) the deportation proceedings at which the
12 order was issued improperly deprived the alien of the
13 opportunity for judicial review; and

14 “(3) the entry of the order was fundamentally
15 unfair.”.

16 (f) CRIMINAL ALIEN TRACKING CENTER.—

17 (1) OPERATION.—The Attorney General shall,
18 under the authority of section 242(a)(3)(A) of the
19 Immigration and Nationality Act (8 U.S.C.
20 1252(a)(3)(A)), operate a criminal alien tracking
21 center.

22 (2) PURPOSE.—The criminal alien tracking cen-
23 ter shall be used to assist Federal, State, and local
24 law enforcement agencies in identifying and locating

1 aliens who may be subject to deportation by reason
2 of their conviction of aggravated felonies.

3 (3) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated to carry out
5 this section \$2,000,000 for fiscal year 1995 and
6 \$6,000,000 for each of fiscal years 1996, 1997,
7 1998, and 1999.

8 (g) MISCELLANEOUS AND TECHNICAL CHANGES.—

9 (1) FORM OF DEPORTATION HEARINGS.—The
10 second sentence of section 242(b) of the Immigra-
11 tion and Nationality Act (8 U.S.C. 1252(b)) is
12 amended by inserting before the period the follow-
13 ing: “; except that nothing in this subsection shall
14 preclude the Attorney General from authorizing pro-
15 ceedings by electronic or telephonic media, in the
16 discretion of the special inquiry officer, or, where
17 waived or agreed to by the parties, in the absence
18 of the alien.”.

19 (2) CONSTRUCTION OF EXPEDITED DEPORTA-
20 TION REQUIREMENTS.—No amendment made by
21 this Act and nothing in section 242(i) of the Immi-
22 gration and Nationality Act (8 U.S.C. 1252(i)) shall
23 be construed to create any substantive or procedural
24 right or benefit that is legally enforceable by any

1 party against the United States or its agencies or of-
2 ficers or any other person.

3 (3) AMENDMENT OF THE VIOLENT CRIME CON-
4 TROL AND LAW ENFORCEMENT ACT OF 1994.—Sec-
5 tions 130001, 130002, and 130004 of the Violent
6 Crime Control and Law Enforcement Act of 1994
7 and the amendments made by those sections are re-
8 pealed effective as of the date of enactment of this
9 Act.

10 **SEC. 11. FLEXIBILITY IN APPLICATION OF MANDATORY**
11 **MINIMUM SENTENCE PROVISIONS IN CER-**
12 **TAIN CIRCUMSTANCES.**

13 (a) AMENDMENT OF TITLE 18, UNITED STATES
14 CODE.—Section 3553 of title 18, United States Code, is
15 amended by adding at the end the following new sub-
16 section:

17 “(f) MANDATORY MINIMUM SENTENCE PROVI-
18 SIONS.—

19 “(1) SENTENCING UNDER THIS SECTION.—In
20 the case of an offense described in paragraph (2),
21 the court shall, notwithstanding the requirement of
22 a mandatory minimum sentence in that section, im-
23 pose a sentence in accordance with this section and
24 the sentencing guidelines and any pertinent policy

1 statement issued by the United States Sentencing
2 Commission.

3 “(2) OFFENSES.—An offense is described in
4 this paragraph if—

5 “(A) the defendant is subject to a manda-
6 tory minimum term of imprisonment under sec-
7 tion 401 or 402 of the Controlled Substances
8 Act (21 U.S.C. 841 and 844) or section 1010
9 of the Controlled Substances Import and Ex-
10 port Act (21 U.S.C. 960);

11 “(B) the defendant does not have—

12 “(i) more than criminal history point
13 under the sentencing guidelines; or

14 “(ii) any prior conviction, foreign or
15 domestic, for a crime of violence against
16 the person or drug trafficking offense that
17 resulted in a sentence of imprisonment (or
18 an adjudication as a juvenile delinquent for
19 an act that, if committed by an adult,
20 would constitute a crime of violence
21 against the person or drug trafficking of-
22 fense;

23 “(C) the offense did not result in death or
24 serious bodily injury (as defined in section
25 1365) to any person—

1 “(i) as a result of the act of any per-
2 son during the course of the offense; or

3 “(ii) as a result of the use by any per-
4 son of a controlled substance that was in-
5 volved in the offense;

6 “(D) the defendant did not carry or other-
7 wise have possession of a firearm (as defined in
8 section 921) or other dangerous weapon during
9 the course of the offense and did not direct an-
10 other person who possessed a firearm to do so
11 and the defendant had no knowledge of any
12 other conspirator involved possessing a firearm;

13 “(E) the defendant was not an organizer,
14 leader, manager, or supervisor of others (as de-
15 fined or determined under the sentencing guide-
16 lines) in the offense;

17 “(F) the defendant was nonviolent in that
18 the defendant did not use, attempt to use, or
19 make a credible threat to use physical force
20 against the person of another during the course
21 of the offense;

22 “(G) the defendant did not own the drugs,
23 finance any part of the offense or sell the
24 drugs; and

1 “(H) the Government certifies that the de-
2 fendant has timely and truthfully provided to
3 the Government all information and evidence
4 the defendant has concerning the offense or of-
5 fenses that were part of the same course of con-
6 duct or of a common scheme or plan.”.

7 (b) HARMONIZATION.—

8 (1) IN GENERAL.—The United States Sentenc-
9 ing Commission—

10 (A) may make such amendments as it
11 deems necessary and appropriate to harmonize
12 the sentencing guidelines and policy statements
13 with section 3553(f) of title 18, United States
14 Code, as added by subsection (a), and promul-
15 gate policy statements to assist the courts in in-
16 terpreting that provision; and

17 (B) shall amend the sentencing guidelines,
18 if necessary, to assign to an offense under sec-
19 tion 401 or 402 of the Controlled Substances
20 Act (21 U.S.C. 841 and 844) or section 1010
21 of the Controlled Substances Import and Ex-
22 port Act (21 U.S.C. 960) to which a mandatory
23 minimum term of imprisonment applies a
24 guideline level that will result in the imposition
25 of a term of imprisonment at least equal to the

1 mandatory term of imprisonment that is cur-
2 rently applicable unless a downward adjustment
3 is authorized under section 3553(f) of title 18,
4 United States Code, as added by subsection (a).

5 (2) EMERGENCY AMENDMENTS.—If the Com-
6 mission determines that an expedited procedure is
7 necessary in order for amendments made pursuant
8 to paragraph (1) to become effective on the effective
9 date specified in subsection (c), the Commission may
10 promulgate such amendments as emergency amend-
11 ments under the procedures set forth in section
12 21(a) of the Sentencing Act of 1987 (Public Law
13 100–182; 101 Stat. 1271), as though the authority
14 under that section had not expired.

15 (c) EFFECTIVE DATE.—The amendment made by
16 subsection (a) and any amendments to the sentencing
17 guidelines made by the United States Sentencing Commis-
18 sion pursuant to subsection (b) shall apply with respect
19 to sentences imposed for offenses committed on or after
20 the date that is 60 days after the date of enactment of
21 this Act. Notwithstanding any other law, a defendant who
22 has been sentenced pursuant to section 3553(f) who is
23 subsequently convicted of a violation of the Controlled
24 Substances Act, or of a crime of violence for which imposi-
25 tion of a mandatory minimum term of imprisonment is

1 required, shall be sentenced to an additional 5 years' im-
2 prisonment.

3 (d) REPEAL OF TITLE VIII OF VIOLENT CRIME CON-
4 TROL AND LAW ENFORCEMENT ACT OF 1994.—Title VIII
5 of Violent Crime Control and Law Enforcement Act of
6 1994 and the amendment made by that title are repealed
7 effective as of the effective date specified in subsection (c).

8 **SEC. 12. EQUITABLE DISTRIBUTION OF DISCRETIONARY**
9 **GRANTS.**

10 It is the sense of the Congress that all grants author-
11 ized under the Violent Crime Control and Law Enforce-
12 ment Act of 1994 and not required to be distributed ac-
13 cording to a formula prescribed by law shall be distributed
14 in a fair and equitable manner that ensures that rural
15 States receive a fair and proportional share of the funds.

○

S 2431 IS—2

S 2431 IS—3