law, the annual report for calendar year 1996; to the Committee on Banking, Housing, and Urban Affairs.

EC–1225. A communication from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of seven rules including one rule relative to approval and promulgation of plans, (FRL–5691–3, 5590–8, 5682–5, 5693–8, 5693–8, 5693–5, 5583–4, 5590–4) received on February 24, 1997; to the Committee on Environment and Public Works.

EC–1226. A communication from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule relative to national emmission standards,(FRL–5695–9) received on February 25, 1997; to the Committee on Environment and Public Works.

EC–1227. A communication from the Regulations Unit Chief of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Procedure 97–19, received on February 25, 1997; to the Committee on Finance.

EC–1228. A communication from the Regulations Unit Chief of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule relative to per diem allowances, received on February 25, 1997; to the Committee on Finance.

EC–1229. A communication from the Regulations Unit Chief of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule relative to cost depletion, received on February 25, 1997; to the Committee on Finance.

EC–1230. A communication from the Assistant Attorney General (Office of Legislative Affairs), transmitting, a draft of proposed legislation entitled ''Anti-Gang and Youth Violence Act of 1997''; to the Committee on the Judiciary.

EC–1231. A communication from the Acting Director of the Office of Administration, Executive Office of the President, transmitting, pursuant law, the annual report under the Freedom of Information Act for 1996; to the Committee on the Judiciary.

REPORTS OF COMMITTEE

The following report of committee was submitted:

By Mr. THURMOND, from the Committee on Armed Services:

Mr. THURMOND. Mr. President, Senate rule XXVI.8(b), which requires the submission by March 31 of this year of a report activities of the committee for the previous Congress.

In accordance with the requirements, I am submitting the report of the activities of the Senate Committee on Armed Services during the 104th Congress. This report outlines the most noteworthy legislative and other achievements of our committee.

Special Report entitled ''Report on the Activities of the Committee on Armed Services of the United States During the 104th Congress First and Second Sessions'' (Rept. No. 105–6).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DEWINE (for himself and Mr. GRAHAM):

S. 358. A bill to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. THOMAS (for himself, Mr. GRASSLEY, Mr. BURNS, Mr. KEMPTHORNE, Mr. GRAMS, and Mr. ROBERTS):

S. 359. A bill to amend title XVIII of the Social Security Act to change the payment system for health maintenance organizations and competitive medical plans; to the Committee on Finance.

By Mr. CRAIG:

S. 360. A bill to require adoption of a management plan for the Hells Canyon National Recreation Area that allows appropriate use of motorized and nonmotorized river craft in the recreation area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. JEFFORDS:

S. 361. A bill to amend the Endangered Species Act of 1973 to prohibit the sale, import, and export of products labeled as containing endangered species, and for other purposes; to the Committee on Environment and Public Works.

By Mr. LEAHY (for himself and Mr. BIDEN):

S. 362. A bill to deter and punish serious gang and violent crime, promote accountability in the juvenile justice system, prevent juvenile and youth crime, and for other purposes; to the Committee on the Judiciary.

By Mr. HOLLINGS (for himself, Mr. INOUYE, and Mr. DORGAN):

S. 363. A bill to amend the Communications Act of 1934 to require that violent video programming is limited to broadcast after the hours when children are reasonably likely to comprise a substantial portion of the audience, unless it is specifically rated on the basis of its violent content so that it is blockable by electronic means specifically on the basis of that content; to the Committee on Commerce, Science, and Transportation.

By Mr. LIEBERMAN (for himself, Mr. MCCAIN, Mr. LOTT, Mr. ASHCROFT, Mr. GORTON, Mrs. FEINSTEIN, Mr. GREGG, and Mr. FRIST):

S. 364. A bill to provide legal standards and procedures for suppliers of raw materials and component parts for medical devices; to the Committee on Commerce, Science, and Transportation.

By Mr. COVERDELL:

S. 365. A bill to amend the Internal Revenue Code of 1986 to provide for increased accountability by Internal Revenue Service agents and other Federal Government officials in tax collection practices and procedures, and for other purposes; to the Committee on Finance.

By Mr. COVERDELL (for himself, Mrs. HUTCHISON, Mr. MCCAIN, Mr. FAIRCLOTH, Mr. KYL, Mr. THOMAS, and Mr. INHOFE):

S. 366. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to prohibit the consideration of retroactive tax increases; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mr. WELLSTONE:

S. 367. A bill to amend the Family and Medical Leave Act of 1993 to allow leave to address domestic violence and its effects, and for other purposes; to the Committee on Finance.

By Mr. COVERDELL (for himself, Mr. ABRAHAM, Mrs. HUTCHISON, Mr. MCCAIN, Mr. KYL, Mr. FAIRCLOTH, and Mr. INHOFE):

S.J. Res. 17. A joint resolution proposing an amendment to the Constitution of the United States to prohibit retroactive increases in taxes; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DEWINE (for himself and Mr. GRAHAM):

S. 358. A bill to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes; to the Committee on Labor and Human Resources.

THE RICKY RAY HEMOPHILIA RELIEF FUND ACT

Mr. DEWINE. Mr. President, I introduce, along with my distinguished colleague Senator BOB GRAHAM, the Ricky Ray Hemophilia Relief Fund Act of 1997. This legislation will serve as the counterpart to similar legislation that will be introduced in the House of Representatives by Representative PORTER GOSS.

Mr. President, the purpose of this legislation is to offer some measure of relief to families that have suffered serious medical and financial setbacks because of their reliance on the Federal Government's protection of the blood supply.

In 1995, the Institute of Medicine released the findings of a major investigation into how America's hemophilia community came to be decimated by the HIV virus.

According to that report, the Federal agencies responsible for blood safety did not show the appropriate level of diligence in screening the blood supply.

The Federal agencies did not move as quickly as they should have to approve blood products that were potentially safer.

And the Federal Government did not warn the hemophilia community, when the Government knew—or should have known—that there were legitimate concerns that the blood supply might not be safe.

The Government's failure caused serious harm to real people—people who were counting on the Government to meet its responsibilities.

Mr. President, this legislation is about trust. A substantial number of citizens trusted the Government to exercise due vigilance, and the Government let them down. It's only right that the Government try to offer them some measure of relief.

Mr. President, I recognize the budgetary realities we have to confront. As we move through the process, we will have to address the issue of compensation. I think it's absolutely essential that we begin this process—now.

By Mr. CRAIG:

S. 360. A bill to require adoption of a management plan for the Hells Canyon National Recreation Area that allows appropriate use of motorized and nonmotorized river craft in the recreation area, and for other purposes; to the Committee on Energy and Natural Resources.

HELL'S CANYON NATIONAL RECREATION AREA AMENDMENTS

Mr. CRAIG. Mr. President, Public Law 94–199, designating the Hells Canyon National Recreation Area, was signed into law December 31, 1975.

Section 10 of the act recognizes that the use of both motorized and nonmotorized river craft are valid activities on the Snake River within the recreation area.

The language seems clear. However, assurances by the Congress and the Forest Service 22 years ago that the long-established and traditional use of motorized river craft would be continued are now being callously disregarded by the agency.

The most recent indication of this attitude has arisen during a review and revision of the river management plan for the NRA. Despite the lack of any demonstrable resource problems, and in the face of overwhelming public support for motorized river craft, the agency has again decided to close part of the river to powerboats. The new river management plan would close the heart of the canyon to motorized river craft for 21 days during the peak of the recreation season. Such a closure would also prohibit traditional motor use of the wild river segment to reach privately-owned lands within the scenic river segment of the NRA.

The revised management plan is still in dispute as the result of appeals filed by commercial motorized river users. The vast majority of people, over 80 percent, who recreate in the Hells Canyon segment of the Snake River do so by motorized river craft. Some are private boaters, but most travel with commercial guides on scenic tours. This popular form of recreation is accomplished with a minimum of impact to the river, the land or other resources.

Most river users, motorized and nonmotorized, are willing to share the river. However, a small group of nonmotorized users objects to seeing powered craft even though they have a rich choice of nonmotorized alternatives in this geographic area, such as the Selway and Middle Fork of the Salmon Rivers. Motorized users, however, don't have that luxury. The only other white water rivers open to them in the entire Wild and Scenic River System are portions of the Rogue and Salmon Rivers. Without a single doubt, the Hells Canyon portion of the Snake River is our Nation's premier whitewater power boating river.

Mr. President, the Snake River is different from most rivers in the Wild and Scenic System. It is a high-volume river with a long and colorful history of use by motorized river craft. The first paying passengers to traverse its rapids on a motor boat made their journey on the 110-foot *Colonel Wright* in 1865. Later, the 136-foot *Shoshone* made its plunge through the canyon from Boise to Lewiston in 1870 and was followed by the 165-foot *Norma* in 1895. Gasoline-powered craft began hauling people, produce, and supplies in and out of the canyon in 1910, and the first contract for regular mail delivery was signed in 1919, continuing today. The Corps of Engineers began blasting rocks and improving channels in 1903. They worked continuously until 1975 to make the river safer for navigation.

Mr. President, as you can see, the use of motorized river craft is deeply interwoven in the history, traditions, and culture of Hells Canyon. That is why Congress deliberately created a nonwilderness corridor for the entire length of the river in the authorizing legislation. During debate, Congress tried to make it clear that use of both motorized and nonmotorized river craft would be valid uses of the river within the recreation area—the entire river for the entire year. It was not their intent in 1975 to allow the managing agency to decide that one valid use would prevail to the exclusive use over the other.

Quite clearly, the issue of power boating's validity will not be settled unless decided by the courts or unless Public Law 94–199 is clarified by Congress. The courts are already burdened by too many cases of this type, resulting in a waste of time, energy, and financial resources for both the United States and its citizens. The only practical and permanent resolution of this issue is to clarify congressional intent in a manner that will not allow any future misunderstanding. This is what I propose to do with this legislation.

By Mr. JEFFORDS:

S. 631. A bill to amend the Endangered Species Act of 1973 to prohibit the sale, import, and export of products labeled as containing endangered species, and for other purposes; to the Committee on Environment and Public Works.

THE RHINO AND TIGER PRODUCT LABELING ACT

Mr. JEFFORDS. Mr. President, the bill I am introducing today works to end the illegal killing of rare and endangered species that are close to extinction. These species include rhinos, tigers, bears, and many other animals that are slaughtered for senseless reasons. The bill, titled the Rhino and Tiger Product Labeling Act, seeks to amend the Endangered Species Act of 1973 to prohibit the sale of products labeled as containing endangered species.

Since 1970, the world's population of rhinos has declined by 90 percent. Among the 5 species of rhinos, fewer than 11,000 individual rhinos exist in the wild. Tigers are facing a similar fate. At the turn of the century, as many as 100,000 tigers lived in the wild. Today, less than 5,000 tigers remain. Three subspecies are already extinct, and the remaining five subspecies are found only in sparse pockets of Asia.

The greatest threat to the existence of rhinos and tigers in the wild continues to be the high demand for products containing rhino horn and tiger parts. The prohibition of the illegal trade in endangered species parts has not been well enforced in most Asian countries, where rhino and tiger products are valued for their medicinal value. Although the primary market for these illegal products continues to be in Asia, a large market has developed here in America.

Investigators have found that in the United States, the trade in endangered species continues to be widely practiced. Many pharmacies in Los Angeles and New York offer rhino and tiger products for sale—a strong indication that it is time for the United States to concentrate on its role as a consumer nation of endangered species parts and products. In a recent survey, investigators found that 80 percent of pharmacies and supermarkets in New York's Chinatown district had tiger products openly for sale. Many of these products were imported from China. Demand for such products here in the United States is leading directly to the elimination of these species in their native habitat overseas. This trade must end.

To curb this trade we need effective labeling laws and we must ban all products containing or claiming to contain ingredients derived from endangered species. Many products which advertise ingredients such as rhino horn or tiger parts do not even contain trace amount of these endangered species. However, the mere fact that they are on store shelves leads to increased demand for the real stuff. In addition, these products have been tested in the United States by the Food and Drug Administration and have been found to contain toxic metals that are harmful to human health if taken in the doses found in many traditional medicines. A ban on products containing ingredients from endangered species as well as those claiming to contain endangered species parts is vital to protect human health and to maintain the few remaining rhinos, tigers and bears in their wild habitat.

My legislation will make it illegal to even intend to sell a product containing an endangered species. Today, Fish and Wildlife investigators are overwhelmed trying to control the illegal sale of endangered species parts and products. This bill will allow investigators to completely halt the sale of products labeled as containing endangered species.

I am strong proponent of the protection and conservation of endangered species. If we do not act now, future generations will not be able to enjoy many of the species of wildlife now in existence. Currently there are insufficient legal mechanisms enabling the U.S. Fish and Wildlife Service to forcefully interdict and confiscate products

that are labeled as containing endangered species and to prosecute the merchandisers once the products are on store shelves. This bill seeks to close a significant loophole in the illegal trade in products containing or claiming to contain ingredients from endangered species. My hope is that this legislation, when passed in the 105th Congress, will help curb the escalating trade in wildlife and endangered species parts and stem the decrease in the populations of some of the Earth's most magnificent animals.

By Mr. LEAHY (for himself and Mr. BIDEN):

S. 362. A bill to deter and punish serious gang and violent crime, promote accountability in the juvenile justice system, prevent juvenile and youth crime, and for other purposes; to the Committee on the Judiciary.

THE ANTI-GANG AND YOUTH VIOLENCE CONTROL ACT OF 1997

Mr. LEAHY. Mr. President, I rise to introduce the Anti-Gang and Youth Violence Control Act of 1997. This is the President's juvenile justice bill, and I am pleased to introduce it on behalf of the administration.

Like the Democratic leadership bill, S. 15, the President's Anti-Gang and Youth Violence Control Act includes important provisions to address the increases in juvenile crime and gang violence that we have seen over the past decade.

Just as we proposed measures in S. 15 to streamline the procedures for prosecuting violent juveniles, the President's bill would take steps to ensure that serious juvenile offenses are addressed quickly and efficiently by the courts.

In addition, the President's bill targets many of the same problems we addressed in S. 15, such as increasing the penalties for witness intimidation—a particular problem for prosecutors in gang cases—and improving the rights of the victims of juvenile crime to include restitution, notification of disposition, and greater public access to juvenile proceedings.

The President's bill also addresses the Federal Government's grant authority in the area of juvenile justice and delinquency prevention. I applaud the President for his reform-minded effort for improving the Federal Government's role in helping State and local authorities prevent juvenile crime and juvenile victimization. I look forward to working with the President and my colleagues on both sides of the aisle on this issue. It is important that we reach a bipartisan agreement on the role the Federal Government should play in this area as we move forward into the next century.

Certain sections of the administration's bill differ from S. 15, and I look forward to sorting out this and other differences in the proposals.

I commend President Clinton and the Department of Justice on their efforts to address the problems of gang and youth violence with the concrete proposals in this bill. I urge my colleagues to put partisan politics aside, to work together on finding constructive solutions to these problems. Our challenge is to resolve any differences in approach in ways that make sense and will work to reduce youth and gang violence.

As we proceed to meet this challenge, I know we will depend heavily on Senator BIDEN, our former chairman and ranking member of the Judiciary Committee and now the ranking member on the Youth Violence Subcommittee of the Judiciary Committee. He has worked hard and effectively on these issues in the past and, I thank him in advance for continuing to share his expertise on these important issues.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

ANTI-GANG AND YOUTH VIOLENCE ACT OF 1997—SECTION-BY-SECTION ANALYSIS

The Anti-Gang and Youth Violence Act of 1997 is a comprehensive federal effort to address the nation's youth and juvenile crime problem. This legislation contains many of the proposed amendments to the federal code that were contained in legislation introduced, but not enacted into law during the 104th Congress. This legislation also redesigns, refocuses, and enhances the federal government's role in relation to state, local and Indian tribal governments in combating and preventing juvenile and youth crime, violence, gang involvement, and drug use. Additionally, this legislation includes the authorization for several programs submitted by the President in his fiscal year 1998 budget request.

TITLE I—FINDINGS, POLICIES, AND PURPOSES

This title enumerates findings regarding juvenile crime and violence, as well as purposes tied to the various provisions of the legislation. Additional definitions are provided as needed.

TITLE II—TARGETING VIOLENT GANG, GUN AND DRUG CRIMES

SUBTITLE A—FEDERAL PROSECUTIONS TARGETING VIOLENT GANGS, GUN CRIMES AND ILLICIT GUN MARKETS, AND DRUGS

Part 1—Targeting Gang and Other Violent Crimes

Section 2111. Increased penalties under the RICO law for gang and violent crimes.

This amendment would boost the penalty for certain crimes typically committed by gangs and other violent crime groups by eliminating an anomaly in the penalty provisions of the federal Racketeering Influenced and Corrupt Organizations statute (18 U.S.C. 1963(a)). Specifically, the amendment would increase the maximum penalty from twenty years to the greater of twenty years or the maximum term applicable to a racketeering activity on which the defendant's violation is based. This principle already applies under the RICO statute where the predicate racketeering activity carries a maximum life sentence. The present twenty-year maximum applicable to all other predicate racketeering offenses is anomalous in light of the fact that several of the predicate offenses that constitute ''racketeering activity'' themselves carry more than twenty-year (but less than life) maximum prison terms, *e.g.*, 18 U.S.C. 1344 (bank fraud) and 21 U.S.C. 841(b)(1)(B) (large-scale drug trafficking).

Section 2112. Increased penalty and broadened scope of statute against violent crimes in aid of racketeering.

This amendment would close loopholes in 18 U.S.C. 1959, the law punishing violent crimes in aid of racketeering. The statute presently and anomalously reaches *threats to commit any* crime of violence (with the requisite intent) but only the actual commission of *some* such crimes. The amendment also would clarify that the term ''serious bodily injury'' in 18 U.S.C. 1959 shall be defined as provided in 18 U.S.C. 1365.

This proposal also would increase penalties for certain violent crimes in aid of racketeering in recognition of the serious nature of such crimes and to bring the penalties in line with other penalties for similar crimes in title 18. First, the amendment would increase from a maximum of ten years' imprisonment to a maximum of life imprisonment a conspiracy or attempt to commit murder or kidnapping, in violation of 18 U.S.C. 1959. That statute punishes various violent offenses committed in aid of racketeering activity. The present ten-year maximum penalty for a conspiracy or attempt to commit murder or kidnapping in aid of racketeering is clearly inadequate. The maximum penalty for a conspiracy to commit a murder within the special maritime and territorial jurisdiction of the United States is life imprisonment, 18 U.S.C. 1117, as is the maximum penalty for a conspiracy to commit kidnapping, 18 U.S.C. 1201(c). Such acts when performed with the additional intent of furthering racketeering activity deserve no lesser punishment. Moreover, an attempt warrants an equivalent sanction as a conspiracy. Second, the amendment would increase from five years to ten years the maximum penalty for committing or threatening to commit a crime of violence under paragraph (4). Finally, the amendment would increase from three years to ten years the maximum penalty for attempting or conspiring to commit a crime involving maiming, assault with a dangerous weapon or assault resulting in serious bodily injury under paragraph (6).

Section 2113. Facilitating the prosecution of car-jacking offenses.

This section would eliminate an unjustified and unique scienter element created for the offense of carjacking by the enactment of section 60003(a)(14) of the Violent Crime Control and Law Enforcement Act. The carjacking statute, 18 U.S.C. 2119, essentially proscribes robbery of a motor vehicle. It punishes the taking of a motor vehicle that has moved in interstate or foreign commerce ''from the person or presence of another by force and violence or by intimidation.'' The basic penalty is up to fifteen years' imprisonment but rises if serious bodily injury or death results.

Prior to the enactment of VCCLEA, the offense applied only if the defendant possessed a firearm. Section 60003(a)(14) of that law appropriately deleted the firearm requirement, as had been proposed in the Senate-passed bill, but in conference a new scienter element was added that the defendant must have intended to cause death or serious bodily injury. This unique new element will inappropriately make carjackings difficult or impossible to prosecute in certain situations. Robbery offenses typically require only what the carjacking statute formerly required by way of scienter, *i.e.*, that property be knowingly taken from the person or presence of another by force and violence or by intimidation. The Hobbs Act, 18 U.S.C. 1951, the quintessential federal robbery law which carries a higher maximum penalty

than the carjacking statute, essential defines ''robbery'' in this manner. The new requirement of an intent to cause death or serious bodily harm will likely be a fertile course of argument for defendants in cases in which no immediate threat of injury occurs, such as where a defendant enters an occupied vehicle while it is stopped at a traffic light and physically removes the driver. Even when a weapon is displayed, the defendant may argue that although it was designed to instill fear, he had no intent to harm the victim had the victim in fact declined to leave the car.

Carjacking is one of the most serious types of robbery precisely because, unlike other person property, a car is a place where people are accustomed to feel safe and where they and their family spend hours of their lives. To give defendants who take cars from the person or presence of their occupants by force and violence or intimidation a new legal tool with which to resist their prosecution is unjustified. This new element should be eliminated as soon as possible from Section 2119. The proposed amendment would do so.

Section 2114. Facilitation of RICO prosecutions.

This amendment is intended to overcome decisions in the First and Second Circuits that require proof that a RICO conspiracy defendant agreed personally to commit at least two acts of racketeering activity. *United States* v. *Ruggiero*, 726 F. 2d 913, 921 (2d Cir.), *cert. denied*, 469 U.S. 831 (1984); *United States* v. *Winter*, 663 F. 2d 1120, 1136 (1st Cir. 1981), *cert. denied*, 460 U.S. 1011 (1981). *See also United States* v. *Sanders*, 929 F. 2d 1466, 1473 (10th Cir.), *cert. denied*, 112 S. Ct. 143 (1991). Virtually all other circuits have more recently rejected these holdings and have concluded that it is sufficient to show that the defendant joined the conspiracy and agreed that two or more racketeering acts would be committed by some conspirators on behalf of the enterprise. *See, e.g., United States* v. *Pryba*, 900 F. 2d 748, 759–60 (4th Cir. 1990); *United States* v. *Traitz*, 871 F. 2d 368, 395–96 (3 d Cir.), *cert. denied*, 493 U.S. 821 (1989); *United States* v. *Neapolitan*, 791 F. 2d 489, 491–98 (7th Cir. 1986), *cert. denied*, 479 U.S. 1101 (1987); *United States* v. *Joseph*, 781 F. 2d 549, 554–55 (6th Cir. 1986; *United States* v. *Tille*, 729 F. 2d 615, 619 (9th Cir.), *cert. denied*, 469 U.S. 845 (1984); *United States* v. *Carter*, 721 F. 2d 1514, 1528–31 (11th Cir.), *cert. denied*, 469 U.S. 819 (1984).

There is no reason to require that a defendant charged with RICO conspiracy personally commit racketeering acts. Standard conspiracy law does not contain such a requirement. *See, e.g., Pinkerton* v. *United States*, 328 U.S. 640, 645–48 (1946). It should be sufficient to show that the defendant joined the overall conspiracy and agreed to the commission of a pattern of racketeering activity by others on behalf of the conspiracy. This amendment resolves this conflict in the circuits.

Section 2115. Elimination of the statute of limitations for murder and Class A felonies.

This section makes important changes in federal law and will enhance the ability of federal prosecutors to bring serious offenders to justice. The first proposal relates to the prosecution of certain murders. Current law provides that no statute of limitations shall apply for the commission of a federal crime punishable by death. 18 U.S.C. §3281. This statute should be amended to further eliminate the statute of limitations for any federal offense involving murder, even if the crime does not carry the death penalty. The rationale behind this proposal is straightforward. Most states have no statute of limitations for murder. Moreover, the act of killing another person is so serious that no murderer should go unpunished simply because the government was unable to develop a case for many years.

By virtue of the 1994 Crime Act, most murders committed during the course of a federal offense are now punishable by the death penalty—and thus already have no statute of limitations. The 1994 Crime Act only applies, however, to murders committed on or after the Crime Bill was passed on September 13, 1994. The proposed legislation will help bridge this gap by eliminating the statute of limitations for murders committed within five years of the date of passage of the legislation and September 13, 1994. Furthermore, the Crime Act did not provide for the death penalty for murders committed in violation of the RICO statute. 18 U.S.C. §§1961 *et seq*. The proposed legislation would bridge another important gap by eliminating the statute of limitations for RICO offenses when murders are committed in furtherance of a racketeering enterprise.

The second proposal relates to the prosecution of certain violent crimes and drug trafficking crimes. Current law provides that the general federal five-year statute of limitations applies to non-capital crimes of violence and drug trafficking crimes. 18 U.S.C. §3282. This proposal extends to 10 years the statute of limitations for all crimes of violence and drug trafficking crimes (except for cases involving murder) currently classified as Class A felonies. Pursuant to 18 U.S.C. §3559, Class A felonies are the most serious federal crimes, which carry a maximum sentence of life imprisonment or death.

This proposal is necessary for several reasons. First, evidence of gang-related and other violent crimes, as well as drug trafficking crimes, often develops years after the crimes were committed because the organizations, gangs, and racketeering enterprises that typically perpetrate such crimes enforce strict codes of silence—through violence and threats of violence—on their members. Thus, some violent crimes and drug trafficking crimes are not solved until imprisoned defendants begin to cooperate after spending years behind bars—years in which the five-year statutes of limitations may have lapsed. Second, society's interest in repose and fairness to prospective defendants is greatly outweighed by society's interest in punishing those individuals who commit crimes that are so serious that Congress has imposed a maximum sentence of life imprisonment or death. Under current law, theft of major art work carries a 20-year statute of limitations (18 U.S.C. §3294), and most white-collar crimes involving financial institutions (*e.g.*, theft of money by a bank teller) carry a 10-year statute of limitations (18 U.S.C. §3293). Given that Class A crimes of violence and drug trafficking crimes generally are at least as harmful to society as these offenses, there is no reason for these Class A felonies to carry such a relatively short statute of limitations.

Section 2116. Forfeiture for crimes of violence, racketeering, and obstruction of justice.

This section extends the forfeiture statutes to cover all crimes of violence plus the racketeering crimes set forth in Chapter 95 (18 U.S.C. §1951–60), including extortion, murder-for-hire, and violent crimes in aid of racketeering, and the obstruction of justice offenses set forth in Chapter 73 (18 U.S.C. §1501–17). Presently, there is no forfeiture authority for such offenses except when they are included in a RICO prosecution.

Part 2—Targeting Serious Gun Crimes and Protecting Children from Gun Violence

Section 2121. Gun ban for dangerous juvenile offenders.

This amendment would make it unlawful for any person adjudicated a juvenile delinquent for serious violent felonies or drug crimes to receive or possess firearms. It would also make it unlawful for any person to sell or otherwise dispose of any firearm to any person knowing or having reasonable cause to believe that the recipient has been adjudicated a juvenile delinquent for such crimes. Under current law, persons adjudicated juvenile delinquent, even for the most serious crimes, *e.g.*, murder, may receive and possess firearms as adults. This amendment will ensure that such juveniles will be ineligible to possess firearms after the finding of juvenile delinquency.

The disability will only apply to the most serious drug offenses and violent crimes, as enumerated in the recently enacted ''three-strikes'' law (but because it would otherwise be impossible to administer, the proposed statutory reference incorporates the basic offenses enumerated in paragraph (c)(2) of section 3559, without the exceptions set forth in paragraph (3)). In addition, this amendment will only apply to findings of acts of juvenile delinquency that occur after the effective date of the statute. Thus, persons who have acted or been adjudicated delinquent prior to the effective date will not be subject to this disability. Adjudicated delinquents would be permitted under the proposal to have their firearms rights restored based upon an individualized determination by an appropriate authority of the state of their suitability for such restoration.

The proposal also would make a conforming change to the restoration of rights statute affecting adult convictions. One of the most serious problems today hindering enforcement of a federal firearms statutes arises from the definition of ''conviction'' in 18 U.S.C. 921(a)(20). Under 18 U.S.C. 922(g), it is unlawful for a convicted felon to possess a firearm. Section 922(g) violations also serve as the basis for the mandatory penalties applicable under the Armed Career Criminal Act, 18 U.S.C. 924(e), for 922(g) violators with three or more crime of violence or serious drug trafficking convictions. What is a ''conviction'' is therefore vital to the enforcement of these important provisions.

Prior to the 1986 Firearms Owners' Protection Act, a conviction for purposes of federal firearms prohibitions was a question of federal, not state, law. Federal law provided that once an individual was convicted of a felony, that person remained under a federal firearms disability irrespective of state laws purporting to restore the person's rights to possess firearms. Offenders could apply for relief from firearms disabilities to the Secretary of the Treasury. The 1986 Act, however, changed this policy and provided, in 18 U.S.C. 921(a)(20), that a conviction for which a person has had civil rights restored generally ''shall not be considered a conviction'' under federal firearms statutes.

The 1986 amendment has had adverse effects from the standpoint of public safety. This results from the fact that about half the states have laws that provide for some form of automatic firearms rights restoration, including several states that provide for such restoration after a waiting period, and at least one state that automatically restores firearms possession rights immediately upon completion of a felon's sentence, so that the felon is enabled to walk directly out of prison into a gun dealer's establishment and legally arrange to purchase a firearm. Other states make restoration of rights automatic except for certain categories of felons (typically those convicted of violent crimes), while still other states make restoration automatic for some types of firearms but not others.

Under the proposed amendment, state laws restoring firearms rights would continue to be recognized for federal firearms enforcement purposes, but only if the restoration of

rights was done on an individualized rather than an automatic basis, including a determination that the circumstances of the person's conviction, and his or her record and reputation, make it unlikely that the person will endanger public safety. The Federal Government should not give effect to state restoration of rights statutes that provide for no individualized consideration of the offender's likelihood of committing future crimes. About half the states currently restore firearms rights only after such an individualized review. The remaining states need not change their laws if they do not wish to do so, but the Congressional policy underlying the federal felon-in-possession prohibition in 18 U.S.C. 922(g) should not be deemed superseded by a state law that automatically restores a felon's firearms rights. Such automatic restoration laws insufficiently protect the public safety, not only in the states that provide for such automatic restoration but in other states to which the convicted felon may travel.

The proposed amendment also includes a provision, in the final sentence, that would reverse the outcome in *United States v. Indelicato*, 97 F.3d 627 (1st Cir. 1996). The Court there held, contrary to other courts of appeals, that where a state had never deprived a convicted felon of his or her civil rights as a result of the conviction, that person was to be considered as if the state had ''restored'' such rights. Whether or not this interpretation is deemed correct under the current law, as a matter of policy it makes sense to require a state to make an individualized determination of suitability to possess firearms in every case involving a conviction of a state crime punishable by more than one year in prison.

Section 2122. Locking devices for firearms.

The amendment would require Federal firearms licensees, other than licensed collectors, to provide a locking device with every firearm sold to a nonlicensee. The term ''locking device'' would be defined as a device that can be installed on a firearm that prevents the firearm from being discharged without removing the device. It would also include firearms being developed which can ''identify'' their lawful possessor by the use of a personal electronic ''key'', palmprint, or other identifier. The provision is intended to provide added safety to gun owners and to prevent accidental discharges that can result when children gain access to firearms.

Section 2123. Enhanced penalties for discharging or possessing a firearm during a crime of violence or drug trafficking crime.

In *Bailey v. United States*, ____ U.S. ____, 116 S. Ct. 501, 133 L. Ed. 2nd 472 (1995), the Supreme Court put a restrictive interpretation of the verb ''use'' in relation to a firearms violation under 18 U.S.C. §924(c), finding that an offender only ''uses'' a firearm if the weapon is ''actively employed'' in connection with a criminal act. The legislative proposal makes it clear that the statute punishes possession of a firearm, as well as its ''use.'' Under the proposal, possession of a firearm during the commission of a violent crime or drug felony will result in a 5-year mandatory minimum penalty. Offenders will receive a 10-year mandatory minimum penalty if during the commission of a drug felony or violent crime, the offender discharges the firearm or uses it to inflict bodily harm.

Section 2124. Juvenile handgun possession.

This proposal would increase the penalties for violations of 18 U.S.C. 922(x), which makes it unlawful for a person to transfer a handgun to a juvenile or for a juvenile to possess a handgun. Existing law provides a penalty of not more than one year for violations of Sec. 922(x) and, if the person transferring the handgun to the juvenile knew that the handgun would be used in a crime of violence, a penalty of not more than 10 years. Existing law also provides for probation by juvenile offenders, unless the juvenile has been previously convicted of certain offenses or adjudicated as a juvenile delinquent.

The proposal would eliminate probation as a mandatory sentence for juveniles. Thus, juveniles would be sentenced to a penalty of not more than one year or, if previously convicted under this section or adjudicated delinquent for an act that would be a serious violent felony under 18 U.S.C. 3559(c) if committed by an adult, sentenced to up to five years' imprisonment. The proposal also increases the penalty for adults who transfer handguns to juveniles knowing that they intend to use it in the commission of a crime of violence to not less than three years nor more than 10 years (currently only the ten-year maximum applies).

Section 2125. Increased penalty for firearms conspiracy.

This section would amend the firearms chapter of title 18 to provide that a conspiracy to commit any violation of that chapter is punishable by the same maximum term as that applicable to the substantive offense that was the object of the conspiracy. An identical amendment was enacted to the explosives chapter of title 18 by section 701 of the Anti-Terrorism and Effective Death Penalty Act of 1996 (P.L. 104–132). This also accords with several other recent congressional enactments, including 21 U.S.C. 846 (applicable to drug conspiracies) and 18 U.S.C. 1956(h) (applicable to money laundering conspiracies). This trend in federal law, which is emulated in the penal codes of many States, recognizes that, as the Supreme Court has observed, ''collective criminal agreement—partnership in crime—presents a greater potential threat to the public than individual delicts.'' *Callanan* v. *United States*, 364 U.S. 587, 593 (1961); *accord, United States* v. *Feola*, 420 U.S. 671, 693–94 (1975).

Part 3—Targeting Illicit Gun Markets

Section 2131. Certain gang-related firearms offenses as RICO predicates

The proposed amendment would add a number of title 18 firearms offenses that are related to gang activity to the RICO statute. A brief description of the covered offenses is as follows: 922(a)(1) (illegally engaging in business of dealing in firearms); (922(a)(6) (knowingly making false statement to a licensee in order to acquire a firearm); 922(i) (transporting a firearm in interstate or foreign commerce knowing it to have been stolen); 922(j) (possession or disposition of a firearm or ammunition knowing it to have been stolen); 922(k) (transporting or receiving a firearm interstate with an obliterated serial number); 922(o) (unlawful possession or transfer of a machinegun); 922(g) (unlawful possession of a firearm that affects or has moved in interstate commerce in a school zone); 922(u) (theft from a licensee of a firearm that has moved in interstate commerce; 922(v) (illegal transfer or possession of a semiautomatic assault weapon); (922(x)(1) sale or transfer of a firearm to a person known to be a juvenile); 924(b) (transporting or receiving a firearm in interstate commerce with intent to commit therewith a felony); 924(g) (traveling interstate to acquire a firearm, with intent to commit a crime of violence, drug trafficking offense, or other enumerated felony); (24(h) (transferring a firearm with knowledge it will be used to commit a crime of violence or drug trafficking offense); 924(k) (smuggling a firearm into the United States with intent to commit a crime of violence or drug trafficking offense); 924(l) (theft of a firearm from a licensee); and 924(m) (traveling in interstate or foreign commerce to acquire a firearm, with intent to engage illegally in business of dealing in firearms).

Section 2132. Felony treatment for offenses tantamount to aiding and abetting unlawful purchases

This proposal would increase the punishment for the most serious record keeping violations committed by federal licensees, which are tantamount to aiding and abetting unlawful deliveries or purchases of firearms, to the same level of offense as that committed by the unlawful provider or receiver. Sections 922(b) (1) and (3) proscribe sales of firearms known to be juveniles or to reside out of State, respectively. Each carries a five-year maximum sentence for a willful violation under 18 U.S.C. 924(a)(1)(D). Sections 922(a)(6) and (d) proscribe, respectively, making false statements to a licensee in relation to the acquisition of a firearm, and knowingly selling a firearm to a convicted felon or other prohibited category of firearm recipient. Each is punishable by up to ten years' imprisonment.

At present, all record keeping violations by licensees are misdemeanors carrying a maximum of one year in prison. This is insufficient in the above situations, where the knowingly false record keeping entry is very serious and closely associate with or in the nature of aiding and abetting a violation involving the provision of a firearm to a person not entitled to obtain it. Accordingly, the amendment would increase the penalty for such record keeping violations to the same as that would attach to the underlying violation.

Section 2133. Secure storage of firearms inventories

This amendment would require Federal firearms licensees other than collectors and gunsmiths to store their firearms inventory in accordance with regulations issued by the Secretary. The purpose of the amendment is to provide security requirements for the firearms industry. Thefts of firearms from dealers is a growing problem and contributes to the number of firearms available to juvenile youth gangs and other criminals. In issuing the storage regulations, the Secretary would be required to consider the standards of safety and security used by the firearms industry. The industry, as well as other interested persons, could participate in the rulemaking process and have input into the regulations.

Section 2134. Suspension of federal firearms licenses and civil penalties for willful violations of the Gun Control Act

Under current law, the only available administrative remedies to deal with licensees' violations are the extreme measures of denying license renewal applications and license revocation. There may be certain minor violations of the Gun Control Act, *e.g.*, failure to timely record information in required records, that may not warrant license revocation or license denial. This amendment provides new administrative sanctions, less severe than current administrative remedies, including license suspension, civil money penalties, and authority to accept monetary offers in compromise of violations of the law and regulations.

Section 2135. Transfer of firearm to commit a crime of violence

Present 18 U.S.C. 924(h) makes it unlawful to transfer a firearm ''knowing'' that the firearm will be used to commit a crime of violence or drug trafficking crime. However, 18 U.S.C. 924(b) makes it unlawful to transport or receive a firearm in interstate commerce ''with knowledge or reasonable cause to believe'' that any felony is to be committed

therewith. Both statutes carry the same maximum penalty.

There is no plausible reason why section 924(h) is limited to instances in which the actor has knowledge that a crime of violence or drug trafficking crime will be committed, as opposed to having ''reasonable cause to believe'' that such is the case. Indeed, the offenses covered by section 924(h)—violent felonies and drug trafficking felonies—are inherently more serious than the offenses covered by section 924(b), which extends to all felonies. Accordingly, this section would conform the scienter element in section 924(h) by adding ''reasonable cause to believe'' to that statute.

Section 2136. Increased penalty for knowingly receiving firearm with obliterated serial number.

The current maximum penalty for knowingly receiving a firearm with an obliterated or altered serial number in violation of 18 U.S.C. 922(k) is five years. This offense is tantamount to that of receiving a firearm known to be stolen. However, the latter carries a maximum penalty of ten years. Accordingly, this amendment would increase the maximum penalty for receiving a firearm with an obliterated or altered serial number to ten years.

Section 2137. Amendment to the Sentencing Guidelines for transfers of firearms to prohibited persons.

The proposed amendment would require the United States Sentencing Commission to provide an increase in the base offense level for certain firearms violators under sentencing guideline section 2K2.1. The increase should assure that the base offense level for a person who transfers firearms or ammunition with knowledge or reasonable cause to believe that the transferee is a convicted felon or otherwise in a prohibited category is the same as that for the transferee. Under Federal law the offense of selling or disposing of a firearm or ammunition to any person knowing or having reasonable cause to believe that the person is in a prohibited category is punishable by a maximum term of imprisonment of 10 years—the same penalty that applies to the transferee. *See* 18 U.S.C. §§ 922(d), 922(g) and 924(a)(2).

The sentencing guidelines provide that a prohibited person who engages in a firearm offense is subject at least to offense level 14. Thus, for example, a convicted felon who unlawfully acquires a firearm in violation of section 922(g) of title 18, United States Code, would face a sentencing range of 18–24 months of imprisonment if his past conviction resulted in a sentence of imprisonment of 60 days or more. However, the transferor currently faces a guideline offense level of just 12 (10–16 months of imprisonment for a first offender, which can result in five months of imprisonment and five months of supervised release with home confinement). The transferor in this case should be subject to offense level 14, like the transferee.

Guideline section 2K2.1 also provides an offense level of 20 for a prohibited person whose offense involved a machinegun or certain other dangerous firearms. The proposed directive would require the Sentencing Commission to make this offense level applicable to the transferor of such a weapon if the transferor knows or has reasonable cause to believe that the transferee is in a prohibited category. However, the sentencing guidelines currently provide additional base offense level increases in the case of defendants who have prior felony convictions of either a crime of violence or controlled substance offense, § 2K2.1(a)(1), (2), (3), and (4)(A). The directive to the Sentencing Commission specifically exempts these additional increases from its requirements.

Section 2138. Forfeiture of firearms used in crimes of violence and felonies.

The amendment adds the authority to forfeit firearms used to commit crimes of violence and all felonies to 18 U.S.C. §§ 981 and 982. This authority would be in addition to the authority already available to Treasury agencies under 18 U.S.C. § 924(d).

The purpose of the amendment is (1) to provide for criminal as well as civil forfeiture of firearms; and (2) to permit forfeiture actions to be undertaken by Department of Justice law enforcement agencies who have authority to enforce the statutes governing crimes of violence but who do not have authority to pursue forfeitures of firearms under the existing statutes.

Section 924(d) of title 18 already provides for the civil forfeiture of any firearm used or involved in the commission of any ''criminal law of the United States.'' The statute, however, is enforced only by the Treasury Department and its agencies; it provides no authority for the FBI, for example, to forfeit a gun used in the commission of an offense over which it has sole jurisdiction. Moreover, § 924(d) provides for civil forfeiture only.

Subsection (d) adds a provision to 18 U.S.C. § 924(d) intended to permit the Bureau of Alcohol, Tobacco and Firearms to forfeit property that otherwise would have to be forfeited by another agency. Under § 924(d), ATF is presently authorized to forfeit a firearm used or carried in a drug trafficking crime. Property involved in the drug offense itself, such as drug proceeds, may also be forfeitable under the Controlled Substances Act, 21 U.S.C. § 881, but ATF does not presently have authority to forfeit property under that statute and has to turn the forfeitable property over to another agency. The amendment does not expand the scope of what is forfeitable in any way, but does allow the forfeiture to be pursued by ATF when the agency is already involved in the forfeiture of a firearm in the same case.

Finally, subsection (e) clarifies an ambiguity in the present statute relating to the 120-day period in which a forfeiture action must be filed. Presently, the statute says that a forfeiture proceeding must be filed within 120 days of the seizure of the property. This was intended to force the government to initiate a forfeiture action promptly. In one case, however, where the government did initiate an administrative forfeiture action within the 120-day period, the claimant filed a claim and cost bond which required the government to begin the forfeiture action over again by filing a formal civil judicial proceeding in federal court. The claimant then moved to dismiss the judicial proceeding because the complaint was filed outside the 120-day period.

The court granted the motion to dismiss because the literal wording of § 924(d) requires *any* forfeiture action against the firearm to be filed within 120 days of the seizure. *United States* v. *Fourteen Various Firearms,* ____ F. Supp. ____, 1995 WL 368761 (E.D. Va. June 19, 1995). This interpretation, however, leads to unjust results in cases where the government promptly commences an administrative forfeiture action but the claimant waits the full time allotted to him to file a claim. (Under Section 101 of this Act, the claimant would have 30 days from the date of publication of notice of the administrative forfeiture action to file a claim, which is likely to be several months after the seizure even if the government initiated the administrative forfeiture almost immediately after the seizure.) In such cases, Congress could not have intended the 120-day period for filing a *judicial* complaint to count from the date of the seizure; indeed, it is often the case that the claimant doesn't even file the claim until more than 120 days have passed. Thus, the amendment clarifies the statute to make clear that the government must initiate its *administrative forfeiture* proceeding within 120 days of the seizure and then will have 120 days from the filing of a claim, if one is filed, to file the case in federal court. The amendment also tolls the 120-day period during the time a related criminal indictment or information is pending.

Section 2139. Forfeiture for gun trafficking

This section provides for the forfeiture, under 18 U.S.C. §§ 981 and 982, of vehicles used to commit gun trafficking, such as transporting stolen firearms, and for the proceeds of such offenses. The provision is limited to instances in which five or more firearms are involved, thus making it clear that it is not intended to be used in instances where an individual commits a violation involving a small number of firearms in his or her personal possession.

Part 4—Targeting Serious Drug Crimes and Protecting Children From Drugs

Section 2141. Increased penalties for using minors to distribute drugs

This provision would amend Section 420 of the Controlled Substances Act (21 U.S.C. 861) to increase the current mandatory minimum penalty for using or employing minors to distribute drugs from one year to three years. Similarly, the provision would increase the mandatory minimum penalty for a second or subsequent violation of this statute from one year to five years. The proposed increases are necessary to punish persons who use or employ minors to distribute illegal drugs and to deter others from engaging in such reprehensible conduct.

Section 2142.1 Increased penalties for distributing drugs to minors

This provision would amend Section 418 of the Controlled Substances Act (21 U.S.C. 859) to increase the minimum penalty for distributing drugs to minors from one year to three years for a first offense, and from one year to five years for a second or subsequent offense. The proposal would also alter the age of the minor that triggers these penalties. Under the proposed amendment, the penalties would apply whenever a person at least eighteen years of age distributes drugs to a person under eighteen. Presently, the statute punishes a person at least eighteen who distributes drugs to a person under twenty-one, thus reaching some transactions in which the buyer is significantly older than the seller. This makes little sense and is inconsistent with the companion statute, 21 U.S.C. 861, which punishes persons who employ minors to distribute drugs. The proposed amendment would bring section 859 into conformity with section 861.

Section 2143.1 Increased penalties for drug trafficking in or near a school or other protected location

This provision would amendment Section 419 of the Controlled Substances Act (21 U.S.C. 860) to increase the mandatory minimum penalty for distributing drugs in or near a school or other protected location. The provision also would increase the mandatory minimum penalty for second and subsequent offenses from one to five years. The increased penalties for drug trafficking in or near schools or other protected locations are consistent with the other proposed penalty increases in this legislation and are aimed at protecting children from drug trafficking and abuse, punishing drug dealers who target

children, and deterring others who might engage in such conduct.

Section 2144.1 Serious juvenile drug trafficking offenses as Armed Career Criminal Act predicates

This section would amend the Armed Career Criminal Act (ACCA), 18 U.S.C. §924(e)(2)(A), to permit the use of an adjudication of juvenile delinquency based on a serious drug trafficking offense as a predicate offense under that Act. The ACCA targets for a lengthy period of at least 15 years' imprisonment those felons found in unlawful possession of a firearm who have proven records of involvement in serious acts of misconduct involving drugs and violence.

Section 2145. Attorney General authority to reschedule certain drugs posing imminent danger to public safety.

Under existing law, the Attorney General is empowered to add temporarily a substance to Schedule I of the Controlled Substances Act when necessary to respond to an imminent danger to public safety. *See* 21 U.S.C. 811(h). However, the Attorney General is not authorized to reschedule a substance that already has been placed on one of the schedules of the Controlled Substances Act. Once a substance has been added to one of the schedules, any rescheduling of that substance must be done pursuant to the standard procedures for scheduling or rescheduling a substance. Under the standard procedures, the rescheduling of a substance can take several years.

The proposal would extend the Attorney General's existing authority to schedule a substance on an emergency basis to include the *re*scheduling of an already scheduled drug to Schedule I. This authority will give the Attorney General to respond to public health crises involving scheduled substances, such as the rapidly escalating abuse of rohypnol, a Schedule IV drug with no approved medical uses in the United States.

The proposal contains the same limitations and procedures as apply to the Attorney General's existing emergency scheduling authority. The Attorney General could temporarily reschedule a substance only for one year, with the possibility of a one-time six month extension under certain circumstances. In addition, the Secretary of Health and Human Services would continue to have a formal role in advising the Attorney General in any proposed rescheduling.

Section 2146. Increased penalties for using federal property to grow or manufacture controlled substances.

This provision would increase the penalty for cultivating or manufacturing a controlled substance on federally owned or leased land. A significant amount of the domestic marijuana crop is grown on federal lands and a substantial number of methamphetamine laboratories also have been discovered on federal lands. Federal law enforcement agencies believe that the use of federal lands for cultivating and manufacturing controlled substances has increased because there is no possibility that the land will be forfeited as is the case if the cultivation or manufacture took place on private property.

Section 2147. Clarification of length of supervised release terms in controlled substance cases.

This section resolves a conflict in the circuits as to the permissible length of supervised release terms in controlled substance cases. Under 18 U.S.C. 3583(b), ''[e]xcept as otherwise provided,'' the maximum authorized terms of supervised release are 5 years for Class A and B felonies, 3 years for Class C and D felonies, and 1 year for Class E felonies and certain misdemeanors. The drug trafficking offenses in 21 U.S.C. 841 prescribe special supervised release terms, however, that are longer than those applicable generally under section 3583(b). Those longer terms, which may include lifetime supervised release, were enacted in 1986 in the same Act which inserted the introductory phrase ''Except as otherwise provided'' in section 3583(b). Because of this clear legislative history and intent, two courts of appeals have held that section 3583(b) does not limit the length of supervised release that may be imposed for a violation of 21 U.S.C. 841 when a greater term is there provided. *United States v. LeMay*, 952 F.2d 995, 998 (8th Cir. 1991); *United States v. Eng*, 14 F.3d 165, 172–3 (2d Cir. 1994. One court of appeals, however, has reached the opposite result, holding that the length of a supervised release term that can be imposed for controlled substance cases is limited by 18 U.S.C. 3583(b). *United States v. Gracia*, 983 F.2d 625, 630, (5th Cir. 1993); *United States v. Kelly*, 974 F.2d 22, 24–5 (5th Cir. 1992).

Although the issue has not arisen with frequency, the conflict is entrenched and should be dealt with definitively. Accordingly, the amendment would add the words ''Notwithstanding section 3583 of title 18'' to the title 21 controlled substance offenses in the parts of those statutes dealing with supervised release to make clear that the longer terms there prescribed control over the general provision in section 3583.

Section 2148. Technical correction to assure compliance of sentencing guidelines with provisions of all federal statutes.

This section would amend 28 U.S.C. 994(a) to assure that sentencing guidelines promulgated by the United States Sentencing Commission are consistent with the provisions of all federal statutes. Currently, section 994(a) contains a requirement of consistency only with statutes in titles 28 and 18 of the United States Code. No discussion of this somewhat peculiar limitation appears in the legislative history, see S. Rep. No. 98–225, 98th Cong., 1st Sess., p. 163 (1983). The limitation seems to have been based on the mistaken assumption that all provisions pertinent to the promulgation of sentencing guidelines were contained in those two titles. However, other provisions, such as mandatory minimum sentences in title 21, are relevant and clearly are meant to act as constraints on the guidelines. This amendment will insure that guidelines are not created that are inconsistent with the provisions of any relevant enactment of Congress.

Section 2149. Drug testing, treatment, and supervision of incarcerated offenders.

This section amends Section 20105(b) of the Violent Offender Incarceration/Truth-In-Sentencing (VOI/TIS) grant program of the Violent Crime Control and Law Enforcement Act of 1994 by adding the language at Section 20105(b)(1)(B) and Section 20105(b)(2). The victims' rights language at Section 20105(b)(A) is current law as Section 20105(b).

The amendment adds several requirements to the conditions a state must meet in order to receive funding under the VOI/TIS program. First, the state must by September 1, 1998, have a plan for drug testing/monitoring and treatment for violent offender housed in their corrections facilities. This plan needs to include sanctions for inmates who test positive. Second, the language at (2) would permit the state to use funds received under the VOI/TIS program to pay the costs of the testing and treatment required under (B). Currently the provisions at (B) are found in the Conference Report H.Rpt. 104–863 that accompanies the Department's fiscal year 1997 appropriations act. The language at (2) is not included. The goal of the amendment is to make the language at (B) permanent and add the language at (2) by amending the underlying law.

SUBTITLE B—GRANTS TO PROSECUTORS' OFFICES TO TARGET GANG CRIME AND VIOLENT JUVENILES

This subtitle amends Section 31702, Community-Based Justice Grants for Prosecutors,'' of Title III of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13862) to respond to the increase of violent juvenile offenders and the rate of gang-related juvenile crime. This subtitle provides needed resources for state and local prosecutors to facilitate the prosecution of violent and serious juvenile offenders. There is no existing comparable legislative text and programs previously authorized to assist prosecutors have not been appropriated. As part of the President's fiscal year 1998 budget proposal, this program is authorized for appropriations of $100,000,000 for fiscal year 1998 and $100,000,000 for fiscal year 1999.

Specifically, the legislation expands authority to: hire additional prosecutors to reduce prosecutorial backlogs; enable prosecutors to more effectively prosecute youth drug, gang, and violence problems; supply the technology, equipment, and training to assist prosecutors in reducing the rate of youthful violent crime while increasing the rate of successful identification and rapid prosecution of young violent offenders; and assist prosecutors in their efforts to engage in community-based prosecutions, problem solving, and conflict resolution techniques through collaborative efforts with law enforcement officials, school officials, probation officers, social service agencies, and community organizations.

There is also a two percent set aside of all funds appropriated under this Part to be set aside for ''training and technical assistance'' consistent with the above-mentioned purposes. Similarly, 10 percent is taken ''off the top'' of all funds appropriated under this Part to be set aside for research, statistics, and evaluation'' consistent with these purposes. Numerous jurisdictions have requested training and technical assistance as a priority need. Additionally, through the introduction of various bills, Congress has evidenced its support for enhanced research, statistics, and evaluation.

SUBTITLE C—GRANTS TO COURTS TO ADDRESS VIOLENT JUVENILES

Subtitle C establishes federal grant funding for states, units of local government, and Indian tribal governments to use in developing and implementing innovative initiatives to increase levels of efficiency, expediency, and effectiveness with which juvenile and youths are processed and adjudicated within the criminal and juvenile justice system. This is a new grant authority to assist state, local, and tribal courts, including probation and parole offices, public defenders, and victim/witness service providers, to respond to violent and serious youthful offenders.

This subtitle amends Section 21062 of Subtitle F of Title XXI of the ''Violent Crime Control and Law Enforcement Act of 1994'' (42 U.S.C. 14161), that currently provides assistance to state and local courts. This subtitle reintroduces the Administration's State and Local Courts Assistance Program Act to authorize the establishment of the juvenile gun courts, drug courts, other specialized courts, and innovative programs to better deal with the adjudication and prosecution of juveniles. As part of the President's fiscal year 1998 budget proposal), this program is authorized for appropriations of $50,000,000 for fiscal year 1998.

TITLE III—PROTECTING WITNESSES TO HELP PROSECUTE GANGS AND OTHER VIOLENT CRIMINALS

Section 3001. Interstate travel to engage in witness intimidation or obstruction of justice.

This section would amend the Travel Act (18 U.S.C. 1952) to add witness bribery, intimidation, obstruction of justice, and related conduct in State criminal proceedings to the list of predicates under the Travel Act (18 U.S.C. 1952). Recent studies demonstrate that witness intimidation is one of the most serious impediments to the prosecution of violent street gangs and drug trafficking organizations in State courts. This amendment responds to the growing witness intimidation problem by authorizing federal prosecution of persons who travel in interstate commerce with the intent to bribe or intimidate a witness, obstruct a criminal proceeding, or engage in related conduct.

Section 3002. Expanding pretrial detention eligibility for serious gang and other violent criminals.

This section would make three amendments to the pretrial detention statutes designed to enhance the ability, in appropriate circumstances, to use these statutes in prosecutions against gang members and against other violent criminals. Under the Bail Reform Act, 18 U.S.C. 3141 et seq., defendants charged with certain offenses can be detained pretrial if the court concludes there is clear and convincing evidence that no condition or combination of conditions of release will adequately assure the safety of any other person and the community. See 18 U.S.C. 3142 (e) and (f). The kinds of charges that permit such detention on grounds of the defendant's dangerousness include certain serious drug trafficking offenses and a ''crime of violence''. They also include any felony if the defendant has previously been convicted of two or more crimes of violence or serious drug trafficking offenses.

The first proposal would add a definition of the term ''convicted'' to include adjudications of juvenile delinquency. Thus, it would permit pretrial detention, upon the requisite showing, of persons charged with any felony, e.g., interstate transportation of a stolen automobile, who had two or more prior violent or drug convictions, including juvenile delinquency adjudications for such conduct. This should facilitate the use of pretrial detention when appropriate against young career offenders such as gang members.

The second proposed amendment relates to the definition of ''crime of violence'' in 18 U.S.C. 3156(a)(4). That definition reaches offenses (A) that have as an element the use or attempted or threatened use of physical force, (B) any other felony offenses that, by their nature, involve a substantial risk that physical force may be used in the course of their commission, and (C), by virtue of an amendment in the 1994 crime bill, any felony under chapter 109A or 110 (which proscribe sex offenses and child pornography).

It is not clear whether the offenses of possession of explosives or firearms by convicted felons qualify as ''crimes of violence'' under the second or (B) branch of the definition. What little case law exists suggests that they do. *See United States* v. *Sloan*, 820 F. Supp. 1133, 1136–41 (S.D. Ind. 1993); *United States* v. *Aiken*, 775 F. Supp. 855 (D. Md. 1991). See also, *United States* v. *Dodge*, 846 F. Supp. 181 (D. Conn. 1994). The *Sloan* court noted that, although the Supreme Court held in *United States* v. *Stinson*, 113 S. Ct. 1913 (1993), that a similar definition of ''crime of violence'' in the sentencing guidelines did not encompass the felon-in-possession statutes, because the Sentencing Commission had promulgated a policy statement to that effect, the bail statutes serve a very different purpose from sentencing enhancements and should be more broadly construed to protect the public from continued endangerment by convicted felons charged with a new offense of weapon possession. (Prior to the Commission's policy statement, the courts were divided as to whether a violation of 18 U.S.C. 922(a) was a crime of violence for sentencing purposes). This proposed amendment would codify the result reached in *Sloan*. It would not mandate pretrial detention but would permit the government to show, in the case of a convicted felon such as a gang member charged with violating the certain explosives or firearms statutes, that no one or more conditions of release would be adequate to safeguard society.

The third proposed amendment would make membership or participation in a criminal street gang, racketeering enterprise, or other criminal organization a factor to be considered by courts in making bail determinations. Presently, many other personal history and characteristics of the individual charged are required to be considered in making bail decisions, such as prior convictions, drug abuse, and whether the alleged offense was committed while on parole, probation, or other form of release pending criminal trial. Clearly, gang or organized crime group membership is a relevant factor that bears both on dangerousness and risk of flight and that courts should take into account in making bail determinations. The amendment is not intended to impinge on rights of freedom of association but rather to reach membership or participation in those organizations that exist, at least in part, for the purpose of committing crimes or depriving third parties of their lawful rights. See *Madsen* v. *Women's Health Center, Inc.* 114 S. Ct. 2516, 2530 (1994).

Section 3003. Conspiracy penalty for obstruction of justice offenses involving victims, witnesses, and informants.

Increasingly typical of many criminal gangs is violence directed at silencing or retaliating against witnesses or potential witnesses and informants. 18 U.S.C. 1512 and 1513 set forth offenses and penalties that, generally speaking, adequately deter and punish such offenses. However, a conspiracy to engage in witness intimidation or retaliation in violation of these statutes is punishable only under the catchall conspiracy statute, 18 U.S.C. 371, which carries a maximum prison term of only five years. This is clearly inadequate to vindicate an offense that involves, for example, a conspiracy to kill a witness or potential witness in a federal criminal proceeding. Such a conspiracy, if perpetrated upon the special maritime and territorial jurisdiction, would be punishable by up to life imprisonment. 18 U.S.C. 1117. This is consistent with the principle, recognized in some federal statutes and prevalent in modern State criminal codes, that a conspiracy warrants the same maximum penalty as the offense which was its object. This principle is reflected in several recently enacted federal statutes, including 21 U.S.C. 846 (drug conspiracies), 18 U.S.C. 1856(h)(money laundering conspiracies), and 18 U.S.C. 844(n)(explosives conspiracies). The proposed amendment in this section would apply this principle to 18 U.S.C. 1512 and 1513 and thus provide better protection from gang violence to witnesses and informants.

TITLE IV—PROTECTING VICTIM'S RIGHTS

Title IV contains two Sections that expand the rights and protections afforded to the victims of crime, particularly crimes committed by juvenile offenders and crimes committed against children. It should be noted that a number of other provisions of the Anti-Gang and Youth Violence Act of 1997 expand the rights and protections of crime victims. For example, the proposed Section 5002, which amends 18 U.S.C. 5032, would establish a rebuttable presumption that juvenile proceedings shall be open to victims and members of the public, with special protections and access afforded to crime victims. In addition, proposed Section 5037 would expand the allocution rights of crime victims, including the right to have input into the predisposition report prepared by the probation officer and the right to appear before the judge and be heard prior to an order of disposition.

Section 4001. Records of crimes committed by juvenile offenders.

The proposed Section 40001 would amend 18 U.S.C. 5038(a)(6) to correct an oversight in current law. The amendment affirmatively provides for a victim's or a victim's official representative's allocation at the dispositional phase of the juvenile proceeding. In addition, the new statutory language clarifies that communication is allowable with the victim about ''the status or disposition of the [juvenile] proceeding in order to effectuate any other provision of [state or federal] law''. This language clears up any ambiguity in current law by explicitly extending to victims of juvenile offenders the right to information about the juvenile proceeding that they might need or be entitled to under any other state or federal law, such as the victim's rights set out in 42 U.S.C. 10606. Thus, under this new language, victims of juvenile offenders would be treated like victims of adult offenders. For example, victims would be able: to know about the status of the proceedings and the release status of the offenders; to consult intelligently with the prosecutor; and to make a knowledgeable victim impact statement at the time of the disposition. In addition, if state law allows victim compensation or grants any other rights, this provision allows communication about the federal delinquency proceeding in order to effectuate those provisions.

Fingerprints and photographs of adjudicated delinquents found to have committed the equivalent of an adult felony offense or a violation of 18 U.S.C. 922(x) and 924(a)(6) (possession of a handgun by a juvenile) would be sent to the Federal Bureau of Investigation (FBI) and made available in the manner applicable to adult defendants.

The limited availability of juvenile criminal records is a serious concern in connection with violent and firearms offenses. In order to address this problem, the Department of Justice amended its regulations in 1992 to expand the ability of the FBI to receive and retain records from State courts for ''serious and/or significant adult and juvenile offenses.'' 28 C.F.R. 2032. The proposed bill would further alleviate this problem by making corresponding changes in the statutory rules for reporting offenses by juveniles who are prosecuted federally. This amendment was passed in substance by the Senate in the 103rd Congress as Section 618 of H.R. 3355.

Further disclosure of records relating to a juvenile or a delinquency proceeding would be authorized if it would be permitted under the law of the State in which the delinquency proceeding took place. The proposal will allow for the development of State systems of graduated sanctions by making it possible for the court to take into account a juvenile's criminal history when imposing sentence. The records could also be used for analysis by the Department of Justice if so requested by the Attorney General.

Finally, the new Section 5038(c) would be amended to allow the disclosure of ''necessary docketing data''. This is necessary because the nationwide military justice system cannot process traffic tickets without disclosing some docketing information.

Section 4002. Victims of Child Abuse Act extension of authorizations.

This section extends the authorization of appropriations for programs under Subchapter I of the Victims of Child Abuse Act (42 U.S.C. 13001 *et seq.*). The programs authorized under VOCA include regional children's advocacy centers, local children's advocacy centers, and specialized training and technical assistance for state and local practitioners dealing with the prosecution of child abuse cases. These programs currently are administered by the Office of Juvenile Justice and Delinquency Prevention.

TITLE V—FEDERAL PROSECUTION OF SERIOUS AND VIOLENT JUVENILE OFFENDERS

Section 5001. Short title.

The amendments made in this title are designed to provide protection for the community and hold juveniles accountable for their actions. They will help ensure that prosecution of serious juvenile offenders is more swift and certain, and that punishment of juvenile offenders will be commensurate with the seriousness of the crimes committed.

Section 5002. Delinquency proceeding or criminal prosecutions in district courts.

Under current law, the decision to charge a juvenile as an adult for specified crimes is made by the United States district court as a result of a motion by the United States to transfer the juvenile for criminal prosecution. The offenses subject to this transfer authority are limited. Even more restrictive are the list of violent offenses for which a juvenile under 15 years of age can be transferred.

There is virtually universal agreement among federal prosecutors that the present system is cumbersome and has frequently inhibited them for seeking adult prosecution. Prosecutors who have sought the transfer of juveniles to adult status have experienced many difficulties in the application of an outmoded statute or have encountered judges personally opposed to the transfer of juveniles, even in cases involving very serious crimes. Moreover, there is a presumption under present law in favor of a juvenile adjudication, and a district court's decision to decline transfer to adult status may be reversed only upon a finding of abuse of discretion. *United States v. Juvenile Male #1*, 47 F.3d 68 (2d Cir. 1995). The result is a juvenile justice system which fails to provide an effective deterrent to juvenile crime and fails adequately to protect the public.

The proposed statute would amend 18 U.S.C. §5032 to greatly strengthen and simplify the process for prosecuting the most dangerous juveniles as adults in federal court. The legislation would bring federal law into conformity with that of many states by giving prosecutors, rather than the courts, the discretion to charge a juvenile alleged to have committed certain serious felonies as an adult or as a juvenile.

The proposed statute would retain the minimum age in existing law for prosecution of a juvenile as an adult but would expand the list of offenses with serious violent, gun or drug felonies. A number of states have similar statutes.

The legislation would, however, create a distinction between juveniles 16 years of age and older and those who are younger. Prosecution of juveniles 13 to 15 years of age at the time of the offense would require approval of the Attorney General or his or her designee at a level not lower than Deputy Assistant Attorney General. This internal Justice Department approval requirement (which would not be litigable) has been used in other types of particularly sensitive cases and would ensure that careful scrutiny and uniform standards are used in determining whether to bring criminal charges against very young juveniles. Prosecutors would retain the discretion to proceed against anyone under age 18 as a juvenile delinquent. In those cases, the current requirement for prosecutorial certification would apply, thus assuring that most such cases are handled at the state or local level.[1]

The proposed bill would amend section 5032, to expand the list of serious felonies for which a juvenile can be prosecuted as an adult to include additional violent crimes, firearms charges and drug offenses. Under the amended statutes, a juvenile could be prosecuted as an adult for the following offenses:

(1) a serious violent felony or a serious drug offense as described in section 3559 (c)(2) or (c)(3) or a conspiracy or attempt under section 406 of the Controlled Substances Act or under section 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 846 or 963) to commit an offense described in section 3559(c)(2); and

(2) the following offenses if they are not described in paragraph (1): (A) a crime of violence (as defined in section 3156(a)(4)) that is a felony; (B) an offense described in section 844(d), (k), or (l), or paragraph (a)(6) or subsection (b), (g), (h), (j), (k), or (l), of section 924; (C) a violation of section 922(o) that is an offense under section 924(a)(2); (D) a violation of section 5861 of the Internal Revenue Code of 1986 that is an offense under section 5871 of such Code (26 U.S.C. 5871);

(E) a conspiracy to violate an offense described in any of subparagraphs (A) through (D); or

(F) an offense described in section 401 or 408 of the Controlled Substances Act (21 U.S.C. 841, 848) or a conspiracy or attempt to commit that offense which is punishable under section 406 of the Controlled Substances Act (21 U.S.C. 846), or an offense punishable under section 409 or 419 of the Controlled Substances Act (21 U.S.C. 849, 860), or an offense described in section 1002, 1003, 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952, 953, 955 or 959), or a conspiracy or attempt to commit that offense which is punishable under section 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 963).

To ensure the prosecution in one trial of all offenses charged, a juvenile tried as an adult for one of the designated offenses could also be prosecuted as an adult for any other offenses properly joined under the Federal Rules of Criminal Procedure. With these amendments, juveniles convicted as adults could receive substantially higher sentences than under current law, commensurate with their crimes and criminal histories.

The existing statute excludes younger juveniles in Indian country charged with certain crimes from prosecution unless the tribal government opts to have the provision apply. The proposal would continue this provision.

The proposed bill allows, in certain limited circumstances, the district court to order that a juvenile charged as an adult be tried under the juvenile delinquency procedures. This is sometimes referred to as a ''reverse waiver.'' Any juvenile charged with one of the offenses listed in 3(A)–(F) or a juvenile under the age of 16 would be able to request a ''reverse waiver'' hearing. A motion making such a request would have to be filed within 20 days of the juvenile first being charged as an adult. At the hearing, the juvenile charged as an adult would have the burden of establishing that it would be in the interest of justice that the case be tried under the juvenile delinquency provisions of 5032(a). The criteria by which the court should make its determination are listed in the proposed statute. The procedure for appellate review of the court's ruling would be similar to that presently used after a motion to suppress evidence. If the trial court determined that the juvenile should be tried as a juvenile delinquent, the government would have the right to seek an expedited appeal. In the event the court determined that the juvenile had not carried his or her burden of establishing that it was in the interests of justice that there be a reverse waiver, then the case would proceed to trial as an adult prosecution and the juvenile could appeal in the event of a guilty verdict.

Juveniles under the age of 16 charged as adults, but who have not previously been adjudicated delinquent of a serious violent felony, and who are charged with certain limited offenses would be sentenced under the sentencing guidelines but would not be subject to mandatory minimums.

Section 5032(a)(4) is amended to make clear that federal juvenile proceedings are normally open to the public but may be closed in the interests of justice or for good cause shown. It also includes a provision allowing victims, their relatives and guardians to be included when the public is otherwise excluded, unless the same two tests applied for exclusion of the public also independently require exclusion.

Section 5003. Custody prior to appearance before judicial officer.

Minor changes have been made to make clear that the procedures applicable to the arrest of a juvenile prior to the formal filing of charges apply whether or not it is anticipated that the juvenile will be charged as a juvenile or as an adult.

Section 5004. Technical and conforming amendments to Section 5034.

This section is amended to clarify that it applies to juvenile proceedings only.

Section 5005. Speedy trial.

The proposed status would require that for a juvenile in custody juvenile delinquency proceedings begin within 45 days, rather than the current 30 days. Exclusions in the Speedy Trial Act (18 U.S.C. §3161(h)) would also be made applicable for the first time in juvenile delinquency proceedings. This additional time is necessary, particularly in cases involving both adult and juvenile defendants such as in the prosecution of gangs, to protect witnesses and critical evidence by ensuring that the trial of a juvenile does not proceed before the case against the adults. The time within which a disposition hearing must be held after an adjudication of delinquency would also be increased from 20 to 40 days. Within the 40 days, the probation office would prepare a predisposition report which would include victim impact information. Forty days is consistent with federal court practice generally and will provide the time necessary to prepare a comprehensive report.

Section 5006. Disposition; availability of increased detention, fines and supervised release for juvenile offenders.

The legislation would amend section 5037 to make fines and supervised release—not presently sentencing options—available for adjudicated delinquents in addition to probation and detention. The maximum period of official confinement for an adjudicated delinquent would be increased to ten years or through age 25 to give judges increased sentencing flexibility for juveniles who are adjudicated delinquent. The maximum period

[1] The federal prosecutor would be required to certify that (A) the appropriate State does not have or declines to assume jurisdiction over the juvenile, or (B) the offense is one specified in the statute, and (C) there is a substantial federal interest in the case of the offense to warrant the exercise of federal jurisdiction. 18 U.S.C. §5032(a).

for probation would be increased to the same period applicable to an adult. To strengthen the accountability of juveniles to victims, mandatory restitution would also apply to adjudicated delinquents.

Section 5007. Technical amendment of Sections 5031 and 5034.

This section makes technical and confirming amendments to Sections 5031 and 5034.

TITLE VI—INCARCERATION OF JUVENILES IN THE FEDERAL SYSTEM

Section 6001. Detention prior to disposition or sentencing.

Sections 6001 and 6002 relate to the detention of juvenile offenders prior to disposition or sentencing. Specifically, the bill would amend 18 U.S.C. 5035, to provide that juvenile offenders less than 16 years of age being prosecuted as adults but not yet convicted must be placed in an available, suitable juvenile facility located within, or a reasonable distance from, the district in which the juvenile is being prosecuted. If such a suitable juvenile facility is not available, the juvenile could be placed in any other suitable facility located within, or a reasonable distance from, the district in which the juvenile is being prosecuted. Only if neither of these types of facilities is available could a juvenile less than 16 years old be placed in some other suitable facility. In order to protect the safety of these younger offenders, the bill would require that, to the maximum extent feasible, juveniles not be detained prior to sentencing in any institution in which they have regular contact with adult prisoners.

The requirement in current Section 5035, that a juvenile charged with juvenile delinquency has regular contact with adult prisoners would generally be retained in the proposed legislation. However, the proposed bill would permit juveniles adjudicated delinquent, once they reach the age of 18, to be placed with adults in a correctional facility. This recommended change is consistent with recent regulatory changes to state requirements under the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 *et seq.*

Section 5039 of title 18, United States Code, would also be amended to permit juveniles adjudicated delinquent to be placed with adults in community-based facilities in order to provide transition services for juveniles moving from incarceration to the community and to allow juveniles to be housed in their home communities. These changes would help protect younger juveniles 13 or 14 years old, from 19 or 20 year-olds who, although adjudicated delinquent, may be as dangerous as adults.

The legislation would also amend Sections 5035 and 5039 to give the Attorney General discretion to confine with adults a serious juvenile offender 16 years of age or older who is charged as an adult, both before and after conviction. As under present law, only those juveniles charged as adults whom a judicial officer has found would, if released, endanger the safety of another person or the community or would pose a substantial risk of flight could be detained prior to trial.

The current requirement in Section 5039 that every juvenile under 18 years of age who is in custody be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment would continue to apply to every juvenile charged as an adult who is detained prior to trial and sentencing and would be expanded to provide for reasonable safety and security as well.

These changes are consistent with current practice in many states and are proposed to ensure that the most violent juvenile criminal offenders are not detained or incarcerated with juvenile delinquents. By providing the discretion to house older juveniles prosecuted as adults, adjudicated delinquents once they reach the age of 18 and all juveniles convicted as adults in adult facilities, this proposal would also solve practical problems reported by the U.S. Marshals Service and the U.S. Attorneys, who have experienced great difficulty in finding suitable juvenile facilities for older and violent juvenile offenders.

Section 6002. Rules governing the commitment of juveniles.

The legislative analysis for the amendments made in this discussion are discussed in the analysis accompanying Section 5005.

TITLE VII—OFFICE OF JUVENILE CRIME CONTROL AND PREVENTION

Title VII establishes within the Office of Justice Programs the ''Office of Juvenile Crime Control and Prevention,'' the ''Juvenile Crime Control and Prevention Formula Grant Program,'' the ''Indian Tribal Grant Programs,'' and ''At-Risk Children Grants Program,'' and ''Developing, Testing, and Demonstrating Promising Programs Program,'' the ''Incentive Grant Programs,'' the ''Research, Statistics, and Evaluation'' grants, and the ''Training and Technical Assistance'' grants.

Subtitle A of Title VII creates the ''Office of Juvenile Crime Control and Prevention'' to replace the Office of Juvenile Justice and Delinquency Prevention. The new Office of Juvenile Crime Control and Prevention responds to the changing nature of juvenile and youth crime and represents a more focused, efficient, and effective office. Fundamental protections safeguarding juveniles and youth within the juvenile justice system have been maintained, while operations within this new office have been streamlined to better coordinate and integrate juvenile and youth crime initiatives with other Department of Justice activities, particularly activities within the Office of Justice Programs, the National Institute of Justice and the Bureau of Justice Statistics, as well as with states, units of local government, Indian tribal governments, and local communities.

Section 7001. Short title.

This section provides that Title VII of the Anti-Gang and Youth Violence Act may be cited as the ''Juvenile Crime Control and Prevention State and Local Assistance Act of 1997.''

SUBTITLE A—CREATION OF THE OFFICE OF JUVENILE CRIME CONTROL AND PREVENTION

Section 7101. Establishment of Office.

Section 2701 establishes the ''Office of Juvenile Crime Control and Prevention'' under the general authority, and the ''supervision and direction'' of the Assistant Attorney General for the Office of Justice Programs, United States Department of Justice. The words ''supervision and direction'' are used to describe the line of authority and reporting relationship between the Director of the Office of Juvenile Crime Control and Prevention and the Assistant Attorney General for the Office of Justice Programs in the same way the words ''supervision and direction'' are used to describe the line of authority and reporting relationship between the Secretary of the Department of Health and Human Services and the Assistant Secretary of Health as cited at 42 United States Code Section 202. This section continues the Department of Justice's efforts in maintaining coordination and cooperation among those federal agencies whose jurisdictions involve the health, welfare, education or general well-being of youths and/or juveniles. There are numerous transitional elements to provide for the continuity between the Office of Juvenile Justice and Delinquency Prevention and the new Office of Juvenile Crime Control and Prevention, including a specific transfer for the current Administrator of the Office of Juvenile Justice and Delinquency Prevention to become the Director of the Office of Juvenile Crime Control and Prevention.

Section 7102. Conforming amendments.

Section 7102 makes minor and technical conforming amendments.

Section 7103. Authorization of appropriations.

Section 7103 provides for the authorization of appropriations to carry out the functions of the Office of Juvenile Crime Control and Prevention.

SUBTITLE B—JUVENILE CRIME ASSISTANCE

Subtitle B of Title VII of the Act maintains and establishes numerous federal grant programs and initiatives—the ''Juvenile Crime Control and Prevention Formula Grant Program,'' the ''Indian Tribal Grant Program,'' the ''Incentive Grant Program,'' the ''Developing, Testing, and Demonstrating Promising Programs'' program, the ''At-Risk Children Grants Program,'' and two initiatives that provide additional funding for research, statistics, evaluation, and training and technical assistance.

Section 7201. Formula grant assistance.

Section 7201 amends the Omnibus Crime Control and Safe Streets Act of 1968 by maintaining but revising the formula grant program.

This federal grant program has fewer state planning requirements, specifically allocates ten percent of all grants funds appropriated to be set aside and used for research activities (including program evaluations, data collection efforts, and studies to identify initiatives that reduce juvenile and youth crime and violence), and specifically allocates two percent of all grant funds appropriated to be set aside and used for providing training and technical assistance to states and local communities for the implementation of initiatives and programs that have demonstrated a high likelihood of success.

Under a new formulation, all states receive 50 percent of their allocation. To receive the remaining funds a state must continue to follow established practices and procedures for protecting juveniles within the juvenile justice system. These provisions are reflected in the Department of Justice's newly issued regulations, 28 CFR Part 31, governing this section. Should a state fail to meet the requirements of this section, the unallocated funds may be redistributed within the state.

Section 7202. Indian tribal grants.

Section 7202 establishes for the first time a direct federal grant program whereby funding goes directly from the Office of Juvenile Crime Control and Prevention to Indian tribal governments without utilizing state pass-through procedures. Grant funds under this section shall be used for initiatives designed to reduce, control, and prevent juvenile and youth crime on Indian lands. This method of direct funding is expected to better address and respond to the needs and concerns of Indian tribes as well as increase funding for these tribes. Also included is language amending the Violent Crime Control and Law Enforcement Act of 1994 to substantially increase funding targeted for correctional facilities on Indian tribal lands.

Section 7203. At-risk children grant programs.

The ''At-Risk Children Grants Program'' is a new federal grant program administered by the Office of Juvenile Crime Control and Prevention that provides federal assistance to states, for distribution by states to local

units of government and locally-based organizations to combat truancy, school violence, and juvenile crime by providing funding for local crime prevention and intervention strategies. Programs and initiatives funded with these grants are designed to address youth within the juvenile justice system who, with some focused supervision, direction, and discipline, can go forward to lead-crime-free, productive lives. This program is an expansion of what is currently known as Title V of the Juvenile Justice and Delinquency Prevention Act.

Grants awarded pursuant of this Part may be used for: supporting locally based efforts for assisting high-risk juveniles and juveniles within the juvenile justice system; preventing and reducing truancy and school drop outs; enforcing juvenile curfews; supporting school safety programs, juvenile mentoring, violence reduction programs, intensive supervision services, jobs and life skills training, family strengthening interventions, early childhood services, after-school programs for juveniles, tutoring programs, recreation and parks programs, parent training initiatives, health services, alcohol and substance abuse services, restitution and community services activities, leadership development, accountability and responsibility education, and other such efforts designed to prevent or reduce truancy, school violence, and juvenile crime.

Local units of government that participate under this Part must utilize a local planning board to develop a three-year plan.

Section 7204. Developing, testing, and demonstrating promising programs.

Section 7204 establishes new federal discretionary grant programs for states, units of local government, and Indian tribal governments administered by the Office of Juvenile Crime Control and Prevention to develop, test, and demonstrate initiatives and programs that have a high probability of preventing, controlling, and/or reducing juvenile crime. These grants were developed to motivate states, units of local government, and Indian tribal governments to independently generate innovative initiatives to combat juvenile crime and youth violence.

This section replaces the current multiple discretionary-categorical grant programs currently established by the Juvenile Justice and Delinquency Prevention Act of 1974, by consolidating several categorical grant programs into a single, flexible, broad program.

Section 7205. Incentive grant program.

This section establishes new federal formula grant programs for states, units of local government, and Indian tribal governments to develop and advance initiatives to prevent, control, reduce, evaluate, adjudicate, or sanction juvenile or youthful crime.

The state agency that receives a formula grant is eligible to apply for a grant under this Part. Every applicant must submit assurances to the Director of the Office of Juvenile Crime Control and Prevention that they have or will have within one year of submittal of an application:

(1) implemented a system of accountability-based graduated sanctions; and/or

(2) implemented a system of information collaboration and dissemination regarding acts of juvenile delinquency and adjudication of the same.

Grants authorized under this section may be used to:

Achieve paragraphs (1) and/or (2) above; advance initiatives that prevent or intervene in the unlawful possession, distribution, or sale of a firearm by or to a juvenile; implement initiatives that facilitate the collection, dissemination, and use of information regarding juvenile crime; implement new initiatives that assist state and local jurisdictions in tracking, intervening with, and controlling serious, violent, and chronic juvenile offenders; implement comprehensive program services in juvenile detention and correction facilities; implement procedures designed to prevent and reduce juvenile disproportionate minority confinement; or for any other purpose related to juvenile crime reduction, control, and prevention as determined by the Director of the Office.

Section 7206. Research, statistics and evaluation.

Better research, evaluation, and statistical analysis is critical to understanding and addressing the causes of juvenile and youth crime. Under this section, increased funding is combined with a collaboration between the Director of the Office of Juvenile Crime Control and Prevention and the Directors of the National Institute of Justice and the Bureau of Justice Statistics to better direct and expand these functions.

Section 7207. Training and technical assistance.

This section provides for specific federal grant funding for much-needed technical and training assistance for individuals in the fields of juvenile justice and juvenile and youth crime. Funding under this section will enable more communities to implement effective programs and initiatives that reduce, control, and prevent juvenile and youth crime. While this is a new federal grant program, training and technical assistance have been established functions of the Office of Juvenile Justice and Delinquency Prevention.

In further recognition of the importance of high quality and focused research, statistical analysis, evaluation, training, and technical assistance, Title VII includes specific provisions within each funded program setting aside a percentage of grant funds appropriated for the above-mentioned functions. These monies are in addition to funding appropriated for these functions in Sections 409 and 410 of Title VII. Specifically, Sections 403, 404, 405, 406, 407, and 408 of Title VII of this Act provide that 2 percent of all funds appropriated for each funded program shall be set aside for training and technical assistance consistent with Title VII. Similarly, Sections 403, 404, 405, 406, 407, and 408 provide that 10 percent of all funds appropriated for each funded program shall be set aside for research, statistics and evaluation activities consistent with Title VII.

SUBTITLE C—MISSING AND EXPLOITED CHILDREN

This subtitle amends the ''Missing Children's Assistance Act'' (42 U.S.C. 5771 *et seq.*) by extending its authorization to the year 2001 and by setting aside funds appropriated under this subtitle to be used for research, statistics, evaluation, and training. Additionally, conforming language is added to the Act to reflect the replacement of the Office of Juvenile Justice and Delinquency Prevention with the new Office of Juvenile Crime Control and Prevention.

Mr. BIDEN. Mr. President, today I am pleased to join Senator LEAHY in introducing on behalf of the administration, President Clinton's Anti-Gang and Youth Violence Act, which the President announced last week in Boston.

Three years ago Congress passed the Biden crime bill into law. Today, the verdict is in—the law is working to reduce adult crime. For example, the projected violent crime rate is the lowest since 1991 and the projected murder rate is the lowest since 1971.

But we all know that, unlike adult crime, juvenile crime is on the rise. The statistics are all too familiar: Violent juvenile crime increased by 69 percent from 1987 to 1994; from 1983 to 1994 the juvenile homicide rate jumped 169 percent; and just recently, the Center for Disease Control has reported that the United States has the highest rate of childhood homicide, suicide, and firearm related deaths of 26 industrialized countries. We can and must do better than that.

The President's program is based in large part, on success stories from cities like Boston, MA, which developed a comprehensive community-based strategy to both prevent at-risk youth from becoming criminals and deal harshly with those already in the criminal justice system.

Boston's Operation Night Light sends probation officers on patrol with police to ensure that youth with criminal records stay out of trouble and to assist in the investigation of new crimes. And Boston's police force has joined with Federal law enforcement to target the illegal gun markets that supply most of the guns to gangs and violent youth.

The results have been dramatic: Youth homicides have dropped 80 percent citywide; violent crime in public schools dropped 20 percent in just 1 school year; and most impressively—not a single youth died from a firearm homicide during 1996. Now that is a record we could be proud of.

We are taking the same balanced approach to juvenile crime and drug abuse as we did in the 1994 Crime Act—tough sanctions, certain punishment and protection of vulnerable kids.

Like the Democratic crime bill I, Along with Senators DASCHLE, LEAHY, and many others introduced earlier this year—S. 15—the President's juvenile crime initiative cracks down on violent juvenile offenders and youth gangs, takes concrete steps toward preventing drug and gun violence, and invests in programs that will get kids off the streets and into supervised programs during the after-school hours when they are most likely to be the victims of gangs and criminals or the customers of drug pushers.

The Anti-Gang and Youth Violence Act proposes to use Federal law enforcement where its expertise and resources can best contribute to fighting crime and the spread of gangs. The act also seeks assistance for local police and criminal justice systems to help them address matters that we all know are local law enforcement challenges that they handle the best.

On the Federal level the President's bill: contains tough new Federal penalties applicable to gang activities such as racketeering, witness intimidation, car-jacking, and interstate firearms and drug trafficking; cracks down on juvenile gun use by extending the Brady bill to juveniles and requiring the sale of gun locks; makes juvenile records more accessible to police and

educators; and targets abuse of drugs popular among youths by giving the Attorney General emergency rescheduling authority.

But in recognition that the battle against youth crime and drug abuse is fought primarily in our communities and schools, the President's bill provides over $325 million annually to support State and local governments to: hire additional prosecutors to target gang and youth violence; create special drug and gun courts to handle violent juveniles more effectively; create safehavens for at-risk youth; initiate systems of graduated sanctions so youth receive certain punishment for their first offense instead of a mere slap on the wrist; and promote use of curfews and put truants back in school where they belong.

The President also proposes to recraft the Federal Juvenile Justice Office by eliminating bureaucracies, streamlining programs, providing additional flexibility to States and localities, and sharpening the Office's focus on research and development. These are reforms that I have long advocated.

However, the President's reform proposal reaffirms our commitment to a few core principles that have worked well over the past 23 years—juveniles should not be housed in adult jails or lockups; juveniles in custody should be separated from adult criminals; status offenders should not be incarcerated; and where it exists, the disproportionate confinement of minorities must be addressed.

With the introduction of this legislation the administration, Senate Republicans, and Senate Democrats have now all made it a priority to address the problem of youth violence. Of course, there are other proven, effective crime control programs that I would like to pursue—such as extending the 100,000 Cops Program to put another 25,000 cops on the beat. I am sure there are initiatives which others would want to push.

But, instead of trying to pass an omnibus bill—which we all know will be difficult, if not impossible—I think that we should keep our focus on a targetted, specific bill which keeps our focus on the most immediate concern: youth violence and the criminal victimization of youth.

I look forward to working with the administration and my Republican colleagues to craft responsible legislation that will address the pressing concerns of the American public and be signed into law during this session of Congress.

By Mr. HOLLINGS (for himself, Mr. INOUYE, and Mr. DORGAN):

S. 363. A bill to amend the Communications Act of 1934 to require that violent video programming is limited to broadcast after the hours when children are reasonably likely to comprise a substantial portion of the audience, unless it is specifically rated on the basis of its violent content so that it is blockable by electronic means specifically on the basis of that content; to the Committee on Commerce, Science, and Transportation.

THE CHILDREN'S PROTECTION FROM VIOLENT PROGRAMMING ACT

Mr. HOLLINGS. Mr. President, I rise to offer legislation that will help parents limit the amount of television violence coming into their homes. As my colleagues know well, Congress has been studying this issue for 40 years and the issues have not changed. Recent press reports continue to validate my concerns that all the talk and promises have yielded nothing but the status quo, and efforts to encourage the industry to police itself continue to yield meager results.

Enactment of the Telecommunications Act of 1996 marked the second time Congress has passed legislation to encourage the entertainment industry to limit the amount of violence seen on television. The first time was the effort in the late 1980's led by our former colleague from Illinois, Paul Simon. Senator Simon's approach, the Television Program Improvement Act, was designed to grant the industry a 3-year antitrust exemption to work together to adopt voluntary guidelines that would lead to reducing violence depicted in television programs. The result of this industry collaboration was announced in December 1992 with a statement of joint standards regarding the broadcasting of excessive television violence. In June 1993, the networks made a commitment that, before and during the broadcasting of programs that might contain excessive violence, the following announcement would be made: ''Due to some violent content, parental discretion is advised.'' The Independent Television Association, the trade group representing many of the television stations not affiliated with one of the networks, adopted a similar voluntary code. Subsequent studies detailed, however, that despite these voluntary guidelines, violence continued to rise.

In 1993, therefore, I introduced my safe harbor bill for the first time. The Commerce Committee held one hearing in the 103d Congress and a second hearing during the 104th. The Commerce Committee reported my bill, S. 470, by a vote of 16 to 1. The hearing record substantiates the constitutionality of my safe harbor approach, with both Attorney General Reno and Federal Communications Commission [FCC] Chairman Hundt on record as testifying that the safe harbor approach is constitutional. My efforts to bring my bill to the floor for a vote were repeatedly blocked.

The second time, Congress legislated in this area was last year when the so-called V-Chip provision was incorporated into the Telecommunications Act of 1996. I voted for this provision but had my doubts about its effectiveness. Once again, Congress relied on the industry to help parents limit the amount of violence. To make the V-chip work, the 1996 act encouraged the video programming industry to ''establish voluntary rules for rating video programming that contains sexual, violent or other indecent material about which parents should be informed before it is displayed to children,'' and to broadcast voluntarily signals containing these ratings.

Pursuant to the 1996 act, all segments of the entertainment industry created the TV ratings implementation group—ratings group, headed by the Motion Picture Association of America [MPAA] president Jack Valenti. The group devised an age-based ratings system—not a content-based system. The proposal has been met with widespread criticism as being too broad and vague for parents. I recommend that my colleagues read this past Saturday's New York Times February 22, 1997, to understand the confusion surrounding this issue. The age-based ratings system does not give parents sufficient information. Parents want the ability and the choice to block out specific content they find unsuitable for their children.

So, here we are. Congress passes legislation designed to limit the amount of television violence, again relying on the industry to act responsibly. The voluntary ratings system proposed by the industry, called the TV parental guidelines, consists of the following six age-based ratings:

TV–Y

All Children. This program is designed to be appropriate for all children. Whether animated or live action, the themes and elements in this program are specifically designed for a very young audience, including children from ages 2 through 6. This program is not expected to frighten younger children.

TV–Y7

Directed to older children. This program is designed for children age 7 and above. It may be more appropriate for children who have acquired the developmental skills needed to distinguish between make-believe and reality. Themes and elements in this program may include mild physical or comedic violence, and may frighten children under the age of 7. Therefore, parents may wish to consider the suitability of this program for their very young children.

TV-G

General Audience. Most parents would find this program suitable for all ages. Although this rating does not signify a program designed specifically for children, most parents may let younger children watch this program unattended. It contains little or no violence, no strong language and little or no sexual dialogue or situations.

TV-PG

Parental Guidance Suggested. This program may contain some material that some parents would find unsuitable for younger children. Many parents may want to watch it with their younger children. The theme itself may

call for parental guidance. The program may contain infrequent coarse language, limited violence, some suggestive sexual dialogue and situations.

TV–14

Parents Strongly Cautioned. This program may contain some material that many parents would find unsuitable for children under 14 years of age. Parents are strongly urged to exercise greater care in monitoring this program and are cautioned against letting children under the age of 14 watch unattended. This program may contain sophisticated themes, sexual content, strong language, and more intense violence.

TV-M

Mature Audience Only. This program is specially designed to be viewed by adults and therefore may be unsuitable for children under 17. This program may contain mature themes, profane language, graphic violence, and explicit sexual content.

I ask my colleagues, how will parents be able to block out a specific violent program based on this system?

There are several problems with this approach.

The 1996 Act envisioned that the ratings system, and consequently, the encoded programming, would allow parents to block specific programming content they found objectionable. Under the proposed age-based ratings system, parents are unable to block specific violent programming. The proposed age-based ratings place the entertainment industry in the position of making the judgment about program suitability—not the parent. Moreover, one of the biggest problems with the proposed age-based ratings system is that it intermingles three types of programming content: violence, sexual material, and adult language. Thus it prevents parents from gaining any specific information about whether or not a show actually contains any violent depictions.

The National PTA, the American Medical Association [AMA], the American Academy of Pediatrics [AAPA], the National Education Association [NEA], Children Now, the American Psychological Association [APA], the Coalition for America's Children, the Children's Defense Fund, the American Academy of Child & Adolescent Psychiatry [AACAP], the Family Research Council, the Foundation to Improve Television, and the Center for Media Education all have criticized the age-based ratings systems. Instead, they advocate ratings based on specific program content. These groups have criticized the proposed age-based ratings as too vague and broad for parents to decide what is right for their child to watch in their own home. In addition, the groups state that the ratings raise more questions than they answer.

The AACAP was particularly critical of the ratings system, stating that:

Programs portraying graphic and realistically appearing violence, sex, horror, adult language, and illegal behavior without social consequences increase the risk of dangerous behaviors and aberrant emotional and intellectual development by children and adolescents. . . . An age-based system, such as the one now being proposed, carries the risk of missing significant developmental variations in young people.

The V-chip legislation was intended to empower parents with the ability to block out objectionable content-specific programming. The ratings system does not accomplish this objective. To correct this, I have decided to reintroduce my safe harbor legislation with the addition of a new provision. The new version requires confining the distribution of violent programming to hours of the day when children are not likely to comprise a substantial portion of the audience unless the broadcasters adopt a content-specific ratings system that allows parents to block out violent programming. If the industry continues to insist upon the age-based ratings, then my safe harbor would apply for violent programming. It's a very simple proposition. Either the intent of the 1996 law is met and parents can block out objectionable content, or my safe harbor will ensure that violent programming is aired at hours later in the day to protect children from the harmful effects of violent programming.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 363

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 ''Children's Protection from Violent Programming Act''.

SEC. 2. UNLAWFUL DISTRIBUTION OF VIOLENT VIDEO PROGRAMMING.

Title VII of the Communications Act of 1934 (47 U.S.C. 701 et seq.) is amended by adding at the end the following:

''SEC. 718. UNLAWFUL DISTRIBUTION OF VIOLENT VIDEO PROGRAMMING NOT SPECIFICALLY BLOCKABLE BY ELECTRONIC MEANS.

''(a) UNLAWFUL DISTRIBUTION.—It shall be unlawful for any person to distribute to the public any violent video programming not blockable by electronic means specifically on the basis of its violent content during hours when children are reasonably likely to comprise a substantial portion of the audience.

''(b) RULEMAKING PROCEEDING.—The Commission shall conduct a rulemaking proceeding to implement the provisions of this section and shall promulgate final regulations pursuant to that proceeding not later than 9 months after the date of enactment of the Children's Protection from Violent Programming Act. As part of that proceeding, the Commission—

''(1) may exempt from the prohibition under subsection (a) programming (including news programs and sporting events) whose distribution does not conflict with the objective of protecting children from the negative influences of violent video programming, as that objective is reflected in the findings in section 551(a) of the Telecommunications Act of 1996;

''(2) shall exempt premium and pay-per-view cable programming; and

''(3) shall define the term 'hours when children are reasonably likely to comprise a substantial portion of the audience' and the term 'violent video programming'.

''(c) REPEAT VIOLATIONS.—If a person repeatedly violates this section or any regulation promulgated under this section, the Commission shall, after notice and opportunity for hearing, immediately revoke any license issued to that person under this Act.

''(d) CONSIDERATION OF VIOLATIONS IN LICENSE RENEWALS.—The Commission shall consider, among the elements in its review of an application for renewal of a license under this Act, whether the licensee has complied with this section and the regulations promulgated under this section.

''(e) DEFINITIONS.—For purposes of this section—

''(1) BLOCKABLE BY ELECTRONIC MEANS.—The term 'blockable by electronic means' means blockable by the feature described in section 303(x).

''(2) DISTRIBUTE.—The term 'distribute' means to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire, microwave, or satellite.''.

SEC. 3. ASSESSMENT OF EFFECTIVENESS.

(a) REPORT.—The Federal Communications Commission shall—

(1) assess the effectiveness of measures undertaken under section 718 of the Communications Act of 1934 (47 U.S.C. 718) and under subsections (w) and (x) of section 303 of that Act (47 U.S.C. 303(w) and (x)) in accomplishing the purposes for which they were enacted; and

(2) report its findings to the Committee on Commerce, Science, and Transportation of the United States and the Committee on Commerce of the United States House of Representatives, with 18 months after the date on which the regulations promulgated under section 718 of the Communications Act of 1934 (as added by section 2 of this Act) take effect, and thereafter as part of the biennial review of regulations required by section 11 of that Act (47 U.S.C. 161).

(b) ACTION.—If the Commission finds at any time, as a result of its assessment under subsection (a), that the measures referred to in subsection (a)(1) are insufficiently effective, then the Commission shall initiate a rulemaking proceeding to prohibit the distribution of violent video programming during the hours when children are reasonably likely to comprise a substantial portion of the audience.

(c) DEFINITIONS.—Any term used in this section that is defined in section 718 of the Communications Act of 1934 (47 U.S.C. 718), or in regulations under that section, has the same meaning as when used in that section or in those regulations.

SEC. 4. SEPARABILITY.

If any provision of this Act, or any provision of an amendment made by this Act, or the application thereof to particular persons or circumstances, is found to be unconstitutional, the remainder of this Act or that amendment, or the application thereof to other persons or circumstances shall not be affected.

SEC. 5. EFFECTIVE DATE.

The prohibition contained in section 718 of the Communications Act of 1934 (as added by section 2 of this Act) and the regulations promulgated thereunder shall take effect 1 year after the regulations are adopted by the Commission.

By Mr. LIEBERMAN (for himself, Mr. MCCAIN, Mr. LOTT, Mr. ASHCROFT, Mr. GORTON, Mrs. FEINSTEIN, Mr. GREGG and Mr. FRIST):

S. 364. A bill to provide legal standards and procedures for suppliers of raw materials and component parts for medical devices; to the Committee on Commerce, Science, and Transportation.

THE BIOMATERIALS ACCESS ASSURANCE ACT OF 1997

Mr. LIEBERMAN. Mr. President, I am introducing today, together with Senator MCCAIN and a number of other Senators from both sides of the aisle, the Biomaterials Access Assurance Act of 1997. This bipartisan bill responds to a looming crisis affecting more than 7 million patients annually who rely on implantable life-saving or life-enhancing medical devices such as pacemakers, heart valves, artificial blood vessels, hydrocephalic shunts, and hip and knee joints. These patients are at risk of losing access to the devices on which their lives and well-being depend because, as a result of actual and potential skyrocketing legal costs, the companies that supply the raw materials without which those devices cannot be made are simply refusing to sell their raw materials to device manufacturers. If we do not act soon, makers of the life-saving medical devices that we take for granted today may no longer able to buy the raw materials and components necessary to produce their products, and the public health may be seriously jeopardized. By taking the small step Senator MCCAIN and I propose today, millions of Americans will no longer have to worry about losing access to the life-saving medical devices on which they depend.

The reason for this impending crisis is an all too common one: an out-of-control product liability system. During hearings I held in 1994, as chairman of the Subcommittee on Regulation and Government Information, and again during hearings held by the Commerce Committee last Congress, we heard the same story from witness after witness. They all explained that the current legal system makes it too easy to bring lawsuits against raw materials suppliers and too expensive for those suppliers to defend themselves—even when the suppliers are not at fault and end up winning, as they virtually always do. According to one study, only three out of hundreds of liability cases brought against a raw material supplier led to a finding of wrongdoing against the supplier. Nevertheless, in all of those cases, the suppliers had to spend enormous amounts of money to defend themselves—often much more than the supplier ever profited from its sale of the raw materials. Many suppliers consequently have made the entirely rational decision that the costs of defending these lawsuits are just too high to justify selling raw materials to the makers of implantable medical devices. In short, for those suppliers, it just isn't worth it.

How could this happen? A study by Aranoff Associates paints a clear, but dismal, picture. That study surveyed the markets for polyester yarn, resins such as DuPont's Teflon, and polyacetal resin such as DuPont's Delrin. The study showed that sales of these raw materials for use in manufacturing implantable medical devices was just a tiny percentage of the overall market—$606,000 out of total sales of over $11 billion, or just 0.006 percent. In return for that extra $606,000 in total annual sales, however, that raw material supplier, like others, faced potentially huge liability related costs, even if they never lost a lawsuit.

To take one example, a company named Vitek manufactured an estimated 26,000 jaw implants using about 5-cents worth of DuPont Teflon in each device. The device was developed, designed, and marketed by Vitek, which was not related to DuPont. When those implants failed, Vitek declared bankruptcy, its founder fled to Switzerland, and the patients sued DuPont. DuPont has won virtually all these cases, but the cost has been staggering. The study estimated that DuPont spent at least $8 million per year over 6 years to defend these suits. To put this into perspective, DuPont's estimated legal expenses in these cases for just 1 year would have bought over a 13-year supply of DuPont's Dacron polyester, Teflon, and Delrin for all U.S. makers of implantable medical devices, not just makers of jaw implants. Faced with this overwhelming liability, DuPont decided to stop selling its products to manufacturers of permanently implanted medical devices.

One supplier's decision alone might not be troublesome, but it is not just one supplier that has reached that decision. When I rose during the debate over the product liability bill last year, I put in the record the names of twelve suppliers who had withdrawn from the biomaterials market. Since then, I have learned that at least two more suppliers have done the same. There is no reason to believe that the economics will be different for other suppliers around the world. One of the witnesses at our 1994 hearing testified that she contacted 15 alternate suppliers of polyester yarn worldwide. All were interested in selling her raw materials—except for use in products made and used in the United States. By itself, this is a powerful statement about the nature of our American product liability laws, and it makes a powerful case for reform.

What's at stake here, let me be clear, is not protecting suppliers from liability and not even just making raw materials available to the manufacturers of medical devices. What's at stake is the health of millions of Americans who depend on medical devices for their everyday survival. What's at stake is the health of children like Thomas Reilly from Houston, TX, who suffers from hydrocephalus, a condition in which fluid accumulates around the brain. A special shunt enables him to survive. But continued production of that shunt is in doubt because the raw materials' suppliers are concerned about the potential lawsuit costs. At our hearing in 1994, Thomas' father, Mark Reilly, pleaded for Congress to move forward quickly to assure that the supply of those shunts will continue.

What's at stake is the health of adults like Peggy Phillips of Falls Church, VA, whose heart had twice stopped beating because of fibrillation. Today, she lives an active, normal life because she has an implanted automatic defibrillator. Again, critical components of the defibrillator may no longer be available because of potential product liability costs. Ms. Phillips urged Congress to move swiftly to enact legislation protecting raw materials and component part suppliers from product liability.

The scope of this problem affects young and old alike. Take a pacemaker. Pacemakers are installed in patients whose hearts no longer generate enough of an electrical pulse to get the heart to beat. To keep the heart beating, a pacemaker is connected to the heart with wires. These wires have silicone rubber insulation. Unfortunately, the suppliers of the rubber have begun to withdraw from the market. With this pacemaker, thousands of Americans can live productive and healthy lives for decades.

Take another example, a heart valve. Around the edge of a heart valve is a sleeve of polyester fabric. This fabric is what the surgeon sews through when he or she installs this valve. Without that sleeve, it would be difficult, if not impossible, to install the valve. Without that valve, patients die prematurely.

In short, this developing product liability crisis will have widespread and serious effects. We cannot simply allow the over 7 million people who owe their health to medical devices to become casualties of an outmoded legal liability system. Because product liability litigation costs make the economics of supplying raw materials to the implantable medical device makers very unfavorable, it is imperative that we act now. We cannot rationally expect raw materials suppliers to continue to serve the medical device market out of the goodness of their hearts, notwithstanding the liability related costs. We need to reform our product liability laws, to give raw material suppliers some assurance that unless there is real evidence that they were responsible for putting a defective device on the market, they cannot be sued simply in the hope that their deep pockets will fund legal settlements.

I have long believed that liability reform could be both proconsumer and probusiness. I believe the testimony we heard on this subject during the past two Congresses proved this once again. When fear of liability suits and litigation costs drives valuable, lifesaving products off the market because their makers cannot get raw materials, consumers are the ones to suffer. When

companies divert money from developing new lifesaving products to replace old sources of raw materials supplies, consumers are again the ones to suffer. When one company must spend millions just to defend itself in lawsuits over a product it did not even design or make—for which it simply provided a raw material worth 5 cents—it is the consumer that suffers the most.

Based on the testimony we heard in 1994, I, along with my distinguished colleague from Arizona, committed to forging a solution to remedy this immediate threat to our national public health. That year, and again in the 104th Congress, we introduced the Biomaterials Access Assurance Act, which we reintroduce again today. This bill will establish clear national rules to govern suits against suppliers of raw materials and component parts for permanently implantable medical devices. Under this bill, a supplier of raw materials or component parts could be sued only if the materials they supplied do not meet contractual specifications, or if they properly can be classified as a manufacturer or seller of the whole product. They could not, however, be sued for deficiencies in the design of the final device, the testing of that device, or for inadequate warnings with respect to that device.

Our colleagues recognized the need for that bill last year, and so passed it as part of the 104th Congress' product liability reform bill. Unfortunately, President Clinton vetoed that bill, but in his message to Congress, he made clear that he viewed the biomaterials provision portion of it as, in his words, ''a laudable attempt to ensure the supply of materials needed to make lifesaving medical devices.'' We hope that he continues to see the provision in that light.

I believe that enactment of this bill would help ensure that America's patients continue to have access to the best lifesaving medical devices in the world. We must act now, however. This piece of legislation is preventative medicine at its best and is just the cure the patients need.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 364

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 ''Biomaterials Access Assurance Act of 1997''.

SEC. 2. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term ''biomaterials supplier'' means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf of or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR OR INCOMPETENT.—With respect to an action brought on behalf of or through a minor or incompetent, such term includes the parent or guardian of the minor or incompetent.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional health care services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services;

(ii) a person acting in the capacity of a manufacturer, seller, or biomaterials supplier; or

(iii) a person alleging harm caused by either the silicone gel or the silicone envelope utilized in a breast implant containing silicone gel, except that—

(I) neither the exclusion provided by this clause nor any other provision of this Act may be construed as a finding that silicone gel (or any other form of silicone) may or may not cause harm; and

(II) the existence of the exclusion under this clause may not—

(aa) be disclosed to a jury in any civil action or other proceeding; and

(bb) except as necessary to establish the applicability of this Act, otherwise be presented in any civil action or other proceeding.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term ''component part'' means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant non-implant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term ''harm'' means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term ''implant'' means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term ''manufacturer'' means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1)) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term ''medical device'' means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) and includes any device component of any combination product as that term is used in section 503(g) of such Act (21 U.S.C. 353(g)).

(8) RAW MATERIAL.—The term ''raw material'' means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(9) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(10) SELLER.—

(A) IN GENERAL.—The term ''seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 4. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this Act, a biomaterials supplier may raise any defense set forth in section 5.

(2) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this Act is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 6.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this Act applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this Act; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this Act establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this Act and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 5. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section;

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so; or

(C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section 6(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 6, that it is necessary to impose liability on the biomaterials supplier as a manufacturer because the related manufacturer meeting the requirements of subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if—

(1) the biomaterials supplier—

(A) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(i) the manufacture of the implant; and

(ii) the entrance of the implant in the stream of commerce; and

(B) subsequently resold the implant; or

(2) the biomaterials supplier is related by common ownership or control to a person meeting all the requirements described in paragraph (1), if a court deciding a motion to dismiss in accordance with section 6(c)(3)(B)(ii) finds, on the basis of affidavits submitted in accordance with section 6, that it is necessary to impose liability on the biomaterials supplier as a seller because the related seller meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j), and received clearance from the Secretary if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 6. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this Act, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action against it on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 5(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 5(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B)(i) the claimant has failed to establish, pursuant to section 5(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(2) an action against the manufacturer is barred by applicable law.

(c) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 5(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 5(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2)(B)(i) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATUS OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 5 on the grounds that the defendant is not a manufacturer subject to such section 5(b) or seller subject to section 5(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 5(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 5(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 5(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists as to the applicable elements set forth in paragraphs (1) and (2) of section 5(d).

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 5(d) or the failure to establish the applicable elements of section 5(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 5(b)(3)(A) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this Act shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 7. APPLICABILITY.

This Act shall apply to all civil actions covered under this Act that are commenced on or after the date of enactment of this Act, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before the date of enactment of this Act.

Mr. McCAIN. Mr. President, Senator LIEBERMAN and I are here to announce the introduction of bipartisan legislation to address a health care crisis facing over 7 million Americans who each year receive life-saving or life-enhancing medical implants. The availability of these implants is jeopardized because the suppliers of raw materials used in the implants can no longer afford to expose themselves to the ridiculous and unjust litigation costs that can result from doing business with implant makers.

The problem is that, in the quest for a deep pocket, biomaterials suppliers are roped into product liability lawsuits concerning the implant even though those suppliers are not involved in the design, sale or manufacture of the implant. Biomaterials suppliers just provide raw materials used in the production of vital medical devices such as brain shunts, pacemakers, and artificial joints.

In virtually every case, biomaterials suppliers are not found liable in these lawsuits. Unfortunately, the massive cost of defending these lawsuits often overwhelms the relatively small

amount of revenue biomaterials suppliers receive through the sale of their product to implant makers. As one might expect, biomaterials suppliers are deciding they cannot risk financial ruin to supply biomaterials.

This bill, the Biomaterials Access Assurance Act of 1997, shields biomaterials suppliers from the crushing costs of unwarranted litigation. The bill simply permits suppliers of biomaterials to be quickly dismissed from a lawsuit if they did not manufacture or sell the implant and if they met the contract specifications for the biomaterial. This bill will not prohibit someone who has been injured from filing a lawsuit and recovering damages.

This legislation is critically important to saving lives. In 1995, Tara Ransom, a young girl from Arizona, wrote me a letter indicating her concern that she would die because a new brain shunt would not be available for her. Tara has a life-threatening condition called hydrocephalus where excess fluid builds up on the brain. Without a silicone-based brain shunt to drain the fluid build-up, the pressure would likely kill Tara.

The supplier of the silicone for Tara's brain shunt has indicated they must withdraw from the biomaterials market due to the risk of unwarranted litigation. Thirteen other companies have also indicated they will no longer supply biomaterials due to concerns about unwarranted litigation.

We cannot let this insanity continue. Lives are at stake, and we have a moral duty to Tara and the thousands of others whose lives are at stake to pass this litigation.

Mr. LOTT. Mr. President, I am pleased today to join with my colleagues, Senator MCCAIN and Senator LIEBERMAN, in supporting biomaterials access assurance legislation to confront a looming health care crisis in our country.

This legislation is of vital importance to the 8 million Americans who require life-saving and life-enhancing implantable medical devices. Most of us have a family member or friend who has benefitted from these wondrous products. The availability of the biomaterials necessary for medical device production is critical to the health of millions of Americans. The ramifications of unavailability are severe and, in the end, it is those in need of the devices who will suffer the most.

This bill helps to curtail the impending health crisis by encouraging suppliers of raw materials and component parts to re-enter the medical implant market. Under the bill's provisions, a supplier of raw materials and/or component parts cannot be sued for design or manufacturing deficiencies of the final product unless the supplier can properly be classified as the designer, manufacturer or seller of the product as a whole.

In recent years, and due in no small part to the prospect of derivative participation in broad-based lawsuits, major biomaterial suppliers have expressed their intent to limit or cease their shipments to manufacturers in the medical implant device market. Often, such a supplier has minimal or no knowledge or control of the design, manufacture or sale of an implant device. Nonetheless, under current product liability law, such a supplier can be named as a defendant in a product liability lawsuit based on the design, manufacture and sale of the device itself. And, although suppliers have been found not liable in the overwhelming number of such lawsuits, they must give great consideration to potential damage verdicts and the oppressive financial burden of lawsuit defense costs before deciding to supply manufacturers with raw materials and component parts.

The detrimental effects of the biomaterials shortage are beginning to take their toll.

Although the United States has been a leader in the medical implant field, that may change as our ability to focus on new technologies and to contribute funds to research and development is impaired by the diversion of available resources now directed to the search for and qualification of alternative biomaterials suppliers.

As medical device manufacturers find it increasingly difficult to obtain needed raw materials and component parts, the industry's research and development resources, otherwise devoted to improving existing health care technologies, are drained and redirected to ensure material availability to meet current production demand. In some instances, no alternative sources for materials are found to exist.

Just as many suppliers cannot afford the risk of liability suits, many manufacturers cannot afford the terms of indemnification contracts required by suppliers. Consider the case of Baxter Healthcare Corp., which operates a manufacturing plant in Cleveland, MS, employing approximately 1,000 people. A major manufacturer of life-saving and life-enhancing implantable medical devices such as heart valves, sewing rings, and left ventricular assist devices, Baxter is highly dependent upon medical-grade biomaterials for production.

In facing a future based upon operation within this shortage scenario, Baxter is now diverting millions of dollars from research and development to fund its quest for finding alternative materials. Like manufacturers in other parts of the country, Baxter is dealing with suppliers that are faced with product liability risks that far exceed the benefit gained in dealing with a medical device manufacturer.

For example, Baxter needed to purchase resin—less than 10 pounds a year—with a cost on the open market of less than $3 per pound. The supplier required an iron-clad indemnification contract before the materials could be sold to Baxter, and also demanded an annual fee of nearly $100,000 over and above normal material costs for continued use of the material—in other words, a surcharge for the risk associated with potential liability.

This drain on manufacturers, as well as the uncertainty of obtaining any materials for the manufacture of their products, is directly attributable to the biomaterials shortage.

Mr. President, the stability of the manufacturing process is in constant peril, and patients' lives hang in the balance. Let's act to limit liability to instances of genuine fault, and not encourage more frivolous lawsuits where they are, in fact, so often detrimental to consumer interests.

It is my hope that the Senate will recognize the seriousness of the biomaterials shortage and that we will support this effort to encourage suppliers to re-enter the medical device market and to ensure that patients have available these critical, often life-saving options.

Thank you, Mr. President, for the opportunity to articulate the urgency and criticality of this legislation.

By Mr. COVERDELL:

S. 365. A bill to amend the Internal Revenue Code of 1986 to provide for increased accountability by Internal Revenue Service agents and other Federal Government officials in tax collection practices and procedures, and for other purposes; to the Committee on Finance.

By Mr. COVERDELL (for himself, Mrs. HUTCHISON, Mr. MCCAIN, Mr. FAIRCLOTH, Mr. KYL, Mr. THOMAS, and Mr. INHOFE):

S. 366. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to prohibit the consideration of retroactive tax increases; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, that if one Committee reports, the other Committee have 30 days to report or be discharged.

By Mr. COVERDELL (for himself, Mr. ABRAHAM, Mrs. HUTCHISON, Mr. MCCAIN, Mr. KYL, Mr. FAIRCLOTH, and Mr. INHOFE):

S.J. Res. 17. A joint resolution proposing an amendment to the Constitution of the United States to prohibit retroactive increases in taxes; to the Committee on the Judiciary.

TAX REFORM LEGISLATION

Mr. COVERDELL. Mr. President, today I rise to offer a tax reform package to provide greater tax fairness and to protect citizens from Internal Revenue Service—IRS—abuses. This package includes three initiatives: a constitutional amendment called the retroactive tax ban amendment, a bill to establish a new budget point of order against retroactive taxation, and the Internal Revenue Service Accountability Act.

The first, the retroactive tax ban amendment, is a constitutional amendment to prevent the Federal Government from imposing any tax increase

retroactively. The amendment states simply ''No Federal tax shall be imposed for the period before the date of enactment.'' We have heard directly from the taxpayers, and looking backward for extra taxes is unacceptable. It is not a fair way to deal with taxpayers.

In addition, I am introducing a bill that would create a point of order under the Budget Act against retroactive tax increases. Because amending the Constitution can be a very long prospect—just look at the decades-long effort on behalf of the balanced budget amendment—I believe this legislation is necessary to provide needed protection for American families from the destabilizing effects of retroactive taxation.

It was clear to Thomas Jefferson that the only way to preserve freedom was to protect its citizens from oppressive taxation. Even the Russian Constitution does not allow you to tax retroactively. Retroactive taxation is wrong, and it is morally incorrect.

Families and businesses and communities must know what the rules of the road are and that those rules will not change. They have to be able to plan their lives, plan their families, and plan their tax burdens in advance. They cannot come to the end of a year and have a Congress of the United States and a President come forward and say, ''All your planning was for naught, and we don't care.''

Mr. President, my third proposal is the Internal Revenue Service Accountability Act. It is wide-ranging and deals with a number of faults within the IRS that I have become aware through my constituent services work and through discussions with everyday Americans. Whenever I travel through my State, or across the Nation for that matter, concerns inevitably are raised about the IRS. This agency seems to believe the vast majority of American taxpayers are looking to cheat the Government. Instead, I believe American taxpayers are honest and hardworking, and they deserve to be treated accordingly.

Our Nation suffers under an unfair and incomprehensible tax code that takes far too much of what we earn. Even worse, the organization responsible for enforcement of the tax code—the IRS—often seeks to intimidate and frighten honest citizens. We cannot tolerate a Tax Code that punishes families, and we cannot tolerate an IRS eager to bully and harass taxpayers.

Let me briefly outline my proposal. First, the IRS Accountability Act would make agents of the IRS responsible for their actions. My legislation would make it a crime for an agent to use extortion-like tactics when collecting a tax. Agents must know there are real consequences for their actions. When they abuse their authority by maliciously and willfully disregarding the statutory procedures established for collecting taxes from honest taxpayers, they must be held accountable.

In addition, this legislation would lift the current shield protecting IRS agents from holding any personal liability for their actions in the course of collecting a tax. I was surprised to learn that this shield remains in place even when their abusive actions result in judgments against the United States for hundreds of thousands of dollars. How ironic that American taxpayers end up footing the bill for the abuses they suffer. My legislation would end this intolerable arrangement.

My legislation also protects the privacy of taxpayers. A few years back, I was shocked to learn that nearly 370 employees of the Atlanta IRS office were caught accessing the tax returns and return information of friends, neighbors, and celebrities without proper authorization. They were file snooping. The IRS Accountability Act would make this activity a crime and allows the offender to be held personally liable.

Further, my legislation requires notification of any taxpayer who suffers this abuse. Unfortunately, what should seem to be a simple matter of decency must be required of the IRS. In response to suggestions taxpayers be notified when their privacy has been invaded by file snoopers, IRS Commissioner Margaret Richardson stated, ''I'm not sure there would be serious value to that in terms of protecting the taxpayers' rights.'' With all respect, such sentiment is typical of a Washington status quo mentality that is out-of-touch with the rest of America.

Recent reports in the press suggesting the IRS has been conducting audits for political reasons, add weight to the need for limitations on this activity. The IRS Accountability Act requires that all audits be reasonably justified. It also prohibits random audits and reauditing of returns or issues of a return unless approved by court order in the course of a criminal investigation. Further, the IRS will be limited explicitly to 3 years from the time a return is filed in which to conduct an audit unless approved by court order in the course of a criminal investigation.

The IRS Accountability Act also would extend the time responsible taxpayers have to pay a tax without suffering a penalty. I could not say how often I hear complaints about the inaccessibility of the IRS. Time and time again, taxpayers cannot get answers from the IRS or even speak with a customer service agent.

According to the IRS Taxpayer Advocate's recent report, one of the most common complaints against the IRS is its failure to acknowledge taxpayer correspondence.

The IRS's only responses seems to be more threats and higher penalties. The IRS Accountability Act will help taxpayers by offering some needed relief.

This legislation also preserves the integrity of judicial decisions against the IRS. This section grants a Federal court the authority to dismiss a case of controversy involving the IRS if it is shown that a similar or identical case already has been decided within the court's jurisdiction or circuit. The IRS places itself above our Federal judiciary and will choose to disregard a court decision in subsequent cases when it believes the court's decision is in error. This arrogance must be held in check.

Mr. President, this legislation would place limits I believe are needed on the IRS when it seizes or levies assets. How many times have we heard press reports that a child's earnings from a paper route has been seized or that a child's pennies have been taken to pay the tax bill of a relative.

In Georgia, I recently learned of an instance where the care and health of an elderly nursing home patient was jeopardized by the IRS when it seized her account to pay the tax bill of a relative. Even though it was well documented that the account contained only her Social Security benefits and were used to pay for her care, the IRS refused to relent until my office interceded. In addition, we have heard numerous examples where assets have been taken erroneously. My legislation would ensure that all levies and seizures are proper under the law and are warranted by requiring the IRS to obtain prior court approval.

My legislation also places what I believe are reasonable limits on the accrual of interest and penalties. Specifically, it would decouple the two, preventing interest from accruing on the penalty portion of an unpaid tax bill.

Keep in mind the IRS' track record on responding to taxpayers. According to the IRS Taxpayer Advocate, it isn't good. Now add the following to the mix: interest on the unpaid tax, penalties on the unpaid tax, and interest on the penalty on the unpaid tax. If a hardworking taxpayer is unfortunate enough to run afoul of the IRS, before he or she knows it, the tax bill has doubled, even tripled. For too many taxpayers, when they become aware a problem exists, their bill has turned into a burden they cannot hope to pay.

Further, this legislation would equalize the interest rates charged by the IRS and against the IRS. Current law gives the IRS an advantage in interest charges over taxpayers. I believe this is predicated on the assumption that the Federal Government is more entitled to a taxpayer's income than the taxpayer. Nothing should be farther from the truth. Requiring equal rates to be charged will provide equity and bring to a close another instance where Washington thinks it knows best with what to do with families' income.

Finally, the IRS Accountability Act provides fairness in cases of mathematical and clerical errors. For honest mistakes, the taxpayer should have an opportunity to correct it without getting slapped by a tax bill full of interest and penalty charges. Under my legislation, a taxpayer would have a 60-day grace period after notification in which to pay the unpaid tax or to file

an abatement request without incurring penalty or interest charges. However, should the 60-day period elapse without the taxpayer selecting either option, penalties and interest would be owed in full.

In closing, Mr. President, let me say what I have stated many times before on the floor of the Senate. American families already send 55 percent of their income to government in the form of taxes and other costs. Out of the remaining 45 percent, we expect them to clothe, feed, house, educate, and otherwise raise America.

We also know that if things do not change, future generations will face a lifetime tax rate of 84 percent. Already, families are bullied and harassed by an agency eager to intimidate. How much farther would the IRS be willing to go to collect an 84 percent tax burden? The time has come to bring reason to the IRS. I invite my colleagues to join me in this effort.

By Mr. WELLSTONE:

S. 367. A bill to amend the Family and Medical Leave Act of 1993 to allow leave to address domestic violence and its effects, and for other purposes; to the Committee on Finance.

BATTERED WOMEN'S EMPLOYMENT PROTECTION ACT

Mr. WELLSTONE. Mr. President, while we have begun to make important progress toward seriously addressing the devastating physical and emotional effects of domestic violence, little attention has been paid to the severe economic consequences of domestic abuse. The Battered Women's Employment Protection Act, which I am introducing today, will ensure eligibility for unemployment compensation to women who are separated from their jobs as a direct result of domestic violence. Several new studies illustrate the need for the legislation I am introducing today. The evidence is irrefutable, domestic violence dramatically affects women's ability to work and support themselves and their children.

According to New York City's Victims Service, one-quarter of battered women recently surveyed who have survived abuse had lost their jobs due to the effects of domestic violence.

Abusive husbands and partners harass 74 percent of employed battered women at work, either by showing up at the workplace or calling them at work. It is not unusual for women in abusive relationships to be late for work at least 5 times a month, to leave early at least 5 times a month, and to miss at least 3 full days of work a month—National Work-place Resource Center on Domestic Violence.

There have been cases brought to my attention in my home State of Minnesota where the women trying to escape abusive relationships could have benefited from this legislation, and we know that, sadly, there are many more such stories throughout the country.

On February 12, 1997, a woman came into the Women's Rural Advocacy Program in Marshall, MN, after her partner had emotionally, verbally, and physically assaulted her. After many years of fighting, her abuser finally let her get a drivers license and a car. His motivation for allowing her to do this was that she could get a job, resulting in more money for himself. Three months into her job, her partner assaulted her and she was in need of safe housing and constant protection. Because of the fear of her abuser finding her and her child, it was not safe for her to take their child to daycare, so she was unable to get to work. Seeing that this was a new job, she did not have any vacation days she could use.

Her abuser soon found out where she was located. She panicked and took her child and left the shelter, presumably the city, her friends, and her job. The shelter advocate we spoke to had no idea where she went, but was sure she had no money, very little clothes, and no car.

A woman, known as Sarah, is a 34-year-old college educated mother of 5 children, all under the age of 12. Sarah and her husband of 15 years had a successful market research company. Their combined salaries totaled over $225,000. The husband was the president of the company, Sarah the vice president. They were equal share holders in the company until Sarah came in contact with law enforcement and the Lewis House Shelter due to her hospitalization for extensive injuries suffered at the hands of her abusive husband.

Sarah admits that the abuse has gone on for years. She filed for an order of protection, filed assault charges, and filed for divorce. Her husband then fired Sarah from the company they started. Her lawyer tells Sarah that she can sue for her position to be reinstated in the company. Sarah knows she is not safe and that nothing can protect her or her children from the repeated pattern of abuse. She is faced with the loss of her position, her income, legal fees, medical bills, as well as the foundation of her children's lives.

It took Sarah 6 months to find a full-time position. She has supported herself by using credit cards she maintained in her own name. She begins her new life with $30,000 of new debt. Her batterer maintains his company today, with no loss of position and an increase in income.

For women attempting to escape a violent environment, this legislation can be a lifeline.

There has been great progress in the last few years in societal and legislative response to violence within the home. One area that has not been sufficiently addressed, in my opinion, is the economic cost of domestic abuse.

The Bureau of National Affairs recently estimated that domestic violence costs employers between 3 and 5 billion dollars per year. Domestic violence results in lower productivity, greater absenteeism, and increased health costs.

The National Institute for Justice estimates that from 1987 to 1990, domestic violence cost Americans $67 billion a year.

According to annual estimates for reported domestic violence injuries, family violence exacts a significant economic toll on the well-being of the family, and the United States.

Forty-four million, three hundred ninety-three thousand, seven hundred dollars total annual medical costs, 21,000 hospitalizations, 28,700 emergency room visits, and 175,000 days lost from work.

In addition—50 to 80 percent of women on AFDC are victims or past victims of domestic violence (Taylor Institute Study, 1996). One year after divorce, women's incomes average only 67 percent of their pre-divorce incomes compared to 90 percent for men (Report of the American Psychological Association Presidential Task Force on Violence and the Family, 1996).

The Battered Women's Employment Protection Act will help women retain employment and financial independence by ensuring that employed victims of domestic violence can have time off from work to make necessary court appearances, seek legal assistance, and get help with safety planning, without penalty from the employer.

This bill enables employees to use their family, medical, sick, and other leave in order to deal with circumstances arising from domestic abuse.

Circumstances that would allow an employee to take leave include going to the doctor for injuries caused by domestic violence, seeking legal remedies such as going to court, seeking orders of protection, or meeting with a lawyer.

Current Federal and State laws fail to address the negative economic consequences domestic violence can cause. Today, battered women are not expressly allowed to take leave from work to address the consequences of family violence—both the physical and legal effects. This bill will help women to escape abusive situations by helping them retain employment and financial independence. And, by requiring employers to provide leave to employees for the purpose of dealing with domestic violence and its aftermath—it does not increase costs to employers, it permits employees to use their existing leave to deal with domestic violence.

Furthermore, to ensure that battered women can retain the independence necessary to leave their abusers without having to rely on welfare, the bill requires that States provide unemployment benefits to women who are forced to leave work as a result of domestic abuse. The bill ensures eligibility for unemployment compensation to women who are separated from their jobs as a direct result of domestic violence. For example, victims of abuse could not be denied unemployment if they were forced to leave their jobs because they had to relocate for safety

reasons. Similarly, a woman would be eligible for unemployment compensation if she was fired from her job because she repeatedly showed up late for work with physical signs of abuse or was excessively absent from work as a result of abuse. In addition, the bill provides for specialized training of personnel in assessing unemployment compensation claims based on domestic violence.

All of us here today are committed to doing what we can to help battered women and their children escape domestic violence. I urge my colleagues to join in this effort by cosponsoring the Battered Women's Employment Protection Act.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 367

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the ''Battered Women's Employment Protection Act ''.

(b) REFERENCE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.).

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) violence against women is the leading cause of physical injury to women, and the Department of Justice estimates that intimate partners commit more than 1,000,000 violent crimes against women every year;

(2) approximately 95 percent of the victims of domestic violence are women;

(3) in the United States, a woman is more likely to be assaulted, injured, raped, or killed by a male partner than by any other type of assailant;

(4) the Bureau of Labor Statistics predicts that women will account for two-thirds of all new entrants into the workforce between now and the year 2000;

(5) violence against women dramatically affects women's workforce participation, insofar as one-quarter of the battered women surveyed had lost a job due at least in part to the effects of domestic violence, and over one-half had been harassed by their abuser at work;

(6) a study by Domestic Violence Intervention Services, Inc found that 96 percent of employed domestic violence victims had some type of problem in the workplace as a direct result of their abuse or abuser;

(7) the availability of economic support is a critical factor in a women's ability to leave abusive situations that threaten them and their children, and over one-half of the battered women surveyed stayed with their batterers because they lacked resources to support themselves and their children;

(8) a report by the New York City Victims Services Agency found that abusive spouses and lovers harass 74 percent of battered women at work, 54 percent of battering victims miss at least 3 days of work per month, 56 percent are late for work at least 5 times per month, and a University of Minnesota study found that 24 percent of women in support groups for battered women had lost a job partly because of being abused;

(9) a survey of State unemployment insurance agency directors by the Federal Advisory Council on Unemployment Compensation found that in 31 States battered women who leave work as a result of domestic violence do not qualify for unemployment benefits, in 9 States the determination often varies depending on the facts and circumstances, and in only 13 States are they usually considered qualified for unemployment benefits;

(10) a study by the New York State Department of Labor found that, when filing for unemployment insurance benefits, domestic violence victims frequently hide their victimization and do not disclose the domestic violence as a reason for their problems with the job or need to separate from employment;

(11) 49 percent of senior executives recently surveyed said domestic violence has a harmful effect on their company's productivity, 47 percent said domestic violence negatively affects attendance, and 44 percent said domestic violence increases health care costs, and the Bureau of National Affairs estimates that domestic violence costs employers between $3,000,000,000 and $5,000,000,000 per year; and

(12) existing Federal and State legislation does not expressly authorize battered women to take leave from work to seek legal assistance and redress, counseling, or assistance with safety planning and activities.

(b) PURPOSES.—Pursuant to the affirmative power of Congress to enact this Act under section 5 of the Fourteenth Amendment to the Constitution, as well as under clause 1 of section 8 of Article I of the Constitution and clause 3 of section 8 of Article I of the Constitution, the purposes of this Act are—

(1) to promote the national interest in reducing domestic violence by enabling victims of domestic violence to maintain the financial independence necessary to leave abusive situations, to achieve safety and minimize the physical and emotional injuries from domestic violence, and to reduce the devastating economic consequences of domestic violence to employers and employees, by—

(A) providing unemployment insurance for victims of domestic violence who are forced to leave their employment as a result of domestic violence; and

(B) entitling employed victims of domestic violence to take reasonable leave under the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) to seek medical help, legal assistance, counseling, and safety planning and assistance without penalty from their employer;

(2) to promote the purposes of the Fourteenth Amendment by protecting the civil and economic rights of victims of domestic violence and by furthering the equal opportunity of women to employment and economic self-sufficiency;

(3) to minimize the negative impact on interstate commerce from dislocations of employees and harmful effects on productivity, health care costs, and employer costs from domestic violence; and

(4) to accomplish the purposes described in paragraphs (1) , (2) and (3) in a manner that accommodates the legitimate interests of employers.

SEC. 3. UNEMPLOYMENT COMPENSATION.

(a) UNEMPLOYMENT COMPENSATION.—Section 3304(a) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''and'' at the end of paragraph (18);

(2) by striking the period at the end of paragraph (19) and inserting ''; and'';

(3) by adding after paragraph (19) the following:

''(20) compensation is to be provided where an individual is separated from employment due to circumstances directly resulting from the individual's experience of domestic violence.'';

(4) by redesignating subsections (b) through (f) as subsections (c) through (g), respectively, and

(5) by inserting after subsection (a) the following:

''(b) CONSTRUCTION.—

''(1) DIRECTLY RESULTING FROM VIOLENCE.—For the purpose of determining, under subsection (a)(20), whether an employee's separation from employment is 'directly resulting' from the individual's experience of domestic violence, it shall be sufficient if the separation from employment resulted from—

''(A) the employee's reasonable fear of future domestic violence at or en route to or from her place of employment;

''(B) the employee's wish to relocate to another geographic area in order to avoid future domestic violence against the employee or the employee's family;

''(C) the employee's need to recover from traumatic stress resulting from the employee's experience of domestic violence;

''(D) the employer's denial of the employee's request for the temporary leave from employment to address domestic violence and its effects authorized by section 102 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612); or

''(E) any other respect in which domestic violence causes the employee to reasonably believe that termination of employment is necessary for the future safety of the employee or the employee's family.

''(2) REASONABLE EFFORTS TO RETAIN EMPLOYMENT.—For purposes of subsection (a)(20), where State law requires the employee to have made reasonable efforts to retain employment as a condition for receiving unemployment compensation, it shall be sufficient that the employee—

''(A) sought protection from or assistance in responding to domestic violence, including calling the police or seeking legal, social work, medical, clergy, or other assistance;

''(B) sought safety, including refuge in a shelter or temporary or permanent relocation, whether or not the employee actually obtained such refuge or accomplished such relocation; or

''(C) reasonably believed that options such as a leave, transfer, or alternative work schedule would not be sufficient to guarantee the employee or the employee's family's safety.

''(3) ACTIVE EMPLOYMENT SEARCH.—For purposes of subsection (a)(20), where State law requires the employee to actively search for employment after separation from employment as a condition for receiving unemployment compensation, such requirement shall be deemed to be met where the employee is temporarily unable to actively search for employment because the employee is engaged in seeking safety or relief for the employee or the employee's family from domestic violence, including—

''(A) going into hiding or relocating or attempting to do so, including activities associated with such relocation or hiding, such as seeking to obtain sufficient shelter, food, schooling for children, or other necessities of life for the employee or the employee's family;

''(B) actively pursuing legal protection or remedies, including meeting with the police, going to court to make inquiries or file papers, meeting with attorneys, or attending court proceedings; or

''(C) participating in psychological, social, or religious counseling or support activities to assist the employee in ending domestic violence.

''(4) REQUIREMENT TO PROVIDE DOCUMENTATION OR OTHER EVIDENCE.—In determining if

an employee meets the requirements of paragraphs (1), (2), and (3), the employer of an employee may require the employee to provide—

''(A) documentation of the domestic violence, such as police or court records, or documentation of the domestic violence from a shelter worker, attorney, clergy, or medical or other professional from whom the employee has sought assistance in addressing domestic violence and its effects; or

''(B) other corroborating evidence, such as a statement from any other individual with knowledge of the circumstances which provide the basis for the claim, or physical evidence of domestic violence, such as photographs, torn or bloody clothes, or other similar evidence.

All evidence of domestic violence experienced by an employee, including an employee's statement, any corroborating evidence, and the fact that an employee has applied for or inquired about unemployment compensation available under subsection (a)(20) shall be retained in the strictest confidence of the employer, except to the extent consented to by the employee where disclosure is necessary to protect the employee's safety.''.

(b) SOCIAL SECURITY PERSONNEL TRAINING.—Section 303(a) of the Social Security Act (42 U.S.C. 503(a)(4)) is amended by redesignating paragraphs (4) through (10) as paragraphs (5) through (11), respectively, and by inserting after paragraph (3) the following:

''(4) Such methods of administration as will ensure that claims reviewers and hearing personnel are adequately trained in the nature and dynamics of domestic violence and in methods of ascertaining and keeping confidential information about possible experiences of domestic violence, so that employment separations stemming from domestic violence are reliably screened, identified, and adjudicated and full confidentiality is provided for the employee's claim and submitted evidence.''.

(c) DEFINITIONS.—Section 3306 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(u) DOMESTIC VIOLENCE.—The term 'domestic violence' includes abuse committed against an employee or a family member of the employee by—

''(1) a current or former spouse of the employee;

''(2) a person with whom the employee shares a child in common;

''(3) a person who is cohabitating with or has cohabitated with the employee as a romantic or intimate partner; or

''(4) a person from whom the employee would be eligible for protection under the domestic violence, protection order, or family laws of the jurisdiction in which the employee resides or the employer is located.

''(v) ABUSE.—The term 'abuse' includes—

''(1) physical acts resulting in, or threatening to result in, physical injury;

''(2) sexual abuse, sexual activity involving a dependent child, or threats of or attempts at sexual abuse;

''(3) mental abuse, including threats, intimidation, acts designed to induce terror, or restraints on liberty; and

''(4) deprivation of medical care, housing, food or other necessities of life.''.

SEC. 4. ENTITLEMENT TO LEAVE FOR DOMESTIC VIOLENCE.

(a) AUTHORITY FOR LEAVE.—Section 102(a)(1) (29 U.S.C. 2612(a)(1)) is amended by adding at the end the following:

''(E) In order to care for the child or parent of the employee, if such child or parent is addressing domestic violence and its effects.

''(F) Because the employee is addressing domestic violence and its effects, the employee is unable to perform any of the functions of the position of such employee.''.

(b) DEFINITION.—Section 101 (29 U.S.C. 2611) is amended by adding at the end the following:

''(14) ADDRESSING DOMESTIC VIOLENCE AND ITS EFFECTS.—The term 'addressing domestic violence and its effects' means—

''(A) experiencing domestic violence;

''(B) seeking medical attention for or recovering from injuries caused by domestic violence;

''(C) seeking legal assistance or remedies, including communicating with the police or an attorney, or participating in any legal proceeding related to domestic violence;

''(D) attending support groups for victims of domestic violence;

''(E) obtaining psychological counseling related to experiences of domestic violence;

''(F) participating in safety planning and other actions to increase safety from future domestic violence, including temporary or permanent relocation; and

''(G) any other activity necessitated by domestic violence which must be undertaken during hours of employment.''.

(c) INTERMITTENT OR REDUCED LEAVE.—Section 102(b) (29 U.S.C. 2612(b)) is amended by adding at the end the following:

''(3) DOMESTIC VIOLENCE.—Leave under subparagraph (E) or (F) of subsection (a)(1) may be taken by an employee intermittently or on a reduced leave schedule. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.''.

(d) PAID LEAVE.—Section 102(d)(2)(B) (29 U.S.C. 2612(d)(2)(B)) is amended by striking ''(C) or (D)'' and inserting ''(C), (D), (E), or (F)''.

(e) CERTIFICATION.—Section 103 (29 U.S.C. 2613) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

''(e) DOMESTIC VIOLENCE.—In determining if an employee meets the requirements of subparagraph (E) or (F) of section 102(a)(1), the employer of an employee may require the employee to provide—

''(1) documentation of the domestic violence, such as police or court records, or documentation of the domestic violence from a shelter worker, attorney, clergy, or medical or other professional from whom the employee has sought assistance in addressing domestic violence and its effects; or

''(2) other corroborating evidence, such as a statement from any other individual with knowledge of the circumstances which provide the basis for the claim, or physical evidence of domestic violence, such as photographs, torn or bloody clothes, etc.''.

(f) CONFIDENTIALITY.—Section 103 (29 U.S.C. 2613), as amended by subsection (e), is amended—

(1) in the title by adding before the period the following: **"; CONFIDENTIALITY"**; and

(2) by adding at the end the following:

''(f) CONFIDENTIALITY.—All evidence of domestic violence experienced by an employee or the employee's child or parent, including an employee's statement, any corroborating evidence, and the fact that an employee has requested leave for the purpose of addressing domestic violence and its effects, shall be retained in the strictest confidence by the employer, except to the extent consented to by the employee where disclosure is necessary to protect the employee's safety.''.

SEC. 5. ENTITLEMENT TO LEAVE FOR FEDERAL EMPLOYEES FOR DOMESTIC VIOLENCE.

(a) AUTHORITY FOR LEAVE.—Section 6382 of title 5, United States Code is amended by adding at the end the following:

''(E) In order to care for the child or parent of the employee, if such child or parent is addressing domestic violence and its effects.

''(F) Because the employee is addressing domestic violence and its effects, the employee is unable to perform any of the functions of the position of such employee.''.

(b) DEFINITION.—Section 6381 of title 5, United States Code is amended—

(1) by striking ''and'' at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting ''; and''; and

(3) by adding at the end the following:

''(7) the term 'addressing domestic violence and its effects' means—

''(A) experiencing domestic violence;

''(B) seeking medical attention for or recovering from injuries caused by domestic violence;

''(C) seeking legal assistance or remedies, including communicating with the police or an attorney, or participating in any legal proceeding related to domestic violence;

''(D) attending support groups for victims of domestic violence;

''(E) obtaining psychological counseling related to experiences of domestic violence;

''(F) participating in safety planning and other actions to increase safety from future domestic violence, including temporary or permanent relocation; and

''(G) any other activity necessitated by domestic violence which must be undertaken during hours of employment.''.

(c) INTERMITTENT OR REDUCED LEAVE.—Section 6382(b) of title 5, United States Code, is amended by adding at the end the following:

''(3) Leave under subparagraph (E) or (F) of subsection (a)(1) may be taken by an employee intermittently or on a reduced leave schedule. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.''.

(d) OTHER LEAVE.—Section 6382(d) of title 5, United States Code, is amended by striking ''(C) or (D)'' and inserting ''(C), (D), (E), or (F)''.

(e) CERTIFICATION.—Section 6383 of title 5, United States Code, is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

''(e) DOMESTIC VIOLENCE.—In determining if an employee meets the requirements of subparagraph (E) or (F) of section 6382(a)(1), the employer of an employee may require the employee to provide—

''(1) documentation of the domestic violence, such as police or court records, or documentation of the domestic violence from a shelter worker, attorney, clergy, or medical or other professional from whom the employee has sought assistance in addressing domestic violence and its effects; or

''(2) other corroborating evidence, such as a statement from any other individual with knowledge of the circumstances which provide the basis for the claim, or physical evidence of domestic violence, such as photographs, torn or bloody clothes, etc.''.

(f) CONFIDENTIALITY.—Section 6383 of title 5, United States Code, as amended by subsection (e), is amended—

(1) in the title by adding before the period the following: **"; Confidentiality"**, and

(2) by adding at the end the following:

''(g) CONFIDENTIALITY.—All evidence of domestic violence experienced by an employee or the employee's child or parent, including an employee's statement, any corroborating evidence, and the fact that an employee has requested leave for the purpose of addressing domestic violence and its effects, shall be retained in the strictest confidence by the employer, except to the extent consented to by

the employee where disclosure is necessary to protect the employee's safety.''.

SEC. 6. EFFECT ON OTHER LAWS AND EMPLOYMENT BENEFITS.

(1) MORE PROTECTIVE.—Nothing in this Act or the amendments made by this Act shall be construed to supersede any provision of any Federal, State or local law, collective bargaining agreement, or other employment benefit program which provides greater unemployment compensation or leave benefits for employed victims of domestic violence than the rights established under this Act or such amendments.

(2) LESS PROTECTIVE.—The rights established for employees under this Act or the amendments made by this Act shall not be diminished by any collective bargaining agreement, any employment benefit program or plan, or any State or local law.

SEC. 7. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect upon the expiration of 180 days from the date of the enactment of this Act.

(b) UNEMPLOYMENT COMPENSATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by section 3 shall apply in the case of compensation paid for weeks beginning on or after the expiration of 180 days from the date of the enactment of this Act.

(2) MEETING OF STATE LEGISLATURE.—In the case of a State with respect to which the Secretary of Labor has determined that the State legislature is required in order to comply with the amendments made by section 3, the amendments made by section 3 shall apply in the case of compensation paid for weeks which begin on or after the expiration of 180 days from the date of the enactment of this Act and after the end of the first session of the Sate legislature which begins after the date of the enactment of this Act or which began prior to the date of the enactment of this Act and remained in session for at least 25 calendar days after such date of enactment. For purposes of the preceding sentence, the term ''session'' means a regular, special, budget, or other session of a State legislature.

ADDITIONAL COSPONSORS

S. 28

At the request of Mr. THURMOND, the names of the Senator from New Hampshire [Mr. GREGG] and the Senator from Colorado [Mr. ALLARD] were added as cosponsors of S. 28, a bill to amend title 17, United States Code, with respect to certain exemptions from copyright, and for other purposes.

S. 72

At the request of Mr. KYL, the names of the Senator from Georgia [Mr. COVERDELL] and the Senator from Arkansas [Mr. HUTCHINSON] were added as cosponsors of S. 72, a bill to amend the Internal Revenue Code of 1986 to provide a reduction in the capital gain rates for all taxpayers, and for other purposes.

S. 73

At the request of Mr. KYL, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 73, a bill to amend the Internal Revenue Code of 1986 to repeal the corporate alternative minimum tax.

S. 74

At the request of Mr. KYL, the names of the Senator from Georgia [Mr. COVERDELL] and the Senator from Arkansas [Mr. HUTCHINSON] were added as cosponsors of S. 74, a bill to amend the Internal Revenue Code of 1986 to limit the tax rate for certain small businesses, and for other purposes.

S. 75

At the request of Mr. KYL, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of S. 75, a bill to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers.

S. 76

At the request of Mr. KYL, the names of the Senator from Georgia [Mr. COVERDELL] and the Senator from Arkansas [Mr. HUTCHINSON] were added as cosponsors of S. 76, a bill to amend the Internal Revenue Code of 1986 to increase the expensing limitation to $250,000.

S. 184

At the request of Mr. D'AMATO, the names of the Senator from Illinois [Ms. MOSELEY-BRAUN], the Senator from Connecticut [Mr. DODD], and the Senator from New Jersey [Mr. TORRICELLI] were added as cosponsors of S. 184, a bill to provide for adherence with the MacBride Principles of Economic Justice by United States persons doing business in Northern Ireland, and for other purposes.

S. 228

At the request of Mr. MCCAIN, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 228, a bill to amend title 31, United States Code, to provide for continuing appropriations in the absence of regular appropriations.

S. 239

At the request of Mr. DASCHLE, the names of the Senator from Nevada [Mr. BRYAN] and the Senator from Colorado [Mr. ALLARD] were added as cosponsors of S. 239, a bill to amend the Internal Revenue Code of 1986 relating to the treatment of livestock sold on account of weather-related conditions.

S. 249

At the request of Mr. D'AMATO, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of S. 249, a bill to require that health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissection for the treatment of breast cancer, coverage for reconstructive surgery following mastectomies, and coverage for secondary consultations.

S. 269

At the request of Mr. ABRAHAM, the name of the Senator from Colorado [Mr. ALLARD] was added as a cosponsor of S. 269, a bill to provide that the Secretary of the Senate and the Clerk of the House of Representatives shall include an estimate of Federal retirement benefits for each Member of Congress in their semiannual reports, and for other purposes.

S. 277

At the request of Mr. COCHRAN, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 277, a bill to amend the Agricultural Adjustment Act to restore the effectiveness of certain provisions regulating Federal milk marketing orders.

S. 348

At the request of Mr. MCCONNELL, the name of the Senator from New Jersey [Mr. TORRICELLI] was added as a cosponsor of S. 348, a bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage States to enact a Law Enforcement Officers' Bill of Rights, to provide standards and protection for the conduct of internal police investigations, and for other purposes.

AMENDMENTS SUBMITTED

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

FEINSTEIN AMENDMENT NO. 11

Mrs. FEINSTEIN (for herself, Mr. DURBIN, Mr. TORRICELLI, and Mr. CLELAND) proposed an amendment to the joint resolution (S.J. Res. 1) proposing an amendment to the Constitution of the United States to require a balanced budget; as follows:

Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission to the States for ratification:

''ARTICLE —

''SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a roll call vote.

''SECTION 2. The limit on the debt of the United States held by the public shall not be increased, unless a majority of the whole number of each House shall provide by law for such an increase by a roll call vote.

''SECTION 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year, in which total outlays do not exceed total receipts.

''SECTION 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a roll call vote.

''SECTION 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect.

''The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

''The provisions of this article may be waived for any fiscal year in which the United States is experiencing a national economic emergency or major natural disaster, which is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.