

# CRS Report for Congress

## White-Collar Crime: A Conceptual and Statistical Overview

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## **WHITE-COLLAR CRIME: A CONCEPTUAL AND STATISTICAL OVERVIEW**

### **SUMMARY**

White-collar crime is often defined as criminal activity perpetrated by those of higher socioeconomic status usually within a business setting. Other definitions emphasize the nature of the offense rather than the status of the offender. White-collar crime has reached historic levels in the United States. The role of the Federal government continues to expand as such crime is perpetrated on an interstate or international basis.

The Violent Crime Control and Enforcement Act of 1993 (H.R. 3355, formerly S. 1607), passed by the Senate on November 19, contains a number of white-collar crime provisions, including consumer protection, financial institution fraud and savings and loan prosecution, computer crime, and public corruption. In addition, this bill amends statutes related to white-collar crime to provide for improved enforcement against those who obstruct a Federal auditor or engage in a continuing financial crime enterprise; creates a new Federal health care fraud offense for any scheme to defraud a health care plan; establishes penalties for violations of various Federal fraud laws when they involve telemarketing swindles, especially those victimizing people over 55 years of age; and establishes bankruptcy fraud as a new Federal offense. Legislation containing white-collar crime provisions has been introduced in the House as well. According to press reports, the House leadership has indicated that anti-crime legislation, probably including such provisions, is likely to be passed during the second session of the 103rd Congress.

First defined as "a crime committed by a person of respectability and high social status in the course of his occupation," white-collar crime is an old category of criminal offenses that continues to provoke debate about its exact meaning. Critics of this definition have argued that "white-collar crime" may include activities that are not against the law, so they cannot be called crimes; that it fails to include some white-collar crimes that may not be connected to the offender's occupation; and that it does not distinguish between crimes committed by employees within a corporation and those committed by officers for the corporation.

Statistics on the costs of such crime are difficult to obtain and lack uniformity. One of the latest recent estimates made in a 1982 study by Peat, Marwick, & Mitchell, suggested a minimum total of \$200 billion.

Criminologists find it difficult to compile data that reveal the extent of white-collar crime nationally. For example, although law enforcement officials prosecute a growing number of white-collar crimes, they maintain that many such crimes have few witnesses and demand highly specialized expertise to discover. As a result, these crimes are likely to go undetected and uncounted. Also, many cases of white-collar crime may never appear in statistical compilations because violations are often handled by regulatory agencies.



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# WHITE-COLLAR CRIME: A CONCEPTUAL AND STATISTICAL OVERVIEW

## INTRODUCTION

White-collar crime, generally defined as criminal activity perpetrated by those of higher socioeconomic status often within a business setting, has reached historic levels in the United States.<sup>1</sup> White-collar offenses may include crime against consumers, businesses, financial institutions, and the government. Modern society has created new opportunities for white-collar criminals: telemarketing swindles, computer fraud, and environmental offenses.

Though State governments exercise their police powers to prosecute white-collar crime within their jurisdictions, the role of the Federal government continues to expand as such crime is perpetrated on an interstate or international basis. This report provides a brief discussion of various concepts of white-collar crime, and how it may be distinguished from street crime. Also, it offers a statistical overview of the costs and extent of white-collar crime in the United States. It does not provide statistics on drug-related or organized crime, sometimes considered subcategories of white-collar crime.<sup>2</sup> It presents recent Federal legislative initiatives to address the problem.

## DEFINITION

In 1939, the sociologist Edwin H. Sutherland introduced the concept of white-collar crime and defined it as "a crime committed by a person of respectability and high social status in the course of his occupation."<sup>3</sup> Law enforcement officials and criminologists saw the concept of white-collar offenses as a new way to categorize this form of crime, and to differentiate it from the more traditional categories of violent and property crime. Though law enforcement officials point out that the *offense* of white-collar crime existed before Sutherland coined the term, many would agree with Sutherland that this

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<sup>1</sup> Sutherland, Edwin H. *White Collar Crime*. New York, Holt, Rinehart and Winston, Inc., 1961. pp. 6-10.

<sup>2</sup> Law enforcement officials generally agree that organized crime groups have placed their illegal profits in legitimate businesses, and more recently, drug kingpins have done likewise. This report focuses more on criminal elements originating within legitimate business rather than those which use such business to further already existing illegal enterprises.

<sup>3</sup> Sutherland, Edwin H. *Ibid*, p. 9; Schlegel, Kip and Weisburd, David, eds. Introduction. *White Collar Crime Reconsidered*. Boston, 1992. p. 3.

form of criminal activity is both extremely harmful and deserving of stringent efforts to combat it.<sup>4</sup>

Sutherland's definition has been challenged by later sociologists and criminologists. One critic argued that Sutherland's definition may include activities that are not against the law, so they cannot be called crimes. Others objected that white-collar crime, such as fraudulently claiming social security benefits or purchasing on credit without intending to pay, may not be connected to the offender's occupation. Still others questioned Sutherland's inclusion of only those offenders with social status, or objected to his lack of a distinction between crime committed by *individual employees within a corporation* and that committed by *officers for the corporation*.<sup>5</sup>

In 1989, the former director of the FBI defined white-collar crime as follows:

The FBI categorizes white-collar crimes as those illegal acts which are characterized by deceit, concealment, or violation of trust and which are not dependent upon the application or threat of physical force or violence. These acts are committed by individuals and organizations to obtain money, property, or services; to avoid the payment or loss of money or services; or to secure personal or business advantage.<sup>6</sup>

According to the Bureau of Justice Statistics, white-collar crime may include business-related offenses, abuse of political office, crime involving high technology, and some forms of organized crime--in short, those areas "where an individual's job, power, or personal influence provide the access and opportunity to abuse lawful procedures for unlawful gain."<sup>7</sup>

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<sup>4</sup> According to the testimony of D. Lowell Jensen, Deputy Attorney General, U.S. Department of Justice: "the concept of the categorization [of white-collar crime] was new [when Sutherland introduced it], but the offenses were not. . . . Such crime is an insidious form of criminality, it is so serious and pervasive a threat to the Nation's well-being that it requires a high degree of attention at the Federal level." U.S. Congress. Senate. Committee on the Judiciary. *White Collar Crime*. Hearings, 99th Cong. 2d. sess., Feb 27, 1986. Washington, U.S. Govt. Print. Off. 1987. p. 25-26.

<sup>5</sup> Some criminologists and sociologists have suggested more specific terms, such as corporate crime, occupational crime, "crime in the suites" (as opposed to "crime in the streets"), and elite deviance. Within the FBI, units concerned with white collar crime are often called fraud sections. Coleman, James William. *The Criminal Elite*. New York, St. Martin's Press, 1989. pp. 2-4; Green, Gary S. *Occupational Crime*. Chicago, Nelson-Hall, 1990. pp. 8-10.

<sup>6</sup> U.S. Department of Justice. Federal Bureau of Investigation. *White-Collar Crime: A Report to the Public. Message from William S. Sessions, Director of the FBI*. Washington, D.C. 1989. p. 3.

<sup>7</sup> U.S. Department of Justice. Bureau of Justice Statistics. *Report to the Nation on Crime and Justice*. 2nd ed. March 1988, NCJ-105506. Washington, 1988. p. 9.

## DISTINGUISHING WHITE-COLLAR CRIME FROM STREET CRIME

Traditionally, criminologists have argued that white-collar crime affects more people than street crime, that it ultimately surpasses street crime in its cost to victims and society, and that it relies more on deceit and concealment than the use of force and violence found with street crime.<sup>8</sup>

Certainly, the first two assertions have continued to find general acceptance. In fact, the editor of the *Corporate Crime Reporter* has argued:

. . . most criminologists who have studied the area conclude that all corporate crime and violence combined costs society far more than all street crime combined. The FBI reports, for example, that the total loss from street robbery in the United States in 1989 was \$405 million. But one price fixing conspiracy earlier this year by a number of oil companies cost the nation's consumers \$432 million. And there are many price-fixing conspiracies every year.<sup>9</sup>

On the other hand, the third distinction may not be any longer valid. Increasingly, criminologists tend to portray white-collar crime as much more violent and life threatening than heretofore described. For example, the refusal of one major manufacturer of radial tires to recall a defective product led a House Committee to state that these tires "had caused thousands of accidents, hundreds of injuries, and thirty-four known fatalities." In another case, a major drug manufacturer pleaded guilty in 1985 to failure to report perhaps 11,000 deaths associated with one of its products.<sup>10</sup>

Also, Travis Hirschi and Michael Gottfredson, both on the faculty at the University of Arizona, maintained that "the distinction between crime in the street and crime in the suite is an *offense* rather than an *offender* distinction, [such] that offenders in both cases are likely to share similar characteristics."<sup>11</sup> Using the FBI's Uniform Crime Report statistics for fraud and embezzlement, they found that white-collar criminals are no different demographically (age, race, and sex) than street criminals. Thus, they see white-collar crimes as

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<sup>8</sup> Bequai, August. *White-Collar Crime: A 20th-Century Crisis*. Lexington, Massachusetts, D.C. Heath and Company, 1978. p. 3.

<sup>9</sup> *Washington Post*. Letter to the Editor. November 18, 1991. p. A20.

<sup>10</sup> Pepinsky, Hal and Paul Jesilow. *Myths That Cause Crime*. Washington, D.C., Seven Locks Press, 1992. p. 54; Simon, David R. and D. Stanley Eitzen. *Elite Deviance*, 4th ed. Boston, Allyn and Bacon, 1993. pp. 124-26. The editor of the *Corporate Crime Reporter* stated that: "Thousands of Americans die on the job every year. Increasingly, employers are being prosecuted by State and local officials for occupational homicide or manslaughter." *Washington Post*, November 18, 1991. p. A20.

<sup>11</sup> Hirschi, Travis and Michael Gottfredson. Causes of White-Collar Crime. *Criminology*, vol. 25, November 1987. pp.970-71.



events that take place in a business setting, but not necessarily related to the characteristics of those employed in those settings.<sup>12</sup>

Although criminologists continue to debate the validity or accuracy of distinguishing white-collar crime from street crime, law enforcement officials have established and maintained separate units to investigate and prosecute the former. For example, the FBI has established the White-collar Crime Program and many States have Economic Crime Units (ECUs).<sup>13</sup>

## STATISTICS

Statistics on the costs and extent of white-collar crime lack uniformity. Costs include financial loss, injury to health (including death), and a decline in public confidence in social institutions. Data highlighting the extent of the problem include statistics on arrests, convictions, and financial penalties.

### Costs

Overall costs of white-collar crime are difficult to obtain and interpret. A national Chamber of Commerce study in 1974 placed the total at \$40 billion a year, and another study by Peat, Marwick, & Mitchell in 1982 suggested a minimum of \$200 billion a year.<sup>14</sup> More recent estimates of the cost of selected white-collar crimes to the Nation include:

- telephone fraud: up to \$15 billion;<sup>15</sup>
- tax fraud by legitimate businesses: up to \$50 billion per year in IRS losses;<sup>16</sup>

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<sup>12</sup> Ibid., p. 961-68. David Weisburd and others have found that a substantial proportion of white collar criminals had prior criminal records, contrary to the stereotype that they tend to be one-time offenders. These authors join Hirschi and Gottfredson in questioning the validity of distinguishing white collar criminals and street offenders. See, Weisburd, David, Ellen F. Chayet and Elin J. Waring. *White-Collar Crime and Criminal Careers: Some Preliminary Findings. Crime and Delinquency*, vol. 36, July 1990. pp. 343-47, 352. Hereafter cited as Weisburd, White-Collar Crime.

<sup>13</sup> White-Collar Crime: A Report to the Public, p. 3. William G. Bailey, ed. *The Encyclopedia of Police Science*. New York, Garland Publishing, 1989. p. 669-70.

<sup>14</sup> U.S. Congress. Senate. Committee on the Judiciary. *White Collar Crime*. Hearings, 99th Cong., 2d Sess. February 27, 1986. Washington, U.S. Govt. Print. Off., 1987. p. 23. Hereafter referred to as Senate Judiciary, *White Collar Crime*.

<sup>15</sup> Credit Card Industry, National Consumers League Set Up Hotline to Combat Phone Fraud. *Corporate Crime Reporter*, v. 6, January 27, 1992. p. 7.

<sup>16</sup> U.S. Department of Justice. Bureau of Justice Statistics. *Drugs, Crime, and the Justice System: A National Report*. December 1992, NCJ-133652. Washington, Gov. Print. Off., 1992. p. 62.

- computer related crime: from \$3 billion to \$5 billion a year,<sup>17</sup>

- fraudulent health care claims: from 2 to 10 percent of the \$700 billion spent annually;<sup>18</sup>

- fraudulent activity in savings and loan bank failures: 70 to 80 percent of the estimated \$500 billion loss;<sup>19</sup>

- fraudulent property/casualty claims: approximately \$18 billion annually;<sup>20</sup>

- wasted Federal student aid: \$1 billion or more yearly;<sup>21</sup>

- misuse, fraud, and theft of Department of Housing and Urban Development funds by real estate speculators, mortgage company officials, and multifamily dwelling owners: \$200 million during fiscal year 1993.<sup>22</sup>

Exact data on injuries to health and deaths caused by white-collar crime is also difficult to obtain. Sociologist James William Coleman cites estimates from various studies that claim that 14,000 people are killed annually in industrial accidents and 100,000 die annually from occupationally caused diseases. He states:

It is difficult to determine how many of those deaths result from violations of the law and how many are caused by hazardous conditions that the law does not prohibit, but data from Wisconsin indicate that 45 percent of the industrial accidents in that state result from violations of state safety codes. And since inspectors from the Occupational Safety and Health Administration have found violations of health and safety codes in 75 percent of the firms investigated, it

<sup>17</sup> Increased Computer Crimes and Questions of Computer Ethics Lead to the Formation of New Institute. *Corporate Crime Reporter*, v. 6, June 15, 1992. p. 8.

<sup>18</sup> U.S. Congress, Senate, Committee on the Judiciary. *Health Care Fraud*. Hearings on S. 2652, 102d Cong., 2d Sess., July 28, 1992. Washington, U.S. Govt. Print. Off., 1993. p. 1-2.

<sup>19</sup> Pontell, Henry N. and Kitty Calavita. *Bilking Bankers and Bad Debts: White-Collar Crime and the Savings and Loan Crisis*. In Schlegel, Kip and David Weisburd, eds. *White-Collar Crime Recounted*. Boston, 1992. pp. 195-96.

<sup>20</sup> Insurance Industry Uses Consumer Fraud Issue as Mask to Cover Corporate Fraud, Lawyer Charges. *Corporate Crime Reporter*, v. 7, January 11, 1993. p. 4.

<sup>21</sup> Drinkard, Jim. U.S. Probing Spending by Trade Schools. *Washington Post*, Dec. 26, 1993. p. A25.

<sup>22</sup> Mariano, Ann. HUD Loses \$200 Million In Misused, Stolen Funds. *Washington Post*, Dec. 25, 1993. p. E1.

seems likely that illegal activities of some kind are involved in many of these deaths.<sup>23</sup>

Also, Coleman reports that the National Product Safety Commission estimates 30,000 deaths and 20 million serious injuries due to unsafe consumer products. He acknowledges that the number of these deaths and injuries due to violation of safety laws or fraudulent claims by manufacturers is unknown, but he contends that illegal activities caused the majority of them.<sup>24</sup>

Finally, Coleman identifies illegal environmental pollution as white-collar crime for which the estimation of human costs is particularly difficult. He maintains that many environmental hazards are due to legal and illegal contamination of the environment. Legal contaminants, he argues, may be released because of insufficient governmental regulation.<sup>25</sup> In addition, a study by the Environmental Protection Agency in May 1993 provided statistics showing that environmentally toxic chemicals had been disposed in predominantly minority areas in Louisiana. The Clinton Administration has agreed to investigate these practices as a violation of the civil rights of the inhabitants.<sup>26</sup>

Criminologists and sociologists also note that white-collar crime has secondary costs that ultimately may be more significant than financial costs, but are virtually unquantifiable:

(a) diminished faith in a free economy and in business leaders, (b) loss of confidence in political institutions, processes, and leaders, and (c) erosion of public morality.<sup>27</sup>

They maintain that failure to prosecute white-collar criminals may lead not only to a loss in public confidence, but also a decline in the willingness of many to respect legal and social rules.

### **Extent of the Problem**

Criminologists have found it as difficult to compile data showing the extent of white-collar crime nationally as it is to show the costs of such crime. For

<sup>23</sup> Coleman, James William. *The Criminal Elite*. New York, 1985. pp. 7-8.

<sup>24</sup> *Ibid.*, p. 8. According to a Coalition for Consumer Health and Safety report released in 1990, "consumer products have been linked to the deaths of more than 600,000 Americans each year and the injuries and illnesses of tens of millions of others. . . ." *Consumer Products Implicated in More Than 600,000 Deaths Annually*. *Corporate Crime Reporter*, v. 4, July 16, 1990. p. 1.

<sup>25</sup> Coleman, *Criminal Elite*, p. 8.

<sup>26</sup> Cushman, John H., Jr. U.S. to Weigh Blacks' Complaints About Pollution. *New York Times*, November 19, 1993. p. A16.

<sup>27</sup> Moore, Elizabeth and Michael Mills. The Neglected Victims and Unexamined Costs of White-Collar Crime. *Crime and Delinquency*, v. 36, July 1990. p. 414.

example, although law enforcement officials prosecute a growing number of white-collar crimes, they maintain that many such crimes leave few witnesses and demand highly specialized expertise to discover. As a result, such crime is likely to go undetected and uncounted.

Many criminologists assert that available statistics may underestimate the extent of the problem. First, regulatory agencies and various Federal Offices of Inspector General (OIGs) must work with the Department of Justice in prosecuting alleged white-collar criminal violations. These agencies or OIGs may resolve the matter before it is turned over to prosecutors for criminal indictment, or prosecutors may decide to use civil actions instead of bringing criminal charges. D. Lowell Jensen, former Deputy Attorney General, stated in 1986:

A related consideration, one that also tends to be overlooked in discussions of white-collar crime, is the general availability of non-criminal enforcement methods instead of the criminal justice process. Many white-collar cases arise out of activities subject to Federal regulation and consequently, to regulatory sanctions. Most such conduct is also subject to civil sanctions, such as damage awards, civil fines or penalties, or injunctions.<sup>28</sup>

Such dispositions would not appear in crime statistics enumerating white-collar offenses.

Second, the FBI's Uniform Crime Reports do not provide complete statistics on white-collar crime, nor does it have a separate category containing all such offenses. For example, the category of "ecology law violations" is placed with other selected offenses under the general heading of "All Other Offenses, Category B (Crimes Against Persons, Property, and Society)."<sup>29</sup> Third, some criminologists assert that the nature of white-collar offenses, often of longer duration and affecting a greater number of victims, may lead to an underreporting bias.<sup>30</sup> The arrest of a real estate agent who perpetrates a land fraud scheme over a period of many years may not be comparable to the arrest of a street criminal charged with a single violent crime.

Though comprehensive statistics on white-collar offenses are not available from the UCR, the FBI collects and publishes data for three subcategories: fraud, embezzlement, and forgery/counterfeiting. Total arrests for fraud increased from 221,685 in 1983 to 276,521 in 1992, a 24.7 percent change. Likewise, embezzlement arrests rose from 6,932 in 1983 to 10,522 in 1992, a

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<sup>28</sup> Senate Judiciary, *White Collar Crime*, p. 29.

<sup>29</sup> U.S. Department of Justice. Federal Bureau of Investigation. Uniform Crime Reporting: National Incident-Based Reporting System. Volume 1: Data Collection Guidelines. Washington, July 1, 1988, pp. 39, 47.

<sup>30</sup> Weisburd, *White-Collar Crime*, p. 349.

51.8 percent change. Forgeries and counterfeiting arrests grew from 64,817 in 1983 to 80,083 in 1992, a 23.6 percent change.<sup>31</sup>

The white-collar crime unit of the Department of Justice's Criminal Division includes Public Integrity and Fraud sections. Public Integrity cases opened, for which DOJ had lead prosecution responsibility, rose from 29 in 1991 to 48 in 1992. Convictions for Public Integrity cases litigated increased from 32 in 1991 to 56 in 1992. Fraud cases opened, for which DOJ had lead prosecution responsibility, grew from 52 in 1991 to 94 in 1992. Convictions in Fraud cases litigated rose from 72 in 1991 to 100 in 1992. Court ordered fines, restitution, forfeitures, and settlements in these cases totalled \$933 million in 1992, up from \$228 million in 1991.<sup>32</sup>

## RECENT LEGISLATION

The range of offenses that may be categorized as white-collar crime is extensive. It includes crime against consumers, businesses, financial institutions, and the government. Recent Federal legislation continues to focus on traditional crime in these areas, as well as newer categories of white-collar offenses, including telemarketing swindles and computer fraud.

### 102nd Congress

The 102nd Congress reached conference agreement on an omnibus anti-crime package, the Violent Crime Control and Law Enforcement Act of 1991 (H.R. 3371), that failed to pass in the Senate. This bill would have enacted several new provisions related to white-collar offenses, including consumer protection, financial institution fraud and savings and loan prosecution, and computer crime.

In Title 22 of H.R. 3371, consumer protection provisions would have added new penalties for white-collar offenses in the insurance business and for credit card and mail fraud. For example, penalized activities in the insurance business would have included false statements to State insurance regulators, embezzlement by insurance company officers or employees, fraudulent record keeping entries by anyone in the business, and obstruction of justice with respect to insurance regulation. Also, the Attorney General would have been empowered to impose a civil penalty for such violations. In addition, the bill called for new provisions against trafficking in stolen credit cards, and the fraudulent use of credit cards and would have expanded the existing mail fraud provision to include private mail or commercial interstate carriers.

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<sup>31</sup> U.S. Department of Justice. Federal Bureau of Investigation. Crime in the United States 1992: Uniform Crime Reports. Washington, D.C. October 3, 1993. p. 221. These statistics were obtained from 8,054 reporting agencies and do not include those agencies not reporting to UCR.

<sup>32</sup> U.S. Congress. House. Committee on Appropriations. Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies. Hearings on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1994, 103d Cong., 1st Sess., Washington, U.S. Govt. Print. Off., 1993, pp. 547-60.

In Title 23 of the bill, financial institution fraud provisions would have included new restrictions on employment of certain white-collar offenders by federally insured banks and credit unions, with additional penalties for violation of this restriction. Title 24 contained language urging the Attorney General to establish a task force for the aggressive prosecution of criminal cases involving savings and loan institutions. Computer crime provisions (Title 27) provided penalties for knowingly or recklessly using a computer transmission to cause damage or loss of access to a computer used in interstate commerce.

### 103rd Congress

During the first session of the 103rd Congress, several anti-crime bills have been introduced in both the Senate and the House. The Violent Crime Control and Enforcement Act of 1993 (H.R. 3355, formerly S. 1607), passed by the Senate on November 19, contains a number of white-collar crime provisions. It includes the same provisions found in H.R. 3371 of the 102nd Congress: consumer protection (Title 21), financial institution fraud and savings and loan prosecution (Titles 22 and 23), and computer crime (Title 26); and the same provisions related to public corruption (Title 44) found in S. 1356 and H.R. 2872 of the 103rd Congress.

In addition, H.R. 3355 as passed by the Senate, amends statutes related to white-collar crime to provide for improved enforcement against those who obstruct a Federal auditor or engage in a continuing financial crime enterprise (Title 29); creates a new Federal health care fraud offense for any scheme to defraud a health care plan (Title 38); establishes penalties for violations of various Federal fraud laws when they involve telemarketing swindles, especially those victimizing people over 55 years of age (Title 39); and establishes bankruptcy fraud as a new Federal offense (Title 51).

Several anti-crime bills including white-collar crime provisions have been introduced in the House as well. The Violent Crime Control and Law Enforcement Act of 1993 (H.R. 3131) contains several provisions related to white-collar crime, including consumer protection, financial institutions fraud, and computer crime. The Crime Control Act of 1993 (H.R. 2872) penalizes several activities involving public corruption, such as those in which the mails or facilities in interstate commerce are used, or a bribe is offered or accepted by a Federal or State official, employee or juror in connection with illicit drug activities. According to press reports, the House leadership has indicated that anti-crime legislation, probably including such provisions, is likely to be passed during the second session of the 103rd Congress.<sup>33</sup>

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<sup>33</sup> Cooper, Kenneth J. and Merida, Kevin. House Democrats Say Fate in Midterm Races is Tied to Clinton Agenda. *Washington Post*, January 29, 1994. p. A10; Kondracke, Morton M. Clinton is Backing Senate Crime Bill, But Will the House? *Roll Call*, January 31, 1994. p. 6.