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Crime Control: The Federal Response

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Crime Control: The Federal Response

SUMMARY

Crime control efforts at the federal level traditionally have been concerned with problems of national scope transcending state boundaries or with the maintenance of law and order in areas subject exclusively to federal jurisdiction. However, in recent years, Congress has expanded federal jurisdiction in the area of crime control to areas once considered to be primarily within state and local jurisdiction, for example, in juvenile justice and gun control. The Supreme Court has established some limits on the power of Congress to regulate certain activity through the commerce clause of the Constitution. In *U.S. v. Lopez* (514 U.S. 549, 1995) the court, striking down a provision of the Gun Free Schools Act of 1990, held that the possession of a gun in a local school zone is not an economic activity that might have a substantial effect on interstate commerce.

Congress has passed five omnibus crime control bills since 1984. The Comprehensive Crime Control Act of 1984 (P.L. 98-473) overhauled the federal sentencing system and revised bail and forfeiture procedures along with other federal practices. Anti-drug abuse statutes passed in 1986 (P.L. 99-570) and in 1988 (P.L. 100-690) included enhanced penal-

ties for drug-related crimes and provisions for funding state and local drug enforcement. The Crime Control Act of 1990 (P.L. 101-647), authorized \$900 million for the Federal Drug Control Grant Program, and codified a Crime Victims' Bill of Rights in the federal justice system. The fifth omnibus crime control legislation in ten years, P.L. 103-322, the Violent Crime Control and Law Enforcement Act of 1994, was approved by the House and Senate in the closing days of the 103rd Congress.

Several bills were considered in the 106th Congress to address issues related to crime, juvenile justice, and school violence. The measure (P.L. 106-386, H.R. 3244) containing Aimee's Law and the reauthorization of the Violence Against Women Act was signed into law on October 28, 2000. Two other measures that received congressional approval provided grants to assist States with combating computer crimes, signed into law (P. L. 106-572) on December 28, 2000, and with DNA analyses, signed into law (P. L. 106-546) on December 19, 2000. Congress did not reauthorize the Juvenile Justice and Delinquency Prevention Act of 1974, amended, under H.R. 1501.

MOST RECENT DEVELOPMENTS

Legislation that failed to pass in the 106th Congress may be considered in the 107th. In particular, Congress may reconsider the juvenile justice bill that stalled in conference in 1999.

BACKGROUND AND ANALYSIS

Federal v. State Responsibility for Law Enforcement

Under the federal system in the United States, the states and localities traditionally have held the major responsibility for prevention and control of crime and maintenance of order. For most of the Republic's history, "police powers" in the broad sense were reserved to the states under the Tenth Amendment to the Constitution. Many still hold that view, but others see a string of court decisions in recent decades as providing the basis for a far more active federal role.

Perhaps the most significant factor behind the growth of federal police powers has been a broader interpretation of the Constitution's "commerce clause" (U.S. Constitution, Art. I, Section 8, Cl. 2), which explicitly gives Congress power to regulate interstate and foreign commerce. A series of court decisions in this century has established that the impact of *intrastate* commerce on *interstate* commerce may justify a more inclusive approach. In addition, both Congress and the Court have shown an apparent willingness to view certain kinds of crime, or disorder on a large scale, as threats to commerce in and of themselves. The Supreme Court has established some limits on the power of Congress to regulate certain activity through the commerce clause of the Constitution. In *U.S. v. Lopez* (514 U.S. 549, 1995) the court, striking down a provision of the Gun Free Schools Act of 1990, held that the possession of a gun in a local school zone is not an economic activity that might have a substantial effect on interstate commerce.

Since the 1960s, the law and order issues that most often have generated debate over the appropriate limits of the federal role are financial assistance for state and local law enforcement and regulation of firearms. (For a discussion of firearm regulation, see CRS Issue Brief IB10071, *Gun Control Legislation in the 107th Congress*.) In considering legislation that established the grant program administered by the Law Enforcement Assistance Administration (P.L. 90-351) and its forerunner, the Office of Enforcement Assistance (P.L. 89-197), some Members of Congress and analysts expressed concern that the federal "power of the purse" would lead to a national police force.

The lack of significant opposition to local law enforcement assistance provisions in 1986 and 1988 anti-drug measures and the 1990 Crime Control Act suggests that such concern has diminished. This change in attitude might be explained by a widespread perception that the illicit traffic in dangerous drugs has become a national problem of overriding concern.

One indication of growth in federal involvement in crime control is the upward trend in annual budget authority under the budget category (750), "administration of justice." Since

1976, it has risen from \$3.3 billion to an estimated \$27.4 billion in FY2000. (See Table 5.1, at the website [<http://w3.access.gpo.gov/usbudget/fy2001/pdf/hist.pdf>]). Congress appropriated approximately \$21 billion for Department of Justice (DOJ) agencies and programs for FY2001. (For the latest information on FY2001 DOJ appropriations, see CRS Report RL30509, *Appropriations for FY2001: Commerce, Justice, and State, the Judiciary, and Related Agencies.*)

Federal Assistance to State and Local Governments

During the 1960s the FBI Uniform Crime Reports showed that crime rates in the United States were increasing rapidly, and “law and order” and “crime in the streets” were key issues in the 1964 Presidential campaign. President Lyndon Johnson, in his first message to Congress in 1965, called for the establishment of a blue ribbon panel to probe “fully and deeply into the problems of crime in our nation.” Johnson’s requests led to the creation of the President’s Commission on Law Enforcement and the Administration of Justice and to passage of the Law Enforcement Assistance Act of 1965 (P.L. 89-197; 79 Stat. 828). The latter established an Office of Law Enforcement Assistance in the Department of Justice and charged it with funding demonstration projects for the development of new methods of crime control and law enforcement.

In February 1967, the President’s Commission issued its report, *The Challenge of Crime in a Free Society*, and recommended that the federal government provide more financial assistance to state and local governments for law enforcement purposes. The Commission found that “crime is a national, as well as a state and local phenomenon.” Subsequently, President Johnson proposed an expanded program of grants to state and local governments, to be administered by the Department of Justice. In urging the passage of such legislation, he warned that “the federal government must never assume the role of the nation’s policeman. True, the federal government has certain direct law enforcement responsibilities. But these are carefully limited to such matters as treason, espionage, counterfeiting, tax evasion and certain interstate crimes.”

Congress responded in June of 1968 by passing the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351; 82 Stat. 197). Title I of the Act established a Law Enforcement Assistance Administration (LEAA) to make grants to state and local governments for planning, recruitment, and training of law enforcement personnel; public education relating to crime prevention; building construction; education and training of special law enforcement units to combat organized crime; and the organization, education, and training of regular law enforcement officers, special units, and law enforcement reserve units for the prevention and detection of riots and other civil disorders. The Act also established a National Institute of Law Enforcement and Criminal Justice to make grants for training, education, research, and demonstration for the purpose of improving law enforcement and developing new methods for the prevention and reduction of crime.

The enactment of the Safe Streets Act and the creation of LEAA ushered in a new era of federal assistance to state and local governments for crime control. The grant programs significantly expanded the central government’s involvement in local law enforcement. Although the program was criticized and ultimately phased out after a 12-year life and an expenditure of roughly \$7.5 billion, support for the concept of direct federal aid for law

enforcement and crime control resurfaced and grew during the 1980s as Congress sought solutions to the nation's drug problems.

LEAA's history is controversial. The block grant funding mechanism was criticized because it prevented the agency from exercising tight controls over the money sent to the states. Critics charged that funds were misused and that the program had no visible impact on crime. With the exception of one downturn in crime statistics in 1972, the reported violent crime rate continued to rise throughout the 1970s and 1980s. Although the program had been authorized through FY1983, budget reductions beginning in 1980 resulted in its virtual elimination. Four of its highly specialized functions remained to be administered by a successor agency, the Office of Justice Assistance, Research, and Statistics (OJARS).

Broader federal assistance was restored when the Reagan Administration requested authority, in 1983, to establish a more modest grant program. Additional expansion of the federal role occurred with congressional passage of four omnibus crime control bills. First was Chapter IV (the Justice Assistance Act) of the Comprehensive Crime Control Act of 1984 (P.L. 98-473). It created the Office of Justice Programs, headed by an assistant Attorney General, to coordinate the activities of the Bureau of Justice Assistance, the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Juvenile Justice and Delinquency Prevention. The Anti-Drug Abuse Act of 1986 (P.L. 99-570) established matching formula grants to state and local law enforcement agencies; the Anti-Drug Abuse Act of 1988 expanded the program, the "Edward Byrne Memorial State and Local Law Enforcement Assistance Programs." Despite Reagan Administration opposition to such expansion, Congress appropriated \$150 million for FY1989 for the programs. The Crime Control Act of 1990 (P.L. 101-647), authorized \$900 million. Congress approved an appropriation of \$552 million for the Byrne Programs for FY1999.

Major Enactments

Comprehensive Crime Control Act of 1984

In 1966, Congress created the National Commission on Reform of the Criminal Laws. Headed by California Governor Edmund G. Brown, Sr., the Commission issued a report that took the form of a new draft of the Federal Criminal Code. The Comprehensive Crime Control Act of 1984 was the culmination of a bipartisan effort to implement this report. The bill finally approved was somewhat limited, a compromise that overhauled the federal sentencing system, revised the bail statutes to permit pretrial detention of those considered dangerous to the community, tightened the legal definition of insanity, required mandatory minimum sentences for career criminals, increased the maximum fines for serious drug offenses, gave federal prosecutors new authority to seize the assets of drug traffickers, and established a victim compensation program in the Department of Justice. Controversial provisions related to the death penalty, federal exclusionary rule modification, and *habeas corpus* revision ultimately were dropped. Similar proposals have been reintroduced several times but continue to be a source of contention.

Anti-Drug Abuse Act of 1986

The Anti-Drug Abuse Act of 1986 (P.L. 99-570) was a far-ranging measure containing 15 titles and relating to almost every aspect of federal efforts to prevent and control the abuse of drugs. It stiffened penalties for violations of the Controlled Substances Act (P.L. 91-513), providing for mandatory minimum sentences in certain cases. It also contained provisions aimed at money laundering and expanded authority for seizure and forfeiture of assets derived from criminal activities. Other provisions related to international narcotics control and demand reduction efforts. It authorized \$230 million annually for 3 years for state and local drug enforcement assistance. Overall, it raised existing authorization ceilings by \$1.7 billion; final FY1987 appropriations for drug control were over \$4 billion.

Anti-Drug Abuse Act of 1988

The Anti-Drug Abuse Act of 1988 (P.L. 100-690) was signed into law on November 18, 1988. This legislation built on the Anti-Drug Abuse Act of 1986 and, like its predecessor, contained provisions relating to virtually every facet of the federal effort to curb the abuse of narcotics and other dangerous drugs. The 10 main titles concerned (1) new and increased penalties for drug trafficking offenses (including the death penalty for killings committed by drug “kingpins” and for the drug-related killing of a law enforcement officer), and general increases in funding for drug law enforcement; (2) the organization and coordination of federal anti-drug efforts, including the creation of a new agency headed by a cabinet-level director (a so-called “drug czar”), subject to Senate confirmation; (3) the reduction of drug demand through increased treatment and prevention efforts; (4) the reduction of drug production abroad and of international trafficking in illicit drugs; and (5) sanctions designed to put added pressure on drug users (“user accountability”). The Act raised FY1989 authorization ceilings by \$2.7 billion; actual appropriations brought the total federal anti-drug budget for FY1989 to approximately \$6.5 billion.

Crime Control Act of 1990

The Crime Control Act of 1990 (P.L. 101-647) was an omnibus measure that, like some previous anti-crime proposals, was stripped of several of its more controversial provisions such as those pertaining to the federal death penalty, *habeas corpus* revision, federal exclusionary rule application, and firearms control. The legislation authorized \$220 million in federal matching grants to assist states in establishing more effective prison programs, including alternatives to traditional incarceration. It established a grant program to develop and implement multidisciplinary child abuse investigation and prosecution programs and permitted alternatives to live-in-court testimony in a proceeding involving an alleged offense against a minor. The measure contained child pornography provisions requiring more stringent recordkeeping and enhanced penalties. It codified a Crime Victims’ Bill of Rights in the federal justice system, and increased the funding level for victim compensation and assistance. Other provisions authorized a \$20 million rural drug initiative, expanded the Public Safety Officers’ Death Benefits program to include a one-time benefit for officers permanently disabled in the line of duty, authorized the hiring of additional FBI and Drug Enforcement Administration (DEA) agents, added 12 new chemicals to the list of precursor chemicals regulated under the Chemical Diversion and Trafficking Act, created a National

Commission To Support Law Enforcement, and raised the authorization for the federal drug enforcement grant program to \$900 million.

Violent Crime and Law Enforcement Act of 1994

The Violent Crime and Law Enforcement Act of 1994 (P.L. 103-322) authorized \$30.2 billion for law enforcement and crime prevention measures. It increased to 60 the number of federal crimes punishable by death and established procedures whereby the death penalty may be carried out. It contained a “three strikes” provision requiring the imposition of a sentence of life imprisonment for violent three-time federal offenders. The Act authorized a total of \$8.8 billion, from FY1995-2000, to states and localities for the expansion of law enforcement resources. It authorized a total of \$1 billion for the Byrne program for FY1995-2000. In addition, it authorized, through new grant authorities, funds for additional correctional facilities, the expansion of alternative sanctions for non-violent young offenders, and the costs incurred by states incarcerating criminal aliens. The measure authorized \$5.35 billion for crime prevention and violence against women programs. It prohibited the manufacture, for 10 years after enactment, of semiautomatic assault weapons and the possession or transfer of such firearms if they were not lawfully possessed on the date of enactment. It also authorized \$150 million to implement the Brady Handgun Violence Prevention and the National Child Protection Acts. It included murder by international terrorists among the federal crimes punishable by death and increased the penalties for other terrorist crimes. It increased the penalties for repeat federal sex offenders and assaults against children within federal enclaves, and created a program for the registration of sexual predators with community notice. It also permitted the prosecution as adults of juvenile offenders 13 years of age and older who commit federal crimes of violence or federal crimes involving a firearm. The Act established the Violent Crime Reduction Trust Fund, subject to annual appropriation and financed by savings from reductions in the federal work force or in discretionary spending, to fund its programs.

Legislative Action: 106th Congress

The 106th Congress approved several crime-related bills that were enacted into law. The measure (P.L. 106-386) containing Aimee's Law and the reauthorization of the Violence Against Women Act (VAWA) was signed into law on October 28, 2000. (For more information on VAWA, see CRS Report RS20195, *Violence Against Women, Reauthorization, Federal Funding and Recent Developments*.) Two other measures that received congressional approval provided grants to assist States with combating computer crimes, signed into law (P. L. 106-572) on December 28, 2000, and with DNA analyses, signed into law (P. L. 106-546) on December 19, 2000.

Authorizations for most of the 1994 Crime Act programs, as well as the trust fund established to fund them, expired at the end of September 2000. The 106th Congress considered, but did not approve, several measures that would have extended specific programs within the Act or the trust fund. The House passed the Local Government Law Enforcement Block Grants Act of 2000, amended (H.R. 4999), on September 19, 2000. Similar to the Local Law Enforcement Block Grant (LLEBG) program established under the FY1996 Department of Justice appropriations act (P.L. 104-134), the new grant program

would have continued the current requirement under the LLEBG program that the federal share of grants awarded under the program may not exceed 90% of the cost, but, unlike the LLEBG program, would have included a waiver exception in cases of financial hardship. Also, the program would have received a total authorization of \$10 billion, \$2 billion each year, FY2001-FY2005.

Another measure, S. 1760, would have modified Title I provisions under the 1994 Crime Act establishing the community policing program (COPS). Also, the measure would have reauthorized the program from FY2000 through FY2005. Though the COPS program was not reauthorized, it received over \$1 billion in appropriations in FY2001. (For more information on COPS, see CRS Report 97-196, *The Community Oriented Policing Services Program: An Overview*.)

Another bill, S. 2787, contained a provision to reauthorize the Violent Crime Reduction Trust Fund (VCRTF) from FY2001 through FY2005, but the language was dropped during conference. (See the conference report for the Sexual Trafficking Victims Protection Act P.L. 106-386, signed into law on October 28, 2000. For a discussion of the Crime Trust Fund, see CRS Report RL30471, *Violent Crime Reduction Trust Fund: An Overview*.)

Several bills designed to combat violence in schools and control crime by juveniles were introduced once again in the 106th Congress. In particular, Congress considered legislation that would have reauthorized the Juvenile Justice and Delinquency Prevention Act of 1974, amended. Two bills, (S. 254 and H.R. 1150), were introduced to reauthorize the Juvenile Justice and Delinquency Prevention Act of 1974 (P.L. 93-415), as amended, that expired on September 30, 1996. The Senate passed an amended version of S. 254 on May 20, 1999, and, after striking existing language, inserted the language of S. 254 into H.R. 1501. On June 17, 1999, the House passed, amended, H.R. 1501, a measure reauthorizing the Juvenile Accountability Block Grants. H.R. 1150 was approved as an amendment to H.R. 1501. The measure failed in conference. (For additional information, see CRS Report RL30741, *Juvenile Justice Legislation: Overview and Legislative Debate*.)

The 106th Congress also considered several hate crimes provisions. On June 20, 2000, the Senate approved two hate crimes amendments, No. 3473/Kennedy-Smith and No. 3474/Hatch, to the National Defense Authorization Act for Fiscal Year 2001 (S. 2549/Warner). Under existing law, certain offenses against victims based on such categories as race, color, religion, or national origin are covered by civil rights legislation (18 U.S.C. 245), and the perpetrator tried to prevent the victim from engaging in a "federally protected" activities, such as voting, attending school, serving on a jury, or traveling for purposes of interstate commerce. The Kennedy-Smith amendment, entitled the Local Law Enforcement Enhancement Act of 2000, would have expanded federal authority to prosecute hate crimes in the categories of sexual orientation, gender or disability, and remove limits on federal prosecution for hate crimes that are not committed under "federally protected" activities. The Hatch amendment would have mandated a study of hate crimes to determine whether such legislation is needed, but would not have expanded existing categories under current law.

Shortly after S. 2549 was introduced on May 12, 2000, the House passed, amended, on May 18, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (H.R. 4205/Spence), the companion bill to S. 2549. On July 13, 2000, the Senate struck all language after the enacting clause in H.R. 4205, and substituted the language of S. 2549,

amended. Both hate crimes amendments were dropped from the conference report (H.Rept. 106-945). (For additional information, see CRS Report 98-300, *Hate Crimes Legislation: An Update*.)

LEGISLATION

P.L. 106-177/H.R. 764 (Pryce)

Child Abuse Prevention and Enforcement Act. Amends the Crime Identification Technology Act of 1998 to authorize grants to provide child protective workers and child welfare workers with access to criminal conviction information and protection orders based on a claim of domestic or child abuse, and amends the Victims of Crime Act of 1984 to increase the set aside for child abuse victims by providing an authorization of up to \$20 million within each fiscal year. Introduced February 12, 1999; referred to Committee on the Judiciary. Reported, amended (H.Rept. 106-360) on October 1. Passed House, amended, October 5, 1999. Reported by the Senate Judiciary Committee (without written report), October 28, 1999. Passed Senate, striking existing language, and inserting an amendment, November 19, 1999. Passed House, February 1, 2000. Signed into law, March 10, 2000.

P.L. 106-185/H.R. 1658 (Hyde)

Civil Asset Forfeiture Reform Act. Amends the Federal criminal code to raise the standard that the Government must meet in actions brought for the civil forfeiture of any property belonging to suspected drug traffickers and other alleged offenders. Provides them additional protections, such as: (1) requiring that federal prosecutors establish that a “preponderance of the evidence” connects the assets to be seized with criminal activity; (2) providing that the court may release assets during the case to the defendant if the forfeiture causes a substantial hardship; and (3) mandating that the Government must pay the legal fees of the defendant if the court determines that their property was wrongfully seized. Contains new language to improve law enforcement efforts in property seizure. Introduced May 4, 1999, referred to Committee on the Judiciary. Reported, amended (H.Rept. 106-192), June 18, 1999. Passed House, amended, June 24, 1999. Reported with an amendment in the nature of a substitute (without written report) by the Senate Committee on the Judiciary, March 23, 2000. Passed Senate, amended, March 27, 2000. Passed House by voice vote, April 11. Signed into law, April 25, 2000.

P.L. 106-386/H.R. 3244 (Smith, Christopher)

Sexual Trafficking Victims Protection Act. As reported from conference, the bill contains language to reauthorize the Violence Against Women Act, and to enact Aimee’s Law. Introduced November 8, 1999. Passed House, amended, May 9, 2000. Passed Senate, amended, July 27, 2000. On October 6th and 11th, respectively, the House and Senate approved the conference report, H.Rept. 106-939. Signed into law, October 28, 2000.

P.L. 106-546/H.R. 4640 (McCollum)

DNA Analysis Backlog Elimination Act of 2000. Authorizes the Attorney General to make grants to states for carrying out DNA analyses, to provide for the collection and analysis of DNA samples from certain violent and sexual offenders for use in such system,

and for other purposes. Introduced June 12, 2000, referred to the Committees on the Judiciary and the Armed Services. Passed House, amended, on October 2, 2000. Passed Senate, amended, on December 6, 2000. Signed into law on December 19, 2000.

P.L. 106-576/H.R. 2816 (Salmon)

Computer Crime Enforcement Act. Directs the Office of Justice Programs to make a grants to states to combat computer crime. Introduced September 8, 1999, referred to the Committee on the Judiciary. Passed House and Senate on December 15, 2000. Signed into law on December 28, 2000.

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

U.S. Congress. Committee of Conference. *Violent Crime Control and Law Enforcement Act of 1994*; report to accompany H.R. 3355. Washington, U.S. Govt. Print. Off., 1994. 441 p. (103th Congress, 2d session. H.Rept. 103-694.)

— *Anti Terrorism and Effective Death Penalty Act*; report to accompany S. 735. Washington, U.S. Govt. Print. Off., 1995. 128 p. (104th Congress, 2d session. H.Rept. 104-518.)

— *Violent Crime Control and Law Enforcement Act of 1991*; report to accompany H.R. 3371. Washington, U.S. Govt. Print. Off., 1991. 211 p. (102nd Congress, 1st session. H.Rept. 102-405.)

U.S. Congress. Senate. Committee on the Judiciary. *Comprehensive Crime Control Act of 1983*; report on S. 1762. Washington, U.S. Govt. Print. Off., 1983. 797 p. (98th Congress, 1st session. S.Rept. 98-225.)