

# Issue Brief for Congress

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## **Crime Control: The Federal Response**

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## LEGISLATION

## Crime Control: The Federal Response

### SUMMARY

Federal crime control efforts traditionally have been directed at problems transcending state boundaries, with maintaining law and order in areas subject exclusively to federal jurisdiction or of national concern. Foremost, in the 107<sup>th</sup> Congress are those enhancing the authorities of the Department of Justice (DOJ), specifically the Federal Bureau of Investigation (FBI), in dealing with homeland security and anti-terrorism problems arising from the September 11, 2001 attacks. These include expanded federal law enforcement authority in such areas as wiretapping and related investigative tools to aid law enforcement officials in the war on terrorism, such as in the USA Patriot Act, P.L. 107-56. (For more information, see CRS Report RS21051 and the CRS Electronic Briefing Book on terrorism [http://www.congress.gov/brbk/html/ebter1.shtml].

Amid the law enforcement efforts to combat terrorism, Congress continues to address the issue of the operating authority of the Department of Justice in its law enforcement responsibilities. Legislation (H.R. 2215) regarding the basic authority of DOJ passed in the House and Senate during the first session of the 107<sup>th</sup> Congress. The bill is currently under consideration by conferees.

In the past two decades, Congress has been extending federal jurisdiction over crime control to areas once considered to be within state and local jurisdiction (e.g., juvenile justice and gun control), and enlarging federal support of state and local efforts to combat crime. It passed three 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. The Crime Control Act of 1990 (P.L. 101-647) codified a Crime Victims' Bill of Rights in the federal justice system and directed the U.S. Sentencing Commission to amend certain sentencing guidelines. The Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) authorized funding for law enforcement and crime prevention measures including increasing the number of crimes punishable by death and establishing a "three-strikes" provision for violent offenders. Since the enactment of the last major crime control bill, many bills have evolved to further address crime and criminal justice issues. Renewed discussion and debate on the unenacted proposals related to law enforcement efforts are expected to occur in the second session of the 107<sup>th</sup> Congress.

## MOST RECENT DEVELOPMENTS

*The House agreed on the Homeland Security Act of 2002, H.R. 5005, before the summer recess on July 26, 2002. The Senate is currently considering the measure.*

*Congress resumed the process of developing a plan to reauthorize the Department of Justice in February 2002 and recently on May 1, 2002. Conferees are currently working to resolve differences on H.R. 2215. On December 20, 2001, the Senate passed, with amendments, the 21st Century Department of Justice (DOJ) Appropriations Authorization Act (H.R. 2215). The House had passed its version on July 23, 2001 (H.R. 2215). Both bills would authorize FY2002 appropriations for DOJ, reauthorize the Department's authority to carry out its mission, and require new reporting requirements for the Department.*

*On March 14, 2002, the House considered and passed the Two Strikes and You're Out Child Protection Act (H.R. 2146). The bill would provide for mandatory life imprisonment of a person convicted in which a minor was the victim, unless a death sentence is imposed.*

*In response to the September 11 terrorism attacks, Congress passed relevant anti-terrorist and homeland security legislation in the first session of the 107<sup>th</sup> Congress, which gave the FBI flexibility to investigate suspected terrorists through the USA Patriot Act (P.L. 107-56; October 26, 2001). Prior to the terrorist attacks, DOJ, including the FBI, was in the process of developing a plan for reorganizing; the terrorist attacks brought a sense of urgency to DOJ and the FBI to reorganize in order for the agencies to be more effective with combating terrorism.*

## BACKGROUND AND ANALYSIS

### **Congressional Reaction to the September 11 Terrorist Attacks**

The terrorist attacks of September 11, 2001 have transformed DOJ. With the passage of the USA Patriot Act (P.L. 107-56) on October 26, 2001, Congress gave unprecedented authority to DOJ. The Act enhances surveillance procedures by giving the Attorney General authorization to intercept wire, oral, and electronic communications pertaining to terrorism, as well as computer fraud and abuse. It authorizes the Attorney General to share matters of foreign intelligence and counterintelligence with other federal law enforcement and intelligence agencies. It also authorizes DOJ to use roving surveillance to gather foreign intelligence under certain circumstances, and authorizes to the Director of the FBI to expedite the hiring of people who can provide translation services. The USA Patriot Act (P.L. 107-56) also provides authority for funding deposits of gifts, bequests, and donations from private entities into the Victims of Crime Fund. Currently these funds come from offenders convicted of federal crimes, not taxpayers.

In addition to Congress giving expanded authority to DOJ, on November 8, 2001, Attorney General John Ashcroft announced a "war-time reorganization and mobilization" of DOJ to combat terrorism. The Attorney General's plan contains ten initiatives including restructuring the FBI to make preventing terrorism the center of its law enforcement efforts. Legislation (H.R. 2215) passed in the House and Senate during the first session of the 107<sup>th</sup>

Congress to reorganize DOJ and provide oversight of the FBI. A similar bill, S. 1319, was favorably reported in the Senate (S.Rept. 107-96). The 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act (H.R. 2215/S. 1319), among other provisions, would reauthorize the basic operating authority of DOJ, make all FBI programs and operations subject to the jurisdiction of the DOJ Inspector General, and require the Inspector General to submit a plan to Congress on improving the FBI.

The aftermath of the terrorist acts brought attention to the lack of information sharing between federal law enforcement and intelligence agencies, and between federal and local law enforcement agencies. Congress passed legislation designed, in part, to remove the legal and procedural barriers restricting the sharing of intelligence information between federal agencies. Section 203 of the Patriot Act amends Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure to permit the sharing of intelligence information between federal law enforcement and intelligence agencies. Legislation has been introduced (the Federal-Local Information Sharing Partnership Act of 2001, S. 1615 and H.R. 3285) that would amend the current laws that restrict the sharing of intelligence information between federal and local law enforcement agencies.

## **Congress' Evolving Role in Crime Legislation**

**Development of Federal Aid to States and Local Governments.** During the 1960s, the FBI Uniform Crime Reports showed that crime rates in the United States were rapidly increasing. Consequently, “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). 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 grant programs to state and local governments to be administered by the Department of Justice.

In June 1968, Congress passed the Omnibus Crime Control and Safe Streets Act (P.L. 90-351). 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 to

improve law enforcement and develop 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 federal government's involvement in local law enforcement. Although LEAA 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 in the 1980s, and was expanded as Congress sought solutions to the nation's drug problems.

**Omnibus Crime Bills, 1984-1994.** Since 1984, Congress has passed three omnibus crime control bills. 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. Chapter IV (the Justice Assistance Act) of the 1984 Act established DOJ's leading grant-making administrative agency, the Office of Justice Programs (OJP). Headed by an Assistant Attorney General, OJP coordinates 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 Crime Control Act of 1990 (P.L. 101-647), authorized \$900 million for the Edward Byrne Memorial State and Local Law Enforcement Assistance programs (Byrne programs). The Byrne grants assist states with improving the function of their criminal justice system, preventing crime, and enforcing drug laws. The Act provided funding to assist states with building effective prison systems, including providing alternatives to incarceration. The Act also established new grant programs pertaining to the investigation and prosecution of child abuse cases, authorized funding for other relevant programs, provided enhanced penalties for child pornography, and codified a Crime Victims' Bill of Rights in the federal justice system.

The Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) authorized a total of \$30.2 billion for law enforcement and crime prevention programs under the Violent Crime Reduction Trust Fund. (For more information on the Trust Fund, see CRS Report RL30471, *Violent Crime Reduction Trust Fund: An Overview*.) The 1994 Act authorized appropriations (for FY1995-FY2000) for various programs, including but not limited to: \$1 billion for the Byrne programs; \$8.8 billion for the Community Oriented Policing Services (COPS) programs; \$1.6 billion for the Violence Against Women Act (VAWA) programs; and more than \$1 billion to assist federal law enforcement agencies with the increased workload expected to result from the mandates of the Act. Also, it established new grant programs and provided funding authorization for additional correctional facilities, the expansion of alternative sanctions for non-violent young offenders, and the costs incurred by states incarcerating criminal aliens.

In addition to these funding authorizations, the 1994 Act increased the number of federal crimes punishable by death and established procedures whereby the death penalty might be enforced. It contained a "three strikes" provision requiring a sentence of life imprisonment for violent three-time federal offenders; prohibited the manufacture, for 10 years after enactment, of semiautomatic assault weapons and possession or transference of such firearms if they were not lawfully possessed on the date of enactment; and permitted

the prosecution as adults of juvenile offenders (13 years of age and older) who committed federal crimes of violence or federal crimes involving a firearm.

**Legislation in 1995-2000 Period.** After the passage of the 1994 Act, Congress (in a more incremental fashion) approved additional programs and authorized funding under the Violent Crime Reduction Trust Fund (VCRTF). Under provisions of the Omnibus Consolidated Rescissions and Appropriations Act, FY1996 (P.L. 104-134), Congress approved the establishment of the Local Law Enforcement Block Grant program (LLEBG grants are awarded to states to provide crime prevention programs and improve public safety). LLEBG grants are based on a modified version of the program as outlined in the Local Government Law Enforcement Block Grants Act of 1995 (H.R. 728), a bill passed in the House during the 104<sup>th</sup> Congress, 1<sup>st</sup> session. Again, Congress approved the Commerce, Justice, State Appropriations Act, FY1998 (P.L. 105-119), containing provisions to establish the Juvenile Accountability Incentive Block Grant program (JAIBG block grants are awarded to states that have implemented or are considering implementing legislation or programs promoting greater accountability of juveniles in the juvenile justice system). JAIBG is based on a modified version of the program as outlined in the Juvenile Crime Control Act of 1997 (H.R. 3), a bill passed in the House during the 105<sup>th</sup> Congress, 1<sup>st</sup> session. (For a brief discussion of major DOJ grant programs, see CRS Report RS20539, *Federal Crime Control Assistance to State and Local Governments*.)

Other enacted crime-related legislation includes the Civil Asset Forfeiture Reform Act of 2000 (P.L. 106-185). The legislation provides more protection to property owners while maintaining the effectiveness of forfeiture as a tool for law enforcement purposes. Congress passed Aimee's Law and reauthorized the Violence Against Women's Act of 1994 (VAWA) in the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386). Aimee's Law provides compensation to states for the apprehension, prosecution, and costs of incarceration of offenders that commit murder, rape, or a dangerous sexual offense and were previously convicted of similar offenses in another state. The reauthorization of the Violence Against Women Act extended the authorization for discretionary grant programs. (For more information on VAWA, see CRS Report RL30871, *Violence Against Women Act: History, Federal Funding, and Reauthorizing Legislation*.) The DNA Analysis Backlog Elimination Act of 2000 (P.L. 106-546) signed into law on December 19, 2000, provides grants for DNA analysis to states. The Paul Coverdell National Forensic Sciences Improvement Act of 2000 (P.L. 106-561), signed into law on December 21, 2000, is directed at improving states and local crime labs forensic science services. Also, legislation was enacted that would aid states and local governments in fighting computer crimes, the Computer Crimes Enforcement Act (P.L. 106-572).

## Legislation in the 107<sup>th</sup> Congress

There are several issues before Congress pertaining to homeland security, agencies within the Department of Justice, victims of crime, juvenile justice, and local law enforcement assistance that are being addressed in the 107<sup>th</sup> Congress. Legislation currently under consideration regarding homeland security include: S. 2452 (Lieberman) and H.R. 4660 (Thornberry) would establish the Department of National Homeland Security and the National Office for Combating Terrorism. S. 1867 (Lieberman) would establish the National Commission on Terrorist Attacks Upon the United States and evaluate and investigate circumstances surrounding the September 11 incident. The bill was prepared for

the floor on May 14, 2002. S. 1447 (Hollings), H.R. 3150 (Young), and S. 2546 (Thurmond), would provide for the deployment of federal law enforcement personnel on aircraft. S. 1447 became public law (P.L. 107-71) as well as H.R. 3150 passed in the House in November 2001. Another measure, H.R. 4635, would deputize pilots and allow them to carry firearms on aircrafts after training. A markup was held on June 26, 2002. Funding for responding to terrorism attacks was addressed in S. 2551 (Byrd) and H.R. 4775 (Young). The Senate incorporated S. 2551 as an amendment into H.R. 4775 and the bill passed in the House on May 24, 2002. On June 27, 2002, a hearing was held on H.R. 5005 (Armed and Dangerous) Homeland Security Act of 2002.

In addition to anti-terrorism legislation enacted such as the USA Patriot Act (P.L. 107-56) following the September 11 attacks, other crime-related legislation is now being considered by the 107<sup>th</sup> Congress. The Two Strikes and You're Out Child Protection Act (H.R. 2146) passed in the House on March 14, 2002. The bill would require a mandatory life imprisonment sentence for a person convicted of a federal sex offense in which a minor is the victim and the perpetrator has a prior sex conviction in which the minor was the victim. This penalty would apply to those convicted of this crime or unless a death sentence of death is imposed. The measure was referred to the Senate on March 15, 2002.

In February 2002, conferees resumed consideration of the bill, H.R. 2215, the 21<sup>st</sup> Century Department of Justice (DOJ) Appropriations Authorization Act. The bill passed in the Senate with amendments on December 20, 2001. The Senate Judiciary Committee favorably reported its version of the Act (S. 1319/S.Rept. 107-96) on October 18, 2001. The House passed the 21st Century Department of Justice (DOJ) Appropriations Authorization Act (H.R. 2215) on July 23, 2001. Both bills would reauthorize appropriations for the Department's basic operating authority (which had expired over two decades ago; since that time Congress has routinely enacted appropriations for the agency in the absence of authorizing legislation). Both bills would authorize the making of appropriations of about \$17.6 billion for DOJ in FY2002. The House bill would establish a DOJ Deputy Inspector General with jurisdiction over all FBI programs and operations, and the Senate bill would require the Inspector General of DOJ to appoint an official from the Inspector General's office to independently supervise and coordinate oversight of the FBI's programs and operations. Both bills would require the Inspector General to submit to Congress a plan to improve the FBI, establish new reporting requirements by DOJ intended to bolster congressional oversight of the agency, repeal the provision establishing the Violent Crime Reduction Trust Fund in the 1994 Crime Act, and establish a permanent Violence Against Women Office within the Justice Department.

On October 16, 2001, the House passed the Consequences for Juvenile Offenders Act of 2001 (H.R. 863), a bill similar to H.R. 1501, as introduced in the House in the previous Congress. The bill would amend the Omnibus Crime Control and Safe Streets Act of 1968 to replace provisions regarding grants to develop alternative methods of punishment for young offenders with provisions authorizing the Attorney General to make grants under the Juvenile Accountability Block Grants (JABG), and would in effect, reauthorize the existing Juvenile Accountability Incentive Block Grants (JAIBG), under a shortened title. (For more information on juvenile justice legislation, see CRS Report RL30741, *Juvenile Justice Legislation: Overview and the Legislative Debate*.)



On September 20, 2001, the House considered and passed the Juvenile Crime Control and Delinquency Prevention Act of 2001 (H.R. 1900). It was reported (H.Rept. 107-203) on September 10, 2001, by the House Education and the Workforce Committee. The bill would consolidate funding for various juvenile justice programs into a juvenile crime prevention block grant; it would amend requirements for formula grant funds; and enhance two of the four mandates (separation of juveniles from sight and sound of adult offenders in any correctional institution; and removal of juveniles from any jail or lockup for adults); and would require that states failing to comply with the mandates lose 12.5% of their formula grants for each mandate not met.

The Senate Judiciary Committee reported the Local Law Enforcement Enhancement Act of 2001 (S. 625) on July 26, 2001 (without a written report). For the first time under this measure, sexual orientation, gender, and disability would be added to the list of categories covered by federal civil rights laws. These laws prohibit specified offenses involving actual or perceived race, color, religion, and national origin. Also, S. 625 would expand federal civil rights law to allow prosecution of hate crimes even if no federally “protected activities” were involved (such as voting, attending school, serving on a jury, or traveling for purposes of interstate commerce). Furthermore, the bill would expand the circumstances under which the federal government could offer assistance to state and local governments for the criminal investigation or prosecution of hate crimes. (For more information on hate crimes legislation, see CRS Report 98-300, *Hate Crimes: Background and Legislation in the 107<sup>th</sup> Congress.*)

On April 26, 2001, the House passed the Unborn Victims of Violence Act of 2001 (H.R. 503). The bill would make it a federal crime to harm a fetus while committing a violent crime, including any offender who did not know that the victim was pregnant. Exemptions would include those who perform an abortion with the consent of the pregnant women, and women whose own actions harmed their fetuses. Also, federal prosecutors would not be able to seek the death penalty, except with respect to the death of the mother. The House passed, amended, a similar bill in the 106<sup>th</sup> Congress, H.R. 2436, Unborn Victims of Violence Act of 1999. (For more information on this bill, see CRS Issue Brief IB95095, *Abortion: Legislative Response.*)

Authorizations for most of the 1994 Crime Act programs, as well as the trust fund established to fund them, expired on September 30, 2000. The Departments of Commerce, Justice, and State, the Judiciary, and related agencies FY2002 appropriations bill, signed into law on November 28, 2001 (P.L. 107-77), provides funding for some of the 1994 Crime Act programs such as COPS (\$1 billion), Residential Substance Abuse Treatment for State Prisoners (\$70 million), Drug Courts (\$50 million), Law Enforcement Family Support Programs (\$1 million), Byrne Discretionary Grants (\$94 million), and DNA analysis grants (\$40 million). The appropriations bill also provides funding for Juvenile Accountability Incentive Block Grants (\$249 million), Local Law Enforcement Block Grants (\$400 million), and many of the programs under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

## LEGISLATION

Only bills that have received legislative action during the 107<sup>th</sup> Congress are listed below.

**P.L. 107-56, H.R. 3162**

Uniting and Strengthening America by providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. Signed into law October 26, 2001.

**P.L. 107-71, S. 1447**

Aviation and Transportation Security Act. Introduced September 21, 2001. Passed Senate, amended, October 11. Passed House November 6. Signed into law November 19, 2001.

**H.R. 503 (Graham, Lindsey)**

Unborn Victims of Violence Act of 2001. Reported by Committee on Judiciary April 20, 2001 (H.Rept. 107-42). Passed House April 26, 2001; referred to the Senate. Placed on the Senate's Legislative Calendar June 8, 2001.

**H.R. 863 (Smith, Lamar)**

Consequences for Juvenile Offenders Act of 2001. Reported, amended, by Committee on Judiciary April 20, 2001 (H.Rept. 107-46). Passed House, as amended, October 16, 2001. Referred to Senate Committee on Judiciary.

**H.R. 1900 (Greenwood)**

Juvenile Crime Control and Delinquency Prevention Act of 2001. Reported by Committee on Education and the Workforce September 10, 2001 (H Rept. 107-203). Considered and passed by House September 20, 2001. Referred to Senate Committee on Judiciary.

**H.R. 2146 (Green)**

Two Strikes and You're Out Child Protection Act. Reported, amended, by Committee on Judiciary March 12, 2002 (H.Rept. 107-373). Passed House March 14, 2002. Referred to Senate Committee on Judiciary.

**H.R. 2215 (Sensenbrenner)**

21st Century Department of Justice Appropriations Authorization Act. Reported, amended, by Committee on Judiciary July 10, 2001 (H.Rept. 107-125). Passed House July 23, 2001. Passed Senate December 20, 2001. A similar bill, S. 1319, was referred to Senate Committee on Judiciary (S.Rept. 107-96).

**H.R. 4635 (D. Young)**

Contains provisions to deputize pilots and allow them to carry firearms on aircrafts after training. Referred to Committee on Transportation and Infrastructure May 2, 2002. Ordered to be reported, amended, June 26. Related bill: S. 2554.

**H. 4775 (C. W. Young)**

Introduced May 20, 2002. Reported by Committee on Appropriations (H.Rept. 107-480) May 20. Passed House May 24. Passed Senate June 7.

**H.R. 5005 (Armey)**

Homeland Security Act of 2002. Introduced June 24, 2002; referred to various committees. Hearing held by Committee on Judiciary June 27. Passed House July 26.

**S. 625 (Kennedy)**

Local Law Enforcement Enhancement Act of 2001. Reported by Committee on Judiciary July 26, 2001, without a written report.

**S. 924 (Biden)**

Protection Act of 2002. Ordered reported, amended, by Committee on Judiciary on April 11, 2002.

**S. 1319 (Leahy)**

21<sup>st</sup> Century Department of Justice Appropriations Authorization Act (the Senate's version of H.R. 2215). Reported with an amendment in the nature of a substitute by Committee on Judiciary October 30, 2001, without a written report.