

# Issue Brief for Congress

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

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## Crime Control: The Federal Response

### SUMMARY

Federal crime control efforts traditionally have been directed at problems transcending state boundaries concerned, with maintaining law and order in areas subject exclusively to federal jurisdiction or of national concern. During the 107<sup>th</sup> Congress, authorities of the Department of Justice (DOJ), specifically the Federal Bureau of Investigation (FBI), were enhanced to deal with homeland security and anti-terrorism problems arising from the September 11, 2001 attacks. Provision made in the USA Patriot Act, P.L. 107-56, was one of the first federal responses to the war on terrorism after the attack. Congress also heightened the authority to secure the Nation's lands and borders through the passage of the Homeland Security Act of 2002 on November 25, 2002.

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 107<sup>th</sup> Congress. The bill was signed into law November 2, 2002 (P.L. 107-273).

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 first session of the 108<sup>th</sup> Congress.

## **MOST RECENT DEVELOPMENTS**

The Homeland Security Act of 2002, H.R. 5005, before the summer recess on July 26, 2002. The Senate passed the measure on November 19, 2002. The President signed the bill into law on November 25, 2002.

The President signed into law the 21<sup>st</sup> Century Department of Justice (DOJ) Appropriations Authorization bill, H.R. 2215, on November 2, 2002. The conference report (H.Rept. 107-685) to accompany the bill, H.R. 2215, was agreed to in the House on September 26, 2002 and in the Senate on October 3, 2002. Congress resumed the process of developing a plan to reauthorize the Department of Justice in February 2002 and again on May 1, 2002. 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). The act authorizes FY2002 appropriations for DOJ, reauthorizes the Department's authority to carry out its mission, and require new reporting requirements for the Department.

## **BACKGROUND AND ANALYSIS**

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

The role of Congress in developing crime legislation has evolved from providing assistance to state and local entities to creating enhancements for the security of the nation against terrorist attacks. Along with development of legislation that make provision to aid states in controlling crime, efforts to secure the nation from terrorism has received much attention in Congress in recent years.

**Congressional Reaction to Terrorist Attacks.** The terrorist attacks of September 11, 2001 transformed many responsibilities under the authority of the Department of Justice (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, reauthorizes the basic operating authority of DOJ, makes all FBI programs and operations subject to the jurisdiction of the DOJ Inspector General, and requires the Inspector General to submit a plan to Congress on improving the FBI. The President signed the bill into law on November 2, 2002 (P.L. 107-273).

The aftermath of the terrorist acts also brought attention to the lack of information sharing among federal law enforcement and intelligence agencies, and among 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 among 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 among federal law enforcement and intelligence agencies. Other major legislative efforts to secure the Nation's land and borders was accomplished through the enactment of the Homeland Security Act of 2002 (P.L. 107-296). The act requires a consolidation of 22 federal agencies to establish the Department of Homeland Security within the executive branch of the federal government.

**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 program 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).

## **Recent Legislative Activity in Congress**

There were several issues before Congress pertaining to homeland security, agencies within the Department of Justice, victims of crime, juvenile justice, and local law enforcement assistance addressed in the 107<sup>th</sup> Congress. Legislation considered regarding homeland security included: 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 have established 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 air craft. S. 1447 became public law (P.L. 107-71), and 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 the House on May 24, 2002. On June 27, 2002, the first hearings were held in the House Judiciary Committee and the House Committee on Science regarding H.R. 5005 (Armey) Homeland Security Act of 2002. The bill passed in the House on July 26, 2002 and in the Senate on November 22, 2002. The President signed the bill into law on November 25, 2002 (P.L. 107-296).

In addition to anti-terrorism legislation enacted, other crime-related legislation considered in the 107<sup>th</sup> Congress include 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 sentence of death is imposed. The measure was referred to the Senate on March 15, 2002 with no further action.

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 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. H.R. 2215 passed unanimously in the Senate on December 20, 2001. On October 3, 2002, the conferees agreed to the conference report. The President signed the bill on Nov. 2, 2002 (P.L. 107-273).

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 have amended 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 have expanded the circumstances under which the federal government could offer assistance to state and local governments for the criminal investigation or prosecution of hate crimes.

On April 26, 2001, the House passed the Unborn Victims of Violence Act of 2001 (H.R. 503). The bill would have made 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 (CJS), 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. Appropriations funding for agencies under CJS for FY2003 was not enacted before the end of the 107<sup>th</sup> Congress. CJS was one of eleven appropriations bills operating under a continuing resolution through January 31, 2003. CJS is part of an omnibus bill funding these eleven agencies for FY2003.

## **LEGISLATION**

### **H.R. 54 (Crenshaw)**

Establishes a grant program that provides incentives for states to enact mandatory minimum sentences for certain firearms offenses, and for other purposes. Introduced January 7, 2003; referred to Committee on Judiciary.

### **H.R. 80 (Jackson-Lee)**

To enhance federal enforcement of hate crimes, and for other purposes. Introduced January 7, 2003; referred to Committee on Judiciary.

### **H.R. 291 (Kelly)**

Amends title 18, United States Code, to increase the mandatory minimum penalties provided for possessing, brandishing, or discharging a firearm during and in relation to a crime of violence or drug trafficking crime. Introduced January 8, 2003; referred to Committee on Judiciary.

### **S. 6 (Daschle)**

To enhance homeland security. Introduced January 7, 2003; referred to Committee on Judiciary.

### **S. 22 (Daschle)**

To enhance domestic security and other purposes. Introduced January 7, 2003; referred to Committee on Judiciary.

### **S. 87 (Clinton)**

Provides for homeland security block grants. Introduced January 7, 2003. Referred to Committee on Governmental Affairs.

### **S. 149 (DeWine)**

Improves the investigation and prosecution of sexual assault cases with DNA evidence, and for other purposes. Introduced January 13, 2003. Referred to Committee on Judiciary.

### **S. 152 (Biden)**

Assesses the extent of the backlog in DNA analysis of rape kit samples, and to improve investigation and prosecution of sexual assault cases with DNA evidence. Introduced January 14, 2003. Referred to Committee on Judiciary.