Federal Crime Control: Background, Legislation, and Issues

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Summary

States and localities have the primary responsibility for prevention and control of domestic crime. As crime became more rampant, the federal government increased its involvement in crime control efforts. Over a period of 10 years, Congress passed five major anti-crime bills and increased appropriations for federal assistance to state and local law enforcement agencies. Since the 9/11 terrorist attacks, however, federal law enforcement efforts have been focused more on countering terrorism and maintaining homeland security. Amid these efforts, however, Congress continues to address many crime-related issues.

Many have attributed the increased attention the federal government gave to crime issues in the 1980s and 1990s to the rising crime rate. The violent crime rate, for example, began to increase in the 1960s, continuing to rise in the mid-1990s before starting to decline in the late-1990s. The continued decline in the violent crime rate in the early 2000's coincided with national attention being focused away from domestic crimes and more on securing the homeland against terrorism. During this period, Congress began to increase federal funding to homeland security-related activities. In 2005, however, the violent crime rate began to increase and continued to increase in 2006, before declining again in 2007. The increase in the violent crime rate in 2005 and 2006, however, continues to remain at an over 30 year low.

The 110th Congress is considering a variety of crime-related legislation, some of which has either been enacted, reported out of committee, and/or passed one or the other Chamber. For example, the following Acts were enacted during the 110th Congress: the Court Security Improvement Act of 2007 (P.L. 110-177); the Second Chance Act of 2007 (P.L. 110-199); the Identity Theft Enforcement and Restitution Act of 2008 (P.L. 110-326); the Effective Child Pornography Prosecution Act of 2007 (P.L. 110-358); the Drug-Endangered Children Act of 2007 (P.L. 110-345); the Debbie Smith Reauthorization Act of 2008 (P.L. 110-360); the Methamphetamine Production Prevention Act of 2008 (P.L. 110-415); and the Mentally Ill Offender Treatment and Crime Reauthorization and Improvement Act of 2008 (P.L. 110-416). The House passed the Local Law Enforcement Hate Crimes Prevention Act of 2007 (H.R. 1592) and the COPS Improvement Act of 2007 (H.R. 1700). The Senate passed the Gang Abatement and Prevention Act of 2007 (S. 456), and the Senate Judiciary Committee favorably reported the COPS Improvement Act of 2007 (S. 368), the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2008 (S. 3155), and the Fugitive Information Networked Database Act of 2008 (S. 3136). In addition to the aforementioned legislation, other crime-related issues have surfaced during the 110th Congress that could warrant congressional action, such as the U.S. Sentencing Commission amending the federal sentencing guidelines by lowering the recommended penalties for crack cocaine offenses in an effort to alleviate some of the issues associated with the sentencing disparity in current law between crack and powder cocaine; reforming the Federal Prison Industries; reforming the federal sentencing system; and providing oversight of the various Department of Justice grant programs. This report will be updated as warranted.

Contents

Figures

Appendixes

Contacts

Introduction

The prevention and control of *domestic* crime has traditionally been a responsibility of state and local governments, with the federal government playing more of a supportive role. The federal government increased its involvement in domestic law enforcement through a series of grant programs to encourage and assist states and communities in their efforts to control crime and in the expansion in the number of offenses that could be prosecuted in the federal criminal justice system.

Over a 10-year period (1984-1994), Congress enacted five major anti-crime bills[1] and increased appropriations for federal assistance to state and local law enforcement agencies. As a result, the Federal Bureau of Investigation (FBI) had seen an expansion of its role in fighting domestic crime as Congress began to add more crimes to the federal criminal code that were previously under the sole jurisdiction of state and local governments. Within the past several years, however, some federal assistance to state and local law enforcement has declined, and the FBI refocused its resources on countering terrorism as federal post-9/11 law enforcement efforts have focused primarily on protecting the nation against terrorist attacks.

The policy question facing Congress is what is the role of the federal government in crime control? Specific questions related to this issue include the following:

- Should federal jurisdiction over hate crimes be broadened?
- Should the Department of Justice's (DOJ) Community Oriented Policing Services (COPS) program be restructured?
- Should the federal government provide additional and new funding for court security and states' victim/witness protection programs?
- Should the federal government play a larger role in reintegrating ex-offenders into the community?
- Should the federal government play a larger role in prosecuting identity theft, and how should it treat restitution for victims?
- Should the federal mandatory minimum penalties for crack and powder cocaine be equitable?
- Should the federal government play a larger role in combating the abuse and illicit manufacture of methamphetamine?
- Should the federal government play a role in stemming gang-related violence?
- Should the federal government weigh in on what should be the proper treatment of juvenile offenders?
- Should the federal government provide additional and new funding for programs that support mentally ill offenders?

[1] See for example, the Crime Control Act of 1984 (P.L. 98-473); the Anti-Drug Abuse Act of 1986 (P.L. 99-570); the Anti-Drug Abuse Act of 1988 (P.L. 100-690); the Crime Control Act of 1990 (P.L. 101-647); and the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322).

- Should federal jurisdiction over crimes related to child pornography and the sexual exploitation of children be broadened?
- Should the federal government expand grant funding to aid state and local governments analyze and decrease the backlog in DNA evidence?
- Should certain products produced and services provided by federal inmates be opened to a competitive bidding process?
- Should the federal sentencing scheme be reformed in light of the 2005 U.S. Supreme Court case *U.S. v. Booker* (125 S.Ct. 738 (2005))?
- Should the federal government provide funding to aid state, local, and tribal governments maintain the fugitive database?
- Should Congress exercise its oversight role of several Department of Justice grant programs, including the Edward Byrne Memorial Justice Assistance Grant (JAG) and the Community Oriented Policing Services (COPS) grant program?

This report focuses on the aforementioned crime-related issues and legislation that have been acted upon in the 110th Congress. This report, however, does not cover issues related to homeland security, terrorism, abortion, and gun control.[2]

Crime Statistics[3]

As previously mentioned, the prevention and control of domestic crime has traditionally been a responsibility of state and local governments, with the federal government playing a more supportive role. The federal government began to take a more direct role in crime control, however, as the violent crime rate increased and some questioned the ability of state and local law enforcement to combat the growing problem with limited resources at their disposal.

The Federal Bureau of Investigation's (FBI) Uniform Crime Report (UCR) program compiles data from monthly reports transmitted directly to the FBI from approximately 17,000 local police departments or state agencies. Of interest to lawmakers are the two indices of crimes that are the basis of the UCR. The Part I index includes the four major *violent crimes* of homicide and non-negligent manslaughter, forcible rape, robbery, and aggravated assault. The Part II index includes the *property crimes* of burglary, larceny-theft, motor vehicle theft, and arson. The UCR collects crime data from the various state and local law enforcement agencies and presents it in a variety of formats in the UCR. The data on which the crime rates are derived are crime incidents *reported* to the police (as opposed to arrests made by police or cases cleared by the police).

Although the UCR is most commonly referenced when discussing crime rates, another measurement is worth noting. The National Crime Victim Survey (NCVS), which is administered by the Department of Justice (DOJ) Bureau of Justice Statistics (BJS), is a comprehensive, nation-wide survey of victimization in the United States. Since not all crimes are reported to local

[2] See the CRS website at http://www.crs.gov/ for related reports on homeland security and terrorism. For information on abortion issues, see CRS Report RL33467, *Abortion: Legislative Response*, by (name redacted). For information on gun control issues, see CRS Report RL32842, *Gun Control Legislation*, by (name redacted).

[3] For additional information on crime statistics, see CRS Report RL34309, *How Crime in the United States Is Measured*, by (name redacted) and (name redacted).

law enforcement, NCVS data attempts to address under-reporting issues in the UCR by asking respondents if they have been victimized any time in the past year. Each year, data are obtained from a nationally representative sample of 77,200 households comprising nearly 134,000 persons on the frequency, characteristics and consequences of criminal victimization in the United States.[4] The NCVS asks respondents if they have been the victim of rape, sexual assault, robbery, assault, theft, household burglary, and motor vehicle theft. NCVS data allows DOJ Bureau of Justice Statistics (BJS) to estimate the likelihood of victimization for the population as a whole as well as for segments of the population such as women, the elderly, members of various racial groups, city dwellers, or other groups. For the most part, the NCVS generally trends similar to the UCR. For the purpose of this report, however, we will be presenting and analyzing *crime rates* as reported by the UCR program.

Violent Crime Rate

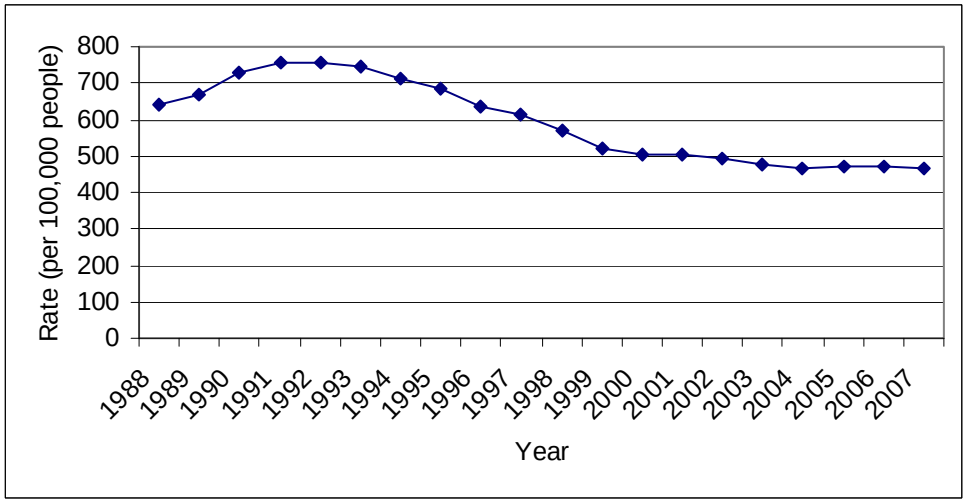
According to the UCR, the violent crime rate began to increase sharply in the 1960s. The increase continued throughout the 1970s and into the early 1990s. By the mid-1990s, however, the violent crime rate began to decline (see **Figure 1**). While the violent crime rate continued to decline overall into the new millennium, it increased slightly in 2005 and 2006, however began to decline once again in 2007. Despite the slight increases in the violent crime rate in 2005 and 2006, the rate remained at a 30-year low.[5]

The decline in the crime rate has led recent Congresses, in part, to take another look at federal funding for state and local law enforcement. Despite the declining crime rate, however, Congress continued to pass "get tough" measures for certain categories of offenders by increasing existing penalties or creating new categories of penalties (i.e., mandatory minimum sentences). Following is a discussion of legislation that has seen legislative action in the 110th Congress and selected crime-related issues that could warrant congressional consideration.

[4] U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Crime and Victims Statistics*, available online at http://www.ojp.usdoj.gov/bjs/cvict.htm.

[5] Although not discussed in this report, the property crime rate during the period examined tended to closely trend the violent crime rate.

Figure 1. Violent Crime Rate, 1988-2007



Source: FBI's UCR for each respective year (see 2007 Federal Bureau of Investigation U.S. Department of Justice, *Crime in the United States Uniform Crime Report*).

Hate Crimes[6]

Under current federal law, hate crimes are limited to certain civil rights offenses. The issue facing Congress is whether it should consider legislation to broaden federal jurisdiction over hate crimes by establishing additional categories of hate crime offenses that could be prosecuted in a federal court. In 2006, there were 7,722 reported incidents of hate crimes. Before a crime is labeled a hate crime, law enforcement must reveal sufficient evidence to lead a reasonable person to conclude that the offender's actions were motivated, in whole or in part, by his or her bias. There is little disagreement that some criminal acts are motivated due to a bias based on race, religion, sexual orientation or ethnicity. There *is*, however, disagreement with respect to the level of *federal* intervention. While some argue that greater federal involvement would ensure that such crimes are systematically addressed, others contend that federal involvement would be redundant to the legal prohibitions for these crimes (in their traditional form) that already exist under either federal or state law.

For several Congresses, attempts had been made to stiffen penalties for crimes of violence motivated by bias. The 110th Congress is considering such legislation, and on May 3, 2007, the House passed the Local Law Enforcement Hate Crimes Prevention Act of 2007 (H.R. 1592).

[6] For additional information and legislation in the 110th Congress on hate crimes, see CRS Report RL33403, *Hate Crime Legislation*, by (name redacted).

Community Oriented Policing Services (COPS)[7]

The COPS program, created by Title I of the Violent Crime Control and Law Enforcement Act of 1994, aims to increase community policing in part by awarding grants to state, local, and tribal law enforcement agencies for hiring and training new officers as well as for several non-hiring purposes, including developing crime-prevention technology and strategy. The 109th Congress passed legislation that reauthorized the COPS program through FY2009.[8] In addition to reauthorizing the program, the act consolidated the COPS program into a single grant program. Prior to this, the COPS program consisted of several different subgrant programs. The 110th Congress, however, is considering legislation that would restructure and further reauthorize the COPS program. Two bills have seen legislative action thus far. On May 15, 2007, the House passed the COPS Improvement Act of 2007 (H.R. 1700) and on May 24, 2007, the Senate passed a different version of the COPS Improvement Act of 2007 (S. 368). In general, both bills would, among other things, expand the scope of the COPS grant programs, make COPS an exclusive component of DOJ, and authorize appropriations for COPS.

The Bulletproof Vest Partnership Grant Program

The Bulletproof Vest Partnership Grant Program receives its appropriations under the COPS program but is administered by DOJ's Bureau of Justice Assistance. The program provides benefits to eligible state and local law enforcement entities to be used for the purchase of body armor. The House considered legislation to reauthorize the program, H.R. 6045, under suspension of the rules on September 25, 2008; however, after limited debate, the motion to suspend the rules was objected to due to a lack of a quorum.

Court Security[9]

The 2005 Atlanta court shooting that killed several court personnel, including a judge, brought national attention to the issue of court security. While legislation was introduced and passed in one Chamber in the 109th Congress, legislation was not enacted. In the 110th Congress, however, legislation was enacted on January 7, 2008 (the Court Security Improvement Act of 2007; P.L. 110-177). Among other provisions, the Act increases penalties for certain crimes committed against specific categories of federal employees and their family members, including federal judges. The Act also increases penalties for certain illegal acts that are committed against jurors, witnesses, victims and informants, as discussed below.

[7] For additional information on the COPS program, see CRS Report RL33308, *Community Oriented Policing Services (COPS): Background, Legislation, and Issues*, by (name redacted).

[8] See the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162).

[9] For additional information and legislation in the 110th Congress on court security, see CRS Report RL33473, *Judicial Security: Comparison of Legislation in the 110th Congress*, by (name redacted), and CRS Report RL33464, *Judicial Security: Responsibilities and Current Issues*, by (name redacted).

States' Victim/Witness Protection Program

Witness intimidation reduces the likelihood that citizens will engage with the criminal justice system, which could deprive police and prosecutors of critical evidence.[10] It can also reduce public confidence in the criminal justice system and create the perception that the criminal justice system cannot protect citizens. Witness intimidation can be the result of actual or perceived threats from an offender or his associates, but it can also be the result of more general community norms that discourage residents from cooperating with the police or prosecutors.[11]

P.L. 110-177, enacted on January 7, 2008, provides incentives for states to enhance their victim/witness protection programs. For example, the Act expands an existing grant program so funds could be used for states and local governments' victim/witness protection programs.[12]

Offender Reentry[13]

Each year nearly 650,000 offenders are released from prison, and the Bureau of Justice Statistics estimates that over 60% of all released prisoners will commit new offences within three years of their release. The issue facing Congress is how to manage this population once they have been released from custody. There has been recent discussion of reinstating parole at the federal level (for non-violent, drug offenders) and creating and enhancing existing programs that are designed to provide assistance for offenders to prepare them for reentry into their communities. Many studies have shown that reentry initiatives that combine work training and placement with counseling and housing assistance can significantly reduce recidivism rates. Within the federal government and the academic community, a broad consensus exists that offender reentry can typically be divided into three phases: programs that prepare offenders to reenter society while they are in prison, programs that connect ex-offenders with services immediately after they are released from prison, and programs that provide long-term support and supervision for ex-offenders as they settle into communities permanently. Both the President's *Serious and Violent Offender Reentry* initiative and recent congressional appropriations in this area have focused primarily on programs for offenders once they have been released from prison.

On April 9, 2008, the Second Chance Act of 2007 (P.L. 110-199) was enacted. This Act expands the current offender reentry grant program at DOJ. It also authorizes funding for pilot programs for a wide range of services for offenders reentering the community. These programs fall under five broad categories: grants for state and local reentry courts, substance abuse treatment and counseling, health care-related services, family unification programs, and education programs.

[10] Kelly Dedel, *Witness Intimidation*, July 2006, Washington DC: Department of Justice, Community Oriented Policing Services, p. 6.

[11] Ibid, p. 3.

[12] Other bills introduced in the 110th Congress (H.R. 933 and S. 79) would establish a Short-term State Witness Protection Section within the U.S. Marshals Service (USMS). The Short-term State Witness Protection Section would provide protection for witnesses in state and local trials involving homicide or other major violent crimes pursuant to cooperative agreements with state and local prosecutor's offices and the U.S. Attorney for the District of Columbia.

[13] For additional information on offender reentry, see CRS Report RL34287, *Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism*, by (name redacted).

Identity Theft

According to the Federal Trade Commission's (FTC's) most recent survey on identity theft, approximately 8.3% of the U.S. adult population may have fallen victim to identity theft in 2005.[14] Furthermore, FTC complaint data from 2006 indicate that the most common complaint received (36% of complaints) was that of identity theft.[15] Policymakers continue to be tasked with strengthening the criminal statues to allow for effective prosecution of identity thieves and to provide restitution for victims.

In April, 2007, The President's Identity Theft Task Force authored a strategic plan for combating identity theft in which it recommended that Congress close gaps in the federal criminal statues to more effectively prosecute identity theft-related offenses.[16] Legislation enacted in the 110th Congress addresses several of these recommendations. The Identity Theft Enforcement and Restitution Act of 2008 (Title II of P.L. 110-326) was signed into law on September 26, 2008; it authorizes restitution to ID theft victims and expands prosecution of identity thieves. Elements of this Act include eliminating provisions in the U.S. Code that required identity theft to involve interstate or foreign communication and eliminating those provisions that required that damage to a victim's computer amass to $5,000. This Act also expands the definition of "cyber-extortion" and expands interstate and foreign jurisdiction for prosecuting computer fraud offenses.

The 110th Congress introduced several other bills related to identity theft, suggesting that policymakers continue to be concerned with safeguarding individuals' and organizations' data. Specifically, the House passed H.R. 6600, H.R. 4791, H.R. 3461, and H.R. 1525, which are aimed at eliminating the inclusion of Social Security numbers on Medicare cards, securing personal information held by federal agencies, advancing public education regarding Internet safety threats, and advancing the prosecution of identity theft committed with the aid of Internet spyware, respectively.

Mandatory Minimum Sentences and Crack/Powder Cocaine Sentencing Disparities

Mandatory minimum sentencing laws require offenders to be imprisoned for a specified period of time for committing certain types of crimes. While the intent of mandatory minimum sentencing and other similar measures is to punish the most serious offenders by incarcerating them for long periods, critics contend that the laws are disproportionately applied to nonviolent, minority offenders. While this debate tends to focus on non-violent, drug offenses, it is especially apparent, they argue, with the crack versus powder cocaine sentencing disparities. Proponents, however, contend that mandatory minimums decrease crime and ensure certainty in the criminal justice

[14] Federal Trade Commission, *2006 Identity Theft Survey Report*, November 2007, at http://www.ftc.gov/os/2007/11/SynovateFinalReportIDTheft2006.pdf.

[15] Federal Trade Commission, *Identity Theft Victim Complaint Data*, February 7, 2007, at http://www.ftc.gov/bcp/edu/microsites/idtheft/downloads/clearinghouse_2006.pdf.

[16] The President's Identity Theft Task Force, *Combating Identity Theft: A Strategic Plan*, April 23, 2007, at http://www.identitytheft.gov/reports/StrategicPlan.pdf

system. In addition to serving as a specific deterrent, proponents argue that these measures serve as a general deterrent to potential criminals.

The 1986 and 1988 Anti-Drug Abuse Acts (P.L. 99-570 and P.L. 100-690, respectively) played pivotal roles in the current mandatory minimum sentencing structure applicable to federal drug offenses. The 1986 Act created mandatory minimum sentences for certain illicit drugs that are based on the quantity and type of drug involved in trafficking offenses. The Act, however, is most notable for its establishment of what has come to be known as the 100-to-1 quantity ratio between powder and crack cocaine.[17] The 1988 Act required a mandatory minimum sentence for a first time offense of simple possession of crack cocaine. Possession of more than 5 grams of crack cocaine is punishable under the act by a minimum of five years.

Congress, through the Violent Crime Control and Law Enforcement Act of 1994,[18] directed the U.S. Sentencing Commission (Commission) to study the difference in penalties for powder and crack cocaine offenses. Congress was concerned that the penalties for crack and powder cocaine were having a disproportionate effect on minority offenders. In 1995, 1997, 2002 and 2007, the Commission reported to Congress[19] on the disparity in penalties for crack and powder cocaine offenses. In the first report, the Commission called for Congress to equalize the quantities between crack and powder cocaine that trigger a mandatory minimum penalty. However, in their 2002 and 2007 reports, the Commission recommended that the 5-year and 10-year "trigger" quantities for crack cocaine be raised, but not to the level of powder cocaine. While the penalties remain in place at the federal level, some states have begun to take measures to ameliorate the discrepancies in state law.

In May 2007, the Commission proposed an amendment to the federal sentencing guidelines that would amend the guidelines by lowering the recommended penalties for crack cocaine offenses in an effort to alleviate some of the issues associated with the sentencing disparity in current law between crack and powder cocaine. In November 2007, the amendment went into effect and the Commission voted in favor of making the amendment retroactive. The amendment, however, does not impact the mandatory minimum penalties that are in current law.[20] Meanwhile, several bills have been introduced in the 110th Congress that would, in some manner, reduce the mandatory minimum penalty triggers for crack and powder cocaine.

Methamphetamine[21]

Illicit methamphetamine (MA) manufacture and abuse are longstanding problems in some states and regions of the country. The problem of illicit MA manufacture and use has been particularly acute in the West, Midwest, and Southeast. In recent years, concerns were raised that this drug problem was spreading nationwide, and MA issues reemerged as an important national concern

[17] It takes 100 times as much powder cocaine to trigger the same 10-year mandatory penalty as for a given amount of crack cocaine.

[18] P.L. 103-322.

[19] To gain access to these report, go to http://www.ussc.gov/reports.htm.

[20] For additional information, see CRS Report RS22800, *U.S. Sentencing Commission's Decision on Retroactivity of the Crack Cocaine Amendment*, by (name redacted).

[21] For more information, see CRS Report RS22325, *Methamphetamine: Legislation and Issues in the 110th Congress*, by (name redacted).

and topped the congressional agenda. The illicit manufacture and abuse of MA have implications for public health, child welfare, crime and public safety, and international relations. According to the 2007 National Survey on Drug Use and Health (NSDUH), there were approximately 529,000 current users of MA aged 12 or older (0.2% of the population).

Over the past 30 years, Congress has enacted legislation designed to address the problem of illicit MA abuse and its manufacture in clandestine labs. These measures have included more stringent federal regulation of MA precursor chemicals, enhanced criminal penalties for trafficking in the drug, and authorizing additional funding for grants providing MA-specific law enforcement assistance. During the 109th Congress, the enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005 (P.L. 109-177) included a number of provisions designed to address various aspects of the MA problem. Title VII of P.L. 109-177, the Combat Methamphetamine Epidemic Act (CMEA), which included provisions designed to curb MA use, trafficking, and production, was signed into law on March 9, 2006. Among other things, P.L. 109-177 further limited the diversion of MA precursor chemicals by requiring retailers to track purchases of over-the-counter medications containing these substances; authorized stricter limits on the bulk importation of MA precursor chemicals; provided increased MA-related criminal penalties; authorized measures related to the clean up of illicit MA laboratory sites; and authorized a grant program to prevent and treat MA abuse among pregnant and parenting women.

Congress continues to be concerned about the abuse and illicit manufacture of MA. More recently, legislation was introduced during the 110th Congress on a broad range of issues related to MA abuse, illicit manufacture, treatment, and drug trafficking offenses. Two more targeted measures were enacted that build on some of the provisions enacted in the CMEA (P.L. 109-177). S. 1276, the Methamphetamine Production Prevention Act of 2008 (P.L. 110-415), passed by the House and Senate on September 29, 2008, further specifies the procedures retailers must follow for tracking the retail purchases of over-the-counter (OTC) medications containing MA precursor chemicals. H.R. 1199, the Drug-Endangered Children Act of 2007 (P.L. 110-345), passed by the House and Senate on September 24, 2008, extends the authority of the Drug-Endangered Children grant program through FY2009.

Gangs[22]

Gangs continue to be a problem throughout America. According to a survey of law enforcement agencies on the characteristics of youth gangs conducted by the National Youth Gang Center (NYGC),[23] gang activity is pervasive in both urban and rural America. Of cities with populations of 50,000 or more, 86% reported youth gang problems in 2006. Among responding suburban county agencies, 51% reported gang activity, as did 33% of responding smaller city agencies, and 15% of responding rural county agencies. The NYGC estimates that in 2006, 785,000 gang members and 26,500 gangs were active across the United States.

Policymakers have long considered solutions to youth gang violence that include a combination of prevention, intervention, and suppression efforts. However, as gang violence increases, some are calling for different approaches to the issue. For example, should the tools used by law

[22] Portions of this section were taken from CRS Report RL33400, *Youth Gangs: Background, Legislation, and Issues*, by (name redacted).

[23] See http://www.iir.com/nygc/.

enforcement for certain crime-related activities (i.e., interception of wire, oral, and electronic communications) be expanded to cover violations committed by criminal street gang members? Should provisions in the Racketeer Influenced and Corrupt Organization (RICO) Act be extended to members of criminal street gangs? Should federal authority to prosecute juvenile gang members as adults be expanded to younger juveniles?

Over the years, Congress has passed legislation that enhanced criminal penalties for gang-related crimes and created programs designed to prevent youths from joining gangs. Several bills targeting the gang problem have been introduced in the 110th Congress. Among other provisions, some of the bills would broaden the scope of the federal government's role in prosecuting violent crimes committed by members of gangs. Some of the bills would include provisions for prosecuting criminal street gang enterprises similar to the existing Racketeer Influenced and Corrupt Organization (RICO) statutes for prosecuting cases involving federal racketeering. One of the more controversial provisions in at least one of the bills pertains to the age at which a juvenile could be transferred for criminal prosecution, which would provide for the transfer of juveniles to adult criminal prosecution at the age of 16. Some of the bills would provide for increased mandatory minimum penalties for gang-related offenses. In at least one of the bills, the death penalty would provide for certain gang-related crimes. Some of the bills would create and authorize designated high-intensity interstate gang activity areas (HIIGAAs). Some of the bills would reauthorize the Gang Resistance Education and Training (G.R.E.A.T) program and authorize appropriations for state and local reentry courts. Additionally, some of the bills would also authorize grant programs that would increase prosecutorial resources to more effectively prosecute gang violence, among other things.

Of the various pieces of legislation that have been introduced in the 110th Congress, only one has received congressional action. The Senate passed the Gang Abatement and Prevention Act of 2007 (S. 456) on September 21, 2007.

Juvenile Justice and Delinquency Prevention Act (JJDPA) Reauthorization[24]

As more focus is being placed on young offenders, some have questioned the way in which the United States treats this population in the nation's criminal justice systems. Over the past thirty years, the federal juvenile justice system has generally moved from a focus on rehabilitation to a focus on holding juveniles accountable for their actions. In a larger sense, this is the underlying tension that drives the national debate surrounding the juvenile justice system: rehabilitation versus retribution. This debate may come into focus again because the authorization for the Juvenile Justice Delinquency and Prevention Act (JJDPA) expired in 2007. It has not been reauthorized thus far in the 110th Congress, although its major programs have continued to receive appropriations. The last time the JJDPA was reauthorized, during the 107th Congress in 2002, P.L. 107-273 restructured many of the grant programs aimed at preventing juvenile delinquency, repealed a large number of smaller grant programs, and consolidated most of their purpose areas into one large block grant that included accountability and graduated sanctions. Many of the programs that were repealed, however, continued to receive annual appropriations even as the

[24] Portions of this section were taken from CRS Report RL33947, *Juvenile Justice: Legislative History and Current Legislative Issues*, by (name redacted).

overall juvenile justice appropriation has decreased by over 50%. The theme of holding juveniles accountable for the crimes they commit continued into the 108th and 109th Congresses as several pieces of legislation attempted to lower the age of culpability for certain gang-related offenses.

The core issues in the larger juvenile justice debate will remain the same during the 110th Congress: whether rehabilitation should be the driving theme in the handling and processing of young offenders through the criminal justice system *or* whether a more punitive approach that emphasizes young offenders' responsibility for the crimes they commit should be the focus. Another issue that may arise involves the apparent dichotomy between the legislation, which features three broad overarching grant programs, and the appropriations that continue to fund the smaller grant programs that were repealed in 2002. S. 3155, as reported by the Senate Committee on the Judiciary, would reauthorize the major provisions of the JJDPA from FY2009 through FY2013. The bill would make slight modifications to the existing grant programs and would create a new grant program, the Incentive Grants for State and Local Programs, that would channel funding into evidence-based prevention and intervention programs, and would aim to expand the use of mental health and substance abuse screening, assessment, referral, treatment, diversion, and aftercare services for juveniles.

Mentally Ill Offenders

In recent years, policymakers have become increasingly interested in the issue of mentally ill offenders and the strain their illnesses place on the criminal justice system. According to the Centers for Disease Control and Prevention (CDC), "health, mental health and substance abuse problems often are more apparent in jails and prisons than in the community."[25] Furthermore, inmates are often diagnosed with health, mental health, and substance abuse problems only after receiving care while incarcerated.[26] A 2006 Bureau of Justice Statistics (BJS) report found that in 2004 over half of inmates in state prisons (56%) and local jails (64%), and nearly half of all federal prisoners (45%), had a mental health problem.[27] Data collected for the report indicated that mentally ill inmates in state prisons and local jails were more likely than inmates without mental illness to have been convicted of a violent offense or to have had three or more prior incarcerations.[28]

[25] Department of Health and Human Services, Centers for Disease Control and Prevention, *Correctional Health*, available online at http://www.cdc.gov/correctionalhealth/.

[26] Ibid.

[27] The findings in the report were based on data from personal interviews with state and federal prisoners in 2004 and local jail inmates in 2002. Mental health problems were defined by two measures: a recent history or symptoms of a mental health problem. Symptoms must have occurred in the 12 months prior to the interview. A recent history of mental health problems included a clinical diagnosis or treatment by a mental health professional. Symptoms of a mental disorder were based on criteria specified in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM-IV). Doris J. James and Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates*, NCJ 213600, September 2006, p. 1, available online at http://www.ojp.usdoj.gov/bjs/pub/pdf/mhppji.pdf.

[28] According to BJS, 61% of mentally ill inmates in state prison were currently incarcerated, or convicted in the past, for a violent offense, compared to 56% of state inmates without a mental illness. For inmates in local jails, 44% were currently incarcerated, or convicted in the past, for a violent offense, compared to 36% of inmates without a mental illness. BJS also found that 25% of mentally ill state inmates had three or more prior incarcerations, compared to 19% on non-mentally ill inmates, and 26% of mentally ill inmates in local jails had three or more prior incarcerations, compared to 20% of non-mentally ill inmates. Ibid.

Policymakers have focused on how to provide treatment and services to mentally ill offenders both while they are incarcerated and after they are released, as well as how to prevent mentally ill offenders from entering the criminal justice system, especially for minor non-violent offenses. Currently, the Bureau of Justice Assistance (BJA) awards grants under the Justice and Mental Health Collaboration Program for programs that increase public safety by facilitating collaboration among the criminal justice, juvenile justice, mental health treatment, and substance abuse systems to increase access to treatment.[29] One of the goals of the program is to maximize the use of diversion from prosecution, the use of alternative sentences through community supervision, and the use of graduated sanctions, as appropriate, in cases involving nonviolent offenders with mental illness.[30]

The Mentally Ill Offender Treatment and Crime Reduction Reauthorization and Improvement Act of 2008 (P.L. 110-416), signed into law on October 14, 2008, reauthorizes funding for the Adult and Juvenile Collaborations Program grants. The Act authorizes $50 million for each fiscal year for FY2009 through FY2014. The Adult and Juvenile Collaborations Program authorizes the Attorney General to award grants to state, local, and tribal governments to prepare a plan for and implement a program (which is overseen cooperatively by a criminal or juvenile justice agency or mental health court and a mental health agency) to ensure access to adequate mental health and other treatment services for non-violent, mentally ill adult or juvenile offenders who have been diagnosed with a mental illness, or who are manifesting signs of mental illness, and who are facing criminal charges for a misdemeanor or non-violent offense and are deemed to have committed the crime as a result of mental illness.[31]

Additionally, the Act authorizes a new grant program that provides grants to state, local, and tribal governments to provide for (1) programs that offer law enforcement personnel specialized and comprehensive training in procedures to identify and respond appropriately to incidents involving individuals with mental illness; (2) the development of specialized receiving centers to assess individuals in the custody of law enforcement for suicide risk and mental health and substance abuse treatment needs; (3) computerized information systems (or to improve existing systems) to provide timely information to improve the response to mentally ill offenders; (4) the establishment and expansion of cooperative efforts by criminal and juvenile justice agencies and mental health agencies to promote public safety through the use of effective intervention with respect to mentally ill offenders; and (5) programs that offer campus security personnel training in procedures to identify and respond appropriately to incidents involving individuals with mental illness.

[29] The Justice and Mental Health Collaboration Program was authorized by the Mentally Ill Offender Treatment and Crime Reduction Act of 2004 (P.L. 108-414). U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Justice and Mental Health Collaboration Program*, available online at http://www.ojp.usdoj.gov/BJA/grant/JMHCprogram.html.

[30] Ibid.

[31] 42 U.S.C. §3797aa(b)(1).

Child Pornography and the Sexual Exploitation of Children

Growing access to, and increasing use of, the Internet has facilitated the proliferation of child pornography. According to the Department of Justice's Child Exploitation and Obscenity Section (CEOS), by the mid-1980s trafficking of child pornography had been almost eliminated through a series of successful law enforcement initiatives.[32] Producing child pornography was both difficult and expensive, and purchasing and trading such images was risky.[33] CEOS reports that the Internet now allows images and digitized movies to be easily reproduced and disseminated to tens of thousands of people.[34] In addition, the distribution and receipt of such images can be done almost anonymously. According to a 2007 BJS report, child pornography cases accounted for approximately 69% of all federal sexual exploitation cases and 82% of the growth in sex exploitation cases referred to U.S. Attorneys offices between 1994 and 2006.[35]

Congress has focused on reducing child pornography through a combination of increased penalties for producing and/or possessing child pornography and by funding initiatives to catch and prosecute child pornographers. Most notably, the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003 (P.L. 108-66) increased penalties related to the production and/or possession of child pornography. The Federal Bureau of Investigation (FBI) investigates cases of child pornography through its Innocent Images National Initiative (IINI). According to the FBI, the mission of IINI is to "reduce the vulnerability of children to acts of sexual exploitation and abuse which are facilitated through the use of computers; to identify and rescue child victims; to investigate and prosecute sexual predators who use the Internet and other online services to sexually exploit children for personal or financial gain; and to strengthen the capabilities of federal, state, local, and international law enforcement through training programs and investigative assistance."[36] Currently, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) provides funding for Internet Crimes Against Children (ICAC) task forces across the country. The ICAC program was created to help state and local law enforcement agencies enhance their investigative response to offenders who use the Internet or other computer technology to sexually exploit children.[37] There are currently 59 regional ICAC task forces.[38]

Title I of P.L. 110-358 does expand and Subtitle D of Title II of S. 3297 would expand the authority of the federal government to prosecute crimes relating to child pornography and the sexual exploitation of children. Subtitle D would, among other things, amend current law so that anyone who uses any means or facility of interstate or foreign commerce to commit an act that is

[32] U.S. Department of Justice, Child Exploitation and Obscenity Section, *Child Pornography*, available online at http://www.usdoj.gov/criminal/ceos/childporn.html.

[33] Ibid.

[34] Ibid.

[35] Mark Motivans and Tracey Kyckelhahn, *Federal Prosecution of Child Sex Exploitation Offenders, 2006*, NCJ 219412, December 2007, p. 1, available online at http://www.ojp.usdoj.gov/bjs/pub/pdf/fpcseo06.pdf.

[36] U.S. Department of Justice, Federal Bureau of Investigation, *Innocent Images National Initiative*, available online at http://www.fbi.gov/publications/innocent.htm.

[37] Internet Crimes Against Children Task Force Training & Technical Assistance Program, available online at http://www.icactraining.org/.

[38] Ibid.

a crime under 18 U.S.C. §§2251 (Sexual Exploitation of Children), 2251A (Selling or Buying of Children), 2252 (Certain Activities Relating to Material Involving the Sexual Exploitation of Minors), or 2252A (Certain Activities Relating to Material Constituting or Containing Child Pornography) could be prosecuted for offenses under those sections. Both bills would also amend current law so that for someone to be prosecuted for a crime under 18 U.S.C. §§2251, 2251A, 2252, or 2252A the prohibited act(s) could either be conducted in interstate or foreign commerce or the act(s) could affect interstate and foreign commerce.

Title II of P.L. 110-358 amends current law, and Subtitle E of Title II of S. 3297 and Title II of S. 3344 would amend current law so that offenses under 18 U.S.C. §2252A (relating to child pornography), where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct and 18 U.S.C §2260 (production of certain child pornography for importation into the United States) are predicate crimes for a prosecution for money laundering under 18 U.S.C. §1956. All three bills amend current law[39] to expand the federal government's ability to prosecute crimes related to knowingly accessing child pornography with the intent to view child pornography.

Title I of S. 1738, Part I of Subtitle H of Title II of S. 3297, and Subtitle A of Title I of S. 3344 would expand the federal government's efforts to prevent child exploitation, online child predators, and child pornography. All three bills would require the Attorney General to create and implement a national strategy for child exploitation prevention and interdiction. This subtitle would, among other things, authorize a national Internet Crimes Against Children (ICAC) task force program, which would consist of state and local law enforcement task forces dedicated to developing effective responses to online enticement of children by sexual predators, child exploitation, and child obscenity and pornography cases.[40] All three bills would also authorize $60 million for each of FY2009 through FY2013 for grants to support ICAC task forces. Title III of S. 1738, Part III of Subtitle H of Title II of S. 3297, and Subtitle C of Title I of S. 3344 expand the authority of the federal government to prosecute crimes related to broadcasting live images of child abuse. All three bills would also amend current law[41] to allow the federal government to prosecute individuals who modify or alter an image of an identifiable minor in order to produce child pornography.

P.L. 110-358 was enacted on October 8, 2008. S. 1738 was cleared for the President on September 27, 2008. S. 3344 was placed on the Senate legislative calendar on July 28, 2008. S. 3297 was introduced on July 22, 2008. The bill was not referred to committee, and the Senate started to debate the bill on July 26, 2008. As of September 26, 2008, the Senate has not invoked cloture on the motion to proceed to consideration of the measure.

[39] 18 U.S.C. §§2252 and 2252A.

[40] Section 2812 of S. 3297 includes language which states that it is the intent of Congress that the ICAC task force program that would be established by the section would continue the ICAC task force program authorized under title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, and funded under Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974.

[41] 18 U.S.C. §2252A.

DNA Testing

The analysis of DNA[42] evidence has had a profound effect on how law enforcement investigates crime. For many years, the collection of DNA evidence grew quickly, outstripping the resources available to analyze it and resulting in a backlog of requests. Many publicly funded laboratories across the country have been experiencing difficulty meeting the demand for these tests and reducing their DNA backlogs. At the same time, federal and state laws were enacted requiring the collection of DNA samples from those convicted of certain offenses, thus adding to the backlog. In response, Congress enacted the DNA Analysis Backlog Elimination Act of 2000 (P.L. 106-546), authorizing grants to states to carry out DNA analyses. Over the years since its original authorization, this grant program has been reauthorized, amended, and renamed the Debbie Smith DNA Backlog Grant program.

Debbie Smith DNA Backlog Grant Program[43]

The Debbie Smith DNA Backlog program was first authorized under the DNA Analysis Backlog Elimination Act of 2000 (P.L. 106-546) and subsequently reauthorized and expanded under the Justice for All Act (P.L. 108-405).[44] Under the current program, grants are awarded to state and local governments to help them collect and analyze DNA evidence from backlogged crime scenes. More specifically, the program grants can be used to

- analyze samples collected under applicable legal authority for inclusion in the national DNA database, the Combined DNA Index System (CODIS) of the Federal Bureau of Investigation (FBI);
- analyze samples from crime scenes, including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect for inclusion in the national DNA database;
- increase the capacity of laboratories owned by states or units of local government to carry out DNA analyses of collected samples;
- collect DNA samples from individuals who are required to submit samples under applicable legal authority; and
- ensure that DNA testing and analysis of samples from crimes, including sexual assault and other serious violent crimes, are carried out in a timely manner.

The Debbie Smith Reauthorization Act of 2008 (P.L. 110-360), signed into law on October 8, 2008, authorizes appropriations of $151 million for each fiscal year. In addition, the Act requires that for each of the fiscal years 2009-2014, at least 40% of the grant amounts awarded must be for the purpose of analyzing DNA samples from crime scenes taken in cases without an identified suspect for inclusion in CODIS.

[42] Deoxyribonucleic acid.

[43] For more information, see CRS Report RL33489, *An Overview and Funding History of Select Department of Justice (DOJ) Grant Programs*, by (name redacted).

[44] 42 U.S.C. §14135.

Federal Prison Industries[45]

UNICOR, the trade name for Federal Prison Industries, Inc., is a government-owned corporation that employs offenders incarcerated in correctional facilities under the Federal Bureau of Prisons. FPI manufactures products and provides services that are sold to executive agencies in the federal government. The question of whether FPI is unfairly competing with private businesses, particularly small businesses, in the federal market has been and continues to be an issue of debate. At the core of the debate is FPI's preferential treatment over the private sector. FPI's enabling legislation and the Federal Acquisition Regulation require federal agencies, with the exception of the Department of Defense, to procure *products* offered by FPI, unless authorized by FPI to solicit bids from the private sector. It is this "mandatory source clause" that has drawn controversy over the years and is the subject of current legislation. Although federal agencies are not required to procure *services* provided by FPI, they are encouraged to do so.

Although the Administration made several efforts to mitigate the competitive advantage FPI has over the private sector, Congress has taken legislative action to lessen such impact on the private sector. For example, in 2002 and 2003, Congress passed legislation that modified FPI's mandatory source clause with respect to procurements made by the Department of Defense and the Central Intelligence Agency;[46] and in recent years, Congress passed legislation limiting federal agencies use of appropriated funds for the purchase of products or services manufactured by FPI unless the agency determines that the products or services provide "... the best value to the buying agency pursuant to government-wide procurement regulations...."[47]

Legislation has been introduced in the 110th Congress that would, in essence, eliminate FPI's mandatory source clause. For example, the Federal Prison Industries Competition in Contracting Act of 2005 (H.R. 2965) and S. 749 would have phased out over five years FPIs' mandatory source clause with respect to *products* produced by FPI and would have ceased treating FPI as a preferential provider for *services*.

Other Issues

In addition to the aforementioned legislation, other crime-related issues have surfaced during the 110th Congress, as discussed below.

Federal Sentencing Structure[48]

In 1984, Congress passed legislation that led to the creation of federal sentencing guidelines. The Sentencing Reform Act of 1984 (Chapter II of the Comprehensive Crime Control Act of 1984; P.L. 98-473), in essence, eliminated indeterminate sentencing at the federal level. The act created

[45] For additional information, see CRS Report RL32380, *Federal Prison Industries*, by (name redacted).

[46] See the National Defense Authorization Act for FY2002 (P.L. 107-107); the Bob Stump National Defense Authorization Act for FY2003 (P.L. 107-314); and the Intelligence Authorization Act for FY2004 (P.L. 108-177).

[47] See §637 of the Consolidated Appropriations Act, 2005 (P.L. 108-447).

[48] For additional information on this subject, see CRS Report RL32766, *Federal Sentencing Guidelines: Background, Legal Analysis, and Policy Options*, by Lisa M. Seghetti and (name redacted).

the United States Sentencing Commission (Commission), an independent body within the judicial branch of the federal government and charged it with promulgating guidelines for federal sentencing. The purpose of the Commission was to examine unwarranted disparity in federal sentencing policy, among other things.[49] In establishing sentencing guidelines for federal judges, the Commission took into consideration factors such as (1) the nature and degree of harm caused by the offense; (2) the offender's prior record; (3) public views of the gravity of the offense; (4) the deterrent effect of a particular sentence; and (5) aggravating or mitigating circumstances.[50] In addition to these factors, the Commission also considered characteristics of the offender, such as age, education, vocational skills, and mental or emotional state, among other things.[51] Prior to the recent Supreme Court ruling (*U.S. v. Booker*, see discussion below), the guidelines were binding, and they were also subject to statutory directives, including mandatory minimum penalties for specific offenses set by Congress.[52]

On January 12, 2005, the U.S. Supreme Court ruled that the Sixth Amendment right to a trial by jury requires that the current federal sentencing guidelines be advisory, rather than mandatory.[53] In doing so, the Court struck down a provision in law that made the federal sentencing guidelines mandatory,[54] as well as a provision that governed the standards of appellate review of departures from the guidelines.[55] In essence, the Court's ruling gives federal judges discretion in sentencing offenders by not requiring them to adhere to the guidelines unless the offense carried a mandatory sentence; rather the guidelines can be used by judges on an advisory basis.[56] As a result of the ruling, judges now have discretion in sentencing defendants unless the offense carries a mandatory sentence (as specified in the law). While some view the ruling as an opportunity for federal judges to take into consideration the circumstances unique to each individual offender, thus handing down a sentence that better fits the offender, others fear that such discretion may result in unwarranted disparity and inconsistencies in sentencing across jurisdictions that led to the enactment of the guidelines in 1984.[57]

As a result of the ruling, many questioned whether Congress should amend current law to require federal judges to follow guided sentences, or permit federal judges to use their discretion in sentencing under certain circumstances. Possible congressional options include (1) amend the

[49] The Commission was also mandated to examine the effects of sentencing policy upon prison resources (e.g., overcrowding) and the use of plea bargaining in the federal criminal justice system.

[50] See 18 U.S.C. §994(c).

[51] See 18 U.S.C. §994(d).

[52] Mandatory minimum sentencing laws are separate from the federal sentencing guidelines. Over the years, Congress has directed the U.S. Sentencing Commission to integrate mandatory minimum penalties it has passed into the federal sentencing guidelines.

[53] See *U.S.* v. *Booker*, 125 S.Ct. 738 (2005).

[54] According to the ruling, a provision in current law makes the guidelines binding on all judges. The provision, 18 U.S.C. §3553(b), requires courts to impose a sentence within the applicable guidelines range.

[55] See 18 U.S.C. §3742(e).

[56] While the Court struck down a provision that made the federal sentencing guidelines mandatory, the Court also noted that current law "... requires judges to take account of the guidelines together with other sentencing goals." See 18 U.S.C. §3553(a). The Court also struck down a provision that governed the standard of appellate review of sentences that were imposed as a result of a judge's departure from the guidelines. The Court noted, however, that current law "... continues to provide for appeals from sentencing decisions (irrespective of whether the trial judge sentences within or outside the guidelines range)." See 18 U.S.C. §3742(a),(b).

[57] See for example, Erik Luna, "Misguided Guidelines: A Critique of Federal Sentencing," *Policy Analysis*, no. 458, November 1, 2002.

sentencing ranges by increasing the top of each guideline range to the statutory maximum for each given offense; (2) require jury trial or defendant waiver for any enhancement factor that would increase the sentence for which the defendant did not waive his rights; or (3) take no action, thus permitting judicial discretion in sentencing in cases where Congress has not specified mandatory sentences.

Maintaining the Fugitive Database

On September 18, 2008, the Senate Judiciary Committee amended and favorably reported (without a written report) the Fugitive Information Networked Database Act of 2008 (or the FIND Act; S. 3136). This bill would authorize $518 million in additional appropriations to improve state-federal information sharing on fugitives from justice, increase U.S. Marshals Service (USMS) regional fugitive task forces (RFTFs) and related activities, and provide extradition assistance to state, local, and tribal governments.

According to the bill's findings, approximately half of the nation's outstanding felony warrants (between 1.4 and 1.6 million warrants) have not been entered into the Federal Bureau of Investigation National Crime Information Center (NCIC). These circumstances result in several public safety issues. One, fugitives who flee to other states are not being apprehended. Two, often times those fugitives go on to commit serious crimes in other states. And, three, law enforcement officers who encounter these fugitives are not informed about the potential danger these fugitives may pose to themselves or the general public.

According to the bill's findings, state, local, and tribal governments often fail to enter such warrants into NCIC because of insufficient funding to upload those records into NCIC. To remedy that circumstance, S. 3136 would authorize the Attorney General to provide grants to state, local, and tribal governments, in a manner consistent with the National Criminal History Improvement Program (NCHIP), to upgrade their computer systems to more easily enter outstanding warrants into NCIC and to validate those warrants. For those purposes, the bill would authorize yearly appropriations of $15 million for FY2009 and FY2010, and $20 million for FY2011. State, local, and tribal governments, moreover, do not always have the resources to extradite fugitives to stand trial in the jurisdiction where they were charged with a crime.

To increase resources for the USMS and its RFTFs, S. 3136 would authorize an additional $50 million in annual appropriations for FY2009 and FY2012, and an additional $25 million for FY2013-FY2015. The bill would also authorize an additional $3 million for the USMS and its Justice Prisoner and Alien Transport System for each fiscal year FY2009-FY2014. Additionally, the bill would authorize the Attorney General to provide grants to state, local, and tribal governments to increase fugitive extraditions. For those purposes, the bill would authorize appropriations of $50 million for each fiscal year FY2009-FY2015.

To gauge the problem of missing felony warrants nationally, S. 3136 includes a provision that would require the Government Accountability Office to report to Congress on the issue of missing felony warrants and apprehended fugitives who were not extradited within 270 days of enactment. The bill would also require states to report to the Attorney General, and for the Attorney General to report to Congress on the implementation of the provisions in this bill.

Oversight of DOJ Grant Programs[58]

DOJ grant programs and appropriations is a perennial issue of oversight for Congress. In the 109th Congress, the Edward Byrne Memorial State and Local Law Enforcement Assistance (Byrne Formula) and the Local Law Enforcement Block Grant (LLEBG) programs were combined to create the Edward Byrne Memorial Justice Assistance Grant (JAG) program. Funding under the JAG program in FYs 2005-2006 was less than the total amount of funding appropriated to the Byrne Formula program and LLEBG in FYs 1996-2004. Congress has also reduced appropriations for the Community Oriented Policing Services (COPS) since FY2002. The JAG and COPS programs are the primary programs for providing federal assistance to state and local law enforcement and many officials in the law enforcement communities have expressed concern over the decrease in grant monies made available to them through the programs. Critics contend, however, that while these programs have seen a reduction in funding, grant programs geared towards countering terrorism have seen an increase in funding and state and local law enforcement agencies are often the recipients of these grants. The Violence Against Women Act (VAWA) was also reauthorized in the 109th Congress, however, funding for most of the new VAWA programs created in the reauthorization act did not receive appropriations.

Some critics have expressed concern that the decrease in federal funding that some of these programs have seen in recent years has made it harder for state and local law enforcement to combat violent crime. Moreover, they argue, that the recent increase in the national violent crime rate is evidence that the federal government should place more focus on providing assistance to state and local law enforcement.[59]

[58] For additional information on DOJ grant programs and oversight-related issues, see CRS Report RL33489, *An Overview and Funding History of Select Department of Justice (DOJ) Grant Programs*, by (name redacted).

[59] See for example the May 23, 2007 Senate Judiciary Committee hearing on "Rising Crime in the United States: Examining the Federal Role in Helping Communities Prevent and Respond to Violent Crime" congressional testimony of the National Sheriff Association's President, Ted Kamatchus, http://www.senate.gov/comm/judiciary/general/testimony.cfm?id=2719&wit_id=6475.

Appendix. Selected Crime-Related Legislation Enacted in the 109th Congress

The Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248)[60]

Legislation was enacted in the 109th Congress that examines more closely registration and notification law and federal funding for state registration enforcement. The Adam Walsh Child Protection and Safety Act of 2006 (H.R. 4472, as amended; P.L. 109-248) was signed into law on July 27, 2006. The act provides a comprehensive national approach to addressing the issue of sex offenders by requiring the establishment of a national public registry with information on individuals convicted of a criminal offense against a minor or on violent predators who victimize children. The act also tightens registration requirements; provides for additional mandatory minimum penalties for sex offenders in certain instances; creates grant programs for states to enhance, operate, or create a civil commitment program; and creates a civil commitment program at the federal level.

The Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162)[61]

Department of Justice Reauthorization

The 109th Congress passed legislation that reauthorizes many of the agencies and programs under DOJ's jurisdiction. The Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162) authorizes appropriations for DOJ for FY2006 through FY2009. Among other provisions, the act codifies the existing Edward Byrne Memorial Justice Assistance Grant (JAG) program, the Executive Office of Weed and Seed, and the Community Capacity Development Office (CCDO). Moreover, the act reauthorizes and restructures grant programs under the Community Oriented Policing Service (COPS) and the Violence Against Women offices and creates an Office of Audit, Assessment and Management.

Consolidation of Certain Office of Justice Programs[62]

The structure of federal funding for state and local law enforcement assistance received congressional attention during the 109th Congress. While the Administration had proposed decreasing the funding amounts and reorganizing some of these programs for several years, it

[60] For additional information on sex offender legislation, see CRS Report RL32800, *Sex Offender Registration and Community Notification Law: Recent Legislation and Issues*, by (name redacted); and CRS Report RL33967, *Adam Walsh Child Protection and Safety Act: A Legal Analysis*, by (name redacted).

[61] For additional information on P.L. 109-162, see CRS Report RL33111, *Department of Justice Reauthorization: Provisions to Improve Program Management, Compliance, and Evaluation of Justice Assistance Grants*, by (name r edacted).

[62] For additional information on the JAG program, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant Program: Legislative and Funding History*, by (name redacted).

wasn't until the 108th Congress that two federal grant programs were consolidated into a newly created program, as discussed briefly below.

For several years, the Administration had proposed consolidating the Edward Byrne Memorial Formula and Local Law Enforcement Block Grant (LLEBG) programs into a new Edward Byrne Memorial Justice Assistance Grant (JAG) program. Congress, however, first considered consolidating the two grant programs in the 108th Congress. Through an appropriations act (the Consolidated Appropriations Act, FY2005; P.L. 108-447), the 108th Congress consolidated the grant programs into a newly created JAG program, and in January 2006, legislation was enacted that authorizes appropriations for the program through FY2009.[63] Overall funding for both programs in the FY2005 appropriations decreased 12% (or $268 million) from FY2004, and in FY2006, Congress again decreased funding by $121 million from FY2005.[64]

Community Oriented Policing Services (COPS)[65]

During the 103rd Congress, legislation was passed that encouraged community policing approaches (i.e., placing more police officers "on the beat") for state and local law enforcement agencies by creating a federal grant program for community policing. Funding for the newly created Cops on the Beat program (now more commonly known as the COPS program) was authorized through FY2000. The COPS program provides assistance to eligible police departments to help improve community policing efforts and law enforcement support activities. The program requires that at least 85% of the grant money be used for the following: (1) to hire or rehire police officers; (2) procure equipment; (3) pay overtime; or (4) build support systems.

The authority for the COPS grant program lapsed at the end of FY2000. Congress, however, has continued to appropriate funding for the program. The 109th Congress passed legislation that reauthorizes the program and realigns some of the COPS activities to other accounts.[66]

Violence Against Women Act (VAWA)[67]

The original Violence Against Women Act (VAWA), enacted as Title IV of the Violent Crime Control and Law Enforcement Act (P.L. 103-322), became law in 1994. To address violence against women, VAWA established within DOJ and the Department of Health and Human Services a number of discretionary grant programs for state, local and Indian tribal governments. The 109th Congress passed legislation that reauthorizes VAWA (P.L. 109-162). Among other provisions, the act encourages collaboration among law enforcement, judicial personnel, and public and private sector providers to victims of domestic and sexual violence. It also addresses the special needs of victims of domestic and sexual violence who are elderly, disabled, children, youth, and individuals of ethnic and racial communities, including Native Americans. The act

[63] See P.L. 109-162.

[64] The Administration's FY2006 budget request, however, proposed to eliminate the JAG program, Congress continued to provide appropriations for the program.

[65] For additional information on the COPS program, see CRS Report RL33308, *Community Oriented Policing Services (COPS): Background, Legislation, and Issues*, by (name redacted).

[66] See P.L. 109-162.

[67] For additional information on VAWA, see CRS Report RL30871, *Violence Against Women Act: History and Federal Funding*, by (name redacted).

provides emergency leave and long-term transitional housing for victims. The act makes these provisions gender neutral and requires studies and reports on the effectiveness of approaches used for certain grants in combating domestic and sexual violence.

The DNA Fingerprinting Act of 2005 (P.L. 109-162)

Title X of P.L. 109-162, the DNA Fingerprinting Act of 2005, made several changes to current law. Among other provisions, the act authorizes federal authorities to take DNA samples from larger categories of individuals, including those who are arrested and detained, and include the DNA analysis in the FBI's Combined DNA Index System (CODIS). The act, however, requires the Director of the Federal Bureau of Investigation to expunge the DNA analysis from CODIS of arrestees for whom the Attorney General receives a certified copy of a final court order that establishes the charge has been dismissed, resulted in an acquittal, or that no charge was filed within the applicable time period. The act also requires the Director of the Federal Bureau of Investigation to expunge the DNA analysis from CODIS of individuals whose convictions have been overturned.

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