TITLE I—SAFE STREETS FOR WOMEN

SEC. 101. SHORT TITLE.

This title may be cited as the "Safe Streets for Women Act of 1991".

Subtitle A—Federal Penalties for Sex Crimes

SEC. 111. REPEAT OFFENDERS.

(a) IN GENERAL.—Chapter 109A of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 2247. Repeat offenders

"Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commision shall promulgate guidelines or amend existing guidelines to provide that any person who commits a violation of this chapter, after one or more prior convictions for an offense punishable under this chapter, or after one or more prior convictions under the laws of any State or foreign country relating to aggravated sexual abuse, sexual abuse, or abusive sexual contact, is punishable by a term of imprisonment up to twice that otherwise provided in the guidelines, or up to twice the fine authorized in the guidelines, or both.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 109A of title 18, United States Code, is amended by adding at the end thereof the following:

"2247. Repeat offenders.".

SEC. 112. FEDERAL PENALTIES.

(a) RAPE AND AGGRAVATED RAPE.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend its sentencing guidelines to provide that a defendant convicted of aggravated rape under section 2241 of title 18, United States Code, or rape under section 2242 of title 18, United States Code, shall be assigned a base offense level under chapter 2 of the sentencing guidelines that is at least 4 levels greater than the base offense level applicable to such offenses under the guidelines in effect on November 1, 1990, or otherwise shall amend the guidelines applicable to such offenses so as to achieve a comparable minimum guideline sentence. In amending such guidelines, the Sentencing Commission shall review the appropriateness of existing specific offense characteristics or other adjustments applicable to such offenses, and make such changes as it deems appropriate, taking into account the severity of rape offenses, with or without aggravating factors; the unique nature and duration of the mental injuries inflicted on the victims of such offenses; and any other relevant factors.

(b) EFFECT OF AMENDMENT.—If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instructions set forth in subsection (a) so as to achieve a comparable result.

(b) STATUTORY RAPE.—

(1) Section 2243(a) of title 18, United States Code, is amended by striking "5 years" and inserting "10 years".

(2) Section 2243(b) of title 18, United States Code, is amended by striking "one year," and inserting "two years,".

(3) Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to incorporate the increase in maximum penalties provided by this section for sections 2243(a) and 2243(b) of title 18, United States Code.

SEC. 113. MANDATORY RESTITUTION FOR SEX CRIMES.

(a) IN GENERAL.—Chapter 109A of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 2248. Mandatory restitution

"(a) IN GENERAL.—Notwithstanding the terms of section 3663 of this title, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

"(b) SCOPE AND NATURE OF ORDER.—(1) The order of restitution under this section shall direct that—

"(A) the defendant pay to the victim the full amount of the victim's losses as determined by the court, pursuant to paragraph (3); and

"(B) the United States Attorney enforces the restitution order by all available and reasonable means.

"(2) For purposes of this subsection, the term 'full amount of the victim's losses' includes any costs incurred by the victim for—

"(A) medical services relating to physical, psychiatric, or psychological care;

"(B) physical and occupational therapy or rehabilitation;

"(C) lost income;

"(D) attorneys' fees; and

"(E) any other losses suffered by the victim as a proximate result of the offense.

"(3) Restitution orders under this section are mandatory. A court may not decline to issue an order under this section because of—

"(A) the economic circumstances of the defendant; or

"(B) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

"(4)(A) Notwithstanding the terms of paragraph (3), the court may take into account the economic circumstances of the defendant in determining the manner in which and the schedule according to which the restitution is to be paid.

"(B) For purposes of this paragraph, the term 'economic circumstances' includes—

"(i) the financial resources and other assets of the defendant;

"(ii) projected earnings, earning capacity, and other income of the defendant; and

"(iii) any financial obligations of the defendant, including obligations to dependents.

"(C) An order under this section may direct the defendant to make a single lump-sum payment or partial payments at specified intervals. The order shall also provide that the defendant's restitutionary obligation takes priority over any criminal fine ordered.

"(D) In the event that the victim has recovered for any amount of loss through the proceeds of insurance or any other source, the order of restitution shall provide that restitution be paid to the person who provided the compensation, but that restitution shall be paid to the victim before any restitution is paid to any other provider of compensation.

"(5) Any amount paid to a victim under this section shall be set off against any amount later recovered as compensatory damages by the victim from the defendant in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(c) PROOF OF CLAIM.—(1) Within 60 days after conviction and, in any event, no later than 10 days prior to sentencing, the United States Attorney (or his delegee), after consulting with the victim, shall prepare and file an affidavit with the court listing the amounts subject to restitution under this section. The affidavit shall be signed by the United States Attorney (or his delegee) and the victim. Should the victim object to any of the information included in the affidavit, the United States Attorney (or his delegee) shall advise the victim that the victim may file a separate affidavit.

"(2) If no objection is raised by the defendant, the amounts attested to in the affidavit filed pursuant to subsection (1) shall be entered in the court's restitution order. If objection is raised, the court may require the victim or the United States Attorney (or his delegee) to submit further affidavits or other supporting documents, demonstrating the victim's losses.

"(3) If the court concludes, after reviewing the supporting documentation and considering the defendant's objections, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. Any records filed, or testimony heard, pursuant to this section, shall be in camera in the judge's chambers. Notwithstanding any other provision of law, this section does not entitle the defendant to discovery of the contents of, or matters related to, any supporting documentation, including medical, psychological, or psychiatric records.

"(4) In the event that the victim's losses are not ascertainable 10 days prior to sentencing as provided in subsection (c)(1), the United States Attorney (or his delegee) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

"(d) DEFINITIONS.—For purposes of this section, the term 'victim' includes any person who has suffered direct physical, emotional, or pecuniary harm as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court: *Provided*, That in no event shall the defendant be named as such representative or guardian.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 109A of title 18, United States Code, is amended by adding at the end thereof the following:

"2248. Mandatory restitution.".

Subtitle B—Law Enforcement and Prosecution Grants To Reduce Violent Crimes Against Women

SEC. 121. GRANTS TO COMBAT VIOLENT CRIMES AGAINST WOMEN.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by—

(1) redesignating part N as part O;

(2) redesignating section 1401 as section 1501; and

(3) adding after part M the following:

"PART N—GRANTS TO COMBAT VIOLENT CRIMES AGAINST WOMEN

"SEC. 1401. PURPOSE OF THE PROGRAM AND GRANTS.

"(a) GENERAL PROGRAM PURPOSES.— The purpose of this part is to assist States, Indian tribes, cities, and other localities to develop effective law enforcement and prosecution strategies to combat violent crimes against women and, in particular, to focus efforts on those areas with the highest rates of violent crime against women.

"(b) PURPOSES FOR WHICH GRANTS MAY BE USED.—Grants under this part shall provide additional personnel, training, technical assistance, data collection and other equipment for the more widespread apprehension, prosecution, and adjudication of persons committing violent crimes against women and specifically, for the purposes of—

"(1) training law enforcement officers and prosecutors to more effectively identify and respond to violent crimes against women, including the crimes of sexual assault and domestic violence;

"(2) developing, training, or expanding units of law enforcement officers and prosecutors specifically targeting violent crimes against women, including the crimes of sexual assault and domestic violence;

"(3) developing and implementing police and prosecution policies, protocols, or orders specifically devoted to identifying and responding to violent crimes against women, including the crimes of sexual assault and domestic violence;

"(4) developing, installing, or expanding data collection systems, including computerized systems, linking police, prosecutors, and courts or for the purpose of identifying and tracking arrests, prosecutions, and convictions for the crimes of sexual assault and domestic violence; and

"(5) developing, enlarging, or strengthening victim services programs, including sexual assault and domestic violence programs, to increase reporting and reduce attrition rates for cases involving violent crimes against women, including the crimes of sexual assault and domestic violence.

"(c) GRANTS FOR MULTIPLE USES.—Grants under this part must be used for at least 3 of the 5 purposes listed in subsection (b).

"Subpart 1—High Intensity Crime Area Grants

"SEC. 1411. HIGH INTENSITY GRANTS.

"(a) IN GENERAL.—The Director of the Bureau of Justice Assistance (hereafter in this part referred to as the 'Director') shall make grants to areas of 'high intensity crime' against women.

"(b) DEFINITIONS.—For purposes of this part, a 'high intensity crime area' means an area with one of the 40 highest rates of violent crime against women, as determined by the Bureau of Justice Statistics pursuant to section 1412.

"SEC. 1412. HIGH INTENSITY GRANT APPLICATION.

"(a) COMPUTATION.—Within 45 days after the date of enactment of this part, the Bureau of Justice Statistics shall compile a list of the 40 areas with the highest rates of violent crime against women based on the combined female victimization rate per population for assault, sexual assault (including, but not limited to, rape), murder, robbery, and kidnapping.

"(b) USE OF DATA.—In calculating the combined female victimization rate required by subsection (a), the Bureau of Justice Statistics may rely on—

"(1) existing data collected by States, municipalities, Indian reservations or statistical metropolitan areas showing the number of police reports of the crimes listed in subsection (a); and

"(2) existing data collected by the Federal Bureau of Investigation, including data from those governmental entities already complying with the National Incident Based Reporting System, showing the number of police reports of crimes listed in subsection (a).

"(c) PUBLICATION.—After compiling the list set forth in subsection (a), the Bureau of Justice Statistics shall convey it to the Director who shall publish it in the Federal Register.

"(d) QUALIFICATION.—Upon satisfying the terms of subsection (e), any high intensity crime area shall be qualified for a grant under this subpart upon application by the chief executive officer of the governmental entities responsible for law enforcement and prosecution of criminal offenses within the area and certification that—

"(1) the funds shall be used to reduce the rate of violent crimes against women and for at least 3 of the purposes outlined in section 1401(b);

"(2) grantees and subgrantees shall develop a plan for implementation, and otherwise consult and coordinate program grants, with nongovernmental nonprofit victim services programs; and

"(3) at least 25 percent of the amount granted shall be allocated to each of the following three areas: prosecution, law enforcement, and victim services.

"(e) APPLICATION REQUIREMENTS.—The application requirements provided in section 513 of this title shall apply to grants made under this subpart. In addition, each application must provide the certifications required by subsection (d) including documentation from nonprofit non-governmental victim services programs showing their participation in developing the plan required by subsection (d)(2). Applications shall—

"(1) include documentation from the prosecution, law enforcement, and victim services programs to be assisted showing—

"(A) need for the grant funds;

"(B) intended use of the grant funds; and

"(C) expected results from the use of grant funds; and

"(2) proof of compliance with the requirements for the payment of forensic medical exams provided in section 162 of this title.

"(f) DISBURSEMENT.—

"(1) No later than 60 days after the receipt of an application under this subpart, the Director shall either disburse the appropriate sums provided for under this subpart or shall inform the applicant why the application does not conform to the terms of section 513 of this title or to the requirements of this section.

"(2) In disbursing monies under this subpart, the Director shall ensure, to the extent practicable, that grantees—

"(A) equitably distribute funds on a geographic basis;

"(B) determine the amount of subgrants based on the population to be served; and

"(C) give priority to areas with the greatest showing of need.

"(g) GRANTEE REPORTING.—Upon completion of the grant period under this subpart, the grantee shall file a performance report with the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this part. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

"Subpart 2—Other Grants to States to Combat Violent Crimes Against Women

"SEC. 1421. GENERAL GRANTS TO STATES.

"(a) GENERAL GRANTS.—The Director is authorized to make grants to States, for use by States, units of local government in the States, and nonprofit nongovernmental victim services programs in the States, for the purposes outlined in section 1401(b), and to reduce the rate of violent crimes against women.

"(b) AMOUNTS.—From amounts appropriated, the amount of grants under subsection (a) shall be—

"(1) $500,000 to each State: and

"(2) that portion of the then remaining available money to each State that results from a distribution among the States on the basis of each State's population in relation to the population of all States.

"(c) QUALIFICATION.—Upon satisfying the terms of subsection (d), any State shall be qualified for funds provided under this part upon certification that—

"(1) the funds shall be used to reduce the rate of violent crimes against women and for at least 3 of the purposes outlined in section 1401(b);

"(2) grantees and subgrantees shall develop a plan for implementation, and otherwise consult and coordinate, with nonprofit nongovernmental victim services programs, including sexual assault and domestic violence victim services programs;

"(3) at least 25 percent of the amount granted shall be allocated to each of the following three areas: prosecution, law enforcement, and victim services.

"(d) APPLICATION REQUIREMENTS.—The application requirements provided in section 513 of this title shall apply to grants made under this subpart. In addition, each application shall include the certifications of qualification required by subsection (c) including documentation from nonprofit nongovernmental victim services programs showing their participation in developing the plan required by subsection (c)(2). Applications shall—

"(1) include documentation from the prosecution, law enforcement, and victim services programs to be assisted showing—

"(A) need for the grant funds;

"(B) intended use of the grant funds; and

"(C) expected results from the use of grant funds; and

"(2) proof of compliance with the requirements for the payment of forensic medical exams provided in section 162 of this title.

"(e) DISBURSEMENT.—(1) No late than 60 days after the receipt of an application under this subpart, the Director shall either disburse the appropriate sums provided for under this subpart or shall inform the applicant why the application does not conform to the terms of section 513 of this title or to the requirements of this section.

"(2) In disbursing monies under this subpart, the Director shall issue regulations to ensure that States will—

"(A) equitably distribute monies on a geographic basis including nonurban and rural areas, and giving priority to localities with populations under 200,000;

"(B) determine the amount of subgrants based on the population to be served; and

"(C) give priority to areas with the greatest showing of need.

"(f) GRANTEE REPORTING.—Upon completion of the grant period under this subpart, the State grantee shall file a performance report with the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this subpart. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

"SEC. 1422. GENERAL GRANTS TO TRIBES.

"(a) GENERAL GRANTS.—The Director is authorized to make grants to Indian tribes, for use by tribes, tribal organizations or nonprofit nongovernmental victim services programs on Indian reservations, for the purposes outlined in section 1401(b), and to reduce the rate of violent crimes against women in Indian country.

"(b) AMOUNTS.—From amounts appropriated, the amount of grants under subsection (a) shall be awarded on a competitive basis to tribes, with minimum grants of $35,000 and maximum grants of $300,000.

"(c) QUALIFICATION.—Upon satisfying the terms of subsection (d), any tribe shall be qualified for funds provided under this part upon certification that—

"(1) the funds shall be used to reduce the rate of violent crimes against women and for a least 3 of the purposes outlined in section 1401(b); and

"(2) at least 25 percent of the grant funds shall be allocated to each of the following three areas: prosecution, law enforcement, and victim services.

"(d) APPLICATION REQUIREMENTS.—(1) Applications shall be made directly to the Director and shall contain a description of the tribes' law enforcement responsibilities for the Indian country described in the application and a description of the tribes' system of courts, including whether the tribal government operates courts of Indian offenses as defined in 25 U.S.C. 1301 or CFR courts under 25 CFR 11 et seq.

"(2) Applications shall be in such form as the Director may prescribe and shall specify the nature of the program proposed by the applicant tribe, the data and information on which the program is based, and the extent to which the program plans to use or incorporate existing services available in the Indian country where the grant will be used.

"(3) The term of any grant shall be for a minimum of 3 years.

"(e) GRANTEE REPORTING.—At the end of the first 12 months of the grant period and at the end of each year thereafter, the Indian tribal granted shall file a performance report with the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in acheiving the purposes of this subpart. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

"(f) DEFINITIONS.—(1) The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.)), which is recognized as eligible for the special services provided by the United States to Indians because of their status as Indians.

"(2) The term 'Indian country' has the meaning given to such term by section 1151 of title 18, United States Code.

"Subpart 3—General Terms and Conditions

"SEC. 1431. GENERAL DEFINITIONS.

"As used in this part—

"(1) the term 'victim services program' means any public or private nonprofit program that assists victims, including (A) nongovernmental nonprofit organizations such as rape crisis centers or battered women's shelters, including nonprofit nongovernmental organizations assisting victims through the legal process and (B) victim/witness programs within governmental entities;

"(2) the term 'sexual assault' includes not only assaults committed by offenders who are strangers to the victim but also assaults committed by offenders who are known or related by blood or marriage to the victim; and

"(3) the term 'domestic violence' includes felony and misdemeanor offenses committed by a current or former spouse of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse, or any other person similarly situated to a spouse who is protected under the domestic or family violence laws of the jurisdiction receiving grant monies.

"SEC. 1432. GENERAL TERMS AND CONDITIONS.

"(a) NONMONETARY ASSISTANCE.—In addition to the assistance provided under subparts 1 or 2, the Director may direct any Federal agency, with or without reimbursement, to use its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts.

"(b) BUREAU REPORTING.—No later than 180 days after the end of each fiscal year for which grants are made under this part, the Director shall submit to the Judiciary Committees of the House and the Senate a report that includes, for each high intensity crime area (as provided in subpart 1) and for each State and for each grantee Indian tribe (as provided in subpart 2)—

"(1) the amount of grants made under this part;

"(2) a summary of the purposes for which those grants were provided and an evaluation of their progress; and

"(3) a copy of each grantee report filed pursuant to sections 1412(g) and 1421(f).

"(c) REGULATIONS.—No later than 45 days after the date of enactment of this part, the Director shall publish proposed regulations implementing this part. No later than 120 days after such date, the Director shall publish final regulations implementing this part.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year 1992, 1993, and 1994, $100,000,000 to carry out the purposes of subpart 1, and $190,000,000 to carry out the purposes of subpart 2, and $10,000,000 to carry out the purposes of section 1422 subpart 2.".

Subtitle C—Safety for Women in Public Transit and Public Parks

SEC. 131. GRANTS FOR CAPITAL IMPROVEMENTS TO PREVENT CRIME IN PUBLIC TRANSPORTATION.

Section 24 of the Urban Mass Transportation Act of 1964 is amended to read as follows:

"GRANTS TO PREVENT CRIME IN PUBLIC TRANSPORTATION

"SEC. 24. (a) GENERAL PURPOSE.—From funds authorized under section 21, and not to exceed $10,000,000, the Secretary shall make capital grants for the prevention of crime and to increase security in existing and future public transportation systems. None of the provisions of this Act may be construed to prohibit the financing of projects under this section where law enforcement responsibilities are vested in a local public body other than the grant applicant.

"(b) GRANTS FOR LIGHTING, CAMERA SURVEILLANCE, AND SECURITY PHONES.—

"(1) From the sums authorized for expenditure under this section for crime prevention, the Secretary is authorized to make grants and loans to States and local public bodies or agencies for the purpose of increasing the safety of public transportation by—

"(A) increasing lighting within or adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages;

"(B) increasing camera surveillance of areas within and adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages;

"(C) providing emergency phone lines to contact law enforcement or security person-

nel in areas within or adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages; or

"(D) any other project intended to increase the security and safety of existing or planned public transportation systems.

"(2) From the sums authorized under this section, at least 75 percent shall be expended on projects of the type described in subsection (b)(1) (A) and (B).

"(c) REPORTING.—All grants under this section are contingent upon the filing of a report with the Secretary and the Department of Justice, Office of Victims of Crime, showing crime rates in or adjacent to public transportation before, and for a 1-year period after, the capital improvement, statistics shall be broken down by type of crime, sex, race, and relationship of victim to the offencer.

"(d) INCREASED FEDERAL SHARE.—Notwithstanding any other provision of this Act, the Federal share under this section for each capital improvement project which enhances the safety and security of public transporation systems and which is not required by law (including any other provision of this chapter) shall be 90 percent of the net project cost of such project.

"(e) SPECIAL GRANTS FOR PROJECTS TO STUDY INCREASING SECURITY FOR WOMEN.—From the sums authorized under this section, the Secretary shall provide grants and loans for the purpose of studying ways to reduce violent crimes against women in public transit through better design or operation of public transit systems.

"(f) GENERAL REQUIREMENTS.—All grants or loans provided under this section shall be subject to all the terms, conditions, requirements, and provisions applicable to grants and loans made under section 2(a).".

SEC. 132. GRANTS FOR CAPITAL IMPROVEMENTS TO PREVENT CRIME IN NATIONAL PARKS.

The Act of August 18, 1970, the National Park System Improvements in Administration Act (90 Stat. 1931; 16 U.S.C. 1a-1 et seq.) is amended by adding at the end thereof the following:

"SEC. 13. NATIONAL PARK SYSTEM CRIME PREVENTION ASSISTANCE.

"(a) From the sums authorized pursuant to section 7 of the Land and Water Conservation Act of 1965, and not to exceed $10,000,000, the Secretary of the Interior is authorized to provide Federal assistance to reduce the incidence of violent crime in the National Park System.

"(b) The Secretary shall direct the chief official responsible for law enforcement within the National Park Services to—

"(1) compile a list of areas within the National Park System with the highest rates of violent crime;

"(2) make recommendations concerning capital improvements, and other measures, needed within the National Park System to reduce the rates of violent crime, including the rate of sexual assault; and

"(3) publish the information required by paragraphs (1) and (2) in the Federal Register.

"(c) No later than 120 days after the date of enactment of this section, and based on the recommendations and list issued pursuant to subsection (b), the Secretary shall distribute funds throughout the National Park Service. Priority shall be given to those areas with the highest rates of sexual assault.

"(d) Funds provided under this section may be used for the following purposes—

"(1) to increase lighting within or adjacent to public parks and recreation areas;

"(2) to provide emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public parks and recreation areas;

"(3) to increase security or law enforcement personnel within or adjacent to public parks and recreation areas; and

"(4) any other project intended to increase the security and safety of public parks and recreation areas.".

SEC. 133. GRANTS FOR CAPITAL IMPROVEMENTS TO PREVENT CRIME IN PUBLIC PARKS.

Section 6 of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-8) is amended by adding at the end thereof the following new subsection:

"(h) CAPITAL IMPROVEMENT AND OTHER PROJECTS TO REDUCE CRIME.—In addition to assistance for planning projects, and in addition to the projects identified in subsection (e), and from amounts appropriated, the Secretary shall provide financial assistance to the States, not to exceed $15,000,000 in total, for the following types of projects or combinations thereof:

"(1) For the purpose of making capital improvements and other measures to increase safety in urban parks and recreation areas, including funds to—

"(A) increase lighting within or adjacent to public parks and recreation areas;

"(B) provide emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public parks and recreation areas;

"(C) increase security personnel within or adjacent to public parks and recreation areas; and

"(D) any other project intended to increase the security and safety of public parks and recreation areas.

"(2) In addition to the requirements for project approval imposed by this section, eligibility for assistance under this subsection is dependent upon a showing of need. In providing funds under this subsection, the Secretary shall give priority to those projects proposed for urban parks and recreation areas with the highest rates of crime and, in particular, to urban parks and recreation areas with the highest rates of sexual assault.

"(3) Notwithstanding the terms of subsection (c), the Secretary is authorized to provide 70 percent improvement grants for projects undertaken by any State for the purposes outlined in this subsection. The remaining share of the cost shall be borne by the State.".

Subtitle D—National Commission on Violent Crime Against Women

SEC. 141. ESTABLISHMENT.

There is established a commission to be known as the National Commission on Violent Crime Against Women (hereinafter referred to as "the Commission").

SEC. 142. DUTIES OF COMMISSION.

(a) GENERAL PURPOSE OF THE COMMISSION.—The Commission shall carry out activities for the purposes of promoting a national policy on violent crime against women, and for making recommendations for how to reduce violent crime against women.

(b) FUNCTIONS.—The Commission shall perform the following functions—

(1) evaluate the adequacy of, and make recommendations regarding, current law enforcement efforts at the Federal and State levels to reduce the rate of violent crimes against women;

(2) evaluate the adequacy of, and make recommendations regarding, the responsiveness of State prosecutors and State courts to violent crimes against women;

(3) evaluate the adequacy of, and make recommendations regarding, the adequacy of current education, prevention, and protection services for women victims of violent crime;

(4) evaluate the adequacy of, and make recommendations regarding, the role of the Federal Government in reducing violent crimes against women;

(5) evaluate the adequacy of, and make recommendations regarding, national public awareness and the public dissemination of information essential to the prevention of violent crimes against women;

(6) evaluate the adequacy of, and make recommendations regarding, data collection and government statistics on the incidence and prevalence of violent crimes against women;

(7) evaluate the adequacy of, and make recommendations regarding, the adequacy of State and Federal laws on sexual assault and the need for a more uniform statutory response to sex offenses; and

(8) evaluate the adequacy of, and make recommendations regarding, the adequacy of State and Federal laws on domestic violence and the need for a more uniform statutory response to domestic violence.

SEC. 143. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—

(1) APPOINTMENT.—The Commission shall be composed of 15 members as follows:

(A) Five members shall be appointed by the President—

(i) three of whom shall be—

(I) the Attorney General;

(II) the Secretary of Health and Human Services; and

(III) the Director of the Federal Bureau of Investigation,

who shall be nonvoting members, except that in the case of a tie vote by the Commission, the Attorney General shall be a voting member;

(ii) two of whom shall be selected from the general public on the basis of such individuals being specially qualified to serve on the Commission by reason of their education, training, or experience; and

(iii) at least one of whom shall be selected for their experience in providing services to women victims of violent crime.

(B) Five members shall be appointed by the Speaker of the House of Representatives on the joint recommendation of the Majority and Minority Leaders of the House of Representatives.

(C) Five members shall be appointed by the President pro tempore of the Senate on the joint recommendation of the Majority and Minority Leaders of the Senate.

(2) CONGRESSIONAL COMMITTEE RECOMMENDATIONS.—In making appointments under subparagraphs (B) and (C) of paragraph (1), the Majority and Minority Leaders of the House of Representatives and the Senate shall duly consider the recommendations of the Chairmen and Ranking Minority Members of committees with jurisdiction over laws contained in title 18 of the United States Code.

(3) REQUIREMENTS OF APPOINTMENTS.—The Majority and Minority Leaders of the Senate and the House of Representatives shall—

(A) select individuals who are specially qualified to serve on the Commission by reason of their education, training, and experience, including experience in advocacy or service organizations specializing in sexual assault and domestic violence; and

(B) engage in consultations for the purpose of ensuring that the expertise of the ten members appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate shall provide as much of a balance as possible and, to the greatest extent possible, cover the fields of law enforcement, prosecution, judicial administration, legal expertise, victim compensation boards, and victim advocacy.

(4) TERM OF MEMBERS.—Members of the Commission (other than members appointed under paragraph (1)(A)(i)) shall serve for the life of the Commission.

(5) VACANCY.—A vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(b) CHAIRMAN.—Not later than 15 days after the members of the Commission are appointed, such members shall select a Chairman from among the members of the Commission.

(c) QUORUM.—Seven members of the Commission shall constitute a quorum, but a lesser number may be authorized by the Commission to conduct hearings.

(d) MEETINGS.—The Commission shall hold its first meeting on a date specified by the Chairman, but such date shall not be later than 60 days after the date of the enactment of this Act. After the initial meeting, the Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least six times.

(c) PAY.—Members of the Commission who are officers or employees or elected officials of a government entity shall receive no additional compensation by reason of their service on the Commission.

(f) PER DIEM.—While away from their homes or regular places of business in the performance of duties for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

(g) DEADLINE FOR APPOINTMENT.—Not later than 45 days after the date of the enactment of this Act, the members of the Commission shall be appointed.

SEC. 144. REPORTS.

(a) IN GENERAL.—Not later than 1 year after the date on which the Commission is fully constituted under section 143, the Commission shall prepare and submit a final report to the President and to congressional committees that have jurisdiction over legislation addressing violent crimes against women, including the crimes of domestic and sexual assault.

(b) CONTENTS.—The final report submitted under paragraph (1) shall contain a detailed statement of the activities of the Commission and of the findings and conclusions of the Commission, including such recommendations for legislation and administrative action as the Commission considers appropriate.

SEC. 145. EXECUTIVE DIRECTOR AND STAFF.

(a) EXECUTIVE DIRECTOR.—

(1) APPOINTMENT.—The Commission shall have an Executive Director who shall be appointed by the Chairman, with the approval of the Commission, not later than 30 days after the Chairman is selected.

(2) COMPENSATION.—The Executive Director shall be compensated at a rate not to exceed the maximum rate of the basic pay payable under GS-18 of the General Schedule as contained in title 5, United States Code.

(b) STAFF.—With the approval of the Commission, the Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission.

(c) APPLICABILITY OF CIVIL SERVICE LAWS.—The Executive Director and the additional personnel of the Commission appointed under subsection (b) may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(d) CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Executive Director may procure temporary or intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed $200 per day.

SEC. 146. POWERS OF COMMISSION.

(a) HEARINGS.—For the purpose of carrying out this subtitle, the Commission may conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths before the Commission.

(b) DELEGATION.—Any member or employee of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take under this subtitle.

(c) ACCESS TO INFORMATION.—The Commission may secure directly from any executive department or agency such information as may be necessary to enable the Commission to carry out his subtitle, except to the extent that the department or agency is expressly prohibited by law from furnishing such information. On the request of the Chairman of the Commission, the head of such a department or agency shall furnish nonprohibited information to the Commission.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

SEC. 147. AUTHORIZATIONS OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1992, $500,000 to carry out the purposes of this subtitle.

SEC. 148. TERMINATION.

The Commission shall cease to exist 30 days after the date on which its final report is submitted under section 144. The President may extend the life of the Commission for a period of not to exceed one year.

Subtitle E—New Evidentiary Rules

SEC. 151. SEXUAL HISTORY IN ALL CRIMINAL CASES.

The Federal Rules of Evidence are amended by inserting after rule 412 the following:

"Rule 412A. Evidence of victim's past behavior in other criminal cases

"(a) REPUTATION AND OPINION EVIDENCE EXCLUDED.—Notwithstanding any other provision of law, in a criminal case, other than a sex offense case governed by rule 412, reputation or opinion evidence of the past sexual behavior of an alleged victim is not admissible.

"(b) ADMISSIBILITY.—Notwithstanding any other provision of law, in a criminal case, other than a sex offense case governed by rule 412, evidence of a alleged victim's past sexual behavior (other than reputation and opinion evidence) may be admissible if—

"(1) the evidence is admitted in accordance with the procedures specified in subdivision (c); and

"(2) the probative value of the evidence outweighs the danger of unfair prejudice.

"(c) PROCEDURES.—(1) If the defendant intends to offer evidence of specific instances of the alleged victim's past sexual behavior, the defendant shall make a written motion to offer such evidence not later than 15 days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.

"(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If necessary, the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing, the parties may call witnesses, including the alleged victim and offer relevant evidence. Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence which the defendant seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

"(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence that the defendant seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice such evidence shall be admissible in the trial to the extent an order made by the court specifies the evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined. In its order, the court should consider (A) the chain of reasoning leading to its finding of relevance, and (B) why the probative value of the evidence outweighs the danger of unfair prejudice given the potential of the evidence to humiliate and embarrass the alleged victim and to result in unfair or biased jury inferences.".

SEC. 152. SEXUAL HISTORY IN CIVIL CASES.

The Federal Rules of Evidence, as amended by section 151 of this Act, are amended by adding after rule 412A the following:

"Rule 412B. Evidence of past sexual behavior in civil cases

"(a) REPUTATION AND OPINION EVIDENCE EXCLUDED.—Notwithstanding any other provision of law, in a civil case in which a defendant is accused of actionable sexual misconduct, as defined in subdivision (d), reputation or opinion evidence of the plaintiff's past sexual behavior is not admissible.

"(b) ADMISSIBLE EVIDENCE.—Notwithstanding any other provision of law, in a civil case in which a defendant is accused of actionable sexual misconduct, as defined in subdivision (d), evidence of a plaintiff's past sexual behavior other than reputation or opinion evidence may be admissible if—

"(1) admitted in accordance with the procedures specified in subdivision (c); and

"(2) the probative value of such evidence outweighs the danger of unfair prejudice.

"(c) PROCEDURES.—(1) If the defendant intends to offer evidence of specific instances of the plaintiff's past sexual behavior, the defendant shall make a written motion to offer such evidence not later than 15 days before the date on which the trial in which such evidence is to be offered is scheduled to

begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the plaintiff.

"(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If necessary, the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing, the parties may call witnesses, including the plaintiff and offer relevant evidence. Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence with the defendant seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

"(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence that the defendant seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the plaintiff may be examined or cross-examined. In its order, the court should consider (A) the chain of reasoning leading to its finding of relevance, and (B) why the probative value of the evidence outweighs the danger of unfair prejudice given the potential of the evidence to humiliate and embarrass the alleged victim and to result in unfair or biased jury inferences.

"(d) DEFINITIONS.—For purposes of this rule, a case involving a claim of actionable sexual misconduct, includes, but is not limited to, sex harassment or discrimination claims brought pursuant to title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000(e)) and gender bias claims brought pursuant to title III of the Violence Against Women Act of 1991.".

SEC. 153. AMENDMENTS TO RAPE SHIELD LAW.

Rule 412 of the Federal Rules of Evidence is amended—

(1) by adding at the end thereof the following:

"(e) INTERLOCUTORY APPEAL.—Notwithstanding any other provision of law, any evidentiary rulings made pursuant to this rule are subject to interlocutory appeal by the government or by the alleged victim.

"(f) RULE OF RELEVANCE AND PRIVILEGE.—If the prosecution seeks to offer evidence of prior sexual history, the provisions of this rule may be waived by the alleged victim."; and

(2) by adding at the end of subdivision (c)(3) the following: "In its order, the court should consider (A) the chain of reasoning leading to its finding of relevance; and (B) why the probative value of the evidence outweighs the danger of unfair prejudice given the potential of the evidence to humiliate and embarrass the alleged victim and to result in unfair or biased jury inferences.".

SEC. 154. EVIDENCE OF CLOTHING.

The Federal Rules of Evidence are amended by adding after rule 412 the following:

"Rule 413. Evidence of victim's clothing as inciting violence

"Notwithstanding any other provision of law, in a criminal case in which a person is accused of an offense under chapter 109A of title 18, United States Code, evidence of an alleged victim's clothing is not admissible to show that the alleged victim incited or invited the offense charged.".

Subtitle F—Assistance to Victims of Sexual Assault

SEC. 161. EDUCATION AND PREVENTION GRANTS TO REDUCE SEXUAL ASSAULTS AGAINST WOMEN.

Part A of title XIX of the Public Health and Health Services Act (42 U.S.C. 300w et seq.) is amended as follows:

(1) by adding at the end thereof the following new section:

"§ 1910A. Use of allotments for rape prevention education

"(a) Notwithstanding the terms of section 1904(a)(1) of this title, amounts transferred by the State for use under this part may be used for rape prevention and education programs conducted by rape crisis centers or similar nongovernmental nonprofit entities, which programs may include—

"(1) educational seminars;

"(2) the operation of hotlines;

"(3) training programs for professionals:

"(4) the preparation of informational materials; and

"(5) other efforts to increase awareness of the facts about, or to help prevent, sexual assault.

"(b) States providing grant monies must assure that at least 15 percent of the monies are devoted to education programs targeted for junior high school and high school students.

"(c) There are authorized to be appropriated under this section for each fiscal year 1992, 1993, and 1994, $65,000,000 to carry out the purposes of this section.

"(d) Funds authorized under this section may only be used for providing rape prevention and education programs.

"(e) For purposes of this section, the term 'rape prevention and education' includes education and prevention efforts directed at offenses committed by offenders who are not known to the victim as well as offenders who are known to the victim.

"(f) States shall be allotted funds under this section pursuant to the terms of sections 1902 and 1903, and subject to the conditions provided in this section and sections 1904 through 1909.";

(2) striking section 1901(b); and

(3) striking section 1904(a)(1)(G).

SEC. 162. RAPE EXAM PAYMENTS.

No State or other grantee is entitled to funds under title I of the Violence Against Women Act of 1990 unless the State or other grantee incurs the full cost of forensic medical exams for victims of sexual assault. A State or other grantee does not incur the full medical cost of forensic medical exams if it chooses to reimburse the victim after the fact unless the reimbursement program waives any minimum loss or deductible requirement, provides victim reimbursement within a reasonable time (90 days), permits applications for reimbursement within one year from the date of the exam, and provides information to all subjects of forensic medical exams about how to obtain reimbursement.

TITLE II—SAFE HOMES FOR WOMEN

SEC. 201. SHORT TITLE.

This title may be cited as the "Safe Homes for Women Act of 1990".

Subtitle A—Interstate Enforcement

SEC. 211. INTERSTATE ENFORCEMENT.

(a) IN GENERAL.—Part 1 of title 18, United States Code, is amended by inserting after chapter 110 the following:

"Chapter 110A—Violence Against Spouses

"§ 2261. Traveling to commit spousal abuse

"(a) IN GENERAL.—Any person who travels or causes another (including the intended victim) to travel across State lines or in interstate commerce with the intent to injure a spouse or intimate partner, and who, during the course of any such travel or thereafter, does an act that injures his or her spouse or intimate partner in violation of a criminal law of the State where the injury occurs, shall be fined not more than $1,000 or imprisoned for not more than 5 years but not less than 3 months, or both, in addition to any fine or term of imprisonment provided under State law.

"(b) NO STATE LAW.—If no fine or term of imprisonment is provided for under the law of the State where the injury occurs, a person violating this section shall be punished as follows:

"(1) If permanent disfigurement or life-threatening bodily injury results, by imprisonment for not more than 20 years; where serious bodily injury results, by fine under this title or imprisonment for not more than 10 years, or both; where bodily injury results, by fine under this title or imprisonment for not more than 5 years, or both.

"(2) If the offense is committed with intent to commit another felony, by fine under this title or imprisonment for not more than 10 years, or both.

"(3) If the offense is committed with a dangerous weapon, with intent to do bodily harm, by fine under this title or imprisonment for not more than 5 years, or both.

"(4) If the offense constitutes sexual abuse, as that conduct is described under chapter 109A of title 18, United States Code (without regard to whether the offense was committed in the maritime, territorial or prison jurisdiction of the United States) by fine or term of imprisonment as provided for the applicable conduct under chapter 109A.

"(c) CRIMINAL INTENT.—The criminal intent of the offender required to establish an offense under subsection (b) is the general intent to do the acts that result in injury to a spouse or intimate partner and not the specific intent to violate the law of a State.

"§ 2262. Interstate violation of protection orders

"(a) IN GENERAL.—Any person against whom a valid protection order has been entered or any agent of that person who travels or causes another (including the intended victim) to travel across State lines or in interstate commerce with the intent to injure a spouse or intimate partner and who, during the course of such travel or thereafter, commits an act that injures his or her spouse or initimate partner in violation of a valid protection order issued by a State, with the intent to injure his or her spouse or intimate partner, shall be punished as follows:

"(1) If permanent disfigurement or life-threatening bodily injury results, by impris-

onment for not more than 20 years; where serious bodily injury results, by fine under this title or imprisonment for not more than 10 years, or both; where bodily injury results, by fine under this title or imprisonment for not more than 5 years, or both.

"(2) If the offense is committed with intent to commit another felony, by fine under this title or imprisonment for not more than 10 years, or both.

"(3) If the offense is committed with a dangerous weapon, with intent to do bodily harm, by fine under this title or imprisonment for not more than 5 years, or both.

"(4) If the offender has previously violated any prior protection order issued against that person for the protection of the same victim, by fine under this title or imprisonment for not more than 5 years and not less than six months, or both.

"(5) If the offense constitutes sexual abuse, as that conduct is described under chapter 109A of title 18, United States Code (without regard to whether the conduct was committed in the special maritime, territorial or prison jurisdiction of the United States) by fine or term of imprisonment as provided for the applicable offense under chapter 109A.

"(b) CRIMINAL INTENT.—The criminal intent required to establish the offense provided in subsection (a) is the general intent to do the acts which result in injury to a spouse or intimate partner and not the specific intent to violate a protection order or State law.

"§ 226.3. Interim Protections.

"In furtherance of the purposes of this chapter, and to protect against abuse of a spouse or intimate partner, any judge or magistrate before whom a criminal case under this chapter is brought, shall have the power to issue temporary order of protection for the protection of an abused spouse or intimate partner pending final adjudication of the case, upon a showing of a likelihood of danger to the abused spouse or intimate partner.

"§ 2264. Restitution

"(a) IN GENERAL.—In addition to any fine or term of imprisonment provided under this chapter, and notwithstanding the terms of section 3663 of this title, the court shall order restitution to the victim of an offense under this chapter.

"(b) SCOPE AND NATURE OF ORDER.—(1) The order of restitution under this section shall direct that—

"(A) the defendant pay to the victim the full amount of the victim's losses as determined by the court, pursuant to subsection (3); and

"(B) the United States Attorney enforce the restitution order by all available and reasonable means.

"(2) For purposes of this subsection, the term 'full amount of the victim's losses' includes any costs incurred by the victim for—

"(A) medical services relating to physical, psychiatric, or psychological care;

"(B) physical and occupational therapy or rehabilitation; and

"(C) lost income;

"(D) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and

"(E) any other losses suffered by the victim as a proximate result of the offense.

"(3) Restitution orders under this section are mandatory. A court may not decline to issue an order under this section because of—

"(A) the economic circumstances of the defendant; or

"(B) the fact that victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance.

"(4)(A) Notwithstanding the terms of paragraph (3),

the court may take into account the economic circumstances of the defendant in determining the manner in which and the schedule according to which the restitution is to be paid, including—

"(i) the financial resources and other assets of the defendant;

"(ii) projected earnings, earning capacity, and other income of the defendant; and

"(iii) any financial obligations of the offender, including obligations to dependents.

"(B) An order under this section may direct the defendant to make a single lumpsum payment, or partial payments at specified intervals. The order shall provide that the defendant's restitutionary obligation takes priority over any criminal fine ordered.

"(C) In the event that the victim has recovered for any amount of loss through the proceeds of insurance or any other source, the order of restitution shall provide that restitution be paid to the person who provided the compensation, but that restitution shall be paid to the victim before any restitution is paid to any other provider of compensation.

"(5) Any amount paid to a victim under this section shall be set off against any amount later recovered as compensatory damages by the victim from the defendant in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(c) PROOF OF CLAIM.—(1) Within 60 days after conviction and, in any event, no later than 10 days prior to sentencing, the United States Attorney (or his delegee), after consulting with the victim, shall prepare and file an affidavit with the court listing the amounts subject to restitution under this section. The affidavit shall be signed by the United States Attorney (or his delegee) and the victim. Should the victim object to any of the information included in the affidavit, the United States Attorney (or his delegee) shall advise the victim that the victim may file a separate affidavit.

"(2) If no objection is raised by the defendant, the amounts attested to in the affidavit filed pursuant to subsection (1) shall be entered in the court's restitution order. If objection is raised, the court may require the victim or the United States Attorney (or his delegee) to submit further affidavits or other supporting documents, demonstrating the victim's losses.

"(3) If the court concludes, after reviewing the supporting documentation and considering the defendant's objections, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. Any records filed, or testimony heard, pursuant to this section, shall be in camera in the judge's chambers. Notwithstanding any other provision of law, this section does not entitle the defendant to discovery of the contents of, or related to, any supporting documentation, including medical, psychological, or psychiatric records.

"(4) In the event that the victim's losses are not ascertainable 10 days prior to sentencing as provided in subsection (c)(1), the United States Attorney (or his delegee) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

"(d) RESTITUTION AND CRIMINAL PENALTIES.—An award of restitution to the victim of an offense under this chapter shall not be a substitute for imposition of punishment under sections 2261 and 2262.

"(e) DEFINITIONS.—For purposes of this section, the terms 'victim' includes any person who has suffered direct physical, emotional, or pecuniary harm as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court: *Provided*, That in no event shall the defendant be named as such representative or guardian.

"§ 2265. Full faith and credit given to protection orders

"(a) FULL FAITH AND CREDIT.—Any protection order issued consistent with the terms of subsection (b) by the court of one State (the issuing State) shall be accorded full faith and credit by the court of another State (the enforcing State) and enforced as if it were the order of the enforcing State.

"(b) PROTECTION ORDER.—A protection order issued by a State court is consistent with the provisions of this section if—

"(1) such court has jurisdiction over the parties and matter under the law of such State; and

"(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

"(c) CROSS OR COUNTER PETITION.—A protection order issued by a State court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if—

"(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

"(2) if a cross or counter petition has been filed, if the court did not make specific findings that each party was entitled to such an order.

"§ 2266. Definition for chapter

"As used in this chapter—

"(1) the term 'spouse or intimate partner' includes—

"(A) a present or former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse; and

"(B) any other person similarly situated to a spouse, other than a child, who is protected by the domestic or family violence laws of the State in which the injury occurred or where the victim resides;

"(2) the term 'protection order' includes any injunction or other order issued for the purpose of preventing violent or threatening acts by one spouse against his or her spouse

or intimate partner, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion of an abused spouse or intimate partner;

"(3) the term 'act that injures' includes any act, except those done in self-defense, that results in physical injury or sexual abuse; and

"(4) the term 'State' includes a State of the United States, the District of Columbia, and any Indian tribe, commonwealth, territory, or possession of the United States.".

(b) TABLE OF CHAPTERS.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for chapter 110 the following:

"110A. Violence against spouses ..... 2261.".

Subtitle B—Arrest in Spousal Abuse Cases

SEC. 221. ENCOURAGING ARREST POLICIES.

The Family Violence Prevention and Services Act (42 U.S.C. 10400) is amended by adding after section 311 the following:

"SEC. 312. ENCOURAGING ARREST POLICIES.

"(a) PURPOSE.—To encourage States, Indian tribes and localities to treat spousal violence as a serious violation of criminal law, the Secretary is authorized to make grants to eligible States, Indian tribes, municipalities, or local government entities for the following purposes:

"(1) to implement pro-arrest programs and policies in police departments and to improve tracking of cases involving spousal abuse;

"(2) to centralize and coordinate police enforcement, prosecution, or judicial responsibility for, spousal abuse cases in one group or unit of police officers, prosecutors, or judges;

"(3) to educate judges in criminal and other courts about spousal abuse and to improve judicial handling of such cases.

"(b) ELIGIBILITY.—(1) Eligible grantees are those States, Indian tribes, municipalities or other local government entities that—

"(A) demonstrate, through arrest and conviction statistics, that their laws or policies have been effective in significantly increasing the number of arrests made of spouse abusers; and

"(B) certify that their laws or official policies—

"(i) mandate arrest of spouse abusers based on probable cause that violence has been committed or mandate arrest of spouses violating the terms of a valid and outstanding protection order; or

"(ii) permit warrantless misdemeanor arrests of spouse abusers and encourage the use of that authority; and

"(C) demonstrate that their laws and policies discourage 'dual' arrests of abused and abuser and the increase in arrest rates demonstrated pursuant to paragraph (1)(A) is not the result of increased dual arrests.

"(2) For purposes of this section, the term 'protection order' includes any injunction issued for the purpose of preventing violent or threatening acts of spouse abuse, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

"(3) For purposes of this section, the term 'spousal or spouse abuse' includes abuse of a current or former spouse, a person who shares a child in common with the abuser, and person who cohabits with or has cohabited with the abuser as a spouse.

"(4) The eligibility requirements provided in this section shall take effect one year after the date of enactment of this section.

"(c) DELEGATION AND AUTHORIZATION.—The Secretary shall delegate to the Attorney General of the United States the Secretary's responsibilities for carrying out this section to the Attorney General. There are authorized to be appropriated not in excess of $25,000,000 for each fiscal year to be used for the purpose of making grants under this section.

"(d) APPLICATION.—An eligible grantee shall submit an application to the Secretary. Such application shall—

"(1) contain a certification by the chief executive officer of the State, Indian tribes, municipality, or local government entity that the conditions of subsection (b) are met;

"(2) describe the entity's plans to further the purposes listed in subsection (a);

"(3) identify the agency or office or groups of agencies or offices responsible for carrying out the program; and

"(4) identify the nonprofit nongovernmental victim services programs will be consulted in developing, and implementing, the program.

"(e) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to a grantee that—

"(1) does not currently provide for centralized handling of cases involving spousal or family violence in any one of the areas listed in this subsection—police, prosecutors, and courts; and

"(2) demonstrates a commitment to strong enforcement of laws, and prosecution of cases, involving spousal or family violence.

"(f) REPORTING.—Each grantee receiving funds under this section shall submit a report to the Secretary evaluating the effectiveness of the plan described in subsection (d)(2) and containing such additional information as the Secretary may prescribe.

"(g) REGULATIONS.—No later than 45 days after the date of enactment of this section, the Secretary shall publish proposed regulations implementing this section. No later than 120 days after such date, the Secretary shall publish final regulations implementing this section.".

Subtitle C—Funding for Shelters

SEC. 231. AUTHORIZATION.

Section 310 of the Family Violence Prevention and Services Act (42 U.S.C. 10409) is amended to read as follows:

"SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

"(a) There are authorized to be appropriated to carry out the provisions of this title, $85,000,000 for fiscal year 1992, $100,000,000, for fiscal year 1993, and $125,000,000 for fiscal year 1994.

"(b) Of the sums authorized to be appropriated under subsection (a) of this section for any fiscal year, not less than 85 percent shall be used by the Secretary for making grants under section 303.

"(c) Of the sums authorized to be appropriated under subsection (a) of this section for any fiscal year, not more than 5 percent shall be used by the Secretary for making grants under section 314.".

Subtitle D—Family Violence Prevention and Services Act Amendments

SEC. 241. EXPANSION OF PURPOSE.

Section 302(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10401(1)) is amended by striking "to prevent" and inserting "to increase public awareness about and prevent".

SEC. 242. EXPANSION OF STATE DEMONSTRATION GRANT PROGRAM.

Section 303(a)(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(a)(1)) is amended by striking "to prevent" and inserting "to increase public awareness about and prevent".

SEC. 243 GRANTS FOR PUBLIC INFORMATION CAMPAIGNS.

The Family Violence Prevention and Services Act is amended by adding at the end thereof the following new section:

"GRANTS FOR PUBLIC INFORMATION CAMPAIGNS

"SEC. 314. (a) The Secretary may make grants to public or private nonprofit entities to provide public information campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence.

"(b) No grant, contract, or cooperative agreement shall be made or entered into under this section unless an application that meets the requirements of subsection (c) has been approved by the Secretary.

"(c) An application submitted under subsection (b) shall—

"(1) provide such agreements, assurances, and information, be in such form and be submitted in such manner as the Secretary shall prescribe through notice in the Federal Register, including a description of how the proposed public information campaign will target the population at risk, including pregnant women;

"(2) include a complete description of the plan of the application for the development of a public information campaign;

"(3) identify the specific audiences that will be educated, including communities and groups with the highest prevalence of domestic violence;

"(4) identify the media to be used in the campaign and the geographic distribution of the campaign;

"(5) describe plans to test market a development plan with a relevant population group and in a relevant geographic area and give assurance that effectiveness criteria will be implemented prior to the completion of the final plan that will include an evaluation component to measure the overall effectiveness of the campaign;

"(6) describe the kind, amount, distribution, and timing of informational messages and such other information as the Secretary may require, with assurances that media organizations and other groups with which such messages are placed will not lower the current frequency of public service announcements; and

"(7) contain such other information as the Secretary may require.

"(d) A grant, contract, or agreement made or entered into under this section shall be used for the development of a public information campaign that may include public service announcements, paid educational messages for print media, public transit advertising, electronic broadcast media, and any other mode of conveying information that the Secretary determines to be appropriate.

"(e) The criteria for awarding grants shall ensure that an applicant—

"(1) will conduct activities that educate communities and groups at greatest risk;

"(2) has a record of high quality campaigns of a comparable type; and

"(3) has a record of high quality campaigns that educate the population groups identified as most at risk.".

SEC. 244. STATE COMMISSIONS ON DOMESTIC VIOLENCE.

Section 303(a)(2) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by redesignating subparagraph (G) as subparagraph (H); and

(3) by inserting after subparagraph (F) the following new subparagraph:

"(G) provides assurances that, not later than 1 year after receipt of funds, the State shall have established a Commission on Domestic Violence to examine issues including—

"(i) the use of mandatory arrest of accused offenders;

"(ii) the adoption of 'no-drop' or vertical prosecution policies;

"(iii) the use of mandatory requirements for presentencing investigations;

"(iv) the length of time taken to prosecute cases or reach plea agreements;

"(v) the use of plea agreements;

"(vi) the testifying by victims at post-conviction sentencing and release hearings;

"(vii) the consistency of sentencing practices;

"(viii) restitution of victims;

"(ix) the reporting practices of and significance to be accorded to prior convictions (both felonies and misdemeanors); and

"(x) such other matters as the Commission believes merit investigation.

In implementing this requirement, State grantees must certify to the Secretary that—

"(aa) no less than one-third of Commission members be victim advocates associated with non-profit shelters; and

"(bb) no more than 2 percent of the grant monies awarded shall be used to support the required Commission.".

SEC. 245. INDIAN TRIBES.

Section 303(b)(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(b)(1)) is amended by striking "is authorized" and inserting "from sums appropriated shall make no less than 10 percent available for".

SEC. 246. FUNDING LIMITATIONS.

Section 303(c) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(c)) is amended by striking ", and" and all that follows through "fiscal years".

SEC. 247. GRANTS TO ENTITIES OTHER THAN STATES; LOCAL SHARE.

The first sentence of section 303(f) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(f)) is amended to read as follows: "No demonstration grant may be made under this section to an entity other than a State or Indian tribe unless the entity provides 50 percent of the funding of the program or project funded by the grant.".

SEC. 248. SHELTER AND RELATED ASSISTANCE.

Section 303(g) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(g)) is amended by—

(1) striking "not less than 60 percent" and inserting "not less than 75 percent"; and

(2) striking "immediate shelter and related assistance to victims of family violence and their dependents" and inserting "shelter and related assistance to victims of family violence and their dependents, including any, but not requiring all of the following—

"(1) food, shelter, medical services, and counseling with respect to family violence, including counseling by peers individually or in groups;

"(2) transportation, legal assistance, referrals, and technical assistance with respect to obtaining financial assistance under Federal and State programs;

"(3) comprehensive counseling about parenting, preventive health (including nutrition, exercise, and prevention of substance abuse), educational services employment training, social skills (including communication skills), home management assertiveness training; and

"(4) day care services for children who are victims of family violence or the dependents of such victims.".

SEC. 249. LAW ENFORCEMENT TRAINING AND TECHNICAL ASSISTANCE GRANTS.

Section 311(b) of the Family Violence Protection and Services Act (42 U.S.C. 10410(b)) is amended by adding at the end thereof the following new subparagraph:

"(d) Training grants may be made under this section only to private nonprofit organizations that have experience in providing training and technical assistance to law enforcement personnel on a national or regional basis.".

SEC. 260. REPORT ON RECORDKEEPING.

Not later than 120 days after the date of enactment of this Act, the General Accounting Office shall complete a study of, and shall submit to Congress a report and recommendations on, problems of recordkeeping of criminal complaints involving domestic violence. The study and report shall examine efforts to date of the FBI and Justice Department to collect statistics on domestic violence and the feasibility of, including a suggested timetable for, requiring that the relationship between an offender and victim be reported in Federal and State records of crimes of assault, aggravated assault, rape, and other violent crimes.

SEC. 251. MODEL STATE LEADERSHIP INCENTIVE GRANTS FOR DOMESTIC VIOLENCE INTERVENTION.

The Family Violence Prevention Services Act, as amended by section 103 of this Act, is amended by adding at the end thereof the follcwing new section:

"MODEL STATE LEADERSHIP GRANTS FOR DOMESTIC VIOLENCE INTERVENTION

"SEC. 315. (a) The Secretary, in cooperation with the Attorney General, shall award grants to not less than 10 States to assist in becoming model demonstration States and in meeting the costs of improving State leadership concerning activities that will—

"(1) increase the number of prosecutions for domestic violence crimes;

"(2) encourage the reporting of incidences of domestic violence; and

"(3) facilitate 'arrests and aggressive' prosecution policies.

"(b) To be designated as a model State under subsection (a), a State shall have in effect—

"(1) a law that requires mandatory arrest of a person that police have probable cause to believe has committed an act of domestic violence or probable cause to believe has violated an outstanding civil protection order;

"(2) a law or policy that discourages 'dual' arrests;

"(3) statewide prosecution policies that—

"(A) authorize and encourage prosecutors to pursue cases where a criminal case can be proved, including proceeding without the active involvement of the victim if necessary; and

"(B) implement model projects that include either—

"(i) a 'no-drop' prosecution policy; or

"(ii) a vertical prosecution policy; and

"(C) limit diversion to extraordinary cases, and then only after an admission before a judical officer has been entered;

"(4) statewide guidelines for judges that—

"(A) reduce the automatic issuance of mutual restraining or protective orders in cases where only one spouse has sought a restraining or protection order;

"(B) discourage custody or joint custody orders by spouse abusers; and

"(C) encourage the understanding of domestic violence as a serious criminal offense and not a trivial dispute;

"(5) develop and disseminate methods to improve the criminal justice system's reponse to domestic violence to make existing remedies as easily available as possible to victims of domestic violence, including reducing delay, eliminating court fees, and providing easily understandable court forms.

"(c)(1) In addition to the funds authorized to be appropriated under section 310, there are authorized to be appropriated to make grants under this section $25,000,000 for fiscal year 1992 and such sums as may be necessary for each of the fiscal years 1993 and 1994.

"(2) Funds shall be distributed under this section so that no State shall receive more than $2,500,000 in each fiscal year under this section.

"(3) The Secretary shall delegate to the Attorney General the Secretary's responsibilities for carrying out this section and shall transfer to the Attorney General the funds appropriated under this section for the purpose of making grants under this section.".

SEC. 252. FUNDING FOR TECHNICAL ASSISTANCE CENTERS.

The Family Violence Prevention and Services Act is amended by inserting after section 308 the following:

"SEC. 308A. TECHNICAL ASSISTANCE CENTERS.

"(a) PURPOSE.—The purpose of this section is to provide training and technical assistance to State, Indian tribal, and local domestic violence programs and to other professionals who provide services to victims of domestic violence. From the sums authorized under this title, the Secretary shall provide grants or contracts with public or private nonprofit organizations, for the establishment and maintenance of six national resource centers serving defined geographic areas. One national resource center shall offer resource, policy, and/or training assistance to Federal, State, Indian tribal, and local government agencies on issues pertaining to domestic violence and serve a coordinating and resource-sharing function among domestic violence service providers, and maintain a central resource library. The other national resource centers shall provide information, training and technical assistance to State, tribal and local domestic violence service providers. In addition, each national center shall specialize in one of the following areas of domestic violence service, prevention or law:

"(1) Public awareness and prevention education;

"(2) Criminal justice response to domestic violence, including court-mandated abuser treatment;

"(3) Child abuse and domestic violence, including domestic violence and child custody issues;

"(4) Domestic violence victim self-defense;

"(5) Medical personnel training; and

"(6) Enhancing victims' access to effective legal assistance.

"(b) ELIGIBILITY.—Eligible grantees are private nonprofit organizations that—

"(1) focus primarily on domestic violence;

"(2) provide documentation to the Secretary demonstrating experience with issues of domestic violence, particularly in the specific area for which it is applying;

"(3) include on its advisory boards representatives from domestic violence programs in the region who are geographically and culturally diverse; and

"(4) demonstrate strong support from domestic violence advocates in the region for their designation as the regional resource center.

"(c) REPORTING.—Each grantee receiving funds under this section shall submit a report to the Secretary evaluating the effectiveness of the plan described and containing such additional information as the Secretary may prescribe.

"(d) REGULATIONS.—No later than 45 days after the date of enactment of this section, the Secretary shall publish proposed regulations implementing this section.

"(e) FUNDING.—From the sums appropriated under section 310 of this title, not in excess of $2,000,000 for each fiscal year shall be used for the purpose of making grants under this section.".

Subtitle E—Youth Education and Domestic Violence

SEC. 261. EDUCATING YOUTH ABOUT DOMESTIC VIOLENCE.

(a) GENERAL PURPOSE.—For purposes of this section, the Secretary shall delegate his powers to the Secretary of Education, hereinafter referred to as the "Secretary". The Secretary shall develop model programs for education of young people about domestic violence and violence among intimate partners.

(b) NATURE OF PROGRAM.—The Secretary shall develop three separate programs for three different audiences: primary and middle schools, secondary schools, and institutions of higher education. These model programs shall be developed with the input of educational experts, law enforcement personnel, legal and psychological experts on battering, and victim advocate organizations such as battered women's shelters. The participation of each of these groups or individual consultants from such groups is essential to the development of a program that meets both the needs of educational institutions and the needs of the domestic violence problem.

(c) REVIEW AND DISSEMINATION.—Not later than 9 months after the date of enactment of this Act, the Secretary shall transmit the model programs, along with a plan and cost estimate for nationwide distribution, to the relevant committees of Congress for review.

(d) AUTHORIZATION.—These are authorized to be appropriated under this section for fiscal year 1992, $200,000 to carry out the purposes of this section.

Subtitle F—Confidentiality for Abused Persons

SEC. 271. CONFIDENTIALITY OF ABUSED PERSON'S ADDRESS.

No later than 90 days after the enactment of this Act, the Postmaster General shall promulgate regulations to secure the confidentiality of abused persons address's or otherwise prohibit the disclosure of an abused person's address consistent with the following guidelines:

(1) confidentiality shall be provided upon the presentation to an appropriate postal official of an existing and valid court order for the protection of an abused spouse;

(2) disclosure of addresses to State or Federal agencies for legitimate law enforcement or other governmental purposes shall not be prohibited; and

(3) compilations of addresses existing at the time the order is presented to an appropriate postal official shall be excluded from the scope of the proposed regulations.

TITLE III—CIVIL RIGHTS

SEC. 301. CIVIL RIGHTS.

(a) FINDINGS.—The Congress finds that—

(1) crimes motivated by the victim's gender constitute bias crimes in violation of the victim's right to be free from discrimination on the basis of gender;

(2) current law provides a civil rights remedy for gender crimes committed in the workplace, but not for gender crimes committed on the street or in the home; and

(3) State and Federal criminal laws do not adequately protect against the bias element of gender crimes, which separates these crimes from acts of random violence, nor do they adequately provide victims the opportunity to vindicate their interests.

(b) RIGHTS, PRIVILEGES AND IMMUNITIES.—All persons within the United States shall have the same rights, privileges and immunities in every State as is enjoyed by all other persons to be free from crimes of violence motivated by the victim's gender, as defined in subsection (d).

(c) CAUSE OF ACTION.—Any person, including a person who acts under color of any State, ordinance, regulation, custom, or usage of any State, who deprives another of the rights, privileges or immunities secured by the Constitution and laws as enumerated in subsection (b) shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive or declaratory relief, or such other relief as the court may deem appropriate.

(d) DEFINITIONS.—For purposes of this section—

(1) the term "crime of violence motivated by gender" means any crime of violence, as defined in this section, including rape, sexual assault, sexual abuse, abusive sexual contact, or any other crime of violence committed because of gender or on the basis of gender; and

(2) the term "crime of violence" means an act or series of acts that would come within the meaning of State or Federal offenses described in section 16 of title 18, United States Code, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction and whether or not those acts were committed in the special maritime, territorial, or prison jurisdiction of the United States.

(e) LIMITATION AND PROCEDURES.—

(1) LIMITATION.—Nothing in this section entitles a person to a cause of action under subsection (c) for random acts of violence unrelated to gender or for acts that cannot be demonstrated, by a preponderance of the evidence, to be "motivated by gender" as defined in subsection (d).

(2) NO PRIOR CRIMINAL ACTION.—Nothing in this section requires a prior criminal complaint, prosecution, or conviction to establish the necessary elements of a cause of action under subsection (c).

SEC. 302. CONFORMINING AMENDMENT.

The Civil Right Attorney's Fees Awards Act of 1976 (42 U.S.C. 1988) is amended—

(1) in the last sentence, by striking "or" after "Public Law 92-318,"; and

(2) by adding after "1964," the following:", or title III of the Violence Aganist Women Act of 1991,".

TITLE IV—SAFE CAMPUSES FOR WOMEN

SEC. 401. SHORT TITLE

This title may be cited as the "Safe Campuses for Women Act of 1990".

SEC. 402. FINDINGS.

The Congress finds that—

(1) rape prevention and education programs are essential to an educational environment free of fear for students' personal safety;

(2) sexual assault on campus, whether by fellow students or not, is widespread among the Nation's higher education institutions: experts estimate that 1 in 7 of the women now in college have been raped and over half of college rape victims know their attackers;

(3) sexual assault poses a grave threat to the physical and mental well-being of students and may significantly impair the learning process; and

(4) action by schools to educate students may make substantial inroads on the incidence of rape, including the incidence of acquaintance rape on campus.

SEC. 403. GRANTS FOR CAMPUS RAPE EDUCATION.

Title X of the Higher Education Act of 1965 is amended to add at the end thereof the following:

"PART D—GRANTS FOR CAMPUS RAPE EDUCATION."

SEC. 1071. GRANTS FOR CAMPUS RAPE EDUCATION.

"(a) IN GENERAL.—(1) The Secretary of Education is authorized to make grants to or enter into contracts with institutions of higher education for rape education and prevention programs under this section.

"(2) The Secretary shall make financial assistance available on a competitive basis under this section. An institution of higher education or consortium of such institutions which desires to receive a grant or enter into a contract under this section shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require in accordance with regulations.

"(3) The Secretary shall make every effort to ensure the equitable participation of private and public institutions of higher education and to ensure the equitable geographic participation of such institutions. In the award of grants and contracts under this section, the Secretary shall give priority to institutions who show the greatest need for the sums requested.

"(4) Not less than 50 percent of sums available for the purposes of this section shall be used to make grants under subsection (c) of this section.

"(b) GENERAL RAPE PREVENTION AND EDUCATION GRANTS.—Grants under this section shall be used to educate and provide support services to student victims of rape or sexual assault. Grants may be used for the following purposes:

"(1) to provide training for campus security and college personnel, including campus disciplinary or judicial boards, that address the issues of rape, sexual assault, and other gender-motivated crimes;

"(2) to develop, disseminate, or implement campus security and student disciplinary policies to prevent and discipline rape, sexual assault and other gender-motivated crimes;

"(3) to develop, enlarge or strengthen support services programs including medical or psychological counseling to assist victims' recovery from rape, sexual assault, or other gender-motivated crimes;

"(4) to create, disseminate, or otherwise provide assistance and information about

victims' options on and off campus to bring disciplinary or other legal action; and

"(5) to implement, operate, or improve rape education and prevention programs, including programs making use of peer-to-peer education.

"(c) MODEL GRANTS.—Not less than 25 percent of the funds authorized under this section shall be available for grants for model demonstration programs to be coordinated with local rape crisis centers for the development and implementation of quality rape prevention and education curricula and for local programs to provide services to student rape victims.

"(d) ELIGIBILITY.—No institution of higher education or consortium of such institutions shall be eligible for a grant under this section unless—

"(1) its student code of conduct, or other written policy governing student behavior, explicitly prohibits not only rape but all forms of sexual assault; and

"(2) it has in effect and implements a written policy requiring the disclosure to the victim of any sexual assault the outcome of any investigation by campus police or campus disciplinary proceedings brought pursuant to the victim's complaint against the alleged perpetrator of the sexual assault: *Provided*, That nothing in this section shall be interpreted to authorize disclosure to any person other than the victim.

"(e) APPLICATIONS.—(1) In order to be eligible to receive a grant under this section for any fiscal year, an institution of higher education, or consortium of such institutions, shall submit an application to the Secretary at such time and in such manner as the Secretary shall prescribe.

"(2) Each such application shall—

"(A) set forth the activities and programs to be carried out with funds granted under this part;

"(B) contain an estimate of the cost for the establishment and operation of such programs;

"(C) explain how the program intends to address the issue of acquaintance rape;

"(D) provide assurances that the Federal funds made available under this section shall be used to supplement and, to the extent practical, to increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purpose described in this part, and in no case to supplant such funds; and

"(E) include such other information and assurances as the Secretary reasonably determines to be necessary.

"(e) Grantee Reporting.—Upon completion of the grant period under this section, the grantee institution or consortium of institutions shall file a performance report with the Secretary explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this section. The Secretary shall suspend funding for an approved application if an appplicant fails to submit an annual performance report.

"(f) Definitions.—(1) Except as otherwise provided, the terms used in this part shall have the meaning provided under section 2981 of this title.

"(2) For purposes of this subchapter, the following terms have the following meanings:

"(A) The term 'rape education and prevention' includes programs that provide educational seminars, peer-to-peer counseling, operation of hotlines, self-defense courses, the preparation of informational materials, and any other effort to increase campus awareness of the facts about, or to help prevent, sexual assault.

"(B) The term 'Secretary', means the Secretary of Education.

"(g) General Terms and Conditions.—(1) Regulations.—No later than 45 days after the date of enactment of this section, the Secretary shall publish proposed regulation implementing this section. No later than 120 days after such date, the Secretary shall publish final regulations implementing this section.

"(2) No later than 180 days after the end of each fiscal year for which grants are made under this section, the Secretary shall submit to the committees of the House of Representatives and the Senate responsible for issues relating to higher education and to crime, a report that includes—

"(A) the amount of grants made under this section;

"(B) a summary of the purposes for which those grants were provided and an evaluation of their progress; and

"(C) a copy of each grantee report filed pursuant to subsection (e) of this section.

"(3) For the purpose of carrying out this subchapter, there are authorized to be appropriated $20,000,000 for the fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995.".

SEC. 404. REQUIRED CAMPUS REPORTING OF SEXUAL ASSAULT.

Section 204(f) of the Crime Awareness and Campus Security Act of 1990 is amended to read as follows:

"(F) Statistics concerning the occurrence on campus, during the most recent school year, and during the 2 preceding school years for which data are available, of the following criminal offenses reported to campus security authorities or local police agencies—

"(i) murder;

"(ii) rape or sexual assault;

"(iii) robbery;

"(iv) aggravated assault;

"(v) burglary; and

"(vi) motor vehicle theft.

TITLE V—EQUAL JUSTICE FOR WOMEN IN THE COURTS ACT OF 1990

SECTION 501. SHORT TITLE.

This title may be cited as the "Equal Justice for Women in the Courts Act of 1991".

Subtitle A—Education and Training for Judges and Court Personnel in State Courts

SEC. 511. GRANTS AUTHORIZED.

The State Justice Institute is authorized to award grants for the purpose of developing, testing, presenting, and disseminating model programs to be used by States in training judges and court personnel in the laws of the States on rape, sexual assault, domestic violence, and other crimes of violence motivated by the victim's gender.

SEC. 512. TRAINING PROVIDED BY GRANTS.

Training provided pursuant to grants made under this subtitle may include current information, existing studies, or current data on—

(1) the nature and incidence of rape and sexual assault by strangers and nonstrangers, marital rape, and incest;

(2) the underreporting of rape, sexual assault, and child sexual abuse;

(3) the physical, psychological, and economic impact of rape and sexual assault on the victim, the costs to society, and the implications for sentencing;

(4) the psychology of sex offenders, their high rate of recidivism, and the implications for sentencing;

(5) the historical evolution of laws and attitudes on rape and sexual assault;

(6) sex stereotyping of female and male victims of rape and sexual assault, racial stereotyping of rape victims and defendants, and the impact of such stereotypes on credibility of witnesses, sentencing, and other aspects of the administration of justice;

(7) application of rape shield laws and other limits on introduction of evidence that may subject victims to improper sex stereotyping and harassment in both rape and nonrape cases, including the need for sua sponte judicial intervention in inappropriate cross-examination;

(8) the use of expert witness testimony on rape trauma syndrome, child sexual abuse accommodation syndrome, post-traumatic stress syndrome, and similar issues;

(9) the legitimate reasons why victims of rape, sexual assault, and incest may refuse to testify against a defendant;

(10) the nature and incidence of domestic violence;

(11) the physical, psychological, and economic impact of domestic violence on the victim, the costs to society, and the implications for court procedures and sentencing;

(12) the psychology and self-presentation of batterers and victims and the implications for court proceedings and credibility of witnesses;

(13) sex stereotyping of female and male victims of domestic violence, myths about presence or absence of domestic violence in certain racial, ethnic, religious, or socioeconomic groups, and their impact on the administration of justice;

(14) historical evolution of laws and attitudes on domestic violence;

(15) proper and improper interpretations of the defenses of self-defense and provocation, and the use of expert witness testimony on battered woman syndrome;

(16) the likelihood of retaliation, recidivism, and escalation of violence by batterers, and the potential impact of incarceration and other meaningful sanctions for acts of domestic violence including violations of orders of protection;

(17) economic, psychological, social and institutional reasons for victims' inability to leave the batterer, to report domestic violence or to follow through on complaints, including the influence of lack of support from police, judges, and court personnel, and the legitimate reasons why victims of domestic violence may refuse to testify against a defendant;

(18) the need for orders of protection, and the implications of mutual orders of protection, dual arrest policies, and mediation in domestic violence cases;

(19) recognition of and response to gender-motivated crimes of violence other than rape, sexual assault and domestic violence, such as mass or serial murder motivated by the gender of the victims; and

(20) current information on the impact of pornography on crimes against women, or data on other activities that tend to degrade women.

SEC. 513. COOPERATION IN DEVELOPING PROGRAMS IN MAKING GRANTS UNDER THIS TITLE.

The State Justice Institute shall ensure that model programs carried out pursuant to grants made under this subtitle are developed with the participation of law enforcement officials, public and private nonprofit victim advocates, legal experts, prosecutors, defense attorneys, and recognized experts on gender bias in the courts.

SEC. 514. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1992, $600,000 to carry out the pur-

poses of this subtitle. Of amounts appropriated under this section, the State Justice Institute shall expend no less than 40 percent of model programs regarding domestic violence and no less than 40 percent on model programs regarding rape and sexual assault.

Subtitle B—Education and Training for Judges and Court Personnel in Federal Courts

SEC. 521. EDUCATION AND TRAINING GRANTS.

(a) STUDY.—The Federal Judicial Center shall conduct a study of the nature and extent of gender bias in the Federal courts, including in proceedings involving rape, sexual assault, domestic violence, and other crimes of violence motivated by gender. The study shall be conducted by the use of data collection techniques such as reviews of trial and appellate opinions and transcripts, public hearings, and inquiries to attorneys practicing in the Federal courts. The Federal Judicial Center shall publicly issue a final report containing a detailed description of the findings and conclusions of the study, including such recommendations for legislative, administrative, and judicial action as it considers appropriate.

(b) MODEL PROGRAMS.—(1) The Federal Judicial Center shall develop, test, present, and disseminate model programs to be used in training Federal judges and court personnel in the laws on rape, sexual assault, domestic violence, and other crimes of violence motivated by the victim's gender.

(2) The training programs developed under this subsection shall include—

(A) all of the topics listed in section 512 of subtitle A; and

(B) all procedural and substantive aspects of the legal rights and remedies for violent crime motivated by gender including such areas as the Federal penalties for sex crimes, interstate enforcement of laws against domestic violence and civil rights remedies for violent crimes motivated by gender.

SEC. 522. COOPERATION IN DEVELOPING PROGRAMS.

In implementing this subtitle, the Federal Judicial Center shall ensure that the study and model programs are developed with the participation of law enforcement officials, public and private nonprofit victim advocates, legal experts, prosecutors, defense attorneys, and recognized experts on gender bias in the courts.

SEC. 523. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1992, $400,000 to carry out the purposes of this subtitle. Of amounts appropriated under this section, no less than 25 percent and no more than 40 percent shall be expended by the Federal Judicial Center on the study required by section 521(a) of this subtitle.●

BIDEN "VIOLENCE AGAINST WOMEN ACT"

TITLE I—SAFE STREETS FOR WOMEN

Creates New Penalties for Sex Crimes:

Doubles penalties for rape and aggravated rape.

Creates new penalties for repeat sex offenders.

Increases restitution for the victims of sex crimes.

Encourages Women to Prosecute Their Attackers:

Requires states to pay for women's medical examinations to determine if they have been raped.

Extends "rape shield law" protection to criminal and civil cases—other than sexual assault cases where it already applies—to bar embarrassing and irrelevant inquiries into a victim's sexual history at trial.

Authorizes $65 million in funds for rape prevention and education.

Bars the use of a women's clothing to show, at trial, that the victim incited or invited a sexual assault.

Targets Places Most Dangerous for Women:

Authorizes $300 million for law enforcement efforts to combat sex crimes, with $100 million targeted for the 40 metropolitan areas most dangerous for women.

Creates special units of police, prosecutors and victim advocates to fight crime against women.

Creates Safer Public Transit and Public Parks:

Funds increased lighting and camera surveillance at bus stops, bus stations, subways, and parking lots adjacent to public transit facilities.

Targets $25 million in existing park funds for increased lighting, emergency telephones, and police.

Establishes the "National Commission on Violent Crime Against Women":

Creates a commission to develop a national strategy for combating violence against women.

TITLE II—SAFE HOMES FOR WOMEN

Protects Women from Abusive Spouses:

Deters abusers from learning the whereabouts of a fleeing victim.

Creates federal penalties for spouse abusers who cross state lines to continue their abuse.

Requires all states to enforce any "stay away" order, regardless of which state issues it.

Promotes Arrests of Abusive Spouses:

Authorizes $25 million for prosecutors and courts to develop special spouse abuse units.

Provides additional grants to "model states" that promote the arrest and prosecution of abusive spouses.

Provides More Money for Shelters:

Triples funding for battered women's shelters.

Teaches Children about Domestic Violence:

Creates school-based programs designed to stop the cycle of family violence.

Educates Women about Their Rights:

Requires States to establish commissions to study domestic violence and authorizes a national media campaign against such violence. (Senator Coats)

TITLE III—CIVIL RIGHTS FOR WOMEN

Labels Sex Crimes as "Bias" or "Hate" Crimes:

Defines gender-motivated crimes as "bias" crimes that deprive victims of their civil rights.

Extends "Civil Rights" Protections to All Gender-Motivated Crimes:

Makes gender-based assaults a violation of federal civil rights laws.

Allows victims of all felonies "motivated by gender" to bring civil rights suits against their assailants.

TITLE IV—SAFE CAMPUSES FOR WOMEN

Funds Rape Prevention Programs:

Creates a $20 million grant program for the neediest colleges to fund campus rape education and prevention programs and services.

Guarantees Victims' Right to Know:

Requires grantee colleges to disclose to rape victims the outcome of college disciplinary proceedings against their attackers.

Strengthens Campus Security:

Closes loophole in existing campus crime reporting law by requiring that campuses report not only "rape" but also any form of sexual assault.

Requires grantee colleges to expressly bar sexual assault as a violation of student disciplinary codes.

TITLE V—JUDICIAL EDUCATION ON VIOLENCE AGAINST WOMEN

Educates state and federal judges about domestic violence, sexual assault and gender bias.

● Mr. BOREN. Mr. President, I am very pleased to join my colleague, Senator BIDEN of Delaware, in introducing the Violence Against Women Act. This bill is the first piece of comprehensive legislation that directly addresses and alleviates the serious problem of violent crime against women in this country.

Violent crimes against women are rising at an alarming and unacceptable rate. During the last decade, the rate of rape rose four times as fast as the total crime rate. Today, with every minute that passes, over 4 women are beaten; and with every hour that passes, 10 women are raped.

While the statistics are alarming, they pale in comparison to the true numbers of female victims. It is estimated that less than half of all rapes, and even fewer domestic assaults, are ever reported. Violent crimes against women are not limited to the streets of the inner cities, but also occur in homes in the urban and rural areas across the country.

Violence against women affects not only those who are actually beaten and brutalized, but indirectly affects all women. Today, our wives, mothers, daughters, sisters, and colleagues are held captive by the fear generated from these violent crimes—held captive not for what they do or who they are, but solely because of their gender.

Mr. President, the Violence Against Women Act is not a panacea for this pervasive problem, but is a necessary first step in freeing all females from unnecessary risk and fear. The bill designates sex crimes as a violation of civil rights, allowing women to seek remedies under the Federal civil rights laws.

Additionally, the bill increases penalties for sex related crimes being tried in Federal court, and makes court restraining orders for women enforceable across State lines. The bill also provides $300 million in grants to State and local law-enforcement agencies to tailor programs to combat this problem at the local level.

Mr. President we can and must put an end to the spiraling escalation of violent crimes against women in this country. We must protect the rights of women in this country to feel safe on the street and in their homes. I strongly urge my colleagues to recognize the urgent need for this legislation and to join me in supporting the Violence Against Women Act.●

Mr. COHEN. Mr. President, today I am pleased to join Senator BIDEN in reintroducing the Violence Against Women Act. The first comprehensive

legislation designed specifically to combat violent crime against women, this legislation was first introduced by Senator BIDEN last year and, subsequently, was favorably reported by the Judiciary Committee. Regrettably, the full Senate did not have the opportunity to consider the measure before adjournment.

Violence against women in this country has been rising at an alarming rate. Increases in the rate of rape, assaults, and murder of women are significantly higher than increases in the national crime rate or the rate of assaults and murder of men. Nationally, a woman is raped every 6 minutes and, every 18 seconds, a women is beaten. In my own State of Maine, a woman is raped every 38 hours and a domestic assault occurs every 3 hours.

While the statistics are shocking, the reality is even worse. It is estimated that less than half of all rapes and even fewer domestic assaults are ever reported. These crimes are not limited to the streets of our inner cities or to those few highly publicized cases that we read about in the newspapers or see on the evening news.

Women throughout the country, in our Nation's urban areas and rural communities, are being beaten and brutalized in the streets and in their homes. It is our mothers, wives, daughters, sisters, friends, neighbors, and coworkers who are being victimized; and, in many cases, they are being victimized by family members, friends, and acquaintances.

The physical and emotional toll on women who are the victims of violent crime is devastating. Compounding this tragedy is the fact that the law enforcement and judicial systems in this country, and society in general, often contribute to the victimization of women by their insensitivity, reliance on outmoded stereotypes, and failure to adequately protect victims.

Even those women who have not been touched directly by violent crime are not unaffected. How many women can walk home at night from the bus or subway without some thought of what is the safest route to take, or without pausing when they hear footsteps behind them. How many women have thought better of taking an evening stroll in their neighborhood or perhaps a local park because of a concern about crime. Regrettably, all women are victims of fear—the fear generated by the pervasiveness of violence directed against women not because of who they are or what they are doing or where they live but simply because they are women.

The Federal Government has an important role to play in reversing the trend of increasing violence against women. In addition to setting an example for the States to emulate by strengthening its own laws and enforcement efforts, the Federal Government can promote programs at the State and local level to prevent violence against women, and to more effectively prosecute and appropriately punish those individuals who commit violent crimes against women.

The Violence Against Women Act is not a cure to the growing incidence of violence but it is an important step in the right direction. The bill has five major titles: Safe Streets for Women; Safe Homes for Women; Civil Rights for Women; Safe Campuses for Women; and Equal Justice for Women in the Courts. A summary of the bill has been placed in the RECORD.

I want to take this opportunity to commend Senator BIDEN for his leadership in this area and his commitment to addressing the very difficult problem of violence against women, and I look forward to working with him to move this measure forward. I urge my colleagues to join in supporting this important legislation.

By Mr. BIDEN (for himself, Mr. KENNEDY, Mr. SPECTER, Mr. ADAMS, Mr. D'AMATO, Mr. DECONCINI, Mr. SIMON, Mr. BRADLEY, Mr. PRYOR, Mr. METZENBAUM, Mr. HEINZ, Mr. HEFLIN, Mr. BAUCUS, Mr. GORTON, Mr. MOYNIHAN, Mr. CRANSTON, and Mr. AKAKA):

S. 16. A bill to provide emergency Federal assistance to drug emergency areas; to the Committee on the Judiciary.

DRUG EMERGENCY AREAS ACT

• Mr. BIDEN. Mr. President, today I am introducing the Drug Emergency Areas Act of 1991 to fight the spiraling problems of drug trafficking and violent crime in our Nation's cities and communities.

The drug and violent crime epidemics are taking their toll on U.S. cities unlike any natural disaster in modern history. Each year, thousands die in drug-related violence and overdoses. Tens of billions of dollars are lost in health costs and lowered productivity. The drug crisis has—literally—destroyed neighborhoods in every major city in this country.

Congress and the President recognized the need to provide emergency Federal aid to the hardest hit cities as far back as 1988, when the Anti-Drug Abuse Act was enacted. This law directed the President to designate certain areas of the country as "high intensity drug trafficking areas" and to provide immediate Federal aid to these areas. And to ensure that emergency aid was provided immediately, Congress appropriated $25 million in October 1989 for the areas to be designated by the President.

Unfortunately, the White House response has been plagued by bureaucratic delays and inefficiency.

More than 2 years after the high-intensity drug trafficking area legislation was signed into law, not a single Federal dollar—not a single extra police officer or treatment bed—had been delivered to these hard-hit areas.

That's why 16 of my colleagues and I are introducing the Drug Emergency Areas Act of 1991 as an alternative to the President's plan. Our legislation is simple and direct. It would:

Provide $300 million—six times the amount in the President's antidrug plan—in emergency Federal assistance to those areas of the Nation hardest hit by drug trafficking, abuse and related violence;

Direct that emergency Federal aid be available not only for big cities, but also to rural and suburban areas, where the drug crisis has overwhelmed the ability of State and local law enforcement agencies to respond; and

Allow funding for both law enforcement and prevention and treatment initiatives—to attack the problem at every possible level.

Mr. President, there is one additional—and perhaps the most critical—difference between this new initiative and the President's plan.

My bill offers direct Federal assistance to the cities and counties where the drug problem hits the hardest, and where emergency assistance is needed the most. Federal assistance to drug emergency areas should be delivered the same way we help areas affected by natural emergencies—directly to the local officials who know what needs doing, and how best to do it.

This bill is identical to legislation I introduced last year, S. 2313, which was endorsed by the former President of the U.S. Conference of Mayors, Richard Berkley, and the mayor of New York City, David Dinkins. The bill is also strongly supported by the National League of Cities and the Delaware League of Local Governments.

Mr. President, drug trafficking and abuse in our cities is a national emergency. We need an emergency response. I believe the Drug Emergency Areas Act is a major step in the right direction.

I ask unanimous consent that the bill, an explanatory factsheet, and a chart comparing this legislation with the President's plan be printed in the CONGRESSIONAL RECORD at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 16

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Drug Emergency Areas Act of 1990".

SEC. 2. DRUG EMERGENCY AREAS.

Subsection (c) of section 1005 of the National Narcotics Leadership Act of 1988 is amended to read as follows:

"(c) DECLARATION OF DRUG EMERGENCY AREAS.—

"(1) PRESIDENTIAL DECLARATION.—(A) In the event that a major drug-related emergency exists throughout a State or a part of a State, the President may, in consultation with the Director and other appropriate officials, declare such State or part of a State to be a drug emergency area and may take any and all necessary actions authorized by this subsection or otherwise authorized by law.

"(B) For the purposes of this subsection, the term 'major drug-related emergency' means any occasion or instance in which drug trafficking, drug abuse, or drug-related violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

"(2) PROCEDURE FOR DECLARATION.—(A) All requests for a declaration by the President designating an area to be a drug emergency area shall be made, in writing, by the Governor or chief executive officer of any affected State or local government, respectively, and shall be forwarded to the President through the Director in such form as the Director may by regulation require. One or more cities, counties, or States may submit a joint request for designation as a drug emergency area under this subsection.

"(B) Any request made under clause (A) of this paragraph shall be based on a written finding that the major drug-related emergency is of such severity and magnitude that effective response to save lives, and to protect property and public health and safety, that Federal assistance is necessary.

"(C) The President shall not limit declarations made under this subsection to highly-populated centers of drug trafficking, drug use or drug-related violence, but shall also consider applications from governments of less populated areas where the magnitude and severity of such activities is beyond the capability of the State or local government to respond.

"(D) As part of a request for a declaration by the President under this subsection, and as a prerequisite to Federal drug emergency assistance under this subsection, the Governor(s) or chief executive officer(s) shall—

"(i) take appropriate response action under State or local law and furnish such information on the nature and amount of State and local resources which have been or will be committed to alleviating the major drug-related emergency;

"(ii) certify that State and local government obligations and expenditures will comply with all applicable cost-sharing requirements of this subsection; and

"(iii) submit a detailed plan outlining the State and/or local government's short- and long-term plans to respond to the major drug-related emergency, specifying the types and levels of Federal assistance requested, and including explicit goals (where possible quantitative goals) and timetables and shall specify how Federal assistance provided under this subsection is intended to achieve such goals.

"(E) The Director shall review any request submitted pursuant to this subsection and forward the application, along with a recommendation to the President on whether to approve or disapprove the application, within 30 days after receiving such application. Based on the application and the recommendation of the Director, the President may declare an area to be a drug emergency area under this subsection.

"(3) FEDERAL MONETARY ASSISTANCE.—(A) The President is authorized to make grants to State or local governments of up to, in the aggregate for any single major drug-related emergency, $50,000,000.

"(B) The Federal share of assistance under this section shall not be greater than 75 percent of the costs necessary to implement the short- and long-term plan outlined in paragraph (2)(D)(iii).

"(C) Federal assistance under this subsection shall not be provided to a drug disaster area for more than 1 year. In any case where Federal assistance is provided under this Act, the Governor(s) or chief executive officer(s) may apply to the President, through the Director, for an extension of assistance beyond 1 year. The President, based on the recommendation of the Director, may extend the provision of Federal assistance for not more than an additional 180 days.

"(D) Any State and/or local government receiving Federal assistance under this subsection shall balance the allocation of such assistance evenly between drug supply reduction and drug demand reduction efforts, unless State or local conditions dictate otherwise.

"(4) NONMONETARY ASSISTANCE.—In addition to the assistance provided under paragraph (3), the President may—

"(A) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts; and

"(B) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information.

"(5) ISSUANCE OF IMPLEMENTING REGULATIONS.—Within 90 days after the enactment of this subsection, the Director shall issue regulations to implement this subsection, including such regulations as may be necessary relating to applications for Federal assistance and the provision of Federal monetary and nonmonetary assistance.

"(6) AUDIT BY COMPTROLLER GENERAL.—The Comptroller General shall conduct an audit of any Federal assistance (both monetary and nonmonetary) of an amount greater than $100,000 provided to a State or local government under this subsection, including an evaluation of the effectiveness of such assistance based on the goals contained in the application for assistance.

"(7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year 1991, 1992, 1993, 1994, and 1995, $300,000,000 to carry out the purposes of this subsection.".

DRUG EMERGENCY AREAS ACT OF 1991

BACKGROUND

Modeled closely on the Federal Disaster Assistance Act, the Drug Emergency Areas Act (DEAA) provides direct, emergency Federal aid to areas that are particularly hard hit by drug trafficking and violence—and where state and local agencies are overwhelmed and unable to respond effectively.

WHO WOULD GET HELP

The Drug Emergency Areas Act would allow any local official to apply directly for aid:

Any city (irrespective of its population) could receive aid if the President declares that the area is in need of Federal assistance due to a high level of drug trafficking, drug abuse or drug-related violence.

EXACTLY WHAT ASSISTANCE DOES THE DEAA PROVIDE

Funding: Up to $50 million in emergency relief aid would be available to a specific drug emergency area.

These funds would be provided directly to state or local governments.

Other: The Act also authorizes increases in the number of Federal agents in such areas and provides communications, intelligence and equipment.

WHAT ARE THE MAJOR DIFFERENCES WITH PRESIDENT'S PLAN

1. More aid. The DEAA would provide $300 million in new aid to the hardest-hit areas—up to a maximum of $50 million per city.

The Administration's plan provides a total of $10 million to each of five pre-determined areas.

2. More cities eligible. As mentioned above, any city could apply for and receive aid under the DEAA if designated an emergency area by the President.

The Administration's plan limits aid to five specific areas: New York, Los Angeles, Miami, Houston, and the Southwest Border.

3. Direct funding. The DEAA provides immediate and direct aid to local governments, designated drug emergency areas.

The Administration's plan provides no Federal aid to state or local governments; rather, all of the aid is earmarked solely for Federal agencies.

4. Use of funds for demand reduction. The DEAA directs that local governments spend emergency relief funds on both supply and demand reduction efforts, unless local conditions dictate otherwise.

The Administration's plan provides no funding for prevention or treatment.●

● Mr. KENNEDY. Mr. President, the 1988 Anti-Drug Abuse Act gave the Drug Director specific authority that Senator BIDEN and I authored to designate certain areas as high intensity drug areas. We left considerable discretion with the Drug Director in exercising that authority. Our concept was intended to provide a mechanism for the Federal Government to bring greater pressure to bear on areas of the country hardest hit by the drug problem.

The legislation we reintroduced today expands on this concept by authorizing the President to declare drug emergency areas. Currently, the Drug Director's authority is limited to reassigning existing resources. That authority is important, but it must be augmented. This new proposal will authorize the President, on the advice of the Drug Director to inject new resources directly to high intensity areas, instead of taking away important resources from other assignments. This legislation will provide an important and indispensable weapon in our fight against drug abuse. I have pursued similar authority to enable the President to direct emergency relief for areas with acute educational treatment needs.

A winning strategy against drug abuse involves three approaches: Law enforcement, prevention, and treatment. Each is vital, and none can be downgraded or ignored. On the enforcement side of the drug war, wiser policies and more resources are needed, es-

pecially at the State and local level—where the real war is fought every day on our streets and in our communities. We must learn to support our State and local police—and do it without abandoning fundamental constitutional guarantees or turning any local jurisdiction into a police state.

More important, Federal law enforcement officials must do a better job of coordinating Federal efforts, so that we direct drug enforcement resources in a way that focuses maximum pressure on drug trafficking organizations here and abroad.

We have enacted enhancements in State and local law enforcement authority, tougher asset forfeiture, quicker prosecutions of drug offenders, broader use of civil sanctions, high intensity drug trafficking area improvements, and additional Federal trial judges for areas of the country hardest hit by the drug crisis. Taken together, these provisions and the Drug Emergency Areas Act will provide substantial new assistance to all levels of our law enforcement and civil justice system.●

By Mr. LOTT:

S. 17. A bill to provide for a study of the Corinth Battlefield in the State of Mississippi; to the Committee on Energy and Natural Resources.

S. 80. A bill to establish a national military park to commemorate the Battle of Corinth in the State of Mississippi; to the Committee on Energy and Natural Resources.

CORINTH BATTLEFIELD LEGISLATION

● Mr. LOTT. Mr. President, I rise today to offer legislation which will ensure the preservation of a site in my home State or Mississippi which was the scene of one of the greatest campaigns during the War Between the States. Corinth, MS was the location of the Battle of Corinth which was the largest battle to take place in my State and the Siege of Corinth was, in terms of aggregate numbers of troops involved, one of largest in the history of the Western Hemisphere.

Possession of Corinth was the key to victory during the war because of the railroads. Corinth was the Confederacy's only east-west link; the Memphis and Charleston Railroad crossed the critical Mobile and Ohio Railway. These were the two longest railroads in the South. This junction was referred to as the vertebrae of the Confederacy and eventually acquired the nickname "crossroads of the Confederacy." It is interesting to note that the famous Battle of Shiloh was fought solely for the possession of Corinth. A National Military Park is located at Shiloh in commemoration of this battle.

The strategical value of Corinth was tremendous. With Corinth in Union hands, the roads to Vicksburg and Atlanta were open for Federal armies. The Confederacy certainly realized the importance of Corinth. Possession of Corinth was critical enough for the Confederacy to sacrifice New Orleans, the South's largest city and the coastal region from Mobile to Charleston. The Confederacy abandoned these cities in order to send the needed troops to protect the small village in northeast Mississippi, known as Corinth.

Of all the major civil war crusades, the Battle of Corinth and the Corinth Siege is indisputably the least known and definitely the least recognized. The Battle of Corinth is deserving of long-overdue national recognition. I am aware that these sites at Corinth are being considered for National Historic Landmark designation which, if seclected, would be officially named this summer. However, I am convinced that we must go one step further to ensure this notable site's place in American history; therefore my reason for introducing legislation.

Corinth is an ideal location for a National Military Park. If we act expeditiously we may easily preserve many battle and siege sites which are still vacant tracts of land. The urban setting is advantageous for the purposes of cost minimization in development and maintenance. Furthermore, the proximity of the Shiloh National Military Park offers the possibility of a combined administration.

Corinth and the Corinth Siege are the only sites in my State of Mississippi included on the Secretary of the Interior's list of Priority Civil War Battlefields and 2 of only 25 nationwide. My proposal is also consistent with the Secretary of the Interior's American Battlefield Protection Program established in July 1990.

We must safeguard our national heritage and protect this significant battlefield upon which our ancestors lost life and limb in pursuit of their most fundamental ideals. I believe Corinth is a natural location for a military park. The closeness of the Shiloh National Military Park, which is just 20 miles from Corinth, would be especially beneficial. The connection between the two battles, not to mention the convenience of location, convinces me that construction of a military park at Corinth is needed for proper interpretation of this important chapter in American history.

Mr. President, I ask my colleagues to support this important legislation and ask unanimous consent the full text of these bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 17

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Battle of Corinth Study Act of 1991".

SEC. 2. STUDY OF THE BATTLE OF CORINTH.

(a) IN GENERAL.—(1) The Secretary of the Interior shall conduct a study of the events surrounding and lands involved in the Battle of Corinth, in the State of Mississippi, which was fought on October 3 and 4, 1862.

(2) The study described in paragraph (1) shall—

(A) determine the significance of the battle in illustrating and commemorating the "War in the West" of the War Between the States and

(B) include alternatives for the administration, protection, and interpretation of the battlefield and associated lands.

(b) COMPLETION OF STUDY.—The study described in subsection (a) shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than 2 years after the date on which funds are made available for the study.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as necessary to carry out this Act.

S. 80

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT OF NATIONAL MILITARY PARK.

(a) IN GENERAL.—In order to commemorate and interpret the events of the Battle of Corinth, which was fought on October 3, and 4, 1862, the Corinth battleground, in the State of Mississippi, including such adjacent and contiguous lands, waters, and interests therein as may be useful and proper in effectively carrying out the purposes of this Act, is established as a national military park, to be known as Corinth National Military Park (referred to as the "national military park").

(b) DESIGNATION.—(1) The national military park shall consist of such lands, waters and interests therein, not to exceed 500 acres, as the Secretary of the Interior (referred to as the "Secretary") shall designate in furtherance of this Act.

(2) A map of the lands and interests in land designated paragraph (1) shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior, and at the national military park.

(3) The Secretary may from time to time make minor revisions in the boundary of the national military park by publication of a revised map or other boundary description in the Federal Register, so long as the area of the national military park does not exceed 500 acres.

SEC. 2. ACQUISITION OF PROPERTY.

(a) IN GENERAL.—Within the national military park the Secretary may, subject to subsection (b), acquire—

(1) lands, waters, and interests therein by donation, purchase and donated or appropriated funds, or exchange;

(2) or personal property for use in connection with the administration of the national military park.

(b) PUBLICLY OWNED LANDS.—Lands, waters, or interests therein owned by the State of Mississippi or a political subdivision thereof may be acquired by the Secretary only by donation.

SEC. 3. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the national military park in accordance with this Act and the law generally applicable to units of the national park sys-

tem, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 21, 1916 (39 Stat. 535; 16 U.S.C. 1, 2-4) and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461-467).

(b) MANAGEMENT PLAN.—Not later than 3 years after funds are made available for the purpose, the Secretary shall prepare and submit a general management plan for the national military park to the appropriate committees of the Congress.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.•

By Mr. SPECTER:

S. 18. A bill to establish constitutional procedures for the imposition of the death penalty for certain Federal offenses; to the Committee on the Judiciary.

DEATH PENALTY ACT OF 1991

Mr. SPECTER. Mr. President, today I am introducing an omnibus bill providing for the death penalty for a series of crimes: Murder by terrorists against U.S. citizens anywhere in the world; major narcotics traffickers; hijacking; murder by kidnappers, hostage takers and bank robbers; train-wrecking and explosives causing death; acts of espionage; murder by a Federal prisoner; Presidential assassination attempts; genocide; murder of court officers and jurors; and retaliatory killings of witnesses, victims and informants. Last Congress, I introduced both a bill to impose the death penalty on drug traffickers as well as a bill to subject terrorist-murderers to the death penalty.

As we all well know, the drug kingpin and terrorist-murder provisions, the two I specifically championed last Congress, as well as all the other provisions in this bill were passed either by the House or the Senate or both in the 101st Congress. None of them, however, ever made it through the House-Senate conference on the omnibus crime bill. I was not a member of the Senate panel involved in that conference and thus was not privy to what took place. I understand that the crime bill conferees met only in the last few days of the session and thus placed themselves under enormous time pressures. One might well wonder how every single death penalty provision was excised from the bill given that both Houses had overwhelmingly approved them. Whatever happened, the time is long overdue for Congress to bring back the death penalty.

I continue to believe that the death penalty is a very important weapon in the war against violent crime, most particularly including the war against drugs and the war against terrorists. Most people would be surprised to know that there had not been an effective Federal law imposing the death penalty from 1972 until 1988 when Congress finally enacted legislation providing for the death penalty for major drug dealers when death results. Yet, to this day, many Federal offenses which traditionally had called for the death penalty—treason and espionage; murder; Presidential assassination; explosives causing death; train wrecks causing death—have never had their death penalty provisions reintroduced. This bill would do just that.

Mr. President, this is not an easy matter. There are many who have conscientious scruples against the death penalty, and I respect their views. Nevertheless, this is a democracy and the Representatives of the people have spoken time and time again through a series of votes in both Houses in support of reimposition of the death penalty.

The bill that I am introducing today is the product of the give and take of last Congress' debates and is designed to provide all the safeguards necessary to ensure that the death penalty is properly invoked only in the most egregious circumstances. Crimes committed by children under 18 cannot result in the death penalty. The bill also prohibits the mentally retarded or mentally disabled from being executed. The bill provides for appointment of competent counsel and a special hearing for determining whether the death penalty is appropriate. At that hearing, all relevant information may be considered and all mitigating and aggravating factors will be looked at. The bill also provides for de novo review of any death sentence by the court of appeals.

When I served as district attorney of Philadelphia, from 1966 through 1974, I reviewed personally every case where the death penalty was to be requested. Out of some 500 homicides a year in the city of Philadelphia, the death penalty was requested in a very limited number of cases. A strict standard was applied because I felt it was necessary to be very restrained in the use of the death penalty, as a matter of fairness.

The death penalty was upheld as constitutional in *Gregg* v. *Georgia*, 428 U.S. 153 (1976), and the views of Justice Stewart are illuminating in pointing out the very proper purposes of the death penalty. Justice Stewart wrote,

> Indeed, the decision that capital punishment may be the appropriate sanction in extreme cases is an expression of the community's belief that certain crimes are themselves so grievous an affront to humanity that the only adequate response may be the penalty of death. * * *
>
> In part, capital punishment is an expression of society's moral outrage at particularly offensive conduct. This function may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs.

Of course, the death penalty is not only an expression of society's moral outrage. I believe it also has a significant deterrent effect, although there are studies which go both ways. A very interesting study by Prof. Steven Gabison, an econometric analyst, comes to the conclusion, after studying some 7,092 executions between 1900 and 1985, that approximately 125,000 innocent lives have been saved by the death penalty. And, although there are studies going the other way, there are certain points at which the death penalty simply must serve as a deterrent. For example, I think it is hard to deny the necessity for an additional penalty for someone serving life imprisonment. Justice Stewart touched on this issue of deterrence in his opinion in Gregg versus Georgia:

> Although some of the studies suggest that the death penalty must not function as a significantly greater deterrent than lesser penalties, there is no convincing empirical evidence either supporting or refuting this view. We may, nevertheless, assume safely that there are murderers, such as those who act in passion, for whom the threat of death has little or no deterrent effect. But for many others, the death penalty undoubtedly is a significant deterrent. There are carefully contemplated murders, such as murder for hire, where the possible penalty of death may well enter into the cold calculus that precedes the decision to act. And there are some categories of murder, such as murder by those serving life sentences where other sanctions may not be adequate.

I am personally convinced that the death penalty is a deterrent based upon substantial experience I have had as a prosecuting attorney in cases where criminals undertaking a robbery did not take along a weapon because they were worried about the possibility of the death penalty. In a case involving the death penalty, a dissenting opinion by California Supreme Court Justice McComb set forth some 14 cases where criminals stated that they did not take along a weapon or they were concerned about killing because they feared the death penalty. *People* v. *Love*, 16 Cal. Rptr. 777, 784-793 (1961). For example, one bank robber, Louis Joseph Turck, used a toy gun in the robbery precisely because he feared that he would get the death penalty if he used a real one:

> I knew that if I used a real gun and that if I shot someone in a robbery, I might get the death penalty and go to the gas chamber.

Another criminal, Ramon Velarde, was apprehended while robbing a supermarket. Later on, he told investigators:

> I think I might have escaped at the market if I had shot one or more of them. I probably would have done it if it wasn't for the gas chamber. * * * I don't want to die no matter what happens, you want to live another day.

DRUG KINGPINS

Although this bill provides for the death penalty for a number of different crimes, I want to focus on two in particular: drug kingpins and terrorist-murderers. The bill provides for the death penalty or life in prison for major drug dealers who distribute large quantities of drugs or who take in $10 million from drug trafficking in any 12-month period as well as dealers who attempt to obstruct justice by threatening to kill witnesses and informants. Drugs are, by definition, addictive. The

more people a drug dealer is able to "hook", then the better business will be. A major drug dealer increases the harm to society exponentially with each new regular customer. The harm comes about through overdose, the spreading of disease, families destroyed, and the increase in violence from addicts and the traffickers protecting their markets. The consequences are direct and foreseeable. The law recognizes that a person who fires a gun into a room that he knows is occupied by several people, who plays Russian roulette with another person, or who drives a car at high speed along a major street is engaging in conduct that involves a very high degree of unjustifiable homicidal dangers. It is time that major drug dealers, who have targeted every person in this country, will now have to face the ultimate for their conduct.

A good example of the type of major drug dealer we are talking about is Ricardo Melendez, recently found guilty of drug conspiracy, racketeering and money laundering in Federal court in Brooklyn, NY. According to the New York Daily News, dated December 24, 1990, Federal prosecutors report that Mr. Melendez dominated Brooklyn's heroin market. When Federal agents raided his Queens home and arrested Mr. Melendez 2 years ago, they found 300 pounds of cash—$2.38 million in 6-inch-high stacks of $10, $20, and $100 bills that blanketed the kitchen floor. They also found a jar of human teeth. Witnesses at the trial testified that those who double-crossed Mr. Melendez and his top lieutenants paid for it with maimings and mutilations—ice-pick stabbings, teeth pulled out, fingers chopped off. The teeth in the jar are believed to belong to a low-level worker of Mr. Melendez's accused of stealing money from his gang. Although I do not know the specifics of the charges against Mr. Melendez to know for certain whether he would face the electric chair if this bill were passed, Mr. Melendez, from the press reports, would appear to be the type of drug kingpin this bill is aimed at—a druglord who cannot be pinned with any particular murder but who, the evidence clearly shows, dealt in huge volumes of drugs. This bill is aimed at ensuring that druglords like Mr. Melendez get the ultimate punishment.

On September 19, 1989, during committee hearings on the death penalty, I engaged Assistant Attorney General Edward Dennis in a discussion of the constitutionality of the death penalty for major drug traffickers. As I stated to Mr. Dennis at the hearing, I believe that death is a natural and foreseeable consequence of massive sales of narcotics. I asked Mr. Dennis to study the issue and deliver an opinion. In a subsequent hearing on October 2, 1989, Mr. Dennis delivered the view of the Justice Department that:

[I]mposition of the death penalty on the leaders of large-scale drug production and distribution operations would be consistent with the proportionality requirement of the Eighth Amendment.

A recent trilogy of cases provides additional support for the rationale behind my bill. In *Tison* v. *Arizona*, 107 S. Ct. 1676 (1987), *Cabana* v. *Bullock*, 474 U.S. 376 (1986), and *Enmund* v. *Florida*, 458 U.S. 782 (1982), the Supreme Court held that applying the death penalty to accomplices convicted of felony murder was not violative of the eighth amendment's prohibition against cruel and unusual punishment.

TERRORIST-MURDERERS

The other provision I have vigorously advanced would impose the death penalty on terrorists who murder U.S. citizens anywhere. This provision is limited to terrorists who are convicted of first degree murder only in order to ensure that only the most heinous of terrorist criminal acts will result in the death sentence. When we recall just a few of the atrocities committed against Americans by those seeking to kill innocent American citizens in order to sway our Government's foreign policy, I think it becomes very apparent why the death penalty is an appropriate here.

On December 21, 1988, Pan Am flight 103 was blown up by a terrorist bomb over Lockerbie, Scotland, and 259 passengers were brutally murdered—79 of those 259 passengers were women and children, with 189 United States citizens.

On September 5, 1986, another Pan Am plane, this time at the airport in Karachi, Pakistan, was held by terrorists for 17 hours and gunmen indiscriminately exploded grenades and sprayed hostages with machinegun fire. Twenty-one civilians died and 100 were wounded.

On April 2, 1986, a bomb exploded on TWA flight 840 en route to Athens, Greece. Four Americans, including a mother and her infant child and the child's grandmother, were sucked out of the aircraft and fell to their death.

On December 17, 1985, at the Rome airport, 15 people were killed, including 5 Americans, and 73 wounded in a grenade and machine gun attack by the Abu Nidal group.

On October 7, 1985, Leon Klinghoffer, who was confined to a wheelchair, was savagely beaten and dumped overboard by terrorists holding the cruise ship, the *Achille Lauro*.

On June 14, 1985, passengers on TWA flight 847 endured a 17-day ordeal, where three U.S. citizens were repeatedly beaten by terrorists. Robert Stethem, a Navy diver, was not only savagely beaten, but was shot in the head, his body dumped out of the plane onto the airfield.

I could go on with a list of the many other terrorist actions which emanate from the Middle East, including the Americans taken hostage years ago in Lebanon, many of whom are still held today and who fear for their lives every day. Although most terrorist attacks seem to occur in the Middle East these days, that region does not have a monopoly on attacks committed against U.S. citizens. On May 25, 1989, Jeffrey Ball and Todd Wilson, two young Mormons doing missionary work in Bolivia, were executed gangland style on their doorsteps by terrorists for "violations of our national sovereignty." On June 13, 1988, two USAID subcontractors, one of whom was an American, were executed by Sendero Luminoso terrorists in Peru. Both men were ordered to lie on the ground and then were shot in the back of the head.

Some individuals—including a few of my colleagues—have questioned whether invoking the death penalty against terrorists will serve any deterrent effect. Truly, many terrorists are motivated primarily by fanaticism and will not think twice if they knew they faced the death sentence. However, as long as there is at least one terrorist who thinks twice about killing an American citizen for fear that he will be brought to justice in an American court—and the remarkable interdiction of convicted terrorist Fawaz Yunis off the coast of Cyprus by the FBI shows terrorists that this is a distinct possibility, then this death penalty provision will have been successful. Moreover, let us not forget that enacting this provision will also express our society's moral outrage at terrorism committed against our people abroad.

In sum, I believe that this omnibus death penalty bill is a worthy one, long overdue for passage. The American people have voiced their continued support for the death sentence in appropriate and limited circumstances; it is time for Congress to enact this legislation.

Mr. President, I ask for unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 18

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Death Penalty Act of 1991".

SEC. 2. DEATH PENALTY.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 227 the following new chapter:

"CHAPTER 228—DEATH PENALTY PROCEDURES

"§3591. Sentence of death

"A defendant who has been found guilty of—

"(1) an offense described in section 794 or section 2381 of this title;

"(2) an offense described in section 1751(c) of this title if the offense, as determined beyond a reasonable doubt at a hearing under section 3593, constitutes an attempt to murder the President of the United States or comes dangerously close to causing the death of the President; or

"(3) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at a hearing under section 3593 either—

"(A) intentionally killed the victim;

"(B) intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act; or

"(C) acting with reckless disregard for human life, engaged or substantially participated in conduct which the defendant knew would create a grave risk of death to another person or persons and death resulted from such conduct,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held under section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.

"§3592. Factors to be considered in determining whether a sentence of death is justified

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(1) MENTAL CAPACITY.—The defendant's mental capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

"(2) DURESS.—The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

"(3) PARTICIPATION IN OFFENSE MINOR.—The defendant is punishable as a principal (as defined in section 2 of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

The jury, or if there is no jury, the court, shall consider whether any other aspect of the defendant's character or record or any other circumstances of the offense that the defendant may proffer as a mitigating factor exists.

"(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(1), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) PREVIOUS ESPIONAGE OR TREASON CONVICTION.—The defendant has previously been convicted of another offense involving espionage or treason for which a sentence of life imprisonment or death was authorized by statute.

"(2) RISK OF SUBSTANTIAL DANGER TO NATIONAL SECURITY.—In the commission of the offense the defendant knowingly created a grave risk to the national security.

"(3) RISK OF DEATH TO ANOTHER.—In the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3591 (2) or (6), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) DEATH OCCURRED DURING COMMISSION OF ANOTHER CRIME.—The death occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property by explosives), section 1118 (prisoners serving life term), section 1201 (kidnapping), or section 2381 (treason) of this title, section 1826 of title 28 (persons in custody as recalcitrant witnesses or hospitalized following a finding of not guilty only by reason of insanity), or section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472 (i) or (n) (aircraft piracy)).

"(2) INVOLVEMENT OF FIREARM OR PREVIOUS CONVICTION OF VIOLENT FELONY INVOLVING FIREARM.—The defendant—

"(A) during and in relation to the commission of the offense or in escaping apprehension used or possessed a firearm as defined in section 921 of this title; or

"(B) has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than one year, involving the use or attempted or threatened use of a firearm, as defined in section 921 of this title, against another person.

"(3) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(4) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of 2 or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(5) GRAVE RISK OF DEATH TO ADDITIONAL PERSONS.—The defendant, in the commission of the offense or in escaping apprehension, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) HEINOUS, CRUEL, OR DEPRAVED MANNER OF COMMISSION.—The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

"(7) PROCUREMENT OF OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(8) COMMISSION OF THE OFFENSE FOR PECUNIARY GAIN.—The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(9) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation.

"(10) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

"(11) TYPE OF VICTIM.—The defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice President-elect, the Vice President-designate, or, if there is no Vice President, the officer next in order of succession to the office of the President of the United States, or any person who is acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A) of this title, if that official is in the United States on official business; or

"(D) a public servant who is a Federal judge, a Federal law enforcement officer, an employee (including a volunteer or contract employee) of a Federal prison, or an official of the Federal Bureau of Prisons—

"(i) while such public servant is engaged in the performance of the public servant's official duties;

"(ii) because of the performance of such public servant's official duties; or

"(iii) because of such public servant's status as a public servant.

For purposes of this paragraph, the terms 'President-elect' and 'Vice President-elect' mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2; a 'Federal law enforcement officer' is a public servant authorized by law or by a government agency or Congress to conduct or engage in the prevention, investigation, or prosecution of an offense; 'Federal prison' means a Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government; and 'Federal judge' means any judicial officer of the United States, and includes a justice of the Supreme Court and a magistrate.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"§3593. Special hearing to determine whether a sentence of death is justified

"(a) NOTICE BY THE GOVERNMENT.—Whenever the Government intends to seek the death penalty for an offense described in section 3591, the attorney for the Government, a

reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, shall sign and file with the court, and serve on the defendant, a notice—

"(1) that the Government in the event of conviction will seek the sentence of death; and

"(2) setting forth the aggravating factor or factors enumerated in section 3592 and any other aggravating factor not specifically enumerated in section 3592, that the Government, if the defendant is convicted, will seek to prove as the basis for the death penalty.

The court may permit the attorney for the Government to amend the notice upon a showing of good cause.

"(b) HEARING BEFORE A COURT OR JURY.—When the attorney for the Government has filed a notice as required under subsection (a) of this section and the defendant is found guilty of an offense described in section 3591 of this title, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Before such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under the section is necessary; or

"(3) before the court alone, upon motion of the defendant and with the approval of the attorney for the Government.

A jury impaneled pursuant to paragraph (2) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—At the hearing, information may be presented as to—

"(1) any matter relating to any mitigating factor listed in section 3592 and any other mitigating factor; and

"(2) any matter relating to any aggravating factor listed in section 3592 for which notice has been provided under subsection (a)(2) and (if information is presented relating to such a listed factor) any other aggravating factor for which notice has been so provided.

Information presented may include the trial transcript and exhibits. Any other information relevant to such mitigating or aggravating factors may be presented by either the government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the Government and for the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in that case of imposing a sentence of death. The attorney for the Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of an aggravating factor is on the Government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the evidence.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all of the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 of this title found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 of this title is found to exist, the court shall impose a sentence other than death authorized by law.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591(1) of this title, an aggravating factor required to be considered under section 3592(b) of this title is found to exist; or

"(2) an offense described in section 3591 (2) or (6) of this title, an aggravating factor required to be considered under section 3592(c) of this title is found to exist;

the jury, or if there is no jury, the court, shall then consider whether the aggravating factor or factors found to exist outweigh any mitigating factor or factors. The jury, or if there is no jury, the court, shall recommend a sentence of death if it unanimously finds at least one aggravating factor and no mitigating factor or if it finds one or more aggravating factors which outweigh any mitigating factors. In any other case, it shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

"(f) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, before the return of a finding under subsection (e) of this section, shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, religious beliefs, national origin, or sex of the defendant or of any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or of any victim may be. The jury, upon return of a finding under subsection (e) of this section, shall also return to the court a certificate, signed by each juror, that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or any victim was not involved in reaching the juror's individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or any victim may be.

"§ 3594. Imposition of a sentence of death

"Upon the recommendation under section 3593(e) of this title that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without the possibility of release or furlough.

"§ 3595. Review of a sentence of death

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal of the sentence must be filed within the time specified for the filing of a notice of appeal of the judgment of conviction. An appeal of the sentence under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d) of this title.

"(c) DECISION AND DISPOSITION.—

"(1) If the court of appeals determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the evidence and information support the special findings of the existence of an aggravating factor or factors;

it shall affirm the sentence.

"(2) In any other case, the court of appeals shall remand the case for reconsideration under section 3593 of this title or for imposition of another authorized sentence as appropriate.

"(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of sentence of death under this section.

"§ 3596. Implementation of a sentence of death

"(a) IN GENERAL.—A person who has been sentenced to death pursuant to this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the manner prescribed by such law.

"(b) IMPAIRED MENTAL CAPACITY, AGE, OR PREGNANCY.—A sentence of death shall not be carried out upon a person who is under 18

years of age at the time the crime was committed. A sentence of death shall not be carried out upon a person who is mentally retarded. A sentence of death shall not be carried out upon a person who, as a result of mental disability—

"(1) cannot understand the nature of the pending proceedings, what such person was tried for, the reason for the punishment, or the nature of the punishment; or

"(2) lacks the capacity to recognize or understand facts which would make the punishment unjust or unlawful or lacks the ability to convey such information to counsel or to the court.

A sentence of death shall not be carried out upon a woman while she is pregnant.

"(c) EMPLOYEES MAY DECLINE TO PARTICIPATE.—No employee of any State department of corrections or the Federal Bureau of Prisons and no employee providing services to that department or bureau under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution carried out under this section, if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participate in any execution' includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

"§ 3597. Use of State facilities

"A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such as an official employed for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

"§ 3598. Appointment of counsel

"(a) FEDERAL CAPITAL CASES.—

"(1) REPRESENTATION OF INDIGENT DEFENDANTS.—Notwithstanding any other provision of law, this subsection shall govern the appointment of counsel for any defendant against whom a sentence of death is sought, or on whom a sentence of death has been imposed, for an offense against the United States, where the defendant is or becomes financially unable to obtain adequate representation. Such a defendant shall be entitled to appointment of counsel from the commencement of trial proceedings until one of the conditions specified in section 3599(b) of this title has occurred.

"(2) REPRESENTATION BEFORE FINALITY OF JUDGMENT.—A defendant within the scope of this subsection shall have counsel appointed for trial representation as provided in section 3005 of this title. At least one counsel so appointed shall continue to represent the defendant until the conclusion of direct review of the judgment, unless replaced by the court with other qualified counsel.

"(3) REPRESENTATION AFTER FINALITY OF JUDGMENT.—When a judgment imposing a sentence of death has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the Government shall promptly notify the district court that imposed the sentence. Within 10 days of receipt of such notice, the district court shall proceed to make a determination whether the defendant is eligible under this subsection for appointment of counsel for subsequent proceedings. On the basis of the determination, the court shall issue an order (A) appointing one or more counsel to represent the defendant upon a finding that the defendant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel; (B) finding, after a hearing if necessary, that the defendant rejected appointment of counsel and made the decision with an understanding of its legal consequences; or (C) denying the appointment of counsel upon a finding that the defendant is financially able to obtain adequate representation. Counsel appointed pursuant to this paragraph shall be different from the counsel who represented the defendant at trial and on direct review unless the defendant and counsel request a continuation or renewal of the earlier representation.

"(4) STANDARDS FOR COMPETENCE OF COUNSEL.—In relation to a defendant who is entitled to appointment of counsel under this subsection, at least one counsel appointed for trial representation must have been admitted to the bar for at least 5 years and have at least 3 years of experience in the trial of felony cases in the Federal district courts. If new counsel is appointed after judgment, at least one counsel so appointed must have been admitted to the bar for at least 5 years and have at least 3 years of experience in the litigation of felony cases in the Federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration of the seriousness of the penalty and the nature of the litigation.

"(5) APPLICABILITY OF CRIMINAL JUSTICE ACT.—Except as otherwise provided in this subsection, the provisions of section 3006A of this title shall apply to appointments under this subsection.

"(6) CLAIMS OF INEFFECTIVENESS OF COUNSEL.—The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28, United States Code, in a capital case shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

"(b) STATE CAPITAL CASES.—The laws of the United States shall not be construed to impose any requirement with respect to the appointment of counsel in any proceeding in a State court or other State proceeding in a capital case, other than any requirement imposed by the Constitution of the United States. In a proceeding under section 2254 of title 28, United States Code, relating to a State capital case, or any subsequent proceeding on review, appointment of counsel for a petitioner who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Such appointment of counsel shall be governed by the provisions of section 3006A of this title.

"§ 3599. Collateral attack on judgment imposing sentence of death

"(a) TIME FOR MAKING SECTION 2255 MOTION.—In a case in which a sentence of death has been imposed, and the judgment has become final as described in section 3598(a)(3) of this title, a motion in the case under section 2255 of title 28, United States Code, must be filed within 90 days of the issuance of the order relating to appointment of counsel under section 3598(a)(3) of this title. The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding 60 days. A motion described in this section shall have priority over all noncapital matters in the district court, and in the court of appeals on review of the district court's decision.

"(b) STAY OF EXECUTION.—The execution of a sentence of death shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28, United States Code. The stay shall run continuously following imposition of the sentence and shall expire if—

"(1) the defendant fails to file a motion under section 2255 of title 28, United States Code, within the time specified in subsection (a), or fails to make a timely application for court of appeals review following the denial of such a motion by a district court;

"(2) upon completion of district court and court of appeals review under section 2255 of title 28, United States Code, the motion under that section is denied and (A) the time for filing a petition for certiorari has expired and no petition has been filed; (B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or (C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a district court, in the presence of counsel and after having been advised of the consequences of his decision, the defendant waives the right to file a motion under section 2255 of title 28, United States Code.

"(c) FINALITY OF THE DECISION ON REVIEW.—If one of the conditions specified in subsection (b) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless—

"(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

"(2) the failure to raise the claim is (A) the result of governmental action in violation of the Constitution or laws of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed.".

"(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part II of title 28, United States Code, is amended by inserting after the item relating to chapter 227 the following new item:

"228. Death penalty procedures ..... 3591".

SEC. 3. CONFORMING AMENDMENT RELATING TO DESTRUCTION OF AIRCRAFT OR AIRCRAFT FACILITIES.

Section 34 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and all that follows and inserting a period.

SEC. 4. CONFORMING AMENDMENT RELATING TO ESPIONAGE.

Section 794(a) of title 18, United States Code, is amended by inserting before the period at the end the following: ", except that the sentence of death shall not be imposed

unless the jury or, if there is no jury, the court, further finds beyond a reasonable doubt at a hearing under section 3593 of this title that the offense directly concerned nuclear weaponry, military spacecraft and satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; sources or methods of intelligence or counterintelligence operations; or any other major weapons system or major element of defense strategy".

SEC. 5. CONFORMING AMENDMENT RELATING TO TRANSPORTING EXPLOSIVES.

Section 844(d) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

SEC. 6. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF FEDERAL PROPERTY BY EXPLOSIVES.

Section 844(f) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

SEC. 7. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF INTERSTATE PROPERTY BY EXPLOSIVES.

Section 844(i) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

SEC. 8. CONFORMING AMENDMENT RELATING TO MURDER.

The second paragraph of section 1111(b) of title 18, United States Code, is amended to read as follows:

"Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;".

SEC. 9. CONFORMING AMENDMENT RELATING TO KILLING OFFICIAL GUESTS OR INTERNATIONALLY PROTECTED PERSONS.

Section 1116(a) of title 18, United States Code, is amended by striking "any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and".

SEC. 10. MURDER BY FEDERAL PRISONER.

(a) IN GENERAL.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following:

"§ 1118. Murder by a Federal prisoner

"(a) Whoever, while confined in a Federal prison under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of release or furlough.

"(b) For the purposes of this section—

"(1) 'Federal prison' means any Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government;

"(2) 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least 15 years and a maximum of life, or an unexecuted sentence of death.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51 of title 18, United States Code, is amended by adding at the end the following:

"1118. Murder by a Federal prisoner.".

SEC. 11. DEATH PENALTY RELATING TO KIDNAPING.

Section 1201(a) of title 18, United States Code, is amended by inserting "and, if the death of any person results, shall be punished by death or life imprisonment" after "or for life".

SEC. 12. DEATH PENALTY RELATING TO HOSTAGE TAKING.

Section 1203(a) of title 18, United States Code, is amended by inserting "and, if the death of any person results, shall be punished by death or life imprisonment" after "or for life".

SEC. 13. CONFORMING AMENDMENT RELATING TO MAILABILITY OF INJURIOUS ARTICLES.

The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and all that follows and inserting a period.

SEC. 14. CONFORMING AMENDMENT RELATING TO PRESIDENTIAL ASSASSINATION.

Subsection (c) of section 1751 of title 18, United States Code, is amended to read as follows:

"(c) Whoever attempts to murder or kidnap any individual designated in subsection (a) of this section shall be punished—

"(1) by imprisonment for any term of years or for life, or

"(2) by death or imprisonment for any term of years or for life, if the conduct constitutes an attempt to murder the President of the United States and results in bodily injury to the President or otherwise comes dangerously close to causing the death of the President.".

SEC. 15. CONFORMING AMENDMENT RELATING TO MURDER FOR HIRE.

Section 1958(a) of title 18, United States Code, is amended by striking "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both" and inserting "and if death results, shall be punished by death or life imprisonment, or shall be fined under this title, or both".

SEC. 16. CONFORMING AMENDMENT RELATING TO VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

Paragraph (1) of section 1959(a) of title 18, United States Code, is amended to read as follows:

"(1) for murder, by death or life imprisonment, or a fine in accordance with this title, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine in accordance with this title, or both;".

SEC. 17. CONFORMING AMENDMENT RELATING TO WRECKING TRAINS.

The second to the last paragraph of section 1992 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and all that follows and inserting a period.

SEC. 18. CONFORMING AMENDMENT RELATING TO BANK ROBBERY.

Section 2113(e) of title 18, United States Code, is amended by striking "or punished by death if the verdict of the jury shall so direct" and inserting "or if death results shall be punished by death or life imprisonment".

SEC. 19. CONFORMING AMENDMENT RELATING TO TERRORIST ACTS.

Paragraph (1) of subsection 2331(a) of title 18 of the United States Code is amended to read as follows:

"(1)(A) if the killing is a first degree murder as defined in section 1111(a) of this title, be punished by death or imprisonment for any term of years or for life, or be fined under this title, or both; and

"(B) if the killing is a murder other than a first degree murder as defined in section 1111(a) of this title, be fined under this title or imprisoned for any term of years or for life, or both so fined and so imprisoned;".

SEC. 20. CONFORMING AMENDMENT RELATING TO AIRCRAFT HIJACKING.

Section 903 of the Federal Aviation Act of 1958 (49 U.S.C. APP. 1473), is amended by striking subsection (c).

SEC. 21. APPLICATION TO UNIFORM CODE OF MILITARY JUSTICE.

Chapter 228 of title 18 of the United States Code, as added by this Act, does not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801 et seq.).

SEC. 22. CONFORMING AMENDMENT RELATING TO GENOCIDE.

Section 1091(b)(1) of title 18, United States Code, is amended by striking "a fine of not more than $1,000,000 and imprisonment for life" and inserting in lieu thereof "by death or imprisonment for life, or a fine of not more than $1,000,000, or both".

SEC. 23. CONFORMING AMENDMENT RELATING TO PROTECTION OF COURT OFFICERS AND JURORS.

Section 1503 of title 18, United States Code, is amended—

(1) by striking "Whoever corruptly" and inserting "(a) Whoever corruptly";

(2) in subsection (a) (as so designated), by striking "fined not more than $5,000 or imprisoned not more than five years, or both" and inserting "punished as provided in subsection (b)"; and

(3) by adding at the end the following:

"(b) The punishment for an offense under this section is—

"(1) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title;

"(2) in the case of an attempted killing, imprisonment for not more than 20 years; and

"(3) in any other case, imprisonment for not more than 10 years.".

SEC. 24. CONFORMING AMENDMENT RELATING TO PROHIBITION OF RETALIATORY KILLINGS OF WITNESSES, VICTIMS, AND INFORMANTS.

Section 1513 of title 18, United States Code, is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c) respectively;

(2) by inserting before subsection (b) (as so redesignated) the following:

"(a)(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for—

"(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

"(B) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings given by a person to a law enforcement officer;

shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under this subsection is—

"(A) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title; and

"(B) in the case of an attempt, imprisonment for not more than 20 years.".

SEC. 25. APPLICATION TO DRUG KINGPINS.

Title II of the Controlled Substances Act (21 U.S.C. 801 et seq.) is amended by inserting after section 408 the following:

"DEATH PENALTY FOR DRUG KINGPINS

"SEC. 408A (a) IN GENERAL.—A defendant who has been found guilty of—

"(1) an offense referred to in section 408(c)(1) (21 U.S.C. 848(c)(1)), committed as

part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section;

"(2) an offense referred to in section 408(c)(1) (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of an enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or member of the family or household of such a person; or

"(3) an offense constituting a felony violation of this Act (21 U.S.C. 801 et seq.), the Controlled Substance Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime-Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), where the defendant, intending to cause death or acting with reckless disregard for human life, engaged in such a violation, and the death of another person results in the course of the violation or from the use of the controlled substance involved in the violation,

shall be sentenced to death if, after consideration of the procedures set forth in chapter 228 of title 18, United States Code, and subject to the consideration of the additional aggravating factors set forth in subsection (b), it is determined that imposition of a sentence of death is justified.

"(b) ADDITIONAL AGGRAVATING FACTORS.—In addition to the aggravating factors set forth in section 3592(c) of title 18, United States Code, the following aggravating factors shall be considered in determining whether a sentence of death is justified for an offense under this section:

"(1) DISTRIBUTION TO PERSONS UNDER TWENTY-ONE.—The offense, or a continuing criminal enterprise of which the offense was a part, involved a violation of section 405 of this Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of title 18, United States Code.

"(2) DISTRIBUTION NEAR SCHOOLS.—The offense, or a continuing criminal enterprise of which the offense was a part, involved a violation of section 405A of this Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of title 18, United States Code.

"(3) USING MINORS IN TRAFFICKING.—The offense, or a continuing criminal enterprise of which the offense was a part, involved a violation of section 405B of this Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of title 18, United States Code.

"(4) LETHAL ADULTERANT.—The offense involved the importation, manufacture, or distribution of a controlled substance mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant.".

By Mr. SPECTER:

S. 19. A bill to provide expedited procedures for the consideration of habeas corpus petitions in capital cases; to the Committee on the Judiciary.

EXPEDITED HABEAS CORPUS PROCEDURES IN CAPITAL CASES

Mr. SPECTER. Mr. President, in the 101st Congress, the Senate passed, as part of S. 1970, an amendment I had offered to reform habeas corpus procedures in death penalty cases. After extensive debate, the Senate initially rejected my amendment, but adopted my motion to reconsider, 52 to 46. Thereupon, my amendment was adopted by voice vote. Unfortunately, upon the insistence of House conferees, this important provision of last year's Senate crime bill was dropped from the legislation approved by the Conference Committee. Therefore, I have today introduced the Federal Habeas Corpus Reform Act of 1991, S. 19, which is identical to the amendment adopted by the Senate on May 24, 1990.

This proposed legislation, "The Federal Habeas Corpus Reform Act of 1991", establishes a timeframe for imposition of the death penalty in State criminal cases that will again make that penalty meaningful. The scope of the problem is demonstrated by the fact that as of December 1, 1990, there were approximately 2,400 people on death row with 143 executions since the reinstatement of capital punishment in 1976.

When Chief Justice William H. Rehnquist said last year that the current system for handling death penalty in the Federal courts "verges on the chaotic", he was being charitable. The existing process makes a farce of the death penalty. Chief Justice Rehnquist was correct in calling for remedial legislation; but his proposal and the other pending measures do not go far enough in dealing with the core of the problem.

Today the death penalty is the laughing stock of the criminal justice system because endless delays in Federal court habeas corpus proceedings have rendered it meaningless. Cases involving capital punishment are dragged through the courts for as long as 17 years.

Before a case finds its way through the court system, intervening decisions by the Supreme Court of the United States frequently establish new constitutional rights which, in turn, causes the litigation process to begin anew. The great writ of habeas corpus is always available, so stays of proceedings repeatedly delay the imposition of the death penalty resulting in public scorn and criminals' contempt for a penalty which all know will probably never be imposed.

This legislative proposal is based on my experience in personally handling numerous State and Federal court habeas corpus proceedings as an assistant district attorney and chief of the appeals division in the district attorney's office and later supervising hundreds of such cases as district attorney of Philadelphia.

A PRACTICAL, JUST TIMETABLE

This proposed legislation establishes a timetable for imposition of the death penalty in almost all cases within 1 year from the time the State courts impose the death penalty. The essential provisions are:

First, elimination of State habeas corpus proceedings which involve enormous delays by providing for collateral attack on the judgment of sentence of death.

Second, a single Federal court review, through habeas corpus proceedings, where almost all cases will be decided within 1 year on this schedule:

(a) Federal habeas corpus petitions must be filed within 60 days from the final action in the State court proceeding resulting in the death penalty.

(b) A final decision must be made by the U.S. district court within 110 days from the filing of the habeas corpus petition.

(c) A final decision must be made by the U.S. court of appeals within 110 days after the final judgment of the U.S. district court.

(d) Final action on a grant or denial of certiorari by the Supreme Court of the United States must be made within 110 days from final judgment of the court of appeals.

Third, the statute would prohibit continuances on filing a petition except on the showing of good cause with a detailed specification of reasons by any court granting such continuance.

Fourth, no subsequent Federal court habeas corpus petition shall be entertained unless specific leave for such filing is granted by the court of appeals for the circuit with jurisdiction and then only for limited reasons.

Fifth, the proposed expedited treatment of Federal habeas corpus proceedings would apply only in States which agree to provide free, competent legal counsel for defendants throughout the legal process in capital cases.

This compressed timeframe is both just and practical because it eliminates the long delays occasioned by State habeas corpus proceedings and establishes Federal habeas corpus death penalty proceedings as the highest priority in the Federal judicial system.

For reasons discussed in this floor statement, the death penalty is sufficiently important to be accorded this priority on the Federal court calendar with the addition of such Federal judges as may be necessary to accomplish the stipulated timetable.

The essence of effectiveness of any criminal sentence is swiftness and certainty. Today the death penalty is exactly the opposite: lengthy delays and great uncertainty. Its deterrent effect is virtually totally vitiated. Society is unprotected. The inmates on death row are unfairly held in limbo in a system which exacts a high price from them even though obviously preferable to the ultimate imposition of the death penalty.

RETROACTIVE EFFECT TO NEWLY CREATED RIGHTS

My bill accommodates two vexing issues posed by other pending legislative proposals. Sharp disagreement has arisen as to whether rights created by

intervening court rulings should be given retroactive effect to prisoners whose convictions were already final and who were in the process of seeking habeas corpus relief. Under existing law where the habeas corpus proceedings have taken years to complete, it has been a frequent occurrence for the courts to interpret new constitutional rights in the interim. On this proposed timetable for completion of Federal court habeas corpus actions within 1 year, that problem will be greatly reduced.

In my judgment it is neither conscionable nor realistic to carry out the death penalty where that result might be altered by a constitutional right created by an intervening judicial opinion. My proposed legislation would allow the defendant to benefit from any newly created rights, but would greatly minimize this problem by compressing the timetable.

STANDARD FOR NEW PETITION

My proposal would eliminate much of the controversy between the recommendation of the committee chaired by former Supreme Court Justice Lewis F. Powell, Jr. which had proposed permitting successive petitions only if there was reason to doubt the defendant's guilt contrasted with the approach of the judicial conference which would allow a subsequent petition if the Federal judge doubted the appropriateness of the sentence of death. By establishing the court of appeals as the gatekeeper before leave is granted to file a subsequent petition, there would be a much tighter rein on such repetitious provisions.

Here again, it is unwise, if not unconscionable, to impose a more restrictive provision where the death penalty will be carried out. Since the death sentence carries with it conclusions of both guilt and sufficient aggravated circumstances to warrant that penalty, it is my judgment that the standards for allowing a subsequent petition should be broad enough to consider the appropriateness of the death sentence. Requiring leave by the circuit court before the subsequent petition may be filed provides a strong check against unmeritorious repetitive petitions.

STATE HABEAS CORPUS PROCEEDINGS SHOULD BE ELIMINATED

State habeas corpus proceedings, which provide for collateral attack on State court death penalty cases, involve lengthy delays and accomplish virtually nothing in the administration of justice. Such State habeas corpus proceedings involve a petition for a writ of habeas corpus which means in Latin to produce the body of the defendant on a showing that some error has been committed in the preceding State trial.

For example, in Pennsylvania a defendant is indicated on the charge of murder in the first degree, which is then tried before a jury in the court of common pleas. If convicted of murder in the first degree, the jury then considers aggravating and mitigating circumstances to determine whether the appropriate penalty is life imprisonment or death in the electric chair. Where the jury imposes the death penalty, there is an appeal to the Supreme Court of the Commonwealth of Pennsylvania. If the conviction and death penalty are upheld by the Pennsylvania Supreme Court, the defendant may then petition the Supreme Court of the United States for a writ of certiorari which means that the U.S. Supreme Court then may, at its discretion, issue a writ to review the case. As a matter of practice, review by the U.S. Supreme Court occurs very, very infrequently.

After a denial by the Supreme Court of the United States of a petition for a writ of certiorari, Federal law requires the defendant to file a State habeas corpus proceeding in order to exhaust all State administrative remedies before the Federal court would have jurisdiction to review the case in a Federal habeas corpus action.

In the State court habeas corpus proceeding, the defendant then asks the court of common pleas in the same county where the defendant was convicted to review the trial record on a claim that the defendant's constitutional rights were violated in that trial. While the State habeas corpus proceeding is in the court of common pleas of the same county, it is customary before a different judge to handle the second proceeding. Although in some lesser populated counties where there is only one common pleas judge, the habeas corpus action comes before the same jurist.

Where questions of fact are raised in the petition, the Court will then hold an evidentiary hearing. Such hearings are virtually always perfunctory since the courts, realistically viewed, go through the motions on cases which have previously been argued and adjudicated. In virtually all cases, the petitions for a writ of habeas corpus are denied because most, if not all, of the issues have already been decided against the defendant by the State supreme court.

After the court of common pleas denies the petition for writ of habeas corpus, an appeal is then taken to the State supreme court which customarily affirms the lower court's denial of the petition because, here again, the State supreme court is reviewing a case and a defendant on which the court has already ruled. After the Supreme Court of the United States denies a petition for a writ of certiorari, the defendant then has standing to file a habeas corpus proceeding in the Federal courts.

This State habeas corpus proceeding frequently takes years because no one is in a hurry, the courts are clogged with other cases and it has become the common practice for such matters to languish since the defendant is in jail and other matters take precedence. At this juncture, the defendant may file a petition for a writ of habeas corpus in the U.S. district court and the habeas corpus process is repeated. Where issues of fact arise, a hearing is held. After an adjudication by the district court, an appeal is then taken to the U.S. Court of Appeals. After the decision by the court of appeals, a petition is filed for writ of certiorari with the Supreme Court of the United States. This Federal court process may again take years.

By the time the State and Federal court habeas corpus proceedings have been concluded, it frequently occurs that an intervening decision by the Supreme Court of the United States or other court has created—or at least the defendant may colorably argue—new defendants' rights which provides some basis for a new attack on the conviction and death sentence. Then the whole habeas corpus starts anew in the State courts to be followed by the Federal courts. At the end of that process, it again frequently occurs that some intervening decision has or appears to have established some new defendants' rights and the process can then be repeated virtually interminably.

This proposed legislation would eliminate the State habeas corpus proceeding as a precondition to the Federal habeas corpus proceeding because the State process is usually a formality; and, in any event, is unnecessary to determine any denial of constitutional right at trial. Any such legal issues can be adequately litigated in the Federal habeas corpus proceeding.

IMPORTANCE OF THE DEATH PENALTY-DETERRENCE

This proposed legislation would give the highest priority in the Federal courts to State capital cases because of their importance in our criminal justice system. It should really be unnecessary to prove that capital punishment is a deterrent in order to justify priority treatment in the Federal courts since 37 States impose the death penalty on their legislative judgments of its importance.

Beyond that strong statement of importance, it is my firm conclusion that the death penalty is a deterrent. My experience in this field started in 1959 when I was an assistant district attorney in the city of Philadelphia. From experience in the magistrates' courts, where I saw the full range of criminal conduct—robberies and burglaries and rapes and assaults and murders—I became convinced that the death penalty was an effective deterrent.

My later experience as district attorney further supported my judgment that the death penalty was a deterrent. Robbers, burglars and other professional criminals customarily do not carry weapons because of their concern

that they may use those weapons and face possible imposition of the death penalty. They reconsider the use of weapons in the course of a robbery or burglary because they do not want to face the possibility of the death penalty.

One illustrative case from the Philadelphia Criminal Courts some 30 years ago involved three young hoodlums named Williams, Caters, and Rivers. Williams was 19, Caters was 18, and Rivers was 17. Williams chose Rivers, the 17-year-old, because he did not have a criminal record and, therefore, could open the door of the grocery store they planned to rob without leaving fingerprints.

As the statements of Williams and Rivers and Caters disclosed—and they were all in agreement on the underlying planning of the robbery which resulted in murder—Williams importuned the two younger men to join him. Williams had a gun. When Williams brandished his gun, Caters and Rivers said "they would not go along on the robbery if he took the gun, because they were afraid that there might be a killing and they would face the possibility of the death penalty."

So Williams put the revolver in a drawer and slammed it shut. Caters and Rivers got up and walked out of the room. Then, unbeknownst to Caters and Rivers, Williams pulled the gun out of the drawer, put it in his pocket, and, as you have suspected, Williams used the revolver on a storekeeper in north Philadelphia, and a murder resulted.

I argued the case on appeal in the Supreme Court of Pennsylvania, as an assistant district attorney in the early 1960's. Williams received the death penalty because of his calculated, malicious decision to carry the weapon in the course of a robbery which resulted in death and first-degree murder.

Caters and Rivers ultimately received life imprisonment because the facts showed that they did not have the degree of malice that Williams possessed, although technically, as a matter of law, any co-conspirator can be held to the same level of complicity.

The significant fact of this case is that a 17-year-old like Rivers and an 18-year-old like Caters, with marginal IQ's knew that the death penalty was a potential result of their robbery if a gun was carried. The prospect of the death penalty directly affected the conduct of Caters and Rivers.

An experienced ex-New York City police officer who serves on my staff, Tom Madine, commented about the increases in murder in New York State as a result of the death penalty having been eliminated there.

ILLUSTRATIVE CASES ON DETERRENCE

A dissenting opinion in a 1961 California case captioned People versus Love contains a summary of many cases which show the deterrent effect of capital punishment. These cases are worth citing here because the specific facts and the defendants' statements demonstrate human nature on deterrence much more vividly than dry statistics. Mr. Justice McComb wrote:

> Any prosecuting attorney or criminal defense attorney or any trial judge who has sat for a substantial period in a department of the superior ccurt devoted to the trial of felony cases knows that many felons are careful to refrain from arming themselves with a deadly weapon because they do not want to take the chance of killing anyone and suffering death as a penalty.
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> A few recent examples of the accuracy of this view are to be found in the following cases involving persons arrested by officers of the Los Angeles Police Department:[1]
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> (i) Margaret Elizabeth Daly, of San Pedro, was arrested August 28, 1961, for assaulting Pete Gibbons with a knife. She stated to investigating officers: "Yeh, I cut him and I should have done a better job. I would have killed him but I didn't want to go to the gas chamber."
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> (ii) Robert D. Thomas, alias Robert Hall, an ex-convict from Kentucky; Melvin Eugene Young, alias Gene Wilson, a petty criminal from Iowa and Illinois; and Shirley R. Coffee, alias Elizabeth Salquist, of California, were arrested April 25, 1961, for robbery. They had used toy pistols to force their victims into rear rooms, where the victims were bound. When questioned by the investigating officers as to the reason for using toy guns instead of genuine guns, all three agreed that real guns were too dangerous, as if someone were killed in the commission of the robberies, they could all receive the death penalty.
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> (iii) Louis Joseph Turek; alias Luigi Furchiano, alias Joseph Farino, alias Glenn Hooper, alias Joe Moreno, an ex-convict with a felony record dating from 1941, was arrested May 20, 1961, for robbery. He had used guns in prior robberies in other states but simulated a gun in the robbery here. He told investigating officers that he was aware of the California death penalty although he had been in this state for only one month, and said, when asked why he had only simulated a gun, "I knew that if I used a real gun and that if I shot someone in a robbery I might get the death penalty and go the gas chamber".
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> (iv) Ramon Jesse Velarde was arrested September 26, 1960, while attempting to rob a supermarket. At that time, armed with a loaded .38 caliber revolver, he was holding several employees of the market as hostages. He subsequently escaped from jail and was apprehended at the Mexican border. While being returned to Los Angeles for prosecution, he made the following statement to the transporting officers: "I think I might have escaped at the market if I had shot one or more of them. I probably would have done it if it wasn't for the gas chamber. I'll only do 7 or 10 years for this. I don't want to die no matter what happens, you want to live another day."
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> (v) Orelius Mathew Stewart, an ex-convict with a long felony record, was arrested March 3, 1960, for attempted bank robbery. He was subsequently convicted and sentenced to the state prison. While discussing the matter with his probation officer, he stated: "The officer who arrested me was by himself, and if I had wanted, I could have blasted him. I thought about it at the time, but I changed my mind when I thought of the gas chamber".
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> (vi) Paul Anthony Brusseau, with a criminal record in six other states, was arrested February 6, 1960, for robbery. He readily admitted five holdups of candy stores in Los Angeles. In this series of robberies he had only simulated a gun. When questioned by investigators as to the reason for his simulating a gun rather than using a real one, he replied that he did not want to get the gas chamber.
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> (vii) Salvador A. Estrada, a 19-year-old youth with a four-year criminal record, was arrested February 2, 1960, just after he had stolen an automobile from a parking lot by wiring around the ignition switch. As he was being booked at the station, he stated to the arresting officers: "I want to ask you one question, do you think they will repeal the capital punishment law. If they do, we can kill all you cops and judges without worrying about it".
>
> (viii) Jack Colevris, a habitual criminal with a record dating back to 1945, committed an armed robbery at a supermarket on April 25, 1960, about a week after escaping from San Quentin Prison. Shortly thereafter he was stopped by a motorcycle officer. Colevris, who had twice been sentenced to the state prison for armed robbery, knew that if brought to trial, he would again be sent to prison for a long term. The loaded revolver was on the seat of the automobile beside him and he could easily have shot and killed the arresting officer. By his own statements to interrogating officers, however, he was deterred from this action because he preferred a possible life sentence to death in the gas chamber.
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> (ix) Edward Joseph Lapienski, who had a criminal record dating back to 1948, was arrested in December 1959 for a holdup committed with a toy automatic type pistol. When questioned by investigators as to why he had threatened his victim with death and had not provided himself with the means of carrying out the threat, he stated, "I know that if I had a real gun and killed someone, I would get the gas chamber".
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> (x) George Hewlitt Dixon, an ex-convict with a long felony record in the East, was arrested for robbery and kidnapping committed on November 27, 1959. Using a screwdriver in his jacket pocket to simulate a gun, he had held up and kidnaped the attendant of a service station, later releasing him unharmed. When questioned about his using a screwdriver to simulate a gun, this man, a hardened criminal with many felony arrests and at least two known escapes from custody, indicated his fear and respect for the California death penalty and stated, "I did not want to get the gas".
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> (xi) Eugene Freeland Fitzgerald, alias Edward Finley, an ex-convict with a felony record dating back to 1951, was arrested February 2, 1960, for the robbery of a chain of candy stores. He used a toy gun in committing the robberies, and when questioned by the investigating officers as to his reasons for doing so, he stated: "I know I'm going to the joint and probably for life. If I had a real gun and killed someone, I would get the gas. I would rather have it this way".
>
> (xii) Quentin Lawson, an ex-convict on parole, was arrested January 24, 1959, for committing two robberies, in which he had simulated a gun in his coat pocket. When questioned on his reason for simulating a gun and not using a real one, he replied that he did not want to kill someone and get the death penalty.
>
> (xiii) Theodore Roosevelt Cornell, with many aliases, an ex-convict from Michigan

[1] The cases cited are taken from the records on file in the Los Angeles Police Department.

with a criminal record of 26 years, was arrested December 31, 1958, while attempting to hold up the box office of a theater. He had simulated a gun in his coat pocket, and when asked by investigating officers why an ex-convict with everything to lose would not use a real gun, he replied, "If I used a real gun and shot someone, I could lose my life".

(xiv) Robert Ellis Blood, Daniel B. Gridley, and Richard R. Hurst were arrested December 3, 1958, for attempted robbery. They were equipped with a roll of cord and a toy pistol. When questioned, all of them stated that they used the toy pistol because they did not want to kill anyone, as they were aware that the penalty for killing a person in a robbery was death in the gas chamber".

REALISTIC TIMETABLE

It is realistic to establish a timetable for the full range of Federal habeas corpus proceedings within 1 year. A key factor is the requirement that the States must provide competent free counsel to defendants in capital cases through all legal proceedings. It may be that the trial counsel would handle all stages of the case unless there is a allegation of incompetency of counsel in which event new counsel would obviously have to be provided to press that claim.

It is practical to require the Federal habeas corpus petition to be filed within 60 days from the appointment of post-conviction counsel. It would not be "business as usual"; but I know from my own experience in the criminal justice system that a lawyer can prepare the petition in that timeframe although it may require long hours, overtime effort or putting aside other legal matters.

If there are unusual circumstances, and it must be conceded that it is not possible in a statutory setting to anticipate every conceivable situation, the court may allow extra time on a showing of good cause with the specifications of the reasons.

Similarly, it is practical for the U.S. District Court to render a final decision within 110 days from the filing of the habeas corpus petition. That timeframe would allow 20 days for a responsive pleading by the public prosecutor and 90 days for hearings, briefings, argument, and a decision by the district court. Again, from my own experience in the field, I know that this timetable can be observed although it would require a Federal judge to give priority to such matters and the lawyers to be diligent in processing the case. It is customary when cases go to trial that lawyers are heavily engaged not only during the hours of trial in court, but in advance of the trial day in preparing witnesses, and after court hours on legal research and the preparation of legal memoranda.

It is further practical to require a decision by the court of appeals within 110 days after the final judgment of the district court. This is only slightly faster than existing rules on docketing and briefing. This timetable will give the appellate court an adequate opportunity for review, reflection, and decision. In the British courts, judges render immediate decisions and opinions after hearing appellate argument. As a practical matter, most decisions are made by an appellate judge within a relatively brief period of time after oral arguments or submission of briefs.

It is again realistic to require final action by the Supreme Court of the United States within 110 days. This would allow 20 days for the preparation of the petition for certiorari and 90 days for decision by the court. It is currently a common practice for the Supreme Court to deny certiorari in a much shorter period of time. Here again, our Nation's highest court would have to accord priority treatment to capital cases, but that is fair requirement in the face of the urgency of the issue as articulated by Chief Justice Rehnquist.

It is inevitable that some cases will not be completed within a 1-year timeframe. Some trials may be so long and so complex that this timetable will be too short. It should be noted, however, that this abbreviated timetable does not take effect until after the case has been tried in the State courts where no limitation is applied to the length of trial, time for post-trial motions or appellate review. During that process, most, if not customarily all, of the complex factual and legal issues will be organized, analyzed, and resolved.

Where this proposed timetable cannot be observed, extensions may be granted on a showing of good cause where the court will be obligated to specify the reasons for any delays. If delays are granted, the court will be under an obligation to monitor the proceeding and see to it that delays are held to a minimum.

CONCLUSION

No one can deny the seriousness of the problem of crime in America. Similarly, no one can deny the inadequacy of our criminal justice system.

At a minimum, powerful arguments support the conclusion that the death penalty is a deterrent. Even those who doubt the deterrent effect of capital punishment cannot deny the legitimacy of appropriate execution of the laws of 37 States which provide for the death penalty.

Currently, the Federal courts are "chaotic" in dealing with such cases and the death penalty in America has become a "farce".

This legislation, establishing a timetable of 1 year for the disposition of almost all Federal habeas corpus cases, would effectively reinstate the death penalty in America.

By Mr. ROTH:

S. 20. A bill to provide for the establishment and evaluation of performance standards and goals for expenditures in the Federal budget, and for other purposes; to the Committee on Governmental Affairs.

FEDERAL PROGRAM PERFORMANCE STANDARDS AND GOALS ACT

• Mr. ROTH. Mr. President, today I am introducing what I believe to be a much-needed and long overdue reform of the way the Federal Government operates—the "Federal Program Performance Standards and Goals Act of 1991."

I know that my colleagues share with me a growing sense of frustration at our seeming inability to prevent waste, fraud, and mismanagement in Federal programs. It has not been for lack of our trying. In recent years we have taken such steps as enacting the Federal Managers Financial Integrity Act, creating Inspectors General and virtually every agency, and, late last year, passing the Chief Financial Officers Act.

All of these efforts have been very important. However, as the scandals within our agencies mount, I have become concerned that our focus on improving financial management has caused us to over-look a big missing piece in the puzzle of how to prevent governmental waste and mismanagement. That missing piece is the need for measurable performance goals for all Federal programs.

I am convinced that we will not make significant progress in our fight against fraud, waste, and mismanagement in Federal agencies and programs, if all we do is focus on the dollars spent. We must begin to pay much more attention to the performance side of the equation: What are we actually getting for the dollars spent, compared to what we should be getting?

This is not to diminish the vital role of strong financial management. Making sure that Federal funds are properly accounted for is indeed of fundamental importance. But knowing that budgeted money was lawfully spent is not the same as knowing that it was well-spent. Good management is more than just the absence of fraud.

Fraud is an illegal act, defined in the law. But what is the definition of "waste" and of "mismanagement"? How do we know when a program is "inefficient" or "inefective"? And if these abuses are undefined, how can they be prevented? What should we tell the taxpayers when we spend their money—that they should be satisfied simply knowing that no serious fraud exists in a program?

No, I think we owe them more than that. I think we ought to be able to tell the American taxpayers what results they can expect when we spend their money, and then we ought to be able to tell them what results they actually got. And when we can do that, we will truly begin to define, identify, and eliminate waste and mismanagement in the Federal Government.

That is what lies behind my legislation. The Federal Program Performance Standards and Goals Act would require that the President's budget include—for each major expenditure category of every department and agency—measurable program performance goals. And each year's budget would include the previous year's actual program results compared with the original performance goals, integrated with program cost information. This performance-based budgeting is what changes a budget from being largely a political document, into a real policymaking and management tool.

In addition, this legislation would require every Federal department and agency to publish an annual performance report. These reports would show more detailed performance goals and actual results—also integrated with program cost information, so as to reveal costs per unit-of-output or unit-of-result.

This information would be reported for the past year and the three prior years, so that performance trends could be tracked. If, for example, the unit cost of delivering a particular level of service, or of achieving a particular result, is shown to be rising faster than the rate of inflation, we can ask why.

These annual agencywide performance reports would be a real boost to program oversight. The Office of Management and Budget, the General Accounting Office, the Inspectors General, and congressional committees would all find these reports invaluable.

I also believe that Congress should be held responsible for stating what results it expects when it creates programs and spends money. We have for too long ducked that responsibility. We fund programs without specifying what the measure of success should be. No wonder accountability is lacking. Therefore, my legislation would require all authorization and appropriation bills to include measurable program performance goals.

I would be the first to acknowledge that this legislation would result in a revolutionary change in the way we do business around here. Think of it—the sponsor of a new program actually having to say what the program is supposed to accomplish, in measurable terms, so that we can later see if we are getting our money's worth. I can hear the howls of protest already. And certainly within the agencies there will be, as there has been in the past, strong resistance to being held accountable for measurable results.

I first proposed this reform last May in an article in "Roll Call." Several days later a number of witnesses testifying before a Senate committee addressing the HUD scandal were asked whether this would help. Their responses are very interesting.

Mr. Richard Wegman, testifying on behalf of the National Academy of Public Administration, stated that—

It's essential that there be clear and explicit performance goals for executive branch programs * * * Clarity is extremely important; otherwise it's very difficult for Congress to make a judgment about whether or not the agency is doing its job effectively.

In his written statement he emphasized that—

Preventing more HUDs ultimately is a continuous process of improving program goals in law and testing agency performance against them * * *

And attached to Mr. Wegman's testimony was a list of recommendations from the Academy's Panel on Congressional Oversight. I'd like to read two of them. First, that—

Congress should set performance goals * * * that provide a better match between those goals and the resources likely to be available for implementation. Similarly, the executive branch should suggest to Congress ways of better matching goals and resources."

And second, that—

Congress should ensure that agencies engage in more thorough, systematic, and comprehensive evaulations of the programs they administer by: * * * providing in authorizing statutes criteria by which to measure program effectiveness; * * *

At that same hearing, GAO's Assistant Comptroller General for General Government, Mr. Richard Fogel, testified that—

It would help if congressional committees could press some of the agencies to develop performance measures and output measures of what the agencies think are good measures of whether they are accomplishing program objectives. * * * That gives the Congress a basis for then going in and tracking and saying how well things are happening, what type of problems there may be, and if there are problems it gives you a basis for focusing the oversight. Unfortunately, most agencies do not want to develop those types of performance measures because it is easier not to be held accountable if you do not have them.

Mr. Bert Rockman of the Brookings Institute stated that—

Within the agencies, people will want to know what it is that Congress defines as the indicators for how well a program is working.

To which Mr. Fogel added—

Quite frankly, sometimes the Congress does not want to really clarify what the indicators are, either. It is easier to keep it somewhat confused. That creates additional problems for the agency.

In a followup letter, GAO wrote to the committee—

In short, we believe that congressional and executive agency agreement on measures of program performance is a fundamental element for improved delivery of government service to the public.

It should be noted that in February 1985, GAO issued a two-part report entitled "Managing the Cost of Government," in which it repeatedly emphasized the need to establish program performance goals and to measure results. For example, it states—

It is important, and possible, to measure how well government employees and programs are performing. Whether the goal is defending the nation cr immunizing children against disease, government officials and the public need to know how well government is accomplishing its intended objectives. Assessing government accomplishments requires measuring employee and program performance. Though the size and complexity of the government make it difficult, developing effective performance measurement systems is clearly possible.

On another page the report urges that we—

Measure output as well as input. A management system that can measure only the financial resources put into a process is incomplete. A truly effective system must also measure what is produced by using those resources. For all significant administrative functions and program activities, appropriate output measures should be identified, and acceptable performance levels must be established.

And perhaps most significant, is what the U.S. Comptroller General, Charles Bowsher, had to say in support of my proposal, during testimony before the Senate Governmental Affairs Committee last October 3—

It would be very helpful, I think, to the Congress to have this information, and that is why I think you need an annual report from all these departments, just like you have in the private sector—where you actually tell what were your performance goals, what were you trying to achieve with these program objectives, and how well you did it. And it would help us immensely. We waste half our time in doing our program evaluation work and our financial audit work in trying to figure out what is the goal that was trying to be achieved and where is the information. We are always over there trying to gather the data. It should be brought together in an organized fashion by the agencies themselves.

This point was then underscored by GAO's Assistant Comptroller General for Accounting and Financial Management, Donald H. Chapin, who testified that if financial information is related to performance goals—

* * * it is amazing when you do that what you can see about an agency's operations. You can see what the trends are. You can understand what the numbers mean. And if we can get the agencies to supply us with measurable goals, we can relate those to financial results and then you can see what you are spending your money on and whether that money is well spent. And that is my fond hope, that we can get that into our system of government and have it reported to the committees of Congress as a regular matter, so that they can see the effectiveness of the money that they appropriate. And you don't see this now, you really don't see that.

Mr. President, I am strongly convinced that we must put in place a process for establishing, monitoring, and reporting program performance. I know that establishing such a system will not be easy, but it can be done. It must be done. We owe it to the American taxpayers to begin this effort, and

I urge my Senate colleagues to join me in supporting this legislation.

I ask that a copy of the "Federal Program Performance Standards and Goals Act of 1991" be printed in the RECORD, along with a recent nationally syndicated column on the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 20

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Program Performance Standards and Goals Act of 1991".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) despite major efforts by the Congress and the Executive Branch to improve the financial management of the Federal Government, unacceptable waste and mismanagement persists in Federal programs;

(2) waste and mismanagement place an intolerable burden on the limited resources of important Federal programs, reducing the ability of such programs to adequately address vital needs;

(3) much of the public's opposition to increased taxes is based on a belief that taxpayers are not getting full value for their tax dollar;

(4) because financial management systems focus on how money is spent, but not on how well it is spent and the value received for it, the Federal Government is handicapped in its ability to identify wasteful or ineffective programs; and

(5) the Congress is further handicapped in its ability to conduct adequate and thorough oversight of Federal programs, because few programs have measurable goals against which to track and compare performance.

(b) PURPOSES.—The purposes of this Act are—

(1) to strengthen Government accountability by showing the American taxpayers what results to expect for their tax dollars when a program is funded, and what results the taxpayers actually receive;

(2) to improve congressional oversight and the uncovering of waste and mismanagement, by requiring that measurable performance standards and goals be established for all Federal programs and that each Federal department and agency issue an annual program performance report showing program accomplishment;

(3) to free additional resources for vital Federal programs, by reducing waste, reforming or eliminating ineffective programs, and allowing the targeting of funds to those programs achieving the best results;

(4) to change the Federal budget from a political document into a policy-making and management tool, by requiring that the budget incorporate a performance standards and goals plan for Federal spending.

SEC. 3. PERFORMANCE STANDARDS AND GOALS PLANS.

(a) BUDGET CONTENTS AND SUBMISSION TO CONGRESS.—Section 1105(a) of title 31, United States Code, is amended by adding at the end thereof the following new paragraph:

"(29) a Federal performance standards and goals plan for the overall budget as provided for under section 1115.".

"(b) PERFORMANCE STANDARDS AND GOALS PLANS.—Chapter 11 of title 31, United States Code, is amended by adding after section 1114 the following new sections;

"§1115. Performance standards and goals plans

"(a) In carrying out the provisions of section 1105(a)(29), the Office of Management and Budget shall promulgate regulations requiring each department and agency to establish a performance standards and goals plan for each majority expenditure category of the budget of such department or agency. Such plan shall—

"(1) establish performance indicators to be used to define and measure the outputs, products, services, and results of each expenditure allocated;

"(2) establish performance standards and goals to define and measure the specific service or product to be achieved or produced for the expenditure allocated;

"(3) express such standards and goals in an objective, quantifiable, and measurable form unless permitted in an alternative form under subsection (b);

"(4) establish major expenditure categories of related functions of such agency or department for the analysis of performance standards and goals;

"(5) include actual program results compared with original performance standards and goals, integrated with program cost information, to show trends in costs per unit-of-result, unit-of-service, or other unit-of-output;

"(6) review the success of achieving the performance standards and goals of the preceding fiscal year; and

"(7) evaluate the performance standards and goals for the fiscal year relative to the results achieved for the performance standards and goals in the preceding fiscal year.

"(b) If the Office of Management and Budget determines that it is not feasible to express the performance standards and goals of a particular program in an expenditure category in an objective and quantifiable form, the Office of Management and Budget may authorize an alternative form. Such alternative form shall include separate descriptive statements of both—

"(1) minimally effective program, and

"(2) a successful program,

with sufficient precision and in such terms that would allow for an accurate, independent determination of whether the program's performance meets the criteria of either description.

"(c) The Office of Management and Budget shall review and adjust the department and agency plans established under subsection (a) and establish an overall performance standards and goals plan for the Federal Government.

"§1116. Program performance reports

"(a) By December 31 of each year, the head of each department and agency shall prepare and submit to the President and the Congress, a report on the program performance for the previous fiscal year.

"(b) Each program performance report shall enumerate all performance indicators established in the departmental or agency performance standards and goals plan, along with the performance goals and the actual results achieved for the previous fiscal year and the three preceding fiscal years and the goals for the current fiscal year. Program costs and, where applicable, trends in costs per unit-of-result, unit-of-service, or other unit-of-output shall be shown. Where the performance standards and goals are specified by descriptive statements of a minimally effective program and a successful program, the results of such program shall be described in relationship to those categories, including whether the results failed to meet the criteria of either category.

"(c) Where a performance standard or goal has not been met, including when a program's results are not determined to have met the criteria of a successful program, the report shall explain—

"(1) why the goal was not met, including an indication of any managerial deficiencies or of any legal obstacles;

"(2) plans and schedule for achieving the established performance goal;

"(3) recommended legislative or regulatory changes necessary to achieve the goal; and

"(4) if the performance standard or goal is impractical or infeasible, why that is the case and what action is recommended, including whether the goal should be changed or the program altered or eliminated.".

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 11 of title 31, United States Code, is amended by adding at the end thereof:

"1115. Performance standards and goals plans.

"1116. Program performance reports.".

SEC. 3. CONGRESSIONAL ESTABLISHMENT OF PERFORMANCE STANDARDS AND GOALS.

(a) IN GENERAL.—It shall not be in order for either the House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) which provides for the authorization of appropriations or for the appropriation of funds, unless such bill or resolution (or amendment thereto) specifies performance standards and goals for such authorization or appropriation.

(b) PERFORMANCE STANDARDS AND GOALS.—(1) The program performance standards and goals required under subsection (a) shall—

(A) specify either—

"(i) objective, quantifiable, and measurable standards and goals expected to be achieved, or

"(ii) separate descriptive statements of a minimally effective program and of a successful program, with sufficient precision and in such terms that would allow for an accurate, independent determination of whether the program's performance meets the criteria of either description;

(B) include indicators of cost per unit-of-result, unit-of-service, or other unit-of-output, of the type specified in the legislation authorizing the appropriation or relevant program; and

(C) be established after review of the plan established under section 1115 of title 31, United States Code.

(2) An appropriation Act may specify a lesser amount of a performance standard or goal to be achieved than is provided by the authorizing legislation, but may not change the specific type of standard or goal.

(c) WAIVER.—This section may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn, and in the House of Representatives only as approved by the Committee on Rules.

[From the Copley News Service, Dec. 6, 1990]

YARDSTICK FOR THE BUDGET

(By Stephen Green)

The tax revolt has forced lawmakers to think twice before raising taxes. What's needed now is more assurance that the money collected from the taxpayers is spent wisely and not wasted. It's time for a new revolution—a performance revolt—to force the federal government to function effectively.

As matters now stand, there is no way to determine for certain whether the government is spending the public's money prudently. The president proposes spending for a government program, and if Congress agrees, the expenditures begin. In too many cases, the actual effect of the spending is difficult to determine. Lacking are specific criteria by which to measure a program's successes or failures.

This governmental deficiency is so glaring that it is mystifying why it has been tolerated for so long. Sheer expediency may be the explanation. Politicians find it desirable to promote pet programs, and program managers find it advantageous to expand their domains without real accountability for what has or hasn't been accomplished.

Whatever the reason, this deplorable state of affairs has continued for too long. Now, however, there is hope for change. A remedy has been offered by Sen. William V. Roth, Delaware Republican, in the form of so-called "performance-based budgeting."

Under a bill that Mr. Roth intends to introduce when Congress convenes, budget laws for the first time would contain clear and precise goals—stated in measurable terms—for various programs.

Instead of just setting aside millions of dollars for certain welfare programs, legislation would contain stated goals as to what the money is supposed to achieve.

One welfare program might promise, for instance, to place 100,000 welfare mothers in full-time employment. A Justice Department program might pledge to increase federal drug convictions by 15 percent. Such a method of budgeting would permit productivity to be traced and performance measured.

Launching the federal government into performance-based budgeting would not be a venture into unchartered territory. Performance-based budgeting does work. Its feasibility already has been demonstrated by a few local governments, most notably that of Sunnyvale, Calif.

Perusing the latest Sunnyvale municipal budget is edifying. It reveals that the city parks department has promised to repair all reported vandalism within three working days 90 percent of the time in return for an appropriation of $33,838. In law enforcement, the city police department has pledged to respond to all emergency calls in 5.6 minutes or less 90 percent of the time in return for an appropriation of $677,398.

In many ways, the complexity of the federal budget cannot be compared to Sunnyvale's. But, as Sunnyvale City Manager Tom Lewcock has been quoted as saying, the principle of performance-based budgeting "works regardless of the size of the government."

Performance-based budgeting permits taxpayers to determine what they receive for the money they spend and how the actual results compare to what should be occurring. Programs that fail to live up to promises can be altered—or terminated. Programs that do work can be expanded.

Despite the overwhelming logic in favor of performance-based budgeting, persuading the federal government to adopt it will not be easy. As Mr. Roth has explained, "There will be, as there has been in the past, strong resistance within the agencies to being held accountable for measurable results. Even some in the Congress may not relish the idea of having to tell the taxpayers upfront what result to expect for their tax dollars and then what actually was accomplished."

It will help that Mr. Roth appears to have support in the Bush administration for at least a pilot project. The White House Office of Management and Budget agrees that the concept is worth exploring. Clearly, it is. Performance-based budgeting could prove to be the long-sought-after key to making the vast federal bureaucracy accountable at last.•

By Mr. MITCHELL (for Mr. CRANSTON):

S. 21. A bill to provide for the protection of the public lands in the California desert; to the Committee on Environment and Natural Resources.

PROTECTION AND THE CALIFORNIA DESERT

• Mr. CRANSTON. Mr. President, today I submit for reintroduction the California Desert Protection Act, S. 21. I previously sponsored this measure in the 101st Congress as S. 11 and in the 100th Congress, as S. 7. Over time this bill has been refined to address various concerns. I ask unanimous consent that my statement of January 25, 1989, which describes the purpose of the bill as well as the changes made to it from the 100th to the 101st Congress be inserted in the RECORD at the conclusion of my remarks. I also ask unanimous consent that a summary of additional changes incorporated into the version of the bill being introduced today also be printed in the RECORD.

Mr. President, the California Desert Protection Act is intended to protect the beauty, wilderness, and fragile resources of the California Desert. There in the desert of California is a diverse landscape, incredibly rich in its scenery, archeology, and wildlife. One can find looming sand dunes, extinct volcanoes, some 90 mountain ranges, over 100,000 archeological sites, the world's largest joshua tree forest, more than 760 wildlife species, and the oldest living organism—an 11,700-year-old creosote bush.

My bill would designated 4.5 million acres of BLM lands as wilderness. It would create the Mojave National Park, comprising 1.5 million acres now managed by the BLM. It would redesignate Death Valley National Monument and Joshua Tree National Monument as National Parks, and enlarge both areas by including contiguous BLM lands of national park quality. The time has come to give meaningful, lasting protection to the California Desert.

I ask unanimous consent that the text of S. 21 also be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the CONGRESSIONAL RECORD, Jan. 25, 1989]

By Mr. CRANSTON:

S. 11. A bill to provide for the protection of the public lands in the California desert; to the Committee on Energy and Natural Resources.

CALIFORNIA DESERT PROTECTION ACT

Mr. CRANSTON. Mr. President, today I am reintroducing the California Desert Protection Act to provide lasting protection for the beauty and wildness of the California Desert.

In 1987 and 1988 I made three trips to the California desert accompanied by naturalists, environmentalists, and scientists. We camped out on the desert floor. We hiked mountains. We trekked up and through narrow desert wilderness canyons. We found snakes, lizards and other animals on huge, wild sand dunes. We looked at recreational sites for ORVs—dune buggies, ATVs, and motorcycles. We saw countless varieties of flowers and plants, including an 11,000 year-old creosote bush which may be the oldest living organism on the planet earth. We drove hundreds of miles over dirt and paved roads through Death Valley and Joshua Tree National Monuments and the East Mojave National Scenic Area. We flew over huge mining operations, water projects, military installations and miles of farming and ranching lands. We held lizards in our hands and saw nighttime skies of incredible beauty and the myriad stars of endless galaxies.

One sunset we climbed the Eureka Dunes, looming, awesome sand structures that are a miniature ecosystem of incredible complexity. The dunes are surrounded by towering mountain ranges of rugged, stark and massive igneous rocks whose antiquity and structure bespeak of geological aeons of long ago.

Climbing the 8,500 foot Last Chance mountain peak, we saw a sweeping, 360-degree view, the snow-capped Sierra Nevada in the west and, far to the south, Death Valley Sink, 280 feet below sea level.

The overwhelming presence of time and force surround you in the desert. There is an immense, almost incomprehensible beauty there that attracts people from all over the world, totalling some 16 million visitor days a year.

The desert is a land of many uses and many resources. And it is vast enough to support the varied demands being made upon it—by campers, hikers, tourists, the military, residents, energy developers, miners, rockhounds, hunters, ranchers, naturalists, scientists, and educators. The desert can support all these diverse interests, but only if the demands made upon it are in concert with the ecological and economic realities of the region.

In 1976, Congress enacted the Federal Land Policy and Management Act [FLPMA] which established the California Desert Conservation Area and started a process for protecting the resources of the California Desert, FLPMA also called the wilderness review of the public lands administered by the BLM, including those in the California Desert.

The California Desert Protection Act continues this process of providing for appropriate protection of significant resources of the public lands in the California Desert.

Like S. 7 which I sponsored in the 100th Congress, this bill designated 81 separate areas, comprising approximately 4.5 million acres of land in the California Desert, as wilderness to be administered by the Bureau of Land Management.

The BLM itself has identified 5.7 million acres in the California Desert as potential wilderness, and has designated these lands wilderness study areas to be managed to protect their wilderness values until Congress acts on the BLM wilderness recommendations.

Also like S. 7, the bill I am introducing today creates three new national parks in the California Desert—Death Valley, Joshua Tree, and Mojave.

For each of these parks, I have drawn from the recommendations of the Bureau of Land

Management's own desert plan staff and the 1977 and 1987 recommendations of the western regional office of the National Park Service.

However, in response to testimony presented on S. 7 at hearings of the Senate Energy and Natural Resources Committee Subcommittee on Public Lands, National Parks and Forests in July 1987 and information provided subsequently, I am making a number of significant changes in the California Desert Protection Act.

First, I have included new bill language regarding military activities in the California Desert.

As my colleagues may be aware, the areas proposed for addition to the national park and wilderness systems in this legislation are located in a region which is used extensively by the Department of Defense for training, research and development. These military activities have not impaired the natural and cultural values of the proposed parks and wilderness areas. However, the Department of Defense has expressed concern about the continued availability of these lands and airspace as there is a lack of alternative sites available for these military training, testing, and research activities.

I have, therefore, amended the California Desert Protection Act to clarify that the legislation has no impact on the military's existing use of airspace in the California Desert region.

I also have amended the legislation to provide for continued military use of public lands in the California Desert. The bill withdraws 1,100,000 acres for China Lake Naval Weapons Center and 227,369 acres for the Chocolate Mountain Aerial Gunnery Range. The lands are currently being used by the Department of the Navy, for research, development, testing and training purposes. However, the Engle Act provides that peacetime withdrawals of 5,000 acres or more of public land can only be accomplished by an Act of Congress. This legislation will meet the requirements of the Engle Act.

Additionally I have amended the boundaries of the parks and a number of the proposed wilderness areas to accommodate important non-wilderness uses and to correct map errors.

These changes in the following areas include:

Argus wilderness: Deletion of a road and limestone quarry;

Chuckwalla Mountains: Deletion of microwave site, road, and mine;

Clipper Mountains: Deletion of a road and pipeline;

Dead Mountains: Deletion of a road and rock quarry;

Inyo Mountains: Exclusion of mining claims;

Fish Creek: Exclusion of mine;

Hollow Hills: Deletion for utility corridor;

Jacumba: Deletion of transmission line and quarry;

Kelso Dunes: Deletion of gas pipeline;

Kingston Range: Deletion for utility corridor;

Malpais Mesa: Exclusion of mining claims;

Mecca Hills: Deletion of pipeline and map correction to complete boundary;

Mesquite: Deletion for utility corridor;

North Mesquite: Deletion of private property;

Orocopia: Exclusion for utility corridor;

Picacho Peak: Addition of lands;

Piper Mountains: Deletion for utility corridor;

Piute Mountains; Deletion of gas pipeline;

Resting Spring: Deletion of mining road;

Rodman: Deletion of gas pipeline;

Slate Range: Deletion of patented lands;

Soda Mountains: Exclusion for utility corridor;

South Algodones Dunes: Deletion of microwave tower;

Trilobite; Deletion of gas pipeline;

White Mountains WSA: Exclusion for utility corridor;

Mojave National park; Map correction;

Mojave Park wilderness: Deletion of gas pipeline in Granite Mountains portion, map correction and road deletion in Mid Hills portion, deletion of gas pipeline in Providence Mountains portion, map correction and utility corridor deletion in Clark Mountains portion;

Joshua Tree Park additions and wilderness: Deletion of mining claims in Eagle Mountains portion; and

Red Rock Canyon State park additions: Map clarification;

I have also amended the California Desert Protection Act to facilitate and expedite exchanges of lands with State and private property owners in the park and wilderness areas. The revised bill language should be particularly helpful in instances where mineral interests are involved. I intend to continue to work with the two major nonfederal owners of California Desert lands, the State of California and Santa Fe-Southern Pacific, in an effort to reduce conflicts and identify specific parcels for exchange.

Additionally, I have included new language to ensure that Native Americans will continue to have access to the park and wilderness areas for continued traditional cultural and religious use.

I have also included new language to clarify that the important research and educational activities of the University of California at its Granite Mountain Natural Reserve in the East Mojave will continue under a cooperative management agreement with the National Park Service.

Grazing in wilderness areas is a permitted activity and is not affected by this legislation. However, S. 7 provided that grazing in the new Mojave National Park be phased out as the current grazing permits expire. The 10 cattle ranching operations in the East Mojave are not a major contribution to the economy of the State or even the local area. However, the ranching families affected have made a strong case for continuation of their grazing activities beyond the expiration of the current permits. At the same time, I have received new information that the decline in bighorn sheep populations in the desert stems from diseases transmitted by domestic sheep and cattle. I want to study this issue further and review additional hearing testimony before crafting the final grazing provision in the legislation.

S. 7 also called for the establishment of the Indian Canyons National Historic Site, comprising 490 acres rich in archeological sites. This property is now under active threat of development. Last June 1988 the voters of California approved Proposition 70, the California Wildlife, Coastal and Park Land Bond Act which includes $19 million for acquisition of lands in the Indian Canyons region. It's my understanding the California Department of Parks and Recreation is particularly interested in purchasing the 490 acres, but it's unclear whether $19 million will be sufficient to acquire the entire property. No appraisal has yet been made. Thus, I am again including in the California Desert Protection Act a provision to establish the Indian Canyons National Historic Site. I will be following the California Department of Parks and Recreation's efforts to acquire the Indian Canyons and will modify my legislation at a future date as necessary based upon the State's actions.

Mr. President, I am aware that many people are interested in maintaining vehicular access to their favorite areas of the desert. In drawing the boundaries of the wilderness areas designated by this bill, I have been careful to exclude roads and areas receiving the heaviest ORV use. Unaffected by the legislation and available for vehicular use are 15,000 miles of unmaintained dirt routes—enough to go half way around the world. Another 15,000 miles of paved and maintained dirt roads also would remain open. Also the legislation does not affect 7,000 miles of vehicle accessible washes. In addition, over 430,000 acres of BLM open areas are outside the proposed parks and wilderness areas and remain available exclusively for ORV use. Additionally more than 30,000 acres on State and private lands in the desert are available to ORVers. Nonetheless, I will be reviewing the need for additional vehicular access. Mr. President, the time has come to protect the California Desert.

A September 1988 survey conducted by the Field Institute found that the vast majority of Californians support more parks and wilderness in the California Desert. Seventy-five percent of those polled said they want to see more protection for desert wildlife and ecology. Fifty-eight percent expressed a desire for more primitive areas and wilderness. And 67 percent said they want to see the creation of more national parklands in the desert. Only 17 percent said they favor more roads for four-wheel drive vehicles, while a third of the public said they want fewer roads for this purpose. Less than 17 percent said they want to see more open areas for the use of off-road vehicles like dune buggies and motorcycles. Also only a quarter of the respondents said they wanted to see more energy development such as gas and oil exploration and mining in the desert.

The major newspapers throughout the State of California have called for increased protection for the California Desert. Most have endorsed the California Desert Protection Act.

The Los Angeles Times says,

The Cranston bill would provide enhanced enjoyment of the desert by present visitors, and give it true lasting protection. (June 14, 1987).

The Sacramento Bee explains,

Cranston's bill wouldn't foreclose on any private property or terminate any current valid mining claims or even add very much to what the government is already spending to administer these lands. It would simply . . . ensure that the most important natural, scenic and scientific values of this complex, fragile resource would be preserved . . . Congress should support its basic purpose. (June 3, 1987)

The San Francisco Chronicle urges,

The passage of the California Desert Protection Act, one of the most important pieces of legislation affecting the state to be introduced in many years, should be one of Congress' top priorities. (April 9, 1987)

The Fresno Bee writes,

Much of the desert already has been put to use—and forever changed—by such things as mining operations, military bases, recreational uses and often abortive agricultural projects. A portion of it, close to its original state, must be preserved for future generations. This bill, introduced by Sen. Alan Cranston would do just that. (March 16, 1986)

I urge my colleagues to join me in supporting this important legisiation.

CHANGES FROM S. 11 (101ST CONGRESS) INCORPORATED INTO S. 21 (102D CONGRESS) OFFERED BY SENATOR ALAN CRANSTON

1. On page 4, line 10 add a new section as follows:

"DEFINITIONS

SEC. 3. For the purposes of this Act—

(a) The term "Secretary", unless specifically designated otherwise, means the Secretary of the Interior.

(b) The term "public lands" means any land and interest in land owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management."

Explanation: This amendment adds a new section providing definitions.

2. On page 5, strike line 21 and all that follows through line 2 on page 6.

Explanation: This amendment deletes the Avawatz wilderness, comprising 61,320 acres, in response to DOD concerns about possible expansion of Fort Irwin.

3. On page 7, strike line 24 and all that follows through line 5 on page 8 and insert a new subsection as fcllows:

"(10) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately eighty-five thousand nine hundred and fifty acres, as generally depicted on a map entitled "Cady Mountains Wilderness—Proposed", dated September 1990, and which shall be known as the Cady Mountains Wilderness: *"Provided,* That the Secretary of the Interior may pursuant to an application filed by the Department of Defense, grant a right-of-way for, and authorize construction, use, and maintenance of, an unpaved corridor not to exceed 100 meters in width within the area depicted as "nonwilderness road corridor" on the map entitled "Cady Mountains Wilderness—Proposed", if this route is determined to be otherwise the most feasible route as part of a corridor linking Marine Corps Air Ground Combat Center, Twentynine Palms and the National Training Center, Fort Irwin;"

Explanation: This amendment modifies the Cady Mountains wilderness, deleting 20 acres, in response to DOD interest in a possible road to connect Twentynine Palms Marine Corps Air Station and Fort Irwin.

4. On page 8, strike line 6 and all that follows through line 11 and insert a new subsection as follows:

"(11) certain lands in the California Desert Conservation Area and Eastern San Diego County, of the Bureau of Land Management, which comprise approximately fifteen thousand seven hundred acres, as generally depicted on a map entitled "Carrizo Gorge Wilderness—Proposed", dated September 1990, and which shall be known as the Carrizo Gorge Wilderness;",

Explanation: This amendment corrects the map for the Carrizo Gorge wilderness to exclude Anza Borrego State Park land erroneously included.

5. On page 8, strike line 20 and all that follows through line 25 and insert a new section as follows:

(13) certain lands in the Bakersfield District, of the Bureau of Land Management, which comprise approximately ten thousand seven hundred acres, as generally depicted on a map entitled "Chimney Peak Wilderness—Proposed", dated September 1990, and which shall be known as the Chimney Peak Wilderness.

Explanation: This amendment corrects the map for the Chimney Peak wilderness to exclude non-wilderness quality lands erroneously included.

6. On page 22, strike line 12 and all that follows through line 18 and insert a new subsection as follows:

"(61) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty thousand six hundred and seventy acres, as generally depicted on a map entitled "Rice Valley Wilderness—Proposed", dated September 1990, and which shall be known as the Rice Valley Wilderness;"

Explanation: This amendment modifies the Rice Valley wilderness, deleting 150 acres, to exclude Metropolitan Water District's wasteway area.

7. On page 25, strike line 1 and all that follows through line 7 and insert a new subsection as follows:

"(70) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately sixty-nine thousand seven hundred and forty acres, as generally depicted on a map entitled "Slate Range Wilderness—Proposed", dated September 1990, and which shall be known as the Slate Range Wilderness;"

Explanation: This amendment modifies the Slate Range wilderness, deleting 100 acres, to exclude Keystone Mine claims.

8. On page 25, strike line 8 and all that follows through line 14.

Explanation: This amendment deletes the Soda Mountains wilderness, comprising 80,430 acres, in response to DOD concern about possible expansion of Fort Irwin.

9. On page 25, strike line 22 and all that follows through page 26, line 3.

Explanation: This amendment deletes the South Avawatz wilderness, comprising 26,650 acres, in response to DOD concern about possible expansion of Fort Irwin.

10. On page 26, strike line 11 and all that follows through line 16 and insert a new subsection as follows:

"(75) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seven thousand fifty acres, as generally depicted on a map entitled "Stateline Wilderness—Proposed", dated September 1990, and which shall be known as the Stateline Wilderness;"

Explanation: This amendment modifies the Stateline wilderness, deleting 1,950 acres, to exclude utility corridor.

11. On page 29, line 13, after the word "Act" insert "except for CDCA 242, CDCA 221A, and CDCA 221"

Explanation: This amendment provides that Avawatz, South Avawatz, and Soda Mountains wilderness study areas retain their administrative WSA status.

12. On page 29, line 21, add a new subsection as follows:

"(b) Subject to valid existing rights, the federal lands identified as CDCA 242, CDCA 221 A, and CDCA 221 are hereby withdrawn from disposition under the public land laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from operation of the Geothermal Steam Act of 1970."

Explanation: This amendment withdraws the Avawatz, South Avawatz, and Soda Mountains wilderness study areas from mineral entry.

13. On page 30, line 6, insert a new section as follows:

"GRAZING

"SEC. 107. Within the wilderness areas designated by this Act, the grazing of livestock, where established prior to the enactment of this Act, shall be permitted to continue subject to such reasonable regulations, policies and practices as the Secretary deems necessary, as long as such regulations, policies and practices fully conform with and implement the intent of Congress regarding grazing in such areas as such intent is expressed in the Wilderness Act and section 108 of Public Law 96-560 (16 U.S.C. 1133 note)."

Explanation: This amendment adds a new section regarding grazing in wilderness areas.

14. On page 30, insert a new section as follows:

"BUFFER ZONES

"SEC. 108. The Congress does not intend for the designation of wilderness areas in section 102 of this Act to lead to the creation of protective perimeters or buffer zones around any such wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area."

Explanation: This amendment adds a new section regarding buffer zones around wilderness.

15. On page 30, insert a new section as follows:

"WATER RIGHTS

"SEC. 109. (a) With respect to each wilderness area designated by this Act, Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this Act. The priority date of such reserved water rights shall be the date of enactment of this Act.

"(b) The Secretary of the Interior and all other officers of the United States shall take all steps necessary to protect the rights reserved by this section, including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate stream adjudication in the courts of the State of California in which the United States is or may be joined and which is conducted in accordance with the McCarraan Amendment, 43 U.S.C. 666.

"(c) Nothing in this Act shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of California on or before the date of enactment of this Act.

"(d) The federal water rights reserved by this Act are specific to the wilderness areas located in the State of California designated by this Act. Nothing in this Act related to the reserved federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made thereto."

Explanation: This amendment adds a new section regarding water rights in wilderness.

16. On page 37, line 11, delete "February 1986" and insert in lieu thereof "September 1990"

Explanation: This amendment modifies the Mojave National Park to exclude Interstate 15 and adjacent utility corridor.

17. On page 47, line 24, after the word "parks" insert "designated by this Act"

Explanation: Technical amendment.

18. On page 50, line 17, insert a new section as follows:

"FEE LANDS AND RIGHTS OF THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

"SEC. 608. Nothing in this Act shall affect the lands and rights granted to the Metropolitan Water District of Southern Califor-

nia pursuant to the Act of June 18, 1932 (47 Stat. 324) or any rights to use public and reserved lands of the United States obtained by Metropolitan pursuant to the Boulder Canyon Project Act (43 U.S.C. 617-619b): Provided, That none of the lands designated as wilderness or included in the national park system by this Act shall be granted to Metropolitan pursuant to the Act of June 18, 1932, nor shall the use of such lands be granted to Metropolitan pursuant to the Boulder Canyon Project Act after the date of enactment of this Act."

Explanation: This amendment clarifies that the lands and rights already obtained by the Metropolitan Water District of Southern California pursuant to the Act of June 18, 1932 and the Boulder Canyon Act are not affected by this Act and removes the 1928 and 1932 acts as a basis for Metropolitan to claim additional rights to lands designated as parks and wilderness by this Act.

19. On page 51, strike line 8 and all that follows through line 14 and insert a new section as follows:

"SEC. 702. Nothing in this Act shall preclude low level overflights of military aircraft, the designation of new units of special airspace, or the use or establishment of military flight training routes over the new units of the National Park or Wilderness Preservation Systems (or any additions to existing units) designated by this Act."

Explanation: This amendment modifies the military overflight language in response to DOD concerns.

S. 21

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SEC. 2. (a) The Congress finds and declares that—

(1) the federally owned desert lands of Southern California constitute a public wildland resource of extraordinary and inestimable value for this and future generations;

(2) these desert wildlands display unique scenic, historical, archeological, environmental, ecological, wildlife, cultural, scientific, educational, and recreational values used and enjoyed by millions of Americans for hiking and camping, scientific study and scenic appreciation;

(3) the public land resources of the California desert now face and are increasingly threatened by adverse pressures which would impair, dilute, and destroy their public and natural values;

(4) the California desert, embracing wilderness lands, units of the National Park System, other federal lands, state parks and other state lands, and private lands, constitutes a cohesive unit posing unique and difficult resource protection and management challenges;

(5) through designation of national monuments by Presidential proclamation, through enactment of general public land statutes (including section 601 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 43 U.S.C. 1701 et seq.) and through interim administrative actions, the federal government has begun the process of appropriately providing for protection of the significant resources of the public lands in the California desert; and

(6) statutory land unit designations are needed to afford the full protection which the resources and public land values of the California desert merit.

(b) In order to secure for the American people of this and future generations an enduring heritage of wilderness, national parks, and public land values in the California desert, it is hereby declared to be the policy of the Congres that—

(1) appropriate public lands in the California desert shall be included within the National Park System and the National Wilderness Preservation System, in order to—

(A) preserve unrivaled scenic, geologic, and wildlife values associated with these unique natural landscapes;

(B) perpetuate in their natural state significant and diverse ecosystems of the California desert;

(C) protect and preserve historical and cultural values of the California desert associated with ancient Indian cultures, patterns of western exploration and settlement, and sites exemplifying the mining, ranching and railroading history of the Old West;

(D) provide opportunities for compatible outdoor public recreation, protect and interpret ecological and geological features, and historic, paleontological, and archeological sites, maintain wilderness resource values, and promote public understanding and appreciation of the California desert; and

(E) retain and enhance opportunities for scientific research in undisturbed ecosystems.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(a) The term "Secretary", unless specifically designated otherwise, means the Secretary of the Interior.

(b) The term "public lands" means any land and interest in land owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management.

TITLE I—WILDERNESS ADDITIONS

FINDINGS

SEC. 101. The Congress finds and declares that—

(1) wilderness is a distinguishing characteristic of the public lands in the California desert, one which affords an unrivaled opportunity for experiencing vast areas of the Old West essentially unaltered by man's activities, and which merits preservation for the benefit of present and future generations;

(2) the wilderness values of desert lands are increasingly threatened by and especially vulnerable to impairment, alteration, and destruction by activities and intrusions associated with incompatible use and development; and

(3) preservation of desert wilderness necessarily requires the highest forms of protective designation and management.

DESIGNATION OF WILDERNESS

SEC. 102. In furtherance of the purposes of the Wilderness Act of 1964 (78 Stat. 890, 16 U.S.C. 1131 et seq.), and sections 601 and 603 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743, 43 U.S.C. 1701 et seq.), the following lands in the State of California, as generally depicted on maps, appropriately referenced, dated February 1966, (except as otherwise dated) are hereby designated as wilderness, and therefore, as components of the National Wilderness Preservation System—

(1) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seventy-four thousand eight hundred ninty acres, as generally depicted on a map entitled "Argus Range Wilderness—Proposed", dated January 1989, and which shall be known as the Argus Range Wilderness;

(2) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately ten thousand eight hundred seventy acres, as generally depicted on a map entitled "Bigelow Cholla Garden Wilderness—Proposed", and which shall be known as the Bigelow Cholla Garden Wilderness;

(3) certain lands in the California Desert Conservation Area, of the Bureau of Land Management and within the San Bernadino National Forest, which comprise approximately thirty-three thousand eight hundred acres, as generally depicted on a map entitled "Bighorn Mountain Wilderness—Proposed", and which shall be known as the Bighorn Mountain Wilderness;

(4) certain lands in the California Desert Conservation Area and the Yuma District, of the Bureau of Land Management, which comprise approximately forty-seven thousand five hundred seventy acres, as generally depicted on a map entitled "Big Maria Mountains Wilderness—Proposed", and which shall be known as the Big Maria Mountains Wilderness;

(5) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise thirteen thousand nine hundred forty acres, as generally depicted on a map entitled "Black Mountain Wilderness—Proposed", and which shall be known as the Black Mountain Wilderness;

(6) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seven thousand two hundred acres, as generally depicted on a map entitled "Blackwater Well Wilderness—Proposed", and which shall be known as the Blackwater Well Wilderness;

(7) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately nine thousand five hundred twenty acres, as generally depicted on a map entitled "Bright Star Wilderness—Proposed", dated January 1989, and which shall be known as the Bright Star Wilderness;

(8) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty-two thousand six hundred forty acres, as generally depicted on a map entitled "Cadiz Dunes Wilderness—Proposed", and which shall be known as the Cadiz Dunes Wilderness;

(9) certain lands in the California Desert Conservation Area, of the Bureau of Land Mangaement, which comprise approximately eighty-five thousand nine hundred fifty acres, as generally depcited on a map entitled "Cady Mountains Wildernesss—Proposed", dated September 1990, and which shall be known as the Cady Mountains Wilderness; Provided, That the Secretary may pursuant to an application filed by the Department of Defense, grant a right-of-way, and authorize construction, use, and maintenance of, an unpaved corridor not to exceed 100 meters in width within the area depicted as "nonwilderness road corridor" on the map entitled "Cady Mountain Wilderness—Proposed", if this route is determined to be otherwise the most feasible route as part of a corridor linking Marine Corps Air Ground Combat Center, Twentynine Palms and the National Training Center, Fort Irwin;

(10) certain lands in the California Desert Conservation Area and Eastern San Diego County, of the Bureau of Land Management, which comprise approximately fifteen thou-

sand seven hundred acres, as generally depicted on a map entitled "Carrizo Gorge Wilderness—Proposed", dated September 1990, and which shall be known as the Carrizo Gorge Wilderness;

(11) certain lands in the California Desert Conservation Area and Yuma District, of the Bureau of Land Management and within the Havasu National Wildlife Refuge, which comprise approximately sixty-eight thousand three hundred acres, as generally depicted on a map entitled "Chemehuevi Mountains Wilderness—Proposed", and which shall be known as the Chemehuevi Mountains Wilderness;

(12) certain lands in the Bakersfield District, of the Bureau of Land Management, which comprise approximately ten thousand seven hundred acres, as generally depicted on a map entitled "Chimney Peak Wilderness—Proposed", dated September 1990, and which shall be known as the Chimney Peak Wilderness;

(13) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately one hundred sixty-three thousand nine hundred fifty acres, as generally depicted on a map entitled "Chuckwalla Mountains Wilderness—Proposed", dated January 1989, and which shall be known as the Chuckwalla Mountains Wilderness;

(14) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise fifty thousand six hundred sixty acres, as generally depicted on a map entitled "Cleghorn Lakes Wilderness—Proposed", and which shall be known as the Cleghorn Lakes Wilderness: Provided, That the Secretary may pursuant to an application filed by the Department of Defense, grant a right-of-way for, and authorize construction of, a road within the area depicted as "non-wilderness road corridor" on the map entitled "Cleghorn Lakes Wilderness—Proposed";

(15) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty thousand acres, as generally depicted on a map entitled "Clipper Mountains Wilderness—Proposed", dated January 1989, and which shall be known as Clipper Mountains Wilderness;

(16) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately fifty thousand eight hundred twenty acres, as generally depicted on a map entitled "Coso Range Wilderness—Proposed", and which shall be known as Coso Range Wilderness;

(17) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately eighteen thousand six hundred acres, as generally depicted on a map entitled "Coyote Mountains Wilderness—Proposed", and which shall be known as the Coyote Mountains Wilderness;

(18) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately eight thousand six hundred forty acres, as generally depicted on a map entitled "Darwin Falls Wilderness—Proposed", and which shall be known as the Darwin Falls Wilderness;

(19) certain lands in the California Desert Conservation Area and the Yuma District, of the Bureau of Land Management, which comprise approximately forty-nine thousand six hundred eighty acres, as generally depicted on a map entitled "Dead Mountains Wilderness—Proposed", dated January 1989, and which shall be known as the Dead Mountains Wilderness;

(20) certain lands in the Bakersfield District, of the Bureau of Land Management, which comprise approximately thirty-six thousand three hundred acres, as generally depicted on a map entitled "Domelands Wilderness Additions—Proposed", dated January 1989, and which are hereby incorporated in, and which shall be deemed to be a part of the Domeland Wilderness as designated by Public Laws 93-632 and 98-425;

(21) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately sixteen thousand one hundred acres, as generally depicted on a map entitled "El Paso Mountains Wilderness—Proposed", and which shall be known as the El Paso Mountains Wilderness;

(22) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately twenty-six thousand three hundred acres, as generally depicted on a map entitled "Fish Creek Mountains Wilderness—Proposed", dated January 1989, and which shall be known as the Fish Creek Mountains Wilderness;

(23) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately ten thousand two hundred forty acres, as generally depicted on a map entitled "Frog Creek Wilderness—Proposed", and which shall be known as the Frog Creek Wilderness;

(24) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-four thousand five hundred ten acres, as generally depicted on a map entitled "Funeral Mountains Wilderness—Proposed", and which shall be known as the Funeral Mountains Wilderness;

(25) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-seven thousand seven hundred acres, as generally depicted on a map entitled "Golden Valley Wilderness—Proposed", and which shall be known as the Golden Valley Wilderness;

(26) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seventy thousand two hundred forty acres, as generally depicted on a map entitled "Granite Mountains Wilderness—Proposed", dated January 1987, and which shall be known as the Granite Mountains Wilderness;

(27) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-one thousand seven hundred twenty acres, as generally depicted on a map entitled "Grass Valley Wilderness—Proposed", and which shall be known as the Grass Valley Wilderness;

(28) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately eight thousand eight hundred acres, as generally depicted on a map entitled "Great Falls Basin Wilderness—Proposed", and which shall be known as the Great Falls Basin Wilderness;

(29) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately twenty-two thousand two hundred forty acres, as generally depicted on a map entitled "Hollow Hills Wilderness—Proposed", dated January 1989, and which shall be known as the Hollow Hills Wilderness;

(30) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately twenty-eight thousand two hundred sixty acres, as generally depicted on a map entitled "Ibex Wilderness—Proposed", and which shall be known as the Ibex Wilderness;

(31) certain lands in the California Desert Conservation Area, of the Bureau of Land Management and the Imperial National Wildlife Refuge, which comprise approximately thirty-nine thousand one hundred twenty acres, as generally depicted on a map entitled "Indian Pass Wilderness—Proposed", and which shall be known as the Indian Pass Wilderness;

(32) certain lands in the California Desert Conservation Area and the Bakersfield District, of the Bureau of Land Management and within the Inyo National Forest, which comprise approximately two hundred five thousand sixty acres, as generally depicted on a map entitled "Inyo Mountains Wilderness—Proposed", dated January 1989, and which shall be known as the Inyo Mountains Wilderness;

(33) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-five thousand one hundred sixty acres, as generally depicted on a map entitled "Jacumba Wilderness—Proposed", dated January 1989, and which shall be known as the Jacumba Wilderness;

(34) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately one hundred twenty-nine thousand eight hundred twenty acres, as generally depicted on a map entitled "Kelso Dunes Wilderness—Proposed", dated January 1989, and which shall be known as the Kelso Dunes Wilderness;

(35) certain lands in the California Desert Conservation Area, of the Bureau of Land Management and the Sequoia National Forest, which comprise approximately eighty-eight thousand two hundred eighty acres, as generally depicted on a map entitled "Kiavah Wilderness—Proposed", and which shall be known as the Kiavah Wilderness;

(36) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately two hundred fifty thousand ten acres, as generally depicted on a map entitled "Kingston Range Wilderness—Proposed", dated January 1989, and which shall be known as the Kingston Range Wilderness;

(37) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty-nine thousand four hundred eighty acres, as generally depicted on a map entitled "Little Chuckwalla Mountains Wilderness—Proposed", dated January 1987, and which shall be known as the Little Chuckwalla Mountains Wilderness;

(38) certain lands in the California Desert Conservation Area and the Yuma District, of the Bureau of Land Management and within the Imperial National Wildlife Refuge, which comprise approximately thirty-nine thousand eight hundred sixty acres, as generally depicted on a map entitled "Little Picacho Wilderness—Proposed", and which shall be known as the Little Picacho Wilderness;

(39) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-three thousand two hundred forty acres, as generally depicted on a map enti-

tled "Malpais Mesa Wilderness—Proposed", dated January 1989, and which shall be known as the Malpais Mesa Wilderness;

(40) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately twenty-seven thousand one hundred acres, as generally depicted on a map entitled "Manly Peak Wilderness—Proposed", and which shall be known as the Manly Peak Wilderness;

(41) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-two thousand seven hundred twenty acres, as generally depicted on a map entitled "Mecca Hills Wilderness—Proposed", dated January 1989, and which shall be known as the Mecca Hills Wilderness;

(42) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty-seven thousand three hundred thirty acres, as generally depicted on a map entitled "Mesquite Wilderness—Proposed", dated January 1989, and which shall be known as the Mesquite Wilderness;

(43) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately eleven thousand three hundred acres, as generally depicted on a map entitled "Middle Park Canyon Wilderness—Proposed" and which shall be known as the Middle Park Canyon Wilderness;

(44) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately twenty-two thousand nine hundred acres, as generally depicted on a map entitled "Newberry Mountains Wilderness—Proposed", and which shall be known as the Newberry Mountains Wilderness;

(45) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately one hundred ten thousand eight hundred eighty acres, as generally depicted on a map entitled "Nopah Range Wilderness—Proposed", and which shall be known as the Nopah Range Wilderness;

(46) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-one thousand forty acres, as generally depicted on a map entitled "North Algodones Dunes Wilderness—Proposed", dated January 1987, and which shall be known as the North Algodones Dunes Wilderness;

(47) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately ten thousand acres, as generally depicted on a map entitled "North Coso Range Wilderness—Proposed", and which shall be known as the North Coso Range Wilderness;

(48) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately twenty-six thousand eight hundred forty acres, as generally depicted on a map entitled "North Mesquite Mountains Wilderness—Proposed", dated January 1989, and which shall be known as the North Mesquite Mountains Wilderness;

(49) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately one hundred forty-six thousand one hundred ten acres, as generally depicted on a map entitled "Old Woman Mountains Wilderness—Proposed", and which shall be known as the Old Woman Mountains Wilderness;

(50) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately fifty-seven thousand five hundred acres, as generally depicted on a map entitled "Orocopia Mountains Wilderness—Proposed", dated January 1989, and which shall be known as the Orocopia Mountains Wilderness;

(51) certain lands in the California Desert Conservation Area and the Bakersfield District, of the Bureau of Land Management, which comprise approximately seventy-five thousand six hundred forty acres, as generally depicted on a map entitled "Owens Peak Wilderness—Proposed", dated January 1987, and which shall be known as the Owens Park Wilderness;

(52) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seventy-four thousand eight hundred acres, as generally depicted on a map entitled "Pahrump Valley Wilderness—Proposed", and which shall be known as the Pahrump Valley Wilderness;

(53) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately two hundred fourteen thousand four hundred twenty acres, as generally depicted on a map entitled "Palen/McCoy Wilderness—Proposed", and which shall be known as the Palen/McCoy Wilderness;

(54) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-two thousand three hundred twenty acres, as generally depicted on a map entitled "Palo Verde Mountains Wilderness—Proposed", dated January 1987, and which shall be known as the Palo Verde Mountains Wilderness;

(55) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seven thousand three hundred acres, as generally depicted on a map entitled "Picacho Peak Wilderness—Proposed", dated January 1989, and which shall be known as the Picacho Peak Wilderness;

(56) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty-one thousand six hundred eighty acres, as generally depicted on a map entitled "Pinto Mountains Wilderness—Proposed", and which shall be known as the Pinto Mountains Wilderness;

(57) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seventy-two thousand six hundred acres, as generally depicted on a map entitled "Piper Mountain Wilderness—Proposed", dated January 1989, and which shall be known as Piper Mountain Wilderness;

(58) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-nine thousand forty acres, as generally depicted on a map entitled "Piute Mountains Wilderness—Proposed", dated January 1989, and which shall be known as Piute Mountains Wilderness;

(59) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seventy-eight thousand eight hundred eighty acres, as generally depicted on a map entitled "Resting Spring Range Wilderness—Proposed", dated January 1989, and which shall be known as the Resting Spring Range Wilderness;

(60) certain lands in this California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty thousand six hundred and seventy acres, as generally depicted on a map entitled "Rice Valley Wilderness—Proposed", dated September 1990, and which shall be known as the Rice Valley Wilderness;

(61) certain lands in the California Desert Conservation Area and the Yuma District, of the Bureau of Land Management, which comprise approximately twenty-four thousand one hundred acres, as generally depicted on a map entitled "Riverside Mountains Wilderness—Proposed", and which shall be known as the Riverside Mountains Wilderness;

(62) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty thousand one hundred acres, as generally depicted on a map entitled "Rodman Mountains Wilderness—Proposed", dated January 1989, and which shall be known as the Rodman Mountains Wilderness;

(63) certain lands in the California Desert Conservation Area and the Bakersfield District, of the Bureau of Land Management, which comprise approximately fifty-two thousand six hundred acres, as generally depicted on a map entitled "Sacatar Trail Wilderness—Proposed", dated January 1987, and which shall be known as the Sacatar Trail Wilderness;

(64) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately fourteen thousand eight hundred acres, as generally depicted on a map entitled "Saddle Peak Hills Wilderness—Proposed", and which shall be known as the Saddle Peak Hill Wilderness;

(65) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-three thousand five hundred acres, as generally depicted on a map entitled "San Gorgonio Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the San Gorgonio Wilderness as designated by Public Laws 88-577 and 98-425;

(66) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately fifty-three thousand two hundred forty acres, as generally depicted on a map entitled "Santa Rosa Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the Santa Rosa Wilderness designated by Public Law 98-425;

(67) certain lands in the California Desert district, of the Bureau of Land Management, which comprise approximately thirty-five thousand four hundred acres, as generally depicted on a map entitled "Sawtooth Mountains Wilderness—Proposed", and which shall be known as the Sawtooth Mountains Wilderness;

(68) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately one hundred seventy-seven thousand acres, as generally depicted on a map entitled "Sheephole Valley Wilderness—Proposed", and which shall be known as the Sheephole Valley Wilderness;

(69) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately sixty-nine thousand seven hundred forty acres, as generally depicted on a map entitled "Slate Range Wilderness—Proposed", dated September 1990, and which shall be known as the Slate Range Wilderness;

(70) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately sixty-one thousand nine hundred fifty acres, as generally depicted on a map entitled "South Algodoness Dunes Wilderness—Proposed", dated Jaunary 1989, and which shall be known as the South Algodoness Dunes Wilderness;

(71) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seven hundred eighty acres, as generally depicted on a map entitled "South Nopah Range Wilderness—Proposed", and which shall be known as the South Nopah Range Wilderness;

(72) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seven thousand fifty acres, as generally depicted on a map entitled "Stateline Wilderness—Proposed", dated September 1990, and which shall be known as the Stateline Wilderness;

(73) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately eighty-one thousand six hundred acres, as generally depicted on a map entitled "Stepladder Mountains Wilderness—Proposed", and which shall be known as the Stepladder Mountains Wilderness;

(74) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty-seven thousand six hundred forty acres, as generally depicted on a map entitled "Surprise Canyon Wilderness—Proposed", and which shall be known as the Surprise Canyon Wilderness;

(75) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seventeen thousand eight hundred twenty acres, as generally depicted on a map entitled "Sylvania Mountains Wilderness—Proposed", and which shall be known as the Sylvania Mountains Wilderness;

(76) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-three thousand seven hundred twenty acres, as generally depicted on a map entitled "Trilobite Wilderness—Proposed", dated January 1989, and which shall be known as the Trilobite Wilderness;

(77) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately one hundred forty-four thousand five hundred acres, as generally depicted on a map entitled "Turtle Mountains Wilderness—Proposed", and which shall be known as the Turtle Mountains Wilderness; and

(78) certain lands in the California Desert Conservation Area and the Yuma District, of the Bureau of Land Management, which comprise approximately seventy-five thousand five hundred acres, as generally depicted on a map entitled "Whipple Mountains Wilderness—Proposed", and which shall be known as the Whipple Mountains Wilderness.

ADMINISTRATION OF WILDERNESS AREAS

SEC. 103. Subject to valid existing rights, each wilderness area designated under this title shall be administered by the appropriate Secretary in accordance with the provisions of the Wilderness Act: Provided, That any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this title and any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary who has administrative jurisdiction over the area.

FILING OF MAPS AND DESCRIPTIONS

SEC. 104. As soon as practicable after enactment of this title, a map and a legal description on each wilderness area designated under this title shall be filed by the Secretary concerned with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the House of Representatives, and each such map and description shall have the same force and effect as if included in this title: Provided, That correction of clerical and typographical errors in each such legal description and map may be made. Each such map and legal description shall be on file and available for public inspection in the office of the Director of the Bureau of Land Management, Department of the Interior, or the Chief of the Forest Service, Department of Agriculture, as is appropriate.

WILDERNESS REVIEW

SEC. 105. (a) The Congress hereby finds and directs that lands in the California Desert Conservation Area, of the Bureau of Land Management not designated as wilderness or wilderness study areas by this Act except for CDCA 242, CDCA 221A, and CDCA 221 have been adequately studied for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act (90 Stat. 2743, 43 U.S.C. 1701 et seq.), and are no longer subject to the requirement of section 603(c) of the Federal Land Policy and Management Act pertaining to the management of wilderness study areas in a manner that does not impair the suitablility of such areas for preservation as wilderness.

(b) Subject to valid existing rights, the federal lands identified as CDCA 242, CDCA 221 A, and CDCA 221 are hereby withdrawn from disposition under the public land laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from operation of the Geothermal Steam Act of 1970.

DESIGNATION OF WILDERNESS STUDY AREA

SEC. 106. In furtherance of the provisions of the Wilderness Act of 1964, certain lands in the California Desert Conservation Area of the Bureau of Land Management which comprise eleven thousand two hundred acres as generally depicted on a map entitled "White Mountains Wilderness Study Area—Proposed", dated January 1989, are hereby designated the White Mountains Wilderness Study Area and shall be administed by the Secretary of the Interior in accordance with the provisions of section 603(c) of the Federal Land Policy and Management Act.

GRAZING

SEC. 107. Within the wilderness areas designated by this Act, the grazing of livestock, where established prior to the enactment of this Act, shall be permitted to continue subject to such reasonable regulations, policies and practices as the Secretary deems necessary, as long as such regulations, policies and practices fully conform with and implement the intent of Congress regarding grazing in such areas as such intent is expressed in the Wilderness Act and section 108 of Public Law 96-560 (16 U.S.C. 1133 note).

BUFFER ZONES

SEC. 108. The Congress does not intend for the designation of wilderness areas in section 102 of this Act to lead to the creation of protective perimeters or buffer zones around any such wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

WATER RIGHTS

SEC. 109. (a) With respect to each wilderness area designated by this Act, Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this Act. The priority date of such reserved water rights shall be the date of enactment of this Act.

(b) The Secretary and all other officers of the United States shall take all steps necessary to protect the rights reserved by this section, including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate stream adjudication in the courts of the State of California in which the United States is or may be joined and which is conducted in accordance with the McCarraan Amendment, 43 U.S.C. 666.

(c) Nothing in this Act shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of California on or before the date of enactment of this Act.

(d) The federal water rights reserved by this Act are specific to the wilderness areas located in the State of California designated by this Act. Nothing in this Act related to the reserved federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made thereto.

TITLE II—DEATH VALLEY NATIONAL PARK

FINDINGS

SEC. 201. The Congress hereby finds that—

(1) proclamations by Presidents Herbert Hoover in 1933 and Franklin Roosevelt in 1937 established and expanded the Death Valley National Monument for the preservation of the unusual features of scenic, scientific, and educational interest therein contained;

(2) Death Valley National Monument is today recognized as major unit of the National Park System, having extraordinary values enjoyed by millions of visitors;

(3) the Monument boundaries established in the 1930's exclude and thereby expose to incompatible development and inconsistent management, contiguous federal lands of essential and superlative natural, ecological, geological, archeological, paleontological, cultural, historical and wilderness values;

(4) Death Valley National Monument should be substantially enlarged by the addition of all contiguous federal lands of national park caliber, and afforded full recognition and statutory protection as a national park; and

(5) the wilderness with Death Valley should receive maximum statutory protection by designation pursuant to the Wilderness Act.

ESTABLISHMENT OF DEATH VALLEY NATIONAL PARK

SEC. 202. There is hereby established the Death Valley National Park, as generally depicted on a map entitled "Death Valley National Park", dated February 1986, which shall be on file and available for public inspection in the offices of the Superintendent of the Park and the Director of the National Park Service, Department of the Interior. The Death Valley National Monument is hereby abolished as such, and the lands and interests therein are hereby incorporated within and made part of the new Death Valley National Park.

TRANSFER AND ADMINISTRATION OF LANDS

SEC. 203. Upon enactment of this title, the Secretary shall transfer the lands under the jurisdiction of the Bureau of Land Management depicted on the map described in section 202 of this title, without consideration, to the administrative jurisdiction of the Director of the National Park Service for administration as part of the National Park System. The boundaries of the public lands and the national parks shall be adjusted accordingly. The areas added to the National Park System by this title shall be administered in accordance with the provisions of law generally applicable to units of the National Park System.

MAPS AND LEGAL DESCRIPTION

SEC. 204. Within six months after the enactment of this title, the Secretary shall file a legal description of the park designated under this title with the Energy and Natural Resources Committee of the United States Senate and the Interior and Insular Affairs Committee of the House of Representatives. Such legal description shall have the same force and effect as if included in this title, except that the Secretary may correct clerical and typographical errors in such legal description and in the map referred to in section 202. The legal description shall be on file and available for public inspection in the offices of the Superintendent of the Park and the Director of the National Park Service, Department of the Interior.

DISPOSITION UNDER MINING LAWS

SEC. 205. Subject to valid existing rights, the federal lands and interests therein added to the park system by this title are withdrawn from disposition under the public land laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from operation of the Geothermal Steam Act of 1970.

STUDY AS TO VALIDITY OF MINING CLAIMS

SEC. 206. The Secretary shall not approve any plan of operation prior to determining the validity of any unpatented mining claims within the additions to the park system and submit to Congress recommendations as to whether any valid or patented claims should be acquired by the United States, including the estimated acquisition costs of such claims, and a discussion of the environmental consequences of the extraction of minerals from these lands.

TITLE III—JOSHUA TREE NATIONAL PARK

FINDINGS

SEC. 301. The Congress hereby finds that—

(1) a proclamation by President Franklin Roosevelt in 1936 established Joshua Tree National Monument to protect various objects of historical and scientific interest;

(2) Joshua Tree National Monument today is recognized as a major unit of the National Park System, having extraordinary values enjoyed by millions of visitors;

(3) the Monument boundaries as modified in 1950 and 1961 exclude and thereby expose to incompatible development and inconsistent management, contiguous federal lands essential and superlative natural, ecological, archeological, paleontological, cultural, historical and wilderness values;

(4) Joshua Tree National Monument should be enlarged by the addition of contiguous federal lands of national park caliber, and afforded full recognition and statutory protection as a national park; and

(5) the non-designated wilderness within Joshua Tree should receive maximum statutory protection by designation pursuant to the Wilderness Act.

ESTABLISHMENT OF JOSHUA TREE NATIONAL PARK

SEC. 302. There is hereby established the Joshua Tree National Park, as generally depicted on a map entitled "Joshua Tree National Park", dated January 1989, which shall be on file and available for public inspection in the offices of the Superintendent of the Park and the Director of the National Park Service, Department of the Interior. The Joshua Tree National Monument is hereby abolished as such, and the lands and interests therein are hereby incorporated within and made part of the new Joshua Tree National Monument.

TRANSFER AND ADMINISTRATION OF LANDS

SEC. 303. Upon enactment of this title, the Secretary shall transfer the lands under the jurisdiction of the Bureau of Land Management depicted on the map described in section 302 of this title, without consideration, to the administrative jurisdiction of the Director of the National Park Service for administration as part of the National Park System. The boundaries of the public lands and the national parks shall be adjusted accordingly. The areas added to the National Park System by this title shall be administered in accordance with the provisions of law generally applicable to units of the National Park System.

MAPS AND LEGAL DESCRIPTION

SEC. 304. Within six months after the enactment of this title, the Secretary shall file a legal description of the park designated by this title with the Energy and Natural Resources Committee of the United States Senate and the Interior and Insular Affairs Committee of the House of Representatives. Such legal description shall have the same force and effect as if included in this title, except that the Secretary may correct clerical and typographical errors in such legal description and in the map referred to in section 302. The legal description shall be on file and available for public inspection in the offices of the Superintendent of the Park and the Director of the National Park Service, Department of the Interior.

DISPOSITION UNDER MINING LAWS

SEC. 305. Subject to valid existing rights, federal lands and interests therein added to the park system by this title are withdrawn from disposition under the public lands laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from the operation of the Geothermal Steam Act of 1970.

STUDY AS TO VALIDITY OF MINING CLAIMS

SEC. 306. The Secretary shall not approve any plan of operation prior to determining the validity of any unpatented mining claims within the park and submit to Congress recommendations as to whether any valid or patented claims should be acquired by the United States, including the estimated acquisition costs of such claims, and a discussion of the environmental consequences of the extraction of minerals from these lands.

TITLE IV—MOJAVE NATIONAL PARK

FINDINGS

SEC. 401. The Congress hereby finds that—

(1) Death Valley and Joshua Tree National Parks, as established by this Act, protect unique and superlative desert resources, but do not embrace the particular ecosystems and transitional desert type found in the Mojave Desert area lying between them on public lands now afforded only impermanent administrative designation as a national scenic area;

(2) the Mojave Desert area possesses outstanding natural, cultural, historical, and recreational values meriting statutory designation and recognition as a unit of the National Park System;

(3) the Mojave Desert area should be afforded full recognition and statutory protection as a national park; and

(4) the wilderness within the Mojave Desert should receive maximum statutory protection by designation pursuant to the Wilderness Act.

ESTABLISHMENT OF THE MOJAVE NATIONAL PARK

SEC. 402. There is hereby established the Mojave National Park, comprising approximately one million five hundred thousand acres, as generally depicted on a map entitled "Mojave National Park", dated September 1990, which shall be on file and available for inspection in the offices of the Director of the National Park Service, Department of the Interior.

TRANSFER OF LANDS

SEC. 403. Upon enactment of this title, the Secretary shall transfer the lands under the jurisdiction of the Bureau of Land Management depicted on the map described in section 402 of this title, without consideration, to the administrative jurisdiction of the Director of the National Park Service. The boundaries of the public lands shall be adjusted accordingly.

MAPS AND LEGAL DESCRIPTION

SEC. 404. Within six months after the enactment of this title, the Secretary shall file a legal description of the park designated under this title with the Energy and Natural Resources Committee of the United States Senate and the Interior and Insular Affairs Committee of the House of Representatives. Such legal description shall have the same force and effect as if included in this title, except that the Secretary may correct clerical and typographical errors in such legal description and in the map referred to in section 402. The legal description shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

ABOLISHMENT OF SCENIC AREA

SEC. 405. The East Mojave National Scenic Area, designated on January 13, 1981 (46 FR 3994) and modified on August 9, 1983 (48 FR 36210), is hereby abolished.

ADMINISTRATION OF LANDS

SEC. 406. The Secretary shall administer the park in accordance with this title and with the provisions of law generally applicable to units of the National Park System, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1–4).

DISPOSITION UNDER MINING LAWS

SEC. 407. Subject to valid existing rights, federal lands within the park, and interests therein, are withdrawn from disposition under the public land laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from operation of the Geothermal Steam Act of 1970.

STUDY AS TO VALIDITY OF MINING CLAIMS

SEC. 408. The Secretary shall not approve any plan of operation prior to determining

the validity of any unpatented mining claims within the park and submit to Congress recommendations as to whether any valid or patented claims should be acquired by the United States, including the estimated acquisition costs of such claims, and a discussion of the environmental consequences of the extraction of minerals from these lands.

REGULATION OF MINING

SEC. 409. Subject to valid existing rights, all mining claims located within the park shall be subject to such reasonable regulations as the Secretary may prescribe to assure that mining will, to the maximum extent practicable, be consistent with the protection of the scenic, scientific, cultural and other resources of the park, and any patent which may be issued after the date of enactment of this title shall convey title only to the minerals together with the right to use the surface of lands for mining purposes subject to such reasonable regulations.

GRAZING RIGHTS

SEC. 410. The Secretary shall permit those persons holding currently valid grazing permits within the boundary of the park to continue to exercise such permits consistent with other applicable law: Provided, however, that upon expiration of the current term of such permits, the permits shall not be renewed.

UTILITY RIGHTS OF WAY

SEC. 411. Nothing in this title shall have the effect of terminating any validly issued right-of-way or right-of-use within the boundary of the park issued, granted, or permitted for

(a) systems for transmission or distribution of electric energy,

(b) pipelines for the transmission or distribution of natural gas or oil, and

(c) communication cables or lines.

PREPARATION OF MANAGEMENT PLAN

SEC. 412. Within three years of the date of enactment of this title, the Secretary shall submit to the Energy and Natural Resources Committee of the United States Senate and the Interior and Insular Affairs Committee of the House of Representatives a detailed and comprehensive management plan for the park. Such plan shall place emphasis on historical and cultural sites and ecological and wilderness values within the boundaries of the park and shall evaluate the feasibility of using the Kelso Depot and existing railroad corridor to provide public access to and a facility for special interpretive, educational and scientific programs within the park.

GRANITE MOUNTAINS NATURAL RESERVE

SEC. 413. (a) There is hereby designated the Granite Mountains Natural Reserve within the park comprising approximately 9,000 acres as generally depicted on a map entitled "Granite Mountains Natural Reserve", dated January 1989.

(b) Upon enactment of this title, the Secretary shall enter into a cooperative management agreement with the University of California for the purposes of managing the lands within the Granite Mountains Natural Reserve. Such cooperative agreement shall ensure continuation of arid lands research and educational activities of the University of California, consistent with the provisions of law generally applicable to units of the National Park System.

CONSTRUCTION OF VISITOR CENTER

SEC. 414. The Secretary is authorized to construct a visitor center in the park for the purpose of providing information through appropriate displays, printed material, and other interpretive programs, about the resources of the park.

ACQUISITION OF LANDS

SEC. 415. The Secretary is authorized to acquire all lands and interest in lands within the boundary of the park by donation, purchase, or exchange, except that—

(1) any lands or interests therein within the boundary of the park which are owned by the State of California, or any political subdivision thereof, may be acquired only by donation or exchange; and

(2) lands of interests therein within the boundary of the park which are not owned by the State of California or any political subdivision thereof may be acquired only with the consent of the owner thereof unless the Secretary determines, after written notice to the owner and after opportunity for comment, that the property is being developed, or proposed to be developed, in a manner which is detrimental to the integrity of the park or which is otherwise incompatible with the purposes of this title.

AUTHORIZATION OF APPROPRIATIONS

SEC. 417. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE V—NATIONAL PARK WILDERNESS

DESIGNATION OF WILDERNESS

SEC. 501. The following lands are hereby designated as wilderness in accordance with section (3) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1132(c)) and shall be administered by the Secretary of the Interior in accordance with the applicable provisions of the Wilderness Act.

(1) Death Valley National Park Wilderness, comprising approximately three million one hundred fifty-nine thousand seven hundred twenty acres, and potential wilderness additions comprising approximately twenty thousand four hundred acres, as generally depicted on a map entitled "Death Valley National Park Wilderness—Proposed", dated January 1987, and which shall be known as the Death Valley Wilderness;

(2) Joshua Tree National Park Wilderness Additions, comprising approximately one hundred thirty-three thousand five hundred acres, as generally depicted on a map entitled "Joshua Tree National Park Wilderness Additions—Proposed", dated January 1989, and which are hereby incorporated in, and which shall be deemed to be a part of the Joshua Tree Wilderness as designated by Public Law 94-567; and

(3) Mojave National Park Wilderness, comprising approximately seven hundred forty-seven thousand nine hundred forty acres, as generally depicted on a map entitled "Mojave National Park Wilderness—Proposed", dated January 1989, and which shall be known as the Mojave Wilderness.

FILING OF MAPS AND DESCRIPTIONS

SEC. 502. A map and description of the boundaries of the areas designated in section 501 of this title shall be on file and available for public inspection in the Office of the Director of the National Park Service, Department of the Interior, and in the Office of the Superintendent of each area designated in section 501. As soon as practicable after this title takes effect, maps of the wilderness areas and descriptions of their boundaries shall be filed with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the House of Representatives, and such maps and descriptions shall have the same force and effect as if included in this title: Provided, That correction of clerical and typographical errors in such maps and descriptions may be made.

CESSATION OF CERTAIN USES

SEC. 503. Any lands (in section 501 of this title) which represent potential wilderness additions upon publication in the Federal Register of a notice by the Secretary that all uses thereon prohibited by the Wilderness Act have ceased, shall thereby be designated wilderness. Lands designated as potential wilderness additions shall be managed by the Secretary of the Interior insofar as practicable as wilderness until such time as said lands are designated as wilderness.

ADMINISTRATION OF WILDERNESS AREAS

SEC. 504. The areas designated by section 501 of this title as wilderness shall be administered by the Secretary in accordance with the applicable provisions of the Wilderness Act governing areas designated by that title as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this title, and where appropriate, and reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

TITLE VI—MISCELLANEOUS PROVISIONS

TRANSFER OF LANDS TO RED ROCK CANYON STATE PARK

SEC. 601. Upon enactment of this title, the Secretary shall transfer to the State of California certain lands within the California Desert Conservation Area, California, of the Bureau of Land Management, comprising approximately twenty thousand five hundred acres, as generally depicted on a map entitled "Red Rock Canyon State Park Additions", dated February 1986, for inclusion in the State of California Park System. Should the State of California cease to manage these lands as part of the state park system, ownership of the lands shall revert to the Department of the Interior to be managed as part of the California Desert Conservation Area to provide maximum protection for the area's scenic and scientific values.

DESERT LILY SANCTUARY

SEC. 602. (a) There is hereby established the Desert Lily Santuary within the California Desert Conservation Area, California, of the Bureau of Land Management, comprising approximately two thousand forty acres, as generally depicted on a map entitled "Desert Lily Sanctuary", dated February 1986. The Secretary shall administer the area to provide maximum protection to the desert lily.

(b) Subject to valid existing rights, federal lands within the sanctuary, and interests therein, are withdrawn from disposition under the public land laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from operation of the Geothermal Steam Act of 1970.

INDIAN CANYONS NATIONAL HISTORIC SITE

SEC. 603. (a) There is hereby established the Indian Canyons National Historic Site, comprising approximately four hundred ninety acres, as generally depicted on a map entitled "Indian Canyons National Historic Site", dated February 1986.

(b) Upon enactment of this title, the Secretary of the Interior shall enter into negotiations to acquire by exchange the privately owned lands or interests therein within the national historic site designated by subsection (a). The value of the properties so exchanged either shall be equal or, if they are not equal, the values shall be equalized by

the payment of cash to the grantor or to the Secretary as the circumstances require.

(c) The Secretary shall enter into a cooperative management agreement with the Aqua Caliente Band of Cahuilla Indians for the purposes of managing the Indian Canyons National Historic Site. Upon execution of the management agreement, the Secretary shall transfer title of the land to be held in trust for the Aqua Caliente Band of Cahuilla Indians as part of the Aqua Caliente Indian Reservation and such transfer shall remain effective so long as the agreement remains in force and in effect.

LAND TENURE ADJUSTMENTS

SEC. 604. In preparing land tenure adjustment decisions within the California Desert Conservation Area, of the Bureau of Land Management, the Secretary shall give priority to consolidating federal ownership within the national park units and wilderness areas designated by this Act.

STATE EXCHANGES

SEC. 605. (a) Upon the request of the State of California and pursuant to the provisions of this section, the Secretary shall exchange public lands or interests in lands elsewhere in the State of California of approximately equal value and selected by the State of California, acting through the State Lands Commission, for any lands or interests therein owned by the State located within the boundaries of the wilderness or the parks designated pursuant to this Act which the State wishes to exchange with the United States.

(b) Within six months from the date of enactment of this Act, the Secretary shall notify the Chairman of the State Lands Commission what state lands or interests therein are within the wilderness areas and national park units designated by this Act. The notice shall contain a listing of all public lands or interests therein within the boundaries of the State of California which have not been withdrawn from entry and which the Secretary, pursuant to the provisions of section 202 and 206 of the Federal Land Policy and Management Act of 1976, has identified as appropriate for transfer to the State in exchange for state lands. Such listing shall be updated at least annually.

(c) If the Chairman of the State Lands commission gives notice to the Secretary of the state's desire to obtain public lands so listed, the Secretary shall notify the Chairman in writing whether the Department of the Interior considers the state lands within the wilderness areas and national park units to be of equal value to the list of lands the chairman has indicated the State wishes to obtain. It is the sense of the Congress that the exchange of lands and interests therein with the State pursuant to this section should be completed within two years after the date of enactment of this Act.

MINERAL EXCHANGES

SEC. 606. (a) The Secretary is authorized to exchange the federal mineral interests in lands within the State of California for private mineral interests in lands located within the boundaries of the wilderness areas and national park units designated by this Act if—

(1) the owner of such private mineral interests has made available to the Secretary all information requested by the Secretary as to the respective values of the private and federal mineral interests to be exchanged; and

(2) on the basis of information obtained pursuant to paragraph (1) and any other information available, the Secretary has determined that the mineral interests to be exchanged are of approximately equal value; and

(3) the Secretary has determined—

(A) that except insofar as otherwise provided in this section, the exchange is not inconsistent with the Federal Land Policy and Management Act of 1976; and

(B) that the exchange is in the public interest.

(b) The Secretary shall file a legal description of the mineral interest areas exchanged pursuant to this section with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal description. The legal descrition shall be on file and available for public inspection in the offices of the Director of the Bureau of Land Management, Department of the Interior.

(c) It is the sense of the Congress that all exchanges pursuant to this section shall be completed no later than three years after the date of enactment of this Act.

NATIVE AMERICAN USES

SEC. 607. In recognition of the past use of the parks and wilderness areas by Indian people for traditional cultural and religious purposes, the Secretary shall insure nonexclusive access to the parks and wilderness areas by Indian people for such traditional cultural and religious purposes. Such access shall be consistent with the purpose and intent of the American Indian Religious Freedom Act of August 11, 1978 (42 U.S.C. 1996).

FEE LANDS AND RIGHTS OF THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

SEC. 608. Nothing in this Act shall affect the land and rights granted to the Metropolitan Water District of Southern California pursuant to the Act of June 18, 1932 (47 Stat. 324) or any rights to use public and reserved lands of the United States obtained by Metropolitan pursuant to the Boulder Canyon Project Act (43 U.S.C. 617-619b): Provided, That none of the lands designated as wilderness or included in the national park system by this Act shall be granted to Metropolitan pursuant to the Act of June 18, 1932, nor shall the use of such lands be granted to Metropolitan pursuant to the Boulder Canyon Project Act after the date of enactment of this Act.

TITLE VII—MILITARY ACTIVITIES

MILITARY OVERFLIGHTS

SEC. 701. The Congress hereby finds that—

(1) The national parks and wilderness areas designated by this Act lie within a region critical to providing training, research, and development for the Armed Forces of the United States and its allies;

(2) there is a lack of alternative sites available for these military training, testing and research activities;

(3) continued use of lands and airspace in the California desert region is essential for military purposes; and

(4) these military activities in the California desert have not impaired the natural and cultural values of the areas designated as parks and wilderness by this Act.

SEC. 702. Nothing in this Act shall preclude low level overflights of military aircraft, the designation of new units of special airspace, or the use or establishment of military flight training routes over the new units of the National Park or Wilderness Preservation Systems (or any additions to existing units) designated by this Act.

MILITARY WITHDRAWALS

SEC. 703. (a) CHINA LAKE. (1) Subject to valid existing rights and except as otherwise provided in this title, the Federal lands referred to in paragraph (2), and all other areas within the boundary of such lands as depicted on the map specified in such paragraph which may become subject to the operation of the public land laws, are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing laws). Such lands are reserved for use by the Secretary of the Navy for—

(A) use as a research, development, test, and evaluation laboratory;

(B) use as a range for air warfare weapons and weapon systems;

(C) use as a high hazard training area for aerial gunnery, rocketry, electronic warfare and countermeasures, tactical maneuvering and air support; and

(D) subject to the requirements of section 4(f), other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) are the Federal lands, located within the boundaries of the China Lake Naval Weapons Center, comprising approximately 1,100,000 acres in Inyo, Kern, and San Bernardino Counties, California, as generally depicted on a map entitled "China Lake Naval Weapons Center Withdrawal—Proposed", dated January 1985, and filed in accordance with section 704.

(b) CHOCOLATE MOUNTAINS.—(1) Subject to valid existing rights and except as otherwise provided in this title, the Federal lands referred to in paragraph (2), and all other areas within the boundary of such lands as depicted on the map specified in such paragraph which may become subject to the operation off the public land laws, are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and geothermal leasing laws). Such lands are reserved for use by the Secretary of the Navy for—

(A) testing and training for aerial bombing, missile firing, tactical maneuvering and air support; and

(B) subject to the provisions of section 4(f), other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) are the Federal lands comprising approximately 227,369 acres in Imperial and Riverside Counties, California, as generally depicted on a map entitled "Chocolate Mountain Aerial Gunnery Range Withdrawal" dated July 1987 and filed in accordance with section 704.

MAPS AND LEGAL DESCRIPTIONS

SEC. 704. (a) PUBLICATION AND FILING REQUIREMENT.—As soon as practicable after the date of enactment of this title, the Secretary of the Interior shall—

(1) publish in the Federal Register a notice containing the legal description of the lands withdrawn and reserved by this title; and

(2) file maps and the legal description of the lands withdrawn and reserved by this title with the Committee on Energy and Natural Resources of the United States Senate and with the Committee on Interior and Insular Affairs of the United States House of Representatives.

(b) TECHNICAL CORRECTIONS.—Such maps and legal descriptions shall have the same

force and effect as if they were included in this title except that the Secretary of the Interior may correct clerical and typographical errors in such maps and legal descriptions.

(c) AVAILABILITY FOR PUBLIC INSPECTION.—Copies of such maps and legal descriptions shall be available for public inspection in the Office of the Director of the Bureau of Land Management, Washington, District of Columbia; the Office of the Director, California State Office of the Bureau of Land Management, Sacramento California; the office of the commander of the Naval Weapons Center, China Lake, California; the office of the commanding officer, Marine Corps Air Station, Yuma, Arizona; and the Office of the Secretary of Defense, Washington, District of Columbia.

(d) REIMBURSEMENT.—The Secretary of Defense shall reimburse the Secretary of the Interior for the cost of implementing this section.

MANAGEMENT OF WITHDRAWN LANDS

SEC. 705. (a) MANAGEMENT BY THE SECRETARY OF THE INTERIOR.—(1) Except as provided in subsection (g), during the period of the withdrawal the Secretary of the Interior shall manage the lands withdrawn under section 701 pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and other applicable law, including this title.

(2) To the extent consistent with applicable law and Executive orders, the lands withdrawn under section 703 may be managed in a manner permitting—

(A) the continuation of grazing pursuant to applicable law and Executive orders where permitted on the date of enactment of this title;

(B) protection of wildlife and wildlife habitat;

(C) control of predatory and other animals;

(D) recreation;

(E) the prevention and appropriate suppression of brush and range fires resulting from nonmilitary activities; and

(F) geothermal leasing on the lands withdrawn under section 703(a) (relating to China Lake).

(3)(A) All nonmilitary use of such lands, including uses described in paragraph (2), shall be subject to such conditions and restrictions as may be necessary to permit the military use of such lands for the purposes specified in or authorized pursuant to this title.

(B) the Secretary of the Interior may issue any lease, easement, right-of-way, or other authorization with respect to the nonmilitary use of such lands only with the concurrence of the Secretary of the Navy.

(b) CLOSURE TO PUBLIC.—(1) If the Secretary of the Navy determines that military operations, public safety, or national security require the closure to public use of any road, trail, or other portion of the lands withdrawn by this title, the Secretary of the Navy, after consultation with the Secretary of the Interior determines necessary or desirable to effect and maintain such closure.

(2) Any such closure shall be limited to the minimum areas and periods which the Secretary of the Navy determines are required to carry out this subsection.

(3) Before and during any closure under this subsection, the Secretary of the Interior shall—

(A) keep appropriate warning notices posted; and

(B) take appropriate steps to notify the public concerning such closures.

(c) MANAGEMENT PLAN.—The Secretary of the Interior (after consultation with the Secretary of the Navy) shall develop a plan for the management of each area withdrawn under section 703 during the period of such withdrawal. Each plan shall—

(1) be consistent with applicable law;

(2) be subject to conditions and restrictions specified in subsection (a)(3);

(3) include such provisions as may be necessary for proper management and protection of the resources and values of such areas; and

(4) be developed not later than three years after the date of enactment of this title.

(d) BRUSH AND RANGE FIRES.—The Secretary of the Navy shall take necessary precautions to prevent and suppress brush and range fires occurring within and outside the lands withdrawn under section 703 as a result of military activities and may seek assistance from the Bureau of Land Management in the suppression of such fires. The memorandum of understanding required by subsection (e) shall provide for Bureau of Land Management assistance in the suppression of such fires, and for a transfer of funds from the Department of the Navy to the Bureau of Land Management as compensation for such assistance.

(e) MEMORANDUM OF UNDERSTANDING.—(1) The Secretary of the Interior and the Secretary of the Navy shall (with respect to each land withdrawal under section 703) enter into a memorandum of understanding to implement the management plan developed under subsection (c). Any such memorandum of understanding shall provide that the Director of the Bureau of Land Management shall provide assistance in the suppression of fires resulting from the military use of lands withdrawn under section 703 if requested by the Secretary of the Navy.

(2) The duration of any memorandum shall be the same as the period of the withdrawal of the lands under section 703.

(f) ADDITIONAL MILITARY USES.—Lands withdrawn by section 703 may be used for defense-related uses other than those specified in such section. The Secretary of Defense shall promptly notify the Secretary of the Interior in the event that the lands withdrawn by this title will be used for defense-related purposes other than those specified in section 703. Such notification shall indicate the additional use or uses involved, the proposed duration of such uses, and the extent to which such additional military uses of the withdrawn lands will require that additional or more stringent conditions or restrictions be imposed on otherwise/permitted nonmilitary uses of the withdrawn land or portions thereof.

(g) MANAGEMENT OF CHINA LAKE.—(1) The Secretary of the Interior may, except as provided in subsection (g)(4), assign the management responsibility for the lands withdrawn under section 703(a) to the Secretary of the Navy who shall manage such lands, and issue leases, easements, rights-of-way, and other authorizations, in accordance with this title and cooperative management arrangements between the Secretary of the Interior and the Secretary of the Navy. In the case that the Secretary of the Interior assigns such management responsibility to the Secretary of the Navy before the development of the management plan under subsection (c), the Secretary of the Navy (after consultation with the Secretary of the Interior) shall develop such management plan.

(2) The Secretary of the Interior shall be responsible for the issuance of any lease, easement, right-of-way, and other authorization with respect to any activity which involves both the lands withdrawn under section 703(a) and any other lands. Any such authorization shall be issued only with the consent of the Secretary of the Navy and, to the extent that such activity involves lands withdrawn under section 703(a), shall be subject to such conditions as the Secretary of the Navy may prescribe.

(3) The Secretary of the Navy shall prepare and submit to the Secretary of the Interior an annual report on the status of the natural and cultural resources and values of the lands withdrawn under section 703(a). The Secretary of the Interior shall transmit such report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

(4) Neither this title nor any other provision of law shall be construed to prohibit the Secretary of the Interior from issuing any lease for the development and utilization of geothermal steam and associated geothermal resources on the lands withdrawn under section 703(a) pursuant to the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) but no such lease shall be issued without the concurrence of the Secretary of the Navy. Upon isssuance of such a lease, the Secretary of the Interior, consistent with his authority under applicable federal laws, shall be responsible for the administration of the lease and for the issuance of associated permits, rights-of-way, other authorizations and approval of required environmental impact mitigation measures within the leasehold.

(5) This title shall not affect the geothermal exploration and development authority of the Secretary of the Navy under section 2689 of title 10, United States Code, except that the Secretary of the Navy shall obtain the concurrence of the Secretary of the Interior before taking action under that section with respect to the lands withdrawn under section 703(a).

DURATION OF WITHDRAWALS

SEC. 706. (1) DURATION.—The withdrawal and reservation established by this title shall terminate 15 years after the date of enactment of this title.

(b) DRAFT ENVIRONMENTAL IMPACT STATEMENT.—No later than 12 years after the date of enactment of this title, the Secretary of the Navy shall publish a draft environmental impact statement concerning continued or renewed withdrawal of any portion of the lands withdrawn by this title for which the Secretary intends to seek such continued or renewed withdrawal. Such draft environmental impact statement shall be consistent with the requirements of the National Environmental Policy Act of 1969 (41 U.S.C. 4321 et seq.) applicable to such a draft environmental impact statement. Prior to the termination date specified in subsection (a), the Secretary of the Navy shall hold a public hearing on any draft environmental impact statement. Such hearing shall be held in the State of California in order to receive public comments on the alternatives and other matters included in such draft environmental impact statement.

(c) EXTENSIONS OR RENEWALS.—The withdrawals established by this title may not be extended or renewed except by an Act or joint resolution.

ONGOING DECONTAMINATION

SEC. 707. (a) PROGRAM.—Throughout the duration of the withdrawals made by this title, the Secretary of the Navy, to the extent funds are made available, shall maintain a program of decontamination of lands

withdrawn by this title at lease at the level of decontamination activities performed on such lands in fiscal year 1986.

(b) REPORTS.—At the same time as the President transmits to the Congress the President's proposed budget for the first fiscal year beginning after the date of enactment of this title and for each subsequent fiscal year, the Secretary of the Navy shall transmit to the Committees on Appropriations, Armed Services, and Energy and Natural Resources of the United States Senate and to the Committees on Appropriations, Armed Services, and Interior and Insular Affairs of the House of Representatives a description of the decontamination efforts undertaken during the previous fiscal year on such lands and the decontamination activities proposed for such lands during the next fiscal year including:

(1) amounts appropriated and obligated or expended for decontamination of such lands;

(2) the methods used to decontaminate such lands;

(3) amount and types of contaminants removed from such lands;

(4) estimated types and amounts of residual contamination on such lands; and

(5) an estimate of the costs for full decontamination of such lands and the estimate of the time to complete such decontamination.

REQUIREMENTS FOR RENEWAL

SEC. 708. (a) NOTICE AND FILING.—(1) No later than three years prior to the termination of the withdrawal and reservation established by this title, the Secretary of the Navy shall advise the Secretary of the Interior as to whether or not the Secretary of the Navy will have a continuing military need for any of the lands withdrawn under section 703 after the termination date of such withdrawal and reservation.

(2) If the Secretary of the Navy concludes that there will be a continuing military need for any of such lands after the termination date, the Secretary shall file an application for extension of the withdrawal and reservation of such needed lands in accordance with the regulations and procedures of the Department of the Interior applicable to the extension of withdrawals of lands for military uses.

(3) If, during the period of withdrawal and reservation, the Secretary of the Navy decides to relinquish all or any of the lands withdrawn and reserved by this title, the Secretary shall file a notice of intention to relinquish with the Secretary of the Interior.

(b) CONTAMINATION.—(1) Before transmitting a notice of intention to relinquish pursuant to subsection (a), the Secretary of Defense, acting through the Department of Navy, shall prepare a written determination concerning whether and to what extent the lands that are to be relinquished are contaminated with explosive, toxic, or other hazardous materials.

(2) A copy of such determination shall be transmitted with the notice of intention to relinquish.

(3) Copies of both the notice of intention to relinquish and the determination concerning the contaminated state of the lands shall be published in the Federal Register by the Secretary of the Interior.

(c) DECONTAMINATION.—If any land which is the subject of a notice of intention to relinquish pursuant to subsection (a) is contaminated, the Secretary of the Navy, determines that decontamination is practicable and economically feasible (taking into consideration the potential future use and value of the land) and that upon decontamination, the land could be opened to operation of some or all of the public land laws, including the mining laws, the Secretary of the Navy shall decontaminate the land to the extent that funds are appropriated for such purpose.

(c) ALTERNATIVES.—If the Secretary of the Interior, after consulation with the Secretary of the Navy, concludes that decontamination of any land which is the subject of a notice of intention to relinquish pursuant to subsection (a) is not practicable or economically feasible, or that the land cannot be decontaminated sufficiently to be opened to operation of some or all of the public land laws, of if Congress does not appropriate a sufficient amount of funds for the decontamination of such land, the Secretary of the Interior shall not be required to accept the land proposed for relinquishment.

(e) STATUS OF CONTAMINATED LANDS.—If, because of their contaminated state, the Secretary of the Interior declines to accept jurisdiction over lands withdrawn by this title which have been proposed for relinquishment, or if at the expiration of the withdrawal made by this title the Secretary of the Interior determines that some of the lands withdrawn by this title are contaminated to an extent which prevents opening such contaminated lands to operation of the public land laws—

(1) the Secretary of the Navy shall take appropriate steps to warn the public of the contaminated state of such lands and any risks associated with entry onto such lands;

(2) after the expiration of the withdrawal, the Secretary of the Navy shall undertake no activities on such lands except in connection with decontamination of such lands; and

(3) the Secretary of the Navy shall report to the Secretary of the Interior and to the Congress concerning the status of such lands and all actions taken in furtherance of this subsection.

(f) REVOCATION AUTHORITY.—Notwithstanding any other provision of law, the Secretary of the Interior, upon deciding that it is in the public interest to accept jurisdiction over lands proposed for relinquishment pursuant to subsection (a), is authorized to revoke the withdrawal and reservation established by this title as it applies to such lands. Should the decision be made to revoke the withdrawal and reservation, the Secretary of the Interior shall publish in the Federal Register an appropriate order which shall—

(1) terminate the withdrawal and reservation;

(2) constitute official acceptance of full jurisdiction over the lands by the Secretary of the Interior;

(3) state the date upon which the lands will be opened to the operation of some or all of the public land laws, including the mining laws.

DELEGABILITY

SEC. 709. (a) DEFENSE.—The functions of the Secretary of Defense or the Secretary of the Navy under this title may be delegated.

(b) INTERIOR.—The functions of the Secretary of the Interior under this title may be delegated, except that an order described in section 708(f) may be approved and signed only by the Secretary of the Interior, the Under Secretary of the Interior, or an Assistant Secretary of the Department of the Interior.

HUNTING, FISHING, AND TRAPPING

SEC. 710. All hunting, fishing, and trapping on the lands withdrawn by this title shall be conducted in accordance with the provisions of section 2671 of title 10, United States Code.

IMMUNITY OF THE UNITED STATES

SEC. 711. The United States and all departments or agencies thereof shall be held harmless and shall not be liable for any injuries or damages to persons or property suffered in the course of any geothermal leasing or other authorized nonmilitary activity conducted on lands described in section 703 of this title.

EL CENTRO RANGES

SEC. 712. The Secretary of the Interior is authorized to permit the Secretary of the Navy to use until January 1, 1990 the public lands in Imperial County, California, generally depicted on the map entitled "El Centro Ranges" dated July 1987, for the same purposes and to no greater extent than such lands were used by the Secretary of the Navy as of July 1, 1987. Such permission shall be through a cooperative agreement or other appropriate means. Such use shall be subject to such terms and conditions as the Secretary of the Interior may require so as to protect the natural, environmental, scientific, cultural, and other resources and values of such lands and to minimize the extent to which such use by the Secretary of the Navy impedes or restricts use of such or other public lands for recreational and other purposes.●

By Mr. BREAUX:

S. 22. A bill to regulate interstate commerce with respect to parimutuel wagering on greyhound racing, to maintain the stability of the greyhound racing industry, and for other purposes; to the Committee on Commerce, Science, and Transportation.

INTERSTATE GREYHOUND RACING ACT

● Mr. BREAUX. Mr. President, today I am introducing in the 102d Congress a bill that the Senate should have adopted in the 101st Session, the Interstate Greyhound Racing Act of 1991. This legislation, when enacted, will regulate interstate commerce with respect to interstate parimutuel wagering on greyhound racing. I say that we should have passed this bill, Mr. President, because it provides for greyhound owners the same protective system that has proven so successful for owners of racing horses. The dog racing industry is one of increasing interest and importance; this bill ensures fairness for dog owners, and it thereby ensures orderly growth and stability for the industry.

Eleven years ago nearly identical legislation, the Interstate Horse Racing Act of 1978, was considered by the U.S. Senate and passed by voice vote. I hasten to add that the House of Representatives also passed the Interstate Horse Racing Act of 1978 by voice vote. The major difference between my bill and that passed in 1978 is that I am asking today that we extend to greyhound owners the same protection given to horsemen in 1978.

Mr. President, my bill does not require that we spend Federal money. It does not create a new agency of government, and it does not legalize off-track betting. The States legalize off-track betting.

This legislation does provide that an interstate wager on a greyhound race

taking place in one State may not be placed with an off-track betting office in another State without the consent of: First, the racetrack where the race is to be run, second, the racing commission of the State where the race is to be run, and third, the racing commission of the State where the off-track betting office is located.

Greyhound wagering across State lines will not take place without the agreement of these indispensable parties. State interests are protected, and the interests of greyhound owners cannot be disregarded by racetracks.

A host racetrack must have a written agreement with the greyhound owners' group. This agreement will specify terms and conditions under which the track will consent to an interstate wager with an off-track, out of State betting system.

Mr. President, no longer will greyhound races be simulcast to interstate off-track betting locations without the consent or agreement of greyhound owners. These owners have the same "proprietary" interest as horsemen. A horseman's interest is protected by law, and my bill offers that same protection to greyhound owners.

An icon of the Senate, the Honorable Walter D. Huddleston of Kentucky, with remarkable conciseness, spoke to the issue this way during the Senate floor consideration of the Interstate Horse Racing Act of 1978 when he said:

In essence, this bill regulates the acceptance of an interstate off-track wager that is placed or accepted in one State on the outcome of a horse race taking place in another (State).

The bill prohibits such wagering unless all the parties involved in racing—the track, the horsemen, the off-track betting interests, and the racing commissions of the States involved—agree, either directly or indirectly, regarding the terms and conditions of such wagering. This bill will prevent an off-track betting system in one State from using a race in another State without the permission of the parties that have a "proprietary" interest in that race.

This is an issue of considerable national interest, and I urge my colleagues to support the enactment of the legislation. It is a little-known fact that 26 million people visited the 46 greyhound race tracks in the United States in 1988. I remind us that greyhound racing contributed $225 million to 14 racing States and their county governments. Additionally, the sport generated millions of dollars in payroll taxes and sales taxes paid at the track and at local motels, restaurants, gasoline stations, and other greyhound-related businesses.

Few of us know that greyhound racing is the sixth largest spectator sport in America, and it's still growing. Ten new greyhound tracks are planned for construction in Kansas, Texas, and Wisconsin. A track that generates a "handle" of more than $500,000 will employ a minimum of 600 people.

The National Greyhound Association [NGA] is the sole registry for the racing greyhound on the North American Continent. The NGA, a voluntary nonprofit association, is located in the State of Kansas. It was organized in 1906, and has a membership today of over 6,000 owners and breeders of racing greyhounds. The NGA maintains a rigid identification system with records of all breeding, litters whelped, individual registrations, transfers, and leases. The NGA's exacting system is a major factor in maintaining greyhound racing's "clean as a hound's teeth" very admirable reputation as a major spectator sport. The NGA is an associate member of the World Greyhound Racing Federation and a charter and founding member of the World Alliance of Greyhound Registries and the American Greyhound Council.

Mr. President, this sport has a history that is worthy of veneration. As early as 4,000 years ago, the greyhound was the subject of art, lore, sport and entertainment in ancient civilizations of Egypt, Persia, Greece, Rome, and later in England and Ireland. Cleopatra loved greyhound hunting and racing. Queen Elizabeth I established the first formal rules of greyhound racing in the 1700's.

I urge my colleagues to join me in supporting the continued orderly development of this venerable "sport of queens."●

By Mr. DOLE (for Mr. SIMPSON, for himself, Mr. DOLE, Mr. MURKOWSKI, Mr. SPECTER, Mr. THURMOND, and Mr. JEFFORDS):

S. 23. A bill to amend title 38, United States Code, to index rates of veterans' disability compensation and surviving spouses' and children's dependency and indemnity compensation to automatically increase to keep pace with the cost of living; to the Committee on Veterans' Affairs.

VETERANS' AND SURVIVOR'S COMPENSATION INDEXING ACT

Mr. SIMPSON. Mr. President, earlier in the day the Republican leader introduced a bill, S. 23, that is a cost of living allowance adjustment bill for veterans. I rise to join in the introduction of that legislation that would remedy a very strange and unfortunate and unfair situation faced by many disabled veterans and their survivors in this country today. As I say, I am joined in this effort by the Republican leader, Senator DOLE, and by Senator MURKOWSKI, Senator SPECTER, Senator THURMOND, and Senator JEFFORDS.

Last fall, Mr. President, in our last minute extremity with regard to the budget, Congress failed to pass a cost-of-living adjustment for these veterans when the bill became loaded down with unnecessary and costly and burdensome provisions.

Several of us tried to remedy that situation. We were poised to pass a bill which would be defined as a clean bill that would have provided only the cost-of-living adjustment, only the COLA adjustment. But that effort was stymied by an objection raised in the House of Representatives, and the bill went nowhere amid a great clatter about somebody or various groups being antiveteran. About the last thing I have ever noticed in this body is that anybody is antiveteran.

But there is, of course, a limit somewhere when we deal with those veterans who have never left the United States, maybe have been involved in service for 6 months or 1 year. That is a distinction I have always made and will continue to make.

We give veterans $31½ billion, and there are 27½ million of us. I am proud to be one of that number. I was overseas with the army of occupation after the war in Europe. No shells were flying when I was there. I have related that before, but in some sensible way, we have to emphasize that our first care is to the service-connected disabled veteran, the combat veteran, and that is something we have to do; not get caught in the emotion of the issue.

In any event, there is not anyone that would not indicate that the veterans, these veterans covered in the legislation, deserve to have their COLA without having to depend on Congress to pass separate legislation authorizing it in each and every year. That is something you do not want to miss. It is what has happened over the years.

Some of the veterans groups got together years ago and decided it would be better for them if they had a separate COLA, if you dealt with it separately, and not let it get tied to any other form of index. The reason for that was that they would get more. That worked pretty well except for 1 year.

Yet, that is something that certainly did not work last year. That is why I am introducing this legislation today, which provides for an automatic cost-of-living adjustment for veterans receiving disability compensation, and for their surviving spouses and children who receive dependency and indemnity compensation.

It would also automatically increase the clothing allowance for those veterans who have service-connected disabilities that require them to use prosthetic devices that may cause their clothing to wear. The unstoppable freight train is what stopped the bill last year.

Madam President, the Senate was never given the opportunity to vote on a bill that would simply have assured disabled veterans received the cost-of-living adjustment. I supported and tried to secure consideration of such a measure. I supported and tried to secure consideration of a more streamlined and responsible Senate bill.

I worked with a fine chairman in the House, SONNY MONTGOMERY, who is "Mr. Veteran" and "Mr. Veterans' Affairs" as to what he has done for many years in this Congress. But there were Senators who felt more strongly that it would be a fine opportunity to hook it up; to hook the old freight up with everything you could get on it including a caboose; that it was more important to mandate another study of the health effects of Agent Orange than it was for disabled veterans to have their COLA.

They put a stop to that effort and through their auspices in the House, they achieved that. They also had other items on their mind, things that have been rejected by the full Veterans' Affairs Committee in a bipartisan fashion. But since the freight train was going through the building, they thought they would tack it all on, and it failed for them, I hope we will not see that again. This bill will assure that we do not. So let us assure that disabled veterans and their survivors never again have to be faced with that particular uncertainty.

I also want to bear my efforts to secure rapid consideration and passage of the bill to provide that cost-of-living adjustment, a bill that is assured of rapid passage because it contains only the veterans cost-of-living adjustment, the COLA bill.

But I trust that we will then make this effort under this bill, S. 23, to assure that the COLA for veterans each year becomes automatic and not subject to the whims of Congress. It is a fun and games that should not go on. Let us just do a COLA and let the other thing rise or fall on their worth. Certainly Agent Orange is a very complex issue, and will remain ever so. But it need not ever be tied again to a COLA.

Mr. NICKLES. Will the Senator yield?

Mr. SIMPSON. Certainly.

Mr. NICKLES. I compliment the Senator for his leadership on this issue, and I ask that he be kind enough to add me as a cosponsor.

Mr. SIMPSON. I thank the Senator from Oklahoma very much, and indeed will include him as a cosponsor.

I will conclude my remarks, and say I am very much looking forward to working with the leadership on these bills. We have heard today a great discussion on the Democratic agenda and their bills, and the Republican agenda and their bills.

I must say I was a bit surprised with the intensity of the majority leader as he talked about the education measure as if George Bush were really not the education President. He did not say that in those words. The education bill passed the Senate and passed the House, and died in the last hours of the night before we exited here in October. It had nothing to do with George Bush—child care, these issues of parental activity, civil rights—to indicate somehow that George Bush, the President, had a lesser commitment to civil rights. Those things are balderdash.

If we are going to start off on this bright Monday, after dealing with a very serious issue Saturday—and I commend the majority leader and the minority leader for their work. None of us have any satisfaction from that tough vote. We did it. We did what we had to do, and we will see whether it does what all of us hope it will do, and that is increase the prospects for peace by showing that we are ready to use another option in our activities.

But I do not think it is really very appropriate to simply lay out every bill on the Democratic agenda as if it were somehow saving the world from George Bush. I think we can do a little better than that.

Thank you.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 23

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND REFERENCES

SECTION 1. (a) This Act may be cited as the "Veterans' and Survivors' Compensation Indexing Act."

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES

SEC. 2. Section 3112 is amended by redesignating subsection (c) as subsection (d) and inserting the following new subsection:

"(c)(1) Effective December 1 of each year, each rate of disablity compensation under sections 314 and 315, dependency and indemnity compensation under sections 411, 413, and 414, and the clothing allowance under section 362 shall be increased by the percent change in the price index for the base quarter of such year over the price index for the base quarter of the immediately preceding year, adjusted to the nearest ⅒ of 1 percent.

"(2) For the purpose of this section—

"(A) 'price index' means the Consumer Price Index published monthly by the Bureau of Labor Statistics;

"(B) the term 'base quarter,' as used with respect to a year, means the calendar quarter ending on September 30 of such year; and

"(C) the price index for a base quarter is the arithmetical mean of such index for the three months comprising such quarter."

SEC. 3. The redesignated subsection (d) of section 3112 is amended by redesignating paragraph (2) as paragraph (3) and inserting the following new paragraph:

"(2) Whenever disability compensation, dependency and indemnity compensation, and clothing allowance rates are increased under subsection (c) of this section, the Secretary shall publish new rates in the Federal Register as soon as practicable."

SEC. 4. The Secretary may, consistent with the increases authorized by this title, administratively adjust the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable under chapter 11 of title 38, United States Code. Notice of any adjustments made under this section will be published in accordance with section 3, above.

By Mr. MOYNIHAN (for himself, Mr. PACKWOOD, Mr. HEINZ, Mr. DANFORTH, Mr. BAUCUS, Mr. DURENBERGER, Mr. BOREN, Mr. SYMMS, Mr. RIEGLE, Mr. CRANSTON, Mr. BURDICK, Mr. DIXON, Mr. HOLLINGS, Mr. HATFIELD, Mr. SARBANES, Mr. HARKIN, Mr. LOTT, Mr. KERRY, Mr. REID, Mr. MCCAIN, Mr. AKAKA, Mr. GORE, Mr. KASTEN, Mr. JOHNSTON, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. SIMON, Mr. BURNS, Mr. GLENN, Mr. MACK, Mr. HELMS, Mr. BROWN, Mr. BINGAMAN, Mr. COCHRAN, Mr. LUGAR, Mr. D'AMATO, and Mr. SANFORD):

S. 24. A bill to amend the Internal Revenue Code of 1986 to make permanent the exclusion from gross income of educational assistance provided to employees; to the Committee on Finance.

EMPLOYEE EDUCATIONAL ASSISTANCE ACT

Mr. MOYNIHAN. Mr. President, I rise today to introduce the Employee Educational Assistance Act of 1991, legislation that will make permanent section 127 of the Internal Revenue Code. This bill ensures that employees will be able to continue to receive up to $5,250 annually in tuition reimbursements or similar educational benefits from their employers on a tax-free basis. I am pleased to be joined in introducing this legislation by 35 of my distinguished colleagues. We have had similar levels of support for this measure in past years. Such continued support is indicative of the importance that so many of us attach to tax-free treatment of educational assistance, and to the need to make it a permanent part of the Tax Code.

First enacted in 1978, section 127 has enabled over 7 million working men and women to advance their education and improve their job skills without incurring additional income tax liabilities and a reduction in take-home pay. Without this provision, an employee would owe taxes on the value of any educational benefits provided by an employer that do not directly relate to the current job held. For example, a clerical worker pursuing a college diploma who earns $21,000 annually and who receives tuition reimbursement for two semesters of night courses—worth approximately $4,000—would owe additional Federal income and payroll taxes of over $1,000 on this educational assistance. If the educational benefits are accepted, the employee incurs a loss of over $1,000 in take-home pay. The effects are even more severe if he or she lives in a State that uses the Federal definition of income for State tax purposes. It is shortsighted to im-

pose such a tax burden on employees seeking to further their education. For many low- and moderate-income employees, this cut in take-home pay is simply prohibitive, preventing them from enrolling in courses that would upgrade their job skills and improve their future career prospects. Without this investment in our employees' education, the ability of our work force to compete in the global economy erodes. By removing the requirement that educational assistance be job related, section 127 eliminates a tax burden on workers seeking to further their education and improve their career prospects.

Moreover, section 127 removes a tax bias against lesser skilled workers because they have greater difficulty proving that educational benefits are directly related to their current job, due to narrower job descriptions.

Congress has until now only enacted section 127 for temporary periods. It has repeatedly allowed the provision to lapse, only to reextend it on a retroactive basis for another temporary period. Since 1978, there have been 5 extensions of this provision. Most recently the Omnibus Budget Reconciliation Act of 1990 provided for a 15-month extension of section 127, retroactive from its September 30, 1990, expiration date through December 31, 1991. Without further action by Congress, the provision will agian expire on that date.

It is time for this cliffhanger approach to stop. Employees cannot plan sensibly for their educational goals, not knowing the extent to which accepting educational assistance may reduce their take-home pay. And for employers, the fits and starts of the legislative history of section 127 have been a serious administrative nuisance. If section 127 is in force, then there is no need to withhold taxes on educational benefits provided; if not, the job-relatedness of the educational assistance must be ascertained, a value assigned, and withholding adjusted accordingly. And we leave everyone to guess until late in the year whether Congress will extend the provision, or reenact it retroactively if it has already expired. This needless uncertainty and inefficiency reflects badly on the legislative process; it must cease.

The Employee Educational Assistance Act of 1991 would restore certainty to section 127, by extending it on a permanent basis. The 1990 Budget Reconciliation Act, in addition to extending the tax-free treatment for undergraduate assistance, restored tax-free treatment for assistance provided for graduate level studies. Tax-free graduate assistance had been eliminated in 1988. The Employee Educational Assistance Act of 1991 will permanently extend the tax-free status for both undergraduate and graduate assistance.

Mr. President, I introduced similar legislation in the 101st Congress, S. 260 and S. 2988, which enjoyed wide bipartisan support. Encouraging workers to further their education and to improve their job skills is an important national priority, crucial for preserving our competitive position in the global economy. Permitting employees to receive educational assistance on a tax-free basis, without incurring significant cuts in take-home pay, is a demonstrated cost-effective means to achieve these objectives.

Employee educational assistance is not an extravagant fringe benefit for highly paid executives. It largely benefits low- and moderate-income employees seeking access to higher education or further job training. A recent survey undertaken by the American Society for Training and Development indicated that over 70 percent of recipients of section 127 benefits in 1986 earned less than $30,000. In fact, lower income employees are more likely to participate in educational assistance programs than those on the higher end of the income scale. Employees making less than $30,000 participate at a much higher rate than those making above that income, and participation rates decline as salary levels increase. Moreover, employees making less than $15,000 participate at almost twice the rate of those who earn over $50,000.

Further, section 127 makes an important contribution to simplicity in the Tax Code. Without it, employers and the IRS would be required to determine on a case-by-case basis which employer-provided educational benefits are sufficiently related to the job to avoid treatment as taxable income.

Today, American workers are the most productive in the industrialized and developing world. Yet pressures from international competition and the pace of technological change require continual adjustment by our work force. Retraining will thus be necessary to maintain and strengthen American industry's competitive position in the global economy. Section 127 permits employees to adapt and retrain without incurring additional tax liabilities and a reduction in take-home pay. By removing the tax burden from workers seeking retraining, section 127 will enable employees displaced by foreign competition or technological change to learn new job skills. Retraining will take on an increasing importance in this decade, given that approximately 85 percent of those who will make up the work force in the year 2000 are already working today. Work force growth in the next decade is expected to barely match that during the Great Depression.

The American Electronics Association has reported that the United States is experiencing an acute shortage of engineers—some 20,000 engineers between 1981 and 1985. The association further notes the troubling fact that the United States produces fewer engineers per capita than many of our major trading partners and has relatively smaller numbers of workers in research and development. To counter this trend, almost half of America's largest electronic firms have initiated educational assistance programs under section 127 to encourage employees to pursue advanced degrees in electronics. Without section 127, employees participating in this important effort to maintain our competitive position in high technology will incur a penalty of additional taxes. The Tax Code should not hinder such an effort, and section 127 is designed to make sure that it does not.

Section 127 has also helped to improve the quality of America's public education system, at a fraction of the cost of direct-aid programs. It has enabled thousands of public school teachers to obtain advanced degrees, augmenting the quality of instruction in our schools. A survey by the National Education Association a few years ago found that almost half of all American public school systems provide tuition assistance to teachers seeking advanced training and degrees. Again, the Tax Code should not impose obstacles to this kind of shared effort at improvement. This legislation, by making section 127 permanent, for both graduate and undergraduate assistance, will ensure that it does not.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 24

Be it enacted by the Senate and House of Represenatives of the United States of America in Congress assembled,

SECTION 1. EDUCATIONAL ASSISTANCE EXCLUSION MADE PERMANENT.

(a) IN GENERAL.—Section 127 of the Internal Revenue Code of 1986 is amended by striking subsection (d).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1991.

Mr. DIXON. Mr. President, I rise today to join my distinguished colleague, the Senior Senator from New York, Senator MOYNIHAN, in introducing the Employee Educational Assistance Act of 1991. This important legislation would permit an employee to receive educational benefits, such as tuition reimbursement or outside training, from their employers on a tax-free basis. In addition, this bill would make section 127 a permanent provision of the Internal Revenue Code.

Educational assistance is not a fringe benefit for highly paid executives. Rather, it is a program that directly benefits students, employees seeking to better themselves, and employers needing to retrain their work force.

Educational assistance is designed to help young students meet the soaring costs of education in this country, enabling them to pursue their studies. Without the benefit of this program, graduate students would be forced to pay taxes on their tuition waivers and stipends. Taxing these meager stipends places unbearable demands upon our Nation's youth.

In addition, this assistance allows employers to provide their employees with a prescribed amount of tax-exempt tuition payments in order to advance in studies which are related to their jobs. This program is particularly important for workers who want to upgrade their skills and vocational opportunities, and for retraining employees whose current skills have become technologically obsolete.

Mr. President, since 1979, Congress has recognized the important benefits derived from this provision. Unfortunately, section 127 is not a permanent provision of the Code. Thus, over the years, continuation of this worthy provision has been left to temporary and piecemeal extensions. On several occasions, this provision actually lapsed, only to be reextended on a retroactive basis for another temporary period. Such uncertainty has hampered the effectiveness of section 127.

I encourage and applaud incentives that will improve our nations work force, and increase our competitiveness in the world market. It is vital to the competitiveness of the United States business that Congress act to create an environment that encourages productivity improvement in the workplace, as well as individual opportunity for personal growth.

I urge my colleagues to support this important legislation.

By Mr. MITCHELL (for Mr. CRANSTON, for himself, Mr. PACKWOOD, Mr. METZENBAUM, Mr. KENNEDY, Mr. ADAMS, Mr. BINGAMAN, Ms. MIKULSKI, Mr. PELL, Mr. SIMON, Mr. AKAKA, Mr. BAUCUS, Mr. BRADLEY, Mr. BURDICK, Mr. CHAFEE, Mr. COHEN, Mr. GLENN, Mr. INOUYE, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. ROBB, and Mr. WIRTH):

S. 25. A bill to protect the reproductive rights of women, and for other purposes; to the Committee on Labor and Human Resources.

FREEDOM OF CHOICE ACT

• Mr. CRANSTON. Mr. President, I am pleased to have reintroduced today S. 25, the proposed Freedom of Choice Act, which I introduced in the last Congress with the distinguished Senator from Oregon [Mr. PACKWOOD] and the Senator from Ohio [Mr. METZENBAUM], as S. 1912 following the Supreme Court's 1989 decision in Webster versus Reproductive Health Services. Although the Webster decision did not directly overturn the landmark Roe versus Wade decision, it gave State legislatures an open invitation to begin meddling with the rights of women to make their own decisions regarding the issue of abortion. The Freedom of Choice Act is intended to codify as a Federal right the holding of the Roe versus Wade decision and thereby prevent the erosion of individual rights threatened by the Webster decision.

The legislation being introduced today has broad bipartisan support. I am very pleased to be joined in introducing this legislation by Members of both sides of the aisle who are strongly committed to protecting freedom of choice for all women, regardless of where they may reside. A companion measure, H.R. 25, was introduced in the House of Representatives on January 3 by my good friend and colleague from California, Representative DON EDWARDS. During the last Congress, a number of hearings were held on this legislation in both the House and the Senate. The Freedom of Choice Act was also favorably reported by the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee shortly before the 101st Congress adjourned.

At the time that the Freedom of Choice bill was first introduced in the Senate on November 17, 1989, I submitted a lengthy statement outlining its purpose and explaining certain terms included in the legislation. The text of the bill being introduced today is identical to the text of the bill, S. 1912, in the 101st Congress, and the legislative intent described in that statement is fully applicable to the current bill, S. 25.

Mr. President, the vast majority of Americans believe that decisions in this difficult area should be made by individuals, free from government intrusion or control. The Freedom of Choice Act is designed to help ensure that access to safe and legal abortion remains a protected right, secured by the laws of the United States, as it has been since Roe versus Wade was decided almost two decades ago.

I ask unanimous consent that a copy of my 1989 statement detailing the provisions of the bill be printed in the RECORD at the conclusion of these remarks along with the text of S. 25.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

By Mr. CRANSTON (for himself, Mr. PACKWOOD, Mr. METZENBAUM, Mr. ADAMS, Mr. SIMON, Mr. PELL, Ms. MIKULSKI, Mrs. KASSEBAUM, Mr. MATSUNAGA, Mr. WILSON, Mr. INOUYE, Mr. CHAFEE, Mr. GLENN, Mr. COHEN, Mr. KERRY, Mr. STEVENS, Mr. WIRTH, Mr. BURDICK, Mr. ROBB, Mr. BINGAMAN, Mr. LAUTENBERG, and Mr. KENNEDY):

S. 1912. A bill to protect the reproductive rights of women, and for other purposes; to the Committee on Labor and Human Resources.

FREEDOM OF CHOICE ACT

Mr. CRANSTON. Mr. President, I am proud to introduce today with the Senator from Oregon [Mr. PACKWOOD] and the Senator from Ohio [Mr. METZENBAUM] and other Members of the Senate the proposed Freedom of Choice Act of 1989. This bipartisan legislation is designed to codify the holding of the 1973 Roe versus Wade decision.

We are joined in introducing this legislation by the Senator from Washington [Mr. ADAMS], the Senator from Illinois [Mr. SIMON], the Senator from Rhode Island [Mr. PELL], the Senator from Maryland [Ms. MIKULSKI], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from California [Mr. WILSON], the Senator from Hawaii [Mr. INOUYE], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Ohio [Mr. METZENBAUM], the Senator from Maine [Mr. COHEN], the Senator from Massachusetts [Mr. KERRY], the Senator from Alaska [Mr. STEVENS], the Senator from Colorado [Mr. WIRTH], the Senator from North Dakota [Mr. BURDICK], the Senator from Virginia [Mr. ROBB], the Senator from New Mexico [Mr. BINGAMAN], the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from Massachusetts [Mr. KENNEDY].

Companion legislation is being introduced in the House of Representatives by my good friend and colleague from California, Representative DON EDWARDS and the co-Chair of the Congressional Caucus on Women's Issues, the Representative from Colorado, PAT SCHROEDER.

Mr. President, this legislation is intended to accomplish one simple goal: Preserve the rights of pregnant women to make their own individual decision regarding whether or not to terminate a pregnancy. These rights which were guaranteed by the Supreme Court in the landmark decision in Roe versus Wade almost 17 years ago are in grave jeopardy today.

BACKGROUND: ROE VERSUS WADE

Mr. President, in 1973 the United States Supreme Court held in *Roe* v. *Wade*, 40 U.S. 113, that the Constitution protects a woman's decision whether or not to terminate her pregnancy. The Court noted that its prior decisions had found a right to personal privacy embedded in the Constitution's protection of personal liberty and concluded that right of privacy encompassed a woman's decision whether or not to carry a pregnancy to term. The Court further concluded that since the right of personal privacy is a fundamental right, only a "compelling state interest" could justify its limitation by a state. In a related case, *Doe* v. *Bolton*, 410 U.S. 179, handed down at the same time, the Court explicitly stated that a State may not interfere in a significant way with the exercise that prohibit or substantially limit access to the means of effectuating that decision.

The Roe decision set forth a number of basic principles by which State regulation of abortion rights were to be measured. Balancing competing interests at different stages of a pregnancy, the Court found that the stage of fetal viability was the point at which the State's interest arises. It held that following viability, the State's interest permits it to regulate and even proscribe an abortion except when necessary for the preservation of the life or health of the mother. Prior to viability, the State's powers were limited to promoting its interest in the health of mother by regulating the abortion procedure in ways that are reasonably related to maternal health. During the first tri-

mester, the Court held that the abortion decision and its effectuation must be left solely to the woman and her physician.

In the intervening years, the Court on numerous occasions, rigorously enforced its 1973 holding, striking down attempts by States to interfere with a woman's right to decide whether or not to terminate a pregnancy.

On July 3, 1989, however, the Court sent a shockwave through the country when it handed down its decision in Webster versus Reproductive Health Services. The Webster decision gave State legislatures an open invitation to begin meddling with the freedom of individual women to make their own decisions in this difficult area. Although the decision did not directly overturn Roe, it signaled the Court's willingness to apply a less stringent standard of review to State restrictions concerning a woman's right to an abortion.

Mr. President, after the Webster decision, Americans can no longer assume that access to safe and legal abortions will remain a guaranteed right. The Webster decision was a blow to all Americans who look to the Court to protect and preserve fundamental rights and liberties.

There is ample evidence to indicate that this legislation is sorely needed. Freedom of choice is already under assault in the State legislatures.

Shortly after the Webster decision, the Louisiana legislature passed a non-binding resolution urging State district attorneys to enforce a long-standing law outlawing abortions and requiring jail terms for doctors who provide them.

In Florida, an effort was made by the antichoice Governor to force the State legislature to enact restrictions in a special session called for that purpose. That ill-conceived effort failed, but there is little doubt that there will be further attempts in Florida in the coming year.

Only a few days ago, the Pennsylvania legislature won the distinction of making that State one of the most restrictive in the Nation by passing sweeping antichoice legislation. That legislation included provisions such as 24-hour waiting periods and spousal consent requirements which had previously been declared unconstitutional under Roe.

The purpose of the legislation we are introducing today is to create a statutory basis for the rights established under the Roe decision in order to prevent the States from undermining those rights. It is our intention to codify the state of the law established under Roe prior to Webster.

It has long been recognized that Congress has the authority, under section 5 of the 14th amendment and other provisions of the Constitution to enact legislation to restrain States from denying due process and equal protection rights to individuals or interfering with fundamental rights.

OUTLINE OF LEGISLATION

Mr. President, the Freedom of Choice Act of 1989 is very simple. Section 2(a) provides that a State may not restrict the right of a woman to choose to terminate a pregnancy before fetal viability or at any time if such termination is necessary to protect the life or health of the woman. As I indicated earlier, that is the basic principle established under the Roe decision.

Section 2(b) provides that a State may impose only those restrictions on a woman's right to an abortion prior to viability that are medically necessary to protect the woman's life or health—a concept established in Roe. This provision allows a limited exception to the general rule that a State may not interfere with a woman's fundamental right to choose whether or not to have an abortion. To meet this exception, the State would have to demonstrate that a rule or procedure was designed to protect the life or health of the woman, was medically necessary, and consituted the least restrictive means of furthering the State's interest in the woman's health.

Thus, under Roe versus Wade, it has been held that a State could not impose requirements which are not medically necessary such as a requirement that all abortions be performed in a hospital. Similarly, spousal consent requirements and waiting requirements have been held to be not medically necessary and therefore unconstitutional under Roe. On the other hand, statutes requiring that abortions be performed by licensed physicians have been upheld.

Mr. President, Roe versus Wade and its progeny clearly barred States from devising ingenious statutory schemes to deny women the right to exercise the basic right of freedom of choice. To the extent that Webster both invites and approves erosion of the Roe rights, this legislation is intended to reverse the impact of that decision.

There are several specific aspects of this legislation which should be noted.

First, the bill refers to the concept of fetal viability which the Court held in Roe to be the point where the State's interest in the fetus arises. In Roe, the Court defined viability as the point at which the fetus is "potentially able to live outside the mother's womb, albeit with artificial aid," 410 U.S. at 160. Such potentiality, however, must be for "meaningful life" and this cannot encompass simply momentary survival, 410 U.S. at 163. Finally, and most importantly, Roe stressed the central role of the pregnant woman's doctor in determining viability, emphasizing that "the abortion decision in all its aspects is inherently, and primarily, a medical decision," 410 at 160. In a subsequent case, *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52 (1976), the Court reemphasized that viability is "a matter of medical judgment, skill, and technical ability." In that decision, the Court also held that "it is not the proper function of the legislature or the courts to place viability, which is essentially a medical concept, at a specific point in the gestation period. The time when viability is achieved may vary with each pregnancy, and the determination of whether a particular fetus is viable is, and must be, a matter for the judgment of the attending physician", 428 U.S. at 64. The physician's central role in determining viability, and the lack of such definitional authority in the legislatures was reaffirmed by the Court in *Colautti* v. *Franklin*, 439 U.S. 379 (1979).

Another important issue relates to the question of funding of abortion services for low-income women. Roe versus Wade did not address the issue of public funding for abortion services and subsequent Supreme Court decisions involving Medicaid funding distinguished the right to terminate a pregnancy from the right to have government funding. Since this bill is designed simply to codify the basic rights established under Roe, it does not include any requirement for public funding of abortion services. However, separate legislation, the Reproductive Health Equity Act, which has previously been introduced in the House of Representatives, will be introduced in the Senate. That measure would have the effect of repealing the numerous restrictions on funding for abortion services in various programs, like Medicaid which have been enacted in the past decade.

Although the measure is totally separate and distinct from the legislation we are introducing today, many of the supporters of freedom of choice feel strongly that a two-tiered system which protects only the rights of women who can afford to pay for an abortion is unconscionable. Hopefully, in the not-so-distant future we will be able to assure all women, regardless of economic status, equal access to safe and legal abortion services.

Finally, the bill we are introducing, like Roe versus Wade itself, does not specifically address the issue of parental consent or notification requirements. The sponsors of this measure may have differing views as to whether a specific provision dealing with this issue is either necessary or appropriate. In the intervening years since the Roe decision, although that holding has clearly been applied to pregnant minors, the specific issue of the constitutionality of parental consent or notification statutes has not been clearly settled. Two of the three cases pending before the Supreme Court directly address the over-all question of whether a State can impose any type of restriction on minors' access to abortions.

My own view is that carving out an exception which would result in denying minors access to abortion would be unacceptable and would only serve to drive desparate teenagers into the hands of back-ally butchers or deadly efforts to induce their own abortions. Access to safe, legal abortions for all women who make that choice ought to remain an over-riding goal. The specific issues of parental consent or notification statutes will undoubtedly be addressed during the consideration of this legislation once the Supreme Court has acted in the pending cases.

CONCLUSION

Mr. President, I believe that when future historians write the book on the progress of expansion of individual rights in the last quarter of the 20th century, they will mark the introduction of the Freedom of Choice Act of 1989 as one the milestones in the steady progress of our society towards securing the rights of women, and all Americans, to live their own lives, free from unwarranted governmental intervention.

The vast majority of Americans support the right of an individual woman to make her own decision regarding whether or not to terminate a pregnancy and don't support government intervention.

Individual freedom is a value Americans have always held dear. We neither want nor need government by "big brother".

Nor do most Americans want to see the clock turned back and a return to the days when unskilled, illegal abortionists preyed upon desperate women.

Abortion is a very emotional and controversial issue. There are strong feelings on both sides, often based upon deeply felt religious convictions and beliefs. The central issue, however, is a simple one: who decides. The sponsors of this legislation believe that decisions regarding abortions are deeply personal, profound matters best made by the individual woman herself, guided by her own personal beliefs and convictions, free from governmental interference. That approach is consistent with the most deeply cherished values in our society—individual liberty and personal freedom.

This bill is designed to help ensure that access to safe and legal abortion remains a protected right, secured by the laws of the United States. It is designed to help ensure that women, whatever State they may reside in, continue to have the freedom of choice which

was guaranteed by the Roe versus Wade decision.

S. 25

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Freedom of Choice Act of 1991".

SEC. 2. RIGHT TO CHOOSE.

(a) IN GENERAL.—Except as provided in subsection (b), a State may not restrict the right of a woman to choose to terminate a pregnancy—

(1) before fetal viability; or

(2) at any time, if such termination is necessary to protect the life or health of the woman.

(b) MEDICALLY NECESSARY REQUIREMENTS.—A State may impose requirements medically necessary to protect the life or health of women referred to in subsection (a).

SEC. 3. DEFINITION OF STATE.

As used in this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and each other territory or possession of the United States.

• Mr. BAUCUS. Mr. President, I am pleased to join as an original cosponsor to the Freedom of Choice Act in the 102d Congress. I was a cosponsor in the 101st Congress, and I have done so again this year because I firmly support the right to privacy, including the principles embodied in Roe versus Wade.

The decision of whether or not to have an abortion is one of the most personal decisions a woman can make. Women should be able to make this decision according to their own circumstances and beliefs—without unnecessary interference from the government or politicians.

Unfortunately, the Supreme Court has been retreating from Roe versus Wade and the right to privacy which was reaffirmed in that case. The 1989 Webster decision, in particular, undermined privacy rights significantly. The Freedom of Choice Act is designed to end this retreat and reaffirm Americans' fundamental right to privacy. To do so, the act would codify the Supreme Court's basic holding in Roe, as elaborated upon in subsequent pre-Webster decisions.

Concerns have been raised about whether the Act would permit laws that encourage parental involvement before a young woman makes her decision. Under Roe, the Supreme Court has upheld such laws, so long as they contain a "bypass" procedure for cases—such as incest—where special circumstances make parental involvement inappropriate. A legal analysis by the congressional research service concludes that, by incorporating the Roe standard, the Freedom of Choice Act would continue to permit such laws. "It is likely," the report says, that:

> The courts would interpret the otherwise unexplicated language of the [Act], if enacted, in a way as to make it compatible with the surrounding body of law into which it must be integrated. That body of law includes, under the regime of Roe versus Wade . . . the permissibility of state laws mandating parental notification or consent, subject to an alternative bypass.

I feel the Freedom of Choice Act is necessary to send a clear message that the constitutional right to privacy should be maintained.

• Mr. PACKWOOD. Mr. President, I rise today to introduce the Freedom of Choice Act along with Senator CRANSTON and a number of our colleagues on both sides of the aisle.

The Freedom of Choice Act was first introduced in the 101st Congress, in response to the assaults on a woman's right to choose which resulted from the Supreme Court's decision in Webster versus Reproductive Health Services in 1989. Accepting the invitation to restrict women's access to safe and legal abortion which was recognized in Roe versus Wade in 1973, many States have passed or attempted to pass laws varying from mandating the consent of the woman's husband to subjecting medical facilities which perform abortions to unreasonable or unnecessary regulations. In the U.S. territory of Guam, abortion has actually been outlawed. Most of these restrictions are being challenged in court—a costly and time-consuming process to secure a right recognized nearly 20 years ago.

The basic principles of Roe versus Wade have been relied upon by women and by the medical profession since 1973. In Roe the Court addressed the issue of abortion by balancing the competing interests involved. During the first trimester of pregnancy, the abortion decision is left to the woman and her doctor. During the second trimester, a State may regulate abortion in ways that are reasonably related to maternal health. After fatal viability, a State may regulate and even proscribe abortion except where abortion is necessary to preserve the life or health of the woman.

We have endeavored to codify the reasonable framework of Roe versus Wade in the Freedom of Choice Act. Basically, the act says that States may not restrict a woman's right to terminate a pregnancy before fetal viability, or at any time during pregnancy if such termination is necessary to protect the woman's life or health. It further allows States to impose requirements which are medically necessary to protect the life or health of the woman.

As simple and straightforward as this bill is, I have been amazed at the misinterpretations and off-base legal analyses being put forth by those who oppose the right to choose. For instance, an antichoice lobby group is distributing literature which says that under the Freedom of Choice Act, States' ability to regulate abortion would be so severely curbed that midwives would be allowed to perform abortions. However, the Court in Roe specifically resolved this question. It held that a State may proscribe any abortion by a person who is not a physician.

The flier I just mentioned also said that our bill would prevent States from requiring ordinary medical record-keeping and pathology testing for abortions. These allegations ignore the "medically necessary" clause of the bill. Any restriction which has a legitimate relationship to protecting the life or health of the woman would be permitted. The States have traditionally regulated the safety of medical procedures and we fully intend that they continue to do so pursuant to sound medical practice.

Another area of confusion about the freedom of choice act is "viability." Under the act, States could regulate or even proscribe abortion after fetal viability. A fetus becomes viable when it is able to live outside the mother's womb, with or without artificial aid. The Court in Roe quoted this definition from a medical textbook. Fetal viability is a medical determination which only a trained medical professional is capable of making. Opponents of the Freedom of Choice Act charge that we are somehow giving doctors more leeway to determine viability than they have under Roe. However, in using viability as the point at which a State may begin to regulate abortion to protect the fetus, our bill parallels Roe. Roe did not really use a pure trimester analysis. Under Roe a State could regulate abortion to protect the woman's health beginning at the second trimester, or 12 weeks. However, the Court drew its second line at viability rather than between the second and third trimester: Under Roe a State may regulate abortion beginning at viability to preserve the fetus's potential for life. Therefore physicians have been making viability determinations in this regard ever since Roe was decided. The Freedom of Choice Act will not alter the ability of doctors to continue this practice.

These are examples of the misinformation Senators may hear about this bill. I would like to ask my colleagues who are not already cosponsors of the Freedom of Choice Act to take the time to read S. 25. It will only take a minute—the bill is less than a page long. There is no hidden agenda. What you see is what the bill does. If you have a question or a concern, please direct it to me or to Senator CRANSTON or our staffs. We invite you to join us in enacting the Freedom of Choice Act in the 102d Congress.

• Mr. CHAFEE. Mr. President, I am pleased to be an original cosponsor of the Freedom of Choice Act. This is a very important piece of legislation which will protect the rights and privacy of American women.

The Supreme Court ruled in Roe versus Wade that States cannot restrict

the right of a woman to obtain a safe and legal abortion prior to fetal viability. This landmark decision in 1973 afforded women the same rights as all other members of American society—namely to make their own decisions about their reproductive health care. This was the law for seventeen years. Then, in 1989, in Webster versus Reproductive Health Services, the Supreme Court undermined this principle. The so-called Webster decision marked the beginning of the gradual erosion of this fundamental right, and indeed, since Webster, we have seen a great deal of legislative activity in many States attempting to restrict choice.

We must respond to this alarming decision by the Supreme Court in Webster versus Reproductive Health Services by reaffirming our commitment to choice. The Freedom of Choice Act is such a response. The bill is a simple codification of the Supreme Court's decision in Roe versus Wade, guaranteeing a woman's right to choose to terminate her pregnancy as part of the constitutional right to privacy. Women in America fought long and hard to attain this right. It is unconscionable to think that the government would take this basic right away, sending American women back down the road of State-by-State battles that they have already rightfully won. Indeed, Mr. President, we cannot let this happen. Enactment of the Freedom of Choice Act will ensure that it does not. I urge my colleagues to push for swift passage of this important legislation.●

By Mr. MOYNIHAN (for himself, Mr. PACKWOOD, Mr. D'AMATO, Mr. KASTEN, Mr. DECONCINI, and Mr. CHAFEE):

S. 26. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income the value of certain transportation furnished by an employer; to the Committee on Finance.

TAX FREE TREATMENT OF MASS TRANSIT EMPLOYEE BENEFITS

Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill that will help eliminate what can only be characterized as an irrational environmental and transportation policy that has crept into the Tax Code. Current tax law produces a significant bias against the use of mass transit: an employer can provide unlimited free parking to employees without tax consequences to them, but if the same employer wants to provide subway, bus or other mass transit benefits, any benefit over $15 a month produces a tax liability for the employee. In short, you get a better deal under the Tax Code if you drive to work.

Despite the fact that the streets and highways of almost every major city are nearly overwhelmed by the crush of rush hour traffic, and that automotive exhaust from this deluge is the primary cause of urban air pollution, the tax code encourages use of single occupant vehicles during commuting hours. Parking benefits—which are worth $250 a month in New York City; in Boston, $245; in Los Angeles, $120—can be provided tax-free, while mass transit or van pooling benefits are mostly taxed. Current law permits up to $15 is exceeded, the entire amount becomes taxable. Van pooling benefits have been fully taxable since 1986, when the statutory tax exclusion for them was allowed to expire. The juxtaposition of unlimited employee tax benefits for parking and very limited or nonexistent tax benefits for mass transit produces a tax policy encouraging automobile use. As the Urban Mass Transportation Administration concluded in a February 1989 report on commuting behavior, "Federal tax policy appears to favor solo auto usage over other commuting modes. By providing economic incentives for free parking as opposed to transit, auto usage is encouraged."

The effects of this policy are clear enough. In 1984, the Port Authority of New York and New Jersey conducted a survey of drivers commuting into Manhattan during the morning rush hour. Sixty-four percent of those drivers reported receiving some form of automobile-related subsidy from their employers, the most common—84 percent—being a free parking space. In the same survey, 26 percent of these automobile commuters reported that they would switch to mass transit if significant transit benefits were provided.

A Federal tax policy that encourages single occupant vehicle commuting flies in the face of sensible environmental policy. Automobile emissions are the primary cause of most urban air pollution. In New York City, 90 percent of the carbon monoxide and 50 percent of the ozone in the air can be traced to automotive exhaust.

Current law also raises concerns about tax equity. Is it fair for a highly-paid executive to receive tax-free parking benefits worth as much as $3,000 a year, while a clerical worker owes tax on transit passes or the value of a ride in a company-provided van pool?

The legislation that I introduce today will make some progress in eliminating the tax bias encouraging commuting to work by car. The bill will raise the current amount of mass transit benefits that may be provided by an employer on a tax-free basis from $15 per month to $60 per month, which is the average cost nationwide for monthly mass transit commuting. In this manner, the tax treatment of parking and mass transit benefits will be brought into closer parity. In addition, the tax-free treatment of van pool transportation provided by an employer will be reinstated in the tax code.

While $60 per month is the national average, many mass transit commuters incur transit fares which significantly exceed that amount, including in my own State a typical worker taking a commuter train into Manhattan. For these commuters, the bill does provide that the first $60 in monthly mass transit benefits will not be taxed, regardless of the total amount of benefits received. This repeals the arbitrary "cliff" effect of current law, under which the first $15 of tax-free benefits becomes fully taxable if the total monthly benefit exceeds $15.

Mr. President, local governments and private industry are making commendable efforts to address the very pressing problem of urban traffic congestion and attendant air quality deterioration. In the New York City metropolitan area, the Port Authority of New York and New Jersey, together with the New York Metropolitan Transportation Authority and New Jersey Transit, have formed the TransitCenter, a public-private alliance to promote transit. TransitCenter has created the TransitChek, a low-cost and administratively simple means for private employers to provide transit benefits to encourage mass transit use by employees. Since October 1987, almost 1,000 companies have joined the TransitChek program. This is a good start, certainly, but only 0.5 percent of the companies in the region. No doubt the meager $15 per month benefit has dampened employers' enthusiasm for undertaking the burdens of participation in the program. Federal tax policy should get behind these efforts.

Employers across the country are also developing many innovative employee van and car pooling arrangements. Again, Federal tax policy should not hamper these efforts.

Mr. President, I urge my colleagues to join me in supporting this legislation to get the Tax Code on the right side of sensible environmental and transportation policy.

Mr. President, I ask unanimous consent that the text of the bill appear in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 26

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. QUALIFIED TRANSPORTATION FRINGE BENEFIT.

(a) EXCLUSION.—Section 132(a) is amended by striking "or" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", or", and by adding at the end thereof the following new paragraph."

"(5) qualified transportation fringe."

(b) QUALIFIED TRANSPORTATION FRINGE.—Section 132 is amended by redesignating subsection (k) as subsection (l) and inserting after subjection (j) the following new subsection.

"(K) QUALIFIED TRANSPORTATION FRINGE.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified transportation fringe' means—

"(A) transportation in a commuter highway vehicle between the employee's residence and place of employment, and

"(2) LIMITATION ON EXCLUSION FOR TRANSIT PASSES.—In the case of a qualified transportation fringe described in paragraph (1)(B), the amount excluded from gross income under subsection (a)(5) shall not exceed $60 per month.

"(3) BENEFIT NOT IN LIEU OF COMPENSATION.—Paragraph (1) shall not apply to any qualified transportation fringe unless—such benefit is provided in addition to (and not in lieu of) any compensation otherwise payable to the employee.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) TRANSIT PASS.—The term 'transit pass' means any pass, token, farecard, voucher, or similar item entitling a person to transportation on mass transit facilities (whether or not publicly owned).

"(B) COMMUTER HIGHWAY VEHICLE.—The term 'commuter highway vehicle' means any highway vehicle—

"(i) the seating capacity of which is at least 7 adults (not including the driver), and

"(ii) at least 80 percent of the mileage use of which can reasonably be expected to be—

"(I) for purposes of transporting employees between their residences and their place of employment, and

"(II) on trips during which the number of employees transported for such purposes is at least ½ of the adult seating capacity of such vehicle (not including the driver).

"(C) TRANSPORTATION PROVIDED BY EMPLOYER.—Transportation referred to in paragraph (1)(A) shall be considered to be provided by an employer if such transportation is furnished in a commuter highway vehicles operated by or for the employer.

"(D) EMPLOYEE.—The term 'employee' does not inlcude an individual who is an employee within the meaning of section 401(c)(1).".

(c) CONFORMING AMENDMENT.—Section 132(h)(1) is amended by striking "and (2)" in the text and heading and inserting ", (2), and (5)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

Mr. D'AMATO. Mr. President, I am pleased to join my distinguished colleague from New York in introducing a bill to encourage the use of our country's mass transit systems. This bill provides commuters an added incentive to use public transportation by increasing from $15 to $60 per month the amount of transit passes an employer can provide tax-free to employees. Greater use of public transportation will make a significant contribution toward solving traffic gridlock and environmental problems. I know in my State, the city of Portland has been working to reduce the number of automobiles in the downtown area by imposing restrictions on new parking spaces. This bill should help Portland in achieving this goal. Reducing vehicle emissions through the use of public transportation is an important step toward improving air quality in our cities. I urge my colleagues to join me in promoting the use of our mass transit systems as we continue our efforts to address the Nation's air polution and traffic problems.

Mr. D'AMATO. Mr. President, I rise today as an original cosponsor to the mass transit/van pool commuter benefit legislation introduced by my senior colleague from New York, Senator MOYNIHAN. This bill would establish an employer provided tax-free benefit of $60 per month to working people who commute by train, bus, subway or van pools.

This legislation advances an equitable commuter policy that I have promoted for several years and will continue to support. At a time when congestion and pollution are choking many of our urban and suburban areas, we must make every effort to encourage the use of mass transit and other high occupancy modes of transportation.

Current tax laws clearly discriminates against mass transit and van pool users. A partner in a law firm who drives and parks at work can receive free parking as a tax-free fringe benefit. A secretary who commutes by train, bus, or subway can receive only $15 a month from an employer. This commuter most likely receives no subsidy at all. The return to administer a $15 benefit program is often viewed by employers as too small to justify operating a program, leaving the bias in favor of automobile use.

In our Nation's cities, where smog is a major problem, the current tax inequity is tantamount to subsidizing pollution. Automobiles are the largest single contributor to the ozone and carbon monoxide problems in New York and in the entire Northeast. Recent analysis shows that in 1987, motor vehicles accounted for anywhere between 50 and 70 percent of the hydrocarbon, nitrogen oxide, and carbon monoxide emissions in the Northeast. Each time a commuter chooses mass transit over driving to work he is making a significant contribution to reducing air pollution.

Mr. President, I encourage my colleagues to consider the lack of equity and fairness surrounding the current commuter-benefit tax policy. This year, as Congress reauthorizes the Surface Transportation Act, we will have the opportunity to address a number of transportation issues. This issue is not within the scope of the reauthorization but it is relevant and it does deserve our attention.

Thank you, Mr. President.

By Mr. MOYNIHAN:

S. 27. A bill entitled the "Social Security Trust Funds Management Act of 1991"; to the Committee on Finance.

SOCIAL SECURITY TRUST FUNDS MANAGEMENT ACT

Mr. MOYNIHAN. Mr. President, on this first day of legislation in the 102d Congress, I rise to offer the Social Security Trust Funds Management Act of 1991, legislation to reform current investment practices governing the Social Security trust funds. The intent of this bill is to prevent from happening again what never should have happened at all: The disinvestment in 1984 and 1985 of Social Security trust fund assets in order to keep the Federal Government running.

The facts about the disinvestment are well-known, but they bear repeating. In the fall of 1985, the Federal Government's ability to borrow additional funds to finance the budget deficit temporarily expired because the Government had reached its statutory debt limit. In order to drop the Federal debt below the statutory ceiling, the Secretary of the Treasury, acting in his role as managing trustee of the Social Security trust funds, disinvested, or prematurely redeemed, $25.4 billion of Social Security's long-term securities. As a result, the trust fund reserves were drawn down by November 12, 1985 to about $11 billion—a level insufficient to pay 1 months' worth of benefits. The interest that the trust funds could have lost by such premature redemptions was estimated by the Social Security Office of the Actuary to be some $857 million.

Moreover, the Treasury Department took a similar step the previous year, during the September–October 1984 debt limit impasse. At that time, $5.1 billion of Social Security's long-term bonds were prematurely cashed in, which could have resulted in a $382 million loss of interest to the trust fund.

The Senate did later adopt an amendment offered by myself and Senator RIEGLE to make the trust funds whole. Lone-term bonds were restored to the trust funds, as was lost interest. But a more precious commodity could not be so easily restored—public trust.

In the wake of the trust fund disinvestments, public confidence plummeted. Social Security recipients became concerned about whether they could continue to receive their benefits.

Another aspect of the trust fund disinvestments troubles me: the concealment that surrounded it. Neither the congressional committees with jurisdiction over the program nor the public trustees of the Social Security system received any notification of these extraordinary steps. During a November 7, 1985 hearing on the issue held before the Senate Finance Subcommittee on Social Security and Public Assistance, the Treasury Department witness, former Deputy Assistant Secretary John J. Niehenke, demonstrated an extraordinary lack of candor. He was loathe to divulge such basic information as the total amount of long-term investments held by the trust funds on November 7, the day of the hearing, because such information would have revealed the disinvestments of early that month. Nor was he forthright about ad-

mitting to the disinvestment that occurred in 1984.

Mr. President, I remain deeply disturbed by this concealment. Why were we in the Congress not informed about these disinvestments in a timely manner? Why weren't all of the trustees informed? Why were we left to our own devices to find out just what was being done with such large amounts of public money?

The bill I am reintroducing today would address the problems caused by disinvestment. It would help restore public confidence in Social Security by assuring that the trust funds are properly managed. It would force the Treasury to be more candid about its practices by putting into statute reporting requirements. Specifically, the bill would:

Prohibit the disinvestment of OASDI trust fund assets during a debt ceiling crisis for anything other than the timely payment of Social Security benefits and administrative expenses;

Mandate that uninvested Social Security tax receipts be invested in interest-bearing U.S. Government obligations as soon as the debt ceiling is increased;

Make a permanent appropriation to restore to the trust funds any amounts that may be lost in future debt limit crises; and

Require the Managing Trustee to notify the Social Security Board of Trustees and the Congress 15 days in advance of an anticipated disinvestment and to report monthly to the trustees on the operation and status of the trust funds.

Mr. President, I remind my colleagues in the Senate that during the 99th and 100th Congresses they thrice accepted identical language, but the House thrice rejected it. Why? Because the House insisted on prohibiting disinvestment for any purpose even if this resulted in Social Security checks not being mailed during a debt limit crisis. My bill would allow the assets of the Social Security trust funds to be disinvested in order to pay Social Security benefits, but never in order to fund, or temporarily float, other Government expenses. The Treasury Department has endorsed this approach over that taken by the House.

I urge my colleagues to once again support this important legislation, and I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 27

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This title may be cited as the "Social Security Trust Funds Management Act of 1991".

SEC. 2. INVESTMENT AND RESTORATION OF TRUST FUNDS.

(a) Subsection (d) of section 201 of the Social Security Act (42 U.S.C. 401(d)) is amended—

(1) by striking out "(1) on original issue" and inserting in lieu thereof "(A) on original issue",

(2) by striking out "(2) by purchase" and inserting in lieu thereof "(B) by purchase";

(3) by striking out "It shall be" and inserting in lieu thereof "(1) It shall be", and

(4) by adding at the end thereof the following new paragraphs:

(2) If—

"(A) any amounts in the Trust Funds have not been invested solely by reason of the public debt limit, and

"(B) the taxes described in clause (3) or (4) of subsection (a) with respect to which such amounts were appropriated to the Trust Funds have actually been received into the general fund of the Treasury of the United States,

such amounts shall be invested by the Managing Trustee as soon as such investments can be made without exceeding the public debt limit and without jeopardizing the timely payment of benefits under this title or under any other provision of law directly related to the programs established by this title.

"(3)(A) Upon expiration of any debt limit impact period, the Managing Trustee shall immediately—

"(i) reissue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations held by such Trust Fund that—

"(I) were redeemed during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of standard investment procedures for such Trust Fund in effect on the day before the date on which the debt limit impact period began would not have been redeemed if the debt limit impact period had not occurred, and

"(ii) issue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations which—

"(I) were not issued during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of such standard investment procedures, would have been issued if the debt limit impact period had not occurred.

"(B) Obligations issued or reissued under subparagraph (A) shall be substituted for obligations that are held by the Trust Fund, and for amounts in the Trust Fund that have not been invested, on the date on which the debt limit impact period ends in a manner that will ensure that, after such substitution, the holdings of the Trust Fund will replicate to the maximum extent practicable the obligations that would be held by such Trust Fund if the debt limit impact period had not occurred.

"(C) In determining, for purposes of this paragraph, the obligations that would be held by a Trust Fund if the debt limit impact period had not occurred, any amounts in the Trust Fund which have not been invested, and any amounts required to be invested under paragraph (2), shall be treated as amounts which were required to be invested upon transfer to the Trust Fund.

"(4) The Managing Trustee shall pay, on the first normal interest payment date that occurs on or after the date on which any debt limit impact period ends, to each of the Trust Funds, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Managing Trustee to be equal to the excess of—

"(A) the net amount of interest that would have been earned by such Trust Fund during such debt limit impact period if—

"(i) amounts in such Trust Fund that were not invested during such debt limit impact period solely by reason of the public debt limit had been invested, and

"(ii) redemptions and disinvestments with respect to such Trust Fund which occurred during such debt limit impact period solely by reason of the public debt limit had not occurred, over

"(B) the sum of—

"(i) the net amount of interest actually earned by such Trust Fund during such debt limit impact period, plus

"(ii) the total amount of the principal of all obligations issued or reissued under paragraph (3)(A) at the end of such debt limit impact period that is attributable to interest that would have been earned by such Trust Fund during such debt limit impact period but for the public debt limit.

"(5) For purposes of this section—

"(A) The term 'public debt limit' means the limitation imposed by subsection (b) of section 3101 of title 31, United States Code.

"(B) The term 'debt limit impact period' means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to orderly conduct the financial operations of the United States may not be made without exceeding the public debt limit.".

(b) Subsection (a) of section 201 of the Social Security Act is amended by adding at the end thereof the following new sentence: "All amounts so transferred shall be immediately available exclusively for the purpose for which amounts in the Trust Fund are specifically made available under this title or under any other provisions of law directly related to the programs established by this title.".

SEC. 3. FAITHFUL EXECUTION OF DUTIES BY MEMBERS OF BOARD OF TRUSTEES OF TRUST FUNDS.

Section 201(c) of the Social Security Act is amended by striking the last sentence and inserting the following: "A person serving on the Board of Trustees (incluuding the Managing Trustee) shall not be considered to be a fiduciary, but each such person shall faithfully execute the duties imposed on such person by this section. A person serving on the Board of Trustees (including the Managing Trustee) shall not be personally liable for actions taken in such capacity with respect to the Trust Funds.".

SEC. 4. REPORTS REGARDING THE OPERATION AND STATUS OF THE TRUST FUNDS.

Subsection (c) of section 201 of the Social Security Act is amended—

(1) by striking "once" in the fourth sentence and inserting "twice",

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(3) by redesignating paragraphs (3), (4), and (5) as subparagraphs (D), (E), and (F), respectively,

(4) by inserting after subparagraph (B) (as redesignated by paragraph (2) of this section) the following:

"(C) Report to the Congress as soon as possible, but not later than the date that is 30 days after the first normal interest payment date occurring on or after the date on which any debt limit impact period for which the

Managing Trustee is required to take action under paragraph (3) or (4) of subsection (d) ends, on—

"(i) the operation and status of the Trust Funds during such debt limit impact period, and

"(ii) the actions taken under paragraphs (3) and (4) of subsection (d) with respect to such debt limit impact period;",

(5) by striking out "in paragraph (2) above" and inserting in lieu thereof "in subparagraph (B) above",

(6) by inserting "(1) after "(c)", and

(7) by adding at the end thereof the following:

"(2) The Managing Trustee shall report monthly to the Board of Trustees concerning the operation and status of the Trust Funds and shall report to Congress and to the Board of Trustees not less than 15 days prior to the date on which by reason of the public debt limit, the Managing Trustee expects to be unable to fully comply with the provisions of subsection (a) or (d)(1), and shall include in such report an estimate of the expected consequences to the Trust Funds of such inability.".

SEC. 5. ELIMINATION OF UNDUE DISCRETION IN THE INVESTMENT OF TRUST FUNDS.

(a) Section 201(d) of the Social Security Act is amended, in the first sentence—

(1) by inserting "immediately" after "to invest"; and

(2) by striking ", in his judgment,".

(b)(1) Paragraph (2) of section 201(d) of the Social Security Act, as added by section 2 of this Act, is amended to read as follows:

"(2) If any amount in either of the Trust Funds is not invested solely by reason of the public debt limit, such amount shall be invested as soon as such investment can be made without exceeding the public debt limit and without jeopardizing the timely payment of benefits under this title or under any other provision of law directly related to the programs established by this title."

(2) The amendment made by paragraph (1) shall take effect on July 1, 1992.

SEC. 6. SALES AND REDEMPTIONS BY TRUST FUNDS.

Section 201(e) of the Social Security Act is amended—

(1) by inserting "(1)" after "(e)"; and

(2) by adding at the end the following:

"(2)(A) The Managing Trustee may effect any such sale or redemption with respect to either Trust Fund only for the purpose of enabling such Trust Fund to make payments authorized by this title or under any other provisions of law directly related to the programs established by this title. If either of the Trust Funds holds any amounts which are not invested by reason of the public debt limit, the Managing Trustee is nevertheless directed to make such sales and redemptions if, and only to the extent, necessary to assure timely payment of benefits and other payments authorized by this title or by any other provisions of law directly related to the programs established by this title, but the principal amount of obligations sold or redeemed pursuant to this sentence shall not exceed the principal amount of obligations that would have been sold or redeemed under normal operating procedures in order to make such payments.".

SEC. 7. EFFECTIVE DATE.

Except as otherwise provided by this title, the amendments made by this title shall take effect on the date of enactment of this Act.

By Mr. MOYNIHAN (for himself and Mr. LAUTENBERG):

S. 28. A bill to amend title 13, United States Code, to remedy the historic undercount of the poor and minorities in the decennial census of population and to otherwise improve the overall accuracy of the population date collected in the decennial census by directing the use of appropriate statistical adjustment procedures, and for other purposes; to the Committee on Governmental Affairs.

DECENNIAL CENSUS IMPROVEMENT ACT

Mr. MOYNIHAN. Mr. President, today I am introducing the Decennial Census Improvement Act of 1991. It is the same legislation I introduced in the 101st Congress, and it is more vital, more justified, than ever. The 1990 census is nearing completion—249,632,692 heads were counted. The Bureau of the Census went to great effort to count as much of the population as possible. But the Bureau did not get everyone. Growth and changes in the Nation have made this task more difficult than ever. Fewer people responded by mail than 10 years ago. More are homeless.

In 1980 the Bureau itself estimated that it missed 1.5 percent of the population. In most statistical endeavors this would be considered a success, but the census is too important to strive for anything less than a complete count. The most disturbing aspect of this undercount is that it disproportionately includes minorities. Blacks were undercounted by an estimated 5.9-percent nationally. With congressional representation and the distribution of Federal funds so reliant on census data, and with a solution at hand, this differential undercount cannot be tolerated. This legislation will ensure the fair representation of the people,[1] Edmund Randolph's words, in the House of Representatives, and the equitable distribution of Federal funds.

EQUAL REPRESENTATION AND THE CENSUS

Article I, section 2, clause 3 of the Constitution requires the Federal Government to conduct a decennial census. A national census was and is necessary to implement the terms of the "Great Compromise", which, for all practical purposes, based the allocation of Congressmen in the House of Representatives solely on population. Indeed, only an accurate and honest census could accomplish this goal. As the Supreme Court stated in Wesberry versus Sanders (1964):

While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives.[2]

Otherwise, the weight of some citizen's votes is diluted, while others are strengthened.

Footnotes at end of article.

THE UNDERCOUNT

A census is never exact. Invariably, some persons are missed. An undercount is, to some degree or other, inevitable. Nonetheless, the Census Bureau has made considerable progress in reducing it over the years. In 1940, for example, the undercount for the population as a whole was 5.6 percent; by 1980, the total undercount had been reduced to between 1.4 and 1.6 percent. Despite this improvement, the Bureau of the Census continues to miss a significant portion of the population, particularly the nonwhite population, and those living in central cities across the country.

In 1955 the demographer Ansley J. Coale established that the 1950 census missed a substantial proportion of the black population.[3] Subsequently, Jacob Siegel, senior demographic statistician at the Census Bureau, estimated the minority undercount for the 1950 census at 11.5 percent. Though the 1960 census did somewhat better, Siegel has concluded that 9.5 percent of blacks were missed and that the differential between whites and blacks remained pronounced.[4]

In 1966 when I became director of the Joint Center for Urban Studies at MIT and Harvard I asked Prof. David Heer of the Harvard School of Public Health to work with me in planning a conference to publicize the nonwhite undercount in the 1960 census and to foster concern about the problem of obtaining a full enumeration, especially of the urban poor. It was our hope that the public airing of this issue would lead to greater public support for the Census Bureau to obtain the resources to deal with this problem in the 1970 census.

In his introduction to the published report of the conference, Social Statistics and the City (1968), Professor Heer described our planning:

Daniel P. Moynihan, then Assistant Secretary of Labor, became aware of the findings concerning the underenumeration of nonwhites in the census while preparing his now famous report "The Negro Family: The Case for National Action," which was published in 1965.[5] In the fall of 1966 Moynihan became director of the Joint Center for Urban Studies of the Massachusetts Institute of Technology and Harvard University. In December of that year he asked me if I would plan a conference that would (1) publicize the fact that many Negroes had not been counted in the 1960 census and (2) attempt to arouse national concern about the matter. In further discussion we decided that the proposed conference should be broadened to include not only census underenumeration of Negroes but the adequacy of all official social statistics for Negroes, Puerto Ricans and Mexicans in the United States. In January 1967 the Carnegie Corporation of New York informed us that it was willing to provide financial support for the conference.

A prime aim of the conference was to stimulate public interest in the importance of social statistics for Negroes, Puerto Ricans and Mexicans so that the chief agencies concerned with gathering such statistics—the

U.S. Bureau of the Census and the National Center for Health Statistics—might obtain a more adequate budget from Congress to improve the quality and quantity of data for these groups. With this goal in mind we decided that the conference would have to be held before the fall of 1967, since the Bureau of the Budget was to decide upon the recommended appropriations for the 1970 Decennial Census at that time. The final dates established were June 22 and 23, 1967, and the conference was to be held in Washington, DC.

Among those providing invaluable assistance in planning the conference were Dr. A. Ross Eckler, director of the U.S. Bureau of the Census; Dr. Conrad Taeuber, Assistant Director for Demographic Fields, U.S. Bureau of the Census; and Dr. Anders Lunde, Assistant Director of the Division of Vital Statistics, National Center for Health Statistics, U.S. Public Health Service. It was decided that six papers should be presented on the first day of the conference. On the morning of the second day, the participants would divide into three workshops to discuss recommendations with respect to each of the following topics: First, ways of improving coverage of Negroes, Puerto Ricans, and Mexicans in the census; second, ways of improving vital statistics for those groups; and third, needed additions in available social statistics for the three groups. On the afternoon of the second day, the rapportuers from each of the morning sessions would report the recommendations of their respective panels, and the conference as a whole would then adopt a general series of recommendations.[6]

Since the report was published, the decline in the undercount of minorities has continued. Still, in 1980 it remained disproportionately high. While the undercount for whites and nonblacks in 1980 was an estimated 0.7 percent, a much higher 5.9 percent of all blacks were not counted. Other estimates of the black undercount are even higher. In that census, the Bureau estimates it missed some 1.5 million whites, and 1.67 million blacks. Thus, in 1980, blacks constituted 53 percent of all people missed in the census, even though they made up less than 12 percent of the total population—the official population. Moreover, 1980 was the first time in the history of the census that more blacks than whites were missed.

Some estimates also indicate that perhaps 5.9 percent of all Hispanics are not being counted. And the undercount rates among our central city population are estimated to be the highest. Possibly 6 percent of all central city inhabitants were missed in the 1980 count; 11.3 percent of black central city residents, and 10.3 percent of such Hispanic residents.

Merely increasing the resources available to the Census Bureau is not likely to remedy this differential undercount. The 1990 census was the most expensive in history, but there was still not sufficient money or time to completely train the army of enumerators hired. Finding people qualified to go into some ubran areas remains a difficult problem.

Moreover, the National Academy of Sciences has determined that further coverage improvement programs are likely to be extremely expensive, costing as much as $75 per capita. Prof. Everett S. Lee of the University of Massachusetts forecast this situation when he wrote in our 1968 conference report, "Social Statistics and the City" that:

[M]ore money will not in itself greatly improve the situation. Traditional census procedures, while highly effective, cannot be expected to provide the additional or better data needed in our effort to deal with the numerous problems posed by the disadvantaged. The Census Bureau has gone about as far as it can go with traditional procedures.[7]

Some analysts even suggest that increasing resources can actually worsen the differential undercount. In 1980, additional resources helped to increase the count of whites more than the count of minorities, thus exacerbating the differential. At a conference held on the 1970 census post enumeration program in October of that year, Bureau Director Vicent Barabba admitted—

[Y]ou could reduce the 1970 undercoverage level (by augmenting resources), but perhaps increase the differential.[8]

At the same conference, Professor Nathan Keyfitz of Harvard University also stated:

[A]s the census pushes harder and reduces the undercount it is almost certain to increase the differential of the undercount.[9]

Finally, Jacob Siegel, who also participated in our 1967 conference, remarked:

Don't be surprised if you get something like an overcount of whites and an undercount of blacks with therefore an impossible-to-compute differential except in absolute terms or something that might go far beyond the 4 to 1 of 1970.[10]

IMPACT OF THE UNDERCOUNT

Estimates vary as to the impact of past undercounts on various communities, and there are divergent views about how an adjustment of the undercount would benefit different areas. But scholars agree that those groups which tend to be undercounted—namely, minorities, the poor. and the homeless—generally reside in the largest cities, and in poor or remote rural areas.

New York State officials estimate that the 1980 census left between 500,000 and 860,000 New Yorkers uncounted; others estimate that a large undercount in New York City was mitigated by a substantial overcount in other parts of the State, leaving a net undercount of some 250,000 people. Double counting of students, individuals with two homes, residential mobility, et cetera, all contribute to the undercount, which is most likely to occur in rural and more affluent areas.

There is general agreement, however, that New York City suffered a substantial undercount—of at least a half million people—and lost one congressional seat as a result.

City officials, extrapolating from 1980 Census Bureau data, estimate the total city undercount at 7.4 percent, with the worst discrepancies in the black and Hispanic counts; 15.2 percent of black New Yorkers were missed, and 12.4 percent of Hispanics in the city may have been missed.

After the 1980 census the city and State of New York obtained a court order requiring the Census Bureau to accept "Were You Counted?" forms, distributed by the Census Bureau but not received within the Bureau's deadline. City officials claim that as a result of this action somewhere between 12,000 and 20,000 additional individuals were included in the final count. This balance, said city officials, saved a congressional seat for New York. Correction of the undercount does matter.

In addition to almost losing a second seat in Congress, city officials believe New York loses annually between $26 and $52 million in Federal and State dollars distributed on the basis of population. Among other cities, Chicago, Detroit, Kansas City, and Los Angeles have each alleged substantial undercounts in the 1980 census, with resulting loss of Federal aid and representation in Congress.

FEASIBILITY OF ADJUSTMENT

Statistical adjustments to remedy this situation are quite feasible. For example, in 1970, the Bureau of the Census imputed almost 5 million additional people into apparently occupied housing, and into the official count. In 1980 over half a million were imputed. Yet, the Department of Commerce—with jurisdiction over the Census Bureau—decided not to adjust the 1990 census for the undercount. Announcing the Department's decision, Dr. Robert Ortner, Under Secretary for Economic Affairs, stated on October 30, 1987:

Adjustment would be controversial, even among statisticians. Techniques are available to adjust, but there are questions about the validity of their results . . . Different statisticians would employ different models and get different results.[11]

Notwithstanding the Department's official position, the Census Bureau's former Associate Director for Statistical Standards and Methodology, Barbara Bailar, in her capacity as president of the American Statistical Association, stated this:

[T]he consensus of the statisticians—statisticians from government, industries, and academia, statisticians who have carefully reviewed all the work in this area—is that an adjustment will provide more accurate data on the size, location, and demography of the minority population in this country. It's time to get on with the job.[12]

After making that statement, Ms. Bailar resigned her post in protest over Mr. Ortner's decision. While she opposed adjusting the 1980 census because suitable methodology did not exist, she is now convinced that it does and that the adjustment should be made.

Moreover, a panel of five Census statisticians—Dan Childers, Gregg Diffendal, Howard Hogan, Nathanial Schenker, and Kirk Wolter—published