

HR 970 IH

109th CONGRESS

1st Session

**H. R. 970**

To increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent gang crime, to protect law-abiding citizens and communities from violent criminals, to revise and enhance criminal penalties for violent crimes, to reform and facilitate prosecution of juvenile gang members who commit violent crimes, to expand and improve gang prevention programs, and for other purposes.

**IN THE HOUSE OF REPRESENTATIVES****February 17, 2005**

Mr. SCHIFF (for himself and Mrs. BONO) introduced the following bill; which was referred to the Committee on the Judiciary

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**A BILL**

To increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent gang crime, to protect law-abiding citizens and communities from violent criminals, to revise and enhance criminal penalties for violent crimes, to reform and facilitate prosecution of juvenile gang members who commit violent crimes, to expand and improve gang prevention programs, and for other purposes.

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) Short Title- This Act may be cited as the 'Gang Prevention and Effective Deterrence Act of 2005'.

(b) Table of Contents- The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I--CRIMINAL STREET GANG ABATEMENT ACT**

Sec. 100. Findings.

**Subtitle A--Criminal Law Reforms and Enhanced Penalties to Deter and Punish Illegal Street Gang Activity**

Sec. 101. Solicitation or recruitment of persons in criminal street gang activity.

Sec. 102. Criminal street gangs.

Sec. 103. Violent crimes in furtherance or in aid of criminal street gangs.

Sec. 104. Interstate and foreign travel or transportation in aid of criminal street gangs.

Sec. 105. Amendments relating to violent crime in areas of exclusive Federal jurisdiction.

Sec. 106. Increased penalties for use of interstate commerce facilities in the commission of murder-for-hire and other felony crimes of violence.

Sec. 107. Increased penalties for violent crimes in aid of racketeering activity.

Sec. 108. Murder and other violent crimes committed during and in relation to a drug trafficking crime.

### **Subtitle B--Increased Federal Resources to Deter and Prevent At-risk Youth From Joining Illegal Street Gangs**

Sec. 110. Designation of and assistance for 'high intensity' interstate gang activity areas.

Sec. 111. Enhancement of project safe neighborhoods initiative to improve enforcement of criminal laws against violent gangs.

Sec. 112. Additional resources needed by the Federal Bureau of Investigation to investigate and prosecute violent criminal street gangs.

Sec. 113. Grants to State and local prosecutors to combat violent crime and to protect witnesses and victims of crimes.

Sec. 114. Reauthorize the gang resistance education and training projects program.

### **TITLE II--VIOLENT CRIME REFORMS NEEDED TO DETER AND PREVENT ILLEGAL GANG CRIME**

Sec. 201. Multiple interstate murder.

Sec. 202. Expansion of rebuttable presumption against release of persons charged with firearms offenses.

Sec. 203. Venue in capital cases.

Sec. 204. Statute of limitations for violent crime.

Sec. 205. Predicate crimes for authorization of interception of wire, oral, and electronic communications.

Sec. 206. Clarification to hearsay exception for forfeiture by wrongdoing.

Sec. 207. Clarification of venue for retaliation against a witness.

Sec. 208. Amendment of sentencing guidelines relating to certain gang and violent crimes.

Sec. 209. Increased penalties for criminal use of firearms in crimes of violence and drug trafficking.

Sec. 210. Possession of firearms by dangerous felons.

Sec. 211. Conforming amendment.

### **TITLE III--JUVENILE CRIME REFORM FOR VIOLENT OFFENDERS**

Sec. 301. Treatment of Federal juvenile offenders.

Sec. 302. Notification after arrest.

Sec. 303. Release and detention prior to disposition.

Sec. 304. Speedy trial.

Sec. 305. Federal sentencing guidelines.

### **TITLE I--CRIMINAL STREET GANG ABATEMENT ACT**

#### **SEC. 100. FINDINGS.**

Congress finds that--

- (1) violent crime and drug trafficking are pervasive problems at the national, State, and local level;
- (2) the crime rate is exacerbated by the association of persons in gangs to commit acts of violence and drug offenses;
- (3) according to the most recent National Drug Threat Assessment, criminal street gangs are responsible for the distribution of much of the cocaine, methamphetamine, heroin, and other illegal drugs being distributed in rural and urban communities throughout the United States;
- (4) gangs commit acts of violence or drug offenses for numerous motives, such as membership in or loyalty to the gang, for protecting gang territory, and for profit;
- (5) gang presence has a pernicious effect on the free flow of commerce in local businesses and directly affects the freedom and security of communities plagued by gang activity;
- (6) gangs often recruit and utilize minors to engage in acts of violence and other serious offenses out of a belief that the criminal justice systems are more lenient on juvenile offenders;
- (7) gangs often intimidate and threaten witnesses to prevent successful prosecutions;
- (8) gang recruitment can be deterred through increased vigilance, strong criminal penalties, equal partnerships with State and local law enforcement, and proactive intervention efforts, particularly targeted at juveniles, prior to gang involvement;
- (9) State and local prosecutors, in hearings before the Committee on the Judiciary of the Senate, enlisted the help of Congress in the prevention, investigation, and prosecution of gang crimes and in the protection of witnesses and victims of gang crimes; and
- (10) because State and local prosecutors and law enforcement have the expertise, experience, and connection to the community that is needed to combat gang violence, consultation and coordination between Federal, State, and local law enforcement is critical to the successful prosecutions of criminal street gangs.

## Subtitle A--Criminal Law Reforms and Enhanced Penalties to Deter and Punish Illegal Street Gang Activity

### SEC. 101. SOLICITATION OR RECRUITMENT OF PERSONS IN CRIMINAL STREET GANG ACTIVITY.

Chapter 26 of title 18, United States Code, is amended by adding at the end the following:

#### **Sec. 522. Recruitment of persons to participate in a criminal street gang**

(a) Prohibited Acts- It shall be unlawful for any person to recruit, employ, solicit, induce, command, or cause another person to be or remain as a member of a criminal street gang, or conspire to do so, with the intent to cause that person to participate in an offense described in section 521(a).

(b) Definition- In this section:

(1) CRIMINAL STREET GANG- The term 'criminal street gang' shall have the same meaning as in section 521(a) of this title.

(2) MINOR- The term 'minor' means a person who is less than 18 years of age.

(c) Penalties- Any person who violates subsection (a) shall--

(1) be imprisoned not more than 5 years, fined under this title, or both; or

(2) if the person recruited, solicited, induced, commanded, or caused to participate or remain in a criminal street gang is under the age of 18--

(A) be imprisoned for not more than 10 years, fined under this title, or both; and

(B) at the discretion of the sentencing judge, be liable for any costs incurred by the Federal Government, or by any State or local government, for housing, maintaining, and treating the person until the person attains the age of 18 years.'

### SEC. 102. CRIMINAL STREET GANGS.

(a) Criminal Street Gang Prosecutions- Section 521 of title 18, United States Code, is amended to read as follows:

#### **Sec. 521. Criminal street gang prosecutions**

(a) Definitions- As used in this chapter:

(1) CRIMINAL STREET GANG- The term 'criminal street gang' means a formal or informal group, club, organization, or association of 3 or more individuals, who individually, jointly, or in combination, have committed or attempted to commit for the direct or indirect benefit of, at the direction of, in furtherance of, or in association with the group, club organization, or association at least 2 separate acts, each of which is a predicate gang crime, 1 of which occurs after the date of enactment of the Gang Prevention and Effective Deterrence Act of 2004, and the last of which occurs not later than 10 years (excluding any period of imprisonment) after the commission of a prior predicate gang crime, and 1 predicate gang crime is a crime of violence or involves manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemicals (as those terms are

defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) provided that the activities of the criminal street gang affect interstate or foreign commerce, or involve the use of any facility of, or travel in, interstate or foreign commerce.

`(2) PREDICATE GANG CRIME- The term `predicate gang crime' means--

`(A) any act, threat, conspiracy, or attempted act, which is chargeable under Federal or State law and punishable by imprisonment for more than 1 year involving--

`(i) murder;

`(ii) manslaughter;

`(iii) maiming;

`(iv) assault with a dangerous weapon;

`(v) assault resulting in serious bodily injury;

`(vi) gambling;

`(vii) kidnapping;

`(viii) robbery;

`(ix) extortion;

`(x) arson;

`(xi) obstruction of justice;

`(xii) tampering with or retaliating against a witness, victim, or informant;

`(xiii) burglary;

`(xiv) sexual assault (which means any offense that involves conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction);

`(xv) carjacking; or

`(xvi) manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemicals (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

`(B) any act punishable by imprisonment for more than 1 year under--

`(i) section 844 (relating to explosive materials);

`(ii) section 922(g)(1) (where the underlying conviction is a violent felony (as defined in section 924(e)(2)(B) of this title) or is a serious drug offense (as defined in section 924(e)(2)(A) of this title));

`(iii) subsection (a)(2), (b), (c), (g), or (h) of section 924 (relating to receipt, possession, and transfer of firearms);

- `(iv) sections 1028 and 1029 (relating to fraud and related activity in connection with identification documents or access devices);
- `(v) section 1503 (relating to obstruction of justice);
- `(vi) section 1510 (relating to obstruction of criminal investigations);
- `(vii) section 1512 (relating to tampering with a witness, victim, or informant), or section 1513 (relating to retaliating against a witness, victim, or informant);
- `(viii) section 1708 (relating to theft of stolen mail matter);
- `(ix) section 1951 (relating to interference with commerce, robbery or extortion);
- `(x) section 1952 (relating to racketeering);
- `(xi) section 1956 (relating to the laundering of monetary instruments);
- `(xii) section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity);
- `(xiii) section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire); or
- `(xiv) sections 2312 through 2315 (relating to interstate transportation of stolen motor vehicles or stolen property); or

`(C) any act involving the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose).

`(3) STATE- The term `State' means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

`(b) Participation in Criminal Street Gangs- It shall be unlawful--

`(1) to commit, or conspire or attempt to commit a predicate crime--

`(A) in furtherance or in aid of the activities of a criminal street gang;

`(B) for the purpose of gaining entrance to or maintaining or increasing position in such a gang; or

`(C) for the direct or indirect benefit of the criminal street gang, or in association with the criminal street gang; or

`(2) to employ, use, command, counsel, persuade, induce, entice, or coerce any individual to commit, cause to commit, or facilitate the commission of, a predicate gang crime--

`(A) in furtherance or in aid of the activities of a criminal street gang;

`(B) for the purpose of gaining entrance to or maintaining or increasing position in such a gang; or

“(C) for the direct or indirect benefit or the criminal street gang, or in association with the criminal street gang.

“(c) Penalties- Whoever violates paragraph (1) or (2) of subsection (b)--

“(1) shall be fined under this title, imprisoned for not more than 30 years, or both; and

“(2) if the violation is based on a predicate gang crime for which the maximum penalty includes life imprisonment, shall be fined under this title, imprisoned for any term of years or for life, or both.

“(d) Forfeiture-

“(1) IN GENERAL- The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States--

“(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

“(B) any property used or intended to be used, in any manner or part, to commit or to facilitate the commission of such violation.

“(2) CRIMINAL PROCEDURES- The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

“(3) CIVIL PROCEDURES- Property subject to forfeiture under paragraph (1) may be forfeited in a civil case pursuant to the procedures set forth in chapter 46 of this title.’

(b) Clerical Amendment- The table of sections at the beginning of chapter 26 of title 18, United States Code, is amended to read as follows:

“521. Criminal street gang prosecutions.’

## **SEC. 103. VIOLENT CRIMES IN FURTHERANCE OR IN AID OF CRIMINAL STREET GANGS.**

(a) Violent Crimes and Criminal Street Gang Recruitment- Chapter 26 of title 18, United States Code, as amended by section 101, is amended by adding at the end the following:

### **“Sec. 523. Violent crimes in furtherance or in aid of a criminal street gang**

“(a) Any person who, for the purpose of gaining entrance to or maintaining or increasing position in, or in furtherance or in aid of, or for the direct or indirect benefit of, or in association with a criminal street gang, or as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value to or from a criminal street gang, murders, kidnaps, sexually assaults (which means any offense that involved conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction), maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, commits any other crime of violence or threatens to commit a crime of violence against any individual, or attempts or conspires to do so, shall be punished, in addition and consecutive to the punishment provided for any other violation of this chapter--

`(1) for murder, by death or imprisonment for any term of years or for life, a fine under this title, or both;

`(2) for kidnapping or sexual assault, by imprisonment for any term of years or for life, a fine under this title, or both;

`(3) for maiming, by imprisonment for any term of years or for life, a fine under this title, or both;

`(4) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 30 years, a fine under this title, or both;

`(5) for any other crime of violence, by imprisonment for not more than 20 years, a fine under this title, or both;

`(6) for threatening to commit a crime of violence specified in paragraphs (1) through (4), by imprisonment for not more than 10 years, a fine under this title, or both;

`(7) for attempting or conspiring to commit murder, kidnapping, maiming, or sexual assault, by imprisonment for not more than 30 years, a fine under this title, or both; and

`(8) for attempting or conspiring to commit a crime involving assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 20 years, a fine under this title, or both.

`(b) Definition- In this section, the term `criminal street gang' has the same meaning as in section 521 of this title.!

(b) Clerical Amendment- The table of sections at the beginning of chapter 26 of title 18, United States Code, is amended by adding at the end the following:

`522. Recruitment of persons to participate in a criminal street gang.

`523. Violent crimes in furtherance of a criminal street gang.!

## **SEC. 104. INTERSTATE AND FOREIGN TRAVEL OR TRANSPORTATION IN AID OF RACKETEERING ENTERPRISES AND CRIMINAL STREET GANGS.**

Section 1952 of title 18, United States Code, is amended--

(1) in subsection (a)--

(A) by striking `and thereafter performs or attempts to perform' and inserting `and thereafter performs, or attempts or conspires to perform'; and

(B) by striking `5 years' and inserting `10 years';

(2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(3) by inserting after subsection (a) the following:

`(b) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with the intent to kill, assault, bribe, force, intimidate, or threaten any person, to delay or influence the testimony of, or prevent from testifying, a witness in a State criminal proceeding and thereafter performs, or attempts or conspires to perform, an act described in this

subsection, shall--

`(1) be fined under this title, imprisoned for any term of years, or both; and

`(2) if death results, be punished by imprisonment for any term of years or for life.'; and

(4) in subsection (c)(2), as redesignated under subparagraph (B), by inserting `intimidation of, or retaliation against, a witness, victim, juror, or informant,' after `extortion, bribery,'.

## **SEC. 105. AMENDMENTS RELATING TO VIOLENT CRIME IN AREAS OF EXCLUSIVE FEDERAL JURISDICTION.**

(a) Assault Within Maritime and Territorial Jurisdiction of United States- Section 113(a)(3) of title 18, United States Code, is amended by striking `with intent to do bodily harm, and without just cause or excuse,'.

(b) Manslaughter- Section 1112(b) of title 18, United States Code, is amended by--

(1) striking `ten years' and inserting `20 years'; and

(2) striking `six years' and inserting `10 years'.

(c) Offenses Committed Within Indian Country- Section 1153(a) of title 18, United States Code, is amended by inserting `an offense for which the maximum statutory term of imprisonment under section 1363 is greater than 5 years,' after `a felony under chapter 109A,'.

(d) Racketeer Influenced and Corrupt Organizations- Section 1961(1) of title 18, United States Code, is amended--

(1) in subparagraph (A), by inserting `, or would have been so chargeable if the act or threat (other than lawful forms of gambling) had not been committed in Indian country (as defined in section 1151) or in any other area of exclusive Federal jurisdiction,' after `chargeable under State law'; and

(2) in subparagraph (B), by inserting `section 1123 (relating to multiple interstate murder),' after `section 1084 (relating to the transmission of wagering information),'.

(e) Carjacking- Section 2119 of title 18, United States Code, is amended by striking `, with the intent to cause death or serious bodily harm'.

(f) Clarification of Illegal Gun Transfers to Commit Drug Trafficking Crime or Crimes of Violence- Section 924(h) of title 18, United States Code, is amended to read as follows:

`(h) Illegal Transfers- Whoever knowingly transfers a firearm, knowing that the firearm will be used to commit, or possessed in furtherance of, a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)), shall be imprisoned for not more than 10 years, fined under this title, or both.'

(g) Amendment of Special Sentencing Provision- Section 3582(d) of title 18, United States Code, is amended--

(1) by striking `chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title' and inserting `section 521 (criminal street gangs) or 522 (violent crimes in furtherance or in aid of criminal street gangs), in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations),'; and

(2) by inserting `a criminal street gang or' before `an illegal enterprise'.

(h) Conforming Amendment Relating to Orders for Restitution- Section 3663(c)(4) of title 18, United States Code, is amended by striking `chapter 46 or chapter 96 of this title' and inserting `section 521, under chapter 46 or 96,'.

(i) Special Provision for Indian Country- No person subject to the criminal jurisdiction of an Indian tribal government shall be subject to section 3559(e) of title 18, United States Code, for any offense for which Federal jurisdiction is solely predicated on Indian country (as defined in section 1151 of such title 18) and which occurs within the boundaries of such Indian country unless the governing body of such Indian tribe elects to subject the persons under the criminal jurisdiction of the tribe to section 3559(e) of such title 18.

## **SEC. 106. INCREASED PENALTIES FOR USE OF INTERSTATE COMMERCE FACILITIES IN THE COMMISSION OF MURDER-FOR-HIRE AND OTHER FELONY CRIMES OF VIOLENCE.**

Section 1958 of title 18, United States Code, is amended--

(1) by striking the header and inserting the following:

**`Sec. 1958. Use of interstate commerce facilities in the Commission of murder-for-hire and other felony crimes of violence';**

and

(2) by amending subsection (a) to read as follows:

`(a) Any person who travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility in interstate or foreign commerce, with intent that a murder or other felony crime of violence be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, or who conspires to do so--

`(1) may be fined under this title and shall be imprisoned not more than 20 years;

`(2) if personal injury results, may be fined under this title and shall be imprisoned for not more than 30 years; and

`(3) if death results, may be fined under this title, and shall be imprisoned for any term of years or for life.'.

## **SEC. 107. INCREASED PENALTIES FOR VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.**

Section 1959(a) of title 18, United States Code, is amended to read as follows:

`(a) Any person who, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, or in furtherance or in aid of an enterprise engaged in racketeering activity, murders, kidnaps, sexually assaults (which means any offense that involved conduct that would

violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction), maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires to do so, shall be punished, in addition and consecutive to the punishment provided for any other violation of this chapter--

`(1) for murder, by death or imprisonment for any term of years or for life, a fine under this title, or both;

`(2) for kidnapping or sexual assault, by imprisonment for any term of years or for life, a fine under this title, or both;

`(3) for maiming, by imprisonment for any term of years or for life, a fine under this title, or both;

`(4) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 30 years, a fine under this title, or both;

`(5) for threatening to commit a crime of violence, by imprisonment for not more than 10 years, a fine under this title, or both;

`(6) for attempting or conspiring to commit murder, kidnapping, maiming, or sexual assault, by imprisonment for not more than 30 years, a fine under this title, or both; and

`(7) for attempting or conspiring to commit assault with a dangerous weapon or assault which would result in serious bodily injury, by imprisonment for not more than 20 years, a fine under this title, or both.!

## **SEC. 108. MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME.**

(a) In General- Part D of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end the following:

### **`MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME**

`SEC. 424. (a) In General- Any person who, during and in relation to any drug trafficking crime, murders, kidnaps, sexually assaults (which means any offense that involved conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction), maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, commits any other crime of violence or threatens to commit a crime of violence against, any individual, or attempts or conspires to do so, shall be punished, in addition and consecutive to the punishment provided for the drug trafficking crime--

`(1) in the case of murder, by death or imprisonment for any term of years or for life, a fine under title 18, United States Code, or both;

`(2) in the case of kidnapping or sexual assault by imprisonment for any term of years or for life, a fine under such title 18, or both;

`(3) in the case of maiming, by imprisonment for any term of years or for life, a fine under such

title 18, or both;

`(4) in the case of assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment not more than 30 years, a fine under such title 18, or both;

`(5) in the case of committing any other crime of violence, by imprisonment for not more than 20 years, a fine under this title, or both;

`(6) in the case of threatening to commit a crime of violence specified in paragraphs (1) through (4), by imprisonment for not more than 10 years, a fine under such title 18, or both;

`(7) in the case of attempting or conspiring to commit murder, kidnapping, maiming, or sexual assault, by imprisonment for not more than 30 years, a fine under such title 18, or both; and

`(8) in the case of attempting or conspiring to commit a crime involving assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 20 years, a fine under such title 18, or both.

`(b) Venue- A prosecution for a violation of this section may be brought in--

`(1) the judicial district in which the murder or other crime of violence occurred; or

`(2) any judicial district in which the drug trafficking crime may be prosecuted.

`(c) Applicable Death Penalty Procedures- A defendant who has been found guilty of an offense under this section for which a sentence of death is provided shall be subject to the provisions of chapter 228 of title 18, United States Code.

`(d) Definitions- As used in this section--

`(1) the term `crime of violence' has the meaning given that term in section 16 of title 18, United States Code; and

`(2) the term `drug trafficking crime' has the meaning given that term in section 924(c)(2) of title 18, United States Code.'

(b) Clerical Amendment- The table of contents for the Controlled Substances Act is amended by inserting after the item relating to section 423, the following:

`Sec. 424. Murder and other violent crimes committed during and in relation to a drug trafficking crime.'

### **Subtitle B--Increased Federal Resources to Suppress, Deter, and Prevent At-risk Youth From Joining Illegal Street Gangs**

## **SEC. 110. DESIGNATION OF AND ASSISTANCE FOR `HIGH INTENSITY' INTERSTATE GANG ACTIVITY AREAS.**

(a) Definitions- In this section the following definitions shall apply:

(1) GOVERNOR- The term `Governor' means a Governor of a State or the Mayor of the District of Columbia.

(2) HIGH INTENSITY INTERSTATE GANG ACTIVITY AREA- The term `high intensity

interstate gang activity area' means an area within a State that is designated as a high intensity interstate gang activity area under subsection (b)(1).

(3) STATE- The term `State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States. The term `State' shall include an `Indian tribe', as defined by section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

(b) High Intensity Interstate Gang Activity Areas-

(1) DESIGNATION- The Attorney General, after consultation with the Governors of appropriate States, may designate as high intensity interstate gang activity areas, specific areas that are located within 1 or more States. To the extent that the goals of a high intensity interstate gang activity area (HIIGAA) overlap with the goals of a high intensity drug trafficking area (HIDTA), the Attorney General may merge the 2 areas to serve as a dual-purpose entity. The Attorney General may not make the final designation of a high intensity interstate gang activity area without first consulting with and receiving comment from local elected officials representing communities within the State of the proposed designation.

(2) ASSISTANCE- In order to provide Federal assistance to high intensity interstate gang activity areas, the Attorney General shall--

(A) establish criminal street gang enforcement teams, consisting of Federal, State, and local law enforcement authorities, for the coordinated investigation, disruption, apprehension, and prosecution of criminal street gangs and offenders in each high intensity interstate gang activity area;

(B) direct the reassignment or detailing from any Federal department or agency (subject to the approval of the head of that department or agency, in the case of a department or agency other than the Department of Justice) of personnel to each criminal street gang enforcement team; and

(C) provide all necessary funding for the operation of the criminal street gang enforcement team in each high intensity interstate gang activity area.

(3) COMPOSITION OF CRIMINAL STREET GANG ENFORCEMENT TEAM- The team established pursuant to paragraph (2)(A) shall consist of agents and officers, where feasible, from--

(A) the Bureau of Alcohol, Tobacco, Firearms, and Explosives;

(B) the Department of Homeland Security;

(C) the Department of Housing and Urban Development;

(D) the Drug Enforcement Administration;

(E) the Internal Revenue Service;

(F) the Federal Bureau of Investigation;

(G) the United States Marshal's Service;

(H) the United States Postal Service;

(I) State and local law enforcement; and

(J) Federal, State and local prosecutors.

(4) **CRITERIA FOR DESIGNATION-** In considering an area for designation as a high intensity interstate gang activity area under this section, the Attorney General shall consider--

(A) the current and predicted levels of gang crime activity in the area;

(B) the extent to which violent crime in the area appears to be related to criminal street gang activity, such as drug trafficking, murder, robbery, assaults, carjacking, arson, kidnapping, extortion, and other criminal activity;

(C) the extent to which State and local law enforcement agencies have committed resources to--

(i) respond to the gang crime problem; and

(ii) participate in a gang enforcement team;

(D) the extent to which a significant increase in the allocation of Federal resources would enhance local response to the gang crime activities in the area; and

(E) any other criteria that the Attorney General considers to be appropriate.

(c) **Authorization of Appropriations-**

(1) **IN GENERAL-** There are authorized to be appropriated \$100,000,000 for each of the fiscal years 2005 to 2009 to carry out this section.

(2) **USE OF FUNDS-** Of amounts made available under paragraph (1) in each fiscal year--

(A) 50 percent shall be used to carry out subsection (b)(2); and

(B) 50 percent shall be used to make grants available for community-based programs to provide crime prevention, research, and intervention services that are designed for gang members and at-risk youth in areas designated pursuant to this section as high intensity interstate gang activity areas.

(3) **REPORTING REQUIREMENTS-** By February 1st of each year, the Attorney General shall provide a report to Congress which describes, for each designated high intensity interstate gang activity area--

(A) the specific long-term and short-term goals and objectives;

(B) the measurements used to evaluate the performance of the high intensity interstate gang activity area in achieving the long-term and short-term goals;

(C) the age, composition, and membership of `gangs';

(D) the number and nature of crimes committed by `gangs'; and

(E) the definition of the term `gang' used to compile this report.

## **SEC. 111. ENHANCEMENT OF PROJECT SAFE NEIGHBORHOODS**

## **INITIATIVE TO IMPROVE ENFORCEMENT OF CRIMINAL LAWS AGAINST VIOLENT GANGS.**

(a) In General- While maintaining the focus of Project Safe Neighborhoods as a comprehensive, strategic approach to reducing gun violence in America, the Attorney General is authorized to expand the Project Safe Neighborhoods program to require each United States attorney to--

- (1) identify, investigate, and prosecute significant criminal street gangs operating within their district;
- (2) coordinate the identification, investigation, and prosecution of criminal street gangs among Federal, State, and local law enforcement agencies; and
- (3) coordinate and establish criminal street gang enforcement teams, established under section 110(b), in high intensity interstate gang activity areas within a United States attorney's district.

(b) Additional Staff for Project Safe Neighborhoods-

- (1) IN GENERAL- The Attorney General may hire Assistant United States attorneys, non-attorney coordinators, or paralegals to carry out the provisions of this section.
- (2) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated \$7,500,000 for each of the fiscal years 2005 through 2009 to carry out this section.

## **SEC. 112. ADDITIONAL RESOURCES NEEDED BY THE FEDERAL BUREAU OF INVESTIGATION TO INVESTIGATE AND PROSECUTE VIOLENT CRIMINAL STREET GANGS.**

(a) Responsibilities of Attorney General- The Attorney General is authorized to require the Federal Bureau of Investigation to--

- (1) increase funding for the Safe Streets Program; and
- (2) support the criminal street gang enforcement teams, established under section 110(b), in designated high intensity interstate gang activity areas.

(b) Authorization of Appropriations-

- (1) IN GENERAL- In addition to amounts otherwise authorized, there are authorized to be appropriated to the Attorney General \$5,000,000 for each of the fiscal years 2005 through 2009 to carry out the Safe Streets Program.
- (2) AVAILABILITY- Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

## **SEC. 113. GRANTS TO PROSECUTORS AND LAW ENFORCEMENT TO COMBAT VIOLENT CRIME AND TO PROTECT WITNESSES AND VICTIMS OF CRIMES.**

(a) In General- Section 31702 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13862) is amended--

- (1) in paragraph (3), by striking `and' at the end;

(2) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(5) to hire additional prosecutors to--

“(A) allow more cases to be prosecuted; and

“(B) reduce backlogs;

“(6) to fund technology, equipment, and training for prosecutors and law enforcement in order to increase accurate identification of gang members and violent offenders, and to maintain databases with such information to facilitate coordination among law enforcement and prosecutors; and

“(7) to create and expand witness and victim protection programs to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes.’.

(b) Authorization of Appropriations- Section 31707 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13867) is amended to read as follows:

### **“SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.**

“(a) In General- There are authorized to be appropriated \$20,000,000 for each of the fiscal years 2005 through 2009 to carry out this subtitle.

“(b) Use of Funds- Of the amounts made available under subsection (a), in each fiscal year 60 percent shall be used to carry out section 31702(7) to create and expand witness and victim protection programs to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes.’.

### **SEC. 114. REAUTHORIZE THE GANG RESISTANCE EDUCATION AND TRAINING PROJECTS PROGRAM.**

Section 32401(b) of the Violent Crime Control Act of 1994 (42 U.S.C. 13921(b)) is amended by striking paragraphs (1) through (6) and inserting the following:

“(1) \$20,000,000 for fiscal year 2005;

“(2) \$20,000,000 for fiscal year 2006;

“(3) \$20,000,000 for fiscal year 2007;

“(4) \$20,000,000 for fiscal year 2008; and

“(5) \$20,000,000 for fiscal year 2009.’.

## **TITLE II--VIOLENT CRIME REFORMS NEEDED TO DETER AND PREVENT ILLEGAL GANG CRIME**

### **SEC. 201. MULTIPLE INTERSTATE MURDER.**

Chapter 51 of title 18, United States Code, is amended by adding at the end of the new section:

**`Sec. 1123. Multiple murders in furtherance of common scheme of purpose**

`(a) In General- Whoever, having committed murder in violation of the laws of any State or the United States, moves or travels in interstate or foreign commerce with the intent to commit one or more murders in violation of the laws of any State or the United States, and thereafter commits one or more murders in violation of the laws of any State or the United States in furtherance of a common scheme or purpose, or who conspires to do so--

`(1) shall be fined under this title, imprisoned for not more than 30 years, or both, for each murder; and

`(2) if death results, may be fined not more than \$250,000 under this title, and shall be punished by death or imprisoned for any term of years or for life for each murder.

`(b) Definition- The term `State' means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.'

**SEC. 202. EXPANSION OF REBUTTABLE PRESUMPTION AGAINST RELEASE OF PERSONS CHARGED WITH FIREARMS OFFENSES.**

Section 3142 of title 18, United States Code, is amended--

(1) in subsection (e), in the matter following paragraph (3)--

(A) by inserting `an offense under section 922(g)(1) where the underlying conviction is a serious drug offense as defined in section 924(e)(2)(A) of title 18, United States Code, for which a period of not more than 10 years has elapsed since the date of the conviction or the release of the person from imprisonment, whichever is later, or is a serious violent felony as defined in section 3559(c)(2)(F) of title 18, United States Code,' after `that the person committed'; and

(B) by inserting `or' before `the Maritime';

(2) in subsection (f)(1)--

(A) in subparagraph (C), by striking `or' at the end; and

(B) by adding at the end the following:

`(E) an offense under section 922(g); or'; and

(3) in subsection (g), by amending paragraph (1) to read as follows:

`(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, or involves a drug, firearm, explosive, or destructive devise;'

**SEC. 203. VENUE IN CAPITAL CASES.**

Section 3235 of title 18, United States Code, is amended to read as follows:

**`Sec. 3235. Venue in capital cases**

`(a) The trial for any offense punishable by death shall be held in the district where the offense was

committed or in any district in which the offense began, continued, or was completed.

`(b) If the offense, or related conduct, under subsection (a) involves activities which affect interstate or foreign commerce, or the importation of an object or person into the United States, such offense may be prosecuted in any district in which those activities occurred.'

## **SEC. 204. STATUTE OF LIMITATIONS FOR VIOLENT CRIME.**

(a) In General- Chapter 214 of title 18, United States Code, is amended by adding at the end the following:

### **`Sec. 3297. Violent crime offenses**

`Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any noncapital felony, crime of violence (as defined in section 16), including any racketeering activity or gang crime which involves any violent crime, unless the indictment is found or the information is instituted by the later of--

- `(1) 10 years after the date on which the alleged violation occurred;
- `(2) 10 years after the date on which the continuing offense was completed; or
- `(3) 8 years after the date on which the alleged violation was first discovered.'

(b) Clerical Amendment- The table of sections at the beginning of chapter 214 of title 18, United States Code, is amended by adding at the end the following:

`3296. Violent crime offenses.'

## **SEC. 205. PREDICATE CRIMES FOR AUTHORIZATION OF INTERCEPTION OF WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS.**

Section 2516(1) of title 18, United States Code, is amended--

- (1) in paragraph (q), by striking `or'.
- (2) by redesignating paragraph (r) as paragraph (u); and
- (3) by inserting after paragraph (q) the following:
  - `(r) any violation of section 424 of the Controlled Substances Act (relating to murder and other violent crimes in furtherance of a drug trafficking crime);
  - `(s) any violation of 1123 of title 18, United States Code (relating to multiple interstate murder);
  - `(t) any violation of section 521, 522, or 523 (relating to criminal street gangs); or'

## **SEC. 206. CLARIFICATION TO HEARSAY EXCEPTION FOR FORFEITURE BY WRONGDOING.**

Rule 804(b)(6) of the Federal Rules of Evidence is amended to read as follows:

`(6) FORFEITURE BY WRONGDOING- A statement offered against a party that has

engaged, acquiesced, or conspired, in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.'.

## **SEC. 207. CLARIFICATION OF VENUE FOR RETALIATION AGAINST A WITNESS.**

Section 1513 of title 18, United States Code, is amended by--

- (1) redesignating subsection (e) beginning with 'Whoever conspires' as subsection (f); and
- (2) adding at the end the following:
 

`(g) A prosecution under this section may be brought in the district in which the official proceeding (whether or not pending, about to be instituted or was completed) was intended to be affected or was completed, or in which the conduct constituting the alleged offense occurred.'.

## **SEC. 208. AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN GANG AND VIOLENT CRIMES.**

(a) Directive to the United States Sentencing Commission- Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements to conform to the provisions of title I and this title.

(b) Requirements- In carrying out this section, the Sentencing Commission shall--

- (1) establish new guidelines and policy statements, as warranted, in order to implement new or revised criminal offenses created under this title;
- (2) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious gang and violent crimes, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;
- (3) consider the extent to which the guidelines and policy statements adequately address--
  - (A) whether the guideline offense levels and enhancements for gang and violent crimes--
    - (i) are sufficient to deter and punish such offenses; and
    - (ii) are adequate in view of the statutory increases in penalties contained in the Act; and
  - (B) whether any existing or new specific offense characteristics should be added to reflect congressional intent to increase gang and violent crime penalties, punish offenders, and deter gang and violent crime;
- (4) assure reasonable consistency with other relevant directives and with other sentencing guidelines;
- (5) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;
- (6) make any necessary conforming changes to the sentencing guidelines; and

(7) assure that the guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.

## **SEC. 209. INCREASED PENALTIES FOR CRIMINAL USE OF FIREARMS IN CRIMES OF VIOLENCE AND DRUG TRAFFICKING.**

(a) In General- Section 924(c)(1)(A) of title 18, United States Code, is amended--

(1) by striking `shall' and inserting `or conspires to commit any of the above acts, shall, for each instance in which the firearm is used, carried, or possessed';

(2) in clause (i), by striking `5 years' and inserting `7 years'; and

(3) by striking clause (ii).

(b) Conforming Amendments- Section 924 of title 18, United States Code, is amended--

(1) in subsection (c), by striking paragraph (4); and

(2) by striking subsection (o).

## **SEC. 210. POSSESSION OF FIREARMS BY DANGEROUS FELONS.**

(a) In General- Section 924(e) of title 18, United States Code, is amended to read as follows:

`(e)(1) In the case of a person who violates section 922(g) of this title and has previously been convicted by any court referred to in section 922(g)(1) for a violent felony or a serious drug offense shall--

`(A) in the case of 1 such prior conviction, where a period of not more than 10 years has elapsed since the date of conviction or release of the person from imprisonment for that conviction, be subject to imprisonment for not more than 15 years, a fine under this title, or both;

`(B) in the case of 2 such prior convictions, committed on occasions different from one another, and where a period of not more than 10 years has elapsed since the date of conviction or release of the person from imprisonment for that conviction, be subject to imprisonment for not more than 20 years, a fine under this title, or both; and

`(C) in the case of 3 such prior convictions, committed on occasions different from one another, be subject to imprisonment for not less than 15 years, a fine under this title, or both, and notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

`(2) As used in this subsection--

`(A) the term `serious drug offense' means--

`(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances 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.), punishable by a maximum term of imprisonment of not less than 10 years; or

`(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), punishable by a maximum term of imprisonment of not less than 10 years;

`(B) the term `violent felony' means any crime punishable by a term of imprisonment exceeding 1 year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by a maximum term of imprisonment for such term if committed by an adult, that--

`(i) has, as an element of the crime or act, the use, attempted use, or threatened use of physical force against the person of another; or

`(ii) is burglary, arson, or extortion, involves the use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

`(C) the term `conviction' includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.'.

(b) Amendment to Sentencing Guidelines- Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal Sentencing Guidelines to provide for an appropriate increase in the offense level for violations of section 922(g) of title 18, United States Code, in accordance with section 924(e) of such title 18, as amended by subsection (a).

## **SEC. 211. CONFORMING AMENDMENT.**

The matter before paragraph (1) in section 922(d) of title 18, United States Code, is amended by inserting ` , transfer,' after `sell'.

### **TITLE III--JUVENILE CRIME REFORM FOR VIOLENT OFFENDERS**

## **SEC. 301. TREATMENT OF FEDERAL JUVENILE OFFENDERS.**

(a) In General- Section 5032 of title 18, United States Code, is amended to read as follows:

### **`Sec. 5032. Delinquency proceedings in district courts; juveniles tried as adults; transfer for criminal prosecution**

`(a) Delinquency Proceedings in District Courts-

`(1) IN GENERAL- A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed 6 months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that--

`(A) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over that juvenile with respect to such alleged act of juvenile delinquency;

`(B) the State does not have available programs and services adequate for the needs of juveniles; or

^(C) the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), section 1002(a), 1003, 1005, 1009, or 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b) (1), (2), (3)), section 922(x), or section 924 (b), (g), or (h) of this title, and there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

^(2) FAILURE TO CERTIFY- If the Attorney General does not certify under paragraph (1), the juvenile shall be surrendered to the appropriate legal authorities of such State.

^(3) FEDERAL PROCEEDINGS- If an alleged juvenile delinquent is not surrendered to the authorities of a State pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information or as authorized under section 3401(g) of this title, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.

^(b) Transfer for Federal Criminal Prosecution-

^(1) IN GENERAL- A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless--

^(A) the juvenile has requested in writing upon advice of counsel to be proceeded against as an adult;

^(B) with respect to a juvenile 15 years and older alleged to have committed an act after his fifteenth birthday which if committed by an adult would be a felony that is a crime of violence or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959), or section 922(x) of this title, or in section 924 (b), (g), or (h) of this title, the Attorney General makes a motion to transfer the criminal prosecution on the basis of the alleged act in the appropriate district court of the United States and the court finds, after hearing, such transfer would be in the interest of justice as provided in paragraph (2); or

^(C) with respect to a juvenile 13 years and older alleged to have committed an act after his thirteenth birthday which if committed by an adult would be a felony that is the crime of violence under section 113 (a), (b), (c), 1111, 1113, or, if the juvenile possessed a firearm during the offense, an offense under section 2111, 2113, 2241(a), or 2241(c), the Attorney General makes a motion to transfer the criminal prosecution on the basis of the alleged act in the appropriate district court of the United States and the court finds, after hearing, such transfer would be in the interest of justice as provided in paragraph (2).

Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to subparagraph (C) for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151), and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that the preceding sentence have effect over land and persons subject to its criminal jurisdiction.

^(2) FACTORS-

^(A) IN GENERAL- Evidence of the following factors shall be considered, and findings

with regard to each factor shall be made in the record, in assessing whether a transfer under subparagraph (B) or (C) of paragraph (1), and paragraph (4) of subsection (d), would be in the interest of justice:

- ˆ(i) The age and social background of the juvenile.
- ˆ(ii) The nature of the alleged offense, including the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities.
- ˆ(iii) Whether prosecution of the juvenile as an adult would protect public safety.
- ˆ(iv) The extent and nature of the juvenile's prior delinquency record.
- ˆ(v) The juvenile's present intellectual development and psychological maturity.
- ˆ(vi) The nature of past treatment efforts and the juvenile's response to such efforts.
- ˆ(vii) The availability of programs designed to treat the juvenile's behavioral problems.

ˆ(B) NATURE OF THE OFFENSE- In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such a factor, if found to exist, shall weigh in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer.

ˆ(C) NOTICE- Reasonable notice of the transfer hearing under subparagraph (B) or (C) of paragraph (1) shall be given to the juvenile, the juvenile's parents, guardian, or custodian and to the juvenile's counsel. The juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

ˆ(c) Mandatory Transfer of Juvenile 16 or Older- A juvenile who is alleged to have committed an act on or after his sixteenth birthday, which if committed by an adult would be a felony offense, that has an element thereof the use, attempted use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another, may be used in committing the offense or would be an offense described in section 32, 81, or 2275 or subsection (d), (e), (f), (h), or (i) of section 844 of this title, subsection (d) or (e) or subparagraphs (A), (B), (C), (D), or (E) of subsection (b)(1) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, or 1009, or paragraphs (1), (2), or (3) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b) (1), (2), and (3)), and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this subsection or subsection (b), or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred, upon notification by the United States, to the appropriate district court of the United States for criminal prosecution.

ˆ(d) Sixteen and Seventeen Year Olds Charged With the Most Serious Violent Felonies-

ˆ(1) IN GENERAL- Notwithstanding any other provision of law, a juvenile may be prosecuted as an adult if the juvenile is alleged to have committed, conspired, solicited or attempted to commit, on or after the day the juvenile attains the age of 16 any offense involving--

- `(A) murder;
- `(B) manslaughter;
- `(C) assault with intent to commit murder;
- `(D) sexual assault (which means any offense that involves conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction);
- `(E) robbery (as described in section 2111, 2113, or 2118);
- `(F) carjacking with a dangerous weapon;
- `(G) extortion;
- `(H) arson;
- `(I) firearms use;
- `(J) firearms possession (as described in section 924(c));
- `(K) drive-by shooting;
- `(L) kidnapping;
- `(M) maiming;
- `(N) assault resulting in serious bodily injury; or
- `(O) obstruction of justice (as described in 1512(a)(1)) on or after the day the juvenile attains the age of 16.

`(2) OTHER OFFENSES- In a prosecution under this subsection the juvenile may be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted as an adult of a lesser included offense.

`(3) REVIEWABILITY- Except as otherwise provided by this subsection, a determination to approve or not to approve, or to institute or not to institute, a prosecution under this subsection shall not be reviewable in any court.

`(4) PROSECUTION- (A) In any prosecution of a juvenile under this subsection, upon motion of the defendant, the court in which the criminal charges have been filed shall after a hearing determine whether to issue an order that the defendant should be transferred to juvenile status.

`(B) A motion by a defendant under this paragraph shall not be considered unless filed no later than 30 days after the date on which the defendant initially appears through counsel or expressly waives the right to counsel and elects to proceed pro se.

`(C) The court shall not order the transfer of a defendant to juvenile status under this paragraph unless the defendant establishes by the preponderance of the evidence that removal to juvenile status would be in the interest of justice. In making a determination under this paragraph, the court shall consider the factors specified in subsection (b)(2) of this section.

`(5) ORDER- An order of the court made in ruling on a motion by a defendant to transfer a

defendant to juvenile status under this subsection shall not be a final order for the purpose of enabling an appeal, except that an appeal by the United States shall lie to a court of appeals pursuant to section 3731 of this title from an order of a district court removing a defendant to juvenile status. Upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis. The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous, and the court of appeals shall review de novo the district court's application of the law to the facts.

^(e) Sixteen and Seventeen Year Olds Charged With Other Serious Violent Felonies-

^(1) IN GENERAL- Except as provided by subsection (d), a juvenile may be prosecuted as an adult if the juvenile is alleged to have committed an act on or after the day the juvenile attains the age of 16 which is committed by an adult would be a serious violent felony as described in paragraphs (2) and (3) of section 3559(a).

^(2) OTHER OFFENSES- In a prosecution under this subsection the juvenile may be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted as an adult of a lesser included offense.

^(3) REVIEWABILITY- Except as otherwise provided by this subsection, a determination to approve or not to approve, or to institute or not to institute, a prosecution under this subsection shall not be reviewable in any court.

^(4) PROSECUTION- (A) In any prosecution of a juvenile under this subsection, upon motion of the defendant, the court in which the criminal charges have been filed shall after a hearing determine whether to issue an order that the defendant should be transferred to juvenile status.

^(B) A motion by a defendant under this paragraph shall not be considered unless filed no later than 30 days after the date on which the defendant initially appears through counsel or expressly waives the right to counsel and elects to proceed pro se.

^(C) The court shall not order the transfer of a defendant to juvenile status under this paragraph unless the defendant establishes by the preponderance of the evidence that removal to juvenile status would be in the interest of justice. In making a determination under this paragraph, the court shall consider the factors specified in subsection (b)(2) of this section.

^(5) ORDER- An order of the court made in ruling on a motion by a defendant to transfer a defendant to juvenile status under this subsection shall be a final order for the purpose of enabling an appeal. Upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis. The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous, and the court of appeals shall review de novo the district court's application of the law to the facts.

^(f) Proceedings-

^(1) SUBSEQUENT PROCEEDING BARRED- Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

^(2) STATEMENTS- Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions except for impeachment

purposes or in a prosecution for perjury or making a false statement.

`(3) FURTHER PROCEEDINGS- Whenever a juvenile transferred to district court under subsection (b) or (c) is not convicted of the crime upon which the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged with that crime, further proceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter.

`(4) RECEIPT OF RECORDS- A juvenile shall not be transferred to adult prosecution under subsection (b) nor shall a hearing be held under section 5037 (disposition after a finding of juvenile delinquency) until any prior juvenile court records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile's record is unavailable and why it is unavailable.

`(5) SPECIFIC ACTS DESCRIBED- Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter, the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile's official record.

`(g) State- For purposes of this section, the term `State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.'

(b) Conforming Amendment- The analysis for chapter 403 of title 18, United States Code, is amended by striking the item relating to section 5032 and inserting the following:

`5032. Delinquency proceedings in district courts; juveniles tried as adults; transfer for criminal prosecution.'

## **SEC. 302. NOTIFICATION AFTER ARREST.**

Section 5033 of title 18, United States Code, is amended in the first sentence, by striking `immediately notify the Attorney General and' and inserting `immediately, or as soon as practicable thereafter, notify the Attorney General and shall promptly take reasonable steps to notify'.

## **SEC. 303. RELEASE AND DETENTION PRIOR TO DISPOSITION.**

(a) Duties of Magistrate Judge- Section 5034 of title 18, United States Code, is amended--

(1) in the first undesignated paragraph, by striking `The magistrate judge shall insure' and inserting the following:

`(a) In General-

`(1) REPRESENTATION BY COUNSEL- The magistrate judge shall ensure';

(2) in the second undesignated paragraph, by striking `The magistrate judge may appoint' and inserting the following:

`(2) GUARDIAN AD LITEM- The magistrate judge may appoint';

(3) in the third undesignated paragraph, by striking `If the juvenile' and inserting the following:

`(b) Release Prior to Disposition- Except as provided in subsection (c), if the juvenile'; and

(4) by adding at the end the following:

`(c) Release of Certain Juveniles-

`(1) IN GENERAL- A juvenile, who is to be tried as an adult under section 5032, shall be released pending trial in accordance with the applicable provisions of chapter 207.

`(2) CONDITIONS- A release under paragraph (1) shall be conducted in the same manner, and shall be subject to the same terms, conditions, and sanctions for violation of a release condition, as provided for an adult under chapter 207.

`(d) Penalty for an Offense Committed While on Release-

`(1) IN GENERAL- A juvenile alleged to have committed, while on release under this section, an offense that, if committed by an adult, would be a Federal criminal offense, shall be subject to prosecution under section 5032.

`(2) APPLICABILITY OF CERTAIN PENALTIES- Section 3147 shall apply to a juvenile who is to be tried as an adult under section 5032 for an offense committed while on release under this section.'.

(b) Detention Prior to Disposition- Section 5035 of title 18, United States Code, is amended--

(1) by striking `A juvenile' and inserting the following:

`(a) In General- Except as provided in subsection (b), a juvenile'; and

(2) by adding at the end the following:

`(b) Detention of Certain Juveniles- A juvenile who is to be tried as an adult under section 5032 shall be subject to detention in accordance with chapter 207.'.

## **SEC. 304. SPEEDY TRIAL.**

Section 5036 of title 18, United States Code, is amended to read as follows:

### **`Sec. 5036. Speedy trial**

`(a) In General- If an alleged delinquent, who is to be proceeded against as a juvenile pursuant to section 5032 and who is in detention pending trial, is not brought to trial within 70 days from the date upon which such detention began, the information shall be dismissed on motion of the alleged delinquent or at the direction of the court.

`(b) Periods of Exclusion- The periods of exclusion under section 3161(h) shall apply to this section.

`(c) Judicial Considerations- In determining whether an information should be dismissed with or without prejudice, the court shall consider--

`(1) the seriousness of the alleged act of juvenile delinquency;

`(2) the facts and circumstances of the case that led to the dismissal; and

`(3) the impact of a reprosecution on the administration of justice.'.

## **SEC. 305. FEDERAL SENTENCING GUIDELINES.**

(a) Application of Guidelines to Certain Juvenile Defendants- Section 994(h) of title 28, United States Code, is amended by inserting `, or in which the defendant is a juvenile who is tried as an adult,' after `old or older'.

(b) Guidelines for Juvenile Cases- Section 994 of title 28, United States Code, is amended by adding at the end the following:

`(z) Guidelines for Juvenile Cases- Not later than May 1, 2006, the Commission, pursuant to its rules and regulations and consistent with all pertinent provisions of any Federal statute, shall promulgate and distribute, to all courts of the United States and to the United States Probation System, guidelines, as described in this section, for use by a sentencing court in determining the sentence to be imposed in a criminal case if the defendant committed the offense as a juvenile, and is tried as an adult pursuant to section 5032 of title 18.'

*END*