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Federal Crime Control: Background, Legislation, and Issues

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Summary

States and localities have the primary responsibility for prevention and control of domestic crime, while the federal government's role is limited. As crime became more rampant, the federal government has increased its involvement in crime control efforts. Over a period of 20 years, Congress passed five major anti-crime bills and increased appropriations for federal assistance to state and local law enforcement agencies. Since the terrorist attacks, however, federal law enforcement efforts have been focused more on countering terrorism and maintaining homeland security. Amid these efforts, however, Congress continues to address many crime-related issues.

Many have attributed the increased attention the federal government gave to crime issues in the 1980s and 1990s to rising crime rates. The violent crime rate began to increase in the 1960s, peaking in the late 1980s and mid-1990s and began to decline in the late 1990s, continuing to the present day. The decline in the violent crime rate coincides with national attention being focused away from domestic crimes and more on securing the homeland against terrorism. The declining violent crime rate coupled with the recent terrorist attacks have led Congress to focus federal funding to first responders, while federal funding to state and local law enforcement for more traditional crime fighting activities has seen a mix of increases and decreases. The 108th Congress consolidated two popular grant programs into a newly created grant program, but funded it at a lower level — raising questions about the amount and shape of federal support to state and local law enforcement in the future.

The 109th Congress is considering, and in at least two instances has passed, a variety of crime-related legislation. For example, on January 5, 2006, the Violence Against Women and Department of Justice Reauthorization Act of 2005 was signed into law (P.L. 109-162), and on July 27, 2006, the Adam Walsh Child Protection and Safety Act of 2006 was signed into law (P.L 109-248). Moreover, the House passed the Children's Safety Act of 2005 (H.R. 3132); the Gang Deterrence and Community Protection Act of 2005 (H.R. 1279); the Secure Access to Justice and Court Protection Act of 2005 (H.R. 1751); and the Children's Safety and Violent Crime Reduction Act of 2005 (H.R. 4472). Legislation under consideration include reforming the Federal Prison Industries (H.R. 2965/S. 749); broadening the federal definition of hate crimes (H.R. 2262/S. 1145 and H.R. 3132); further restricting a state inmate's right to a federal habeas claim (S. 1088/H.R. 3035 and H.R. 4472); and providing for expeditious habeas review of cases where a child, public safety officer or state judge was killed (H.R. 3132/H.R. 3860/S. 956 and S. 1605). In addition to the aforementioned legislation, other crime-related issues have also surfaced. For example, the federal sentencing guidelines were called into question when the U.S. Supreme Court struck down a provision in law that made them mandatory. Congress may consider legislation that would address the Court's concern with respect to the guidelines. Congress may also revisit the issue of sentencing disparity with respect to crack and powder cocaine. Other issues that may be of interest to Congress include providing oversight to the DOJ with respect to the development of national standards for preventing sexual assaults in prisons. This report will be updated as legislation warrants.

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Recent Legislative Developments

On January 5, 2006, the Violence Against Women and Department of Justice Reauthorization Act of 2005 was signed into law (H.R. 3402, as amended; P.L. 109-162), and on July 27, 2006, the Adam Walsh Child Protection and Safety Act of 2006 was signed into law (H.R. 4472, as amended; P.L 109-248). In addition to the enacted legislation, the House passed the Gang Deterrence and Community Protection Act of 2005 (H.R. 1279) on May 11, 2005; the Children's Safety Act of 2005 (H.R. 3132) on September 14, 2005; and the Secure Access to Justice and Court Protection Act of 2005 (H.R. 1751) on November 9, 2005. On March 8, 2006, the House passed a measure (H.R. 4472) that contained similar provisions in the previously passed sex offender, anti-gang, and court security measures. The measure also includes the language in the Local Law Enforcement Hate Crimes Prevention Act of 2005 (H.R. 2662).

Introduction

This report focuses on crime-related legislation in the 109th Congress that has seen congressional action. The report also focuses on other crime-related issues that may be of interest to the 109th Congress.[1] This report, however, does not cover issues related to homeland security, terrorism, abortion, and illicit drug and gun control.[2] Following is a list of issues the 109th Congress is considering or may consider with respect to crime-related matters that are covered in this report, including

- oversight of the federal grant programs that assist states and localities in testing DNA samples in relevant criminal cases, including those cases where the defendant has already been convicted of a crime;

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[1] **Appendix A** lists other crime-related measures that were passed in the previous Congress.

[2] For additional information, see the CRS website at [http://beta.crs.gov/cli/level_2.aspx?PRDS_CLI_ITEM_ID=60] for related reports on homeland security, and [http://beta.crs.gov/cli/level_2.aspx?PRDS_CLI_ITEM_ID=28] for related reports on terrorism. For additional information on abortion issues, see CRS Report RL33467, *Abortion: Legislative Response*, by Karen J. Lewis and Jon O. Shimabukuro. For additional information on gun control issues, see CRS Report RL32842, *Gun Legislation in the 109th Congress*, by William J. Krouse.

- oversight of federal assistance to states for the purpose of improving death penalty representation;
- Federal Prison Industries system reform;
- oversight of federal assistance to states to reduce the incidence of prison rape;
- the federal role in combating youth gangs;
- the federal role in combating hate crimes;
- oversight of the consolidation of several federal grant programs that assist state and local law enforcement efforts to prevent and control crime;
- greater security for court personnel;
- the federal sentencing system reform, including addressing the sentencing disparities between crack and powder cocaine; and
- a Constitutional amendment on crime victims rights.

Background

Traditionally, states and localities have the primary responsibility for prevention and control of domestic crime, while the federal government's role is limited. As crime became more rampant and diverse (i.e., transnational and white-collar crimes), the federal government increased its involvement in domestic law enforcement through a series of grant programs to encourage and assist states and communities in their efforts to control crime. Over a period of 20 years, Congress passed five major anti-crime bills[3] and increased appropriations for federal assistance to state and local law enforcement agencies. Moreover, prior to the September 11, 2001 terrorist attacks, the Federal Bureau of Investigations (FBI) had seen an expansion of its role in fighting domestic crime as Congress began to add more crimes that were previously under the sole jurisdiction of state and local governments to the federal criminal code.[4] Within the past several years, however, some federal assistance to state and local law enforcement has declined and federal post 9/11 law enforcement efforts have focused primarily on protecting the nation against terrorist attacks, as discussed below.

Post 9/11 Era and Crime Control

With somewhat lower levels of funding, federal crime control efforts focus on fighting domestic crime and providing state and local law enforcement with supplementary resources (i.e., funding for hiring, equipment and training). The Department of Justice (DOJ) administers several federal grant programs for state and

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

[4] Beginning in 1986 and continuing well beyond the passage of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322), Congress passed legislation that made some crimes a federal offense (in addition to their existing state violation). These crimes had been under the sole jurisdiction of states.

local law enforcement that are aimed at preventing or controlling crime. In addition to these programs, DOJ has authority over several federal law enforcement agencies, including the FBI; the Drug Enforcement Agency (DEA); the Bureau of Alcohol, Tobacco, Firearms and Explosives; and the U.S. Marshals Service. Although the 107th Congress passed legislation that reauthorized many of the programs and agencies that fall under the DOJ's jurisdiction,[5] many of these programs and agencies will be up for reauthorization in the near future.

Crime Statistics

Although many attributed the increased attention the federal government gave to crime issues in the mid- to late 1980s and throughout the 1990s in part to the rising crime rate, questions about police effectiveness in responding to the problem and limited funds at the state and local levels have also been cited. Crime statistics are collected at the state and local levels and disseminated by the federal government. The FBI's Uniform Crime Report (UCR) program compiles data from monthly reports transmitted directly to the FBI from local police departments or to state agencies that compile such data and then report the data to the FBI. Of interest to law makers are the two indexes of crimes that are the basis for the UCR and are detailed in it. The Part I Index includes the four major *violent crimes* of homicide and nonnegligent manslaughter, forcible rape, robbery and aggravated assault. The Part II Index includes the *property crimes* of burglary, larceny-theft, motor vehicle theft and arson.

According to the UCR, Part I Index crimes (violent crimes) began to increase sharply in the 1960s, peaking in the late 1980s to mid 1990s and began to decline in the late 1990s, continuing to the present day (see **Figure 1**). The UCR shows that violent crime continued to decline in 2003, with the exception of the murder rate, which increased by 1.3% in 2003.[6] Despite an increase in homicide, the UCR suggests that the nation's violent crime declined 3.2% in 2003 when compared to the previous year. Violent crime in urban areas (cities with more than 1 million inhabitants) had an even greater reduction (6.5 %) when compared with 2002 data.

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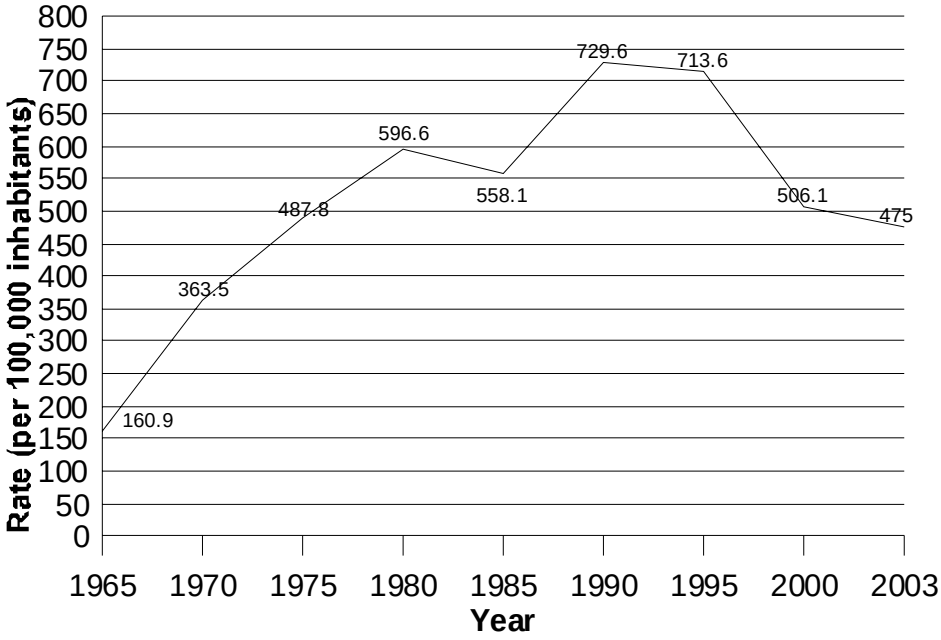
[5] See the Department of Justice Reauthorization Act, P.L. 107-273.

[6] The 2003 UCR contains the latest data available.

Figure 1. Violent Crime Rate, 1965-2003



Source: FBI's UCR for each respective year (see 1965, 1970, 1975, 1980, 1985, 1990, 1995, 2002 and 2003 Federal Bureau of Investigation U.S. Department of Justice, *Crime in the United States Uniform Crime Report*).

The decline in the crime rate has led recent Congresses, in part, to take another look at federal funding for state and local law enforcement, as discussed below. Despite the declining crime rates, however, Congress continues to pass "get tough" measures for certain categories of offenders by increasing existing penalties or creating new categories of penalties (i.e., mandatory minimum sentences), as also discussed below.

Following is a discussion of recently enacted legislation and selected ongoing issues with respect to the legislation that may be of interest to the 109th Congress.

DNA Testing for Law Enforcement Legislation[7]

The analysis of deoxyribonucleic acid (DNA) evidence has been an important tool in law enforcement. DNA analysis has significantly changed the way crime scenes are investigated and how prosecutions are conducted. The FBI started its DNA database in 1988. Since then, the FBI has led law enforcement agencies throughout the United States to standardize DNA analyses to be entered into the Combined DNA Index System (CODIS).

The collection of DNA for use in criminal investigations has grown much faster than the capacity to analyze it. As a result, many publicly funded laboratories across

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[7] See CRS Report RL32247, *DNA Testing for Law Enforcement: Legislative Issues for Congress*, by Lisa M. Seghetti and Nathan James.

the country have been experiencing tremendous difficulty in meeting the demand and reducing the backlog of requests. Meanwhile, all states and the District of Columbia have enacted legislation to require DNA samples to be taken from those convicted of certain criminal offenses. During the 1990s and more recently, congressional concern over the need for federal assistance to crime laboratories led to the enactment of several measures, including the Justice for All Act in the 108th Congress.

Among other things, the Justice for All Act (P.L. 108-405) improved and expanded DNA testing capacity of crime laboratories. The act authorized funding for training relevant law enforcement personnel in the collection, handling, and use of DNA evidence and created several grant programs related to DNA training, education, research and development among other things. Although participation in these grant programs is voluntary, in order to receive funding, state and local government crime laboratories are required to receive professional accreditation within two years of passage of the act and must undergo external audits to demonstrate compliance with the standards established by the FBI at least every two years. With respect to maintaining the privacy of DNA evidence, the act expanded the criminal code provisions that criminalize unauthorized disclosure of DNA information and set penalties for such violations.

The act also required the Attorney General to appoint a Commission to assess the needs of the forensic science community, provided a forum for the exchange and dissemination of ideas and information regarding forensic science technologies and techniques, and made recommendations to the Attorney General regarding such technologies.

The act authorized funding for various DNA activities administered by the FBI. It also authorized funding to promote the use of DNA technology to identify missing persons and unidentified human remains. The act required each entity that receives such funding to submit the DNA profiles of missing persons and unidentified human remains to the National Missing Persons DNA Database of the FBI.

DNA Backlog

The Justice for All Act reauthorized an existing grant program that provides funding to states to assist with eliminating certain types of DNA backlogs. The act amended current law[8] by providing formula grants to state and local governments to perform DNA analysis of samples collected from convicted individuals and violent crime scenes, including sexual assaults. It also amended current law[9] by allowing states to include in the CODIS the DNA profiles of persons whose DNA samples have been collected under applicable legal authorities, including those authorized by state law as well as all felons convicted of federal crimes and qualifying military

[8] See the DNA Analysis Backlog Elimination Act of 2000 (P.L. 106-546).

[9] See the DNA Identification Act of 1994 (42 U.S.C. 14132).

offenses. CODIS "keyboard searches" are also permitted by authorized state or federal users.[10]

DNA Standards

The issue of raising the standards of state and local crime laboratories to that of the FBI standards may continue to be an interest of the Congress. Under the Justice for All Act, state and local crime laboratories that desire to receive federal funding to test DNA samples are required to be accredited through a private source and such accreditation is required to meet the FBI's standards. It is not clear how many crime laboratories are in the United States,[11] however, experts approximate that there are between 400 and 450 crime laboratories,[12] of which only 174 meet the FBI standards for testing DNA technology.[13] Concerns may continue to exist with respect to those laboratories that are not accredited and the potential for DNA evidence tested in the non-accredited laboratories providing inaccurate results. With respect to the newly created grant programs, Congress may choose to exercise its oversight role in making sure the programs are meeting their objectives.

Broadening the Database

Expanding the national database to include persons convicted of lesser crimes or possibly arrestees could potentially increase the number of crimes solved through its use. The discussion has received increased attention after the kidnaping, rape, and murder of young victims in 2005. However, several concerns are raised with respect to broadening the DNA database. Although additional crimes may be solved by expanding the categories of offenders included in DNA databases, at what point does the cost associated with the additional DNA samples to be analyzed outweigh the benefit? Moreover, expanding the number of samples that need to be processed could add to the already taxed forensic science budgets of many states. The Justice for All Act expanded the categories of convicted federal offenders from whom the collection of DNA samples is authorized. Legislation recently enacted (P.L. 109-169), however, further expands the categories of individuals who are now eligible to have their DNA collected, see the discussion in the next section.

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[10] A keyboard search is an online effort to match a DNA sample that can be collected under state law but not added to CODIS (e.g., an arrest sample) with a DNA sample in CODIS (e.g., samples collected from convicted offenders or at a crime scene).

[11] According to Keith Kenneth Coonrod, chair of the Consortium of Forensic Science Organizations, "We actually don't know how many forensic laboratories exist in the United States as many facilities never before considered as crime laboratories are now providing forensic examinations in one or more forensic disciplines and therefore, should be included." U.S. Congress, Senate Committee on the Judiciary, *DNA Crime Labs: The Paul Coverdell National Forensic Sciences Improvement Act*, 107th Cong., 1st sess., May 15, 2001 (Washington: GPO, 2001).

[12] Ibid.

[13] Conversation with the FBI's Congressional Affairs Office, Jan. 2005.

The DNA Fingerprinting Act of 2005 (P.L. 109-162). Title X of P.L. 109-162, the DNA Fingerprinting Act of 2005, made several changes to current law. Among other provisions, the act authorizes federal authorities to take DNA samples from larger categories of individuals, including those who are arrested and detained, and include the DNA analysis in the FBI's Combined DNA Index System (CODIS). The act, however, requires the Director of the Federal Bureau of Investigation to expunge the DNA analysis from CODIS of arrestees for whom the Attorney General receives a certified copy of a final court order that establishes the charge has been dismissed, resulted in an acquittal, or that no charge was filed within the applicable time period. The act also requires the Director of the Federal Bureau of Investigation to expunge the DNA analysis from CODIS of individuals whose convictions have been overturned. A similar measure was previously passed in the House on September 14, 2005 (see Title II of the Children's Safety Act of 2005, H.R. 3132).

Post-Conviction DNA Testing

In recent years, an increasing number of offenders sentenced to death at the state level have been exonerated through DNA testing. Although most states have made provisions for post-conviction DNA testing, they do not currently permit new trials based on newly discovered evidence more than three years after conviction. Title IV of the Justice for All Act, the Innocence Protection Act, amended current law by requiring the Attorney General to provide DNA testing of material evidence for federal prisoners who assert their innocence. Among other things, the act set forth conditions under which federal prisoners could obtain post-conviction DNA testing and a requirement that the government preserve such biological evidence, unless otherwise specified under the act. In addition to federal post-conviction DNA testing, the act required the Attorney General to establish a grant program for states to "... to help defray the costs of post-conviction DNA testing."[14] The act also established incentive grants to states to encourage DNA testing of offenders sentenced to death by an accredited laboratory. As a condition for receiving the grant, states must develop plans to ensure that there is prompt DNA testing of people who may have been wrongly convicted, while at the same time ensuring that procedures are in place to discourage frivolous testing. In addition to the grant program, the act established post-conviction DNA testing standards and procedures for federal offenders who could not have obtained such forensic testing at the time of their trials.

The act required the Attorney General to submit DNA test results to the National DNA Index System under the following circumstances:

- if the current test results are inconclusive;
- if the results show that the offender was the source of the DNA evidence; or
- if the results show that the offender's DNA matches the DNA collected from another offense.

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[14] P.L. 108-405, §412.

The act required that if the results from the DNA sample of the offender do not match the DNA evidence sample or that of another offense, the DNA sample of the offender must be destroyed. The act also specified who should incur the cost of the testing under which circumstances and established a threshold for granting a motion for a new trial.

Death Penalty Representation Grants

In addition to the DNA testing grants previously mentioned, the Innocence Protection Act also authorizes grants to states for the following: (1) to improve the representation of indigent defendants by defense attorneys in capital cases; and (2) to improve the ability of prosecutors to represent the public in capital cases.

The Innocence Protection Act may be one of the most contentious sections in the act. Its expressed aim is not only to exonerate the innocent through DNA testing in the form of post-conviction DNA testing and incentive grants to states to ensure consideration of claims of actual innocence; it is also aimed at improving the quality of representation in state capital cases through capital representation improvement grants and capital prosecution improvement grants. As the provisions under the Innocence Protection Act are being implemented, Congress may want to exercise its oversight role in making certain the various grant programs are meeting their objectives. It is not yet clear the extent to which the grant programs will assist jurisdictions in providing DNA testing in relevant cases and to what extent, if any, these programs may lead to disparities across jurisdictions (in particular for those jurisdictions that declined to obtain funding).

Department of Justice Reauthorization[15]

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

One of the more controversial titles of the act seeks to make DOJ grant programs more efficient by creating an Office of Audit, Assessment and Management. Prior to the act being enacted, DOJ had two components that were tasked with monitoring the effectiveness and efficiency of its grant programs: grant managers and the Office of the Inspector General (OIG). Office of Justice Programs (OJP) grant managers, who are located in each of its bureaus and program offices,

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[15] For additional information on P.L. 109-162, see CRS Report RL33111, *Department of Justice Reauthorization: Provisions to Improve Program Management, Compliance, and Evaluation of Justice Assistance Grants*, by Nathan James.

were charged with monitoring the grants made by OJP; the OIG is charged with promoting economy, efficiency, and effectiveness within the department.

Consolidation of Certain Office of Justice Programs[16]

The structure of federal funding for state and local law enforcement assistance efforts has recently received congressional attention. While the Administration has proposed decreasing the funding amounts and reorganizing some of these programs for several years, it wasn't until the 108th Congress that two federal grant programs were consolidated into a newly created program, as discussed briefly below.

For several years, the Administration had proposed consolidating the Edward Byrne Memorial Formula and Local Law Enforcement Block Grant (LLEBG) programs into a new Edward Byrne Memorial Justice Assistance Grant (JAG) program. Congress, however, first considered consolidating the two grant programs in the 108th Congress. Through an appropriations act (the Consolidated Appropriations Act, FY2005; P.L. 108-447), the 108th Congress consolidated the grant programs into a newly created JAG program and appropriated funding for FY2005,[17] and in January 2006, legislation was enacted that authorizes appropriations for the program through FY2009. Overall funding for both programs in the FY2005 appropriations decreased 12% (or $268 million) from FY2004, and in FY2006, Congress again decreased funding by $121 million from FY2005. Although the Administration's FY2006 budget request proposed to eliminate the JAG program, Congress continued to provide appropriations for the program. Congress may wish to exercise its oversight powers to determine whether the needs of state and local governments are being met through the new JAG program.

Community Oriented Policing Services (COPS)[18]

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

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[16] For additional information on the JAG program, see CRS Report RS22416, *Edward Bryne Memorial Justice Assistance Grant Program: Legislative and Funding History*, by Nathan James.

[17] The Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (P.L. 109-108) also consolidated the grant programs into a newly created JAG program and appropriated funding for FY2006.

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

The authority for the COPS grant program lapsed at the end of FY2000, Congress, however, has continued to appropriate funding for the program. The 109th Congress passed legislation that reauthorizes the program and realigns some of the COPS activities to other accounts.[19]

Violence Against Women Act (VAWA)[20]

The original Violence Against Women Act (VAWA), enacted as Title IV of the Violent Crime Control and Law Enforcement Act (P.L. 103-322), became law in 1994. To address violence against women, VAWA established within DOJ and the Department of Health and Human Services a number of discretionary grant programs for state, local and Indian tribal governments. The 109th Congress passed legislation that reauthorizes VAWA (P.L. 109-169). Among other provisions, the act encourages collaboration among law enforcement, judicial personnel, and public and private sector providers to victims of domestic and sexual violence. It also addresses the special needs of victims of domestic and sexual violence who are elderly, disabled, children, youth, and individuals of ethnic and racial communities, including Native Americans. The act provides emergency leave and long-term transitional housing for victims. The act makes these provisions gender neutral and requires studies and reports on the effectiveness of approaches used for certain grants in combating domestic and sexual violence.

Sex Offenders[21]

The 108th Congress passed legislation that strengthened penalties for certain categories of sex offenders. The Prosecuting Remedies and Tools Against the Exploitation of Children Today (PROTECT) Act of 2003 (P.L. 108-21) was designed to prevent the abduction and sexual exploitation of children. It included provisions that (1) increased penalties for sexually abusing a minor; (2) permitted a maximum life term of supervised release for sexual offenders convicted of sexually exploiting a minor; (3) provided a life imprisonment penalty after two-strikes for repeat offenders who commit certain crimes against children; and (4) provided funding to assist state and local law enforcement agencies in enforcing registration of convicted sex offenders and apprehending and prosecuting anyone who fails to register. In addition, it required each state to establish and maintain, within three years, an internet site for the release of information on a sex offender and to create a process for correcting allegedly erroneous information on the internet site. The act permitted

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

[20] For additional information on VAWA, see CRS Report RL30871, *Violence Against Women Act: History and Federal Funding*, by Garrine P. Laney.

[21] Garrine Laney contributed to this section. For additional information on sex offender legislation, see CRS Report RL32800, *Sex Offender Registration and Community Notification Law: Enforcement and Other Issues*, by Garrine Laney; CRS Report RS21597, *Federal Mandatory Minimum Sentencing Statutes: The PROTECT Act and Legislative Proposals in the 108th Congress*; and CRS Report RL31917, *The PROTECT (Amber Alert) Act and the Sentencing Guidelines*, both by Charles Doyle.

the Attorney General to extend for an additional two years the time-frame for completing this requirement. The act required child pornographers to register in the national sex offender registry. It also authorized funding for assistance to states in enforcing sex offender registration requirements.

Another provision of the law that could affect the identification of sex offenders involves the use of DNA. The act provided that within a five-year statute of limitations, federal prosecutors can issue an indictment identifying an unknown defendant by a DNA profile. If the indictment is issued within this time frame, the statute of limitation is nullified until the perpetrator is identified at a later date through the DNA profile.

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

Prison Legislation

The 108th Congress considered several pieces of legislation (and passed two laws) that (1) affected the way in which federal prisons provide training, job skills and manage inmates; (2) provide incentives to states to begin addressing rape in prisons;[22] and (3) require the establishment of a grant program that supports cooperative efforts by state or local criminal justice and mental health agencies to provide services to incarcerated mentally ill offenders.[23] The latter two pieces of legislation were enacted into law during the 108th Congress, but legislation that would have reformed Federal Prison Industries (FPI) failed to pass the Senate in the 108th Congress. The House Judiciary Committee favorably reported to the House legislation that would reform FPI, see discussion below.

Federal Prison Industries[24]

UNICOR, the trade name for Federal Prison Industries, Inc., is a government-owned corporation that employs offenders incarcerated in correctional facilities under

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[22] See discussion below on Prison Rape Elimination Act (P.L. 108-79).

[23] See **Appendix B** for a description of the Mentally Ill Offender Treatment and Crime Reduction Act of 2004 (P.L. 108-414).

[24] For additional information, see CRS Report RL32380, *Federal Prison Industries*, by Lisa M. Seghetti.

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

Although the Administration has recently made several efforts to mitigate the competitive advantage FPI has over the private sector, Congress has taken legislative action to lessen such impact on the private sector. For example, in 2002 and 2003, Congress passed legislation that modified FPI's mandatory source clause with respect to procurements made by the Department of Defense and the Central Intelligence Agency;[25] and in recent years, Congress passed legislation limiting federal agencies use of appropriated funds for the purchase of products or services manufactured by FPI unless the agency determines that the products or services provide "... the best value to the buying agency pursuant to government-wide procurement regulations...."[26]

Legislation introduced in the 109th Congress would, in essence, eliminate FPI's mandatory source clause. For example, the Federal Prison Industries Competition in Contracting Act of 2005 (H.R. 2965) would phase out over five years FPIs' mandatory source clause with respect to *products* produced by FPI and would cease treating FPI as a preferential provider for *services*. A similar measure (S. 749) has been introduced in the Senate. H.R. 2965, as amended, was favorably reported out of the House Judiciary Committee on July 21, 2006.

Prison Rape Elimination Act (PREA)

Although prison violence in general is documented, sexual assaults in prisons have not been well documented. Prison rape may be a symptom of a larger problem that faces many prisons throughout the country. Overcrowded and understaffed prisons as well as prisons that lack sufficient services may, among other things, lead to idle inmates without adequate supervision and contribute to violence.

The 108th Congress considered and passed legislation that requires the Attorney General to develop national standards for preventing sexual assaults in prisons.

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

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

Among other things, the PREA[27] requires the Attorney General to (1) begin gathering national statistics about the prevalence of prison rape; (2) develop guidelines for states about how to address the problem; (3) create a commission to study the effects of prison rape and correctional policies on rape reduction; and (4) provide grants to states to combat the problem. In making such grants, however, the act requires the grantee (state administrator) to certify that the state has adopted national rape prevention standards (as promulgated by the Attorney General), among other things.

PREA has been viewed as a necessary step to begin to correct the problem of prison rape, however, until Congress and the federal government provide a mechanism for independent oversight of state prison facilities, other issues may continue to persist. For example, conditions and services in state prison facilities are not monitored by an independent, centralized entity. Responsibility for oversight of prison conditions varies from state to state, with some jurisdictions having few if any monitoring mechanisms. The American Correctional Association (ACA) provides accreditation for state correctional facilities, however, it is done on a voluntary basis.[28] The issue for Congress is whether it wants to monitor conditions in state prison facilities, and if so, in what manner and degree. One option Congress may consider is to tie existing federal assistance to state prisons to accreditation, similar to the requirements set forth for funding for DNA testing mentioned above.

Youth Gangs[29]

Gang activity in the United States has been traced back to the early 19th century when youth gangs emerged from some immigrant populations. It has been estimated that in 1855, New York City alone had more than 30,000 gang members.[30] According to the findings of the Juvenile Justice and Delinquency Prevention Act of 2002 (P.L. 107-273), in 1970 only 19 states reported youth gang problems. Congress found that by the late 1990s, all 50 states and the District of Columbia were reporting gang problems.[31] Youth gangs continue to be a pervasive problem, particularly in large cities across the country. Gangs contribute to high rates of violent crime, instill fear in citizens, and engage in a wide range of troublesome behavior that can include vandalism and graffiti to drug dealing, property crime, weapons violations and violence.

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[27] P.L. 108-79.

[28] According to the ACA, approximately 80% of state departments of corrections and youth services are accredited.

[29] Celinda Franco contributed to this section. For additional information on youth gangs, see CRS Report RL33400, *Youth Gangs: Legislative Issues in the 109th Congress*, by Celinda Franco.

[30] Kenneth J. Peak and Timothy Griffin, *Gangs: Origin, Status, Community Responses, and Policy Implications*, Roslyn Muraskin and Albert R. Roberts in *Visions for Change Crime and Justice in the Twenty-First Century*, Fourth Edition, 2004, p. 44.

[31] P.L. 107-273, *21st Century Department of Justice Appropriations Authorization Act*, Nov. 2, 2002, Division C, Title II, §12202.

According to a survey of law enforcement agencies on the characteristics of youth gangs conducted by the National Youth Gang Center (NYGC),[32] gang activity is pervasive in both urban and rural America. Cities with populations of 250,000 or more all reported youth gang problems in 2002. Of cities with populations between 100,000 and 249,999, 87% reported youth gang problems. Among responding suburban county agencies, 38% reported gang activity, as did 27% of responding smaller city agencies, and 12% of responding rural county agencies. Youth gangs were active in more than 2,300 cities with a population of 2,500 or more and in more than 550 jurisdictions served by county law enforcement agencies. The survey also estimated that approximately 731,500 gang members and 21,500 gangs were active in the United States in 2002. Larger cities and suburban counties accounted for approximately 85% of the estimated number of gang members in 2002.

Policymakers have long considered comprehensive approaches to youth gangs, generally that involve a combination of prevention, intervention, and suppression efforts. Congress has been concerned with the problem of youth gangs and over the years passed enhanced criminal penalties for gang activities and programs designed to prevent gang activities. As was the case in the 108th Congress, several bills targeting the youth gang problem have been introduced in the 109th Congress. The Gang Deterrence and Community Protection Act of 2005 (H.R. 1279) and the Children's Safety and Violent Crime Reduction Act of 2006 (H.R. 4472) however, are the only measures that have received legislative attention. Among other provisions, the bills would broaden the scope of the federal government's role in prosecuting violent crimes committed by members of gangs. The bills would include provisions for prosecuting criminal street gang enterprises similar to the existing Racketeer Influenced and Corrupt Organization (RICO) statutes for prosecuting cases involving federal racketeering. One of the more controversial provisions in the bills pertains to the age at which a juvenile could be transferred for criminal prosecution. H.R. 1279 would provide for increased mandatory minimum penalties for gang-related offenses, whereas H.R. 4472 would only do so in a limited number of instances. Both bills would provide for the death penalty in certain gang-related crimes. H.R. 4472 would reauthorize the Gang Resistance Education and Training (G.R.E.A.T) program and authorize appropriations for state and local reentry courts. Both bills would also authorize grant programs that would increase prosecutorial resources to more effectively prosecute gang violence, among other things.[33] On May 11, 2005, the House passed an amended version of H.R 1279, and on March 8, 2006, the House passed H.R. 4472.

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

[33] Other bills that have been introduced includeH.R. 970, H.R. 1168, H.R. 1225, H.R. 2672, H.R. 2933, S. 155, S. 853, and S. 1322.

Court Security[34]

The 2005 Atlanta court shooting that killed several court personnel, including a judge, brought national attention to the issue of court security. Congress promptly responded to the shooting by introducing legislation that would address concerns about the adequacy of court security. On November 9, 2005, the House passed the Secure Access to Justice and Court Protection Act of 2005 (H.R. 1751), and on March 8, 2006, the House passed the Children's Safety and Violent Crime Reduction Act of 2006 (H.R. 4472). Among other provisions, both bills would increase penalties for certain crimes committed against certain categories of federal employees and their family members, including federal judges. The bills would also increase penalties for certain illegal acts that are committed against jurors, witnesses, victims and informants. The bills would authorize the Attorney General to make grants to states, local governments, and Indian tribes to create or expand witness protection programs. A similar bill (S. 1968) was introduced in the Senate, however, no action has been taken on it.[35]

Hate Crimes[36]

The Hate Crime Statistics Act became law in 1990, P.L. 101-275, and required the collection of information on crimes motivated by a bias based on race, religion, sexual orientation or ethnicity. In 1994, P.L. 103-322 amended the law to include bias against the disabled as a hate crime. The Attorney General designated the FBI, working cooperatively with state and local law enforcement agencies, to establish a uniform method for gathering hate crime data. Hate crime data collection became a permanent part of the FBI's UCR in 1996.

In 2003, more than 17,000 city, county, and state law enforcement agencies reported data on hate crimes to the national UCR program. Before a crime is labeled a hate crime, law enforcement must reveal sufficient evidence to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by his or her bias. There were 7,489 reported hate crimes in 2003, four of which were multiple-bias hate crime incidents, with the remaining 7,485 reported as single-bias incidents. Within the 7,485 incidents, 51.4% of the single-bias hate crime incidents were committed because of the offenders' racial bias (66.3% were an anti-black bias, 21.2% were an anti-white bias); 17.9% were due to religious bias (69.2%

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[34] For additional information on court security, see CRS Report RL33473, *Judicial Security: Comparison of Legislation in the 109th Congress*, by Nathan James, and CRS Report RL33464, *Judicial Security: Responsibilities and Current Issues*, by Lorraine H. Tong.

[35] Several other court security-related pieces of legislation has also been introduced, however, there have been no legislative action. For a discussion of these legislation, see CRS Report RL33473, *Judicial Security: Comparison of Legislation in the 109th Congress*, by Nathan James.

[36] For additional information on hate crimes, see CRS Report RL33403, *Hate Crime Legislation in the 109th Congress*, by William J. Krouse and Janice Cheryl Beaver; and CRS Report RL32850, *Hate Crimes: Legal Issues*, by Paul S. Wallace.

were an anti-Jewish bias, 10.9% were an anti-Islamic bias); 16.6% were attributed to sexual-orientation bias, and 13.7% occurred because of an ethnicity/national origin bias. Disability bias motivated 0.4% of the single-bias incidents.[37]

For several Congresses, attempts have been made to stiffen penalties for crimes of violence motivated by bias. The 108th Congress considered legislation, the Local Law Enforcement Act of 2003 (S. 966/H.R. 4204), that would have broadened the federal definition of hate crimes and provided federal assistance to investigate and prosecute such acts; and included offenses involving animus toward the victim's actual or perceived gender, sexual orientation, or disability as among the qualifying factors. The current definition includes offenses based on animus toward the victim's actual or perceived race, color, religion, national origin, or disability. The Local Law Enforcement Act became a part of the National Defense Authorization for FY2005 (S. 2400). During the conference between the House and the Senate to settle the differences between the two versions of the defense authorization bills, the conference report was agreed to without including the hate crimes provision.

The Children's Safety Act of 2005 (H.R. 3132)[38]

Title X of H.R. 3132 (Local Law Enforcement Hate Crimes Prevention Act of 2005) would permit the Attorney General to provide assistance in the criminal investigation or prosecution of relevant crimes through technical, forensic and prosecutorial support to a state or tribal law enforcement official. The act also permits the Attorney General to make grants to state, local, and tribal law enforcement officials who demonstrate *extraordinary* expenses associated with the investigation and prosecution of hate crimes. Additionally, the act requires DOJ's Office of Justice Programs to make grants to state and local programs that are designed to combat hate crimes committed by juveniles. The act authorizes funding for the various grant programs as well as for additional personnel for DOJ to respond to alleged hate crime violations. The act amends current law with respect to penalties for individuals who commit violent offenses based on someone's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. According to the act, the offense must occur as a result of the defendant or the victim traveling across a state line or "using a channel, facility, or instrumentality of interstate or foreign commerce," and the defendant using such in connection with the offense, among other things.[39]

Other Issues

The 109th Congress may also consider several measures that have either been a long standing concern or have recently begun to receive attention, as discussed below.

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[37] FBI's Hate Crime Statistics, 2003, see [http://www.fbi.gov/ucr/03hc.pdf].

[38] Title X of H.R. 3132 is similar to H.R. 2662 and S. 1145. Other hate crimes-related bills that have been introduced in the 109th Congress include, H.R. 259, and H.R. 1193.

[39] See §1007 of H.R. 3132.

Federal Sentencing Structure[40]

In 1984, Congress passed legislation that led to the creation of federal sentencing guidelines. The Sentencing Reform Act of 1984 (Chapter II of the Comprehensive Crime Control Act of 1984; P.L. 98-473), in essence, eliminated indeterminate sentencing at the federal level. The act created the United States Sentencing Commission, an independent body within the judicial branch of the federal government and charged it with promulgating guidelines for federal sentencing. The purpose of the commission was to examine unwarranted disparity in federal sentencing policy, among other things.[41] In establishing sentencing guidelines for federal judges, the commission took into consideration factors such as (1) the nature and degree of harm caused by the offense; (2) the offender's prior record; (3) public views of the gravity of the offense; (4) the deterrent effect of a particular sentence; and (5) aggravating or mitigating circumstances.[42] In addition to these factors, the Commission also considered characteristics of the offender, such as age, education, vocational skills, and mental or emotional state, among other things.[43] Prior to the recent Supreme Court ruling, the guidelines were binding, and they were also subjected to statutory directives, including mandatory minimum penalties for specific offenses set by Congress.[44]

On January 12, 2005, the U.S. Supreme Court ruled that the Sixth Amendment right to a trial by jury requires that the current federal sentencing guidelines be advisory, rather than mandatory.[45] In doing so, the Court struck down a provision in law that made the federal sentencing guidelines mandatory[46] as well as a provision that governed the standards of appellate review of departures from the guidelines.[47] In essence, the Court's ruling gives federal judges discretion in sentencing offenders

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[40] For additional information on this subject, see CRS Report RL32766, *Federal Sentencing Guidelines: Background, Legal Analysis, and Policy Options*, by Lisa M. Seghetti and Alison M. Smith.

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

[42] See 18 U.S.C. §994(c).

[43] See 18 U.S.C. §994(d).

[44] Mandatory minimum sentencing laws are separate from the federal sentencing guidelines. Over the years, Congress has directed the U.S. Sentencing Commission to integrate mandatory minimum penalties it has passed into the federal sentencing guidelines. Examples of federal mandatory minimum sentencing laws include the 1986 and 1988 Anti-Drug Abuse Acts (P.L. 99-570 and P.L. 100-690). In addition to mandatory minimum penalties for certain drug violations, Congress has passed mandatory minimum penalties for certain gun violations and sex offenses.

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

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

[47] See 18 U.S.C. §3742(e).

by not requiring them to adhere to the guidelines; rather the guidelines can be used by judges on an advisory basis.[48] As a result of the ruling, judges now have discretion in sentencing defendants unless the offense carries a mandatory sentence (as specified in the law). While some may view the ruling as an opportunity for federal judges to take into consideration the circumstances unique to each individual offender, thus handing down a sentence that better fits the offender, others may fear that such discretion may result in unwarranted disparity and inconsistencies in sentencing across jurisdictions that led to the enactment of the guidelines in the first place.[49]

In light of the ruling, the issue for Congress is whether to amend current law to require federal judges to follow guided sentences, or permit federal judges to use their discretion in sentencing under certain circumstances. Possible congressional options include (1) maintain the sentencing guidelines by placing limits on a judge's ability to depart from the guidelines, by establishing escalating mandatory minimums and increasing the top of each guideline range to the statutory maximum for the offense; (2) require jury trial or defendant waiver for any enhancement factor that would increase the sentence for which the defendant did not waive his rights; or (3) take no action, thus permitting judicial discretion in sentencing in cases where Congress has not specified mandatory sentences.

Separate from the federal sentencing guidelines are mandatory minimum sentencing laws. Over the years, Congress has directed the U.S. Sentencing Commission to integrate mandatory minimum penalties it has passed into the federal sentencing guidelines. A notable example of federal mandatory minimum sentencing laws includes the 1986 and 1988 Anti-Drug Abuse Acts (P.L. 99-570 and P.L. 100-690), which created mandatory minimums for drug trafficking and simple possession of crack cocaine, as discussed below.

Mandatory Minimum Sentencing

Beginning in the 1970s and continuing into the 1990s, Congress passed legislation that revised sentencing laws and required, in many cases, the mandatory imprisonment of offenders for committing certain types of crimes. Mandatory minimum sentences require an offender to serve at least a portion of his term in prison and essentially eliminate correctional officials or a parole board's ability to determine when an offender should be released from prison. While a judge's discretion may be limited under these measures and correctional officials may no

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

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

longer decide *when* an offender can be released from prison, many contend that the discretion is actually shifted to the charging or prosecuting attorney *or* the sentencing commission.[50]

Although the intent of mandatory minimum sentencing and other similar measures is to punish the most serious offenders by sending them to prison for a long period, critics contend that the laws are disproportionately applied to nonviolent, minority offenders.[51] They argue that "... mandatory minimums are inconsistent with the notion that sentences should consider all relevant circumstances of an offense and an offender..."[52] Proponents of these measures, however, contend that such efforts decrease crime and ensure certainty in the criminal justice system.[53] Moreover, in addition to serving as a specific deterrence, proponents argue that these measures serve as a general deterrence to potential criminals.[54]

The 1986 and 1988 Anti-Drug Abuse Acts (P.L. 99-570 and P.L. 100-690, respectively) played a pivotal role in the current mandatory minimum sentencing structure applicable to federal drug offenses. The passage of these acts was the first time Congress distinguished drug traffickers by the quantities of drugs they had in their possession. Both acts required a mandatory minimum sentence for offenders who were convicted of trafficking specific quantities of cocaine and other controlled substances. The acts also required different mandatory minimum penalties for different forms of the same drug (i.e., cocaine base, commonly referred to as crack cocaine, and cocaine hyrdochloride, HCL, commonly referred to as powder cocaine), which has been commonly referred to as the "100:1 disparity." The 1988 act required a mandatory minimum penalty for simple possession of crack cocaine, which was the only drug that could generate a mandatory minimum sentence for simple possession.

Congress, through the Violent Crime Control and Law Enforcement Act of 1994,[55] directed the commission to study federal sentencing policy as it relates to possession and distribution of all forms of cocaine. Congress was particularly interested in the commission's examination of "the current federal structure of differing penalties for powder and crack cocaine offenses and to provide

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[50] See for example, Michael Tonry, *Sentencing Matters* (New York: Oxford University Press, 1996).

[51] See, for example, the Sentencing Project at [http://www.sentencingproject.org/]; and Families Against Mandatory Minimums at [http://www.famm.org/index2.htm].

[52] American Bar Association, Justice Kennedy Commission, *Reports with Recommendations to the ABA House of Delegates*, Aug. 2004, p. 26.

[53] The Rand Corporation, *Three Strikes and You're Out*: *Estimated Benefits and Costs of California's New Mandatory-Sentencing Law*, 1994; Ronald J. Pestritto, *In Defense of Three Strikes: Analyzing the Impact of California's 1994 Anti-Crime Measures* (Assembly Publications Office, 1996).

[54] Ibid., both articles.

[55] P.L. 103-322.

recommendations for retention or modification of these differences."[56] In 1995, the commission reported to Congress on the disparity found in the sentencing structure for crack and powder cocaine. It called for Congress to equalize the quantities between crack and powder cocaine that triggers a mandatory minimum penalty. Congress, however, did not accept the commission's recommendation.

The issue for Congress is whether it wants to address the sentencing disparity that exists with respect to crack and powder cocaine. Among other matters, the 109th Congress may wish to consider legislation that would re-examine the 100:1 ratio between crack and powder cocaine.[57]

Federal Habeas Corpus

Federal habeas corpus is the statutory procedure under which state and federal prisoners may petition the federal courts to review their convictions and sentences to determine whether the prisoners are being held contrary to the laws or Constitution of the United States.[58] With respect to federal inmates, the authority of a federal court to issue a writ of habeas corpus has been a part of legal procedure since 1789. With respect to inmates in state custody, federal courts have had the authority since 1867. However, while the federal writ of habeas corpus was extended to inmates in state custody in 1867, it did not become fully available as a means to challenge an unlawful conviction or sentence until the 1940s.[59]

In recent decades, the U.S. Supreme Court and Congress have restricted the filing of habeas corpus petitions. The reason for this is, in part, due to the number of reported cases of abuse by inmates (i.e., repeat and frivolous filing of petitions). While the issue was most often associated with death penalty cases (e.g., inmates using the writ of habeas corpus as a means to delay their executions), inmates sentenced in non-capital cases were reportedly also availing themselves of such petitions. In the 1970s and 1980s, the U.S. Supreme Court developed restrictive procedural doctrines to govern federal habeas proceedings;[60] and in 1996, Congress passed legislation (Antiterrorism and Effective Death Penalty Act of 1996; AEDPA)[61] that limited federal court adjudication of state prisoners' federal claims, particularly in death penalty cases.

The Streamlined Procedures Act (S. 1088/H.R. 3035). Two bills have been introduced in the 109th Congress that would further restrict a state inmate's right to a federal habeas claim. The Streamlined Procedures Act (S. 1088/H.R. 3035)

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[56] See P.L. 104-38.

[57] Several bills have been introduced that would impact current law, including H.R. 48, H.R. 1501, and H.R. 2456.

[58] 28 U.S.C. §241 et seq.

[59] See *Waley* v. *Johnson*, 316 U.S. 101 (1942).

[60] See *Stone* v. *Powell*, 428 U.S. 465 (1976); *Wainwright* v. *Sykes*, 433 U.S. 72 (1977); *Engle* v. *Issac*, 456 U.S. 107 (1982); and *Marshall* v. *Longberger*, 259 U.S. 422 (1983).

[61] See P.L. 104-32.

would amend AEDPA and further restrict state inmates' access to federal habeas corpus relief. Generally, SPA would impose additional requirements on habeas corpus applicants in state custody.[62] SPA would also impose time limits on federal courts of appeal review of habeas corpus decisions. In addition, it would bar federal courts from tolling[63] the current one-year deadline for filing habeas corpus claims for reasons other than those authorized by the state, as well as clarify when a state appeal is pending for purposes of tolling the deadline.

Similar to H.R. 3035, the Children's Safety and Violent Crime Reduction Act of 2005 (H.R. 4472) contains a provision that would bar federal judicial review of a habeas corpus application with respect to a sentencing error that a state court has found harmless or not prejudicial unless a determination is made that the error is contrary to clearly established federal law. On March 8, 2006, the House passed H.R. 4472.

Other Legislation. Four additional bills (H.R. 3132/S. 956, S. 1605 and S. 3835) have also been introduced in the 109th Congress. The bills would provide for an expeditious habeas review of convictions that involved a killing of a child (§303 of H.R. 3132, §303 of H.R. 3860 and §4 of S. 956) and a public safety officer or state judge (§6 of S. 1605 and §7 of S. 3835). The House passed H.R. 3132 on September 14, 2005. H.R. 3860, S. 956, S. 1605 and S. 3835 have been referred to the relevant committees and no further action has been taken on them.

Crime Victims Rights

As has occurred since the 104th Congress, several constitutional amendments (S.J.Res. 1, H.J.Res. 10 and H.J.Res. 48) were introduced in the 108th Congress to protect the rights of crime victims.[64] When it became apparent in the 108th Congress that the necessary two-thirds super-majority needed to pass a Constitutional Amendment was not available, efforts were initiated to introduce a bill that proposed a statutory alternative. It was argued that the provisions in the *Victims' Rights Bill* (S. 2329) would serve to strengthen the statute that already existed and also serve as a test to determine if a statute, rather than a constitutional amendment, could work to provide the necessary protection for victim rights. S. 2329 passed the Senate on April 22, 2004. The provisions of S. 2329 were included in H.R. 5107, Justice for All Act of 2004, and became P.L. 108-405 on October 30, 2004.

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[62] Defendants being held under a state criminal conviction may file a federal petition for a writ of habeas corpus under 28 U.S.C. §2254 to challenge the validity of their conviction or sentence.

[63] To *toll* the deadline means "to stop the running of" the statute of limitation. Black's Law Dictionary, Second Pocket Edition, Bryan A. Garner, Editor in Chief.

[64] For more information on the Constitutional Amendments, see CRS Report RL31750, *Victims' Rights Amendment: A Proposal to Amend the United States Constitution in the 108th Congress*; and CRS Report RS21434, *Victims' Rights Amendment: A Sketch of a Proposal in the 108th Congress to Amend the United States Constitution*, both by Charles Doyle.

The crime victims rights listed in P.L. 108-405 are similar to the rights listed in the proposed constitutional amendment (i.e., to be reasonably protected from the accused; to reasonable, accurate and timely notice of any court proceeding or parole proceeding affecting the accused; to be heard at any public court proceeding; to confer with the Attorney for the Government; to full and timely restitution; to proceedings without undue delay; and to be treated with fairness and with respect to victim's dignity and privacy). It was observed during Senate debate that the states might look to the federal statute as a model and incorporate it into their own systems because the federal statute encourages legal assistance grants and victim notification grants to states that have laws substantially equivalent to the federal statute. Enforcement mechanisms are more stringent in the legislation than is present in the statute it replaces. Victims with standing are able to apply for a writ of mandamus to a court of appeals to enforce the rights outlined in this law. An administrative procedure is established in the Justice Department to receive and investigate victims' claims of unlawful or inappropriate action on the part of criminal justice and victims' service providers. Also, DOJ employees could face disciplinary sanctions, including suspension or termination of employment if they fail to comply with the law pertaining to the treatment of crime victims.

As noted, while there was an unsuccessful effort to pass a constitutional amendment regarding victims of crime in the 108th Congress, a measure was passed in its place, as discussed above. The 109th Congress, however, may reconsider whether to pursue the constitutional amendment path or provide oversight on the effectiveness of the statutory approach.

Appendix A: List of Selected Crime-Related Legislation Enacted During the 108th Congress

The Torture Victims Relief Act of 2003 (P.L. 108-179). P.L. 108-179 amends current law[65] by authorizing appropriations to the Department of Health and Human Services to provide grants to domestic programs that provide rehabilitative services to victims of torture, among other things.

The Hometown Heroes Survivors Benefits Act of 2003 (P.L. 108-182). P.L. 108-182 amends current law[66] by providing that if an officer has a fatal heart attack or stroke while on duty, he is presumed to have died in the line of duty for purposes of survivor benefits.

The Trafficking Victims Protection Reauthorization Act of 2003 (P.L. 108-193). P.L. 108-193 contains several provisions that are aimed at stemming human sex trafficking before it reaches the United States. With respect to domestic criminal justice, the act amends current law[67] by extending the jurisdiction of sex trafficking offenses to acts of trafficking in or affecting interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States. It also amends current law by requiring the Attorney General to report to Congress on the number of people who have been charged or convicted of trafficking-related criminal offenses, among other things.

The Identity Theft Penalty Enhancement Act (P.L. 108-275). P.L. 108-275 amends current law[68] by establishing penalties for aggravated identity theft. Among other things, this act expands the existing identify theft prohibition to (1) cover possession of a means of identification of another with intent to commit specified unlawful activity; (2) increase penalties for violations; and (3) include acts of domestic terrorism within the scope of a prohibition against facilitating an act of international terrorism. The U.S. Sentencing Commission is directed to review and amend its guidelines and policy statements to ensure that the guideline offense levels and enhancements appropriately punish identity theft offenses involving an abuse of position. The Department of Justice is authorized funding for the investigation and prosecution of identity theft and related credit card and other fraud cases constituting felonies.

Boys and Girls Club of America (P.L. 108-344). P.L. 108-344 amends current law[69] by reauthorizing and extending the *Boys and Girls Club of America* (BGCA) program. The BGCA program provides services that promote and enhance the development of boys and girls. The act requires the establishment of 300

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[65] See P.L. 105-320.

[66] See 42 U.S.C. 3796.

[67] See P.L. 106-386.

[68] See Chapter 47 of 18 U.S.C. 1028.

[69] See 42 U.S.C. 13751 (§401 of the Economic Espionage Act of 1996).

additional boys and girls club in public housing projects and other distressed areas. The act required that there be a plan in place that ensures that at least 5,000 boys and girls clubs be established by 2010 and it also authorized funding for the program through calendar year 2010.

Law Enforcement Officers Safety Act of 2003 (P.L. 108-277). P.L. 108-277 exempts certain law enforcement officers from state laws that prohibit the concealed carry of firearms.

The State Justice Institute Reauthorization Act of 2004 (P.L. 108-372). P.L. 108-372 amends current[70] law by reauthorizing the *State Justice Institute* (SJI) through FY2008. SJI awards grants to improve the quality of justice in state courts, among other things.

The act also reauthorized the *Bulletproof Vest Partnership grant program* through FY2007. The Bulletproof Vest Partnership grant program awards grants to state, local and tribal law enforcement agencies to assist them in purchasing bulletproof vests for their officers.

The Mentally Ill Offender Treatment and Crime Reduction Act of 2004 (P.L. 108-414). P.L. 108-414 amended current[71] law by creating a new grant program that authorized funding to state and local criminal justice and mental health agencies to established a collaborative effort to provide services to the mentally ill prisoner.

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[70] See 42 U.S.C. §10713.

[71] See 42 U.S.C. §3711 *et seq.*