

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4055

To combat crime.

---

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 1994

Mr. BURTON of Indiana introduced the following bill; which was referred jointly to the Committees on the Judiciary, Energy and Commerce, Foreign Affairs, Banking, Finance and Urban Affairs, and Armed Services

---

## A BILL

To combat crime.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

Sec. 1. Table of contents.

TITLE I—BOOT CAMP

Sec. 101. Conversion of property and facilities at closed or realigned military installations into youthful offender boot camps.

Sec. 102. Grants for boot camps.

TITLE II—STRONGER PENALTIES FOR DRUG OFFENDERS

Sec. 201. Life imprisonment or death penalty for certain drug trafficking offenses.

Sec. 202. Conforming amendments.

TITLE III—VIOLENCE AGAINST WOMEN AND CHILDREN

Sec. 301. Pretrial detention in sex offense cases.

- Sec. 302. Death penalty for murders committed by sex offenders.
- Sec. 303. Increased penalties for recidivist sex offenders.
- Sec. 304. Increased penalties for sex offenses against victims below the age of 16.
- Sec. 305. Sentencing guidelines increase for sex offenses.
- Sec. 306. HIV testing and penalty enhancement in sexual offense cases.
- Sec. 307. Admissibility of evidence of similar crimes in sex offense cases.
- Sec. 308. Interstate travel to commit spouse abuse or to violate protective order; interstate stalking.
- Sec. 309. Full faith and credit for protective orders.
- Sec. 310. Presumption against child custody for spouse abusers.

#### TITLE IV—IMMIGRATION AND ASYLUM REFORM

- Sec. 401. Inspection and exclusion by immigration officers.
- Sec. 402. Enhanced penalties for alien smuggling.
- Sec. 403. Expanded forfeiture for smuggling or harboring illegal aliens.
- Sec. 404. Including alien smuggling as a racketeering activity for purposes of racketeering influenced and corrupt organizations (RICO) enforcement authority.
- Sec. 405. Effective dates.
- Sec. 406. Asylum.
- Sec. 407. Failure to appear for provisional asylum hearing; judicial review.
- Sec. 408. Effective dates.
- Sec. 409. Issuance of new identification cards for aliens.
- Sec. 410. Implementation.
- Sec. 411. No national identity card.
- Sec. 412. Employer education program.
- Sec. 413. Authorization of appropriations.
- Sec. 414. Employment eligibility verification demonstration project.

#### TITLE V—CHILD-RELATED SEX OFFENDERS

- Sec. 501. Sense of Congress.

#### TITLE VI—TRUTH IN SENTENCING

- Sec. 601. Short title.
- Sec. 602. Findings and purpose.
- Sec. 603. Definition.
- Sec. 604. State sentencing reviews.
- Sec. 605. State sentencing systems.
- Sec. 606. Funding and compliance.

#### TITLE VII—THREE STRIKES AND YOU'RE OUT

- Sec. 701. Life imprisonment or death penalty for third Federal violent felony conviction.

#### TITLE VIII—HABEAS CORPUS REFORM

##### Subtitle A—Post Conviction Petitions: General Habeas Corpus Reform

- Sec. 801. Period of limitation for filing writ of habeas corpus following final judgment of a State court.
- Sec. 802. Authority of appellate judges to issue certificates of probable cause for appeal in habeas corpus and Federal collateral relief proceedings.

- Sec. 803. Conforming amendment to the rules of appellate procedure.  
 Sec. 804. Discretion to deny habeas corpus application despite failure to exhaust State remedies.  
 Sec. 805. Period of limitation for Federal prisoners filing for collateral remedy.

Subtitle B—Special Procedures for Collateral Proceedings in Capital Cases

- Sec. 811. Death penalty litigation procedures.

Subtitle C—Funding for Litigation of Federal Habeas Corpus Petitions in Capital Cases

- Sec. 821. Funding for death penalty prosecutions.

TITLE IX—INCREASE PENALTIES FOR JUVENILES

- Sec. 901. Prosecution as adults of violent juvenile offenders.

1                                   **TITLE I—BOOT CAMP**  
 2   **SEC. 101. CONVERSION OF PROPERTY AND FACILITIES AT**  
 3                                   **CLOSED OR REALIGNED MILITARY INSTALLA-**  
 4                                   **TIONS INTO YOUTHFUL OFFENDER BOOT**  
 5                                   **CAMPS.**

6           (a) BASES CLOSED OR REALIGNED UNDER 1990  
 7 BASE CLOSURE LAW.—Section 2905 of the Defense Base  
 8 Closure and Realignment Act of 1990 (part A of title  
 9 XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is  
 10 amended by adding at the end the following:

11           “(f) PRIORITY FOR CONVERSION TO YOUTHFUL OF-  
 12 FENDER BOOT CAMPS.—(1) Notwithstanding subsection  
 13 (b), before any action is taken with respect to the disposal  
 14 or transfer of any real property or facility located at a  
 15 military installation to be closed or realigned under this  
 16 part, the Secretary of Defense shall notify the State and  
 17 each local government in which the installation is located  
 18 and other interested persons of the suitability of the prop-

1 erty or facility for conversion and use as a youthful  
2 offender boot camp.

3 “(2) Subject to paragraph (3), the Secretary shall  
4 transfer (without reimbursement) the property or facilities  
5 described in the notification to the State, local govern-  
6 ment, or interested person if the State, local government,  
7 or person certifies that the property or facilities will be  
8 promptly converted to and used as a youthful offender  
9 boot camp.

10 “(3) Any certification submitted under paragraph (2)  
11 must be received by the Secretary not later than 180 days  
12 after the Secretary provides the notification required by  
13 paragraph (1) and must include a conversion and operat-  
14 ing plan for the youthful offender boot camp. If the Sec-  
15 retary receives more than one certification, the Secretary  
16 shall select the recipient of the property or facility based  
17 upon the quality and feasibility of the competing conver-  
18 sion and operating plans. In the case of a certification sub-  
19 mitted by a private person, the Secretary may reject the  
20 certification and refuse to transfer the property or facility  
21 concerned if—

22 “(A) the Secretary determines on the basis of  
23 the conversion and operating plan that the person  
24 will likely be unable to successfully convert or oper-  
25 ate the proposed youthful offender boot camp; or

1           “(B) the State or any local government in  
2           which the installation is located opposes the transfer.

3           “(4) As used in this subsection, the term ‘youthful  
4 offender boot camp’ means a correctional facility operated  
5 as a military-style boot camp to provide discipline, treat-  
6 ment, and work for adjudicated non-violent offenders who  
7 are between the ages of 14 and 25, inclusive.”.

8           (b) BASES CLOSED OR REALIGNED UNDER 1988  
9 BASE CLOSURE LAW.—Section 204 of the Defense Au-  
10 thorization Amendments and Base Closure and Realign-  
11 ment Act (title II of Public Law 100–526; 10 U.S.C. 2687  
12 note) is amended by adding at the end the following new  
13 subsection:

14           “(e) PRIORITY FOR CONVERSION TO YOUTHFUL OF-  
15 FENDER BOOT CAMPS.—(1) Notwithstanding subsection  
16 (b), before any action is taken with respect to the disposal  
17 or transfer of any real property or facility located at a  
18 military installation to be closed or realigned under this  
19 title, the Secretary of Defense shall notify the State and  
20 each local government in which the installation is located  
21 and other interested persons of the suitability of the prop-  
22 erty or facility for conversion and use as a youthful of-  
23 fender boot camp.

24           “(2) Subject to paragraph (3), the Secretary shall  
25 transfer (without reimbursement) the property or facilities

1 described in the notification to the State, local govern-  
2 ment, or interested person if the State, local government,  
3 or person certifies that the property or facilities will be  
4 promptly converted to and used as a youthful offender  
5 boot camp.

6       “(3) Any certification submitted under paragraph (2)  
7 must be received by the Secretary not later than 180 days  
8 after the Secretary provides the notification required by  
9 paragraph (1) and must include a conversion and operat-  
10 ing plan for the youthful offender boot camp. If the Sec-  
11 retary receives more than one certification, the Secretary  
12 shall select the recipient of the property or facility based  
13 upon the quality and feasibility of the competing conver-  
14 sion and operating plans. In the case of a certification sub-  
15 mitted by a private person, the Secretary may reject the  
16 certification and refuse to transfer the property or facility  
17 concerned if—

18               “(A) the Secretary determines on the basis of  
19 the conversion and operating plan that the person  
20 will likely be unable to successfully convert or oper-  
21 ate the proposed youthful offender boot camp; or

22               “(B) the State or any local government in  
23 which the installation is located opposes the transfer.

24       “(4) As used in this subsection, the term ‘youthful  
25 offender boot camp’ means a correctional facility operated

1 as a military-style boot camp to provide discipline, treat-  
2 ment, and work for adjudicated non-violent offenders who  
3 are between the ages of 14 and 25, inclusive.”.

4 (c) MODEL YOUTHFUL OFFENDER BOOT CAMP.—

5 (1) DEVELOPMENT.—The Secretary of Defense,  
6 in consultation with the Federal Bureau of Prisons  
7 and State and local correctional agencies, shall de-  
8 velop a model program intended to incorporate mili-  
9 tary basic training and other military instruction  
10 and disciplinary procedures into the design and op-  
11 eration of youthful offender boot camps at the Fed-  
12 eral, State, and local levels.

13 (2) DEFINITION.—For purposes of this sub-  
14 section, the term “youthful offender boot camp”  
15 means a correctional facility operated as a military-  
16 style boot camp to provide discipline, treatment, and  
17 work for adjudicated non-violent offenders who are  
18 between the ages of 14 and 25, inclusive.

19 **SEC. 102. GRANTS FOR BOOT CAMPS.**

20 Subsection (a) of section 516 of the Omnibus Crime  
21 Control and Safe Streets Act of 1968 (42 U.S.C. 3762b)  
22 is amended—

23 (1) by striking “80” and inserting “40”; and

24 (2) by striking “10” the second place it appears  
25 and inserting “50”.

1 **TITLE II—STRONGER PENALTIES**  
2 **FOR DRUG OFFENDERS**

3 **SEC. 201. LIFE IMPRISONMENT OR DEATH PENALTY FOR**  
4 **CERTAIN DRUG TRAFFICKING OFFENSES.**

5 (a) IN GENERAL.—Part D of the Controlled Sub-  
6 stances Act (21 U.S.C. 841 et seq.) is amended by adding  
7 at the end the following:

8 “LIFE IMPRISONMENT OR DEATH PENALTY FOR CERTAIN  
9 DRUG TRAFFICKING OFFENSES

10 “SEC. 423. (a) Whoever commits a violation of this  
11 title or title III involving—

12 “(1) 4 or more kilograms of cocaine (including  
13 cocaine freebase);

14 “(2) 2 or more kilograms of heroin;

15 “(3) 200,000 or more dosage units of lysergic  
16 acid diethylamide; or

17 “(4) 200,000 or more dosage units of  
18 phencyclidine;

19 shall be sentenced to death or to life imprisonment without  
20 the benefit of parole, probation, or suspension.

21 “(b) The procedures applicable to the death penalty  
22 for an offense under section 902(i) of the Federal Aviation  
23 Act of 1958 shall, to the greatest extent practicable, apply  
24 to the death penalty for an offense under this section.”.

1 (b) CLERICAL AMENDMENT.—The table of contents  
2 of the Comprehensive Drug Abuse Prevention and Control  
3 Act of 1970 is amended by adding at the end of the items  
4 relating to part D of title II the following new item:

“Sec. 423. Life imprisonment or death penalty for certain drug trafficking of-  
fenses.”.

5 **SEC. 202. CONFORMING AMENDMENTS.**

6 (a) SECTION 401.—Section 401(b) of the Controlled  
7 Substances Act (21 U.S.C. 841(b)) is amended in the mat-  
8 ter before paragraph (1) by striking out “418” and insert-  
9 ing “417, 418”.

10 (b) SECTION 1010.—Paragraph (1) of section  
11 1010(b) of the Controlled Substances Import and Export  
12 Act (21 U.S.C. 960(b)(1)) is amended in the matter before  
13 subparagraph (A) by striking out “In” and inserting in  
14 lieu thereof “Except as otherwise provided in this title or  
15 title II, in”.

16 **TITLE III—VIOLENCE AGAINST**  
17 **WOMEN AND CHILDREN**

18 **SEC. 301. PRETRIAL DETENTION IN SEX OFFENSE CASES.**

19 Section 3156(a)(4) of title 18, United States Code,  
20 is amended by striking “, or” at the end of subparagraph  
21 (A) and inserting a semicolon, by striking the period at  
22 the end of subparagraph (B) and inserting “; or”, and  
23 by adding after subparagraph (B) the following new sub-  
24 paragraph:

1           “(C) any felony under chapter 109A or  
2           chapter 110 of this title.”.

3 **SEC. 302. DEATH PENALTY FOR MURDERS COMMITTED BY**  
4           **SEX OFFENDERS.**

5           Title 18 of the United States Code is amended—

6           (1) by adding the following new section at the  
7           end of chapter 51:

8 **“§1118. Capital Punishment for Murders Committed**  
9           **by Sex Offenders**

10          “(a) OFFENSE.—(1) Whoever, in a circumstance de-  
11          scribed in subsection (b) of this section—

12               “(A) causes the death of a person intentionally,  
13               knowingly, or through recklessness manifesting ex-  
14               treme indifference to human life; or

15               “(B) causes the death of a person through the  
16               intentional infliction of serious bodily injury;  
17          shall be punished as provided in subsection (c) of this  
18          section.

19          “(2) For the purposes of this section, conduct that  
20          results in the transfer of the human immunodeficiency  
21          virus to a person shall be deemed conduct that causes the  
22          death of that person, whether or not that person has died  
23          before the prosecution for the offense under this section  
24          takes place.

1       “(b) REQUIRED CIRCUMSTANCES.—The cir-  
2 cumstance referred to in subsection (a) of this is that the  
3 conduct resulting in death occurs in the course of another  
4 offense against the United States.

5       “(c) PENALTY.—The penalty for an offense under  
6 this section is a fine under this title or imprisonment for  
7 life or any term of years, or both. A sentence of death  
8 may also be imposed for an offense under this section as  
9 provided in subsections (d)–(l), except that a sentence of  
10 death may not be imposed on a defendant who was below  
11 the age of 18 years at the time of the commission of the  
12 crime.

13       “(d) MITIGATING FACTORS.—In determining wheth-  
14 er to recommend a sentence of death, the jury shall con-  
15 sider whether any aspect of the defendant’s character,  
16 background, or record or any circumstance of the offense  
17 that the defendant may proffer as a mitigating factor ex-  
18 ists, including the following factors:

19               “(1) MENTAL CAPACITY.—The defendant’s  
20 mental capacity to appreciate the wrongfulness of  
21 his conduct or to conform his conduct to the require-  
22 ments of law was significantly impaired.

23               “(2) DURESS.—The defendant was under un-  
24 usual and substantial duress.

1           “(3) PARTICIPATION IN OFFENSE MINOR.—The  
2 defendant is punishable as a principal (pursuant to  
3 section 2 of this title) in the offense, which was com-  
4 mitted by another, but the defendant’s participation  
5 was relatively minor.

6           “(e) AGGRAVATING FACTORS.—In determining  
7 whether to recommend a sentence of death, the jury shall  
8 consider any aggravating factor for which notice has been  
9 provided under subsection (f), including the following  
10 factors:

11           “(1) KILLING IN COURSE OF DESIGNATED SEX  
12 CRIMES.—The conduct resulting in death occurred  
13 in the course of an offense defined in chapter 109A,  
14 110, or 117 of this title.

15           “(2) KILLING IN CONNECTION WITH SEXUAL  
16 ASSAULT OR CHILD MOLESTATION.—The defendant  
17 committed a crime of sexual assault or crime of  
18 child molestation, as defined in subsection (x), in the  
19 course of an offense on which federal jurisdiction is  
20 based under subsection (b).

21           “(3) PRIOR CONVICTION OF SEXUAL ASSAULT  
22 OR CHILD MOLESTATION.—The defendant has pre-  
23 viously been convicted of a crime of sexual assault  
24 or crime of child molestation as defined in sub-  
25 section (x).

1       “(f) NOTICE OF INTENT TO SEEK DEATH PEN-  
2 ALTY.—If the government intends to seek the death pen-  
3 alty for an offense under this section, the attorney for the  
4 government shall file with the court and serve on the de-  
5 fendant a notice of such intent. The notice shall be pro-  
6 vided a reasonable time before the trial or acceptance of  
7 a guilty plea, or at such later time before trial as the court  
8 may permit for good cause. If the court permits a late  
9 filing of the notice upon a showing of good cause, the court  
10 shall ensure that the defendant has adequate time to pre-  
11 pare for trial. The notice shall set forth the aggravating  
12 factor or factors set forth in subsection (e) and any other  
13 aggravating factor or factors that the government will seek  
14 to prove as the basis for the death penalty. The factors  
15 for which notice is provided under this subsection may in-  
16 clude factors concerning the effect of the offense on the  
17 victim and the victim’s family. The court may permit the  
18 attorney for the government to amend the notice upon a  
19 showing of good cause.

20       “(g) JUDGE AND JURY AT CAPITAL SENTENCING  
21 HEARING.—A hearing to determine whether the death  
22 penalty will be imposed for an offense under this section  
23 shall be conducted by the judge who presided at trial or  
24 accepted a guilty plea, or by another judge if that judge  
25 is not available. The hearing shall be conducted before the

1 jury that determined the defendant's guilt if that jury is  
2 available. A new jury shall be impaneled for the purpose  
3 of the hearing if the defendant pleaded guilty, the trial  
4 of guilt was conducted without a jury, the jury that deter-  
5 mined the defendant's guilt was discharged for good  
6 cause, or reconsideration of the sentence is necessary after  
7 the initial imposition of a sentence of death. A jury  
8 impaneled under this subsection shall have twelve mem-  
9 bers unless the parties stipulate to a lesser number at any  
10 time before the conclusion of the hearing with the approval  
11 of the judge. Upon motion of the defendant, with the ap-  
12 proval of the attorney for the government, the hearing  
13 shall be carried out before the judge without a jury. If  
14 there is no jury, references to 'the jury' in this section,  
15 where applicable, shall be understood as referring to the  
16 judge.

17       “(h) PROOF OF MITIGATING AND AGGRAVATING  
18 FACTORS.—No presentence report shall be prepared if a  
19 capital sentencing hearing is held under this section. Any  
20 information relevant to the existence of mitigating factors,  
21 or to the existence of aggravating factors for which notice  
22 has been provided under subsection (f), may be presented  
23 by either the government or the defendant. The informa-  
24 tion presented may include trial transcripts and exhibits.  
25 Information presented by the government in support of

1 factors concerning the effect of the offense on the victim  
2 and the victim's family may include oral testimony, a vic-  
3 tim impact statement that identifies the victim of the of-  
4 fense and the nature and extent of harm and loss suffered  
5 by the victim and the victim's family, and other relevant  
6 information. Information is admissible regardless of its  
7 admissibility under the rules governing the admission of  
8 evidence at criminal trials, except that information may  
9 be excluded if its probative value is outweighed by the dan-  
10 ger of creating unfair prejudice, confusing the issues, or  
11 misleading the jury. The attorney for the government and  
12 for the defendant shall be permitted to rebut any informa-  
13 tion received at the hearing, and shall be given fair oppor-  
14 tunity to present argument as to the adequacy of the in-  
15 formation to establish the existence of any aggravating or  
16 mitigating factor, and as to the appropriateness in that  
17 case of imposing a sentence of death. The attorney for  
18 the government shall open the argument, the defendant  
19 shall be permitted to reply, and the government shall then  
20 be permitted to reply in rebuttal.

21       “(i) FINDINGS OF AGGRAVATING AND MITIGATING  
22 FACTORS.—The jury shall return special findings identify-  
23 ing any aggravating factor or factors for which notice has  
24 been provided under subsection (f) and which the jury  
25 unanimously determines have been established by the gov-

1 ernment beyond a reasonable doubt. A mitigating factor  
2 is established if the defendant has proven its existence by  
3 a preponderance of the evidence, and any member of the  
4 jury who finds the existence of such a factor may regard  
5 it as established for purposes of this section regardless of  
6 the number of jurors who concur that the factor has been  
7 established.

8       “(j) FINDING CONCERNING A SENTENCE OF  
9 DEATH.—If the jury specially finds under subsection (i)  
10 that one or more aggravating factors set forth in sub-  
11 section (e) exist, and the jury further finds unanimously  
12 that there are no mitigating factors or that the aggravat-  
13 ing factor or factors specially found under subsection (i)  
14 outweigh any mitigating factors, then the jury shall rec-  
15 ommend a sentence of death. In any other case, the jury  
16 shall not recommend a sentence of death. The jury shall  
17 be instructed that it must avoid any influence of sym-  
18 pathy, sentiment, passion, prejudice, or other arbitrary  
19 factors in its decision, and should make such a rec-  
20 ommendation as the information warrants.

21       “(k) SPECIAL PRECAUTION TO ASSURE AGAINST  
22 DISCRIMINATION.—In a hearing held before a jury, the  
23 court, before the return of a finding under subsection (j),  
24 shall instruct the jury that, in considering whether to rec-  
25 ommend a sentence of death, it shall not be influenced

1 by prejudice or bias relating to the race, color, religion,  
2 national origin, or sex of the defendant or any victim, and  
3 that the jury is not to recommend a sentence of death  
4 unless it has concluded that it would recommend a sen-  
5 tence of death for such a crime regardless of the race,  
6 color, religion, national origin, or sex of the defendant or  
7 any victim. The jury, upon the return of a finding under  
8 subsection (j), shall also return to the court a certificate,  
9 signed by each juror, that the race, color, religion, national  
10 origin, or sex of the defendant or any victim did not affect  
11 the juror's individual decision and that the individual juror  
12 would have recommended the same sentence for such a  
13 crime regardless of the race, color, religion, national ori-  
14 gin, or sex of the defendant or any victim.

15       “(l) IMPOSITION OF A SENTENCE OF DEATH.—Upon  
16 a recommendation under subsection (j) that a sentence of  
17 death be imposed, the court shall sentence the defendant  
18 to death. Otherwise the court shall impose a sentence,  
19 other than death, that is authorized by law.

20       “(m) REVIEW OF A SENTENCE OF DEATH.—The de-  
21 fendant may appeal a sentence of death under this section  
22 by filing a notice of appeal of the sentence within the time  
23 provided for filing a notice of appeal of the judgment of  
24 conviction. An appeal of a sentence under this subsection  
25 may be consolidated with an appeal of the judgment of

1 conviction and shall have priority over all noncapital mat-  
2 ters in the court of appeals. The court of appeals shall  
3 review the entire record in the case including the evidence  
4 submitted at trial and information submitted during the  
5 sentencing hearing, the procedures employed in the sen-  
6 tencing hearing, and the special findings returned under  
7 subsection (i). The court of appeals shall uphold the sen-  
8 tence if it determines that the sentence of death was not  
9 imposed under the influence of passion, prejudice, or any  
10 other arbitrary factor, that the evidence and information  
11 support the special findings under subsection (i), and that  
12 the proceedings were otherwise free of prejudicial error  
13 that was properly preserved for and raised on appeal. In  
14 any other case, the court of appeals shall remand the case  
15 for reconsideration of the sentence or imposition of an-  
16 other authorized sentence as appropriate, except that the  
17 court shall not reverse a sentence of death on the ground  
18 that an aggravating factor was not supported by the evi-  
19 dence and information if at least one aggravating factor  
20 set forth in subsection (e) which was found to exist re-  
21 mains and the court, on the basis of the evidence submit-  
22 ted at trial and the information submitted at the sentenc-  
23 ing hearing, finds no mitigating factor or finds that the  
24 remaining aggravating factor or factors which were found  
25 to exist outweigh any mitigating factors. The court of ap-

1 peals shall state in writing the reasons for its disposition  
2 of an appeal of a sentence of death under this section.

3 “(n) IMPLEMENTATION OF SENTENCE OF DEATH.—

4 A person sentenced to death under this section shall be  
5 committed to the custody of the Attorney General until  
6 exhaustion of the procedures for appeal of the judgment  
7 of conviction and review of the sentence. When the sen-  
8 tence is to be implemented, the Attorney General shall re-  
9 lease the person sentenced to death to the custody of a  
10 United States Marshal. The Marshal shall supervise im-  
11 plementation of the sentence in the manner prescribed by  
12 the law of the State in which the sentence is imposed, or  
13 in the manner prescribed by the law of another State des-  
14 igned by the court if the law of the State in which the  
15 sentence was imposed does not provide for implementation  
16 of a sentence of death. The Marshal may use State or local  
17 facilities, may use the services of an appropriate State or  
18 local official or of a person such an official employs, and  
19 shall pay the costs thereof in an amount approved by the  
20 Attorney General.

21 “(o) SPECIAL BAR TO EXECUTION.—A sentence of  
22 death shall not be carried out upon a woman while she  
23 is pregnant.

24 “(p) CONSCIENTIOUS OBJECTION TO PARTICIPATION  
25 IN EXECUTION.—No employee of any State department

1 of corrections, the Federal Bureau of Prisons, or the Unit-  
2 ed States Marshals Service, and no person providing serv-  
3 ices to that department, bureau, or service under contract  
4 shall be required, as a condition of that employment or  
5 contractual obligation, to be in attendance at or to partici-  
6 pate in any execution carried out under this section if such  
7 participation is contrary to the moral or religious convic-  
8 tions of the employee. For purposes of this subsection, the  
9 term ‘participate in any execution’ includes personal prep-  
10 aration of the condemned individual and the apparatus  
11 used for the execution, and supervision of the activities  
12 of other personnel in carrying out such activities.

13       “(q) APPOINTMENT OF COUNSEL FOR INDIGENT  
14 CAPITAL DEFENDANTS.—A defendant against whom a  
15 sentence of death is sought, or on whom a sentence of  
16 death has been imposed, under this section, shall be enti-  
17 tled to appointment of counsel from the commencement  
18 of trial proceedings until one of the conditions specified  
19 in subsection (v) has occurred, if the defendant is or be-  
20 comes financially unable to obtain adequate representa-  
21 tion. Counsel shall be appointed for trial representation  
22 as provided in section 3005 of this title, and at least one  
23 counsel so appointed shall continue to represent the de-  
24 fendant until the conclusion of direct review of the judg-  
25 ment, unless replaced by the court with other qualified

1 counsel. Except as otherwise provided in this section, the  
2 provisions of section 3006A of this title shall apply to ap-  
3 pointments under this section.

4       “(r) REPRESENTATION AFTER FINALITY OF JUDG-  
5 MENT.—When a judgment imposing a sentence of death  
6 under this section has become final through affirmance by  
7 the Supreme Court on direct review, denial of certiorari  
8 by the Supreme Court on direct review, or expiration of  
9 the time for seeking direct review in the court of appeals  
10 or the Supreme Court, the government shall promptly no-  
11 tify the court that imposed the sentence. The court, within  
12 10 days of receipt of such notice, shall proceed to make  
13 a determination whether the defendant is eligible for ap-  
14 pointment of counsel for subsequent proceedings. The  
15 court shall issue an order appointing one or more counsel  
16 to represent the defendant upon a finding that the defend-  
17 ant is financially unable to obtain adequate representation  
18 and wishes to have counsel appointed or is unable com-  
19 petently to decide whether to accept or reject appointment  
20 of counsel. The court shall issue an order denying appoint-  
21 ment of counsel upon a finding that the defendant is fi-  
22 nancially able to obtain adequate representation or that  
23 the defendant rejected appointment of counsel with an un-  
24 derstanding of the consequences of that decision. Counsel  
25 appointed pursuant to this subsection shall be different

1 from the counsel who represented the defendant at trial  
2 and on direct review unless the defendant and counsel re-  
3 quest a continuation or renewal of the earlier representa-  
4 tion.

5       “(s) STANDARDS FOR COMPETENCE OF COUNSEL.—  
6 In relation to a defendant who is entitled to appointment  
7 of counsel under subsections (q)–(r), at least one counsel  
8 appointed for trial representation must have been admit-  
9 ted to the bar for at least 5 years and have at least three  
10 years of experience in the trial of felony cases in the Fed-  
11 eral district courts. If new counsel is appointed after judg-  
12 ment, at least one counsel so appointed must have been  
13 admitted to the bar for at least 5 years and have at least  
14 3 years of experience in the litigation of felony cases in  
15 the Federal courts of appeals or the Supreme Court. The  
16 court, for good cause, may appoint counsel who does not  
17 meet these standards, but whose background, knowledge,  
18 or experience would otherwise enable him or her to prop-  
19 erly represent the defendant, with due consideration of the  
20 seriousness of the penalty and the nature of the litigation.

21       “(t) CLAIMS OF INEFFECTIVENESS OF COUNSEL IN  
22 COLLATERAL PROCEEDINGS.—The ineffectiveness or in-  
23 competence of counsel during proceedings on a motion  
24 under section 2255 of title 28, United States Code, shall  
25 not be a ground for relief from the judgment or sentence

1 in any proceeding. This limitation shall not preclude the  
2 appointment of different counsel at any stage of the  
3 proceedings.

4 “(u) TIME FOR COLLATERAL ATTACK ON DEATH  
5 SENTENCE.—A motion under section 2255 of title 28,  
6 United States Code, attacking a sentence of death under  
7 this section, or the conviction on which it is predicated,  
8 must be filed within 90 days of the issuance of the order  
9 under subsection (r) appointing or denying the appoint-  
10 ment of counsel for such proceedings. The court in which  
11 the motion is filed, for good cause shown, may extend the  
12 time for filing for a period not exceeding 60 days. Such  
13 a motion shall have priority over all non-capital matters  
14 in the district court, and in the court of appeals on review  
15 of the district court’s decision.

16 “(v) STAY OF EXECUTION.—The execution of a sen-  
17 tence of death under this section shall be stayed in the  
18 course of direct review of the judgment and during the  
19 litigation of an initial motion in the case under section  
20 2255 of title 28, United States Code. The stay shall run  
21 continuously following imposition of the sentence and shall  
22 expire if—

23 “(1) the defendant fails to file a motion under  
24 section 2255 of title 28, United States Code, within  
25 the time specified in subsection (u), or fails to make

1 a timely application for court of appeals review fol-  
2 lowing the denial of such a motion by a district  
3 court;

4 “(2) upon completion of district court and court  
5 of appeals review under section 2255 of title 28,  
6 United States Code, the Supreme Court disposes of  
7 a petition for certiorari in a manner that leaves the  
8 capital sentence undisturbed, or the defendant fails  
9 to file a timely petition for certiorari; or

10 “(3) before a district court, in the presence of  
11 counsel and after having been advised of the con-  
12 sequences of such a decision, the defendant waives  
13 the right to file a motion under section 2255 of title  
14 28, United States Code.

15 “(w) FINALITY OF THE DECISION ON REVIEW.—If  
16 one of the conditions specified in subsection (v) has oc-  
17 curred, no court thereafter shall have the authority to  
18 enter a stay of execution or grant relief in the case un-  
19 less—

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

22 “(2) the failure to raise the claim is the result  
23 of governmental action in violation of the Constitu-  
24 tion or laws of the United States, the result of the  
25 Supreme Court’s recognition of a new Federal right

1 that is retroactively applicable, or the result of the  
2 fact that the factual predicate of the claim could not  
3 have been discovered through the exercise of reason-  
4 able diligence in time to present the claim in earlier  
5 proceedings; and

6 “(3) the facts underlying the claim would be  
7 sufficient, if proven, to undermine the court’s con-  
8 fidence in the determination of guilt on the offense  
9 or offenses for which the death penalty was imposed.

10 “(x) DEFINITIONS.—For purposes of this section—

11 “(1) ‘crime of sexual assault’ means a crime  
12 under Federal or State law that involved—

13 “(A) contact, without consent, between any  
14 part of the defendant’s body or an object and  
15 the genitals or anus of another person;

16 “(B) contact, without consent, between the  
17 genitals or anus of the defendant and any part  
18 of the body of another person;

19 “(C) deriving sexual pleasure or gratifi-  
20 cation from the infliction of death, bodily in-  
21 jury, or physical pain on another person; or

22 “(D) an attempt or conspiracy to engage  
23 in any conduct described in paragraphs (A)–  
24 (C);

1           “(2) ‘crime of child molestation’ means a crime  
2 under Federal or State law that involved—

3           “(A) contact between any part of the de-  
4 fendant’s body or an object and the genitals or  
5 anus of a child;

6           “(B) contact between the genitals or anus  
7 of the defendant and any part of the body of  
8 a child;

9           “(C) deriving sexual pleasure or gratifi-  
10 cation from the infliction of death, bodily in-  
11 jury, or physical pain on a child; or

12           “(D) an attempt or conspiracy to engage  
13 in any conduct described in paragraphs (A)–  
14 (C); and

15           “(3) ‘child’ means a person below the age of  
16 14.”; and

17           (2) by adding the following at the end of the  
18 table of sections for chapter 51:

“1118. Capital punishment for murders committed by sex offenders.”.

19 **SEC. 303. INCREASED PENALTIES FOR RECIDIVIST SEX OF-**  
20 **FENDERS.**

21           (a) REDESIGNATION.—Section 2245 of title 18,  
22 United States Code, is redesignated section 2246.

23           (b) PENALTIES.—Chapter 109A of title 18, United  
24 States Code, is amended by inserting the following new  
25 section after section 2244:

1 **“§ 2245. Penalties for subsequent offenses**

2 “Any person who violates this chapter after a prior  
3 conviction under this chapter or the law of a State (as  
4 defined in section 513 of this title) for conduct proscribed  
5 by this chapter has become final is punishable by a term  
6 of imprisonment up to twice that otherwise authorized.”.

7 (c) CLERICAL AMENDMENT.—The table of sections  
8 at the beginning of chapter 109A of title 18, United States  
9 Code, is amended—

10 (1) by striking “2245” and inserting in lieu  
11 thereof “2246”; and

12 (2) by inserting after the item relating to sec-  
13 tion 2244 the following:

“2245. Penalties for subsequent offenses.”.

14 **SEC. 304. INCREASED PENALTIES FOR SEX OFFENSES**  
15 **AGAINST VICTIMS BELOW THE AGE OF 16.**

16 Paragraph (2) of section 2246 of title 18, United  
17 States Code, as so redesignated by this Act, is amended—

18 (1) in subparagraph (B) by striking “or” after  
19 the semicolon;

20 (2) in subparagraph (C) by striking “; and”  
21 and inserting in lieu thereof “; or”; and

22 (3) by inserting a new subparagraph (D) as fol-  
23 lows:

24 “(D) the intentional touching, not through  
25 the clothing, of the genitalia of another person

1           who has not attained the age of 16 years with  
2           an intent to abuse, humiliate, harass, degrade,  
3           or arouse or gratify the sexual desire of any  
4           person;”.

5   **SEC. 305. SENTENCING GUIDELINES INCREASE FOR SEX OF-**  
6                           **FENSES.**

7           The United States Sentencing Commission shall  
8   amend the sentencing guidelines to increase by at least  
9   four levels the base offense level for an offense under sec-  
10   tion 2241 (aggravated sexual abuse) or section 2242 (sex-  
11   ual abuse) of title 18, United States Code, and shall con-  
12   sider whether any other changes are warranted in the  
13   guidelines provisions applicable to such offenses to ensure  
14   realization of the objectives of sentencing. In amending the  
15   guidelines in conformity with this section, the Sentencing  
16   Commission shall review the appropriateness and ade-  
17   quacy of existing offense characteristics and adjustments  
18   applicable to such offenses, taking into account the hei-  
19   nousness of sexual abuse offenses, the severity and dura-  
20   tion of the harm caused to victims, and any other relevant  
21   factors. In any subsequent amendment to the sentencing  
22   guidelines, the Sentencing Commission shall maintain  
23   minimum guidelines sentences for the offenses referenced  
24   in this section which are at least equal to those required  
25   by this section.

1 **SEC. 306. HIV TESTING AND PENALTY ENHANCEMENT IN**  
2 **SEXUAL OFFENSE CASES.**

3 (a) IN GENERAL.—Chapter 109A of title 18, United  
4 States Code, is amended by inserting at the end the follow-  
5 ing new section:

6 **“§2247. Testing for human immunodeficiency virus;**  
7 **disclosure of test results to victim; effect**  
8 **on penalty**

9 “(a) TESTING AT TIME OF PRE-TRIAL RELEASE DE-  
10 TERMINATION.—In a case in which a person is charged  
11 with an offense under this chapter, a judicial officer issu-  
12 ing an order pursuant to section 3142(a) of this title shall  
13 include in the order a requirement that a test for the  
14 human immunodeficiency virus be performed upon the  
15 person, and that follow-up tests for the virus be performed  
16 6 months and 12 months following the date of the initial  
17 test, unless the judicial officer determines that the conduct  
18 of the person created no risk of transmission of the virus  
19 to the victim, and so states in the order. The order shall  
20 direct that the initial test be performed within 24 hours,  
21 or as soon thereafter as feasible. The person shall not be  
22 released from custody until the test is performed.

23 “(b) TESTING AT LATER TIME.—If a person charged  
24 with an offense under this chapter was not tested for the  
25 human immunodeficiency virus pursuant to subsection (a),  
26 the court may at a later time direct that such a test be

1 performed upon the person, and that follow-up tests be  
2 performed 6 months and 12 months following the date of  
3 the initial test, if it appears to the court that the conduct  
4 of the person may have risked transmission of the virus  
5 to the victim. A testing requirement under this subsection  
6 may be imposed at any time while the charge is pending,  
7 or following conviction at any time prior to the person's  
8 completion of service of the sentence.

9       “(c) TERMINATION OF TESTING REQUIREMENT.—A  
10 requirement of follow-up testing imposed under this sec-  
11 tion shall be canceled if any test is positive for the virus  
12 or the person obtains an acquittal on, or dismissal of, all  
13 charges under this chapter.

14       “(d) DISCLOSURE OF TEST RESULTS.—The results  
15 of any test for the human immunodeficiency virus per-  
16 formed pursuant to an order under this section shall be  
17 provided to the judicial officer or court. The judicial offi-  
18 cer or court shall ensure that the results are disclosed to  
19 the victim (or to the victim's parent or legal guardian, as  
20 appropriate), the attorney for the government, and the  
21 person tested.

22       “(e) EFFECT ON PENALTY.—The United States Sen-  
23 tencing Commission shall amend existing guidelines for  
24 sentences for offenses under this chapter to enhance the  
25 sentence if the offender knew or had reason to know that

1 he was infected with the human immunodeficiency virus,  
2 except where the offender did not engage or attempt to  
3 engage in conduct creating a risk of transmission of the  
4 virus to the victim.”.

5 (b) CLERICAL AMENDMENT.—The table of sections  
6 for chapter 109A of title 18, United States Code, is  
7 amended by inserting at the end thereof the following new  
8 item:

“2247. Testing for human immunodeficiency virus; disclosure of test results to  
victim; effect on penalty”.

9 **SEC. 307. ADMISSIBILITY OF EVIDENCE OF SIMILAR**  
10 **CRIMES IN SEX OFFENSE CASES.**

11 (a) IN GENERAL.—Article IV of the Federal Rules  
12 of Evidence is amended by adding after Rule 412 the  
13 following new rules:

14 **“Rule 413. Evidence of Similar Crimes in Sexual As-**  
15 **sault Cases**

16 “(a) In a criminal case in which the defendant is ac-  
17 cused of an offense of sexual assault, evidence of the de-  
18 fendant’s commission of another offense or offenses of sex-  
19 ual assault is admissible, and may be considered for its  
20 bearing on any matter to which it is relevant.

21 “(b) In a case in which the government intends to  
22 offer evidence under this Rule, the attorney for the govern-  
23 ment shall disclose the evidence to the defendant, includ-  
24 ing statements of witnesses or a summary of the substance

1 of any testimony that is expected to be offered, at least  
2 fifteen days before the scheduled date of trial or at such  
3 later time as the court may allow for good cause.

4 “(c) This Rule shall not be construed to limit the ad-  
5 mission or consideration of evidence under any other Rule.

6 “(d) For purposes of this Rule and Rule 415, ‘offense  
7 of sexual assault’ means a crime under Federal law or the  
8 law of a State (as defined in section 513 of title 18, United  
9 States Code) that involved—

10 “(1) any conduct proscribed by chapter 109A of  
11 title 18, United States Code;

12 “(2) contact, without consent, between any part  
13 of the defendant’s body or an object and the genitals  
14 or anus of another person;

15 “(3) contact, without consent, between the geni-  
16 tals or anus of the defendant and any part of an-  
17 other person’s body;

18 “(4) deriving sexual pleasure or gratification  
19 from the infliction of death, bodily injury, or phys-  
20 ical pain on another person; or

21 “(5) an attempt or conspiracy to engage in con-  
22 duct described in paragraphs (1)–(4).

1 **“Rule 414. Evidence of Similar Crimes in Child Mo-**  
2 **lestation Cases**

3 “(a) In a criminal case in which the defendant is ac-  
4 cused of an offense of child molestation, evidence of the  
5 defendant’s commission of another offense or offenses of  
6 child molestation is admissible, and may be considered for  
7 its bearing on any matter to which it is relevant.

8 “(b) In a case in which the government intends to  
9 offer evidence under this Rule, the attorney for the govern-  
10 ment shall disclose the evidence to the defendant, includ-  
11 ing statements of witnesses or a summary of the substance  
12 of any testimony that is expected to be offered, at least  
13 fifteen days before the scheduled date of trial or at such  
14 later time as the court may allow for good cause.

15 “(c) This Rule shall not be construed to limit the ad-  
16 mission or consideration of evidence under any other Rule.

17 “(d) For purposes of this Rule and Rule 415, the  
18 term ‘child’ means a person below the age of 14 years,  
19 and the term ‘offense of child molestation’ means a crime  
20 under Federal law or the law of a State (as defined in  
21 section 513 of title 18, United States Code) that in-  
22 volved—

23 “(1) any conduct proscribed by chapter 109A of  
24 title 18, United States Code, that was committed in  
25 relation to a child;

1           “(2) any conduct proscribed by chapter 110 of  
2 title 18, United States Code;

3           “(3) contact between any part of the defend-  
4 ant’s body or an object and the genitals or anus of  
5 a child;

6           “(4) contact between the genitals or anus of the  
7 defendant and any part of the body of a child;

8           “(5) deriving sexual pleasure or gratification  
9 from the infliction of death, bodily injury, or phys-  
10 ical pain on a child; or

11           “(6) an attempt or conspiracy to engage in con-  
12 duct described in paragraphs (1)–(5).

13 **“Rule 415. Evidence of Similar Acts in Civil Cases**  
14 **Concerning Sexual Assault or Child Mo-**  
15 **lestation**

16           “(a) In a civil case in which a claim for damages or  
17 other relief is predicated on a party’s alleged commission  
18 of conduct constituting an offense of sexual assault or  
19 child molestation, evidence of that party’s commission of  
20 another offense or offenses of sexual assault or child mo-  
21 lestation is admissible and may be considered as provided  
22 in Rule 413 and Rule 414 of these Rules.

23           “(b) A party who intends to offer evidence under this  
24 Rule shall disclose the evidence to the party against whom  
25 it will be offered, including statements of witnesses or a

1 summary of the substance of any testimony that is ex-  
 2 pected to be offered, at least 15 days before the scheduled  
 3 date of trial or at such later time as the court may allow  
 4 for good cause.

5 “(c) This Rule shall not be construed to limit the ad-  
 6 mission or consideration of evidence under any other  
 7 Rule.”.

8 (b) CLERICAL AMENDMENT.—The table of contents  
 9 for the Federal Rules of Evidence is amended by adding  
 10 at the end of the items relating to Article IV the following:

“Rule 413. Evidence of similar crimes in sexual assault cases

“Rule 414. Evidence of similar crimes in child molestation cases

“Rule 415. Evidence of similar acts in civil cases concerning sexual assault or  
 child molestation”.

11 **SEC. 308. INTERSTATE TRAVEL TO COMMIT SPOUSE ABUSE**  
 12 **OR TO VIOLATE PROTECTIVE ORDER; INTER-**  
 13 **STATE STALKING.**

14 (a) OFFENSE.—Part I of title 18, United States  
 15 Code, is amended by inserting after chapter 110 the  
 16 following:

17 **“CHAPTER 110A—DOMESTIC VIOLENCE AND**  
 18 **STALKING**

“Sec.

“2261. Domestic violence and stalking.

19 **“§ 2261. Domestic violence and stalking**

20 “(a) OFFENSE.—Whoever causes or attempts to  
 21 cause bodily injury to, engages in sexual abuse against,

1 or violates a protective order in relation to, another shall  
2 be punished—

3 “(1) if death results, by death or by imprison-  
4 ment for any term of years or for life;

5 “(2) if permanent disfigurement or life-threat-  
6 ening bodily injury results, by imprisonment for not  
7 more than 20 years;

8 “(3) if serious bodily injury results, or if a fire-  
9 arm, knife, or other dangerous weapon is possessed,  
10 carried, or used during the commission of the of-  
11 fense, by imprisonment for not more than 10 years;  
12 and

13 “(4) in any other case, by imprisonment for not  
14 more than five years.

15 If, however, the defendant engages in sexual abuse and  
16 the penalty authorized for such conduct under chapter  
17 109A exceeds the penalty which would otherwise be au-  
18 thorized under this subsection, then the penalty authorized  
19 for such conduct under chapter 109A shall apply.

20 “(b) MANDATORY PENALTIES.—A sentence under  
21 this section shall include at least 3 months of imprison-  
22 ment if the offense involves the infliction of bodily injury  
23 on or the commission of sexual abuse against the victim.  
24 A sentence under this section shall include at least 6  
25 months of imprisonment if the offense involves the viola-

1 tion of a protective order and the defendant has previously  
2 violated a protective order in relation to the same victim.

3 “(c) JURISDICTION.—There is Federal jurisdiction to  
4 prosecute an offense under this section if the defendant  
5 traveled in interstate or foreign commerce, or transported  
6 or caused another to move in interstate or foreign com-  
7 merce, with the intention of committing or in furtherance  
8 of committing the offense, and—

9 “(1) the victim was a spouse or former spouse  
10 of the defendant, was cohabiting with or had  
11 cohabited with the defendant, or had a child in com-  
12 mon with the defendant; or

13 “(2) the defendant on two or more occasions—

14 “(A) has caused or attempted or threat-  
15 ened to cause death or serious bodily injury to  
16 or engaged in sexual abuse in relation to the  
17 victim; or

18 “(B) has engaged in any conduct that  
19 caused or was intended to cause apprehension  
20 by the victim that the victim would be subjected  
21 to death, serious bodily injury, or sexual abuse.

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

23 “(1) ‘protective order’ means an order issued by  
24 a court of a State prohibiting or limiting violence

1 against, harassment of, contact or communication  
2 with, or physical proximity to another person;

3 “(2) ‘sexual abuse’ means any conduct pro-  
4 scribed by chapter 109A of this title, whether or not  
5 the conduct occurs in the special maritime and terri-  
6 torial jurisdiction of the United States or in a Fed-  
7 eral prison;

8 “(3) ‘serious bodily injury’ and ‘bodily injury’  
9 have the meanings given in section 1365(g); and

10 “(4) ‘State’ has the meaning given in section  
11 513(c)(5).”.

12 (b) CLERICAL AMENDMENT.—The table of chapters  
13 at the beginning of part I of title 18, United States Code,  
14 is amended by inserting after the item for chapter 110  
15 the following:

“**110A. Domestic violence and stalking** ..... **2261**”.

16 (c) MANDATORY RESTITUTION.—Section 3663 of  
17 title 18, United States Code is amended by striking “or  
18 chapter 110” and inserting “, chapter 110, or section  
19 2261” in each of subsections (b)(2) and (d).

20 (d) INTERIM PROTECTION.—Section 3156(a)(4)(C)  
21 of title 18, United States Code, as added by section 301  
22 of this Act, is amended by striking “or chapter 110” and  
23 inserting “, chapter 110, or section 2261”.

24 (e) DEATH PENALTY PROCEDURES.—Section 1118  
25 of title 18, United States Code, as added by section 302

1 of this Act, is amended in paragraph (1) of subsection (e)  
2 by inserting “or section 2261” after “117”.

3 **SEC. 309. FULL FAITH AND CREDIT FOR PROTECTIVE OR-**  
4 **DERS.**

5 (a) REQUIREMENT OF FULL FAITH AND CREDIT.—  
6 Chapter 110A of title 18, United States Code, as enacted  
7 by section 308 of this Act, is amended by adding at the  
8 end the following:

9 **“§ 2262. Full faith and credit for protective orders**

10 “(a) A protective order issued by a court of a State  
11 shall have the same full faith and credit in a court in an-  
12 other State that it would have in a court of the State in  
13 which issued, and shall be enforced by the courts of any  
14 State as if it were issued in that State.

15 “(b) For purposes of this section—

16 “(1) ‘protective order’ means an order prohibit-  
17 ing or limiting violence against, harassment of, con-  
18 tact or communication with, or physical proximity to  
19 another person; and

20 “(2) ‘State’ has the meaning given in section  
21 513(c)(5).”.

22 (b) CLERICAL AMENDMENT.—The table of sections  
23 at the beginning of chapter 110A of title 18, United States  
24 Code, as enacted by section 308 of this Act, is amended  
25 by inserting at the end the following:

“2262. Full faith and credit for protective orders.”.

1 **SEC. 310. PRESUMPTION AGAINST CHILD CUSTODY FOR**  
2 **SPOUSE ABUSERS.**

3 (a) The Congress finds that—

4 (1) courts fail to recognize the detrimental ef-  
5 fects of having as a custodial parent an individual  
6 who physically abuses his or her spouse, insofar as  
7 they do not hear or weigh evidence of domestic vio-  
8 lence in child custody litigation;

9 (2) joint custody forced upon hostile parents  
10 can create a damaging psychological environment for  
11 a child;

12 (3) physical abuse of a spouse is relevant to the  
13 likelihood of child abuse in child custody disputes;

14 (4) the effects on children of physical abuse of  
15 a spouse include—

16 (A) traumatization and psychological dam-  
17 age to children resulting from observation of  
18 the abuse and the climate of violence and fear  
19 existing in a home where abuse takes place;

20 (B) the risk that children may become tar-  
21 gets of physical abuse when they attempt to in-  
22 tervene on behalf of an abused parent; and

23 (C) the negative effects on children of ex-  
24 posure to an inappropriate role model, in that  
25 witnessing an aggressive parent may commu-

1           nicate to children that violence is an acceptable  
2           means of dealing with others; and

3           (5) the harm to children from spouse abuse  
4           may be compounded by award of exclusive or joint  
5           custody to an abuser because further abuse may  
6           occur when the abused spouse is forced to have con-  
7           tact with the abuser as a result of the custody ar-  
8           rangement, and because the child or children may be  
9           exposed to abuse committed by the abuser against a  
10          subsequent spouse or partner.

11          (b) SENSE OF CONGRESS.—It is the sense of the  
12 Congress that, for purposes of determining child custody,  
13 evidence establishing that a parent engages in physical  
14 abuse of a spouse should create a statutory presumption  
15 that it is detrimental to the child to be placed in the cus-  
16 tody of the abusive spouse.

17           **TITLE IV—IMMIGRATION AND**  
18           **ASYLUM REFORM**

19           **SEC. 401. INSPECTION AND EXCLUSION BY IMMIGRATION**  
20           **OFFICERS.**

21           (a) IN GENERAL.—Section 235(b) of the Immigra-  
22 tion and Nationality Act (8 U.S.C. 1225(b)) is amended  
23 to read as follows:

24           “(b)(1) An immigration officer shall inspect each  
25 alien who is seeking entry to the United States.

1       “(2)(A) If the examining immigration officer deter-  
2 mines that an alien seeking entry—

3               “(i) does not present the documentation re-  
4 quired (if any) to obtain legal entry to the United  
5 States; and

6               “(ii) does not indicate either an intention to  
7 apply for provisional asylum (under section 208) or  
8 a fear of persecution,  
9 the officer shall order the alien excluded from the United  
10 States without further hearing or review.

11       “(B) The examining immigration officer shall refer  
12 for immediate inspection at the port of entry by an asylum  
13 officer under subparagraph (C) any alien who (i) does not  
14 present the documentation required (if any) to obtain legal  
15 entry to the United States, and (ii) has indicated an inten-  
16 tion to apply for provisional asylum or a fear of persecu-  
17 tion.

18       “(C)(i) If an asylum officer determines that an alien  
19 has a credible fear of persecution, the alien shall be enti-  
20 tled to apply for provisional asylum under section 208.

21       “(ii)(I) Subject to subclause (II), if an asylum officer  
22 determines that an alien does not have a credible fear of  
23 persecution the officer shall order the alien excluded from  
24 the United States without further hearing or review.

1       “(II) The Attorney General shall promulgate regula-  
2 tions to provide for the immediate review by another asy-  
3 lum officer at the port of entry of a decision under  
4 subclause (I).

5       “(iii) For the purposes of this subparagraph, the  
6 term ‘credible fear of persecution’ means (I) that it is  
7 more probable than not that the statements made by the  
8 alien in support of his or her claim are true, and (II) that  
9 there is a significant possibility, in light of such state-  
10 ments and of such other facts as are known to the officer  
11 that the alien could establish eligibility for provisional asy-  
12 lum under section 208.

13       “(iv) Notwithstanding any other provision of law, no  
14 court shall have jurisdiction to review, except by petition  
15 for habeas corpus, any determination made with respect  
16 to an alien found excludable pursuant to this paragraph.  
17 In any such case, review by habeas corpus shall be limited  
18 to examination of whether the petitioner (I) is an alien,  
19 and (II) was ordered excluded from the United States pur-  
20 suant to this paragraph.

21       “(3)(A) Except as provided in subparagraph (B), if  
22 the examining immigration officer determines that an  
23 alien seeking entry is not clearly and beyond a doubt enti-  
24 tled to enter, the alien shall be detained for a hearing be-  
25 fore a special inquiry officer.

1       “(B) The provisions of subparagraph (A) shall not  
2 apply—

3               “(i) to an alien crewman,

4               “(ii) to an alien described in paragraph (2)(A)  
5 or 2(C)(ii)(I), or

6               “(iii) if the conditions described in section  
7 273(d) exist.

8       “(4) The decision of the examining immigration offi-  
9 cer, if favorable to the admission of any alien, shall be  
10 subject to challenge by any other immigration officer and  
11 such challenge shall operate to take the alien, whose privi-  
12 lege to enter is so challenged, before a special inquiry offi-  
13 cer for a hearing on exclusion of the alien.

14       “(5)(A) Subject to subparagraph (B), an alien has  
15 not entered the United States for purposes of this Act un-  
16 less and until such alien has been inspected and admitted  
17 by an immigration officer pursuant to this subsection.

18       “(B) An alien who (i) is physically present in the  
19 United States, (ii) has been physically present in the Unit-  
20 ed States for a continuous period of one year, and (iii)  
21 has not been inspected and admitted by an immigration  
22 officer shall be deemed to have entered the United States  
23 without inspection.”.

1 (b) CONFORMING AMENDMENTS.—Section 237(a) of  
2 the Immigration and Nationality Act (8 U.S.C. 1227(a))  
3 is amended—

4 (1) in the second sentence of paragraph (1) by  
5 striking “Deportation” and inserting “Subject to  
6 section 235(b)(2), deportation”; and

7 (2) in the first sentence of paragraph (2) by  
8 striking “If” and inserting “Subject to section  
9 235(b)(2), if”.

10 **SEC. 402. ENHANCED PENALTIES FOR ALIEN SMUGGLING.**

11 (a) ADDITIONAL CRIMINAL PENALTY.—Section  
12 274(a)(1) of the Immigration and Nationality Act (8  
13 U.S.C. 1324(a)(1)) is amended—

14 (1) by striking “or” at the end of subparagraph  
15 (C),

16 (2) by striking the comma at the end of sub-  
17 paragraph (D) and inserting “; or”,

18 (3) by inserting after subparagraph (D) the fol-  
19 lowing:

20 “(E) contracts or agrees with another party for  
21 that party to provide, for employment by the person  
22 or another, an alien who is not authorized to be em-  
23 ployed in the United States, knowing that such  
24 party intends to cause such alien to be brought into

1 the United States in violation of the laws of the  
2 United States,” and

3 (4) by striking “shall be fined” and all that fol-  
4 lows and inserting the following: “shall, for each  
5 alien in respect to whom any violation of this para-  
6 graph occurs, be fined in accordance with title 18,  
7 United States Code, imprisoned not more than 5  
8 years (or 10 years in the case of a violation of sub-  
9 paragraph (A) or (E)), or 20 years if during and in  
10 relation to the violation the person causes serious  
11 bodily injury (as defined in section 1365 of title 18,  
12 United States Code) to, or places in jeopardy the life  
13 of, any alien, or for any term of years up to life if  
14 during and in relation to the violation the person  
15 causes the death of any alien, or both.”.

16 (b) TREATMENT OF SMUGGLING AS AN AGGRAVATED  
17 FELONY.—The first sentence of section 101(a)(43) of the  
18 Immigration and Nationality Act (8 U.S.C. 1101(a)(43))  
19 is amended by inserting “or any offense under section  
20 274(a)” before “for which the term of imprisonment” the  
21 first place it appears.

1 **SEC. 403. EXPANDED FORFEITURE FOR SMUGGLING OR**  
2 **HARBORING ILLEGAL ALIENS.**

3 (a) IN GENERAL.—Paragraph (1) of section 274(b)  
4 of the Immigration and Nationality Act (8 U.S.C.  
5 1324(b)) is amended to read as follows:

6 “(1)(A) Except as provided in subparagraph (B),  
7 the following property shall be subject to seizure and  
8 forfeiture:

9 “(i) Any conveyance, including any vessel, vehi-  
10 cle, or aircraft, which has been or is being used in  
11 the commission of a violation of subsection (a).

12 “(ii) Any property, real or personal, which—

13 “(I) constitutes, or is derived from or  
14 traceable to, the proceeds obtained directly or  
15 indirectly from the commission of a violation of  
16 subsection (a), or

17 “(II) is used to facilitate, or is intended to  
18 be so used in the commission of, a violation of  
19 subsection (a)(1)(A).

20 “(B)(i) No property used by any person as a common  
21 carrier in the transaction of business as a common carrier  
22 shall be forfeited under this section, unless the owner or  
23 other person with lawful custody of the property was a  
24 consenting party to or privy to the violation of subsection  
25 (a) or of section 274A(a)(1) or 274A(a)(2).

1       “(ii) No property shall be forfeited under the provi-  
2 sions of this section by reason of any act or omission es-  
3 tablished by the owner to have been committed or omitted  
4 by a person other than the owner while the property was  
5 unlawfully in the possession of a person other than the  
6 owner in violation of the criminal laws of the United  
7 States or of any State.

8       “(iii) No property shall be forfeited under the provi-  
9 sions of this section to the extent of an interest of the  
10 owner, by reason of any act or omission established by  
11 the owner to have been committed or omitted without the  
12 knowledge, consent, or willful blindness of the owner, un-  
13 less the act or omission was committed or omitted by an  
14 employee or agent of the owner or other person with lawful  
15 custody of the property with the intent of furthering the  
16 business interests of, or to confer any other benefit upon,  
17 the owner or other person with lawful custody of the prop-  
18 erty.”.

19       (b) CONFORMING AMENDMENTS.—Section 274(b) of  
20 such Act (8 U.S.C. 1324(b)) is amended—

21             (1) in paragraph (2)—

22                     (A) by striking “conveyance” and inserting  
23                     “property” each place it appears, and

24                     (B) by striking “is being used in” and in-  
25                     serting “is being used in, is facilitating, has fa-

1 cilitated, is facilitating or was intended to facili-  
2 tate”; and

3 (2) in paragraphs (4) and (5), by striking “a  
4 conveyance”, “any conveyance”, and “conveyance”  
5 and inserting “property” each place it appears.

6 **SEC. 404. INCLUDING ALIEN SMUGGLING AS A RACKETEER-**  
7 **ING ACTIVITY FOR PURPOSES OF RACK-**  
8 **ETEERING INFLUENCED AND CORRUPT OR-**  
9 **GANIZATIONS (RICO) ENFORCEMENT AU-**  
10 **THORITY.**

11 Section 1961(1) of title 18, United States Code, is  
12 amended—

13 (1) by striking “or” before “(E) any act”, and

14 (2) by inserting before the semicolon at the end  
15 the following: “, or (F) any act which is indictable  
16 under section 274(a)(1) of the Immigration and Na-  
17 tionality Act (relating to alien smuggling)”.

18 **SEC. 405. EFFECTIVE DATES.**

19 (a) IN GENERAL.—Except as otherwise provided, the  
20 amendments made by this title shall take effect on the  
21 date of the enactment of this Act and shall apply to aliens  
22 who arrive in or seek admission to the United States on  
23 or after such date.

24 (b) SMUGGLING.—The amendment made by section  
25 102(b) shall apply to offenses for which convictions are

1 entered before, on, or after the date of the enactment of  
2 this Act.

3 (c) INTERIM REFERENCE TO PROVISIONAL ASY-  
4 LUM.—Any reference in section 235(b)(2) of the Immigra-  
5 tion and Nationality Act (as amended by section 101(a)  
6 of this Act) to provisional asylum under section 208 of  
7 the Immigration and Nationality Act shall be deemed, be-  
8 fore the effective date of the amendment made by section  
9 201(a), to be a reference to asylum under section 208 of  
10 such Act.

11 **SEC. 406. ASYLUM.**

12 (a) IN GENERAL.—Section 208 (8 U.S.C. 1158) of  
13 the Immigration and Nationality Act is amended to read  
14 as follows:

15 “ASYLUM

16 “SEC. 208. (a) PROVISIONAL ASYLUM.—

17 “(1) RIGHT TO APPLY.—An alien physically  
18 present in the United States or at a land border or  
19 port of entry, irrespective of such alien’s status, may  
20 apply for provisional asylum in accordance with this  
21 section.

22 “(2) CONDITIONS FOR GRANTING.—

23 “(A) MANDATORY CASES.—The Attorney  
24 General shall grant provisional asylum to an  
25 alien if the alien applies for provisional asylum  
26 in accordance with the requirements of this sec-

1           tion and establishes that it is more likely than  
2           not that in the alien’s country of nationality  
3           (or, in the case of a person having no national-  
4           ity, the country in which such alien last habit-  
5           ually resided) such alien’s life or freedom would  
6           be threatened on account of race, religion, na-  
7           tionality, membership in a particular social  
8           group, or political opinion.

9           “(B) DISCRETIONARY CASES.—The Attor-  
10          ney General may grant provisional asylum to an  
11          alien if the alien applies for provisional asylum  
12          in accordance with the requirements of this sec-  
13          tion and establishes that the alien is a refugee  
14          within the meaning of section 101(a)(42).

15          “(C) EXCEPTIONS.—(i) Subparagraphs  
16          (A) and (B) shall not apply to an alien if the  
17          Attorney General determines that—

18                 “(I) the alien ordered, incited, as-  
19                 sisted, or otherwise participated in the per-  
20                 secution of any person on account of race,  
21                 religion, nationality, membership in a par-  
22                 ticular social group, or political opinion;

23                 “(II) the alien, having been convicted  
24                 by a final judgment of a particularly seri-

1           ous crime, constitutes a danger to the com-  
2           munity of the United States;

3           “(III) there are serious reasons for  
4           believing that the alien has committed a  
5           serious nonpolitical crime outside the  
6           United States prior to the arrival of the  
7           alien in the United States;

8           “(IV) there are reasonable grounds  
9           for regarding the alien as a danger to the  
10          security of the United States; or

11          “(V) a country willing to accept the  
12          alien has been identified (other than the  
13          country described in subparagraph (A)) to  
14          which the alien can be deported or re-  
15          turned and the alien does not establish  
16          that it is more likely than not that the  
17          alien’s life or freedom would be threatened  
18          in such country on account of race, reli-  
19          gion, nationality, membership in a particu-  
20          lar social group, or political opinion.

21          “(ii)(I) For purposes of clause (i)(II), an  
22          alien who has been convicted of an aggravated  
23          felony shall be considered to have committed a  
24          particularly serious crime.

1           “(II) The Attorney General shall promul-  
2           gate regulations that specify additional crimes  
3           that will be considered to be a crime described  
4           in clause (i)(II) or (i)(III).

5           “(III) The Attorney General shall promul-  
6           gate regulations establishing such additional  
7           limitations and conditions as the Attorney Gen-  
8           eral considers appropriate under which an alien  
9           shall be ineligible to apply for provisional asy-  
10          lum under subparagraph (B).

11          “(3) PROVISIONAL ASYLUM STATUS.—In the  
12          case of any alien granted provisional asylum under  
13          paragraph (2), the Attorney General, in accordance  
14          with this section—

15                 “(A) shall not deport or return the alien to  
16                 the country described under paragraph (2)(A);

17                 “(B) shall authorize the alien to engage in  
18                 employment in the United States and provide  
19                 the alien with an ‘employment authorized’ en-  
20                 dorsement or other appropriate work permit;  
21                 and

22                 “(C) may allow the alien to travel abroad  
23                 with the prior consent of the Attorney General.

24          “(4) TERMINATION.—Provisional asylum grant-  
25          ed under paragraph (2) may be terminated if the At-

1       torney General, pursuant to such regulations as the  
2       Attorney General may prescribe, determines that—

3               “(A) the alien no longer meets the condi-  
4               tions described in paragraph (2) owing to a  
5               change in circumstances in the alien’s country  
6               of nationality or, in the case of an alien having  
7               no nationality, in the country in which the alien  
8               last habitually resided;

9               “(B) the alien meets a condition described  
10              in paragraph (2)(C); or

11              “(C) a country willing to accept the alien  
12              has been identified (other than the country de-  
13              scribed in paragraph (2)) to which the alien can  
14              be deported or returned and the alien cannot  
15              establish that it is more likely than not that the  
16              alien’s life or freedom would be threatened in  
17              such country on account of race, religion, na-  
18              tionality, membership in a particular social  
19              group, or political opinion.

20              “(5) ACCEPTANCE BY ANOTHER COUNTRY.—In  
21              the case of an alien described in paragraph  
22              (2)(C)(i)(V) or paragraph (4)(C), the alien’s depor-  
23              tation or return shall be directed by the Attorney  
24              General in the sole discretion of the Attorney Gen-  
25              eral, to any country which is willing to accept the

1 alien into its territory (other than the country de-  
2 scribed in paragraph (2)).

3 “(b) PROVISIONAL ASYLUM PROCEDURE.—

4 “(1) APPLICATIONS.—

5 “(A) IN GENERAL.—

6 “(i) DEADLINE.—Subject to clause  
7 (ii), an alien’s application for provisional  
8 asylum shall not be considered under this  
9 section unless—

10 “(I) the alien has filed, not later  
11 than 30 days after entering or coming  
12 to the United States, notice of inten-  
13 tion to file such an application, and

14 “(II) such application is actually  
15 filed not later than 60 days after en-  
16 tering or coming to the United States.

17 “(ii) EXCEPTION.—An application for  
18 provisional asylum may be considered, not-  
19 withstanding that the requirements of  
20 clause (i) have not been met, only if the  
21 alien demonstrates by clear and convincing  
22 evidence changed circumstances in the  
23 alien’s country of nationality (or in the  
24 case of an alien with no nationality, in the  
25 country where the alien last habitually re-

1           sided) affecting eligibility for provisional  
2           asylum.

3           “(B) REQUIREMENTS.—An application for  
4           provisional asylum shall not be considered un-  
5           less the alien submits to the taking of finger-  
6           prints and a photograph in a manner deter-  
7           mined by the Attorney General.

8           “(C) FEES.—In the discretion of the At-  
9           torney General, the Attorney General may im-  
10          pose reasonable fees for the consideration of an  
11          application for provisional asylum, for employ-  
12          ment authorization under this section, and for  
13          adjustment of status under section 209(b). The  
14          Attorney General is authorized to provide for  
15          the assessment and payment of any such fee  
16          over a period of time or by installments.

17          “(D) NOTICE OF PRIVILEGE OF COUNSEL  
18          AND CONSEQUENCES OF FRIVOLOUS APPLICA-  
19          TION.—

20                 “(i) NOTICE.—At the time of filing a  
21                 notice of intention to apply for provisional  
22                 asylum, the alien shall be advised of the  
23                 privilege of being represented by counsel  
24                 (as provided under paragraph (2)(D)) and  
25                 of the consequences, under subsection (d),

1 of filing a frivolous application for provi-  
2 sional asylum.

3 “(ii) PROVISION OF LIST OF COUN-  
4 SEL.—The Attorney General shall provide  
5 for lists (updated not less often than quar-  
6 terly) of persons who have indicated their  
7 availability to represent pro bono aliens in  
8 provisional asylum proceedings. Such lists  
9 shall be provided to the alien at the time  
10 of filing of notice of intention to apply for  
11 provisional asylum, and otherwise be made  
12 generally available.

13 “(2) CONSIDERATION OF APPLICATIONS; HEAR-  
14 INGS.—

15 “(A) ASYLUM OFFICERS.—Applications for  
16 provisional asylum shall be considered by offi-  
17 cers of the Service (referred to in this Act as  
18 ‘asylum officers’) who are specially designated  
19 by the Service as having special training and  
20 knowledge of international conditions and  
21 human rights records of foreign countries.

22 Pending the designation of such officers, individuals who  
23 as of the date of the enactment of the Immigration En-  
24 forcement and Asylum Reform Act of 1993 are authorized

1 to perform duties as asylum officers shall be deemed to  
2 be qualified to be asylum officers for purposes of this Act.

3 “(B) SCHEDULING OF HEARINGS.—

4 “(i) IN GENERAL.—Upon the filing of  
5 an application for provisional asylum, an  
6 asylum officer, at the earliest practicable  
7 time and after consultation with the attor-  
8 ney for the Government and the attorney  
9 (if any) for the applicant, shall set the ap-  
10 plication for hearing on a day certain or  
11 list it on a weekly or other short-term cal-  
12 endar, so as to assure a speedy hearing.

13 “(ii) DEADLINE.—Unless the appli-  
14 cant (or an attorney for the applicant) con-  
15 sents in writing to the contrary, the hear-  
16 ing on the provisional asylum application  
17 shall commence not later than 45 days  
18 after the date the application was filed.

19 “(C) PUBLIC HEARINGS.—A hearing on a  
20 provisional asylum application shall be open to  
21 the public unless the applicant requests that it  
22 be closed to the public.

23 “(D) PRIVILEGE OF COUNSEL.—The alien  
24 shall have the privilege of being represented by  
25 such counsel (at no expense to the government),

1 authorized to practice in such proceedings, as  
2 the alien shall choose. Such representation may  
3 not cause undue delay in the proceedings. The  
4 Attorney General, in the discretion of the Attor-  
5 ney General, shall provide standards by regula-  
6 tion for determinations of undue delay.

7 “(E) RIGHTS IN HEARINGS.—The officer  
8 shall conduct the hearing in a nonadversarial  
9 manner. During such hearing, the applicant  
10 shall have the privilege of the assistance and  
11 participation of counsel and shall be entitled to  
12 present evidence and witnesses, to examine and  
13 object to evidence presented by the Government,  
14 and to cross-examine all witnesses presented by  
15 the Government.

16 “(F) COUNTRY CONDITIONS.—

17 “(i) The Secretary of State shall pro-  
18 vide information regarding country condi-  
19 tions to the Attorney General to be in-  
20 cluded, along with information from other  
21 reliable sources, in the collections of the  
22 asylum resource information center of the  
23 Immigration and Naturalization Service.

24 “(ii) An officer may request informa-  
25 tion regarding country conditions from the

1           asylum resource information center of the  
2           Immigration and Naturalization Service  
3           and from the Secretary of State, but may  
4           not request or consider recommendations  
5           from the Secretary of State as to whether  
6           a particular named individual should or  
7           should not be granted provisional asylum.

8           “(G) TRANSCRIPT OF HEARINGS.—A com-  
9           plete record of the proceedings and of all testi-  
10          mony and evidence produced at the hearing  
11          shall be kept. The hearing shall be recorded  
12          verbatim. The Attorney General and the Service  
13          shall provide that a transcript of a hearing held  
14          under this section is made available not later  
15          than 10 days after the date of completion of the  
16          hearing.

17          “(H) DEADLINE FOR DETERMINATIONS ON  
18          APPLICATIONS.—The officer shall render a de-  
19          termination on the application not later than 30  
20          days after the date of completion of the hear-  
21          ing. The determination of the officer shall be  
22          based only on the evidence produced at the  
23          hearing or on information which is the subject  
24          of official notice with respect to country condi-  
25          tions.

1           “(I) RESOURCE ALLOCATION.—The Attor-  
2           ney General shall allocate sufficient resources  
3           so as to assure that applications for provisional  
4           asylum are heard and determined on a timely  
5           basis. However, nothing in this paragraph relat-  
6           ing to scheduling or deadlines shall be con-  
7           strued as creating any right or benefit, sub-  
8           stantive or procedural, which is legally enforce-  
9           able by any party against the United States, its  
10          agencies, its officers, or any other person.

11          “(J) SANCTIONS FOR FAILURE TO AP-  
12          PEAR.—

13                 “(i) Subject to clause (ii), the applica-  
14                 tion for provisional asylum of an alien who  
15                 does not appear for a hearing on such ap-  
16                 plication shall be summarily dismissed un-  
17                 less the alien can show exceptional cir-  
18                 cumstances (as defined in section  
19                 242B(f)(2)) as determined by the asylum  
20                 officer.

21                 “(ii) Clause (i) shall not apply if writ-  
22                 ten and oral notice were not provided as  
23                 required by section 242B(e)(4)(B).

24          “(K) FINALITY OF DETERMINATIONS.—

1           “(i) IN GENERAL.—The decision of  
2           the asylum officer shall be the final admin-  
3           istrative determination of a claim for provi-  
4           sional asylum.

5           “(ii) TREATMENT OF CASES IN EX-  
6           CLUSION OR DEPORTATION.—If proceed-  
7           ings are instituted against an alien under  
8           section 235 or 242 of this Act and the  
9           alien files an application for provisional  
10          asylum based on circumstances described  
11          in subsection (b)(1)(A)(ii), the asylum offi-  
12          cer shall render, on an expedited basis, a  
13          decision on the application.

14          “(c) ASYLUM.—

15                 “(1) ADJUSTMENT OF STATUS.—Under such  
16                 regulations as the Attorney General may prescribe,  
17                 the Attorney General shall adjust to the status of an  
18                 alien granted asylum the status of any alien granted  
19                 provisional asylum under subsection (a)(2)(A) or  
20                 (a)(2)(B) who—

21                         “(A) applies for such adjustment;

22                         “(B) has been physically present in the  
23                         United States for at least 1 year after being  
24                         granted provisional asylum;

1           “(C) continues to be eligible for provisional  
2           asylum under this section; and

3           “(D) is admissible under this Act at the  
4           time of examination for adjustment of status  
5           under this subsection.

6           “(2) TREATMENT OF SPOUSE AND CHIL-  
7           DREN.—A spouse or child (as defined in section  
8           101(b) (A), (B), (C), (D), or (E)) of an alien whose  
9           status is adjusted to that of an alien granted asylum  
10          under paragraph (a)(2) may be granted the same  
11          status as the alien if accompanying, or following to  
12          join, such alien.

13          “(3) APPLICATION FEES.—The Attorney Gen-  
14          eral may impose a reasonable fee for the filing of an  
15          application for asylum under this subsection.

16          “(d) DENIAL OF IMMIGRATION BENEFITS FOR FRIV-  
17          OLOUS APPLICATIONS.—

18          “(1) IN GENERAL.—If the asylum officer deter-  
19          mines that an alien has made a frivolous application  
20          for provisional asylum under this section and the  
21          alien has received the notice under subsection  
22          (b)(1)(D)(i), the alien shall be permanently ineligible  
23          for any benefits under this Act, effective as of the  
24          date of a final determination on such application.

1           “(2) TREATMENT OF MATERIAL MISREPRESENTATIONS.—For purposes of this subsection, an application considered to be ‘frivolous’ includes, but is not limited to, an application which contains a willful misrepresentation or concealment of a material fact.”.

7           (b) CLERICAL AMENDMENT.—The item in the table of contents relating to section 208 is amended to read as follows:

“Sec. 208. Asylum.”.

10 **SEC. 407. FAILURE TO APPEAR FOR PROVISIONAL ASYLUM**  
11 **HEARING; JUDICIAL REVIEW.**

12           (a) FAILURE TO APPEAR FOR PROVISIONAL ASYLUM HEARING.—Section 242B(e)(4) of the Immigration and Nationality Act (8 U.S.C. 1252b(e)(4)) is amended—

15           (1) in the heading, by striking “ASYLUM” and inserting “PROVISIONAL ASYLUM”;

17           (2) by striking “asylum” each place it appears and inserting “provisional asylum”; and

19           (3) in subparagraph (A), by striking all after clause (iii) and inserting the following:

21           “shall not be eligible for any benefits under this Act.”.

23           (b) JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended by adding at the end the following subsection:

1       “(d) The procedure prescribed by, and all the provi-  
2 sions of chapter 158 of title 28, United States Code, shall  
3 apply to, and shall be the sole and exclusive procedure for,  
4 the judicial review of all final orders granting or denying  
5 provisional asylum, except that—

6               “(1) a petition for review may be filed not later  
7 than 90 days after the date of the issuance of the  
8 final order granting or denying provisional asylum;

9               “(2) the venue of any petition for review under  
10 this subsection shall be in the judicial circuit in  
11 which the administrative proceedings before an asy-  
12 lum officer were conducted in whole or in part, or  
13 in the judicial circuit wherein is the residence, as de-  
14 fined in this Act, of the petitioner, but not in more  
15 than one circuit; and

16               “(3) notwithstanding any other provision of  
17 law, a determination granting or denying provisional  
18 asylum based on changed circumstances pursuant to  
19 section 208(b)(1)(A)(ii) shall be in the sole discre-  
20 tion of the asylum officer.”.

21 **SEC. 408. EFFECTIVE DATES.**

22       (a) IN GENERAL.—Except as otherwise provided, the  
23 amendments made by this title shall take effect on the  
24 date of the enactment of this Act.

25       (b) EXCEPTIONS.—

1           (1) The amendments made by this title shall  
2 not apply to applications for asylum or withholding  
3 of deportation made before the first day of the first  
4 month that begins more than 180 days after the  
5 date of the enactment of this Act and no application  
6 for provisional asylum under section 208 of the Im-  
7 migration and Nationality Act (as amended by sec-  
8 tion 201 of this Act) shall be considered before such  
9 first day.

10           (2) In applying section 208(b)(1)(A) of the Im-  
11 migration and Nationality Act (as amended by this  
12 title) in the case of an alien who has entered or  
13 came to the United States before the first day de-  
14 scribed in paragraph (1), notwithstanding the dead-  
15 lines specified in such section—

16           (A) the deadline for the filing of a notice  
17 of intention to file an application for provisional  
18 asylum is 30 days after such first day, and

19           (B) the deadline for the filing of the appli-  
20 cation for provisional asylum is 30 days after  
21 the date of filing such notice.

22           (3) The amendments made by section 203(b)  
23 (relating to adjustment of status) shall not apply to  
24 aliens granted asylum under section 208 of the Im-

1 migration and Nationality Act, as in effect before  
2 the date of the enactment of this Act.

3 **SEC. 409. ISSUANCE OF NEW IDENTIFICATION CARDS FOR**  
4 **ALIENS.**

5 (a) IN GENERAL.—The Attorney General shall cause  
6 to be issued new registration and identification cards to  
7 all aliens who are qualified to hold employment in the  
8 United States for the purpose of providing proof of em-  
9 ployment eligibility under section 274A of the Immigration  
10 and Nationality Act (8 U.S.C. 1324a).

11 (b) REQUIREMENTS.—(1) Each new registration and  
12 identification card issued under subsection (a) shall—

13 (A) be in a form which is resistant to counter-  
14 feiting and tampering;

15 (B) be designed in such a manner so that an  
16 employer can reliably determine that—

17 (i) the person with the bearer's claimed  
18 identity is eligible to be employed in the United  
19 States, and

20 (ii) the bearer is not claiming the identity  
21 of another individual;

22 (C) contain a photograph and other identifying  
23 information (such as date of birth, sex, and distin-  
24 guishing marks) that would allow an employer to de-

1       termine with reasonable certainty that the bearer is  
2       not claiming the identity of another individual;

3               (D) in the case of a card issued to—

4                       (i) a work-eligible nonimmigrant admitted  
5                       under section 214 of the Immigration and Na-  
6                       tionality Act (8 U.S.C. 1184),

7                       (ii) an alien admitted for temporary resi-  
8                       dence under section 210 of such Act (8 U.S.C.  
9                       1160),

10                      (iii) an alien granted temporary protected  
11                      status under section 244A of such Act (8  
12                      U.S.C. 1254a), and

13                      (iv) an alien authorized to work by the Im-  
14                      migration and Naturalization Service pending a  
15                      final determination of deportability,

16       shall specify the expiration date of the work author-  
17       ization on the face of the card; and

18               (E) shall specify the alien's admission number  
19       or alien file number.

20       (2) The new card shall be valid for a period of 10  
21       years and must be reissued to remain valid after the 10th  
22       anniversary of the date of its issue.

23       (3) The new card shall note on its face whether work  
24       authorization is restricted.

1 (4) An employer, for purposes of satisfying the re-  
2 quirements of section 274A(b) of the Immigration and  
3 Nationality—

4 (A) may require an alien seeking employment to  
5 produce the new card as proof of employment eligi-  
6 bility, and

7 (B) may inquire whether an applicant's limited  
8 work authorization has expired or has been reau-  
9 thorized at the end of a work authorization period.  
10 Such a requirement or inquiry shall not constitute an un-  
11 fair immigration-related employment practice under sec-  
12 tion 274B of such Act.

13 **SEC. 410. IMPLEMENTATION.**

14 (a) IN GENERAL.—Each alien who is authorized to  
15 be employed in the United States shall, on or before Octo-  
16 ber 1, 1994, turn in any alien registration and identifica-  
17 tion card which is in the alien's possession at any post  
18 office or office of the Immigration and Naturalization  
19 Service. No resident alien shall receive the new card  
20 until—

21 (1) the alien—

22 (A) has surrendered the old green card;

23 (B) has provided proof of identity;

24 (C) has provided such other documents as  
25 may be required under law; and

1 (D) has paid a fee (not to exceed \$75) that  
2 is reasonable and sufficient to cover the costs of  
3 administration of this section; and

4 (2) the Service has verified the lawful status of  
5 the alien.

6 The Attorney General may waive payment of the fee under  
7 paragraph (1)(D) (or reduce the amount of such fee) if  
8 the alien provides satisfactory evidence that the alien can-  
9 not afford the full fee.

10 (b) POSTING OF NOTICES.—Notices of the require-  
11 ment of subsection (a) shall be posted in all post offices  
12 and Immigration and Naturalization Service offices and  
13 published in local newspapers during fiscal year 1994.

14 (c) INVALIDITY OF OLD CARDS.—Any alien registra-  
15 tion or identification card for permanent resident aliens,  
16 other than an alien registration and identification card is-  
17 sued under this section, shall be invalid as of midnight  
18 of October 1, 1997.

19 (d) USE OF NEW CARDS UNDER SAVE PROGRAM.—

20 (1) IN GENERAL.—Section 1137(d) of the So-  
21 cial Security Act (42 U.S.C. 1320b-7(d)) is amend-  
22 ed—

23 (A) in paragraph (2), by striking “either”  
24 and all that follows through the end and insert-  
25 ing the following: “a registration and identifica-

1           tion card issued under section 2(a) of the Immi-  
2           gration Document Fraud Prevention Act of  
3           1993.”,

4           (B) in paragraph (3), by striking “para-  
5           graph (2)(A)” and inserting “paragraph (2)”,  
6           and

7           (C) in paragraph (4), by striking “para-  
8           graph (2)(A)” and inserting “such paragraph”.

9           (2) HOUSING ASSISTANCE.—Section 214(d) of  
10          the Housing and Community Development Act of  
11          1980 (42 U.S.C. 1436a(d)) is amended—

12          (A) in paragraph (2), by striking “either”  
13          and all that follows through the end and insert-  
14          ing the following: “a registration and identifica-  
15          tion card issued under section 2(a) of the Immi-  
16          gration Document Fraud Prevention Act of  
17          1993.”,

18          (B) in paragraph (3), by striking “para-  
19          graph (2)(A)” and inserting “paragraph (2)”,

20          (C) in paragraph (4), by striking “para-  
21          graph (2)(A)” the first place it appears and in-  
22          serting “paragraph (2)”, and

23          (D) in paragraph (4), by striking “para-  
24          graph (2)(A)” the second place it appears and  
25          inserting “such paragraph”.

1           (3) EFFECTIVE DATE.—The amendments made  
2           by this subsection shall take effect on October 1,  
3           1997.

4 **SEC. 411. NO NATIONAL IDENTITY CARD.**

5           The new card described in section 409—

6           (1) shall not be considered a national identity  
7           card;

8           (2) shall not be issued to any citizen or national  
9           of the United States; and

10          (3) shall—

11                (A) not be required to be carried on one's  
12                person, and

13                (B) not be required to be presented other  
14                than—

15                       (i) upon request by a prospective em-  
16                       ployer for any purposes other than under  
17                       this section or under sections 1001, 1023,  
18                       1566, and 1621 of title 18, United States  
19                       Code, or to satisfy the requirements of sec-  
20                       tion 274A of the Immigration and Nation-  
21                       ality Act, or

22                       (ii) for purposes of carrying out sec-  
23                       tion 1137(d) of the Social Security Act or  
24                       section 214(d) of the Housing and Com-  
25                       munity Development Act of 1980.

1 **SEC. 412. EMPLOYER EDUCATION PROGRAM.**

2 The Attorney General, in consultation with the Sec-  
3 retary of Labor, the Administrator of the Small Business  
4 Administration, and the Commissioner of the Internal  
5 Revenue, shall conduct a nationwide program to inform  
6 employers about their responsibilities under the Immigra-  
7 tion and Nationality Act and the uses of the new alien  
8 registration and identification cards issued under this Act.

9 **SEC. 413. AUTHORIZATION OF APPROPRIATIONS.**

10 There are authorized to be appropriated \$5,000,000  
11 for each of fiscal years 1994 and 1995 to carry out sec-  
12 tions 409 through 412 of this Act.

13 **SEC. 414. EMPLOYMENT ELIGIBILITY VERIFICATION DEM-**  
14 **ONSTRATION PROJECT.**

15 The Attorney General shall continue to conduct the  
16 demonstration projects under section 274A of the Immi-  
17 gration and Nationality Act in order to establish if it is  
18 feasible to determine the employment eligibility of aliens  
19 authorized to work in the United States through the use  
20 of a telephone and computation capability that is available  
21 on the date of enactment of this Act. The Attorney Gen-  
22 eral shall submit a report to Congress on such projects  
23 by not later than October 1, 1994.

1     **TITLE V—CHILD-RELATED SEX**  
2                     **OFFENDERS**

3     **SEC. 501. SENSE OF CONGRESS.**

4             It is the sense of the Congress that—

5                     (1) criminal background checks should be per-  
6             formed for all prospective employees or volunteers of  
7             State-licensed or tax-funded organizations that inter-  
8             act with children;

9                     (2) an adult who is convicted of a child-related  
10            sex offense or a child who has been adjudicated as  
11            a delinquent for an act that would constitute a child-  
12            related sex offense if committed by an adult should  
13            register a current address with the local law enforce-  
14            ment agency;

15                    (3) a court should require an adult or child who  
16            commits a child-related sex offense to register with  
17            a local law enforcement agency as a condition of  
18            probation;

19                    (4) criminal penalties should be provided for of-  
20            fenders described in paragraph (3) who are ordered  
21            to register with a local law enforcement agency and  
22            fail to register;

23                    (5) law enforcement agencies should submit in-  
24            formation on individuals convicted of child-related  
25            sex offenses in the law enforcement agencies' com-

1 munities to the national criminal history background  
2 check system, a criminal history record system main-  
3 tained by the Federal Bureau of Investigation based  
4 on fingerprint identification or other methods of  
5 positive identification;

6 (6) law enforcement agencies should access the  
7 FBI database for criminal background checks on  
8 employees, prospective employees, or volunteers in  
9 State-licensed or federally funded organizations that  
10 interact with children;

11 (7) the police, upon request, should release in-  
12 formation on whether a person has been convicted of  
13 a child-related sex offense, if the convicted person  
14 lives in the same county as the person making the  
15 request;

16 (8) criminal penalties should be provided for  
17 persons who violate confidentiality requirements re-  
18 garding the release of information obtained through  
19 the registration of individuals who have committed  
20 child-related sex offenses;

21 (9) a child care institution, foster family home,  
22 group home, or child placing agency should be pro-  
23 hibited from hiring an employee or utilizing a volun-  
24 teer convicted of a child-related sex offense;

1 (10) anyone applying for employment with a  
2 school should undergo a mandatory criminal history  
3 check;

4 (11) a school should be prohibited from hiring  
5 or retaining a person if the person is known to have  
6 committed a child-related sex offense;

7 (12) the State board of education should be  
8 prohibited from issuing a teaching license to a per-  
9 son who has been convicted of a child-related sex  
10 offense;

11 (13) the State board of education should revoke  
12 a teacher's license permanently if the teacher is con-  
13 victed of a child-related sex offense; and

14 (14) in the case of an arrest or filing of charges  
15 that arises from a child-related sex offense, a law  
16 enforcement agency or prosecuting attorney should  
17 be required to notify the superintendent regarding  
18 such arrest or filing of charges against a person who  
19 is known by such law enforcement agency or pros-  
20 ecuting attorney to be employed by such school.

## 21 **TITLE VI—TRUTH IN** 22 **SENTENCING**

### 23 **SEC. 601. SHORT TITLE.**

24 This title may be cited as the "Violent and Repeat  
25 Offender Accountability Act of 1994".

1 **SEC. 602. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds that—

3 (1) it is the responsibility of the Federal Gov-  
4 ernment to provide States help in certain areas, in-  
5 cluding efforts to reduce violent crime;

6 (2) Federal legislation relating to criminal jus-  
7 tice, including the Racketeer Influenced and Corrupt  
8 Organizations Act (“RICO”) and the Federal Sen-  
9 tencing Guidelines, has been very effective in dealing  
10 with crimes to which the legislation applies;

11 (3) the responsibility for protecting citizens  
12 against most violent crimes and for punishing most  
13 violent criminal offenders is primarily a matter of  
14 State and local governance;

15 (4) violent crimes nationwide have risen dra-  
16 matically and constitute a national priority of the  
17 highest order;

18 (5) the persistence and increasing incidence of  
19 violent crime, despite the efforts of State and local  
20 governments, has resulted in a vastly increased Fed-  
21 eral role in this area, and there is pressure for even  
22 greater Federal involvement in criminal matters tra-  
23 ditionally handled by State and local governments;

24 (6) the Federal courts especially have become  
25 overburdened with criminal matters more properly  
26 handled by State and local governments;

1           (7) a major impetus for this increased Federal  
2 role in combating violent crime is the lack of effec-  
3 tive tools with which State and local governments  
4 can prosecute violent criminal offenders;

5           (8) a more uniform, proportionate, and appro-  
6 priately punitive system of sentencing for violent  
7 criminal offenders would serve both to reduce the in-  
8 cidence of violent crime and to reduce the need for  
9 direct Federal involvement in criminal matters tradi-  
10 tionally handled by State and local governments;

11           (9) a more appropriate and effective role for the  
12 Federal Government in the struggle against most  
13 violent crime is to encourage each State to take the  
14 steps necessary to reduce crime in such State which  
15 would also reduce the national crime rate;

16           (10) the United States Sentencing Guidelines  
17 have proven to be an effective means of achieving,  
18 at the Federal level, a more uniform, proportionate,  
19 and appropriately punitive criminal sentencing sys-  
20 tem; and

21           (11) each State should be required to analyze  
22 its criminal sentencing system and to consider  
23 whether the adoption of a revised sentencing system  
24 would enable it to combat violent crime more effec-  
25 tively.

1 (b) PURPOSES.—The purposes of this title are—

2 (1) to require each State to undertake a com-  
3 prehensive examination of the State’s criminal sen-  
4 tencing scheme and to create a sentencing system  
5 which more effectively governs the sentencing of vio-  
6 lent offenders; and

7 (2) to provide funds to States that comply with  
8 the requirements of section 605(b) to implement  
9 necessary changes to the State criminal sentencing  
10 system, including increasing the capacity of State  
11 correctional facilities if necessary.

12 **SEC. 603. DEFINITION.**

13 For the purpose of this title, the term “State” means  
14 any State of the United States.

15 **SEC. 604. STATE SENTENCING REVIEWS.**

16 (a) IN GENERAL.—Each State, in order to be eligible  
17 for funds under this title, must conduct a systematic re-  
18 view of its criminal sentencing laws and practices.

19 (b) STATE SENTENCING REVIEWS.—Not later than  
20 one year after the date of enactment of this Act, the gov-  
21 ernment of each State shall submit to the Attorney Gen-  
22 eral a report detailing the results of the State’s review of  
23 its criminal sentencing system. The report also shall in-  
24 clude the following:

1           (1) An analysis of the State statutory criminal  
2 sentencing scheme, including information regarding  
3 murder (all degrees), arson, burglary, assault, rob-  
4 bery, kidnapping, extortion, rape, and child molesta-  
5 tion. This analysis should include—

6                   (A) the minimum and maximum sentence  
7 available for each offense;

8                   (B) the basis for distinguishing between  
9 different degrees of the same offense;

10                  (C) whether factors in addition to the ac-  
11 tual crime (such as criminal history, victim im-  
12 pact, or use of a weapon) should be considered  
13 by the sentencing authority; and

14                  (D) whether probation or some other non-  
15 custodial alternatives to incarceration are a sen-  
16 tencing option.

17           (2) An analysis of the sentences actually im-  
18 posed by State court judges for the crimes listed in  
19 paragraph (1).

20           (3) An analysis of the time which has actually  
21 been served for the conviction of crimes listed in  
22 paragraph (1).

23           (4) An analysis of the practices and procedures  
24 of the State relating to probation, parole, and other  
25 alternatives to incarceration, with particular empha-

1       sis on crimes which have been committed by con-  
2       victed criminals while on parole or probation or oth-  
3       erwise not incarcerated.

4               (5) An analysis of whether the State sentencing  
5       system permits or requires the sentencing authority  
6       to order convicted criminals to pay restitution to the  
7       victim, the victim's family, or the State, and the per-  
8       centage of restitution orders which are actually  
9       collected.

10              (6) An analysis of whether and under what cir-  
11       cumstances State law permits the pretrial detention  
12       without bond of dangerous offenders.

13              (7) An analysis of whether and under what cir-  
14       cumstances State law gives victims the right to be  
15       informed, present, and heard at all critical stages of  
16       a case from arrest through parole.

17              (8) An analysis of whether and how State law  
18       establishes post conviction relief procedures which  
19       limit repetitive challenges by convicted offenders.

20              (9) An analysis of State law regarding the ap-  
21       plication of adult sentencing laws to juvenile offend-  
22       ers charged with the crimes listed in section  
23       604(b)(1) of this Act.

24              (10) An analysis of the State prison capacity  
25       and whether court orders limit, or otherwise impact

1 such capacity and whether a lack of capacity im-  
2 pacts sentencing or release decisions at the judicial  
3 or administrative level.

4 **SEC. 605. STATE SENTENCING SYSTEMS.**

5 (a) IN GENERAL.—Each State, in order to comply  
6 with this Act, must submit for approval a plan to the At-  
7 torney General that evaluates the criminal sentencing sys-  
8 tem and, if necessary, creates a sentencing system which  
9 complies with the requirements of subsection (b).

10 (b) STATE SENTENCING SYSTEM.—In addition to re-  
11 sponding to the reporting requirement of section 604(b)  
12 of this Act, the State, in a subsequent report to the Attor-  
13 ney General, shall describe in detail any changes in the  
14 State’s criminal sentencing system designed to meet the  
15 requirements of this Act. The elements of a sentencing  
16 system that the States must have in order to be in compli-  
17 ance with this title shall include at least the following:

18 (1) State constitutional or statutory authority  
19 for pretrial detention of dangerous criminals.

20 (2) Mandatory minimum prison sentences,  
21 which do not allow probation or suspension of sen-  
22 tence, for violent offenders or repeat offenders  
23 who—

24 (A) intentionally or knowingly inflict seri-  
25 ous physical injury;

1 (B) use or exhibit deadly weapons in the  
2 commission of the crimes listed in section  
3 604(b)(1) of this Act;

4 (C) commit violent or sexual offenses  
5 against children; and

6 (D) commit sexual assault.

7 (3) Mandatory life sentence with no release for  
8 third or subsequent conviction of violent crime.

9 (4) Truth in sentencing provisions which re-  
10 strict parole, good-time credit release for violent of-  
11 fenders, or other forms of early release to not more  
12 than a total reduction of 15 percent of the sentence  
13 imposed.

14 (5) State constitutional or statutory provisions  
15 which guarantee to victims the right to be informed,  
16 present, and heard at all critical stages of the crimi-  
17 nal case, and provisions to ensure the collection,  
18 tracking, and enforcement of restitution from the of-  
19 fender in all cases involving economic loss to the  
20 victim.

21 **SEC. 606. FUNDING AND COMPLIANCE.**

22 (a) FUNDING.—There shall be available to carry out  
23 the purposes of this Act, for fiscal year 1994, \$1,000,000;  
24 for fiscal year 1995, \$1,500,000; for fiscal year 1996,  
25 \$2,000,000; for fiscal year 1997, \$2,500,000; and for fis-

1 cal year 1998, \$3,000,000; from amounts appropriated for  
2 foreign operations during such fiscal years (specifically  
3 from the amounts allocated for the Multilateral Develop-  
4 ment Banks, the International Development Association,  
5 the Agency for International Development, Public Law  
6 83-480, and the Export-Import Development Bank) and  
7 from amounts appropriated from Federal land purchases  
8 and from amounts appropriated for trade promotion ac-  
9 tivities and travel and tourism activities.

10 (b) FEDERAL SHARE.—The Federal share of a grant  
11 made under this title may not exceed 50 percent of the  
12 total costs of the projects which receive funds under this  
13 Act.

14 (c) COMPLIANCE.—Beginning 3 years after the date  
15 of enactment of this Act, the Attorney General shall elimi-  
16 nate funding to a State that does not comply with the  
17 requirements of this Act.

## 18 **TITLE VII—THREE STRIKES AND** 19 **YOU'RE OUT**

### 20 **SEC. 701. LIFE IMPRISONMENT OR DEATH PENALTY FOR** 21 **THIRD FEDERAL VIOLENT FELONY CONVIC-** 22 **TION.**

23 Section 3581 of title 18, United States Code, is  
24 amended by adding at the end the following:

25 “(c) PUNISHMENT OF CERTAIN VIOLENT FELONS.—

1           “(1) GENERAL RULE.—Notwithstanding any  
2 other provision of this title or any other law, in the  
3 case of a conviction for a Federal violent felony, the  
4 court shall sentence the defendant to prison for life  
5 if the defendant has previously been convicted of two  
6 other violent felonies and if a death results from the  
7 violent felony, the defendant shall be subject to the  
8 death penalty.

9           “(2) DEFINITION.—As used in this section the  
10 term ‘violent felony’ is a State or Federal crime of  
11 violence (as defined in section 16 of this title)—

12                   “(A) that involves the threatened use, use,  
13 or the risk of use of physical force against the  
14 person of another;

15                   “(B) for which the maximum authorized  
16 imprisonment exceeds one year; and

17                   “(C) which is not designated a mis-  
18 demeanor by the law that defines the offense.

19           “(3) RULE OF CONSTRUCTION.—This sub-  
20 section shall not be construed to prevent the imposi-  
21 tion of the death penalty.”.

1       **TITLE VIII—HABEAS CORPUS**  
2                   **REFORM**  
3       **Subtitle A—Post Conviction Peti-**  
4           **tions: General Habeas Corpus**  
5           **Reform**

6       **SEC. 801. PERIOD OF LIMITATION FOR FILING WRIT OF HA-**  
7                   **BEAS CORPUS FOLLOWING FINAL JUDGMENT**  
8                   **OF A STATE COURT.**

9       Section 2244 of title 28, United States Code, is  
10       amended by adding at the end the following:

11       “(d) A one-year period of limitation shall apply to an  
12       application for a writ of habeas corpus by a person in cus-  
13       tody pursuant to the judgment of a State court. The limi-  
14       tation period shall run from the latest of the following  
15       times:

16               “(1) The time at which State remedies are ex-  
17       hausted.

18               “(2) The time at which the impediment to filing  
19       an application created by State action in violation of  
20       the Constitution or laws of the United States is re-  
21       moved, where the applicant was prevented from fil-  
22       ing by such State action.

23               “(3) The time at which the Federal right as-  
24       serted was initially recognized by the Supreme

1 Court, where the right has been newly recognized by  
2 the Court and is retroactively applicable.

3 “(4) The time at which the factual predicate of  
4 the claim or claims presented could have been dis-  
5 covered through the exercise of reasonable dili-  
6 gence.”.

7 **SEC. 802. AUTHORITY OF APPELLATE JUDGES TO ISSUE**  
8 **CERTIFICATES OF PROBABLE CAUSE FOR AP-**  
9 **PEAL IN HABEAS CORPUS AND FEDERAL COL-**  
10 **LATERAL RELIEF PROCEEDINGS.**

11 Section 2253 of title 28, United States Code, is  
12 amended to read as follows:

13 **“§ 2253. Appeal**

14 “(a) In a habeas corpus proceeding or a proceeding  
15 under section 2255 of this title before a circuit or district  
16 judge, the final order shall be subject to review, on appeal,  
17 by the court of appeals for the circuit where the proceed-  
18 ing is had.

19 “(b) There shall be no right of appeal from such an  
20 order in a proceeding to test the validity of a warrant to  
21 remove, to another district or place for commitment or  
22 trial, a person charged with a criminal offense against the  
23 United States, or to test the validity of his detention pend-  
24 ing removal proceedings.

1       “(c) An appeal may not be taken to the court of ap-  
2 peals from the final order in a habeas corpus proceeding  
3 where the detention complained of arises out of process  
4 issued by a State court, or from the final order in a pro-  
5 ceeding under section 2255 of this title, unless a circuit  
6 justice or judge issues a certificate of probable cause.”.

7   **SEC. 803. CONFORMING AMENDMENT TO THE RULES OF AP-**  
8                           **PELLATE PROCEDURE.**

9       (a) IN GENERAL.—Rule 22 of the Federal Rules of  
10 Appellate Procedure is amended to read as follows:

11   **“Rule 22. Habeas corpus and section 2255 proceedings**

12       “(a) APPLICATION FOR AN ORIGINAL WRIT OF HA-  
13 BEAS CORPUS.—An application for a writ of habeas cor-  
14 pus shall be made to the appropriate district court. If ap-  
15 plication is made to a circuit judge, the application will  
16 ordinarily be transferred to the appropriate district court.  
17 If an application is made to or transferred to the district  
18 court and denied, renewal of the application before a cir-  
19 cuit judge is not favored; the proper remedy is by appeal  
20 to the court of appeals from the order of the district court  
21 denying the writ.

22       “(b) NECESSITY OF CERTIFICATE OF PROBABLE  
23 CAUSE FOR APPEAL.—In a habeas corpus proceeding in  
24 which the detention complained of arises out of process  
25 issued by a State court, and in a motion proceeding pursu-

1 ant to section 2255 of title 28, United States Code, an  
2 appeal by the applicant or movant may not proceed unless  
3 a circuit judge issues a certificate of probable cause. If  
4 a request for a certificate of probable cause is addressed  
5 to the court of appeals, it shall be deemed addressed to  
6 the judges thereof and shall be considered by a circuit  
7 judge or judges as the court deems appropriate. If no ex-  
8 press request for a certificate is filed, the notice of appeal  
9 shall be deemed to constitute a request addressed to the  
10 judges of the court of appeals. If an appeal is taken by  
11 a State or the Government or its representative, a certifi-  
12 cate of probable cause is not required.”.

13 (b) CLERICAL AMENDMENT.—The item relating to  
14 rule 22 in the table of contents of the Federal Rules of  
15 Appellate Procedure is amended by inserting “and section  
16 2255” after “Habeas corpus”.

17 **SEC. 804. DISCRETION TO DENY HABEAS CORPUS APPLICA-**  
18 **TION DESPITE FAILURE TO EXHAUST STATE**  
19 **REMEDIES.**

20 Section 2254(b) of title 28, United States Code, is  
21 amended to read as follows:

22 “(b) An application for a writ of habeas corpus in  
23 behalf of a person in custody pursuant to the judgment  
24 of a State court shall not be granted unless it appears  
25 that the applicant has exhausted the remedies available

1 in the courts of the State, or that there is either an ab-  
2 sence of available State corrective process or the existence  
3 of circumstances rendering such process ineffective to pro-  
4 tect the rights of the applicant. An application may be  
5 denied on the merits notwithstanding the failure of the  
6 applicant to exhaust the remedies available in the courts  
7 of the State.”.

8 **SEC. 805. PERIOD OF LIMITATION FOR FEDERAL PRIS-**  
9 **ONERS FILING FOR COLLATERAL REMEDY.**

10 Section 2255 of title 28, United States Code, is  
11 amended by striking the second paragraph and the penul-  
12 timate paragraph thereof, and by adding at the end the  
13 following new paragraphs:

14 “A two-year period of limitation shall apply to a mo-  
15 tion under this section. The limitation period shall run  
16 from the latest of the following times:

17 “(1) The time at which the judgment of convic-  
18 tion becomes final.

19 “(2) The time at which the impediment to mak-  
20 ing a motion created by governmental action in vio-  
21 lation of the Constitution or laws of the United  
22 States is removed, where the movant was prevented  
23 from making a motion by such governmental action.

24 “(3) The time at which the right asserted was  
25 initially recognized by the Supreme Court, where the

1 right has been newly recognized by the Court and is  
2 retroactively applicable.

3 “(4) The time at which the factual predicate of  
4 the claim or claims presented could have been dis-  
5 covered through the exercise of reasonable dili-  
6 gence.”.

7 **Subtitle B—Special Procedures for**  
8 **Collateral Proceedings in Cap-**  
9 **ital Cases**

10 **SEC. 811. DEATH PENALTY LITIGATION PROCEDURES.**

11 (a) IN GENERAL.—Title 28, United States Code, is  
12 amended by inserting immediately after chapter 153 the  
13 following new chapter:

14 **“CHAPTER 154—SPECIAL HABEAS CORPUS**  
15 **PROCEDURES IN CAPITAL CASES**

“Sec.

“2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.

“2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.

“2258. Filing of habeas corpus petition; time requirements; tolling rules.

“2259. Evidentiary hearings; scope of Federal review; district court adjudication.

“2260. Certificate of probable cause inapplicable.

“2261. Application to State unitary review procedures.

“2262. Limitation periods for determining petitions.

“2263. Rule of construction.

1 **“§ 2256. Prisoners in State custody subject to capital**  
2 **sentence; appointment of counsel; re-**  
3 **quirement of rule of court or statute; pro-**  
4 **cedures for appointment**

5 “(a) This chapter shall apply to cases arising under  
6 section 2254 brought by prisoners in State custody who  
7 are subject to a capital sentence. It shall apply only if the  
8 provisions of subsections (b) and (c) are satisfied.

9 “(b) This chapter is applicable if a State establishes  
10 by rule of its court of last resort or by statute a mecha-  
11 nism for the appointment, compensation and payment of  
12 reasonable litigation expenses of competent counsel in  
13 State postconviction proceedings brought by indigent pris-  
14 oners whose capital convictions and sentences have been  
15 upheld on direct appeal to the court of last resort in the  
16 State or have otherwise become final for State law pur-  
17 poses. The rule of court or statute must provide standards  
18 of competency for the appointment of such counsel.

19 “(c) Any mechanism for the appointment, compensa-  
20 tion and reimbursement of counsel as provided in sub-  
21 section (b) must offer counsel to all State prisoners under  
22 capital sentence and must provide for the entry of an  
23 order by a court of record: (1) appointing one or more  
24 counsel to represent the prisoner upon a finding that the  
25 prisoner is indigent and accepted the offer or is unable  
26 competently to decide whether to accept or reject the offer;

1 (2) finding, after a hearing if necessary, that the prisoner  
2 rejected the offer of counsel and made the decision with  
3 an understanding of its legal consequences; or (3) denying  
4 the appointment of counsel upon a finding that the pris-  
5 oner is not indigent.

6 “(d) No counsel appointed pursuant to subsections  
7 (b) and (c) to represent a State prisoner under capital  
8 sentence shall have previously represented the prisoner at  
9 trial or on direct appeal in the case for which the appoint-  
10 ment is made unless the prisoner and counsel expressly  
11 request continued representation.

12 “(e) The ineffectiveness or incompetence of counsel  
13 during State or Federal collateral postconviction proceed-  
14 ings in a capital case shall not be a ground for relief in  
15 a proceeding arising under section 2254 of this chapter.  
16 This limitation shall not preclude the appointment of dif-  
17 ferent counsel, on the court’s own motion or at the request  
18 of the prisoner, at any phase of State or Federal  
19 postconviction proceedings on the basis of the ineffective-  
20 ness or incompetence of counsel in such proceedings.

21 **“§ 2257. Mandatory stay of execution; duration; limits**  
22 **on stays of execution; successive peti-**  
23 **tions**

24 “(a) Upon the entry in the appropriate State court  
25 of record of an order under section 2256(c), a warrant

1 or order setting an execution date for a State prisoner  
2 shall be stayed upon application to any court that would  
3 have jurisdiction over any proceedings filed under section  
4 2254. The application must recite that the State has in-  
5 voked the postconviction review procedures of this chapter  
6 and that the scheduled execution is subject to stay.

7 “(b) A stay of execution granted pursuant to sub-  
8 section (a) shall expire if—

9 “(1) a State prisoner fails to file a habeas cor-  
10 pus petition under section 2254 within the time re-  
11 quired in section 2258, or fails to make a timely ap-  
12 plication for court of appeals review following the de-  
13 nial of such a petition by a district court;

14 “(2) upon completion of district court and court  
15 of appeals review under section 2254 the petition for  
16 relief is denied and (A) the time for filing a petition  
17 for certiorari has expired and no petition has been  
18 filed; (B) a timely petition for certiorari was filed  
19 and the Supreme Court denied the petition; or (C)  
20 a timely petition for certiorari was filed and upon  
21 consideration of the case, the Supreme Court dis-  
22 posed of it in a manner that left the capital sentence  
23 undisturbed; or

24 “(3) before a court of competent jurisdiction, in  
25 the presence of counsel and after having been ad-

1       vised of the consequences of his decision, a State  
2       prisoner under capital sentence waives the right to  
3       pursue habeas corpus review under section 2254.

4       “(c) If one of the conditions in subsection (b) has  
5       occurred, no Federal court thereafter shall have the au-  
6       thority to enter a stay of execution or grant relief in a  
7       capital case unless—

8               “(1) the basis for the stay and request for relief  
9       is a claim not previously presented in the State or  
10       Federal courts;

11              “(2) the failure to raise the claim is (A) the re-  
12       sult of State action in violation of the Constitution  
13       or laws of the United States; (B) the result of the  
14       Supreme Court recognition of a new Federal right  
15       that is retroactively applicable; or (C) based on a  
16       factual predicate that could not have been discovered  
17       through the exercise of reasonable diligence in time  
18       to present the claim for State or Federal  
19       postconviction review; and

20              “(3) the facts underlying the claim would be  
21       sufficient, if proven, to undermine the court’s con-  
22       fidence in the determination of guilt on the offense  
23       or offenses for which the death penalty was imposed.

1 **“§2258. Filing of habeas corpus petition; time re-**  
2 **quirements; tolling rules**

3 “Any petition for habeas corpus relief under section  
4 2254 must be filed in the appropriate district court within  
5 one hundred and eighty days from the filing in the appro-  
6 priate State court of record of an order under section  
7 2256(c). The time requirements established by this section  
8 shall be tolled—

9 “(1) from the date that a petition for certiorari  
10 is filed in the Supreme Court until the date of final  
11 disposition of the petition if a State prisoner files  
12 the petition to secure review by the Supreme Court  
13 of the affirmance of a capital sentence on direct re-  
14 view by the court of last resort of the State or other  
15 final State court decision on direct review;

16 “(2) during any period in which a State pris-  
17 oner under capital sentence has a properly filed re-  
18 quest for postconviction review pending before a  
19 State court of competent jurisdiction; if all State fil-  
20 ing rules are met in a timely manner, this period  
21 shall run continuously from the date that the State  
22 prisoner initially files for postconviction review until  
23 final disposition of the case by the highest court of  
24 the State, but the time requirements established by  
25 this section are not tolled during the pendency of a

1 petition for certiorari before the Supreme Court ex-  
2 cept as provided in paragraph (1); and

3 “(3) during an additional period not to exceed  
4 sixty days, if (A) a motion for an extension of time  
5 is filed in the Federal district court that would have  
6 proper jurisdiction over the case upon the filing of  
7 a habeas corpus petition under section 2254; and  
8 (B) a showing of good cause is made for the failure  
9 to file the habeas corpus petition within the time pe-  
10 riod established by this section.

11 **“§ 2259. Evidentiary hearings; scope of Federal re-  
12 view; district court adjudication**

13 “(a) Whenever a State prisoner under a capital sen-  
14 tence files a petition for habeas corpus relief to which this  
15 chapter applies, the district court shall—

16 “(1) determine the sufficiency of the record for  
17 habeas corpus review based on the claims actually  
18 presented and litigated in the State courts except  
19 when the prisoner can show that the failure to raise  
20 or develop a claim in the State courts is (A) the re-  
21 sult of State action in violation of the Constitution  
22 or laws of the United States; (B) the result of the  
23 Supreme Court recognition of a new Federal right  
24 that is retroactively applicable; or (C) based on a  
25 factual predicate that could not have been discovered

1 through the exercise of reasonable diligence in time  
2 to present the claim for State postconviction review;  
3 and

4 “(2) conduct any requested evidentiary hearing  
5 necessary to complete the record for habeas corpus  
6 review.

7 “(b) Upon the development of a complete evidentiary  
8 record, the district court shall rule on the claims that are  
9 properly before it.

10 **“§ 2260. Certificate of probable cause inapplicable**

11 “The requirement of a certificate of probable cause  
12 in order to appeal from the district court to the court of  
13 appeals does not apply to habeas corpus cases subject to  
14 the provisions of this chapter except when a second or suc-  
15 cessive petition is filed.

16 **“§ 2261. Application to State unitary review proce-  
17 dure**

18 “(a) For purposes of this section, a ‘unitary review’  
19 procedure means a State procedure that authorizes a per-  
20 son under sentence of death to raise, in the course of di-  
21 rect review of the judgment, such claims as could be raised  
22 on collateral attack. The provisions of this chapter shall  
23 apply, as provided in this section, in relation to a State  
24 unitary review procedure if the State establishes by rule  
25 of its court of last resort or by statute a mechanism for

1 the appointment, compensation and payment of reasonable  
2 litigation expenses of competent counsel in the unitary re-  
3 view proceedings, including expenses relating to the litiga-  
4 tion of collateral claims in the proceedings. The rule of  
5 court or statute must provide standards of competency for  
6 the appointment of such counsel.

7 “(b) A unitary review procedure, to qualify under this  
8 section, must include an offer of counsel following trial  
9 for the purpose of representation on unitary review, and  
10 entry of an order, as provided in section 2256(c), concern-  
11 ing appointment of counsel or waiver or denial of appoint-  
12 ment of counsel for that purpose. No counsel appointed  
13 to represent the prisoner in the unitary review proceedings  
14 shall have previously represented the prisoner at trial in  
15 the case for which the appointment is made unless the  
16 prisoner and counsel expressly request continued represen-  
17 tation.

18 “(c) Sections 2257, 2258, 2259, 2260, and 2262  
19 shall apply in relation to cases involving a sentence of  
20 death from any State having a unitary review procedure  
21 that qualifies under this section. References to State ‘post-  
22 conviction review’ and ‘direct review’ in those sections  
23 shall be understood as referring to unitary review under  
24 the State procedure. The references in sections 2257(a)  
25 and 2258 to ‘an order under section 2256(c)’ shall be un-

1 derstood as referring to the post-trial order under sub-  
2 section (b) concerning representation in the unitary review  
3 proceedings, but if a transcript of the trial proceedings  
4 is unavailable at the time of the filing of such an order  
5 in the appropriate State court, then the start of the one  
6 hundred and eighty day limitation period under section  
7 2258 shall be deferred until a transcript is made available  
8 to the prisoner or his counsel.

9 **“§ 2262. Limitation periods for determining petitions**

10 “(a) The adjudication of any petition under section  
11 2254 of title 28, United States Code, that is subject to  
12 this chapter, and the adjudication of any motion under  
13 section 2255 of title 28, United States Code, by a person  
14 under sentence of death, shall be given priority by the dis-  
15 trict court and by the court of appeals over all noncapital  
16 matters. The adjudication of such a petition or motion  
17 shall be subject to the following time limitations:

18 “(1) A Federal district court shall determine  
19 such a petition or motion within 180 days of filing.

20 “(2)(A) The court of appeals shall hear and de-  
21 termine any appeal relating to such a petition or  
22 motion within 180 days after the notice of appeal is  
23 filed.

24 “(B) The court of appeals shall decide any ap-  
25 plication for rehearing en banc within 30 days of the

1 filing of such application unless a responsive plead-  
2 ing is required in which case the court of appeals  
3 shall decide the application within 30 days of the fil-  
4 ing of the responsive pleading. If en banc consider-  
5 ation is granted, the en banc court shall determine  
6 the appeal within 180 days of the decision to grant  
7 such consideration.

8 “(b) The time limitations under subsection (a) shall  
9 apply to an initial petition or motion, and to any second  
10 or successive petition or motion. The same limitations  
11 shall also apply to the re-determination of a petition or  
12 motion or related appeal following a remand by the court  
13 of appeals or the Supreme Court for further proceedings,  
14 and in such a case the limitation period shall run from  
15 the date of the remand.

16 “(c) The time limitations under this section shall not  
17 be construed to entitle a petitioner or movant to a stay  
18 of execution, to which the petitioner or movant would oth-  
19 erwise not be entitled, for the purpose of litigating any  
20 petition, motion, or appeal.

21 “(d) The failure of a court to meet or comply with  
22 the time limitations under this section shall not be a  
23 ground for granting relief from a judgment of conviction  
24 or sentence. The State or Government may enforce the

1 time limitations under this section by applying to the court  
2 of appeals or the Supreme Court for a writ of mandamus.

3 “(e) The Administrative Office of United States  
4 Courts shall report annually to Congress on the compli-  
5 ance by the courts with the time limits established in this  
6 section.

7 **“§ 2263. Rule of construction**

8 “This chapter shall be construed to promote the expe-  
9 ditious conduct and conclusion of State and Federal court  
10 review in capital cases.”.

11 (b) CLERICAL AMENDMENT.—The table of chapters  
12 at the beginning of part VI of title 28, United States Code,  
13 is amended by inserting after the item relating to chapter  
14 153 the following new item:

“154. **Special Habeas Corpus Procedures in Capital cases 2256**”.

15 **Subtitle C—Funding for Litigation**  
16 **of Federal Habeas Corpus Peti-**  
17 **tions in Capital Cases**

18 **SEC. 821. FUNDING FOR DEATH PENALTY PROSECUTIONS.**

19 Part E of title I of the Omnibus Crime Control and  
20 Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is  
21 amended by adding at the end the following new section:

22 “SEC. 513. Notwithstanding any other provision of  
23 this subpart, the Director shall provide grants to the  
24 States, from the funding allocated pursuant to section  
25 511, for the purpose of supporting litigation pertaining to

1 Federal habeas corpus petitions in capital cases. The total  
2 funding available for such grants within any fiscal year  
3 shall be equal to the funding provided to capital resource  
4 centers, pursuant to Federal appropriation, in the same  
5 fiscal year.”.

6 **TITLE IX—INCREASE PENALTIES**  
7 **FOR JUVENILES**

8 **SEC. 901. PROSECUTION AS ADULTS OF VIOLENT JUVENILE**  
9 **OFFENDERS.**

10 Section 5032 of title 18, United States Code, is  
11 amended by adding at the end the following new para-  
12 graph:

13 “Notwithstanding any other provision of this section  
14 or any other law, a juvenile who was 13 years old or older  
15 on the date of the commission of an offense under section  
16 113(a), (b), or (c), 1111, 1113, 2111 or 2113 (if the juve-  
17 nile was in possession of a firearm during the offense),  
18 or 2241 (a) or (c) (if the juvenile was in possession of  
19 a firearm during the offense) of this title shall be pros-  
20 ecuted as an adult in Federal court. No juvenile pros-  
21 ecuted as an adult under this paragraph shall be incarcer-  
22 ated in an adult prison. If a juvenile prosecuted under this  
23 paragraph is convicted, the juvenile shall be entitled to file  
24 a petition for resentencing pursuant to applicable sentenc-  
25 ing guidelines when he or she reaches the age of 16. The

1 United States Sentencing Commission shall promulgate  
2 guidelines or amend existing guidelines, if necessary, to  
3 carry out the purposes of this paragraph. For resentencing  
4 determinations pursuant to subsection (b), the Commis-  
5 sion may promulgate guidelines, if necessary, to permit  
6 sentencing adjustments which may include adjustments  
7 which provide for supervised releases, for defendants who  
8 have clearly demonstrated an exceptional degree of respon-  
9 sibility for the offense and a willingness and ability to re-  
10 frain from future criminal conduct.”.

○

HR 4055 IH—2

HR 4055 IH—3

HR 4055 IH—4

HR 4055 IH—5

HR 4055 IH—6

HR 4055 IH—7

HR 4055 IH—8