

April 17, 1986

## CONGRESSIONAL RECORD — SENATE

S 4463

(2) striking out "sections 3812 and 3813" in subsection (h) and inserting in lieu thereof "sections 3612 and 3613".

SEC. 16. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in section 3672 (formerly section 3656) of title 18 of the United States Code by adding at the end thereof:

"He shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include, but not be limited to, providing equipment and supplies; testing; medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the addict by eliminating his dependence on addicting drugs, or by controlling his dependence and his susceptibility to addiction. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

"He shall pay for presentence studies and reports by qualified consultants and presentence examinations and reports by psychiatric or psychological examiners ordered by the court under section 3552 (b) or (c) except for studies conducted by the Bureau of Prisons."

SEC. 17. Section 214 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in subsection (a) of section 5037 of title 18 of the United States Code by striking out "(e)" and inserting in lieu thereof "(d)";

(2) in subparagraph (B) of section 5037(c)(1) of title 18 of the United States Code by striking out "by section 3581(b)";

(3) in subparagraph (B) of section 5037(c)(2) of title 18 of the United States Code by striking out "by section 3581(b)"; and

(4) in subsection (c) of section 5037 of title 18 of the United States Code by adding the following new paragraph at the end thereof:

"The provisions of section 3624 are applicable to an order placing a juvenile under detention."

SEC. 18. Section 215(a)(5) of the Comprehensive Crime Control Act of 1984 is amended in subdivision (c)(2)(B) of Rule 32 of the Federal Rules of Criminal Procedure by striking out the word "than" and inserting in lieu thereof the word "from".

SEC. 19. Section 215(f) of the Comprehensive Crime Control Act of 1984 is amended in Rule 6 of the Federal Rules of Criminal Procedure by—

(1) striking out the word "or" in subdivision (e)(3)(C)(ii); and

(2) striking out the period at the end of subdivision (e)(3)(C)(iii) and inserting in lieu thereof "; or".

SEC. 20. (a) Subsection (a) of section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in paragraph (1) to read, "in subsection (b)(1)(A), by deleting the sentence which begins 'Any sentence imposing a term of imprisonment under this paragraph';";

(2) in paragraph (2) to read, "in subsection (b)(1)(B), by deleting the sentence which begins 'Any sentence imposing a term of imprisonment under this paragraph';";

(3) by inserting the following new paragraph after paragraph (2):

"(3) in subsection (b)(1)(C), by deleting the sentence which begins 'Any sentence imposing a term of imprisonment under this paragraph';";

(4) by adding the word "and" at the end of paragraph (4);

(5) by deleting paragraph (5); and

(6) by redesignating paragraphs (3) and (4) as (4) and (5), respectively.

(b) Section 224 of the Comprehensive Crime Control Act of 1984 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following:

"(c) Section 405A (21 U.S.C. 845A) is amended—

"(1) in subsection (a) by deleting '(1)' after the word 'punishable', and by deleting the semicolon and all that follows and inserting in lieu thereof a period;

"(2) in subsection (b) by deleting '(1)' after the word 'punishable', and by deleting 'and (2) at least three times any special parole term' and all that follows and by inserting in lieu thereof a period; and

"(3) in subsection (c) by deleting the second sentence."

SEC. 21. Subsection (a) of section 225 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in paragraph (1) to read, "in subsection (b)(1), by deleting the sentence which begins 'If a sentence under this paragraph provides for imprisonment';";

(2) in paragraph (2) to read, "in subsection (b)(2), by deleting the sentence which begins 'If a sentence under this paragraph provides for imprisonment';";

(3) by redesignating paragraph (3) as (4); and

(4) by inserting the following new paragraph after paragraph (2):

"(3) in subsection (b)(3), by deleting the sentence which begins 'If a sentence under this paragraph provides for imprisonment'; and"

SEC. 22. Subsection (a) of section 232 of the Comprehensive Crime Control Act of 1984 is amended by—

(1) striking out the word "and" the second time it appears and inserting in lieu thereof a comma; and

(2) inserting before the period "and 'and who are not sentenced to treatment under the Narcotic Addict Rehabilitation Act of 1966'".

SEC. 23. (a) Section 235(a)(1)(B)(i) of the Comprehensive Crime Control Act of 1984 is amended by striking out "eighteen" and inserting "thirty" in lieu thereof.

(b) TECHNICAL AMENDMENT.—Section 235(a)(1)(B)(i) of the Comprehensive Crime Control Act of 1984 is amended by striking out "to section" and inserting "under section" in lieu thereof.

(c) Section 994(q) of title 28, United States Code, is amended by striking out "within three years" and all that follows through "Act of 1933" and inserting in lieu thereof "not later than one year after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect."

(d) Section 235(a)(1) of the Comprehensive Crime Control Act of 1984 is amended by striking out "twenty-four" and inserting "thirty-six" in lieu thereof.

#### FORFEITURE (CHAPTERS III AND XXIII)

SEC. 24. Section 1963 of title 18 of the United States Code is amended—

(1) in subsection (c) by striking out "(m)" and inserting in lieu thereof "(l)";

(2) in subsection (j) by striking out "(m)" and inserting in lieu thereof "(l)"; and

(3) by redesignating subsections (e), (f), (g), (h), (i), (j), (k), (l), and (m), as subsections (d), (e), (f), (g), (h), (i), (j), (k), and (l), respectively.

SEC. 25. Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended in the sentence beginning "Upon the filing", by striking out "\$2,500" and inserting in lieu thereof "\$5,000".

SEC. 26. (a) Subsection (c) of section 616 of the Tariff Act of 1930 (19 U.S.C. 1616(c)) as

enacted by Public Law 98-573 is amended by inserting "any other Federal agency or to" after "property forfeited under this Act to".

(b) Section 616 of the Tariff Act of 1930 (19 U.S.C. 1616) as enacted by Public Law 98-473 is repealed.

SEC. 27. Section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853) is amended—

(1) in subsection (c) by striking out "(o)" and inserting in lieu thereof "(n)";

(2) in subsection (f) by striking out "subsection (f)" and inserting in lieu thereof "subsection (e)"; and

(3) in subsection (k) by striking out "(o)" and inserting in lieu thereof "(n)".

SEC. 28. (a) Subsection (b) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(b)) is amended—

(1) by striking out "or criminal" after "Any property subject to civil";

(2) in paragraph (4) by striking out "or criminal" after "is subject to civil"; and

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

"The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure."

(b) Subsection (i) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(i)) is amended by inserting "or a violation of State or local law that could have been charged under this title or title III," after "title III".

SEC. 29. (a) Subparagraph (E) of section 524(c)(1) of title 28 of the United States Code is amended by inserting "the Federal Bureau of Investigation, the United States Marshals Service," after the words "for official use by", and by inserting a comma before the word "or".

(b) Paragraph (4) of section 524(c) of title 28 of the United States Code is amended by striking out "remaining after the payment of expenses for forfeiture and sale authorized by law" and inserting in lieu thereof "except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d))".

#### OFFENDERS WITH MENTAL DISEASE OR DEFECT

##### (CHAPTER IV)

SEC. 30. Subdivision (c) of Rule 12.2 of the Federal Rules of Criminal Procedure is amended by inserting "4241 or" before "4242".

#### DRUG ENFORCEMENT AMENDMENTS

##### (CHAPTER V)

SEC. 31. Paragraph (14) of section 102 of the Controlled Substances Act (21 U.S.C. 802(14)) is amended in the second and third sentences by striking out the word "the" after the words "the term 'isomer' means" and inserting in lieu thereof "any".

SEC. 32. Paragraph (4) of subsection (a) of schedule II of the Controlled Substances Act (21 U.S.C. 812) is amended to read as follows:

"(4) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which

S 4464

## CONGRESSIONAL RECORD — SENATE

April 17, 1986

contains any quantity of any of the substances referred to in this paragraph."

SEC. 33. (a) Subparagraph (A) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is amended—

(1) in clause (i) to read as follows:  
 "(i) 100 grams or more of a mixture or substance containing a detectable amount of a narcotic drug in schedule I or II other than a narcotic drug consisting of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);"

(2) in clause (ii) by adding "a mixture or substance containing a detectable amount of" after "a kilogram or more of";

(3) in clause (iii) by adding "a mixture or substance containing a detectable amount of" after "500 grams or more of";

(4) in clause (iv) by adding "a mixture or substance containing a detectable amount of" after "5 grams or more of"; and

(5) by adding at the end thereof, "Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 8 years in addition to such term of imprisonment."

(b) Paragraph (5) of section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)(5)) is amended by adding the words "the fines provided in" after the word "Notwithstanding".

SEC. 34. Subsection (b) of section 405A of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by inserting "parole" after "(2) at least three times any special".

SEC. 35. Section 503(a) of the Controlled Substances Act (21 U.S.C. 873(a)) is amended by—

(1) striking out "and" at the end of paragraph (5);

(2) striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) adding at the end thereof the following:  
 "(7) notwithstanding any other provision of law, enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this Act."

SEC. 36. Section 508 of the Controlled Substances Act (21 U.S.C. 878) is amended by—

(1) inserting "(a)" before "Any officer or employee";

(2) inserting after "Drug Enforcement Administration" the following: "or any State or local law enforcement officer"; and

(3) adding at the end thereof the following new subsection:

"(b) State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees, except that such officers shall be subject to section 3374(c) of title 5, United States Code."

SEC. 37. (a) Paragraph (1) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)) is amended—

(1) in subparagraph (A) by striking out clauses (i), (ii), and (iii) and inserting in lieu thereof the following:

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ec-

gonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);"

(2) in subparagraph (B) by inserting "a mixture or substance containing a detectable amount of" after "a kilogram or more of";

(3) in subparagraph (C) by inserting "a mixture or substance containing a detectable amount of" after "500 grams or more of";

(4) in subparagraph (D) by inserting "a mixture or substance containing a detectable amount of" after "5 grams or more of"; and

(5) by adding at the end thereof, "If a sentence under this paragraph provides for imprisonment, the sentence shall include a special parole term of not less than four years in addition to such term of imprisonment."

(b) Paragraph (3) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended by striking out ", except as provided in paragraph (4)".

LABOR RACKETEERING AMENDMENT  
 (CHAPTER VIII)

SEC. 38. Paragraph (2) of section 411(a) of title 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111(a)(2)) is amended by striking out "entity" and inserting in lieu thereof "person".

CURRENCY AND FOREIGN TRANSACTIONS REPORTING ACT AMENDMENTS (CHAPTER IX)

SEC. 39. Paragraph (2) of section 5316(a) of title 31 of the United States Code is amended by striking out "\$5,000" and inserting in lieu thereof "\$10,000".

MISCELLANEOUS VIOLENT CRIME AMENDMENTS (CHAPTER X)

SEC. 40. Subsection (a) of section 373 of title 18 of the United States Code is amended by—

(1) inserting after the words "the person or property of another" the words ", or against such person's own property,"; and

(2) inserting before the word "death" the words "life imprisonment or".

SEC. 41. Subsection (c) of section 924 of title 18 of the United States Code is amended by—

(1) adding after the words "during and in relation to any" the words "felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a) or any";

(2) adding after the words "in addition to the punishment provided for such" the words "felony or"; and

(3) adding after the words "term of imprisonment including that imposed for the" the words "felony or".

SEC. 42. Subsection (a) of section 929 of title 18 of the United States Code is amended by—

(1) adding after the words "during and in relation to the commission of a" the words "felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a), or a";

(2) adding after the words "in addition to the punishment provided for the commis-

sion of such" the words "felony or"; and

(3) adding after the words "term of imprisonment including that imposed for the felony" the words "or crime of violence".

SEC. 43. (a) Subsection (d) of section 1201 of title 18 of the United States Code is amended by adding the words "or (a)(5)" after the words "subsection (a)(4)".

(b) Paragraph (2) of section 115(b) of title 18 of the United States Code is amended to read as follows:

"(2) A kidnaping or attempted kidnaping in violation of this section shall be punished as provided in section 1201 of this title for the kidnaping or attempted kidnaping of a person described in section 1201(a)(5) of this title."

SEC. 44. (a) Chapter 65 of title 18 of the United States Code is amended by redesignating section 1365 as enacted by Public Law 98-473 as section 1366.

(b) The analysts at the beginning of chapter 65 of title 18 of the United States Code is amended by striking out "1365" the second time it appears and inserting in lieu thereof "1366".

SERIOUS NONVIOLENT OFFENSES  
 (CHAPTER XI)

SEC. 45. Section 215 of title 18 of the United States Code is amended—

(1) in subsections (a) and (b) by inserting the words ", bank holding company, or savings and loan holding company" after the words "financial institution" the second and third place in which they appear;

(2) in subsection (c)(1)(D) by striking out "Administrator of the"; and

(3) in subsection (d) by inserting the words ", bank holding company, or savings and loan holding company" after the words "financial institution" each place in which they appear.

SEC. 46. Section 219 of title 18 of the United States Code is amended—

(1) in the first paragraph to read:

"Whoever, being a public official, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both; and

(2) in the last paragraph by striking out "the Delegate from the District of Columbia" and inserting in lieu thereof "Delegate", and by striking out ", or a juror".

SEC. 47. (a) Chapter 25 of title 18 of the United States Code is amended by redesignating section 510 as enacted by Public Law 98-473 as section 513.

(b) The analysts at the beginning of chapter 25 of title 18 of the United States Code is amended by striking out "510. Securities of the State and private entities.," and by adding at the end thereof "513. Securities of the States and private entities."

SEC. 48. (a) Sections 1791 and 1792 of title 18 of the United States Code are amended by striking out the phrase "Federal penal or correctional facility" each time it appears and inserting in lieu thereof "Federal penal, detention, or correctional facility".

(b) Section 1791 of title 18 of the United States Code is further amended—

(1) in subparagraph (a)(1)(B) by adding the words "ammunition or" before "any other weapon";

(2) in subparagraph (a)(1)(C) by adding before the semicolon the words ", lysergic acid diethylamide, or phencyclidine";

(3) in subparagraph (a)(1)(D) by striking out "other than a narcotic drug, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)" and inserting in lieu thereof "other than a controlled substance described in subparagraph (C)"; and

(4) by making subsection (c) read as follows:

"(c) DEFINITIONS.—As used in this section, 'ammunition', 'firearm', and 'destructive

April 17, 1986

## CONGRESSIONAL RECORD — SENATE

S 4465

device' have the meaning given those terms, respectively, in section 921 of title 18 the United States Code."

## PROCEDURAL AMENDMENTS (CHAPTER XII)

SEC. 49. Subsection (e) of section 1028 of title 18 of the United States Code is amended by striking out "title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)" and inserting in lieu thereof "chapter 224 of this title".

SEC. 50. Subsection (f) of section 1029 of title 18 of the United States Code is amended by striking out "title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)" and inserting in lieu thereof "chapter 224 of this title".

SEC. 51. Section 3076 of title 18 of the United States Code is amended by striking out "title V of the Organized Crime Control Act of 1970" and inserting in lieu thereof "chapter 224 of this title".

SEC. 52. Section 3522 of title 18 of the United States Code is amended—

(1) in subsection (a) by striking out the word "parolees" in the second sentence and inserting in lieu thereof "probationers or parolees, as the case may be";

(2) in subsection (b)—  
(A) by striking out "subsection (a)" and inserting in lieu thereof "probation or parole"; and

(B) by striking out the word "shall" and inserting in lieu thereof "may";

(3) by striking out subsection (c); and

(4) by redesignating subsection (d) as subsection (c).

SEC. 53. Section 1921 of title 28 of the United States Code is amended by adding the following new paragraph at the end thereof:

"Notwithstanding the provisions of section 3302 of title 31, the United States Marshals Service is authorized, to the extent provided in appropriations acts, to credit to its appropriation account all fees, commissions, and expenses collected for—

"(1) the service of civil process, including complaints, summonses, subpoenas, and similar process; and

"(2) seizures, levies, and sales associated with judicial orders of execution,

by the United States Marshals Service and to use such credited amounts for the purpose of carrying out such activities."

## VICTIM COMPENSATION AND ASSISTANCE (CHAPTER XIV)

SEC. 54. Section 3013 of title 18 of the United States Code is amended by adding the following new subsection at the end thereof:

"(c) No assessment shall be imposed on any person convicted of an offense for which local rules of the district court, or other Federal law, establishes that collateral may be posted in lieu of appearance in court."

SEC. 55. Subsection (a) of section 3671 of title 18 of the United States Code, as enacted by section 1406(a) of the Comprehensive Crime Control Act of 1984, is amended by striking out "chapter 227 or 231 of" after the words "an order of restitution under".

SEC. 56. (a) Sections 3671 and 3672 of title 18 of the United States Code, as enacted by section 1406(a) of the Comprehensive Crime Control Act of 1984, are redesignated as sections 3681 and 3682, respectively.

(b) The sectional analysis of chapter 232 of title 18 of the United States Code, as added by section 1406(a) of the Comprehensive Crime Control Act of 1984, is amended by striking out "3671" and "3672" and inserting in lieu thereof "3681" and "3682", respectively.

SEC. 57. (a) Chapter 232 of title 18 of the United States Code, as enacted by section 1406(a) of the Comprehensive Crime Control Act of 1984, is redesignated as chapter 232A.

(b) The chapter analysis of part II of title 18 of the United States Code is amended by striking out the item relating to chapter 232, as added by section 1406(b) of the Comprehensive Crime Control Act of 1984, and inserting in lieu thereof the following:

"232A. Special forfeiture of collateral profits of crime.....3681"

SEC. 58. Subsection (e) of section 1402 of the Comprehensive Crime Control Act of 1984 is amended by—

(1) striking out "the next succeeding fiscal year" and inserting in lieu thereof "the next two succeeding fiscal years"; and

(2) striking out "year" after "at the end of which".

SEC. 59. Section 1407 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in subsection (h) by striking out "1302" and inserting in lieu thereof "1402"; and

(2) by redesignating subsection (h) as subsection (g).

SEC. 60. Chapter XIV of the Comprehensive Crime Control Act of 1984 is amended by striking out section 1410.

## TRADEMARK COUNTERFEITING (CHAPTER XV)

SEC. 61. (a) Chapter 113 of the title 18 of the United States Code is amended by redesignating section 2320 as enacted by Public Law 98-473 as section 2321.

(b) The analysts at the beginning of chapter 113 of title 18 of the United States Code is amended by striking out

"2320. Trafficking in counterfeit goods or services."

and by adding at the end thereof

"2321. Trafficking in counterfeit goods or services."

## ACCESS DEVICES AND COMPUTER (CHAPTER XXI)

SEC. 62. (a) Section 1030 of title 18 of the United States Code is amended by adding the following new paragraph at the end thereof:

"(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States."

(b) Delete paragraph (3) of subsection (a) of section 1030 of title 18 of the United States Code.

(c) Delete "or" after the semicolon at the end of paragraph (2) of subsection (a) of section 1030 of title 18 of the United States Code, and insert "or" after the semicolon at the end of paragraph (1) of subsection (a) of section 1030 of title 18 of the United States Code.

## MISCELLANEOUS AMENDMENTS

SEC. 63. Section 3 of title 18 of the United States Code is amended by inserting before the word "death" the words "life imprisonment or".

SEC. 64. (a) Chapter 1 of title 18 of the United States Code is amended by adding a new section 17 as follows:

"§ 17. Organization defined

"For purposes of this title, the term 'organization' means a person other than an individual."

(b) The sectional analysis for chapter 1 of title 18 of the United States Code is amend-

ed by adding after the item relating to section 16 the following:

"17. Organization defined."

SEC. 65. Subsection (a) of section 201 of title 18 of the United States Code is amended by striking out "the Delegate from the District of Columbia" and inserting in lieu thereof "Delegate".

SEC. 66. Paragraph (1) of section 203(a) of title 18 of the United States Code is amended by striking out "Delegate from the District of Columbia, Delegate Elect from the District of Columbia" and inserting in lieu thereof "Delegate, Delegate Elect".

SEC. 67. Subsection (h) of section 844 of title 18 of the United States Code is amended to read as follows:

"(h) Whoever uses fire or an explosive to commit, or carries an explosive during the commission of, any felony which may be prosecuted in a court of the United States, including a felony which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device, shall, in addition to the punishment provided for such felony, be sentenced to imprisonment for five years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for ten years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the felony in which the fire or explosive was used or the explosive was carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein."

SEC. 68. Section 1961(a) of title 18 of the United States Code is amended by adding, after the words "section 1511 (relating to the obstruction of State or local law enforcement)," the words "section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant),".

SEC. 69. The first and second paragraphs of section 2315 of title 18 of the United States Code are amended by—

(1) inserting "possesses," after "receives,"; and

(2) striking out "moving as, or which are a part of, or which constitute interstate or foreign commerce," and inserting in lieu thereof "which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken,".

SEC. 70. Subsection (m) of section 223 of the Comprehensive Crime Control Act of 1984 is amended in paragraph (3)(B) to read as follows:

"(B) by amending subsection (b) to read as follows:

"(b) An offender transferred to the United States to serve a sentence of imprisonment that is longer than the maximum period of time specified in the applicable sentencing guideline promulgated pursuant to section 994(a)(1) of title 28, United States Code, as determined by the Bureau of Prisons, shall serve in an official detention facility the maximum period of time specified in the applicable sentencing guideline and shall serve the remainder of the term imposed as a term of supervised release. To the extent permitted by the applicable treaty, a determination by the Bureau of Prisons as to whether the transferred offender shall serve a term of supervised release and the length of such term

S 4466

## CONGRESSIONAL RECORD — SENATE

April 17, 1986

to be served may be appealed to the United States court of appeals for the district in which the offender is imprisoned after transfer to the United States, and the court of appeals shall decide and dispose of the appeal in accordance with section 3742 as though the determination appealed had been imposed by the United States district court. A determination by the Bureau of Prisons shall be made only after affording the transferred offender an opportunity (1) to submit evidence or information as the applicable sentencing guideline, and (2) for an appeal within the Bureau of Prisons of such determination by a reviewing authority established by the Director pursuant to regulations; and".

SEC. 71. Section 3142(c)(2)(J) of title 18 of the United States Code is amended by inserting "psychological," after "medical".

SEC. 72. Paragraphs (3) of subsections (d), (g), and (h) of section 922 of title 18 of the United States Code are amended by deleting the words "marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954)" and inserting in lieu thereof the words "marihuana or any depressant or stimulant substance or narcotic drug (as those terms are defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802)".

SEC. 73. Section 875 of title 18 of the United States Code is amended by striking the phrase "transmits in interstate commerce" each place where it appears and inserting in lieu thereof the words, "transmits in interstate or foreign commerce".

SEC. 74. Section 351 of title 18 of the United States Code is amended—

(a) in subsection (a) by adding after "Deputy Director of Central Intelligence," the words "a major candidate for the office of President or Vice-President, as defined in subsection (a)(7) of section 3056 of this title"; and

(b) in subsection (h) by deleting the words "an official" and inserting in lieu thereof "a person".

Mr. THURMOND. Mr. President, today, I rise in support of S. 1236—a bill that would make minor and technical corrections to the Comprehensive Crime Control Act of 1984.

As most of you are aware, the Comprehensive Crime Control Act of 1984 embodied the most significant series of changes in the Federal criminal justice system ever enacted at one time. I was pleased to have been able to lead the effort, along with several of my distinguished colleagues, in securing passage of that legislation in the 98th Congress. The act was passed during the final weeks of the 98th Congress under demanding time constraints, and inevitably some ambiguities and technical defects found their way into the legislation.

On June 4, 1985, I introduced S. 1236, along with my colleagues Senator BIDEN, ranking minority member of the Judiciary Committee, Senator LAXALT, and Senator KENNEDY to correct those defects. This bill was referred to the Judiciary Committee, of which I am chairman. S. 1236, as originally introduced, included 85 provisions covering all areas of the Federal criminal law. To expedite consideration of this legislation, the committee formulated a compromise containing

those sections of S. 1236 which the members of the Judiciary Committee unanimously supported and it was offered as an amendment in the nature of a substitute.

The committee unanimously approved this substitute at its executive committee meeting on December 12, 1985, and it was reported on April 4, 1986 (S. Rep. 99-278).

## AMENDMENT NO. 1794

(Purpose: To clarify certain fine and sentencing guideline provisions)

Mr. THURMOND. Mr. President, I now send an amendment to the desk on behalf of myself, Senator BIDEN, Senator LAXALT, Senator KENNEDY, Senator HATCH, Senator GRASSLEY, Senator SPECTER, and Senator EAST, to the committee substitute, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. THURMOND), for himself, and Mr. BIDEN, Mr. LAXALT, Mr. KENNEDY, Mr. HATCH, Mr. GRASSLEY, Mr. SPECTER, and Mr. EAST, proposes an amendment numbered 1794.

Mr. THURMOND. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 61, strike out lines 22 through 3 on page 62 and insert in lieu thereof the following:

(1) in subsection (a)(2) by—

(A) redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively;

(B) amending subparagraph (C) to read as follows:

"(C) the sentence modification provisions set forth in sections 3563(c), 3564, 3573, 3582(c), and 3583(e) of title 18;"; and

(C) adding after subparagraph (C) the following new subparagraph:

"(D) the fine imposition provision set forth in section 3572 of title 18;";

On page 62, strike out lines 13 through 16 and insert in lieu thereof the following:

(3) in subsection (b) by—

(A) inserting "(1)" after "(b)"; and

(B) designating the second sentence as paragraph (2) and inserting before the period in such paragraph (2) the following: "except that—

"(A) if the maximum term of the range is life imprisonment, the minimum shall not be less than 25 years imprisonment; or

"(B) if the maximum term of the range is one year or less, the maximum shall not exceed the minimum of that range by more than 50 percent or 60 days, whichever is greater.";

On page 68, between lines 4 and 5, insert the following:

SEC. 16A. Section 213 of the Comprehensive Crime Control Act of 1984 is amended in section 3742 of title 18, United States Code—

(1) in subsections (a)(2), (b)(2), (d)(2), and (e)(1) by striking out "an incorrect" and inserting in lieu thereof "a clearly erroneous construction or"; and

(2) in subsection (e) by—

(A) striking out subparagraph (B) of paragraph (1) and inserting in lieu thereof the following:

"(B) designate the appropriate guideline category and remand the case for imposition of a sentence consistent with its decision;"; and

(B) striking out subparagraphs (A) and (B) of paragraph (2) and inserting in lieu thereof the following:

"(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for imposition of a sentence consistent with its decision;

"(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for imposition of a sentence consistent with its decision; or"

Mr. THURMOND. Mr. President, today I am offering an amendment to S. 1236 to make several changes in the sentencing provisions of the Comprehensive Crime Control Act of 1984.

I am pleased to be joined in offering this legislation by several of my distinguished colleagues on the Judiciary Committee—Senator BIDEN of Delaware, ranking minority member, as well as Senators LAXALT, KENNEDY, HATCH, GRASSLEY, SPECTER, and EAST.

This amendment would make changes with regard to the duties of the U.S. Sentencing Commission and the appellate review of sentences imposed by district courts.

First, the Commission's authority would be expanded to authorize it to promulgate policy statements regarding the imposition of fines in accordance with the applicable provision of Title 18 of the United States Code. This change would be consistent with the Commission's present authority to issue policy statements with regard to matters such as the application of sentencing guidelines, the sanctions of forfeiture, and plea agreements. In addition, this change would enhance the usefulness of the Commission's work to the Federal judicial system.

Second, the amendment modifies the requirement for sentencing guidelines that provides for ranges in the term of imprisonment. Currently, the maximum of the range may not exceed the minimum of that range by more than 25 percent. S. 1236, as reported by the committee, provides that when the maximum of the range is life imprisonment, the minimum of that range would be 30 years. This amendment would change that number to 25 years and would also provide that when the maximum term of the range is 1 year or less, the maximum shall not exceed the minimum of that range by more than 50 percent, or 60 days, whichever is greater. When the maximum term of the range is 1 year or less, a 25-percent variance would not allow the Commission sufficient flexibility to develop meaningful guidelines for relatively minor crimes. In this instance, the difference in the range would only amount to a small number of days which could possibly encourage defendants to stand trial rather than plead guilty. This change would enable the commission to draft

April 17, 1986

## CONGRESSIONAL RECORD — SENATE

S 4467

meaningful, realistic guidelines with regard to the lower end of the imprisonment sentencing scale.

The amendment would also amend certain provisions pertaining to the appellate review of sentences. Currently, an appellate court may overturn a sentence if it determines that the sentence was imposed as a result of an "incorrect application" of the sentencing guidelines. This amendment would change the standard of review to require the court to determine that the sentence was the result of a "clearly erroneous construction" of the sentencing guidelines. This modified standard, unlike the current standard, is well defined in current law, more familiar to potential appellate litigants, and gives more appropriate weight to the sentencing decisions of Federal district court judges.

Finally, this amendment would modify the current law which permits the appellate court to resent a defendant. The responsibility for sentencing and resentencing has traditionally been reserved for the district court in that the presence of the defendant gives the sentencing judge the opportunity to observe the demeanor and attitude of the defendant. As well, the presence of the victim, prosecutor, and defense attorney, and any other relevant witnesses gives the district court insight into the sentencing process that an appellate judge could not realize from a record alone. This bill would, therefore, require an appellate court that finds in favor of the defendant, to remand the case with appropriate instruction to the district court for further sentencing procedures.

Judge William W. Wilkins, Jr., Chairman of the U.S. Sentencing Commission, has indicated that these changes are necessary in order to ensure the meaningful development and implementation of the sentencing guidelines which the Commission will submit to Congress by April 13, 1987, and the Department of Justice concurs. I urge my colleagues to support this legislation. This legislation needs to be enacted as soon as possible because some of the provisions relate directly to the drafting of the sentencing guidelines. I strongly urge my colleagues to accept this amendment by unanimous consent.

Mr. BIDEN. Mr. President, as an original cosponsor of the Comprehensive Crime Control Act that was passed in 1984, I join with Senators THURMOND, KENNEDY, and LAXALT in moving these technical corrections and minor amendments. I introduced these changes in the same bipartisan spirit that carried through our efforts last Congress to pass the most encompassing changes to our Federal Criminal Code in decades.

In the wee hours of the morning when the comprehensive crime control bill passed the Senate, all of us most actively involved recognized that minor and technical amendments would be needed in the future. As my

colleagues may recall, the components of the comprehensive crime bill were expanded by 11 titles and in the limited time available before the end of the 98th Congress, drafting and conforming changes in the legislation were extremely difficult.

As with past legislation I have introduced by request with the chairman, it was recognized that careful review and scrutiny of these changes would need to be done in committee.

In considering this bill in committee, the approach taken was reflective of how we all worked together on passing the original crime bill. In that spirit, we agreed to set aside any section of this bill that any Senator believed was expansive in scope and more than technical. For that reason, 21 sections of the original bill were removed and will be the subject of future hearings.

In the spirit of the cooperation shown in moving the original crime bill in 1984, I ask my colleagues to support final passage of this bill.

Mr. THURMOND. Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. If there is no further debate on the amendment, the question is on agreeing to the amendment.

The amendment (No. 1794) was agreed to.

## AMENDMENT NO. 1795

(Purpose: To clarify the budget effect of the contract authority granted to the Director of Administrative Office of the United States Courts)

Mr. THURMOND. Mr. President, I now send to the desk another amendment to the committee substitute and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. THURMOND] proposes an amendment numbered 1795.

On page 67, line 8, after "contract" insert "subject to appropriations."

Mr. THURMOND. Mr. President, section 16 of S. 1236 would restore the authority of the Administrative Office of the U.S. courts to contract for the care of addicted or drug dependent offenders. Today, I am offering a technical amendment to this section which simply adds "subject to appropriation."

The Budget Committee advises us that this amendment is necessary in order to avoid a conflict with section 401 of the Congressional Budget Act of 1974.

Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1795) was agreed to.

Mr. METZENBAUM. Mr. President, would the chairman of the committee yield for a number of questions?

Mr. THURMOND. I would be pleased to yield.

Mr. METZENBAUM. S. 1236, as the Judiciary Committee reported it, does not include several changes proposed by the Department of Justice in S. 1236 as introduced. Now, it is my understanding the the committee intends to revisit these proposals. Its failure to adopt certain proposals should not necessarily be read as a rejection of those proposals. The committee simply has postponed consideration of them. Am I correct?

Mr. THURMOND. The Senator is correct.

Mr. METZENBAUM. As my colleague is aware, among the proposals not acted on was the proposal, in section 37 of S. 1236 as introduced, to amend section 235(b)(3) of the Sentencing Reform Act. Section 235(b)(3), as enacted addresses how the Parole Commission should deal with individuals who are slated to be in its jurisdiction 5 years after the new sentencing guidelines become effective. Section 235(b)(3) says the Commission must set release dates for each such person within the range of the applicable parole guideline.

The Sentencing Reform Act was intended to respond to the lack of predictability and the disparity of treatment that went with the parole system and the Parole Commission's decisionmaking. The Sentencing Reform Act limits the Commission's discretion before putting it out of business entirely.

As the statement accompanying the introduction of S. 1236 explained, section 37 was intended to let the Commission apply its guidelines with the discretion to go above or below them. Indeed, the explanation stated that under the current section 235(b)(3) "All release dates must be within the applicable guideline ranges" but this would not be the case if section 37 were adopted.

Is that the Senator's understanding of the proposed change?

Mr. THURMOND. Yes it is, however, I want to add that section 235(b)(3) as enacted provides an unjustified windfall to some of the most dangerous prisoners. The prisoners to whom this provision applies will be those who are serving the longest terms. This is the group most likely to have aggravating case factors warranting decisions above the applicable parole guideline range.

On the other hand, 235(b)(3) doesn't allow setting a release date below the guideline range in any circumstances.

Section 235(b), as enacted, establishes an absolute cut off of the administrative parole determination function. By contrast, under section 37 of S. 1236, as introduced, release dates and conditions of release are set by the Parole Commission and may be adjusted by the Bureau of Prisons after the demise of the Commission with the possibility that release could be ul-

S 4468

## CONGRESSIONAL RECORD — SENATE

April 17, 1986

timately set at an earlier date than the date set under section 235(b)(3), as enacted.

Mr. METZENBAUM. I disagree with your evaluation of this section. The Parole Commission guidelines already provide sufficient flexibility to address different degrees of seriousness in criminal offenses. The intent of this section is to reduce arbitrariness and inequities in setting release dates.

However, I do not want to imply that the committee has expressed a view on that proposal. I just want to be clear as to the issue the committee has decided to defer.

Under the Comprehensive Crime Control Act of 1984, the Parole Commission is required to set a "release date for an individual who will be in its jurisdiction the day before the expiration of 5 years after the effective date of this act that is within the range that applies to the prisoner under the applicable parole guidelines." This provision becomes effective on November 1, 1987. In addition, the Senate report accompanying the bill states that "the committee intends that, in the final setting of release dates under this provision, the Parole Commission give the prisoner the benefit of the applicable new sentencing guideline if it is lower than the minimum parole guideline."

Consequently, under current law, the Commission must stay within the guidelines for persons whose sentence extends beyond November 1, 1992, and who come before the Commission for a release date after the Sentencing Reform Act becomes effective on November 1, 1987. Consideration of amending this provision has been deferred.

Mr. THURMOND. Your statement of the committee's decision is correct.

Mr. METZENBAUM. I thank the chairman.

Mr. THURMOND. Mr. President, I now move adoption of the committee amendment in the nature of a substitute as amended.

The PRESIDING OFFICER. Without objection, the committee amendment in the nature of a substitute, as amended, is agreed to.

Mr. BUMPERS. Mr. President, I would like to commend the Judiciary Committee for reporting S. 1236, which would make several important technical amendments to provisions enacted by the Comprehensive Crime Control Act of 1984. The Judiciary Committee and the Justice Department have worked diligently to produce this legislation and as a strong supporter of the Comprehensive Crime Control Act, I am glad to support the amendments in S. 1236.

The Comprehensive Crime Control Act of 1984 was the product of long deliberation and effort by all three branches of Government, going back to the days when Senator John McClellan served as chairman of the Judiciary Committee. As finally passed, it included two tough provi-

sions relating to bail reform and minimum mandatory sentencing for firearm crimes which I had sponsored in the Senate. In 1981 I introduced S. 494, which created a minimum 5-year sentence for the use of a firearm during the commission of a felonious Federal offense, to be imposed in addition to the penalty for the underlying felony. This bill increased the minimum penalty for first offenders from 2 to 5 years, and increased from 2 to 10 years the penalty for second and subsequent offenders. The bill also made such offenders ineligible for parole until that minimum sentence was served. It was a tough proposal. I am glad to say that language almost identical to S. 494 was included in the President's crime package 2 years later and eventually became part of Public Law 98-473, the Comprehensive Crime Control Act of 1984.

I also introduced in the Bail Reform Act Amendments of 1981, S. 482, which required judges making bail determinations to keep in jail until trial those persons who could not be released without endangering the safety of other citizens. Bail reform was long overdue. Reforms strikingly similar to mine were recommended in 1981 by Chief Justice Burger and were also included in the 1984 act, now codified in 18 U.S.C. 3142.

Last December, I wrote Attorney General Meese to inquire into the effectiveness and utilization of the bail and firearms provisions of the 1984 act. In his response, Assistant Attorney General Bolton explained that the Department of Justice believes the bail provisions are proving to be a very effective tool of Federal law enforcement and are already working to keep many dangerous defendants off the streets while awaiting trial. In regard to the firearms provisions, Assistant Attorney General Bolton told me that they would become an effective law enforcement tool. He said, however, that legislation was needed if the minimum mandatory penalty for firearms crimes was to be made applicable to felonies involving the sale and distribution of narcotics. A group of Federal court decisions handed down in 1985, ending with *United States v. Diaz*, No. 85-1276, slip op. (2d Cir. Nov. 21, 1985), has made it apparent that the courts will not rule that felonies involving the sale and distribution of narcotics are to be covered by this provision unless Congress amends it to include narcotics offenses. The court in *Diaz* pointed out that criminals involved in drug trafficking may often carry or use firearms during the commission of drug-related felonies, and the current language of the provision does not apply to that type of felony. Mr. President, I ask unanimous consent that the letter from the Attorney General's office be included in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,  
Washington, DC, February 24, 1986.

HON. DALE BUMPERS,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR BUMPERS: This letter is in response to your letter of December 20, 1985 to the Attorney General asking several questions about the utilization and effectiveness of one of the bail provisions (18 U.S.C. § 3142), and one of the firearms provisions (18 U.S.C. § 924(c)) of the Comprehensive Crime Control Act of 1984. For the reasons stated below, the Department of Justice unequivocally believes that § 3142 and § 924(c) constitute sound public policy.

Since its enactment in October 1984, United States Attorneys have regularly utilized § 3142. As of January 10, 1986 Criminal Division statistics<sup>1</sup> show that 2,146 pretrial detention hearings have been held pursuant to § 3142. In 1,739 instances the courts ordered pretrial detention. In 1,303 of these instances the dangerousness of the defendant to others was an important consideration in the decision to order pretrial detention. These figures clearly indicate that § 3142 is regularly being utilized, and is proving to be an efficacious tool of federal criminal law enforcement. To the extent § 3142 denies pretrial release to those defendants who constitute a danger to others, the Department of Justice believes § 3142 will have a significant impact on criminal activity in that it will keep large numbers of judicially-determined dangerous defendants off the streets while they are awaiting trial on serious criminal charges.

With respect to § 924(c), it appears that United States Attorneys have been regularly utilizing this provision since its passage. While the Criminal Division has no statistics on the frequency of use of § 924(c), the Criminal Division has received numerous telephone calls from United States Attorneys seeking advice on whether to use § 924(c) in given fact situations. While it is too early to determine the efficacy of § 924(c), the Department of Justice has every reason to believe that § 924(c) will have a significant impact on criminal activity because it provides for longer periods of incarceration for those who use a firearm during the commission of a crime of violence. One problem that has arisen with respect to § 924(c) is that several district courts, and one court of appeals, have held that § 924(c) was not intended to apply to narcotics offenses. See *United States v. Diaz*, No. 85-1276, slip op. (2d Cir. Nov. 21, 1985). In *Diaz* the court of appeals stated that "narcotics offenses do not constitute crime of violence within the meaning of § 924(c). If felonies involving the sale and distribution of narcotics are to be deemed crimes of violence for the purpose of Section 924(c), we believe that this should be done by Congress amending the Comprehensive Crime Control Act of 1984." *Id.* at 367. The Department of Justice has asked the Congress to amend § 924(c) so as to make it applicable to the sale and distribution of narcotics.

We trust this reply addresses the concerns raised in your letter.

Sincerely,

JOHN R. BOLTON,  
Assistant Attorney General, Office of  
Legislative and Intergovernmental Affairs.

<sup>1</sup> The Criminal Division's statistics on pretrial detention hearings and pretrial detention orders are derived from figures sent to the Criminal Division by United States Attorneys. A copy of the Criminal Division's compilation of these figures is attached.

April 17, 1986

CONGRESSIONAL RECORD — SENATE

S 4469

PRETRIAL DETENTION HEARING REPORTS

(Cumulative fiscal year 1986 through January 10)

District	Initial motions		Results		Basis for rulings			Reviews (by government) results		Reviews (by defense) results	
	By government	Court	Granted	Denied	Flight	Dangerous	Both	Detained	Not detained	Released	Not released
Alabama, Northern	5	0	5	0	0	5	0	0	0	0	0
Alabama, Middle	0	0	0	0	0	0	0	0	0	0	0
Alabama, Southern	19	0	15	4	13	2	0	3	0	0	0
Alaska	2	0	2	0	0	0	2	0	0	0	0
Arizona											
Arkansas, Eastern	6	1	6	1	4	0	2	0	0	0	0
Arkansas, Western	1	1	1	0	0	0	1	0	0	0	0
California, Northern	51	0	33	18	19	4	10	0	0	1	1
California, Eastern											
California, Central	40	2	28	14	12	10	6	3	0	0	0
California, Southern	10	1	9	2	5	0	4	0	0	0	0
Colorado	5	1	4	2	1	0	3	0	0	0	0
Connecticut											
Delaware	5	1	6	0	2	2	2	0	0	1	1
District of Columbia											
Florida, Northern	12	0	10	2	1	1	8	0	0	1	1
Florida, Middle	20	0	17	3	5	1	11	0	0	0	0
Florida, Southern	6	0	2	4	1	0	1	0	0	0	0
Georgia, Northern	12	0	12	0	2	4	6	3	0	0	0
Georgia, Middle	0	0	0	0	0	0	0	0	0	0	0
Georgia, Southern	0	0	0	0	0	0	0	0	0	0	0
Guam											
Hawaii	8	0	7	1	2	0	5	0	0	0	1
Idaho	2	0	1	1	1	0	0	0	0	0	0
Illinois, Northern											
Illinois, Central	14	0	11	3	1	2	8	0	0	0	0
Illinois, Southern	5	0	4	1	2	1	1	0	0	0	0
Indiana, Northern	8	0	8	0	4	1	3	0	0	0	7
Indiana, Southern	5	0	4	1	0	1	3	0	0	0	0
Iowa, Northern	0	0	0	0	0	0	0	0	0	0	0
Iowa, Southern	1	0	1	0	1	0	0	0	0	0	0
Kansas	6	0	6	0	0	5	1	0	0	0	5
Kentucky, Eastern	2	0	1	1	0	0	1	0	0	0	0
Kentucky, Western	15	0	12	3	3	8	1	0	0	0	1
Louisiana, Eastern	36	0	35	1	28	2	5	0	0	0	0
Louisiana, Middle	4	0	2	2	1	0	1	0	0	0	0
Louisiana, Western	5	0	5	0	4	0	1	0	0	0	0
Maine	3	0	2	1	2	0	0	0	0	0	0
Maryland											
Massachusetts	19	0	17	2	7	0	10	0	0	0	1
Michigan, Eastern	26	5	22	9	3	15	4	0	2	0	7
Michigan, Western											
Minnesota	0	0	0	0	0	0	0	0	0	0	0
Mississippi, Northern	3	1	3	1	2	0	1	0	0	0	0
Mississippi, Southern	3	0	2	1	0	0	2	0	0	0	0
Missouri, Eastern	30	1	23	8	9	3	11	4	3	3	4
Missouri, Western	13	0	10	3	5	0	5	0	2	1	6
Montana	0	0	0	0	0	0	0	0	0	0	0
Nebraska	1	0	0	1	0	0	0	0	0	0	0
Nevada											
New Hampshire											
New Jersey	32	0	23	9	13	0	10	2	2	2	2
New Mexico											
New York, Northern	3	0	2	1	0	1	1	0	0	0	0
New York, Southern											
New York, Eastern											
New York, Western											
North Carolina, Eastern											
North Carolina, Middle	10	0	10	0	9	1	0	2	1	0	0
North Carolina, Western	7	0	3	4	2	1	0	0	0	0	0
North Dakota	4	1	1	4	1	0	0	0	0	0	0
Ohio, Northern											
Ohio, Southern	7	0	5	2	4	1	0	0	0	0	0
Oklahoma, Northern											
Oklahoma, Eastern	4	0	1	3	0	0	1	0	0	0	0
Oklahoma, Western	18	0	10	8	0	0	10	0	0	0	0
Oregon	10	1	11	0	4	3	4	0	0	0	0
Pennsylvania, Eastern	11	0	9	2	3	0	6	1	1	0	0
Pennsylvania, Middle	1	0	1	0	0	0	0	0	0	0	0
Pennsylvania, Western	23	0	17	6	0	11	6	0	0	0	1
Puerto Rico											
Rhode Island	6	0	6	0	5	0	1	0	0	0	5
South Carolina	10	0	10	0	3	2	5	0	0	0	0
South Dakota	4	0	4	0	1	3	0	0	0	1	0
Tennessee, Eastern	3	0	3	0	3	0	0	0	0	0	0
Tennessee, Middle	8	0	7	1	3	1	3	0	0	0	0
Tennessee, Western	1	0	1	0	0	0	1	0	0	0	0
Texas, Northern	10	1	3	8	3	0	0	0	0	0	0
Texas, Southern											
Texas, Eastern	0	0	0	0	0	0	0	0	0	0	0
Texas, Western	32	0	32	0	12	1	19	0	0	0	0
Utah											
Vermont											
Virgin Islands	2	0	1	1	0	0	1	1	1	1	1
Virginia, Eastern											
Virginia, Western	5	0	3	2	1	2	0	0	0	0	0
Washington, Eastern	14	0	13	1	8	0	5	0	0	0	0
Washington, Western	30	0	25	5	15	5	5	0	0	0	0
West Virginia, Northern											
West Virginia, Southern	1	0	1	0	0	0	1	0	0	0	0
Wisconsin, Eastern	1	0	1	0	0	0	1	0	0	0	0
Wisconsin, Western	1	0	1	0	0	1	0	0	0	0	0
Wyoming	2	0	2	0	0	0	2	0	0	0	2
OCRS, Criminal division	4	0	4	0	0	0	4	0	0	6	0
Totals	667	16	535	148	230	100	205	19	12	24	48

S 4470

CONGRESSIONAL RECORD — SENATE

April 17, 1986

PRETRIAL DETENTION HEARING REPORTS

[Cumulative Fiscal Year 1986 by month]

Month	Initial motions by		Results		Basis for rulings			Reviews by Government result		Reviews (by defense) result	
	Government	Court	Granted	Denied	Flight	Dangerous	Both	Detained	Not detained	Released	Not released
	October 1985										
November 1985	188	5	154	39	64	24	66	5	2	2	7
December 1985	310	7	242	75	105	45	92	7	5	17	21
January 1986	169	4	139	34	61	31	47	7	5	5	20
February 1986											
March 1986											
April 1986											
May 1986											
June 1986											
July 1986											
August 1986											
September 1986											
Total	667	16	535	148	230	100	205	19	12	24	48

Mr. BUMPERS. Let me say, however, that I disagree with the court's failure to apply the minimum mandatory penalties of the 1984 act to narcotics offenses. As one of the chief sponsors of the 1984 minimum penalty provisions, I certainly intended that they apply to such offenses. In the event, because of adverse court opinions, congressional intent needs to be clarified, and I had drafted legislation of my own to do so. I am very pleased to see that Senator THURMOND has included such an amendment in the bill we are passing today and also has made several necessary changes in the bail provisions.

I have long been an advocate of tough bail provisions which act to keep dangerous criminals off the streets, and minimum sentencing for drug-related crimes committed with a firearm appears to me to be absolutely necessary. I believe that there is not enough we can do in our efforts to deter violent crime and drug crime in this country. According to 1984 statistics, one violent crime occurs every 25 seconds in the United States. In Arkansas, violent crime including homicide, rape, robbery, and aggravated assault increased by 9 percent from 1984 to 1985. As the court in Diaz recognized, traffic in drugs is often accompanied by violence. Illicit drug use is spreading to persons of all walks of life and is victimizing children of all ages. I hope that applying a stiffer penalty to drug dealers who use firearms will establish a more effective deterrent to drug trafficking and bring us closer to a safe and civilized society for our children and future generations. I urge the immediate adoption of this legislation.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 1236), as amended, was passed as follows:

S. 1236

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

BAIL (CHAPTER I)

SECTION 1. (a) Subparagraph (D) of section 3142(f)(1) of title 18 of the United States Code is amended by—

(1) striking out the words "any felony committed after the person had been convicted of two or more prior offenses" and inserting in lieu thereof "any felony if the person has been convicted of two or more offenses"; and

(2) inserting before the semicolon " or a combination of such offenses".

(b) Subparagraph (A) of section 3142(f)(2) of title 18 of the United States Code is amended by inserting the word "or" after the semicolon.

(c) Subsection (f) of section 3142 of title 18 of the United States Code is amended by adding at the end thereof the following: "The hearing may be reopened, before or after a determination by the judicial officer, at any time prior to trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community."

OTHER SENTENCING AMENDMENTS

SEC. 2. (a) Section 4216 of title 18 of the United States Code is repealed.

(b) The item relating to section 4216 in the sectional analysis of chapter 311 of title 18 of the United States Code is amended to read as follows:

"4216. Repealed."

SEC. 3. Section 992 of title 28 of the United States Code is amended—

(1) in subsection (c) by striking out "section 225(a)(1)(B)(ii) of the Sentencing Reform Act of 1983" and inserting in lieu thereof "section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984"; and

(2) by adding at the end thereof the following new subsection:

"(d) The provisions of sections 44(c) and 134(b) of this title, regarding the residence of judges, shall not apply to any judge holding a full-time position on the Commission pursuant to subsection (c) of this section."

SEC. 4. Section 994 of title 28 of the United States Code is amended—

(1) in subsection (a)(2) by—

(A) redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively;

(B) amending subparagraph (C) to read as follows:

"(C) the sentence modification provisions set forth in sections 3563(c), 3564, 3573, 3582(c), and 3583(e) of title 18;" and

(C) adding after subparagraph (C) the following new subparagraph:

"(D) the fine imposition provision set forth in section 3572 of title 18;"

(2) in subsection (a)(3) by making it read as follows:

"(3) guidelines or general policy statements regarding the appropriate use of the provisions for revocation of probation and supervised release set forth in sections 3656 and 3583(e) of title 18, and the provisions for modification of the term or conditions of probation and supervised release set forth in sections 3563(c), 3564, and 3583(e) of title 18."

(3) in subsection (b) by—

(A) inserting "(1)" after "(b)"; and

(B) designating the second sentence as paragraph (2) and inserting before the period in such paragraph (2) the following: "except that—"

"(A) if the maximum term of the range is life imprisonment, the minimum shall not be less than 25 years imprisonment; or

"(B) if the maximum term of the range is one year or less, the maximum shall not exceed the minimum of that range by more than 50 per centum or 60 days, whichever is greater."

(4) in subsection (h) by striking out "by section 3581(b) of title 18, United States Code,"; and

(5) in subsection (i) by inserting the words "in what circumstances and" after the word "specify" and by deleting the words "that are outside the applicable guideline ranges".

SEC. 5. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in subsection (b) of section 3552 of title 18 of the United States Code by striking out the word "take" in the third sentence and inserting in lieu thereof the word "be";

(2) in subsection (b) of section 3552 of title 18 of the United States Code by inserting the words " if the defendant is in custody," after the words "the United States Marshal shall" in the eighth sentence; and

(3) in subsection (c) of section 3552 of title 18 of the United States Code by striking out "4247" and inserting in lieu thereof "4244".

SEC. 6. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in subsection (a) of section 3553 of title 18 of the United States Code by striking out the words "of this subsection" in the first sentence; and

(2) in subsection (b) of section 3553 of title 18 of the United States Code by adding the following sentence at the end thereof: "In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for its relationship to sentences prescribed by guidelines applicable to similar offenses and of-



April 17, 1986

## CONGRESSIONAL RECORD — SENATE

S 4471

fenders and the purposes of sentencing set forth in subsection (a)(2)."

SEC. 7. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in subsection (c) of section 3553 of title 18 of the United States Code by inserting "or if it includes an order of only partial restitution," after "If the sentence does not include an order of restitution."

SEC. 8. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in subsection (a) of section 3561 of title 18 of the United States Code by striking out the second sentence.

SEC. 9. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in paragraph (11) of section 3563(b) of title 18 of the United States Code by striking out "in section 3581(b)".

SEC. 10. (a) Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in subsection (c) of section 3563 of title 18 of the United States Code by—

(1) striking out the phrase ", after a hearing,"; and

(2) inserting the phrase "the provisions of Rule 32.1 of the Federal Rules of Criminal Procedure and" after the words "pursuant to".

(b) Subdivision (b) of Rule 32.1 of the Federal Rules of Criminal Procedure is amended by—

(1) inserting the words "to be" after the word "relief"; and

(2) striking out the period at the end and inserting in lieu thereof ", and the attorney for the government, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected."

SEC. 11. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in subsection (b) of section 3564 of title 18 of the United States Code by striking out the second sentence and inserting in lieu thereof the following: "A term of probation runs concurrently with any Federal, State, or local term of probation, supervised release, or parole for another offense to which the defendant is subject or becomes subject during the term of probation. A term of probation does not run while the defendant is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than thirty consecutive days."

SEC. 12. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in subsection (f) of section 3603 of title 18 of the United States Code by striking out the word "supervise" and inserting in lieu thereof "assist in the supervision of," and by inserting a comma after the word "about".

SEC. 13. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in subsection (b) of section 3624 of title 18 of the United States Code by striking out "beginning after the first year of the term" in the first sentence and inserting in lieu thereof "beginning at the end of the first year of the term".

SEC. 14. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in subsection (e) of section 3624 of title 18 of the United States Code by striking out the third sentence and inserting in lieu thereof the following: "The term runs concurrently with any Federal, State, or local term of probation, supervised release, or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run while the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than thirty consecutive days."

SEC. 15. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in section 3663 (formerly section 3579) of title 18 of the United States Code by—

(1) striking out "or in lieu of" in subsection (a)(1); and

(2) striking out "sections 3812 and 3813" in subsection (h) and inserting in lieu thereof "sections 3612 and 3613".

SEC. 16. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in section 3672 (formerly section 3656) of title 18 of the United States Code by adding at the end thereof:

"He shall have the authority to contract, subject to appropriations, with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include, but not be limited to, providing equipment and supplies; testing; medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the addict by eliminating his dependence on addicting drugs, or by controlling his dependence and his susceptibility to addiction. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

"He shall pay for presentence studies and reports by qualified consultants and presentence examinations and reports by psychiatric or psychological examiners ordered by the court under section 3552 (b) or (c) except for studies conducted by the Bureau of Prisons."

SEC. 16A. Section 213 of the Comprehensive Crime Control Act of 1984 is amended in section 3742 of title 18, United States Code—

(1) in subsections (a)(2), (b)(2), (d)(2), and (e)(1) by striking out "an incorrect" and inserting in lieu thereof "a clearly erroneous construction or"; and

(2) in subsection (e) by—

(A) striking out subparagraph (B) of paragraph (1) and inserting in lieu thereof the following:

"(B) designate the appropriate guideline category and remand the case for imposition of a sentence consistent with its decision,"; and

(B) striking out subparagraphs (A) and (B) of paragraph (2) and inserting in lieu thereof the following:

"(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for imposition of a sentence consistent with its decision;

"(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for imposition of a sentence consistent with its decision; or"

SEC. 17. Section 214 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in subsection (a) of section 5037 of title 18 of the United States Code by striking out "(e)" and inserting in lieu thereof "(d)";

(2) in subparagraph (B) of section 5037(c)(1) of title 18 of the United States Code by striking out "by section 3581(b)";

(3) in subparagraph (B) of section 5037(c)(2) of title 18 of the United States Code by striking out "by section 3581(b)"; and

(4) in subsection (c) of section 5037 of title 18 of the United States Code by adding the following new paragraph at the end thereof:

"The provisions of section 3624 are applicable to an order placing a juvenile under detention."

SEC. 18. Section 215(a)(5) of the Comprehensive Crime Control Act of 1984 is amended in subdivision (c)(2)(B) of Rule 32 of the Federal Rules of Criminal Procedure by striking out the word "than" and inserting in lieu thereof the word "from".

SEC. 19. Section 215(f) of the Comprehensive Crime Control Act of 1984 is amended in Rule 6 of the Federal Rules of Criminal Procedure by—

(1) striking out the word "or" in subdivision (e)(3)(C)(iii); and

(2) striking out the period at the end of subdivision (e)(3)(C)(iii) and inserting in lieu thereof "; or".

SEC. 20. (a) Subsection (a) of section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in paragraph (1) to read, "in subsection (b)(1)(A), by deleting the sentence which begins 'Any sentence imposing a term of imprisonment under this paragraph';";

(2) in paragraph (2) to read, "in subsection (b)(1)(B), by deleting the sentence which begins 'Any sentence imposing a term of imprisonment under this paragraph';";

(3) by inserting the following new paragraph after paragraph (2):

"(3) in subsection (b)(1)(C), by deleting the sentence which begins 'Any sentence imposing a term of imprisonment under this paragraph';";

(4) by adding the word "and" at the end of paragraph (4);

(5) by deleting paragraph (5); and

(6) by redesignating paragraphs (3) and (4) as (4) and (5), respectively.

(b) Section 224 of the Comprehensive Crime Control Act of 1984 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following:

"(c) Section 405A (21 U.S.C. 845A) is amended—

"(1) in subsection (a) by deleting '(1)' after the word 'punishable', and by deleting the semicolon and all that follows and inserting in lieu thereof a period;

"(2) in subsection (b) by deleting '(1)' after the word 'punishable', and by deleting 'and (2) at least three times any special parole term' and all that follows and by inserting in lieu thereof a period; and

"(3) in subsection (c) by deleting the second sentence."

SEC. 21. Subsection (a) of section 225 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in paragraph (1) to read, "in subsection (b)(1), by deleting the sentence which begins 'If a sentence under this paragraph provides for imprisonment';";

(2) in paragraph (2) to read, "in subsection (b)(2), by deleting the sentence which begins 'If a sentence under this paragraph provides for imprisonment';";

(3) by redesignating paragraph (3) as (4); and

(4) by inserting the following new paragraph after paragraph (2):

"(3) in subsection (b)(3), by deleting the sentence which begins 'If a sentence under this paragraph provides for imprisonment'; and"

SEC. 22. Subsection (a) of section 232 of the Comprehensive Crime Control Act of 1984 is amended by—

(1) striking out the word "and" the second time it appears and inserting in lieu thereof a comma; and

(2) inserting before the period ", and 'and who are not sentenced to treatment under the Narcotic Addict Rehabilitation Act of 1966'".

## CONGRESSIONAL RECORD — SENATE

April 17, 1986

23. (a) Section 235(a)(1)(B)(i) of the Comprehensive Crime Control Act of 1984 is amended by striking out "eighteen" and inserting "thirty" in lieu thereof.

(b) TECHNICAL AMENDMENT.—Section 235(a)(1)(B)(i) of the Comprehensive Crime Control Act of 1984 is amended by striking out "to section" and inserting "under section" in lieu thereof.

(c) Section 994(q) of title 28, United States Code, is amended by striking out "within three years" and all that follows through "Act of 1983" and inserting in lieu thereof "not later than one year after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect."

(d) Section 235(a)(1) of the Comprehensive Crime Control Act of 1984 is amended by striking out "twenty-four" and inserting "thirty-six" in lieu thereof.

#### FORFEITURE (CHAPTERS III AND XXIII)

Sec. 24. Section 1963 of title 18 of the United States Code is amended—

(1) in subsection (c) by striking out "(m)" and inserting in lieu thereof "(l)";

(2) in subsection (j) by striking out "(m)" and inserting in lieu thereof "(l)"; and

(3) by redesignating subsections (e), (f), (g), (h), (i), (j), (k), (l), and (m), as subsections (d), (e), (f), (g), (h), (i), (j), (k), and (l), respectively.

Sec. 25. Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended in the sentence beginning "Upon the filing", by striking out "\$2,500" and inserting in lieu thereof "\$5,000".

Sec. 26. (a) Subsection (c) of section 616 of the Tariff Act of 1930 (19 U.S.C. 1616(c)) as enacted by Public Law 98-573 is amended by inserting "any other Federal agency or to" after "property forfeited under this Act to".

(b) Section 616 of the Tariff Act of 1930 (19 U.S.C. 1616) as enacted by Public Law 98-473 is repealed.

Sec. 27. Section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853) is amended—

(1) in subsection (c) by striking out "(o)" and inserting in lieu thereof "(n)";

(2) in subsection (f) by striking out "subsection (f)" and inserting in lieu thereof "subsection (e)"; and

(3) in subsection (k) by striking out "(o)" and inserting in lieu thereof "(n)".

Sec. 28. (a) Subsection (b) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(b)) is amended—

(1) by striking out "or criminal" after "Any property subject to civil";

(2) in paragraph (4) by striking out "or criminal" after "is subject to civil"; and

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

"The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure."

(b) Subsection (i) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(i)) is amended by inserting ", or a violation of State or local law that could have been charged under this title or title III," after "title III".

Sec. 29. (a) Subparagraph (E) of section 524(c)(1) of title 28 of the United States Code is amended by inserting "the Federal Bureau of Investigation, the United States Marshals Service," after the words "for official use by," and by inserting a comma before the word "or".

(b) Paragraph (4) of section 524(c) of title 28 of the United States Code is amended by striking out "remaining after the payment

of expenses for forfeiture and sale authorized by law" and inserting in lieu thereof "except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d))".

#### OFFENDERS WITH MENTAL DISEASE OR DEFECT

##### (CHAPTER IV)

Sec. 30. Subdivision (c) of Rule 12.2 of the Federal Rules of Criminal Procedure is amended by inserting "4241 or" before "4242".

#### DRUG ENFORCEMENT AMENDMENTS

##### (CHAPTER V)

Sec. 31. Paragraph (14) of section 102 of the Controlled Substances Act (21 U.S.C. 802(14)) is amended in the second and third sentences by striking out the word "the" after the words "the term 'isomer' means" and inserting in lieu thereof "any".

Sec. 32. Paragraph (4) of subsection (a) of schedule II of the Controlled Substances Act (21 U.S.C. 812) is amended to read as follows:

"(4) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph."

Sec. 33. (a) Subparagraph (A) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is amended—

(1) in clause (i) to read as follows:

"(i) 100 grams or more of a mixture or substance containing a detectable amount of a narcotic drug in schedule I or II other than a narcotic drug consisting of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III)";

(2) in clause (ii) by adding "a mixture or substance containing a detectable amount of" after "a kilogram or more of";

(3) in clause (iii) by adding "a mixture or substance containing a detectable amount of" after "500 grams or more of";

(4) in clause (iv) by adding "a mixture or substance containing a detectable amount of" after "5 grams or more of"; and

(5) by adding at the end thereof, "Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment, if there was such a prior conviction, impose a special parole term of at least 8 years in addition to such term of imprisonment."

(b) Paragraph (5) of section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)(5)) is amended by adding the words "the fines provided in" after the word "Notwithstanding".

Sec. 34. Subsection (b) of section 405A of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by inserting "parole" after "(2) at least three times any special"

Sec. 35. Section 503(a) of the Controlled Substances Act (21 U.S.C. 873(a)) is amended by—

(1) striking out "and" at the end of paragraph (5);

(2) striking out the period at the end of paragraph (6) and inserting in lieu thereof "and"; and

(3) adding at the end thereof the following:

"(7) notwithstanding any other provision of law, enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this Act."

Sec. 36. Section 508 of the Controlled Substances Act (21 U.S.C. 878) is amended by—

(1) inserting "(a)" before "Any officer or employee";

(2) inserting after "Drug Enforcement Administration" the following: "or any State or local law enforcement officer"; and

(3) adding at the end thereof the following new subsection:

"(b) State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees, except that such officers shall be subject to section 3374(c) of title 5, United States Code."

Sec. 37. (a) Paragraph (1) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)) is amended—

(1) in subparagraph (A) by striking out clauses (i), (ii), and (iii) and inserting in lieu thereof the following:

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii)";

(2) in subparagraph (B) by inserting "a mixture or substance containing a detectable amount of" after "a kilogram or more of";

(3) in subparagraph (C) by inserting "a mixture or substance containing a detectable amount of" after "500 grams or more of";

(4) in subparagraph (D) by inserting "a mixture or substance containing a detectable amount of" after "5 grams or more of"; and

(5) by adding at the end thereof, "If a sentence under this paragraph provides for imprisonment, the sentence shall include a special parole term of not less than four years in addition to such term of imprisonment."

(b) Paragraph (3) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended by striking out "except as provided in paragraph (4)".

#### LABOR RACKETEERING AMENDMENT

##### (CHAPTER VIII)

Sec. 38. Paragraph (2) of section 411(a) of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111(a)(2)) is amended by striking out "entity" and inserting in lieu thereof "person".

#### CURRENCY AND FOREIGN TRANSACTIONS REPORTING ACT AMENDMENTS (CHAPTER IX)

Sec. 39. Paragraph (2) of section 5316(a) of title 31 of the United States Code is amended by striking out "\$5,000" and inserting in lieu thereof "\$10,000".

April 17, 1986

## CONGRESSIONAL RECORD — SENATE

S 4473

MISCELLANEOUS VIOLENT CRIME  
AMENDMENTS (CHAPTER X)

SEC. 40. Subsection (a) of section 373 of title 18 of the United States Code is amended by—

(1) inserting after the words "the person or property of another" the words ", or against such person's own property,"; and

(2) inserting before the word "death" the words "life imprisonment or";

SEC. 41. Subsection (c) of section 924 of title 18 of the United States Code is amended by—

(1) adding after the words "during and in relation to any" the words "felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a) or any";

(2) adding after the words "in addition to the punishment provided for such" the words "felony or"; and

(3) adding after the words "term of imprisonment including that imposed for the" the words "felony or";

SEC. 42. Subsection (a) of section 929 of title 18 of the United States Code is amended by—

(1) adding after the words "during and in relation to the commission of a" the words "felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a), or a";

(2) adding after the words "in addition to the punishment provided for the commission of such" the words "felony or"; and

(3) adding after the words "term of imprisonment including that imposed for the felony" the words "or crime of violence";

SEC. 43. (a) Subsection (d) of section 1201 of title 18 of the United States Code is amended by adding the words "or (a)(5)" after the words "subsection (a)(4)";

(b) Paragraph (2) of section 115(b) of title 18 of the United States Code is amended to read as follows:

"(2) A kidnaping or attempted kidnaping in violation of this section shall be punished as provided in section 1201 of this title for the kidnaping or attempted kidnaping of a person described in section 1201(a)(5) of this title."

SEC. 44. (a) Chapter 65 of title 18 of the United States Code is amended by redesignating section 1365 as enacted by Public Law 98-473 as section 1366.

(b) The analysis at the beginning of chapter 65 of title 18 of the United States Code is amended by striking out "1365" the second time it appears and inserting in lieu thereof "1366".

SERIOUS NONVIOLENT OFFENSES  
(CHAPTER XI)

SEC. 45. Section 215 of title 18 of the United States Code is amended—

(1) in subsections (a) and (b) by inserting the words ", bank holding company, or savings and loan holding company" after the words "financial institution" the second and third place in which they appear;

(2) in subsection (c)(1)(D) by striking out "Administrator of the"; and

(3) in subsection (d) by inserting the words ", bank holding company, or savings and loan holding company" after the words "financial institution" each place in which they appear.

SEC. 46. Section 219 of title 18 of the United States Code is amended—

(1) in the first paragraph to read:  
"Whoever, being a public official, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, shall

be fined not more than \$10,000 or imprisoned for not more than two years, or both,"; and

(2) in the last paragraph by striking out "the Delegate from the District of Columbia" and inserting in lieu thereof "Delegate", and by striking out ", or a juror";

SEC. 47. (a) Chapter 25 of title 18 of the United States Code is amended by redesignating section 510 as enacted by Public Law 98-473 as section 513.

(b) The analysis at the beginning of chapter 25 of title 18 of the United States Code is amended by striking out "510. Securities of the State and private entities," and by adding at the end thereof "513. Securities of the States and private entities."

SEC. 48. (a) Sections 1791 and 1792 of title 18 of the United States Code are amended by striking out the phrase "Federal penal or correctional facility" each time it appears and inserting in lieu thereof "Federal penal, detention, or correctional facility".

(b) Section 1791 of title 18 of the United States Code is further amended—

(1) in subparagraph (a)(1)(B) by adding the words "ammunition or" before "any other weapon";

(2) in subparagraph (a)(1)(C) by adding before the semicolon the words ", lysergic acid diethylamide, or phencyclidine";

(3) in subparagraph (a)(1)(D) by striking out "other than a narcotic drug, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)" and inserting in lieu thereof "other than a controlled substance described in subparagraph (C)"; and

(4) by making subsection (c) read as follows:

"(c) DEFINITIONS.—As used in this section, 'ammunition', 'firearm', and 'destructive device' have the meaning given those terms, respectively, in section 921 of title 18 of the United States Code."

PROCEDURAL AMENDMENTS (CHAPTER  
XII)

SEC. 49. Subsection (e) of section 1028 of title 18 of the United States Code is amended by striking out "title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)" and inserting in lieu thereof "chapter 224 of this title".

SEC. 50. Subsection (f) of section 1029 of title 18 of the United States Code is amended by striking out "title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)" and inserting in lieu thereof "chapter 224 of this title".

SEC. 51. Section 3076 of title 18 of the United States Code is amended by striking out "title V of the Organized Crime Control Act of 1970" and inserting in lieu thereof "chapter 224 of this title".

SEC. 52. Section 3522 of title 18 of the United States Code is amended—

(1) in subsection (a) by striking out the word "parolees" in the second sentence and inserting in lieu thereof "probationers or parolees, as the case may be";

(2) in subsection (b)—  
(A) by striking out "subsection (a)" and inserting in lieu thereof "probation or parole"; and

(B) by striking out the word "shall" and inserting in lieu thereof "may";

(3) by striking out subsection (c); and

(4) by redesignating subsection (d) as subsection (c).

SEC. 53. Section 1921 of title 28 of the United States Code is amended by adding the following new paragraph at the end thereof:  
"Notwithstanding the provisions of section 3302 of title 31, the United States Marshals Service is authorized, to the extent provided in appropriations acts, to credit to its appropriation account all fees, commissions, and expenses collected for—

"(1) the service of civil process, including complaints, summonses, subpoenas, and similar process; and

"(2) seizures, levies, and sales associated with judicial orders of execution,

by the United States Marshals Service and to use such credited amounts for the purpose of carrying out such activities."

VICTIM COMPENSATION AND  
ASSISTANCE (CHAPTER XIV)

SEC. 54. Section 3013 of title 18 of the United States Code is amended by adding the following new subsection at the end thereof:

"(c) No assessment shall be imposed on any person convicted of an offense for which local rules of the district court, or other Federal law, establishes that collateral may be posted in lieu of appearance in court."

SEC. 55. Subsection (a) of section 3671 of title 18 of the United States Code, as enacted by section 1406(a) of the Comprehensive Crime Control Act of 1984, is amended by striking out "chapter 227 or 231 of" after the words "an order of restitution under".

SEC. 56. (a) Sections 3671 and 3672 of title 18 of the United States Code, as enacted by section 1406(a) of the Comprehensive Crime Control Act of 1984, are redesignated as sections 3681 and 3682, respectively.

(b) The sectional analysis of chapter 232 of title 18 of the United States Code, as added by section 1406(a) of the Comprehensive Crime Control Act of 1984, is amended by striking out "3671" and "3672" and inserting in lieu thereof "3681" and "3682", respectively.

SEC. 57. (a) Chapter 232 of title 18 of the United States Code, as enacted by section 1406(a) of the Comprehensive Crime Control Act of 1984, is redesignated as chapter 232A.

(b) The chapter analysis of part II of title 18 of the United States Code is amended by striking out the item relating to chapter 232, as added by section 1406(b) of the Comprehensive Crime Control Act of 1984, and inserting in lieu thereof the following:

"232A. Special forfeiture of collateral profits of crime..... 3681".

SEC. 58. Subsection (e) of section 1402 of the Comprehensive Crime Control Act of 1984 is amended by—

(1) striking out "the next succeeding fiscal year" and inserting in lieu thereof "the next two succeeding fiscal years"; and

(2) striking out "year" after "at the end of which".

SEC. 59. Section 1407 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in subsection (h) by striking out "1302" and inserting in lieu thereof "1402"; and

(2) by redesignating subsection (h) as subsection (g).

SEC. 60. Chapter XIV of the Comprehensive Crime Control Act of 1984 is amended by striking out section 1410.

TRADEMARK COUNTERFEITING  
(CHAPTER XV)

SEC. 61. (a) Chapter 113 of the title 18 of the United States Code is amended by redesignating section 2320 as enacted by Public Law 98-473 as section 2321.

(b) The analysis at the beginning of chapter 113 of title 18 of the United States Code is amended by striking out

"2320. Trafficking in counterfeit goods or services."

and by adding at the end thereof

"2321. Trafficking in counterfeit goods or services."

S 4474

## CONGRESSIONAL RECORD — SENATE

April 17, 1986

ACCESS DEVICES AND COMPUTER  
(CHAPTER XXI)

Sec. 62. (a) Section 1030 of title 18 of the United States Code is amended by adding the following new paragraph at the end thereof:

"(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States."

(b) Delete paragraph (3) of subsection (a) of section 1030 of title 18 of the United States Code.

(c) Delete "or" after the semicolon at the end of paragraph (2) of subsection (a) of section 1030 of title 18 of the United States Code, and insert "or" after the semicolon at the end of paragraph (1) of subsection (a) of section 1030 of title 18 of the United States Code.

## MISCELLANEOUS AMENDMENTS

Sec. 63. Section 3 of title 18 of the United States Code is amended by inserting before the word "death" the words "life imprisonment or".

Sec. 64. (a) Chapter 1 of title 18 of the United States Code is amended by adding a new section 17 as follows:

## "§ 17. Organization defined

"For purposes of this title, the term 'organization' means a person other than an individual."

(b) The sectional analysis for chapter 1 of title 18 of the United States Code is amended by adding after the item relating to section 16 the following:

## "17. Organization defined."

Sec. 65. Subsection (a) of section 201 of title 18 of the United States Code is amended by striking out "the Delegate from the District of Columbia" and inserting in lieu thereof "Delegate".

Sec. 66. Paragraph (1) of section 203(a) of title 18 of the United States Code is amended by striking out "Delegate from the District of Columbia, Delegate Elect from the District of Columbia" and inserting in lieu thereof "Delegate, Delegate Elect".

Sec. 67. Subsection (h) of section 844 of title 18 of the United States Code is amended to read as follows:

"(h) Whoever uses fire or an explosive to commit, or carries an explosive during the commission of, any felony which may be prosecuted in a court of the United States, including a felony which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device, shall, in addition to the punishment provided for such felony, be sentenced to imprisonment for five years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for ten years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the felony in which the fire or explosive was used or the explosive was carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein."

Sec. 68. Section 1961(a) of title 18 of the United States Code is amended by adding, after the words "section 1511 (relating to the obstruction of State or local law enforcement)," the words "section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliat-

ing against a witness, victim, or an informant),"

Sec. 69. The first and second paragraphs of section 2315 of title 18 of the United States Code are amended by—

(1) inserting "possesses," after "receives,"; and

(2) striking out "moving as, or which are a part of, or which constitute interstate or foreign commerce," and inserting in lieu thereof "which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken,".

Sec. 70. Subsection (m) of section 223 of the Comprehensive Crime Control Act of 1984 is amended in paragraph (3)(B) to read as follows:

"(B) by amending subsection (b) to read as follows:

"(b) An offender transferred to the United States to serve a sentence of imprisonment that is longer than the maximum period of time specified in the applicable sentencing guideline promulgated pursuant to section 994(a)(1) of title 28, United States Code, as determined by the Bureau of Prisons, shall serve in an official detention facility the maximum period of time specified in the applicable sentencing guideline and shall serve the remainder of the term imposed as a term of supervised release. To the extent permitted by the applicable treaty, a determination by the Bureau of Prisons as to whether the transferred offender shall serve a term of supervised release and the length of such term to be served may be appealed to the United States court of appeals for the district in which the offender is imprisoned after transfer to the United States, and the court of appeals shall decide and dispose of the appeal in accordance with section 3742 as though the determination appealed had been imposed by the United States district court. A determination by the Bureau of Prisons shall be made only after affording the transferred offender an opportunity (1) to submit evidence or information as the applicable sentencing guideline, and (2) for an appeal within the Bureau of Prisons of such determination by a reviewing authority established by the Director pursuant to regulations;" and".

Sec. 71. Section 3142(c)(2)(J) of title 18 of the United States Code is amended by inserting " , psychological," after "medical".

Sec. 72. Paragraphs (3) of subsections (d), (g), and (h) of section 922 of title 18 of the United States Code are amended by deleting the words "marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954)" and inserting in lieu thereof the words "marihuana or any depressant or stimulant substance or narcotic drug (as those terms are defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802)".

Sec. 73. Section 875 of title 18 of the United States Code is amended by striking the phrase "transmits in interstate commerce" each place where it appears and inserting in lieu thereof the words, "transmits in interstate or foreign commerce".

Sec. 74. Section 351 of title 18 of the United States Code is amended—

(a) in subsection (a) by adding after "Deputy Director of Central Intelligence," the words "a major candidate for the office of President or Vice-President, as defined in subsection (a)(7) of section 3056 of this title"; and

(b) in subsection (h) by deleting the words "an official" and inserting in lieu thereof "a person".

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion to reconsider on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I wish to thank the able majority leader and the able Democratic leader for their cooperation in this matter. This is a very important piece of legislation. I feel it is going to make beneficial improvements to the criminal procedures in this Nation.

Mr. BYRD. Mr. President, I thank the distinguished chairman of the committee (Mr. THURMOND).

Mr. EVANS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. PRESSLER). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from South Carolina.

THE LIBYAN THREAT TO  
TUNISIA

Mr. THURMOND. Mr. President, in the last few days, Americans have closely followed events in Libya. I have previously stated my support for the President, and wholeheartedly agree with our Commander in Chief, that repeated acts of Qadhafi-sponsored international terrorism ultimately forced our armed response.

Fortunately, the United States has the ability to organize and equip the type of self-defense mission which was launched on Monday. However, we have allies in that troubled region who are outmanned and outgunned by Colonel Qadhafi. I specifically refer to Tunisia and the threat Colonel Qadhafi poses to our friends in that country. Last June, Tunisian President Bourguiba visited the United States. I had the opportunity to meet with him. He is a fine man, and a true friend of our Nation. During that visit, President Reagan told President Bourguiba that the United States was committed to the sanctity of Tunisia's borders, and that Tunisia could rely on the continued support and friendship of our Nation. Based on present events in that region, the proximity of Tunisia to Libya, and recent history of aggressive acts Qadhafi has directed at Tunisia, I believe that we must now demonstrate strong support for our Tunisian ally. The basis for this view can be clearly shown by a brief overview of recent Tunisian-Libyan relations.

In 1976, Libya expelled almost 7,000 Tunisians. In 1978, it was strongly suspected that Qadhafi covertly organized riots in Tunis. In 1980, Libyan-trained commandos seized the town of Gafsa and unsuccessfully attempted to launch a coup against the Bourguiba government. Since 1976, 26,000 more