

February 2, 1983

S 916

CONGRESSIONAL RECORD — SENATE

which the project involved is, or is to be, located;

(3) such grants shall be made on a competitive basis, taking into consideration—

(A) the extent of need for emergency housing in the area where the project involved is, or is to be, located;

(B) in the case of any nonprofit organization, the extent of the need for funding by such organization;

(C) the extent of non-Federal assistance to be provided with respect to the project involved, including in-kind contributions by volunteers;

(D) in the case of any nonprofit organization, the demonstrated capacity of such organization to establish and maintain the project involved; and

(E) any other terms and conditions prescribed by the Secretary to carry out the project involved in an effective, expeditious, and efficient manner;

(4) such grants may be used for the purpose of rehabilitating existing structures in order to provide basic shelter, maintaining structures providing such shelter, and paying for utilities of such structures, and for other purposes (other than salaries and administrative expenses) prescribed by the Secretary consistent with the purpose of this Act; and

(5) in the case of any structure that is rehabilitated with assistance under this Act, such structure shall be used for emergency housing for at least three years, or at least ten years in any case in which the rehabilitation involved is substantial.

REGULATIONS

Sec. 3. The Secretary shall issue regulations with respect to the demonstration program established in section 2 not later than ninety days after the date of the enactment of this Act.

REPORT TO CONGRESS

Sec. 4. The Secretary shall submit to the Congress (1) not later than April 1, 1983, an interim report concerning the demonstration program established in section 2; and (2) not later than December 1, 1983, a final report concerning such program.

FUNDING OF DEMONSTRATION PROGRAM

Sec. 5. Of the additional authority approved in appropriation Acts and made available during fiscal year 1983 pursuant to section 5(c) of the Housing Act of 1937, the Secretary shall utilize \$50,000,000 to carry out the provisions of this Act. ●

By Mr. PELL (for himself and Mr. DeCONCINI):

S. 406. A bill to strengthen bail requirements for individuals charged with drug offenses and to coordinate the national and international drug enforcement efforts of the Federal Government, in order to reduce drug trafficking and drug-related crime; to the Committee on the Judiciary.

BAIL REQUIREMENTS FOR INDIVIDUALS CHARGED WITH DRUG OFFENSES

Mr. PELL. Mr. President, I introduce for appropriate referral a bill on behalf of the Senator from Arizona (Mr. DeCONCINI) and myself.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. PELL. Mr. President, today Senator DeCONCINI and I are introducing the National and International Drug Operations and Policy Act of 1983. I have been pleased to work closely with

Senator DeCONCINI in developing the ideas for this legislation, which was included as an amendment to the Violent Crime and Drug Enforcement Improvement Act. That bill was vetoed by President Reagan, despite its overwhelming passage in both the Senate and House during the 97th Congress.

Because Senator DeCONCINI and I believe that a Cabinet-level "drug czar" is vital to an effective national attack on drug abuse and trafficking, we are reintroducing this legislation at the beginning of the 98th Congress. To the "drug czar" bill we have two other long overdue reforms of the criminal justice system which have been championed by Senator DeCONCINI in past Congresses.

I know every Member of the Senate is deeply concerned about the mounting crime epidemic confronting our society today. In the course of 1 year, 1 out of every 3 households in the United States is touched in some form by this crime epidemic.

Much of the mounting crime rate can be directly traced to the recent unprecedented increase in illegal drug trafficking throughout the United States. We are literally being engulfed by a flood of illegal drugs that are entering the country by sea, by air, and at our borders. And we see the byproducts of this problem daily in our own communities: In the stores and homes burglarized by addicts supporting their drug habit, and the innocent citizens who are victimized by muggings, assaults, and other violent drug related crimes.

Law enforcement officials estimate that between 40 and 60 percent of all serious crimes that occurred in the United States in 1981 were drug-related.

Drug trafficking has become an \$80 billion a year untaxed big business in the United States, producing an alarming increase in drug overdose deaths and addiction rates. We have an estimated 492,000 heroin addicts in this country, 90 percent of whom are believed to support their habit through criminal activity. Moreover, the Drug Enforcement Administration estimates that there are 15 million cocaine users in the United States consuming approximately 60 metric tons of the drug each year.

This is a problem that—by its very nature—local law enforcement is virtually powerless to control. Nearly all the dangerous drugs consumed in the United States are smuggled into the country from other nations, notably from South America and the Caribbean area, as well as the "Golden Crescent" of Southwest Asia and the "Golden Triangle" of Southeast Asia. Earlier this week a United Nations Agency, the International Narcotics Control Board in Vienna, reported that the production of illegal drugs is growing throughout most of the world, overwhelming the resources presently devoted to containing the problem.

Despite the best efforts of a number of agencies—and successful initiatives such as the Florida task force—we are losing the battle against drug traffickers. Efforts to curb drug trafficking in some areas have simply forced well-financed smugglers to find more ingenious methods and new routes. The best estimates are that we are stopping no more than 10 to 15 percent of all the dangerous drugs being smuggled into the United States, despite the fact that the money spent by the Federal Government to intercept drugs tripled from 1977 to 1981.

Perhaps our most important failure has been the lack of a consistent and well-coordinated national strategy. No high-level official presently has the authority to set overall policy and to coordinate the many departments and agencies—spread throughout the Government—with responsibilities in this area. Moreover, no official has the lead responsibility for overseas drug enforcement and spearheading greater international efforts to reduce drug trafficking.

Besides the Justice Department, which includes the FBI and the Drug Enforcement Administration, the other principal departments involved in drug enforcement are the State Department, the Transportation Department, which includes the Coast Guard, the Treasury Department, which includes the IRS, the Customs Service and the Bureau of Alcohol, Tobacco, and Firearms, and the CIA.

The bill Senator DeCONCINI and I are introducing would provide the policy direction and coordination between agencies that has been sorely lacking. It would establish within the executive branch a Cabinet-level position of the Director of National and International Drug Operations and Policy. The Director would report directly to the President and be responsible for the development, review, implementation, and enforcement of all U.S. Government policy with respect to illegal drugs. He or she would have the authority to bring the various agencies together, pooling their staffs and resources where appropriate, to act with a single voice and authority against drug traffickers.

I would emphasize that this position does not entail additional bureaucracy, something we all want to avoid. There is nothing in our bill to prevent the President from designating someone already at the Cabinet level to fill this new position.

Our bill will provide the leadership we must have to win the war against drug-related crime. We cannot rely on short-term success as we have had recently in Florida. We need a consistent attack on this problem at the highest levels of our Government, starting with a clearcut strategy for combating drug trafficking to all regions of the country. A Cabinet-level Director of National Drug Operations and Policy will provide the high-level, responsible

February 2, 1983

CONGRESSIONAL RECORD — SENATE

S 917

and effective leadership that is presently lacking in the war on crime and drugs. I urge my colleagues to join Senator DeCONCINI and me in supporting the establishment of this badly needed position.

Section 1 of this bill is a provision developed last year by Senator DeCONCINI. It requires that bail bonds for drug dealers and traffickers be set, at a minimum, at the street value of the drugs seized at the time of the arrest. This change in our criminal laws is necessary to strengthen the hand of prosecutors against drug traffickers who are readily able to meet current bail bond requirements and flaunt the judicial system. The final section of the bill is Senator DeCONCINI's Federal Diversion Act, establishing a Federal pretrial diversion program for non-violent first-time offenders.

I ask unanimous consent that the full text of the bill be printed in the RECORD following the remarks of Senator DeCONCINI.

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

(See exhibit 1.)

Mr. DeCONCINI. Mr. President, I am pleased to join my colleague, Mr. PELL, in reintroducing a bill that was overwhelmingly and repeatedly approved by this body last year. The bill would create an Office of National and International Drug Operations and Policy. The Director of this Office would have the responsibility for developing and coordinating the drug enforcement activities of all Federal agencies.

It is absolutely necessary that the United States have a coordinated and consistent direction to its drug enforcement efforts. It is clear that we do not have this unified approach at present and I do not believe that we can until one individual is given the responsibility to develop strategy and then monitor its implementation with authority to demand compliance to it. Establishment of a single responsible high-level official in the Government to provide leadership is the most constructive step we can take to reduce the rampant criminal activity which results from the trafficking of drugs.

The origin of this concept was the 1979 GAO report to Congress, "Gains Made in Controlling Illegal Drugs, Yet the Drug Trade Flourishes." In that report, the GAO found that organizational difficulties between Federal agencies diluted our law enforcement efforts and that inconsistent and sometimes conflicting drug policies resulted in no clear overall direction to our drug enforcement activities. The 1979 report stated:

If any improvement is to be made in coordinating Federal drug control efforts, someone is needed who has a clear delegation of authority from the President to monitor activities and demand corrective activities.

A soon-to-be-released GAO report indicates that little progress has been made since the 1979 report. Only 16

percent of the marijuana and less than 10 percent of the heroin, cocaine, and dangerous drugs that are entering this country are seized through total drug enforcement efforts. The draft GAO report indicates that the Federal Government's fragmented system of drug enforcement and interagency competition has limited the effectiveness of drug interdiction efforts. The 1983 GAO report reaffirms its above-quoted recommendation of 1979 and further recommends that "the President make a clear delegation of responsibility to one group to monitor and evaluate activities (in drug law enforcement) and demand corrective actions."

The bill we are introducing today would simply codify the GAO recommendation and grant this responsibility to a new and unaligned executive branch official.

The bill also includes the provisions of two bills that I introduced in the 97th Congress. One provision, which is also aimed at fighting drug trafficking, would require that bail bonds for drug dealers and traffickers be set, at a minimum, at the street value of the drug seized at the time of arrest. The street value of the drug would be determined at the detention hearing at which bail would be set.

The drug dealer and trafficker is the linchpin in these smuggling operations. However, once apprehended the dealer or trafficker can often draw on larger financial resources to meet the bail bond imposed with very little effect on those resources. Once on the street, the dealer disappears or promptly returns to his former business. With this proposed legislation, we hope to end the outrageous flaunting of our bail bond system. We are proposing a realistic approach to insure that the purposes of the bail bonding system, assurance of appearance and protection of the community, are truly met.

The only constitutional right conferred by the bail provision of the eighth amendment is that bail not be excessive. Bail is not excessive when the amount set is reasonable under the circumstances to guarantee the appearance of the accused at trial. With large resources at his command, the dealer and trafficker can easily meet large bonds, even those in excess of \$1 million.

Mr. President, the struggle against drug smuggling has been long and expensive, and it will continue to be long and expensive until we begin to control aspects of this insidious traffic with practical and direct devices like those embodied in this proposed legislation.

Mr. President, in addition to the two provisions I have already discussed, as has been pointed out by the distinguished Senator from Rhode Island, this bill includes the Federal Diversion Act of 1983. This legislation was passed by the Senate on two occasions and permits the prosecutor's office to

have some procedure set up to divert certain offenders who are nonviolent offenders who have no record of past criminal participation. The concept is known as the "diversion project" in many States, including the State of Arizona, where it has been used most successfully. It has operated successfully in Michigan and several other States.

I hope the Judiciary Committee will give prompt attention to this entire package which has been introduced by the Senator from Rhode Island. It is long overdue.

We were most dismayed that the President vetoed the crime package that Congress passed in the waning days of the 97th Congress. It was the only major legislation dealing with crime and the prevention of crime that came out of the 97th Congress, and the President elected to veto it.

We are now seeking and searching for leadership. I hope the administration will look at this piece of legislation carefully and will reassess its objections to the Office of National and International Drug Operations and Policy. I think that if they will take the time to read the 1979 GAO report to Congress, entitled "Gains Made in Controlling Illegal Drugs, Yet, the Drug Traffic Flourishes," they will learn a lot about the coordination problems and will decide to support this legislation. The Senator from Rhode Island and 62 other Members of the Senate voted for this provision last September, and it also was passed by the House of Representatives.

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

S. 406

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 3146 of title 18, United States Code, is amended by adding at the end thereof the following: "Notwithstanding subsection (a), in a case that involves an offense for which a maximum term of imprisonment of ten years or more is prescribed 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 Public Law 96-350 (21 U.S.C. 955a), the judicial officer shall require the execution of a bail bond in an amount equal to or above the street value of the drugs seized incident to the arrest. The street value of the drugs shall be determined at a detention hearing by the judicial officer and subject to verification by expert testimony."

SEC. 2. Sections 2 through 8 of this Act may be cited as the "National and International Drug Operations and Policy Act of 1983".

SEC. 3. (a) The Congress hereby makes the following findings:

- (1) The flow of illegal narcotics into the United States is a major and growing problem.
- (2) The problem of illegal drug activity falls across the entire spectrum of Federal activities both nationally and internationally.
- (3) Illegal drug trafficking is estimated by the General Accounting Office to be an

\$80,000,000,000 a year industry in the United States.

(4) The annual consumption of heroin in the United States is in the range of four metric tons, and annual domestic consumption of cocaine is estimated to be sixty metric tons. Moreover, there are estimated to be about four hundred and ninety-two thousand known heroin addicts in the United States and about fifteen million cocaine users.

(5) Despite the efforts of the United States Government and other nations, the mechanisms for smuggling opium and other hard drugs into the United States remain virtually intact and United States agencies estimate that they are able to interdict no more than 10 to 15 per centum of all hard drugs flowing into the country.

(6) Such significant indicators of the drug problem as drug-related deaths, emergency room visits, and hospital admissions due to drug-related incidents, and addiction rates are soaring.

(7) Increased drug trafficking is strongly linked to violent, addiction-related crime and recent studies have shown that over 90 per centum of heroin users rely upon criminal activity as a means of income. It is estimated that between 40 and 60 per centum of all serious crimes that occurred in the United States in 1981 were drug related.

(8) Much of the drug trafficking is handled by organized crime networks and syndicates which results in increased violence and criminal activity because of the competitive struggle for control of the domestic drug market.

(9) Controlling the supply of illicit drugs is a key to reducing the crime epidemic confronting every region of the country.

(10) The magnitude and scope of the problem requires a Cabinet-level Director of National and International Drug Operations and Policy with the responsibility for the coordination and direction of all Federal efforts by the numerous agencies.

(11) Such a Director must have broad authority and responsibility for making management, policy, and budgetary decisions with respect to all Federal agencies involved in attacking this problem so that a unified and efficient effort can be made to eliminate the illegal drug problem.

(b) It is the purpose of this Act to insure—

(1) the development of a national policy with respect to illegal drugs;

(2) the direction and coordination of all Federal agencies involved in the effort to implement such a policy; and

(3) that a single, competent, and responsible Cabinet-level official of the United States Government, who is appointed by the President, by and with the advice and consent of the Senate, and who is accountable to the Congress and the American people, will be charged with the responsibility of coordinating the overall direction of United States policy, resources, and operations with respect to the illegal drug problem.

Sec. 4. There is established in the executive branch of the Government a Cabinet-level office to be known as the "Office of the Director of National and International Drug Operations and Policy" (hereinafter in this Act referred to as the "Office of the Director"). There shall be at the head of the Office of the Director a Director of National and International Drug Operations and Policy (hereinafter in this Act referred to as the "Director"). There shall be a Deputy Director of National and International Drug Operations and Policy (hereinafter in this Act referred to as the "Deputy Director") to assist the Director in carrying out the Director's functions under this Act.

Sec. 5. (a)(1) The Director and the Deputy Director shall be appointed by the President, by and with the advice and consent of the Senate. The Director and the Deputy Director shall each serve at the pleasure of the President. No person may serve as Director or Deputy Director for a period of more than four years unless such person is reappointed to that same office by the President, by and with the advice and consent of the Senate. The Director shall be entitled to the compensation provided for in section 5311, title 5, United States Code. The Deputy Director shall be entitled to the compensation provided for in section 5313, title 5, United States Code.

(2) Nothing in this Act or any other provision of law shall prohibit the appointment as Director or Deputy Director of any person whom the President has previously appointed, by and with the advice and consent of the Senate, to another Cabinet-level office. Any such person shall serve as Director or Deputy Director without compensation.

(b) The Director shall serve as the principal director and coordinator of United States operations and policy on illegal drugs.

(c) The Director shall have the responsibility, and is authorized to—

(1) develop, review, implement, and enforce United States Government policy with respect to illegal drugs;

(2) direct and coordinate all United States Government efforts to halt the flow into, and sale and use of illegal drugs within the United States;

(3) develop in concept with governmental entities budgetary priorities and budgetary allocations of entities of the United States Government with respect to illegal drugs; and

(4) coordinate the collection and dissemination of information necessary to implement United States policy with respect to illegal drugs.

(d) In carrying out his responsibilities under subsection (c) the Director is authorized to—

(1) direct, with the concurrence of the head of the agency employing such personnel, the temporary reassignment of government personnel within the United States Government in order to implement United States policy with respect to illegal drugs;

(2) procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for the grade of GS-18 of the General Schedule;

(3) accept and use donations of property from all government agencies; and

(4) use the mails in the same manner as any other department or agency of the executive branch.

(e) Notwithstanding any other provision of law, rule, or regulation to the contrary, the Director shall have the authority to direct each department or agency with responsibility for drug control to carry out the policies established by the Director consistent with the general authority of each agency or department.

(f) The Administrator of the General Services Administration shall provide to the Director on a reimbursable basis such administrative support services as the Director may request.

Sec. 6. The Director shall submit to the Congress, within nine months after enactment of this Act, and annually thereafter, a full and complete report reflecting United States policy with respect to illegal drugs, plans proposed for the implementation of such policy, and, commencing with the sub-

mission of the second report, a full and complete report reflecting accomplishments with respect to the United States policy and plans theretofore submitted to the Congress.

Sec. 7. For the purpose of carrying out this Act, there are authorized to be appropriated \$500,000 for fiscal year 1984, and such sums as may be necessary for each of the four succeeding fiscal years, to be available until expended.

Sec. 8. This title may be cited as the "Federal Diversion Act of 1983."

Sec. 102. The Congress finds and declares that:

(1) in the interest of operating the Federal criminal justice system efficiently, protecting society, and deterring individuals charged with violating criminal laws from future criminal acts can be served by creating alternatives to prosecution; and

(2) such alternatives can be accomplished in appropriate cases without losing the general deterrent effect of the criminal justice system.

Sec. 103. (a) Title 18 of the United States Code is amended by adding immediately after chapter 209 the following new chapter:

"CHAPTER 210—DIVERSION

"Sec.

"3201. Definitions.

"3202. Admission to diversion program.

"3203. Voluntariness of waiver of rights.

"3204. Inadmissibility of diversion information.

"3205. Constitution and dismissal of charges.

"3206. Termination; review; completion; withdrawal.

"3207. District panel.

"3208. Authority of the Attorney General.

"§ 3201. Definitions

"As used in this chapter, the term—

"(1) 'eligible individual' means any person against whom a prosecutable case exists for an offense against the United States where—

"(A) the alleged offense did not involve the threat or infliction of serious bodily injury to other persons;

"(B) it is reasonably foreseeable that the person will not commit violent acts if admitted to a diversion program;

"(C) the person has not exhibited a continuing pattern of criminal behavior;

"(D) the person meets the criteria established by regulations issued by the Attorney General and guidelines established by the attorney for the Government in the district where the indictment, information, or complaint is filed; and

"(E) the person is admitted to participation in a diversion program by the attorney for the Government in the district in which the indictment, information, or complaint is filed;

"(2) 'diversion program' may include, but is not limited to, medical, educational, vocational, social, and psychological services; corrective and preventative guidance, training, and counseling; provision for residence in a halfway house or other suitable place; other services designed to protect the public and benefit the individual; restitution to victims of the offense or offenses charged; and uncompensated service to the community;

"(3) 'diversion plan' means a written agreement, signed by the eligible individual, defense counsel, diversion administrator, and the attorney for the Government, that states those elements of a diversion program in which the eligible individual will participate to assure that he will lead a lawful life, and states the length of time required to complete the plan; but in no event shall a diversion plan exceed twelve months except

uary 2, 1983

CONGRESSIONAL RECORD — SENATE

allow the person admitted sufficient time to make restitution; and

"(4) 'diversion administrator' means a person designated by the Attorney General, after consultation with the district planning group, as administrator of the diversion program; except that in those districts in which a chief pretrial services officer has been appointed by a panel consisting of the chief judge of the circuit, the chief judge of the district, and a magistrate of the district (or their respective designees), the chief pretrial services officer shall also serve as the diversion administrator.

"§ 3202. Admission to diversion program

"(a) The diversion administrator or his assistants shall, to the extent possible, upon arrest or the issuance of a summons or as soon thereafter as possible, review the allegations against each person charged with a criminal offense against the United States and interview each person who he believes may be eligible for diversion. The diversion administrator shall then make a report to the attorney for the Government on the eligibility of each person charged. A person who has not had the allegations against him reviewed may request to be considered for admission by application to the diversion administrator. The attorney for the Government may require further investigation by the diversion administrator of a person being considered for admission with the consent of that person. If the attorney for the Government determines that a person is suitable, the diversion administrator shall prepare a diversion plan. Upon agreement of the attorney for the Government, diversion administrator, eligible person, and defense counsel about the elements of the plan, the attorney for the Government shall assign supervision of the plan to the diversion administrator. A determination of eligibility or suitability by the attorney for the Government shall not be subject to review except as otherwise provided by law.

"(b) The diversion administrator shall report to the attorney for the Government on the progress of the person in carrying out his plan in a manner and at times the attorney for the Government and diversion administrator deem appropriate and shall at the same time provide a copy of each such report to the person and defense counsel.

"§ 3203. Voluntariness of waiver of rights

"No person shall be admitted to a diversion program unless he has voluntarily agreed to participate and has received a copy of his diversion plan, and has voluntarily waived, in the presence of a judge or magistrate and with the advice of counsel (except in a case where counsel has been voluntarily waived), all applicable statutes of limitations and his right to a speedy trial for the period of diversion.

"§ 3204. Inadmissibility of diversion information

"Whenever a person is admitted to a diversion program and his diversion plan is later terminated or the person withdraws and prosecution is resumed, any statement made or other information given by the person in connection with the determination of his eligibility or suitability for the program, any statement made by the person while participating in an activity of the program, and any statement, report or other information concerning his participation in the program shall not be admissible against the person on the issue of his guilt of the offense that was the basis for diversion in any judicial proceeding in which he is accused of the offense. This section shall not be construed to limit the admissibility of any information for purposes of impeachment.

"§ 3205. Continuation and dismissal of charges

"In each case involving a person who is admitted to a diversion program under this chapter, the criminal charges against the person shall be continued without final disposition for the period agreed upon in the diversion plan, unless the admission is terminated, completed earlier, or the person withdraws pursuant to section 3206 of this chapter. Upon the expiration of the diversion period, the attorney for the Government shall file a dismissal with prejudice as provided in section 3206(C). Nothing in this paragraph shall be construed to limit further investigation of the offense charged or presentation of evidence to a grand jury during the diversion period.

"§ 3206. Termination; review; completion; withdrawal

"(a) If the attorney for the Government finds the person is not fulfilling his obligations under the plan, or has discovered facts previously unknown to him demonstrating that the person is not suitable for diversion, the attorney for the Government may resume prosecution. The attorney for the Government shall make a written statement of the factual basis for his determination to resume prosecution and transmit copies to the person and to defense counsel. The person and defense counsel shall thereafter be notified of their opportunity to appear before the attorney for the Government and the diversion administrator to contest the determination within a reasonable time as established by the Attorney General.

"(b) If the person fails to contest the determination of the attorney for the Government within the time specified, no further review of the determination shall be granted. If, on the appearance of the person and defense counsel before the attorney for the Government and the diversion administrator, the attorney for the Government determines that prosecution shall be resumed, the person may petition the court for review. If the court finds that no fact exists upon which the attorney for the Government could base a determination to resume prosecution, the court shall order that the person be allowed to fulfill his obligations under the plan or shall dismiss the charges if the court finds that all such obligations have been fulfilled. In a proceeding under the provisions of this subsection, evidence shall be admissible regardless of its admissibility in a trial on the offense.

"(c) If the diversion administrator certifies to the attorney for the Government at any time during the period of diversion that the person has fulfilled his obligations and successfully completed the plan, and if the attorney for the Government concurs, the attorney for the Government shall file, by leave of court, a dismissal with prejudice of the indictment, information, or complaint against the person.

"(d) A person participating in a diversion plan may withdraw at any time, and the attorney for the Government may resume prosecution.

"(e) Whenever a diversion plan is terminated or the person withdraws before completion of the plan and the prosecution is resumed resulting in a conviction, the court shall consider the length and nature of the defendant's participation in the plan and may credit such participation as time served toward any sentence of probation or incarceration.

"§ 3207. District panel

"(a) The panel established by section 3103 (b) of this title, together with the diversion administrator and such other individuals as the panel may appoint, shall constitute a diversion advisory committee. The panel may

appoint individuals representing agencies to which persons are referred under a diversion program pursuant to this chapter. The group shall plan the implementation of the diversion program for the district and review on a regular basis the administration and progress of such program. The group shall report to the Attorney General at times and in a manner as the Attorney General shall prescribe.

"(b) Members of the group shall not be compensated, but may be reimbursed pursuant to section 3208 for reasonable expenses incurred by them in carrying out their duties as members of the committee.

"§ 3208. Authority of the Attorney General

"(a) In carrying out the provisions of this chapter, the Attorney General shall—

"(1) reimburse agencies of the judicial branch of the Government for the cost of services of United States probation officers, pretrial service officers, and employees other than judges, magistrates, or Federal public defenders, necessary to carry out the purposes of this chapter;

"(2) employ and fix the compensation of such persons as he determines necessary to carry out the purposes of this chapter, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive services and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

"(3) acquire such facilities, services, and materials as he determines necessary to carry out the purposes of this chapter; and

"(4) enter into contracts and other agreements without regard to advertising requirements for the acquisition of such personnel, facilities, services, and materials which he determines necessary to carry out the purposes of this chapter.

"(b) In addition to the responsibilities described in subsection (a), the Attorney General shall—

"(1) issue, within one hundred and eighty days after the effective date of this section, regulations for use by the United States attorneys governing recommendations of persons to diversion programs;

"(2) conduct research and prepare concise annual reports for the President, the Congress, and the Judicial Conference showing the progress of all diversion programs in fulfilling the purposes set forth in this chapter;

"(3) provide for the audit of any funds expended under the provisions of this chapter other than funds expended to provide for defense counsel;

"(4) be authorized to accept voluntary and uncompensated services; and

"(5) promote the cooperation of the Department of Justice, local diversion programs, and all agencies which provide education, training, counseling, legal, employment, or other social services under any Act of Congress to assure that eligible individuals admitted to diversion programs can benefit to the extent possible."

(b) The table of chapters for title 18, United States Code, and for part II of title 18, United States Code, are each amended by inserting immediately after the item relating to chapter 209 the following:

"210. Diversion..... 3201."
Sec. 9. This Act shall be effective October 1, 1983.

By Mr. NUNN (for himself and Mr. CHILES):

S. 407. A bill to improve the enforcement of export administration laws, and for other purposes; to the Com-

S 920

CONGRESSIONAL RECORD — SENATE

February 2, 1982

Committee on Banking, Housing, and Urban Affairs.

S. 408. A bill to control the distribution of sensitive technical research reports, to protect technical data from theft under certain circumstances, and for other purposes; to the Committee on the Judiciary.

S. 409. A bill to limit the Freedom of Information Act to U.S. citizens and certain others; to the Committee on the Judiciary.

LEGISLATION TO HALT THE FLOW OF U.S. TECHNOLOGY ABROAD

Mr. NUNN. Mr. President, on behalf of myself and Senator CHILES, I am today introducing three bills designed to halt the flow of American high technology and defense secrets to the Soviet Union and other Communist bloc countries. The bills that I now propose in an attempt to blunt the Soviet's drive to acquire U.S. technology are entitled, "The Export Administration Enforcement Act of 1983," "The Technology Security Enforcement Act of 1983," and "The Citizens Information Act of 1983."

This legislative package is the outgrowth of extensive hearings held by the Senate Permanent Subcommittee on Investigations resulting from an 18-month investigation by the minority staff of the subcommittee under my direction as ranking minority member. In 5 days of hearings in May 1982, some 26 witnesses testified and 38 exhibits were received, resulting in a hearing record of more than 600 pages.

The central point of the staff investigation and subcommittee hearings was that the Soviet Union and its satellite states were unable to develop and manufacture sufficient quantities of high-technology equipment to support their military and industrial needs. As a consequence of this deficiency, we learned that the Soviets rely extensively on high technology from the United States and its major trading partners.

Information developed in the investigation indicated that the Soviets have made the acquisition of U.S. technology, both classified and unclassified, an important priority. Their effort to obtain American microelectronic, laser, radar, and precision manufacturing technologies is massive, well planned and well managed. The Soviets technology acquisition program has a high priority within the Kremlin and has been approved by senior Communist Party and government officials.

The testimony and evidence at the subcommittee hearings indicated that the Soviets are increasingly adept at obtaining American technical know-how, while all too often the U.S. response has been inadequate to the challenge. I must say, Mr. President, that this inadequate response has been bipartisan in nature. We are talking about a problem not just of this current administration but of prior administrations.

One of the first improvements the Government must make is to strengthen its intelligence capabilities. The way high-technology export controls are administered now, too many items are controlled, and because the Government tries to control too many commodities, it fails to keep track of those products the Soviets desire most. These bills I propose today should be the first step toward a greater awareness of the problem of coordinating our intelligence to respond to the specific thrusts of the Soviets acquisition scheme.

Through this legislation we call upon the President to respond to the current threat of Soviet technology acquisition by improving the way high-technology controls are currently administered. Frequently, the assertion was made at the hearings that the United States may be trying to control too many commodities. Because it tries to do too much, the Government actually ends up controlling fewer goods. An improved system of export regulations would focus on only those high-technology items the Soviets want and must have. Mr. President, that is what this legislation calls for. Through such a system, the number of controlled items would be reduced as the protection increases since the law enforcement response would not be spread as thin. At the same time, foreign commerce would improve with the elimination of the needless redtape and regulations.

Witnesses from the defense and intelligence communities testified that the Soviets view American technology as their own resources, to be utilized whenever needed. By relying on American technical development, the Soviets save time, resources, and tremendous amounts of research and development costs. If they used our technology to enhance the lives of their people, the problem would not be so serious. But what we have learned is that the Soviets devote very little of our technology to consumer products. Instead, they make military applications of it in virtually every instance. Little of it benefits the Soviet consumer or private citizen. This total emphasis upon their war-making capabilities forces us to upgrade our own military capability. Like a "Catch-22," we thereby end up competing with our own technology.

Mr. President, this vicious and costly circle must be broken. The three bills I now introduce can play a significant role in breaking such a vicious circle.

The thrust of the first bill I propose today, the Export Administration Enforcement Act of 1983, is to correct some of the problems now facing the U.S. law enforcement community in its attempt to check the illegal flow of high technology. It amends the Export Administration Act of 1979 in certain specific areas that our investigation showed were critical for improvement of our law enforcement response.

Specifically, the bill makes unlawful the possession, or attempted possession, of restricted technological goods with an intent to export those goods. Hearing evidence established the many difficulties law enforcement authorities encounter in the prosecution and investigation of export offenses. One of the main problems lies in the absence of any criminal offense until a suspect actually "exports" the technology in question. This part of the legislation would finally give the criminal law enforcement community a realistic tool to fight the criminal exporter who utilizes all of the advantages of our highly mobile 20th century to evade detection and apprehension.

Second, this bill would transfer the criminal enforcement component of the Export Administration Act from the Department of Commerce to the Customs Service. The Department of Commerce presently maintains primary law enforcement responsibility, with secondary jurisdiction resting in the Customs Service. However, evidence developed at the hearings, and through the detailed minority staff investigation, revealed a lack of traditional law enforcement capabilities at the Department of Commerce. These include shortages in manpower, equipment, fundamental law enforcement training, and experience.

It was the finding of the minority staff of the Permanent Subcommittee on Investigations that the national security implications of enforcement of the Export Administration Act are too important to be entrusted any longer to the Commerce Department as presently organized. For three decades this important enforcement function has resided with the Commerce Department. Three decades is sufficient time to allow reasonably capable officials to perfect the most challenging task. But in this case, after three decades, serious procedural and operational problems still exist in the Commerce Department.

Mr. President, the evidence strongly suggests that the Commerce Department to date has been unable to enforce the Export Administration Act in the face of mounting Soviet efforts to secure sensitive American technology. This bill would place the enforcement of this most serious defense of our Nation's security in the Customs Service which has established a noteworthy track record in their enforcement of the similar Arms Export Control Act and other criminal statutes.

Additionally, this bill broadens the enforcement tools currently available to the U.S. Customs Service. It gives our customs officers the express authority for warrantless arrest and search and seizure in cases of outbound cargo and persons where they have reasonable cause to believe high technology is about to be smuggled out of the country. I should emphasize that this new section is equivalent to