U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 27, 2004

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This presents the views of the Department of Justice on H.R. 3036, the "Department of Justice Appropriation Authorization Act, Fiscal Years 2004 through 2006," as passed by the House of Representatives. We support reauthorization of the programs and activities of the Department of Justice and therefore, subject to the concerns noted below, support enactment of H.R. 3036. We have organized our comments to correspond with the titles of the bill.

Title I – Authorization of Appropriations

Section 101 of the bill would authorize appropriations for the Department of Justice for fiscal year (FY) 2004. Inasmuch as funds have already been appropriated for the remainder of FY 2004, we suggest that this section be amended to conform to the FY 2004 budget, as enacted. The following amounts would need to be inserted in lieu of the amounts currently in the bill: Antitrust Division - $133,133,000; Federal Prison System - $4,858,957,000; Fees and Expenses of Witnesses - $8,000,000 for the construction of protected witness safesites; and Interagency Crime and Drug Enforcement - $556,465,000. We also recommend the deletion of various "earmarks" in this section (*i.e.*, those contained in paragraphs (3), (4)(B), (7)(B) and (10) and the proviso in paragraphs (7)(C)). In addition, in paragraph 4(A) we recommend that "not less than $4,000,000" be replaced with " "such sums as may be necessary," in order to ensure that adequate funds remain available for this important purpose (*i.e.*, the investigation and prosecution of denaturalization and deportation cases involving alleged Nazi war criminals).

Moreover, section 101(2), authorizing appropriations for the Office of the Pardon Attorney, uses the phrase "for administration of pardon and clemency petitions" (as do sections 102(2) and 103(2)). "Clemency" is an umbrella term applicable to pardons, commutations (reductions) of sentence, and remissions of a monetary penalty (such as fine or restitution). We recommend editing this phrase to refer either to the "administration of clemency petitions" or to the "administration of pardon and commutation petitions."

Sections 102 and 103 would authorize specific amounts for the Department's programs and activities for FY 2005 and FY 2006. With respect to FY 2005, we suggest that section 102 be amended to conform to the amounts requested in the President's budget and budget amendments submitted to Congress on July 14, 2004: Federal Detention Trustee - $1,088,810,000; Legal Activities Office Automation - $45,510,000; United States Marshals Service - $742,070,000; Office of Inspector General - $63,813,000; and Bureau of Alcohol, Tobacco, Firearms and Explosives - $870,357,000. In paragraph (22) the following administrative expenses amounts should be substituted: Office of Violence Against Women - $10,473,000; and COPS Oriented Policing Services - $27,914,000. In addition, a new paragraph (24) should be added, as follows: "(24) Foreign Terrorism Tracking Task Force.-- For the Foreign Terrorism Tracking Task Force - $56,349,000." Further, under paragraph (12), referring to "Fees and Expenses of Witnesses," the language should be modified to make available "not to exceed $8,000,000" for construction of protected witness safesites. Because the President's budget for fiscal year 2006 has not been presented, we recommend that section 103 simply authorize appropriations of "such sums as may be necessary." As above, we recommend that the specified earmarks and provisos in sections 102 and 103 be amended or deleted.

In addition, subsections 102(2) and 103(2), authorizing appropriations for the Office of the Pardon Attorney, uses the phrase "for administration of pardon and clemency petitions" (as does subsection 101(2)). For the reasons noted above with respect to section 101, we recommend editing this phrase to refer either to the "administration of clemency petitions" or to the "administration of pardon and commutation petitions."

Title II - Improving the Department of Justice's Grant Programs

Subtitle A - Improving the Department of Justice's Grant Programs

Section 201 would create the Edward Byrne Memorial Justice Assistance Grant ("Byrne JAG") Program by merging the current Edward Byrne Memorial State and Local

Law Enforcement Assistance ("Byrne Grant") Programs and the current Local Law Enforcement Block Grant ("LLEBG") Program. The Department strongly supports this section as written, with three changes.

First, to ensure the ability to incorporate new information about emerging crime trends into the grant formula, the Department would prefer that this legislation not specify a formula for the allocation of the Byrne grant funds among States and localities. Instead, the inclusion of a provision for the periodic establishment of a formula by regulation would be preferable to the formula included in proposed new 28 U.S.C. § 500.

Second, to ensure that references to the current Byrne Grant Programs and LLEBG Program in laws, regulations, documents, papers, or other records of the United States are understood to apply to the proposed new Byrne JAG program, proposed new 28 U.S.C. § 500(b) contains a savings provision. To ensure that specific references to the Byrne Grant allocation formula in such laws, regulations, documents, papers, and other records are understood to apply to the analogous formula in the Byrne JAG program, new section 500(b) should be amended by inserting:

> ", and any reference therein to the current section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3765) shall be deemed to be a reference to section 505(a) of that Act (as amended hereby)"

immediately before the period.

Third, at present, grantees are prohibited from using LLEBG funds to buy (among other things) tanks, armored personnel carriers, fixed-wing aircraft, limousines, yachts, and vehicles not primarily used for law enforcement. However, such recipients may use LLEBG funds to purchase police cruisers, police boats, and police helicopters. As currently written, proposed new 42 U.S.C. § 3751(d)(2)(A) would forbid grantees from using Byrne JAG funds to purchase such cruisers, boats, and helicopters, a result that appears to be inconsistent with proposed new 42 U.S.C. § 3751(a)(2). Accordingly, we recommend that proposed section (d)(2)(A) be amended to state: "(A) vehicles (other than police cruisers), vessels (other than police boats), or aircraft (other than police helicopters);"."

Subtitle B - Building Community Capacity to Prevent, Reduce, and Control Crime

Section 211 would establish an Office of Weed and Seed Strategies and authorize the Weed and Seed Program. The Department strongly supports this section, with the exception of embedded section 104(e)(2)(A), which would reserve "for Seeding

activities" "not less than 40 percent" of each Weed and Seed grant. As section 211 makes clear, the very purpose of the Weed and Seed Program is to bring resources from communities and government together in co-ordinated fashion, by fighting crime ("weeding") and by promoting community-building ("seeding"). There are multiple sources of support for "seeding activities" within the Federal government, including the Departments of Health and Human Services, Education, Commerce, and Transportation. In sharp contrast, little if any "weeding" funding is available from any Federal government source outside the Department of Justice. Accordingly, to mandate a minimum percentage of relevant Justice Department appropriations to "seeding" could impair the "weeding" element of the program. Consequently, embedded section 104(e)(2)(A) should be amended by replacing "not less than 40 percent" with "not more than 40 percent."

Subtitle C - Assisting Victims of Crime

Section 222 would make certain changes to the Victims of Crime Act of 1984. We support these changes. However, we urge consideration of an additional amendment to the Act. Nearly all appropriations to OJP for assistance typically are made without fiscal year limitation. The primary exception to this general rule has been appropriations from the Crime Victims Fund, which have a one-year character. Practically all appropriations from that Fund are allocated pursuant to mandatory statutory formulae and set-asides and can be obligated before the end of each fiscal year. The only problems occasioned by the one-year character of the funds arise with respect to certain reserved amounts whose expenditure is left by statute to the discretion of the Director of OJP's Office for Victims of Crime. With respect to the antiterrorism reserve, the 21st Century Department of Justice Appropriations Authorization Act (Pub. L. No. 107-273) amended the law to permit funds in that reserve to be carried over from year to year until expended. A similar solution is necessary, however, with respect to the Director's *other* discretionary funds (including funds for services to victims of Federal crimes, and funds for child victim services in Indian Country). Accordingly, the Department proposes language (below) that would put these other, limited, discretionary funds on the same general footing as the antiterrorism reserve funds. The proposed language would allow the Director greater flexibility to encourage diverse grant proposals, and to retain adequate funding to respond – quickly and in targeted fashion – to immediate and unforeseen victim needs (such as those arising from school shootings), as warranted. The Director needs authority to be able to maximize use of his other discretionary funding for immediate emerging victim needs, and the Department's proposed language

would provide it, by enabling him to make maximum use of the flexibility afforded by his discretionary funds. To this end, the Department recommends the following change:

Amend § 222, by adding a new paragraph (4) as follows:

"(4) AUTHORITY TO CARRY OVER CERTAIN AMOUNTS FROM YEAR TO YEAR.– Subsection (d)(5)(C) of such section is amended by inserting after 'subparagraph (A)' the following: ', and amounts made available by law for obligation pursuant to sections 1402(g) and 1404(c) but remaining unobligated at the end of a fiscal year,'."

Section 224 would make certain welcome changes to authorities relating to OVW grant programs. The Department supports these changes, with the following recommendations for improvement:

Subsection 224(a) is designed to expand the purpose provisions of the Violence Against Women formula grant program. To avoid potential confusion, the Department recommends replacing "following: "to develop"" with "following: ", to develop"".

Subsection 224(e) would amend current law to prevent government grantees from requiring criminal justice co-operation or law enforcement reporting as a prerequisite for forensic exam payment. The Department is concerned that, as currently drafted, the subsection may not be fully successful in effecting this purpose. The amendment contained in the subsection provides that "[n]othing in this section shall be construed to require a victim of sexual assault to participate in the criminal justice system . . ." The larger problem at present, however, is not that government grantees understand the current statutory grant program language as *requiring* victim cooperation, but that they understand it to *allow* them to require such cooperation. For this reason, the Department recommends inserting "or to allow a State or Indian tribe to require" after "shall be construed to require" in the subsection (d) added by subsection 224(e).

Additionally, in keeping with section 210 of H.R. 3214 (the "Advancing Justice Through DNA Technology Act of 2003"), as passed by the House of Representatives, which was supported by the Administration, the Department recommends that section 224 be amended by adding a new subsection (g) as follows:

(g) TRIBAL COALITION GRANTS

(1) Section 2001 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg) is amended by adding at the end the following:

"(d) TRIBAL COALITION GRANTS – (1) PURPOSE- The Attorney General shall award grants to tribal domestic violence and sexual assault coalitions for purposes of–

"(A) increasing awareness of domestic violence and sexual assault against Indian women;

"(B) enhancing the response to violence against Indian women at the tribal, Federal, and State levels; and

"(C) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to Indian women victimized by domestic and sexual violence.

"(2) GRANTS TO TRIBAL COALITIONS- The Attorney General shall award grants under paragraph (1) to–

"(A) established nonprofit, nongovernmental tribal coalitions addressing domestic violence and sexual assault against Indian women; and

"(B) individuals or organizations that propose to incorporate as nonprofit, nongovernmental tribal coalitions to address domestic violence and sexual assault against Indian women.

"(3) ELIGIBILITY FOR OTHER GRANTS- Receipt of an award under this subsection by tribal domestic violence and sexual assault coalitions shall not preclude the coalition from receiving additional grants under this title to carry out the purposes described in subsection (b)."

(2) Notwithstanding any amendment thereto made in this Act, section 2007(b)(4) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-1(b)(4)) is amended to read as follows:

"(4) 1/54 shall be available for grants under section 2001(d)."

Finally, the Department recommends that section 224 be amended to establish a statutory authorization for OVW to use appropriated funds to provide technical assistance by adding a new subsection (f) as follows (existing subsection (f) should be redesignated as new subsection (h)):

(f) TECHNICAL ASSISTANCE.–Section 2002 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-0) is amended by adding at the end a new subsection as follows:

"(d) Notwithstanding any other provision of law, and except when a higher percentage or greater amount is authorized by statute to be set aside or expended for the same expenses, not to exceed seven percent of all appropriations made available to the Office in each fiscal year for the purpose of making grants may be set aside for necessary expenses of the Office related to evaluation, training, and technical assistance."

Subsection 225(a)(3) is intended to define the term "sexual assault" for purposes of the OVW Arrest Program. The Department welcomes this effort but is concerned that, as currently drafted, the provision may not be fully successful in effecting this purpose, because it amends a definitions provisions that does not apply to the entire program. To ensure that the Arrest Program definition applies to the entire program, the Department recommends – *first*, that subsection (3) be amended to read as follows: "(3) by deleting subsection (d); and"; and *second*, that a new subsection be added at the end of section 225 as follows:

(d) DEFINITIONS.- Section 2105 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796hh-4) is amended–

(1) by redesignating subsection (3) as (4); and

(2) by replacing subsection (2) with the following:

"(2) the term 'protection order' has the meaning given the term in section 2266 of Title 18, United States Code;

"(3) the term 'sexual assault' has the meaning given the term in section

2008; and".

Subsection 226(b) contains very welcome language that would make all of the regular reports to Congress from OVW due biennially (rather than annually) and on a consistent schedule. Two reports from that Office, however (one specified in the Higher Education Amendments of 1998 and another specified in the recently-enacted PROTECT Act), were not included, and thus would remain due to Congress annually. The Department recommends making these reports biennial and putting them on the same schedule as the other reports. This could be accomplished by adding to section 226 of the bill new subsections (c) and (d) as follows:

(c) Section 826(d)(3) of the Higher Education Amendments of 1998 (20 U.S.C. 1152(d)(3)) is amended by replacing the matter from "Not" through and including "under this section" with "Not later than one month after the end of each even-numbered fiscal year".

(d) Section 40299(f) of the Violence Against Women Act of 1994 (42 U.S.C. 13975(f)) is amended by replacing "shall annually prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that contains a compilation of the information contained in the report submitted under subsection (e) of this section." with 'shall prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that contains a compilation of the information contained in the report submitted under subsection (e) of this section not later than one month after the end of each even-numbered fiscal year.".

It also would be helpful to clarify that the Safe Havens for Children report needs to contain information only about Safe Haven for Children grantees. As currently written, the statute appears to impose a requirement that the report for the Safe Havens program also include certain national data about supervised visitation centers, which data can be obtained only by a national survey. Although OVW currently is conducting a survey for its next Safe Havens report, it would entail a significant burden to have this survey conducted every two years. Accordingly, the Department recommends amending section 226(b) by inserting the following after "is amended":

by striking "(A) the number of— (i) individuals served" and inserting "(A) under this section, (i) the number of victims served". Additionally, such section 1301(d)(1) is

amended".

Subtitle E - Other Matters

Section 241(d), by its operative terms, would provide the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") with the same undercover-operations authorities currently available by statute to the Justice Department's Federal Bureau of Investigation ("FBI") and Drug Enforcement Administration ("DEA"). We strongly support such a provision. Unfortunately, however, the subsection's incorrect heading, and an inaccurate parallel citation contained within the subsection itself, appear to suggest that only the audit and reporting provisions applicable to the FBI and DEA undercover operations (as opposed to the authority to conduct the operations themselves) would be applied to ATF undercover operations. For this reason, we recommend striking "AUDITS AND REPORTS ON" in the subsection's heading, as well as "(28 U.S.C. 533 note)" the first place it appears within the subsection itself.

Section 247 would amend current law to allow the Marshals Service to pay for prisoner medical costs at the Medicare rate and would lift the burdensome requirement that it pay the lesser of the Medicare or Medicaid rate. We strongly support this provision. This change is critical to the continued success of the Marshals' prisoner medical cost containment program.

Using national Medicare rates, the Marshals Service has been able to achieve a medical savings of $89.9 million from fiscal year 2002 to the present. Forced implementation of a 50-State Medicaid structure would result in a substantial loss of medical specialists, a decline in the quality of medical care provided to prisoners, and a substantial increase in medical guard costs.

Section 248 would establish a new "Office of Audit, Assessment, and Management" within OJP. The Office would be "the exclusive element of the Department of Justice, other than the Inspector General," with responsibility for monitoring compliance with any OJP grant program or "[a]ny other grant program carried out by the Department of Justice that the Attorney General considers appropriate."

We have four suggestions to improve the language of section 248, as follows:

First, embedded section 105 contains several references to "performance audits."

To avoid conflict with the law and regulations relating to the auditing activities of the Inspector General and the Comptroller General (particularly given the exclusivity provision contained at embedded section 105(a)(3)), the Department strongly recommends that all such references be changed to "program assessments," a term that would cover the assessments, both programmatic and financial that appear to be what is actually contemplated by the provision as it is currently drafted. Second, we also recommend that the name of the Office be changed to the "Office of Assessment and Management."

Third, embedded section 105(f), as currently drafted, provides that "[n]ot to exceed 5 percent of all funding made available for a fiscal year for the programs covered by subsection (b) shall be reserved for the activities of the Office of Audit, Assessment, and Management as authorized by this section." We appreciate the apparent intent of this proposed funding mechanism and believe it would be consistent with a key part of the President's Management Agenda: to ensure that performance is routinely evaluated and considered in government funding and management decisions, and that government programs achieve expected results and work toward continual improvement. We would prefer, however, that the funding be capped at a more reasonable 3 percent (a 40 percent reduction).

Finally, to ensure that the identified funds will be used only for the purposes described in embedded section 105 (which appears to be the intention of subsection (f)), we recommend that the language reserving funds for the activities of the Office, "as authorized by this section," be amended to permit the use of funds "for the activities authorized by this section."

Section 249 would establish a Community Capacity Development Office to provide training and technical assistance to improve and build the capacity of community elements to participate in Justice Department grant programs. The Department strongly supports this provision but recommends a clarifying amendment to embedded section 106(e), which as currently written, makes certain funds available "for the activities of the Community Capacity Development Office." To ensure that the identified funds be used only for the purposes described in embedded section 106 (which appears to be the intention of subsection (e)), the Department recommends that the quoted text be replaced with "for the activities authorized by this section." In addition, our comments about funding of the new Office that would be established by section 248 apply here, as well, to embedded section 106(e).

Section 250 would create an Office of Applied Law Enforcement Technology within OJP. The Department strongly supports the concept of having a single unit within the Department responsible for coordinating the acquisition of applied law enforcement technology pursuant to its myriad grant programs. To ensure that this new component benefits from the research and evaluation efforts of the Department's National Institute of Justice, however, the Department strongly recommends that it be established as a division of NIJ's Office of Science and Technology, rather than as a separate office. This change would create a forceful and proactive element working across the Department to set minimum information technology standards for equipment and software – especially for interoperability equipment and other communication tools – purchased under the various broad grant options. The linkage between research and setting standards is vital, particularly as standards set often have a broader application than the immediate need being addressed, and NIJ is in the best position by far to oversee this endeavor. Additionally, the Department recommends inclusion of some illustrative examples of "crime reporting programs administered by the Department," for clarification purposes. Accordingly, the Department recommends the following changes:

At embedded section 107,

(I) in the heading, strike "OFFICE" and insert "NATIONAL INSTITUTE OF JUSTICE, OFFICE OF SCIENCE AND TECHNOLOGY, DIVISION";

(ii) in subsection (a),

(A) strike "the Office an Office" and insert "the Office of Science and Technology of the National Institute of Justice a Division";

(B) strike "Director" and insert "person";

(C) strike "the Office shall" and insert "the Division shall"; and

(iii) in subsection (b),

(A) strike "the Office, the Director" and insert "the Division, its head"; and

(B) insert ", such as the Uniform Crime Reports or the National Incident-Based Reporting System" after "Department".

Section 251 would add a new section 108 to part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968. This new section would establish certain general time limits on the availability of Justice Department grant funds. The Department strongly supports the expeditious awarding of grant appropriations, which appears to be the intention of this provision. Unfortunately, this provision would cause great confusion and severely limit the flexibility that is necessary in making awards under grant programs, given the disparity of fiscal years among the plethora of jurisdictions across the country and the need occasioned by many grants for significant ramp-up activities (including activities necessary to meet eligibility requirements) before grant funds may be awarded. This is particularly the case, given that the provision offers no leeway for circumstances where there may be legitimate cause for extensions of time. Under the circumstances, the Department believes that potentially could have a significant detrimental effect on Federal assistance to State, local, and tribal governments, and to non-profit grantees. For these reasons, we recommend that the provision be stricken. Alternatively, we strongly recommend the deletion of the last sentence of proposed new subsection 108(b), which, as currently written, would have the practical effect of rescinding nearly all deobligations and causing them to revert to the Treasury - a result directly at odds with new proposed subparagraph 108(a)(3).

Section 253 would reauthorize the use of Community Oriented Policing Services (COPS) grants for hiring law enforcement officers, providing law enforcement equipment, and addressing interoperable communications needs of State and local law enforcement agencies. The Administration's budget proposes to consolidate the current COPS hiring grants, the Byrne program, and the Local Law Enforcement Block Grant program into Byrne Justice Assistance grants, which would give law enforcement greater flexibility to address local priorities, such as equipment, training, or staffing. In addition, the Administration believes that interoperable communications assistance should be administered by the Department of Homeland Security.

Section 254 would make several welcome changes to the Public Safety Officers' Benefits ("PSOB") Program, and, with two changes, we strongly support it.

The *first* change relates to a serious administrative problem unintentionally occasioned by one detail of a provision of the Mychal Judge Police and Fire Chaplains

Public Safety Officers' Benefit Act of 2002 (Public Law 107-196) (the Judge Act), to the great detriment of the beneficiaries of fallen public safety officers. Among other things, the Judge Act provides that, in cases where a public safety officer dies without a spouse or eligible children, the PSOB benefit is to be paid to the individuals on the officer's most recently executed life insurance policy, rather than to his parents (who would have been the beneficiaries under prior law). Unfortunately, the Judge Act, which the Administration strongly supported and supports, has proven extraordinarily difficult to administer in one respect, because it is all but impossible to determine what a fallen officer's "most recently executed life insurance policy" might be, without knowing what the universe of potential policies is. (For example, the Judge Act does not require that the "most recently executed life insurance policy" actually be in effect at the time of the fallen officer's death.) Given the inherent uncertainty as to whether a fallen public safety officer had "executed" one or more "life insurance polic[ies]," and, if so, whether any policy presented to OJP is the "most recently executed" policy, life-insurance beneficiaries have been afforded a one-year period in which to present their claims and then leave it to the Department to decide which such beneficiaries (if any) may be entitled to recover from the program. In several cases, where, by all accounts, there were no life insurance policies, we have been forced to withhold payment from the fallen officer's otherwise eligible parents (parents who may have been economically dependent on the fallen officer) for a full year because of the possibility that someone might appear and claim to be an insurance beneficiary under a current or expired life insurance policy.

Additionally, it is not at all clear that the premise that informs this aspect the Judge Act – that the beneficiaries under a fallen officer's "most recently executed life insurance policy" are the persons the officer would have desired to receive the PSOB Program death benefit – is accurate. Life insurance can be and is obtained often under widely varying circumstances, such as the purchase of airline tickets, the opening of bank accounts, pursuant to divorce decrees, wholly removed from the concrete contemplation of estate planning or the selection of a PSOB beneficiary. For example, currently pending before the Department is the case of a hired farmhand, the beneficiary of a very small life insurance policy purchased by the generous fallen officer who owned the farm. No evidence has been presented to suggest that the fallen officer intended the farmhand, rather than the officer's family (or some designated beneficiary), to receive the PSOB death benefit, as the Judge Act apparently will require.

Taking all these considerations into account, the House of Representatives included section 254(d) in the bill. Section 254(d) corrects one aspect of the serious

administrative problems associated with the Judge Act, but leaves the rest of those administrative problems untouched. To enhance the operation of the Judge Act by correcting all such administrative problems, and to ensure that the purposes of the Judge Act are not defeated unintentionally, we strongly recommend amending section 254(d) by inserting "*on file at the time of death with such officer's public safety agency, organization, or unit*" after "*policy*" in embedded subparagraph (4)(B). Pursuant to this change, any officer who wished to designate a beneficiary to receive the PSOB Program death benefit instead of his parents could do so easily (in fact, more easily than at present), without being required to purchase life insurance as a proxy for making such a designation. This change also would further the purposes of the Judge Act ensuring that the PSOB beneficiary would be the person actually selected by the fallen officer for that purpose, rather than a person who by happenstance was the beneficiary of the most recently executed policy. Finally, this change would enable the Department quickly to determine whether the fallen officer in fact did leave such a designation of beneficiary or policy. If so, the Department would be able to provide that beneficiary with the benefit promptly. If not, the Department would be able to provide the benefit to the fallen officer's parents without further delay.

The *second* change relates to the Department of Justice's authority to act in cases where an additional beneficiary presents a valid claim after the full amount of the PSOB Program benefit has been paid. Under current law, the Department is obligated in these cases to collect from the other beneficiaries in order to pay the additional beneficiary the amount he is entitled to under the PSOB statute. This problem arose, for example, with the Judge Act when, as of the date of its enactment (June 24, 2002), the Department already had paid all claims arising from the September 11th attacks in which the officer died without children or spouse. Because the Judge Act retroactively covers claims on deaths occurring on or after September 11, 2001, the Department received several claims from individuals who were named on life insurance policies of fallen officers. After enactment of the Judge Act, the parents of several fallen officers, who had already received the PSOB Program benefit, no longer were eligible beneficiaries (*i.e.*, the Judge Act made their entitlement to the PSOB Program benefit subordinate to the claims of that Act's insurance claimants). Because the PSOB Act provides for only *one* death benefit per fallen officer (which is divided according to the statute among all the members of the eligible class of beneficiaries), the practical effect of the Judge Act's retroactivity provisions was to strip these parents of their PSOB entitlement and transform the payments honestly made to and received by them into debts subject to collection by the federal government.

This "additional beneficiary after the benefit already has been paid" problem arises in other contexts as well. For example, in a recent case involving a fallen officer of September 11th, the full amount of the benefit was paid to his surviving spouse and four children, but a valid claim now has been filed on behalf of an illegitimate child of the officer's. Under current law, that child (of whom the Department knew nothing until long after the PSOB Program benefit had been paid) is entitled to a statutory share of the benefit, but, under the circumstances, the benefits already paid out are subject to collection to the extent of that child's statutory share. In another case currently before the Department, evidence has been presented -- payment of the full PSOB Program benefit already having been made -- that one of the fallen officer's children (who did not receive a statutory share) was a full-time student at the time of the officer's death and accordingly *is* entitled (despite earlier appearances) to a statutory share of the benefit. Here again, the benefits already paid out are subject to collection to the extent of that child's statutory share.

The House of Representatives was aware of the problems occasioned by the retroactivity provisions of the Judge Act and sought to correct them by including section 254(c) in the bill, which would create a new section 1201(k). (Because the PSOB Act recently was amended, at very least embedded section 1201(k) should be redesignated.) As currently written, section 254(c) of the bill would correct the double/payment/debt-collection problem associated with those retroactivity provisions, but it would*not* address the identical problems that arise in non-Judge Act cases. For this reason, the Department strongly recommends that bill section 254(c) be amended by replacing embedded section (k) with the following:

"(m) The Bureau may suspend or end collection action on an amount disbursed pursuant to a statute enacted retroactively or otherwise in error under subsections (a) or (c), where such collection would be impractical, or would cause undue hardship to a debtor who acted in good faith.".

Title III - Miscellaneous Provisions

Section 304 would require each component of the Department to use only facilities that do not require a payment to a private entity for predominantly internal training or conference meetings "unless specifically authorized in writing by the Attorney

General."[1] The Attorney General would be required to report annually to Congress on the details of each training and conference meeting that is authorized to use a private facility.

Section 304 would have a dampening effect on the Department's ability to periodically conduct training conferences and related meetings. Federal training capacity is limited, and the training facilities available to Department of Justice components have traditionally had serious capacity issues (e.g., at the National Advocacy Center and the Federal Law Enforcement Training Center). Moreover, we are not certain that a provision encouraging the Department to conduct all training in Federal facilities would have the desired effect of reducing the costs of training. Additionally, in some cases (for example, in the case of the Bureau of Prisons), our components have negotiated excellent room rates and conference facility prices. For all of these reasons, we oppose this provision and suggest its deletion.

Section 305 would require the Attorney General to designate a "senior official" within the Department of Justice (the "Department") "to assume primary responsibility for privacy policy." This section also outlines several specific requirements for the Department in managing its responsibilities related to privacy.[2] Privacy, to be sure, remains a *top* priority for the Attorney General, and protecting citizens' privacy rights is crucial to the Department's role in ensuring that justice is administered fairly, consistently, and responsibly. Although we have concerns with some specific parts of the provision as it is currently written, subject to our comments and proposed changes below, we have no objection to what we believe to be the aims of section 305. Indeed, as we understand it, this provision for the most part would simply codify the Department's current privacy efforts and responsibilities.

First, our understanding of section 305 is that it *would not* mandate the centralization of the wide range of the Department's functions that fall under the general rubric of "privacy policy," including particular activities that routinely are undertaken

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[1]We assume that the Attorney General's responsibility to make a written certification could be delegated.

[2]We note that sections 305(a) and (b)(1) - (5) are modeled closely on section 222 of the Homeland Security Act of 2002 (Pub. L. No. 107-296) (6 U.S.C. § 143) ("HSA"). Sections 305(b)(6) - (7) and (c) have no counterparts in the HSA, however.

under the Privacy Act of 1974, 5 U.S.C. § 552a, as explained below.

Currently, the privacy functions of the Department are strategically managed by officials in three distinct offices: (1) the Office of the Deputy Attorney General ("ODAG"); (2) the Office of Information and Privacy ("OIP"); and (3) the Office of General Counsel and the Management and Planning Staff of the Justice Management Division ("JMD"). Specifically, an Associate Deputy Attorney General – designated by the Attorney General as the Department's Chief Privacy Officer – holds responsibility within the Department for the management of policy matters on personal privacy generally. Matters pertaining to the Department's compliance with statutory requirements of the Privacy Act, on the other hand, are coordinated by appropriate staff within JMD and OIP. Thus, for example, reports on Privacy Act compliance are prepared by JMD (in coordination with OIP) based upon efficient existing channels of communication with the Department's 39 components. Matters implicating broader policy issues are coordinated throughout the Department by ODAG, which in recent years has placed increased priority on privacy-related matters. This current structure is both efficient and appropriately tailored to meet the unique needs of the Department. Therefore, assuming, as we do, that section 305 is not intended to disrupt our current methods of doing business, including existing annual reporting requirements, we have no overall objection to it.

Second, section 305(b)(6) would require that the official designated by the Attorney General ensure "that the Department protects personally identifiable information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction. . . ." The provision then goes on to specify, in subparagraphs (A) - (D), various objectives that the Department's designated privacy official is to attempt to achieve in protecting "personally identifiable information and information systems from unauthorized access, use, disclosure" and the like. We question the need for this provision. As currently drafted, it is vague, confusing, and ambiguous. At a minimum, subparagraphs (A) - (D) should be deleted. We would welcome an opportunity to discuss this provision with you in greater detail.

Third, subsection 305(b)(7) appears to be premised on mistaken assumptions about the administration of privacy policies and related matters. We therefore propose that subsection 305(b)(7) be deleted from the bill. Subsection 305(b)(7), for instance, premises that the Attorney General has a role in overseeing "information security" for "Federal Government information systems," which is not the case. Under the Privacy

Act of 1974, in particular, government-wide policy authority is vested in the Director of OMB, *see* 5 U.S.C. § 552a(v). *See also* OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002 (Sept. 29, 2003). If the Committee retains this provision, we suggest that it be amended to read, as follows: "(7) advising the Attorney General on privacy issues pertaining to Department information systems."

In conclusion, while we have no objection to the overall aim of section 305, which we believe would be a codification of our current efforts and responsibilities, we do have some concerns with specific parts of the provision. We look forward to working with the Congress to maximize the practicality and effectiveness of this provision.

Section 306 of the bill includes language requiring the Director of the Executive Office for United States Trustees to report to the Congress annually on:

> "(1) the number and types of criminal referrals; (2) the outcomes of each criminal referral; (3) for any year in which the number of criminal referrals is less than for the prior year, an explanation of the decrease; and (4) the United States Trustee Program's [the Program] efforts to prevent bankruptcy fraud and abuse, particularly with respect to the establishment of uniform internal controls to detect common, higher risk frauds, such as a debtor's failure to disclose all assets."

We believe that a statutory reporting requirement is unnecessary and therefore oppose Section 306.

The Program is in the process of redesigning its criminal referral database. Moreover, the Program voluntarily makes available to the Committee information on its criminal referral efforts, as well as data from other initiatives undertaken to combat abuse of the bankruptcy system. For example, the Program recently issued its *Annual Report of Significant Accomplishments* for fiscal year 2002. Copies were sent to Members of the Judiciary Committees of the Senate and the House of Representatives, and the report is available on the U.S. Trustee Program's internet web site. That document reported on the Program's efforts to combat fraud and abuse through its civil enforcement initiative, criminal enforcement initiative, multi-agency working groups, and training and outreach.

Section 307 would require the Attorney General to report to Congress at least once per year on the status of "United States persons or residents detained on suspicion of terrorism." The report is to specify the number of persons detained, as well as "the

standards developed by the Department of Justice for recommending or determining that a person should be tried as a criminal defendant or should be designated as an enemy combatant." We strongly oppose this provision. As we have explained in the past, no one is detained "on suspicion of terrorism." Rather, detainees fall into three categories: (1) material witnesses; (2) those suspected of immigration violations; and (3) those suspected of criminal violations. The first category is governed by grand jury secrecy provisions and is inappropriate for a report to Congress. The second category is best addressed by the Department of Homeland Security. Information about the third category is generally publicly available and therefore inappropriate for a report to Congress. As for enemy combatants, these are detained by the Department of Defense, not the Department of Justice. Regarding the standards for that designation, we discussed these at length in other communications with Congress. We do not believe that a further annual report on this topic should be required.

Section 309 would amend several statutory provisions to increase penalties and expand jurisdiction for sexual offenses committed in Federal correctional facilities. We recommend editing the language of this amendment to insert into the provisions cited the following language:

> "or with respect to any person in the custody of the Attorney General or the Bureau of Prisons or confined in any institution or facility under the direction of the Attorney General or the Bureau of Prisons".

Section 310 would amend 18 U.S.C. §§ 1791(a)(1) and (2) to expand jurisdiction for contraband offenses in Federal correctional facilities. We recommend editing the language of this amendment to insert into these provisions the following language:

> "or an individual in the custody of the Attorney General or the Bureau of Prisons or any institution or facility in which the person is confined under the direction of the Attorney General or the Bureau of Prisons".

This change would conform the language of the amendment to 18 U.S.C. § 3621 (vesting the Bureau of Prisons with authority to designate the institutions, including non-Bureau institutions, at which Federal prisoners serve their sentences).

Title IV - Koby Mandell Act

Title IV is entitled the "Koby Mandell Act of 2003." Title IV would create a new Office within the Department of Justice to undertake certain specific steps to ensure that all American citizens harmed by terrorism overseas receive equal treatment by the United States Government, regardless of the terrorists' country of origin or residence, and to ensure that all terrorists involved in such attacks are pursued, prosecuted, and punished with equal vigor, regardless of the terrorists' country of origin or residence. This legislation was prompted in part by the brutal May 2001 murder of Koby Mandell in a cave on the West Bank. Koby Mandell, a United States national whose family had moved to the West Bank, was 13 years' old at the time of his death.

Pursuant to the legislation, among other things, the new Office would be responsible for: administering a "Bringing Terrorists to Justice" rewards program; establishing and administering a program to notify American victims of overseas terrorism or their families to update them on the status of efforts to capture the terrorists who harmed them; coordinating with other United States Government agencies to expand restrictions on the ability of murderers to reap profits from their crimes; ensuring that overseas terrorists are not serving in their local police or security forces; undertaking a comprehensive assessment of the pattern of United States indictments and prosecution of terrorists who have harmed American citizens overseas and providing recommendations to the Attorney General; monitoring public actions by governments and regimes overseas pertaining to terrorists who have harmed American citizens; and monitoring the foreign incarceration of terrorists who harmed Americans overseas.

We appreciate the concerns that these provisions highlight. The war on terrorism is the Department's number one priority and it remains critical that we steadfastly pursue terrorists who have harmed American citizens at home as well as abroad, regardless of the location of the attack or the terrorists' country of origin or residence. However, we strongly oppose enactment of title IV of H.R. 3036. First, we are greatly concerned that the addition of a new Office would complicate and dilute our ongoing efforts and operations, some of which are noted below, and detract from our mission of preventing terrorist activity. Indeed, we believe that the creation of a new office would create needless duplication, not only within the Department, but also with the functions of the Department of State.

It is unclear to us that a new Office would assist in better meeting the legislation's objectives. The United States Government, in general, and this Department, in particular, have devoted substantial resources to the apprehension of terrorists who have harmed American citizens overseas, and in many instances aided other countries in their apprehension, investigation and prosecution of individuals. For nearly two decades, the Federal Bureau of Investigation, along with the Criminal Division and several United States Attorney's Offices around the nation, have specifically devoted significant resources to the investigation and prosecution of terrorists who have harmed Americans overseas. Despite the considerable obstacles that the Department has faced in regard to these cases, the Department has achieved prosecutorial success. A clear example of recent success is the May 2001 conviction by a New York Jury of four individuals responsible for the 1998 bombings of the U.S. Embassies in Kenya and Tanzania that killed 224 people and injured thousands.

Moreover, in the wake of the September 11th tragedies, there has been an unprecedented allocation of law enforcement resources, training and investigative focus to analyzing and targeting those persons and organizations who seek to harm United States persons and interests overseas. To that end, the new Office would overlap functions with other components of the Department, such as the Criminal Division's Counterterrorism Section and its Office of International Affairs, causing unnecessary duplication of effort. For example, the Department already tracks public and non-public actions by governments and regimes overseas pertaining to terrorists who have harmed Americans, and monitors the foreign incarceration of terrorists, two functions of the new Office.

In addition, contrary to an implicit assumption of the legislation, it should be understood that United States-based prosecutions of terrorists who harm Americans overseas is not the exclusive yardstick against which to measure "success" against terrorists. For example, since 1992, Israeli authorities have identified, captured or killed many of the terrorists and the terrorist leaders who were responsible for the deaths of American citizens. Some of these terrorists have been sentenced to multiple life terms or have been sentenced to extensive periods of incarceration for their terrorist acts which, in virtually all cases, resulted in the murder of, and injury to, many more Israeli than American nationals, many of whom (i.e., the Americans) were either dual nationals or were residing permanently in Israel.

Similarly, after a nine month trial in 2003, fifteen "17 November" members were convicted in Greece for numerous offenses, including the murder of four U.S. nationals. The families of the American victims received U.S. Government funding to attend this trial in Athens and victim-witness services were provided by the Office of Foreign Litigation of the Department's Civil Division, the Victim-Witness Office of FBI Headquarters, the Counterterrorism Section of the Criminal Division, and the U.S. Attorney's Office.

It should also be understood that the impediments to bringing United States-based prosecutions are often not the result of a lack of commitment or resources, but issues related to the nature of these crimes and the environment in which they are committed. Usually when an American is targeted abroad, the crime scenes are located in places that are not under United States' control. For example, in some of the cases that provided the impetus for this bill, the crime scenes were located either in Israel or in Palestinian-controlled territory, and therefore, the United States is entirely dependent upon Israel or the Palestinian Authority for assistance and cooperation in these investigations. After some terrorist attacks, the Israeli authorities' primary focus is on cleaning up the crime scene, burying the dead, and ensuring that life moves on with as little disruption as possible. Often, usually within hours or days, the Israeli authorities have identified and captured or killed many of the individuals responsible for an attack. In most cases, the Israelis' sources and methods for conducting these investigations are, understandably, considered classified and are not made available to United States law enforcement. Even if these materials were made available, they are unlikely to be of value in a United States prosecution, as the Israeli investigative focus is on preventing a further attack and neutralizing the operatives, rather than collecting evidence in accordance with the United States Constitution or our procedural and evidentiary rules. The same is often true in cases occurring in other parts of the world. The proposed legislation would do nothing to remove obstacles we face relating to the chain of custody of evidence and the admissibility of confessions issues we face that often preclude United States prosecution. It should also be noted that formal cooperation between the Justice Department and the Palestinian Authority currently is non-existent.

Despite the obstacles the Department faces, our commitment to pursuing these cases does not diminish over time, as illustrated by the fact that the Department of Justice and U.S. Attorney's Offices have achieved success long after the incidents take place. Examples include the following:

- June 1985 hijacking of a Jordanian aircraft by Lebanon-based terrorists - in a difficult and covert operation, the U.S. captured one of the terrorists two years later in 1987 and he was convicted and sentenced to 30 years in jail;

- November 1985 hijacking of an Egyptian aircraft by Palestinian terrorists working for the Abu Nidal Organization - the U.S. captured the lone surviving terrorist eight years later in 1993 and he was convicted and sentenced to life in prison;

- May 1986 attempted bombing of the U.S. Embassy in Jakarta by Japanese Red Army terrorists - the U.S. captured the terrorist 10 years later in September 1996 and he was convicted and sentenced to 30 years in prison;

- September 1986 hijacking and murder on board a Pan Am flight by alleged members of the Abu Nidal Organization - the suspect was captured 15 years later in September of 2001 and convicted after trial;

- 1990 hostage taking of an American citizen in Zaire - the suspect was captured 12 years later in 2002, convicted after trial and sentenced to 24 years; and

- Bombing and attempted bombings between 1980 and 1982 by suspected Palestinian terrorists - a suspect was captured by the U.S. 16 years later in 1998 and the prosecution is pending in D.C.

Thus, although for a variety of reasons, we have been unable to date to obtain evidence, legally admissible in court in the United States, to indict individuals in the Koby Mandell murder and in other cases for murder, the Department regularly seeks to overcome these challenges and actively works with our overseas partners in the war on terrorism as illustrated above. The creation of a new office in the Justice Department will not overcome the existing challenges that we face in prosecuting extraterritorial terrorist attacks.

It is important to note that even where the Department is unable to pursue a United States-based prosecution, the Department still often provides technical or other assistance to the country in which the prosecution will occur. This has been demonstrated in a variety of ways in matters ranging from the Indonesian authorities'

investigation into the bombing in Bali to efforts to assist Scottish authorities in the Pan Am 103 trial and Greek authorities in the trial of Mohammed Rashed for his role in the 1982 bombing of Pan Am flight 830.

International assistance and cooperation is also demonstrated, for example, by training on terrorist financing and the PATRIOT Act. To cite but one example, the Criminal Division's Counterterrorism Section, at the request of the Israel Money Laundering Prohibition Authority (IMLPA), sponsored and provided training in March, 2004, in Israel, to IMLPA and approximately forty individuals from the Knesset, military intelligence, Israeli Security Agency, local prosecuting offices, Israeli National Police and Ministry of Justice. Among the topics covered in the lecture and discussion format were money transmitters, the use of RICO in prosecuting terrorism cases (apropos of the recent passage of an Israeli RICO law), State Department and OFAC designations of terrorist groups and individuals, and several case studies of prosecutions for material support and terrorist financing.

Moreover, many of the purposes of the legislation are being addressed by the State Department in a highly competent manner. For example, the Department of State already administers the successful "Rewards for Justice" program. We are aware of no need or justification for a duplicative program to be housed in the Department of Justice. In fact, it would be inappropriate to house a program within the Department since rewards also relate to other matters over which the Department has no special expertise. In addition, the new Office could create unnecessary and counterproductive friction between the Departments of Justice and State.

The Department agrees that there is a great need to reach out to victims of terrorism. For that reason, the Department, and United States Attorneys' Offices in every district in the country, already have victim-witness coordinators who interact on an ongoing basis with victims of terrorism and other crimes. Creating yet another office within the Department to interact with victims and their families would be an unnecessary duplication of resources. For example, in a number of cases, United States Attorneys' Offices and the Criminal Division's Counterterrorism Section have worked closely with surviving American victims and families of Americans murdered by the Palestinian Islamic Jihad and other terrorist groups. As part of trial preparation for *United States v. Sami Amin Al-Arian, et al.*, a case in which the defendants are charged with providing material support to the Palestinian Islamic Jihad, the Al-Arian investigative team has established personal contact with over 100 victims, which include

Americans residing in Israel, dual United States- Israeli citizens and Israeli nationals. Their efforts include the full cooperation with the Ministry of Justice in Israel and the Israeli National Police. As part of the trial preparation in *United States v. Zaid Safarini, et al.*, a case in which Safarini is charged with leading the hijackers of Pan Am 73, and causing the death of at least 20 people and injuring more than 100 others, federal prosecutors and FBI agents have contacted scores of victims and witnesses residing in the United States and in numerous countries in Asia and Europe. In cultivating caring relationships with the victims of terrorism in these and other cases, the Department is not only complying with its mandate, but also within the long tradition of prosecutorial sensitivity to the victims of any crime, that is, the Justice Department presently focuses on the victims of international terrorist incidents and not simply on the offenders.

Other Matters

Bureau of Prisons Reporting Requirement

The Prison Rape Elimination Act was signed into law on September 3, 2003, and contains a provision requiring the National Institute of Corrections ("NIC") to report to Congress each year on the activities of the Department of Justice regarding prison rape abatement. Because the reports will cover the activities of the entire Justice Department, we believe that the Attorney General is in a better position to decide which component of the Department of Justice should compile the needed information and produce the report. Accordingly, we recommend that section 5(b)(1) of the Prison Rape Elimination Act (42 U.S.C. § 15604) be amended by substituting "the Attorney General" for "the National Institute of Corrections."

Implementation of Aimee's Law

Aimee's Law (Pub. L. No. 106-386, sec. 2001) serves the important objective of enabling States to recover the costs of apprehending, convicting, and incarcerating individuals who commit certain heinous crimes, where those individuals previously were incarcerated for those same crimes in other States and released early. We recommend adding to H.R. 3036 provisions to addresses data-collection, administrative, and other practical difficulties that currently impede the effective implementation of Aimee's Law.

Data Collection. The Law's enforcement mechanisms and reporting requirements, as enacted, present a serious "data problem," because they are tied to State or local data

(*e.g.*, State annual sentencing averages for covered crimes; State annual incarceration rates for these crimes; actual apprehension, conviction, and incarceration costs for each individual convicted of these crimes; etc.). If these data actually were collected by the Federal government, these enforcement mechanisms and reporting requirements would be very effective, but the Federal government does not possess, has no resources to collect, and currently has no authority to require States and localities to provide these data. Moreover, as far as can be determined, no State or locality currently collects all of the necessary data, and many States and localities do not collect any of them, even for themselves. Therefore, to make the Law's enforcement mechanisms and reporting requirements workable, based on an analysis of what data actually are available, we propose: 1) tying the enforcement mechanisms to *national averages* and data that are *actually available*; and 2) encouraging States to improve their criminal-records data-collection and data-reporting efforts.

Source of Funds. As enacted, the law's penalties are tied generally to "Federal law enforcement assistance funds." State governments and the Justice Department already have years of experience applying penalties under the Wetterling Act, 42 U.S.C.§ 14071, which are tied to a State's formula-grant allocation under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program, 42 U.S.C. § 3756, the largest and most comprehensive Federal law enforcement assistance program. For the convenience of these governments, and to avoid disruption and confusion as to penalties that may shift from program to program and from year to year, we propose to imitate the basic penalty mechanisms of the Wetterling Act (*i.e.*, we propose to apply or credit these penalties to a State's Byrne formula-grant allocation).

Regulatory Authority. Many of the other issues impeding effective implementation (such as supplementation of definitions) seem to be resolvable by regulation and thus do not need to be addressed by a technical statutory provision. Therefore, we propose statutory language to ensure that such regulations have proper statutory warrant.

To address these issues, we recommend adding to the bill the following language:

SEC. _____. TECHNICAL AMENDMENTS TO AIMEE'S LAW.
Section 2001 of Div. C, Pub. L. 106-386 (42 U.S.C. § 13713), is amended–

(1) in subsections (b), (c)(1), (c)(2), (c)(3), (e)(1), and (g), respectively, by– (A) inserting "Pursuant to regulations promulgated by the Attorney

General hereunder," immediately after the heading; and (B) changing the case of the first upper-case letter after such inserted text;

(2) in paragraphs (c)(1) and (2), respectively, by– (A) replacing "a State", the first place it appears, with "a criminal-records-reporting State"; and (B) replacing "(3)," and all that follows through "subsequent offense" with "(3), it may, under subsection (d), apply to the Attorney General for $10,000, for its related apprehension and prosecution costs, and $22,500 per year (up to a maximum of 5 years), for its related incarceration costs";

(3) in paragraph (c)(3), by– (A) replacing "if–" with "unless–"; (B) striking "average", "individuals convicted of the offense for which", and "convicted by the State"; and (C) inserting "not" before "less" both places it appears.

(4) in subsections (d) and (e), respectively, by striking "transferred";

(5) in paragraph (e)(1), by– (A) inserting "pursuant to section 506 of the Omnibus Crime Control and Safe Streets Act of 1968" before "that"; and (B) replacing the last sentence with "No amount described under this section shall be subject to sections 3335(b) or 6503(d) of title 31, United States Code.";

(6) in paragraph (i)(1), by– (A) replacing "Beginning" with "Subject to the express availability of appropriations herefor, beginning"; and (B) replacing "State–" with "State (where practicable)–"; and

(7) by replacing paragraph (i)(2) with "(2) Report. Subject to the express availability of appropriations herefor, the Attorney General shall submit to the Congress– (A) a report, by not later than 6 months after the first enactment of such appropriations, that provides national estimates of the nature and extent of recidivism (with an emphasis on interstate recidivism) by State inmates convicted of murder, rape, and dangerous sexual offenses; (B) a report, by not later than October 1, 2006, and October 1 of each year thereafter, that provides statistical analysis and criminal history profiles of interstate recidivists identified in any State applications under this section; and (C) reports, at regular intervals not to exceed every five years,

that include the information described in paragraph (1)."

Minor technical changes to the Juvenile Justice and Delinquency Prevention Act

The Department requests that the bill be amended to make two technical changes to the Juvenile Justice and Delinquency Prevention Act.

OJP often makes grants to nonprofit entities. To encourage as much diversity as possible in the applicant pool (and particularly to encourage small neighborhood and community-based organizations to apply), generally any entity that qualifies for nonprofit status under its home State's law (or federal law) is recognized to be a nonprofit organization. Although this general rule is followed throughout OJP, *some* grant programs (but not all) within the Office of Juvenile Justice and Delinquency Prevention (OJJDP) are subject to 42 U.S.C. § 5603(23), which defines "nonprofit organization" strictly in terms of section 501(c)(3) of the Internal Revenue Code. The result of this definition is to exclude many deserving nonprofit entities – typically small neighborhood and community-based organizations – from such grant programs. To avoid this result, and to create consistency with other OJJDP (and OJP) grant programs, the Department recommends that section 5603(23) be deleted.

Additionally, 42 U.S.C. § 5633(c)(1) (as recently amended in 2002) provides for grant awards to be reduced for jurisdictions that are determined not to be in compliance with the core requirements of the Juvenile Justice and Delinquency Prevention Act. That section expressly provides, however, that those reductions are to be made in "the subsequent fiscal year" to the date of the determination of noncompliance. As currently written, this provision works well if the grants for a particular fiscal year have already been awarded as of the date of determination, because "the subsequent fiscal year" is the first opportunity to made the statutorily-required reductions. But in fiscal years when grants for that year have *not* yet been awarded, it seems to make little sense for OJJDP to make a determination of noncompliance, then award a full grant for that fiscal year, and then award a reduced grant for "the subsequent fiscal year." To avoid this result by allowing OJJDP to reduce grant awards to noncompliant jurisdictions at the first opportunity, the Department recommends that section 5633(c)(1) be amended.

To address these two issues, we recommend adding to the bill the following language:

SEC. _____. TECHNICAL AMENDMENTS TO JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT. Public Law 93-415 is amended–

(1) by deleting section 103(23); and

(2) in section 233(c)(1), by replacing "for the subsequent fiscal year" with "for the fiscal year in which the determination of noncompliance is made, or the subsequent fiscal year, as appropriate,".

* * * * *

Thank you for your attention to this matter. If we may be of additional assistance, we trust that you will not hesitate to call upon us. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

William E. Moschella
Assistant Attorney General