

TO: Criminal Justice Section

FROM: Bruce Nicholson
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SUBJECT: Legislative Update

DATE: November 5, 2009

The following briefly updates the status of major legislation of interest to the Section.

1. National Criminal Justice Commission. The Senate Judiciary Committee has put consideration of proposed legislation to authorize a national criminal justice commission on its Committee markup schedule. Senator Arlen Specter (D-PA) will offer a “managers amendment” in the nature of a substitute bill, reflecting substantial reworking of the original legislation following input from many quarters over several months. A number of additional amendments have been filed for Committee consideration at the markup.

On March 26, 2009, Senator Jim Webb (D-VA) and 15 bipartisan cosponsors introduced S. 714, a bill to establish the National Criminal Justice Commission, a blue-ribbon commission charged with conducting an 18-month, top-to-bottom review of the nation's entire criminal justice system and offering concrete recommendations for reform. Senators Orrin Hatch (R-UT) and Lindsey Graham (R-SC) are the principal Senate Republican cosponsors.

The high-level commission created by S. 714 will be comprised of experts in fields including criminal justice, law enforcement, public health, national security, prison administration, social services, prisoner reentry, and victims' rights. It will be led by a chairperson to be appointed by the President. The Majority and Minority Leaders in the House and Senate, and the Democratic and Republican Governors Associations will appoint the remaining members of the commission.

"America's criminal justice system has deteriorated to the point that it is a national disgrace," said Senator Webb. "With five percent of the world's population, our country houses twenty-five percent of the world's prison population. Incarcerated drug offenders have soared 1200% since 1980 and four times as many mentally ill people are in prisons than in mental health hospitals. We should be devoting precious law enforcement capabilities toward making our communities safer."

The Senate Judiciary Subcommittee on Crime and Drugs held a hearing on S.714 on June 11, 2009. The hearing testimony is posted at this address:

<http://judiciary.senate.gov/hearings/hearing.cfm?id=3906>. S.714 currently has 35 Senate cosponsors. A House counterpart bill is expected to be introduced soon.

2. Crack/Powder Cocaine Sentencing Disparities. In July 22, 2009, the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security approved H.R. 3245, the Fairness in Cocaine Sentencing Act of 2009, by voice vote without amendment or opposition. H.R. 3245 was introduced by Representative Bobby Scott (D-VA) on July 16, 2009. It would remove statutory references to crack cocaine and repeal the current five-year mandatory minimum sentence for simple possession of the drug. The full House Judiciary Committee approved H.R. 3245 by a 16-9 vote on July 29, 2009. H.R. 3245 currently has 53 cosponsors.

Senator Dick Durbin (D-IL), along with 10 Senate cosponsors, introduced S. 1789, the Fair Sentencing Act of 2009, on October 15, 2009. It is closely modeled after the Biden-Obama legislation in the last Congress. The Senate Judiciary Committee is expected to consider S. 1789 this fall.

Other bills include H.R. 265, the Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2009, introduced by Representative Sheila Jackson Lee (D-TX) on January 7, 2009. H.R. 265 is identical to the Biden-Obama legislation introduced in the Senate and Representative Jackson Lee's companion legislation introduced in the House in 110th Congress. It would treat crack and powder quantities on a "1:1" basis at current powder threshold levels and repeal the mandatory minimum sentence for simple possession of crack. H.R. 265 has 51 House cosponsors and has been referred to the Judiciary Committee. The Senate Judiciary Subcommittee on Crime and Drugs held a hearing on cocaine sentencing reform on April, 29, 2009, at which Lanny Breuer, Director, Criminal Division, U.S. Department of Justice testified regarding the support of the Department for the "complete elimination" of the crack-powder sentencing disparity. The hearing testimony is posted at:
<http://judiciary.senate.gov/hearings/hearing.cfm?id=3798>.

Representative Bobby Scott (D-VA) introduced H.R. 1459, the Fairness in Cocaine Sentencing Act of 2009, legislation that would more broadly address federal sentencing policy than H.R. 265, on March 12, 2009. H.R.1459 would repeal current federal mandatory minimum sentences for all cocaine offenses, and establish the possibility of probationary sentences for cocaine offenders. It currently has 18 cosponsors and has been referred to the House Judiciary Committee. The House Judiciary Subcommittee on Crime, Terrorism and Homeland Security held a hearing on H.R.265 and H.R.1459 on May 26, 2009. The hearing testimony is posted at:
http://judiciary.house.gov/hearings/hear_090521.html.

On July 16, 2009, Representative Bobby Scott introduced a second crack sentencing reform bill, H.R. 3245, the Fairness in Cocaine Sentencing Act of 2009. H.R. 3245 is a

streamlined, “clean” bill that does contains only provisions to delete current statutory references to crack cocaine resulting in repeal of the mandatory minimum sentence for simple possession of crack cocaine and equalization of drug thresholds at the current level for powder cocaine offenses. It does not contain broader provisions to repeal mandatory minimum sentences for cocaine offenses generally or address sentencing enhancements for aggravating factors, provisions which are proposed in other House bills. On July 22, 2009, H.R. 3245 was approved by the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security by voice vote and was approved by a 16-9 vote by the full Committee on July 29, 2009.

3. Mandatory Minimum Sentencing. On March 12, 2009, Congresswoman Maxine Waters (D-CA) introduced H.R. 1466, the “Major Drug Trafficking Prosecution Act of 2009.” The bill would eliminate all mandatory minimum sentences for drug offenses; curb federal prosecutions of low-level drug offenders; and allow courts to place offenders on probation or suspend their sentence. H.R. 1466 has 34 cosponsors and has been referred jointly to the Judiciary and Commerce Committees.

On June 18, 2009, Representatives Bobby Scott (D-VA) and John Conyers, Jr. (D-MI) introduced H.R.2934, the Common Sense in Sentencing Act of 2009. H.R. 2934 would authorize sentencing judges to impose sentences below statutory minimum if the court finds it is necessary to do so to avoid unjust or irrational sentences. The House Judiciary Subcommittee on Crime, Terrorism and Homeland Security held a hearing on H.R.1466 and H.R. 2934 on July 14, 2009. The hearing is posted on the Subcommittee website at: http://judiciary.house.gov/hearings/hear_090714.html.

On July 24, 2009, Representatives Bobby Scott and Ted Poe (R-TX) introduced H.R. 3327, the Ramos-Compean Justice Act of 2009. Under the bill, federal judges would be allowed to issue a sentence lower than the mandatory minimum “if the court finds that it is necessary to do so in order to avoid” conflicting with the factors judges are directed to consider in formulating sentences. Those factors include “the nature and circumstances of the offense and the history and characteristics of the defendant.” Judges would be required to give parties “reasonable notice” of their intent to impose a sentence below the mandatory minimum and provide an opportunity to respond. Judges would also have to give a written explanation of the decision.

Poe had introduced a narrower measure (H.R. 834) designed to exempt law enforcement officers from mandatory minimum prison sentences if, during the performance of their job, they are convicted of using a firearm they were authorized to carry. Poe’s bill was aimed at addressing cases like that of Ignacio Ramos and Jose Alonso Compean, two U.S. Border Patrol agents convicted of assault with a dangerous weapon and other charges in the non-fatal shooting of a Mexican drug dealer as he fled the agents and escaped to Mexico in 2005. The prison sentences of Ramos and Compean were commuted by President George W. Bush on Jan. 19, 2009, the day before he left office. The House Judiciary Subcommittee on Crime, Terrorism and Homeland Security approved H.R. 3327 on July 28, 2009 by voice vote.

4. Hate Crimes. On October 28, 2009, President Obama signed into law H.R. National Defense Authorization Act for Fiscal Year 2010, which expands federal hate crimes to include attacks based on gender, gender identity and sexual orientation. The hate crimes provisions were introduced as S. 1392 by Senator Carl Levin on behalf of Senator Edward Kennedy, the long-time advocate of this change in law, and were adopted by the Senate as an amendment to Defense Authorization bill on July 23, 2009. The hate crime provisions entitled as the *Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act* were retained in the House-Senate conference committee report passed by the House on October 8, 2009 and by the Senate on October 22, 2009, and were signed into law as Public Law No. 111-84 October 28.

5. Indigent Defense. U.S. Attorney General Eric Holder hosted a high-level meeting on the indigent defense crisis and reform opportunities with leaders of the national indigent defense community on September 24, 2009. Professor Norm Lefstein, long active with ABA SCLAID, represented the ABA at the meeting, which reviewed a range of proposals that included discussion of steps the Department of Justice might take to strengthen focus and support for public defense services, the establishment of a national center for defense services and various legislative proposals to amend federal grant authority to provide more balance for defense as well as prosecutorial functions. Attorney General Holder earlier announced the DOJ would sponsor a national conference in early 2010 and has publicly stated that progress on indigent defense issues is one of several “legacy issues” of special importance to him in his tenure as Attorney General.

The House Judiciary Committee held hearings on March 26, 2009 testimony posted at: http://judiciary.house.gov/hearings/hear_090326.html), and June 4, 2009 (testimony posted at: http://judiciary.house.gov/hearings/hear_090604.html). Past-President Dennis Archer testified on behalf of the ABA at the March hearing.

6. Racial Disparities in the Federal Criminal Justice System. Bipartisan legislation developed by then Senator Biden working with the ABA in the past Congress was introduced as the Justice Integrity Act. It would establish advisory groups in federal districts under the supervision of the United States Attorney General, to study and determine the extent of racial and ethnic disparity in the various stages of the criminal justice system; make public reports on the results of their findings; and make specific recommendations to help to eliminate racial and ethnic discrimination and unjustified racial and ethnic disparities.

Senators Ben Cardin (D-MD) and Arlen Specter (D-PA) introduced S. 495, the Justice Integrity Act, on February 26, 2009. It currently has four cosponsors and has been referred to the Senate Judiciary Committee. In the House, Representative Steve Cohen (D-TN) introduced identical legislation as H.R. 1412 on March 3, 2009. It currently has 30 cosponsors and has been referred to the Judiciary Committee.

The House Judiciary Subcommittee on Crime, Terrorism and Homeland Security held a hearing on October 29, 2009 examining the issue of racial disparities in the criminal

justice system. The hearing testimony is posted on the Subcommittee website at: http://judiciary.house.gov/hearings/hear_091029.html.

Further congressional action of the Justice Integrity Act bills is likely to wait until the Department of Justice makes recommendations on it as the result of its internal review of Sentencing and Corrections policies, including review of the proposed Act and other policies related to racial disparities in the federal justice system.

7. Second Chance Act funding. President Bush signed the Second Chance Act into law on April 9, 2008 as Public Law No. 110-199. The successful enactment of the Act resulted from a five year, bipartisan campaign to provide new funding and direction to address recidivism by the large and growing population of offenders exiting prisons in the United States, currently estimated at over 700,000 per year. With its enactment, supporters of the Second Chance Act turned to seek full funding of the new Act through the appropriations process. The Senate Appropriations Committee approved funding at \$20 million and the House Committee approved \$45 million for FY 2009. However, no final appropriations bills were submitted to President Bush last year, with funding decisions deferred until March 2009. The FY09 omnibus enacted in March 2009 contained \$25 million for Second Chance programs, including \$15 million for state and local reentry demonstration project grants and \$10 million for mentoring grants to nonprofit organizations.

President Obama's initial budget request for FY 2010 allocated \$75 million for the Act but later supported a request of \$100 million. The appropriations process is still ongoing for the FY 2010 Commerce, Justice, Science & Related Agencies Appropriations legislation including the Second Chance Act. The House has approved \$114 million for the Second Chance Act while the Senate Committee has approved \$64 million.

8. Restoration of Prison "Good Time." On March 12, Rep. Danny Davis (D-Ill.) introduced H.R. 1475, the "Federal Prison Work Incentive Act of 2008," a bill that would substantially revive the good time system that existed before November 1, 1987. As defined in H.R. 1475, "good time" is the amount of time a prisoner, whose record of conduct shows substantial observance of Bureau of Prisons (BOP) regulations is eligible to have deducted from the term of his sentence. The amount varies depending on, among other things, the length of the prisoner's sentence.

Congressman Davis's proposal would increase earned "good time," restore industrial good time (providing for additional opportunities to reduce one's sentence by engaging in work opportunities), allow forfeiture of all good time credit in the event of infractions in prison, and provide for potential restoration of forfeited good time credit. H.R. 1475 currently has 16 cosponsors and has been referred to the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security.

9. Employment Background Checks. Legislation introduced in the 110th Congress as the Fairness & Accuracy in Employment Background Checks Act would improve the accuracy and reliability of criminal record information maintained by the

FBI and institute critical safeguards when the FBI conducts criminal background checks for employment purposes. Each year, more than five million criminal background checks are generated by the FBI for civil purposes, mostly for employment, surpassing the number generated to investigate crimes. According to the Attorney General, however, 50 percent of the FBI records are currently incomplete or inaccurate. The proposed legislation is expected to be reintroduced later this year. Representative Bobby Scott (D-VA) and Senator Dick Durbin (D-IL) are expected to introduce legislation in the House and Senate respectively in the near future.

10. Felony Voting Rights: Democracy Restoration Act. Legislation introduced in past Congresses to restore the right to vote in federal elections to persons with felony conviction records will soon be introduced in the 111th Congress as the Democracy Restoration Act. Although the right to vote forms the core of American democracy, one significant group of American citizens is still denied the right to the franchise: 5.3 million Americans are not allowed to vote because of a felony conviction. Four million of these live, work, and raise families in our communities, but because of a conviction in their past are still denied the right to vote. The DRA would provide those with conviction records the automatic right to vote in federal election after their release from confinement. Senators Russ Feingold (D-WI), Ben Cardin (D-MD) and Sheldon Whitehouse (D-RI) introduced S. 1516, the Democracy Restoration Act on July 24, 2009. S. 1516 was referred to the Senate Judiciary Committee. Identical legislation sponsored by Representative John Conyers, Jr., and 29 cosponsors was introduced the same day in the House of Representatives as H.R. 3335, which was referred to the House Judiciary Committee.

11. Recidivism Reduction Act. On June 11, 2009, Representatives Andre Carson (D-IN), Patrick Kennedy (D-RI) and Pete Stark (D-CA) introduced H.R. 2829, the Recidivism Reduction Act. H.R. 2829, amends title XVI (Supplemental Security Income for Aged, Blind, and Disabled) (SSI) of the Social Security Act (SSA) to require the reinstatement upon release of an otherwise eligible disabled inmate for SSI benefits which were terminated owing to the inmate's incarceration in a jail, prison, penal institution, or correctional facility for a period of 12 or more consecutive months. It also amends SSA title XIX (Medicaid) to require state Medicaid plans to provide that in the case of any individual enrolled for medical assistance immediately before becoming an inmate of a public institution: (1) the enrollment shall be reinstated upon the individual's release from such institution unless and until there is a determination that the individual is no longer eligible to be so enrolled; and (2) any period of continuous eligibility in effect on the date the individual became such an inmate shall be reinstated as of the release date and the duration of such period shall be determined without regard to the period in which the individual was such an inmate. H.R. 2829 authorizes case management services in order to engage in planning for services following an individual's release from a public institution. H.R. 2829 currently has 17 cosponsors and has been referred to the House Committees on Ways and Means and Commerce.

12. Federal Prison Bureau Nonviolent Offender Relief Act of 2009. On January 6, 2009, Representative Sheila Jackson Lee introduced H.R. 61, the Federal Prison Bureau

Nonviolent Offender Relief Act of 2009. The bill would amend the federal criminal code to direct the Bureau of Prisons, pursuant to a good time policy, to release a prisoner who has served one half or more of his or her term of imprisonment if that prisoner: (1) has attained age 45; (2) has never been convicted of a crime of violence; and (3) has not engaged in any violation, involving violent conduct, of institutional disciplinary regulations. H.R. 61 currently has 11 cosponsors and was referred to the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security.

13. Juvenile Justice Delinquency Prevention Act (JJDP A). Senators Patrick Leahy (D-VT), Arlen Specter (R-PA), Herb Kohl (D-WI) and Dick Durbin (D-IL) on March 24, 2009 introduced S. 678, legislation to reauthorize the JJDP A. S. 678 is substantially the same as S. 3155, reauthorization legislation introduced in the 110th Congress, as amended and approved by the Senate Judiciary Committee last July. S. 678 as introduced March 24 includes the “Cardin amendment” that phases out over three years the statutory exception to the JJDP A enacted in 1980 that currently allow states to hold status offenders charged with non-criminal offenses in jail or secured confinement. The ABA has long sought this change in the law so that homeless teens, runaways, truants and other non-criminal youth are not moved into and socialized to the criminal justice system. S. 678 as introduced also contains the “Kennedy amendment” adopted by the Committee last July, which provides for early mental health assessment, referral and treatment of youth who come in contact with the juvenile justice system who have mental health needs and disorders. The Senate Judiciary Committee is expected to act on S. 678 this fall. Introduction of a comparable bill in the House is not imminent.

Authority for the JJDP A expired in September 2007, but the 110th Congress temporarily maintained its status under the 2002 reauthorization through a series of “continuing resolutions” while considering reauthorizing legislation. The Senate Judiciary Committee approved bipartisan JJDP A reauthorization legislation in July 2008, but no further action occurred.

Representative Chris Murphy (D-CT) introduced H.R.1873, the Juvenile Justice Improvement Act of 2009, on May 14, 2009. It would amend the JJDP A to strengthen its core mandates. It currently has nine cosponsors and has been referred to the House Education and Labor Healthy Families and Communities Subcommittee. Representative Murphy and Representative Todd Platts (R-PA) introduced H.R. 3838 on October 15, 2009. This legislation titled as the PATIENCE Act of 2009, would provide incentive grants to states to promote alternatives to incarceration of juveniles. H.R. 3838 was referred to the House Education and Labor Healthy Families and Communities Subcommittee.

14. Gang Prevention - Youth PROMISE Act.

The House Judiciary Subcommittee on Crime, Terrorism and Homeland Security approved H.R.1064, the Youth PROMISE Act, by a 6-1 vote on October 29, 2009.

The highest priority for Representative Bobby Scott (D-VA), Chair of the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security, in the 110th and current Congress is his legislation to provide expanded and new resources for evidence-

based and promising practices related to juvenile delinquency and criminal street gang activity prevention and intervention. Under the Youth PROMISE Act, communities facing the greatest youth gang and crime challenges will each form a local council called a Promise Coordinating Council (“PCC”). The PCC will include representatives from law enforcement, court services, schools, social service organizations, health and mental health providers and community-based organizations, including faith-based organizations. The PCC will then develop a comprehensive plan for implementing evidence-based prevention and intervention strategies. These strategies will target young people who are at-risk of becoming involved, or who are already involved in, gangs or the criminal justice system to redirect them toward productive and law-abiding alternatives. The proposed Act will soon be introduced with bipartisan sponsors in the House and Senate.

Representatives Bobby Scott (D-VA) and Mike Castle (R-DE) introduced H.R.1064, the Youth PROMISE Act of 2009, on February 13, 2009. H.R. 1064 currently has 231 cosponsors. The House Judiciary Subcommittee on Crime, Terrorism and Homeland Security held a hearing on H.R. 1064 on July 15, 2007. Witness testimony is posted at: http://judiciary.house.gov/hearings/hear_090715.html. Identical legislation was introduced the same day in the Senate as S. 435 by Senators Robert Casey (D-PA) and Olympia Snowe (R-ME). S. 435 currently has 11 Senate cosponsors. Both bills were referred to the respective Judiciary Committees.

15. Anti-Gang Legislation. On January 6, 2009, Senator Dianne Feinstein (D-CA) and eight bipartisan cosponsors introduced S. 132, the Gang Abatement and Prevention Act of 2009. S. 132 is substantially the same legislation as the anti-gang legislation passed by the Senate in the 110th Congress. S. 132 would increase penalties for various street gang-related offenses, expand the scope of predicate crimes for authorization of interception of wire, oral, and electronic communications to cover violations relating to criminal street gangs, and authorize the Attorney General to award grants to fund programs to combat gang violence, including \$100 million annually through 2012 for federal, state, and local law enforcement cooperation in “high intensity interstate gang activity” areas, as well as for hiring 94 new assistant U.S. attorneys for assignment to those areas. S. 132 currently has 13 Senate cosponsors. It has been referred to the Judiciary Committee.

Representatives Adam Schiff (D-CA) and Mary Bono (R-CA) introduced companion legislation on February 12, 2009 as H.R. 1022. The House bill currently has three cosponsors and has been referred to the Judiciary Committee.

16. Juvenile Life without Parole. On Nov. 9, 2009, the United States Supreme Court is scheduled to hear oral arguments in two Florida cases, *Sullivan v. Florida* and *Graham v. Florida*, on whether sentencing juveniles to life without parole for non-homicidal crimes is unconstitutional.

Representatives Bobby Scott (D-VA) and John Conyers, Jr. (D-MI) on May 6, 2009 introduced H.R. 2289, the Juvenile Justice Accountability and Improvement Act of 2009.

The proposed Act would require states to enact laws and adopt policies to grant child offenders who are under a life sentence a meaningful opportunity for parole at least once during their first 15 years of incarceration and at least once every three years thereafter. It also requires the Attorney General to: (1) establish and implement a system of early release for each child offender who is under a life sentence in a federal prison; and (2) award grants to states to improve legal representation and other services for child defendants charged with an offense carrying a possible sentence of life in prison. The House Judiciary Subcommittee on Crime, Terrorism and Homeland Security held a hearing on H.R. on June 9, 2009. The hearing testimony is posted at: http://judiciary.house.gov/hearings/hear_090609_1.html. H.R.2289 currently has four cosponsors.

17. Juvenile Accountability Block Grants (JABG) program. Representatives Bobby Scott (D-VA), John Conyers, Jr. (D-MI), Louie Gohmert (R-TX) and Lamar Smith (R-TX) introduced H.R. 1514 on March 16, 2009, legislation to reauthorize the federal Juvenile Accountability Block Grants (JABG) through fiscal year 2014. The JABG provides block grants to applying states to support programs for individual offender-focused and system-focused accountability aimed at provision of enhanced use of restitution, community service, victim-offender mediations, and other restorative sanctions. H.R. 1514 currently has three cosponsors and has been referred to the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security.

18. Youth Reentry Improvement Act of 2008/First Step Forward Act. Legislation to enhance federal support for successful reentry of youth offenders after confinement into the community introduced in the last Congress as, respectively, the First Step Forward Act (Senate) and the Youth Reentry Improvement Act (House) will soon be reintroduced in the of 111th Congress in somewhat altered form. The bills would amend the Juvenile Justice and Delinquency Prevention Act of 1974 to require: (1) information on the number of juveniles (under age 21) released from prison and their living arrangements upon release in the annual report of the Administrator of the Juvenile Justice and Delinquency Prevention Office; (2) states seeking juvenile justice grants to adopt procedures to assure the availability of post-release programs and services for juvenile offenders; and (3) research and evaluation on outcomes for juvenile offenders who have been released from custody and reintegrated into communities. The legislation further directs the Attorney General to: (1) award grants to states to establish programs to identify juveniles likely to be released before attaining age 21 and to help such juveniles attain self-sufficiency; (2) develop outcome measures to assess the performance of states in operating juvenile offender reentry programs and track services provided to such offenders; and (3) conduct evaluations of state juvenile offender reentry programs. The Senate bill provisions dealing with Medicaid reenrollment will be split off into a separate bill.

19. Sex Offender Registry. The Adam Walsh Child Protection and Safety Act enacted in 2006 established the Sex Offender Registration and Notification Act (SORNA), including provisions that apply to juvenile offenders, which is set to be reauthorized in 2009. The House of Delegates adopted a recommendation supporting an

amendment to the SORNA provisions applying to juvenile offenders that would authorize state judges to determine on a case-by-case basis whether youth offenders should be required to register under SORNA.

The House Judiciary Subcommittee on Crime, Terrorism and Homeland Security held a hearing on March 10, 2009 titled as “The Sex Offender Registration and Notification Act (SORNA): Barriers to Timely Compliance by States.” The hearing testimony is posted on the Subcommittee website at this address:

http://judiciary.house.gov/hearings/hear_090310_1.html

20. USA PATRIOT Act. The Senate Judiciary Committee on October 8, 2009 approved S. 1692, the USA PATRIOT Act Sunset Extension Act of 2009, in substitute amendment form by an 11-8 vote.

The bill would extend three sections provisions until 2013 that under current law (PL 109-177) are slated to expire Dec. 31: the “roving wiretap” provision; the “lone wolf” terrorist provision; and Section 215 orders for tangible items, commonly referred to as the “library records” provision, which allows federal law enforcement authorities to seek a court order for “any tangible thing” they deem related to a terrorism investigation. S. 1692 would also impose a new sunset at the end of 2013 on the government’s use of “national security letters” to obtain information in terrorism investigations.

On March 12, 2009, Representative Lamar Smith (R-TX) joined by 17 Republican original cosponsors introduced H.R. 1467, Safe and Secure American Act of 2009, legislation to reauthorize key provisions of the USA PATRIOT Act through 2019. H.R. 1467 would: (1) extend the authorization for the multipoint or roving wiretaps for national security and intelligence investigations; (2) allow the FBI to apply to the Foreign Intelligence Surveillance Court to grant government access to tangible items (books, records, etc.) in foreign intelligence, international terrorism, and clandestine intelligence cases. H.R.1467 would also amend the Intelligence Reform and Terrorism Prevention Act of 2004 to extend through 2019 the inclusion of “lone wolf” terrorists as agents of a foreign power, for purposes of the authority to obtain intelligence on non-U.S. persons engaged in international terrorism.

21. Anti-Fraud Legislation. Legislation aimed at mortgage and securities fraud was passed by both the House and Senate and signed into law earlier this year.

On January 6, 2009, Senators Patrick Leahy (D-VT) and John Cornyn (R-TX) introduced S. 49, the Public Corruption Prosecution Improvements Act, a bill to help federal prosecutors and investigators combat public corruption by strengthening and clarifying the law. S. 49 amends the federal criminal code to: (1) establish a six-year limitation period for the prosecution of certain public corruption crime relating to bribery, theft of government property, mail fraud, and racketeering; (2) revise prohibitions against mail and wire fraud to include the taking of any other thing of value (in addition to money or property) in the commission of such crimes; (3) expand the prohibition against bribery in connection with programs receiving federal financial assistance; (4) increase maximum

penalties for theft of government property, bribery, and other public corruption offenses; (5) include certain government theft and bribery offenses as predicates for racketeering prosecutions and wiretaps; (6) revise the definition of "official act" for purposes of public corruption prosecutions; and (7) expand venue requirements for perjury and obstruction of justice proceedings.

Similar legislation stalled in the 110th Congress after Senator Specter (D-PA) raised objections to language that would make it easier to prosecute public officials for illegal gifts. On March 12, the Committee approved a substitute bill that exempts gifts given pursuant to House and Senate rules "governing the acceptance of campaign contributions" but did not include a provision sought by Senator Arlen Specter that would require that the illegal gift was given by someone knowingly trying to break the law.

On February 5, 2009, Senator Leahy introduced S. 378, the Fraud Enforcement and Recovery Act of 2009 or FERA, a bill to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes. It amends the federal criminal code to include within the definition of "financial institution" a mortgage lending business or any person or entity that makes, in whole or in part, a federally related mortgage loan. It defines "mortgage lending business" as an organization that finances or refinances any debt secured by an interest in real estate, including private mortgage companies and their subsidiaries, and whose activities affect interstate or foreign commerce. S. 486 applies the prohibition against defrauding the federal government to fraudulent activities involving the Troubled Assets Relief Program (TARP) or a federal economic stimulus, recovery, or rescue plan, and expands money laundering provisions to prohibit the movement of money outside of the United States to avoid taxes. On March 5, 2009, the Judiciary Committee approved S. 378. It passed the Senate on April 28, 2009 by a 92-4 vote and the House in amended form on May 6, 2009 by a 367-59 vote. A reconciled final Act was signed into law on May 20, 2009 (Public Law No: 111-021).

The House Judiciary Committee held a hearing on April 1, 2009 on "Proposals to Fight Fraud and Protect Taxpayers," including seven House bills. These include: (1) H.R. 1748, the Fight Fraud Act 2009," to enhance the investigation and prosecution of mortgage fraud and financial institution fraud, introduced by Representative John Conyers, Jr. (D-MI); (2) H.R. 1292, to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to establish a National White Collar Crime Center grants program for purposes of improving the identification, investigation, and prosecution of certain criminal conspiracies and activities and terrorist conspiracies, introduced by Representative Bobby Scott (D-VA); (3) H.R. 1667, the War Profiteering Prevention Act of 2009, to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts, introduced by Neil Abercrombie (D-HI); (4) H.R. 1788, the False Claims Corrections Act, introduced by Representative Howard Berman (D-CA); (5) H.R. 1779, the Financial Crimes Resources Act of 2009, to provide for resources for the investigation and prosecution of financial crimes, introduced by Representative Bobby Scott; (6) H.R. 1793, the Money Laundering Correction Act of 2009, to amend title 18, United States Code, with respect to money laundering, introduced by Representative Dan

Lungren (R-CA); and (7) H.R. 78, the Stop Mortgage Fraud Act, to authorize additional appropriations for the Federal Bureau of Investigation to enhance its ability to more effectively stop mortgage fraud, introduced by Representative Judy Biggert (R-IL).

22. Justice for All Act of 2004. The 2004-enacted Justice for All Act enhances protections for victims of federal crime, increases federal resources available to state and local government to combat crimes with DNA technology, and provides safeguards to prevent wrongful convictions and executions. Title I of the Act, the Crime Victims' Rights Act, establishes enhanced and enforceable rights for crime victims in the federal criminal justice system and authorizes grants to help states implement and enforce their own victims' rights laws. Title IV, the Innocence Protection Act, provides access to post-conviction DNA testing in federal cases, helps states improve the quality of legal representation in capital cases, and increases compensation in federal cases of wrongful conviction. These titles are up for reauthorization in 2009. The House Judiciary Subcommittee on Crime, Terrorism and Homeland Security held a hearing on reauthorization of the Innocence Protection Act on September 22, 2009. The hearing testimony is posted on the Committee website at:

http://judiciary.house.gov/hearings/hear_090922_1.html.

23. Over-Criminalization/Over-Federalization of Criminal Law. The House Judiciary Subcommittee on Crime, Terrorism and Homeland Security, held a hearing on July 22, 2009, at which Stephen Saltzburg testified on behalf of the ABA, joining former Attorney General Dick Thornburg and other expert witnesses on the subject of Over-Criminalization and Over-Federalization of Criminal Law. The hearing was the result of an unusual coalition effort led by the Heritage Foundation, Washington Legal Foundation, the National Association of Criminal Defense Lawyers, the ABA, the CATO Institute, the Federalist Society and the ACLU. The "over-criminalization" coalition has been meeting in an effort to reach consensus on a redrawn federal role in future crime legislation and to work together with leaders in Congress to bring attention to this set of issues. The July 22 hearing was considered by most observers as an unusually successful bipartisan discussion on crime policy issues.

24. Preventing Elder Abuse. H.R. 448, the Elder Abuse Victims Act of 2009, would authorize \$6 million in grants per year for fiscal years 2009 – 2015 for special positions in local prosecutors' and courts' offices and a new national organization to backstop prosecutors and courts in cases involving abuse or neglect of the elderly. It would also direct the Attorney General and the Health and Human Services secretary to study relevant state laws and report back to Congress. H.R. 448 authorizes an additional \$8 million through 2015 for grants to state and local law enforcement for training and other support. The House of Representatives approved H.R. 448 on February 10, 2009 under suspension of the rules. Similar legislation was introduced in the Senate as S.795 by Senator Orrin Hatch (R-UT) on April 2, 2009, and was referred to the Senate Finance Committee. It currently has 15 cosponsors.

25. Racial Profiling. The End Racial Profiling Act (ERPA) introduced in previous Congresses by Senator Russ Feingold (D-WI) and Representative John Conyers (D-MI) is likely to be reintroduced later this year after receiving input from DOJ. ERPA would

ban the practice of racial profiling by federal law enforcement agencies and provide federal funding to state and local police departments if they adopt policies to prohibit the practice. The legislation would also create an enforcement mechanism to ensure that anti-profiling policies are being followed and victims of profiling are able to report complaints against police officers. Federal law enforcement agencies would be required to collect demographic data on routine investigatory activities, develop procedures to respond to racial profiling complaints, and develop policies to discipline officers who engage in the practice.

26. Prison Litigation Reform Act (PLRA) Amendments. In the past Congress, the Prison Remedies Abuse Act was introduced by Representatives Bobby Scott (D-VA) and John Conyers, Jr. (D-MI). It would amend the federal PLRA in a number of ways to restore the ability of prisoners to seek redress in the federal courts. The House Subcommittee on Crime held two hearings on the proposed legislation. Discussions between key House Judiciary members suggest that there may be a compromise provision reached on the statutory definition of “physical injury” and regarding exhaustion of administrative remedies in the new Congress.

27. Tribal Justice Reform. Legislation to make a variety of changes to increase Native American tribes' law enforcement powers and increase federal powers and responsibilities regarding crimes on Indian land, was introduced on April 2, 2009 in the House by Representative Stephanie Herseth Sandlin (D-SD) as H.R. 1924 and in the Senate by Senator Byron Dorgan (D-ND) as S. 797, identical bills titled the Tribal Law and Order Act of 2009. Among other things, the legislation would: 1) allow federal officials, with the consent of the tribe, to investigate offenses against tribal criminal laws; (2) provide technical assistance and training to tribal law enforcement officials regarding use of the National Criminal Information Center (NCIC) database; (3) establish the criminal division of the Department of Justice (DOJ) the Office of Indian Country Crime to develop, enforce, and administer federal criminal laws in Indian country; and (4) increasing the criminal sentences tribal courts may impose.

The Senate Committee on Indian Affairs approved S. 797 in substitute form on October 29, 2009. The House bill currently has 11 cosponsors and has been referred to four House Committees including the Judiciary Committee.

28. Child Protection. On March 12, 2009, Representative Adam Schiff (D-CA) introduced H.R. 1469, the Child Protection Improvements Act of 2009, legislation to amend the National Child Protection Act of 1993 to extend the Child Safety Pilot Program to establish a permanent background check system for child-serving organizations. H.R. 1469 currently has 10 cosponsors and has been referred to the Judiciary Subcommittee on Crime, Terrorism and Homeland Security. Senator Charles Schumer (D-NY) introduced the same legislation as S. 1598, which was referred to the Senate Judiciary Committee and has eight cosponsors.