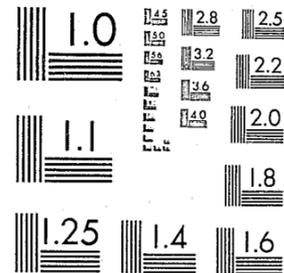


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Education and Training Series

The Crime Control and Fine Enforcement Acts of 1984: A Synopsis



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THE CRIME CONTROL AND FINE ENFORCEMENT
ACTS OF 1984: A SYNOPSIS

By Anthony Partridge

U.S. Department of Justice
National Institute of Justice

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Federal Judicial Center
January 1985

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Cite as A. Partridge, The Crime Control and Fine Enforcement Acts of 1984: A Synopsis (Federal Judicial Center 1985).

FJC-ETS-85-1

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NOTE ON CITATION FORMS

The Comprehensive Crime Control Act of 1984 is title II of Public Law 98-473, 98 Stat. 1837, 1976, enacted October 12, 1984. It is referred to in this outline as the "Crime Control Act." The act comprises twenty-three chapters, some of which have their own titles. Chapter I, for example, is the "Bail Reform Act of 1984," and chapter II is the "Sentencing Reform Act of 1984." These titles are not used in this outline.

Citations to the Crime Control Act carry parallel page references. The first reference is to the print of the enrolled bill that was widely distributed within the judicial branch by the Administrative Office of the United States Courts. The pages on that print carry the running head "H.J. Res. 648"; the Crime Control Act starts on page 140. The second reference is to Statutes at Large.

Because a single section of the Crime Control Act may enact many sections of title 18 or title 28, citations to sections of the act are not always helpful. Hence, the following citation form is sometimes used:

"18 U.S.C. § 3142(c) (pp. 141-42, 98 Stat. 1977-78)."

Note that this form is used only to refer to material in the Crime Control Act.

The Criminal Fine Enforcement Act of 1984 is Public Law 98-596, 98 Stat. 3134, enacted October 30, 1984. It is referred to in this outline as the "Fine Enforcement Act." Citations are to sections of the act and pages in Statutes at Large.

I. PARLIAMENTARY HISTORY

A. Crime Control Act

1. The Senate passed a Comprehensive Crime Control bill (S. 1762) in February 1984. It contained twelve titles.
2. In September 1984, the House of Representatives, considering a continuing appropriations resolution (H.J. Res. 648), added the provisions of the Senate-passed Crime Control bill to the resolution. The twelve titles were redesignated as chapters I through XII of title II of H.J. Res. 648.
3. When the Senate considered the continuing appropriations resolution, some amendments were made to the twelve chapters. In addition, eight other chapters (XIII through XX) were added on the floor of the Senate, derived from pending bills that were in various stages of legislative consideration. Some of these had originated in the House.
4. Three other chapters (XXI through XXIII) were added in the conference between the two houses.
5. Although the first twelve chapters were added to the continuing resolution by the House, the principal source of legislative history for them is the Senate Judiciary Committee's report on S. 1762, S. Rep. No. 98-225, 98th Cong., 1st Sess. (1983). For the remaining chapters, the principal source of legislative history is generally a Senate or House committee report on a separate bill.

B. Fine Enforcement Act

1. Provisions governing fines are found among the amendments in the Crime Control Act that are to take effect in the fall of 1986 when guideline sentencing is scheduled to become effective. 18 U.S.C. §§ 3571-3574, 3611-3615 (pp. 159-61, 168-70, 98 Stat. 1995-97, 2004-06). In addition, section 238 of the Crime Control Act (pp. 198-203, 98 Stat. 2034-39) contains interim provisions about fines that were intended to take effect upon enactment of the Crime Control Act and expire when guideline sentencing becomes effective.
2. Enactment of the Fine Enforcement Act reflects a decision to accept fine provisions that had been developed by the

PARLIAMENTARY HISTORY

House of Representatives rather than the Senate provisions that were included in the Crime Control Act. For parliamentary reasons, it was decided to enact the separate legislation rather than revise the Crime Control bill to incorporate the House provisions.

3. Accordingly, section 12 of the Fine Enforcement Act reverses the amendments to title 18 that were made by section 238 of the Crime Control Act. It restores the affected provisions of title 18 to their status as of October 11, 1984. Sections 2 through 9 of the Fine Enforcement Act amend the restored provisions to accomplish the objectives of the House bill. Note that the amendments made by section 12 must be understood to precede the amendments made by lower-numbered sections.
4. The Fine Enforcement Act amends provisions of title 18 whose repeal will take effect when guideline sentencing becomes effective. It does not amend the fine provisions in the Crime Control Act that were intended to take effect at that time. It is anticipated that Congress will act to conform those provisions to the Fine Enforcement Act before they become effective.
5. The principal source of legislative history is H.R. Rep. No. 98-906, 98th Cong., 2d Sess.

II. GUIDELINE SENTENCING (Chapter II of Crime Control Act)

A. Introduction

1. A United States Sentencing Commission is to formulate guidelines for judges to use in sentencing.
2. Many existing statutes governing sentences and sentencing procedures are repealed, and new provisions enacted.
3. Parole release is abolished. Crime Control Act § 218(a)(5) (p. 191, 98 Stat. 2027). Defendants will serve the sentence imposed, subject only to a good-time allowance. However, a sentence to imprisonment may include a term of "supervised release" to follow incarceration.
4. Judges may sentence outside the guidelines because of mitigating or aggravating circumstances. A defendant may appeal an above-guideline sentence and the government may appeal a below-guideline sentence. Either party may appeal on the ground that the guidelines were misapplied.
5. The guidelines are scheduled to take effect November 1, 1986. The changes in sentences and sentencing procedures that are discussed under this heading--"Guideline Sentencing"--are also to take effect November 1, 1986.
6. The Parole Commission will be retained for five years after the guidelines take effect to handle offenders sentenced under the old law. Before the five years are up, the commission is to set a fixed release date for each person still imprisoned under prior law. At the end of the five years, the function of supervising people on parole under prior law will be transferred to the courts. Crime Control Act § 235(b)(1)(A), (b)(2)-(4) (pp. 196-97, 98 Stat. 2032-33).
7. The principal source of legislative history is S. Rep. No. 98-225 (the Senate report on the Crime Control bill). Section numbers of the public law are higher by ten than the section numbers referred to in the committee report.

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GUIDELINE SENTENCING

Section 235 of the public law, for example, is referred to in the report as section 225.

B. United States Sentencing Commission

1. Membership

- a. Seven voting members, appointed by the president with the advice and consent of the Senate. At least three are to be federal judges in regular active service, selected after consideration of a list of six recommended by the Judicial Conference. 28 U.S.C. § 991(a) (pp. 181-82, 98 Stat. 2017-18).
- b. Two nonvoting members: the attorney general or his designee and, until abolition of the Parole Commission, the chairman of the Parole Commission. Id.; Crime Control Act § 235(b)(5) (p. 197, 98 Stat. 2033).
- c. The chairman is to be full-time; the other members are to be full-time until six years after the guidelines take effect. A federal judge may serve without resigning his or her appointment. 28 U.S.C. § 992(c) (p. 182, 98 Stat. 2018). There is no provision for handling the caseloads of the judge members.
- d. Six-year terms, with initial terms staggered. 28 U.S.C. § 992(a) (p. 182, 98 Stat. 2018); Crime Control Act § 235(a)(2) (p. 196, 98 Stat. 2032).

2. Schedule

- a. The provisions creating the sentencing commission are now in effect. Crime Control Act § 235(a)(1)(B)(i) (p. 195, 98 Stat. 2031). No funds have yet been appropriated.
- b. Initial guidelines are to be promulgated and submitted to Congress by April 12, 1986. Id.
- c. Rule-making requirements of the Administrative Procedure Act, 5 U.S.C. § 553, must be complied with before promulgation and submission. 28 U.S.C. § 994(w) (p. 188, 98 Stat. 2024).
- d. There is some ambiguity whether guidelines are to take effect November 1, 1986, or six months after

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GUIDELINE SENTENCING

submission. Crime Control Act § 235(a)(1)(B)(ii) (pp. 195-196, 98 Stat. 2031-32). The November 1 reading would synchronize the effective date of the guidelines with the effective date of other provisions.

- e. The changes in sentencing statutes and rules, with the notable exception of the repeal of the Youth Corrections Act (which has taken effect), become effective November 1, 1986. 28 U.S.C. § 235(a)(1) (p. 195, 98 Stat. 2031).
- f. It is widely believed that the schedule for promulgation of the guidelines cannot be met and that guideline sentencing will be deferred until the fall of 1987.

3. Content of guidelines

- a. Guidelines are to cover whether to impose probation, a fine, or imprisonment; appropriate amount of fine or length of term; whether imprisonment should be followed by supervised release and length of term; whether multiple sentences should be concurrent or consecutive. 28 U.S.C. § 994(a)(1) (p. 183, 98 Stat. 2019).
- b. They are to include a "sentencing range" for "each category of offense involving each category of defendant." 28 U.S.C. § 994(b) (pp. 183-84, 98 Stat. 2019-20).
- c. If the guideline sentence is imprisonment, the top of the range shall not exceed bottom of the range by more than 25 percent. Id.
- d. The commission shall make recommendations concerning any change in prison capacity that may be necessitated by the guidelines promulgated. Guidelines "shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons." 28 U.S.C. § 994(g) (p. 185, 98 Stat. 2021). Other instructions about the substance of guidelines are found in several other subsections of 28 U.S.C. § 994 (pp. 183-88, 98 Stat. 2019-24).

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GUIDELINE SENTENCING

- e. The commission may also issue "policy statements" about "application of the guidelines or any other aspect of sentencing or sentence implementation." Policy statements are to cover the use of orders of criminal forfeiture, orders of notice to victims, restitution, and various conditions of probation. They are also to address the exercise of the judge's authority to accept or reject plea agreements. 28 U.S.C. § 994(a)(2), (3) (p. 183, 98 Stat. 2019).

C. Use of Guidelines in Sentencing

1. Obligations of sentencing judge

- a. To disclose the presentence report at least ten days before sentencing. 18 U.S.C. § 3552(d) (p. 153, 98 Stat. 1989). The report is to include the sentencing guideline that the probation officer believes applicable and any relevant policy statements. Fed. R. Crim. P. 32(c)(2), as amended by Crime Control Act § 215(a)(5) (p. 179, 98 Stat. 2015).
- b. To impose a sentence within the guideline range "unless the court finds that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that should result in a sentence different from that described." 18 U.S.C. § 3553(b) (p. 154, 98 Stat. 1990).
- c. To consider "any pertinent policy statement issued by the Sentencing Commission." 18 U.S.C. § 3553(a)(5) (p. 154, 98 Stat. 1990).
- d. To state reasons for the sentence in every case, including, if restitution is not imposed, the reason for not imposing it. 18 U.S.C. § 3553(c) (p. 154, 98 Stat. 1990).

2. Appellate review

- a. Either the government or the defendant may appeal on the ground that the sentence was in violation of law or was imposed as a result of incorrect application of the guidelines. 18 U.S.C. § 3742(a), (b) (pp. 175-76, 98 Stat. 2011-12).

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GUIDELINE SENTENCING

- b. The defendant may appeal an above-guideline sentence and the government may appeal a below-guideline sentence, except that they may not appeal a sentence that is consistent with a plea agreement. *Id.* The standard of review is reasonableness. 18 U.S.C. § 3742(d), (e) (pp. 176-77, 98 Stat. 2012-13).
- c. Government appeals require personal approval of the attorney general or solicitor general. 18 U.S.C. § 3742(b) (pp. 175-76, 98 Stat. 2011-12).
- d. There is no appeal based on inconsistency of the sentence with a policy statement.
- e. Rule 35 is in substance repealed so that the appealable sentence is the final decision of the trial court. A rewritten rule 35 permits reduction of sentence, upon motion of the government, to reflect a defendant's subsequent cooperation. Fed. R. Crim. P. 35, as amended by Crime Control Act § 215(b) (pp. 179-80, 98 Stat. 2015-16).

D. Authorized Sentences

- 1. Existing offenses are classified into five classes of felony, three classes of misdemeanor, and infractions on the basis of the maximum term of imprisonment authorized in the statute defining the offense. 18 U.S.C. § 3559(a) (pp. 155-56, 98 Stat. 1991-92).
- 2. An offender shall be sentenced to probation, a fine, or imprisonment. A fine may be imposed in addition to probation or imprisonment. 18 U.S.C. § 3551(b), (c) (p. 152, 98 Stat. 1988).
- 3. Where authorized, an order of criminal forfeiture, an order of notice to victims, or an order of restitution may (in some cases, must) be imposed in addition to the sentence required by paragraph 2 above. *Id.*
- 4. Probation
 - a. Probation is established as a sentence in its own right and does not require that anything be suspended. 18 U.S.C. §§ 3551(b), (c), 3561 (pp. 152, 156, 98 Stat. 1988, 1992). Upon revocation, the court may impose any other sentence that was available at the time of sentencing. 18 U.S.C.

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§ 3565(a)(2) (p. 159, 98 Stat. 1995). In practical effect, this is akin to suspension of imposition of sentence under current law; suspension of execution is abolished.

- b. Probation is not available for a class A or B felony (twenty years' imprisonment or more authorized in statute defining offense). 18 U.S.C. §§ 3559(a), 3561(a)(1) (pp. 155-56, 98 Stat. 1991-92).
- c. For other felonies (more than one year in statute defining offense), the authorized term is not less than one nor more than five years. 18 U.S.C. §§ 3559(a), 3561(b)(1) (pp. 155-56, 98 Stat. 1991-92). If sentenced to probation, the defendant must also be ordered to pay a fine, make restitution, and/or work in community service. 18 U.S.C. § 3563(a)(2) (p. 157, 98 Stat. 1993).
- d. For misdemeanors (more than five days in statute defining offense), the authorized term is not more than five years. 18 U.S.C. §§ 3559(a), 3561(b)(2) (pp. 155-56, 98 Stat. 1991-92).
- e. For infractions (five days or less in statute defining offense), not more than one year. 18 U.S.C. §§ 3559(a), 3561(b)(3) (pp. 155-56, 98 Stat. 1991-92).
- f. Split and mixed sentences are abolished: Probation may not be imposed if "the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense." 18 U.S.C. § 3561(a)(3) (p. 156, 98 Stat. 1992). The provision for terms of supervised release following imprisonment, discussed below, contains somewhat analogous authority. Although a sentence of probation may include a condition requiring that the defendant remain in custody "during nights, weekends, or other intervals of time," this provision "is not intended to carry forward the split sentence." 18 U.S.C. § 3563(b)(11) (p. 157, 98 Stat. 1993); S. Rep. No. 98-225, p. 98.

5. Fines

- a. It is anticipated that the provisions about fines in the Crime Control Act (18 U.S.C. §§ 3571-3574, 3611-3615 (pp. 159-61, 168-70, 98 Stat. 1995-97, 2004-06)) will be amended before they take effect to

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GUIDELINE SENTENCING

conform them with the provisions of the Fine Enforcement Act. The Fine Enforcement Act became effective January 1, 1985, and is discussed in part VIII of this outline.

6. Imprisonment

- a. The statute sets forth authorized terms of imprisonment by class of offense. 18 U.S.C. § 3581(b) (p. 162, 98 Stat. 1998). However, these authorized terms apply only to crimes whose classification is set forth in the statute defining the offense. There are currently no such crimes. Therefore, the authorized term of imprisonment for all existing crimes remains the term that is set forth in the statute defining the offense. 18 U.S.C. § 3559(b)(2) (p. 156, 98 Stat. 1992).
- b. Good time can be earned for satisfactory behavior at the rate of fifty-four days for each year served (not each year of the term of the sentence), except that no good time is earned in the first year. Extra good time is eliminated. Life sentences must be served in full. 18 U.S.C. § 3624(b) (pp. 172-73, 98 Stat. 2008-09).
- c. The court may include a term of supervised release to follow release from imprisonment. Authorized terms of supervised release are not more than three years for a class A or B felony (twenty years' imprisonment or more authorized in statute defining the offense); not more than two years for a class C or D felony (five years or more); not more than one year for a class E felony or a misdemeanor (more than five days); none for an infraction (five days or less). 18 U.S.C. §§ 3559(a), 3583(b) (pp. 155-56, 163, 98 Stat. 1991-92, 1999).
- d. Violation of supervised release may be prosecuted as contempt. There is no revocation procedure. 18 U.S.C. § 3583(e)(3) (p. 164, 98 Stat. 2000).
- e. Increased sentences for dangerous special offenders and dangerous special drug offenders are abolished. Crime Control Act §§ 212(a)(2), 219(a) (pp. 151, 191, 98 Stat. 1987, 2027).

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GUIDELINE SENTENCING

- f. Special parole terms are abolished. Crime Control Act §§ 224, 225 (p. 194, 98 Stat. 2030).
 - g. The sentencing provisions of the Narcotic Addict Rehabilitation Act are repealed. Crime Control Act § 218(a)(6) (p. 191, 98 Stat. 2027).
 - h. Juvenile sentences are made determinate, with neither parole nor good time authorized, and the permissible maximums are increased somewhat. Crime Control Act § 214 (pp. 177-78, 98 Stat. 2013-14).
 - i. The repeal of the Youth Corrections Act, which became effective upon enactment, is discussed in part VI of this outline.
7. Order of notice to victims
- a. A defendant guilty of fraud or other intentionally deceptive practices may be required to give reasonable notice and explanation of the conviction to victims of the offense, but the defendant shall not be required to bear costs in excess of \$20,000. 18 U.S.C. § 3555 (p. 155, 98 Stat. 1991).
 - b. The court must give notice if it is considering imposing such an order and give the parties an opportunity to submit written and oral arguments. 18 U.S.C. § 3553(d) (p. 154, 98 Stat. 1990).
8. Restitution
- a. The provisions of the Victim and Witness Protection Act are preserved and are redesignated as 18 U.S.C. §§ 3663-3664. Crime Control Act § 212(a)(1) (p. 151, 98 Stat. 1987).
 - b. There is apparently no authority to impose restitution as a probation condition except when authorized by the Victim and Witness Protection Act. See 18 U.S.C. §§ 3556, 3563(b)(3) (pp. 155, 157, 98 Stat. 1991, 1993).
 - c. The court must give notice if it is considering imposing restitution and give the parties an

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GUIDELINE SENTENCING

- opportunity to submit written and oral arguments. 18 U.S.C. § 3553(d) (p. 154, 98 Stat. 1990).
9. Forfeiture amendments, which became effective upon enactment, are discussed in part XI of this outline.

Not effective until 1986

III. SENSE OF THE SENATE RESOLUTION
(Crime Control Act § 239)

A. Introduction

1. A resolution expressing the sense of the Senate about sentencing practices that should be followed in the period preceding the effective date of sentencing guidelines. Crime Control Act § 239 (pp. 203-04, 98 Stat. 2039-40).
2. The resolution was a floor amendment to the Senate's Crime Control bill. The principal source of legislative history is 130 Cong. Rec. S542-45 (daily ed. Jan. 31, 1984).
3. The resolution is nonbinding.

B. Purpose

1. The apparent intent is to urge that prisons be used only in cases calling for incapacitation and not where the principal purpose of sentencing is deterrence or retribution. While the resolution refers to the need to reserve prison space for "violent and serious" offenders, the introductory statement of Senator Nunn treats "serious" as synonymous with "dangerous."
2. The "increased use of restitution, community service, and other alternative sentences" is recommended for "nonviolent and nonserious" offenders.

Applicable now

IV. NEW OFFENSES AND AMENDMENTS TO EXISTING OFFENSES

A. Introduction

1. The Crime Control Act establishes a number of new offenses, amends the definitions of others, and changes the penalties for still others. The Fine Enforcement Act establishes the new offense of willful failure to pay a fine. These provisions are summarized below.
2. With the few exceptions noted below, the statutes do not provide an effective date for any of the provisions listed. Hence, the new provisions became effective upon enactment. The ex post facto clause is clearly applicable, so the new crimes, redefinitions, and enhanced penalties can apply only to offenses committed after the enactment date (which is October 12 for the Crime Control Act).
3. The listing below does not include the across-the-board increase in allowable fines that was included in the Fine Enforcement Act and applies to offenses committed after December 31, 1984. That increase is discussed in part VIII of this outline. In many cases, the maximum fine under the Fine Enforcement Act is greater than the maximum fine provided in Crime Control Act amendments listed. The Fine Enforcement Act, as the subsequent enactment, will prevail.
4. The listing below also does not include the provision enhancing penalties if an offense is committed while on release pending trial, sentence, execution of sentence, or appeal. That provision is discussed in part V of this outline.
5. It may be of interest that four of the provisions contain language intended to place on the defendant the burden of proof for establishing a defense. These are in the new offense of soliciting commission of a violent felony, the new offense of using a counterfeit trademark, the new offense of willful failure to pay a fine, and the amended bail-jumping statute. The particular defenses involved are noted below.

Effective now

NEW OFFENSES AND AMENDMENTS TO OFFENSES

6. Particular attention is directed to the amendment to 18 U.S.C. § 219 that makes it a crime for a juror to be an agent of a foreign principal required to register under the Foreign Agents Registration Act (paragraph C13 below). Judges may wish to protect jurors and potential jurors from inadvertently violating this prohibition, which appears to have been inadvertently created.

B. New Offenses

1. Investing illegal drug profits in an enterprise that affects interstate commerce. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 414, added by Crime Control Act § 303 (pp. 213-14, 98 Stat. 2049-50). The new offense is similar to 18 U.S.C. § 1962(a), which applies to illegal profits derived from racketeering activity or collection of unlawful debt.
2. Travel in commerce or use of the mail or any facility in commerce with intent that a murder for hire be committed in violation of state or federal law. 18 U.S.C. § 1952A, added by Crime Control Act § 1002 (pp. 300-01, 98 Stat. 2136-37).
3. Commission or attempted commission of certain assaultive crimes, or threatening to commit crimes of violence, in exchange for payment from an enterprise engaged in racketeering activity or for the purpose of gaining entrance to or maintaining or increasing position in such an enterprise. 18 U.S.C. § 1952B, added by Crime Control Act § 1002 (p. 301, 98 Stat. 2137).
4. Solicitation of another to commit a federal felony that has as an element the use or threatened use of physical force against the person or property of another. It is an affirmative defense, to be proved by the defendant by a preponderance of the evidence, that the defendant prevented commission of the crime under circumstances manifesting a renunciation of criminal intent. 18 U.S.C. § 373, added by Crime Control Act § 1003 (p. 302, 98 Stat. 2138).
5. Using or carrying a handgun loaded with armor-piercing ammunition "during and in relation to the commission of a crime of violence" that may be prosecuted in federal court. The offense carries a term of not less than five nor more than ten years. Probation may not be granted and the offender is not eligible for parole. The sen-

Effective now

NEW OFFENSES AND AMENDMENTS TO OFFENSES

tence runs consecutively to the sentence for the underlying offense. The mandatory sentence applies even if the statute defining the underlying offense provides for enhancement if a dangerous or deadly weapon is used. 18 U.S.C. § 929, added by Crime Control Act § 1006 (p. 303, 98 Stat. 2139). "Crime of violence" is defined in 18 U.S.C. § 16, added by Crime Control Act § 1001 (p. 300, 98 Stat. 2136). The legislative history indicates that a mandatory sentence under this section runs consecutively with a mandatory sentence for use of the weapon under the amended 18 U.S.C. § 924(c), discussed below. S. Rep. No. 98-225, pp. 316-17.

6. Assaulting, kidnaping, or murdering a member of the immediate family of certain officials, or attempting or threatening to do so, "with intent to impede, intimidate, interfere with, or retaliate against such official . . . while he is engaged in or on account of the performance of his official duties." 18 U.S.C. § 115, added by Crime Control Act § 1008 (p. 304, 98 Stat. 2140). The officials covered include those protected by 18 U.S.C. § 1114, which, as noted below, is amended by the bill.
7. Damaging the property of a facility involved in the production, storage, transmission, or distribution of electricity, fuel, or another form or source of energy. 18 U.S.C. § 1365, added by Crime Control Act § 1011 (pp. 305-06, 98 Stat. 2141-42). Nuclear facilities and interstate gas transmission facilities are excluded; damaging them is a criminal offense under 42 U.S.C. § 2284 and 49 U.S.C. § 1679a(c), respectively.
8. Escaping or attempting to escape, or aiding an escape or attempted escape, from custody under an order of civil contempt for refusal to testify or under a civil commitment resulting from a finding of not guilty by reason of insanity. 28 U.S.C. § 1826(c), added by Crime Control Act § 1013 (p. 306, 98 Stat. 2142).
9. Warning someone of a possible search or seizure to prevent the authorized seizing or securing of a person or property. 18 U.S.C. § 2232, paragraph added by Crime Control Act § 1103(b) (p. 307, 98 Stat. 2143).
10. Theft or acceptance of bribes by an agent of an organization or state or local agency that receives benefits in excess of \$10,000 in any one-year period pursuant to a federal program of assistance; also, offering or giving

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- bribes to such an agent. The amount of the theft or the size of the transaction involved in the bribe must be at least \$5,000; there is no requirement that the property stolen or the transaction involved in the bribe be connected with the federal program. 18 U.S.C. § 666, added by Crime Control Act § 1104 (pp. 307-08, 98 Stat. 2143-44).
11. Counterfeiting and forging securities of state and local governments, private corporations, and other organizations. 18 U.S.C. § 511, added by Crime Control Act § 1105 (pp. 308-09, 98 Stat. 2144-45).
 12. Defrauding or attempting to defraud a federally chartered or federally insured financial institution. 18 U.S.C. § 1344, added by Crime Control Act § 1108 (p. 311, 98 Stat. 2147).
 13. Stealing "property of another which has a value of \$10,000 or more in connection with the marketing of livestock in interstate or foreign commerce." The section catch line indicates that the offense is theft of livestock. 18 U.S.C. § 667, added by Crime Control Act § 1111 (p. 313, 98 Stat. 2149).
 14. Disclosure of information about protected witnesses that has been furnished to state or local law enforcement officials. 18 U.S.C. § 3521(b)(3), added by Crime Control Act § 1208 (p. 319, 98 Stat. 2155). This provision has a purported effective date of October 1, 1984, which is before the date of enactment. Crime Control Act § 1210 (p. 327, 98 Stat. 2163).
 15. Trafficking in goods or services using a counterfeit trademark. Any defense available under the Lanham Act is applicable to the criminal prosecution and "the defendant shall have the burden of proof, by a preponderance of the evidence, of any such affirmative defense." 18 U.S.C. § 2320, added by Crime Control Act § 1502 (pp. 342-43, 98 Stat. 2178-79).
 16. Defrauding, attempting to defraud, or conspiring to defraud through any of a variety of acts related to counterfeiting credit cards and debit instruments and the unauthorized use such cards and instruments. 18 U.S.C. § 1029, added by Crime Control Act § 1602 (pp. 347-48, 98 Stat. 2183-84). This provision was designed to remedy perceived loopholes in the offense definitions of 15

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- U.S.C. § 1644 and 15 U.S.C. § 1693n. H.R. Rep. No. 98-894, 98th Cong., 2d Sess., p. 5 (1984). Those provisions are not repealed, however.
17. Hostage taking. The offense covers some cases that are wholly domestic, but is principally aimed at conduct that occurs outside the United States when the offender or hostage is American, the offender is found in the United States, or the hostage is held for the purpose of affecting United States government actions. 18 U.S.C. § 1203, added by Crime Control Act § 2002 (p. 350, 98 Stat. 2186). This provision became effective on the date the United States became "a party to" the International Convention Against the Taking of Hostages. Crime Control Act § 2003 (p. 350, 98 Stat. 2186). Article 18 of the convention provides that the convention "shall enter into force" for a ratifying state on the thirtieth day after deposit of its instrument of ratification; the United States instrument was deposited December 7, 1984.
 18. Threatening to commit certain crimes related to the operation of aircraft. 49 U.S.C. § 1472(m)(2), as amended by Crime Control Act § 2014(d)(1) (p. 354, 98 Stat. 2190). This provision was explicitly made effective on the date of enactment. Crime Control Act § 2015 (p. 354, 98 Stat. 2190).
 19. Destroying or altering certain data within computers and obtaining certain data from computers without authorization. 18 U.S.C. § 1030, added by Crime Control Act § 2102 (pp. 354-56, 98 Stat. 2190-92).
 20. Willful failure to pay a fine. It is a defense that the defendant was unable to make the payment because of the responsibility to provide necessities for himself or dependents; the defendant has the burden of establishing the offense by a preponderance of the evidence. 18 U.S.C. § 3621, added by Fine Enforcement Act § 6 (98 Stat. 3136). The provision "shall apply with respect to offenses committed after December 31, 1984." Fine Enforcement Act § 10 (98 Stat. 3138).
- C. Amendments Affecting the Definitions of Crimes
1. The existing bail-jumping statute, 18 U.S.C. § 3150, is replaced with a new section that (1) covers failure "to surrender for service of sentence pursuant to a court order," (2) increases penalties, and (3) establishes, as

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- an "affirmative defense," that uncontrollable circumstances prevented the person from appearing or surrendering. 18 U.S.C. § 3146 (pp. 146-47, 98 Stat. 1982-83). The Senate committee report states that, since the defense is denominated as "affirmative," the defendant will have the burden of proof by a preponderance of the evidence. S. Rep. No. 98-225, p. 32.
2. The list of offenses defined as "racketeering activity" in 18 U.S.C. § 1961 is expanded by adding offenses indictable under the Currency and Foreign Transactions Reporting Act, offenses indictable under the obscenity chapter of title 18, and state-law offenses of dealing in obscene matter if punishable by imprisonment for more than one year. Crime Control Act §§ 901(g), 1020 (pp. 300, 307, 98 Stat. 2136, 2143).
 3. The definition of first-degree murder in 18 U.S.C. § 1111(a) is amended to include murder committed in the perpetration of, or attempt to perpetrate, escape, murder, kidnaping, treason, espionage, and sabotage. Crime Control Act § 1004 (p. 302, 98 Stat. 2138). The inclusion of murder in the list is designed to make it first-degree murder to kill someone other than the intended victim, even though the killing of the intended victim might be second-degree murder in the circumstances. S. Rep. No. 98-225, p. 311.
 4. 18 U.S.C. § 924(c) is amended to redefine the offense as using or carrying a firearm "during and in relation to any crime of violence." The offense carries a mandatory five-year term; for a second or subsequent section 924(c) offense, the term is ten years. Probation may not be granted with respect to the mandatory sentence, which does not carry parole eligibility and which runs consecutively with the sentence for the underlying offense. The mandatory sentence applies even if the statute defining the underlying offense provides for enhancement if a dangerous or deadly weapon is used. Crime Control Act § 1005 (pp. 302-03, 98 Stat. 2138-39). "Crime of violence" is defined in 18 U.S.C. § 16, added by Crime Control Act § 1001 (p. 300, 98 Stat. 2136).
 5. 18 U.S.C. § 1201, governing kidnaping, is amended to include kidnaping of an official protected under 18 U.S.C. § 1114 "while the person is engaged in, or on account of, the performance of his official duties." Crime Control Act § 1007 (pp. 303-04, 98 Stat. 2139-40).

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6. 18 U.S.C. § 1114, governing the killing of federal officials, is amended to include attempts, to add some officials to the protected list, and to give the attorney general the power to add still others. Among the officials added are United States probation and pretrial services officers and United States magistrates. Crime Control Act § 1012 (p. 306, 98 Stat. 2142).
7. 18 U.S.C. § 1153, the Major Crimes Act, governing offenses committed by Indians within the Indian country, is amended to add maiming and forced sodomy. Crime Control Act § 1009 (p. 305, 98 Stat. 2141).
8. 18 U.S.C. § 31 is amended to include trucks in the definition of motor vehicles, previously limited to vehicles "used for commercial purposes on the highways in the transportation of passengers, or passengers and property." Crime Control Act § 1010 (p. 305, 98 Stat. 2141). The effect is to expand the scope of the crime of destroying motor vehicles or motor vehicle facilities, set forth at 18 U.S.C. § 33.
9. 18 U.S.C. § 2113(c), governing receipt of stolen bank property, is amended to eliminate the requirement that the defendant have known that the property was stolen from a bank, credit union, or savings and loan association. The revised language requires only that the defendant have known that the property was stolen. Crime Control Act § 1106 (p. 309, 98 Stat. 2145).
10. The bank bribery statute, 18 U.S.C. §§ 215-216, is rewritten to encompass an expanded group of institutions and to reach offerors and givers of bribes as well as solicitors and recipients. Crime Control Act § 1107 (pp. 309-10, 98 Stat. 2145-46).
11. 18 U.S.C. §§ 1791-1792, governing contraband in federal prisons and prison riots, are rewritten, principally to make it clear that simple possession of contraband by an inmate is a criminal violation, without the necessity of proving introduction or other movement of the contraband. Graduated penalties are introduced, depending on the nature of the contraband. Crime Control Act § 1109 (pp. 311-12, 98 Stat. 2147-48).
12. 18 U.S.C. §§ 2316-2317, governing transporting and trafficking in stolen cattle, are amended to substitute

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"livestock" for "cattle." Crime Control Act §§ 1113-1114 (p. 313, 98 Stat. 2149).

13. 18 U.S.C. § 219, prohibiting officers and employees of the United States from acting as foreign agents, is amended to make the class of officials covered identical to the class of officials covered by the bribery statute, 18 U.S.C. § 201. Crime Control Act § 1116 (p. 313, 98 Stat. 2149). Jurors are included in this class, producing the apparently unintended result that a juror may not also be an agent of a foreign principal required to register under the Foreign Agents Registration Act.
14. The definition of the special maritime and territorial jurisdiction of the United States in 18 U.S.C. § 7 is enlarged to include "[a]ny place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States." Crime Control Act § 1210 (p. 328, 98 Stat. 2164).
15. Several amendments are made to offenses involving the operation of aircraft. These include amendments to 18 U.S.C. §§ 31-32, principally to establish extraterritorial jurisdiction over acts of aircraft sabotage, and an amendment to 49 U.S.C. § 1472(m), to limit the offense of conveying false information to instances in which the conduct is willful and malicious or is engaged in with reckless disregard of the safety of human life. Conveying false information without this mens rea is made subject to a civil penalty. Carrying a concealed weapon in flight is made subject to a civil penalty although remaining a crime. Crime Control Act §§ 2011-2014 (pp. 351-54, 98 Stat. 2187-90). These amendments were explicitly made effective on the date of enactment. Crime Control Act § 2015 (p. 354, 98 Stat. 2190).

D. Amendments Mainly Affecting Penalties

1. Penalties for manufacture, distribution, and import and export of controlled substances are increased by Crime Control Act §§ 502-505 (pp. 232-34, 98 Stat. 2068-70). The changes include increases in prison terms for certain large transactions, for offenses involving substances other than narcotics in schedules I and II, and for offenses committed within one thousand feet of an elementary or secondary school. They also include increases in fines. In addition, fines up to "twice the gross profits or other proceeds" of an offense involving controlled

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substances are authorized by section 415 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, added by Crime Control Act § 2302 (p. 357, 98 Stat. 2193).

2. Maximum prison terms and fines are increased for certain violations of the Taft-Hartley Act, the Employee Retirement Income Security Act (ERISA), and the Landrum-Griffin Act. The provisions of the latter two statutes that bar people convicted of certain crimes from serving in certain positions with employee benefit plans, labor organizations, employers, and employer organizations are amended by (1) expanding the list of crimes, (2) expanding the list of barred positions, (3) expanding the maximum period of disbarment, and (4) making the disbarment effective as of the date of the trial court's judgment even if an appeal is taken. Crime Control Act §§ 801-804 (pp. 295-98, 98 Stat. 2131-34). Section 804 (p. 298, 98 Stat. 2134) purports to make the ERISA and Landrum-Griffin amendments, including some of the increased prison terms and fines, effective "with respect to any judgment of conviction entered by the trial court after the date of enactment"; it also states that the provision commencing disbarment on the date of the trial court judgment applies to judgments outstanding on the date of the enactment but still subject to appellate review.
3. Both civil and criminal penalties are increased for violation of reporting and record-keeping requirements of the Currency and Foreign Transactions Reporting Act. Crime Control Act § 901(a)-(c) (p. 299, 98 Stat. 2135).
4. Penalties under 18 U.S.C. § 114 for maiming within the special maritime and territorial jurisdiction are increased. Crime Control Act § 1009A (p. 305, 98 Stat. 2141).
5. 18 U.S.C. § 844 is amended to make it clear that the enhanced penalties that apply to arson if personal injury or death results are applicable even if the person injured or killed is a "public safety officer" such as a fire fighter. Crime Control Act § 1014 (p. 306, 98 Stat. 2142). The amendment was intended to overrule a district court decision to the contrary. S. Rep. No. 98-225, pp. 358-59.
6. 18 U.S.C. § 2232 is amended to increase the penalties for destruction or removal of property to prevent seizure. Crime Control Act § 1103(a) (p. 307, 98 Stat. 2143).

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7. In the case of a person who has been convicted three times of robbery or burglary, a fifteen-year mandatory minimum penalty is established for receipt, transportation, or possession of a firearm in violation of 18 U.S.C. app. § 1202(a). Probation may not be granted, and the offender is not eligible for parole. Crime Control Act §§ 1801-1803 (p. 349, 98 Stat. 2185).
8. Penalties for a number of offenses relating to the operation of aircraft are increased. Crime Control Act §§ 2011-2014 (pp. 351-54, 98 Stat. 2187-90). These changes were explicitly made effective on the date of enactment. Crime Control Act § 2015 (p. 354, 98 Stat. 2190).
9. 18 U.S.C. § 1963(a) is amended to authorize fines up to "twice the gross profits or other proceeds" derived from a RICO offense. Crime Control Act § 2301(a) (p. 356, 98 Stat. 2192).

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V. BAIL AMENDMENTS
(Chapter I of Crime Control Act)

A. Introduction

1. The 1966 Bail Reform Act is repealed and new provisions are enacted. Crime Control Act § 203(a) (pp. 140-48, 98 Stat. 1976-84).
2. The principal source of legislative history is S. Rep. No. 98-225 (the Senate report on the Crime Control bill).
3. Many provisions are based on a District of Columbia statute. Decisions of the District of Columbia Court of Appeals, published in the Atlantic Reporter, may be helpful. The preventive detention feature of the District of Columbia law was held constitutional in United States v. Edwards, 430 A.2d 1321 (D.C. 1981) (en banc), cert. denied, 455 U.S. 1022 (1982).
4. There is no effective-date provision; hence, these amendments took effect upon enactment.

B. Release and Detention Before Trial

1. The defendant must be released on personal recognizance or unsecured personal bond unless the judicial officer determines "that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community." 18 U.S.C. § 3142(b) (p. 141, 98 Stat. 1977). The legislative history indicates that "safety" is not limited to absence of physical violence and emphasizes that drug trafficking is regarded as a danger to the safety of the community. S. Rep. No. 98-225, pp. 12-13.
2. Otherwise, the judicial officer shall impose the least restrictive condition or combination of conditions that will reasonably assure the appearance of the person and the safety of any other person and the community (no longer "the first of the following conditions"). 18 U.S.C. § 3142(c) (pp. 141-42, 98 Stat. 1977-78).

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3. The judicial officer "may not impose a financial condition that results in the pretrial detention of the person." *Id.* This provision in effect overrules the line of cases holding that money bail beyond the defendant's means is not necessarily excessive.
4. The defendant may be ordered detained if the judicial officer finds that no condition or combination of conditions will reasonably assure appearance and safety. 18 U.S.C. § 3142(e) (pp. 142-43, 98 Stat. 1978-79).
5. A detention hearing shall be held--
 - a. upon motion of the government in a case that involves--
 - (1) a crime of violence (defined at 18 U.S.C. § 3156(a)(4), added by Crime Control Act § 203(c)(4) (p. 149, 98 Stat. 1985)), or
 - (2) an offense carrying life imprisonment or death, or
 - (3) a federal drug offense carrying ten years or more, or
 - (4) any felony following convictions for two or more offenses of the above types (or two or more state or local offenses that would have been such offenses had circumstances giving rise to federal jurisdiction existed);
 - b. upon motion of the government or the court in a case that involves--
 - (1) serious risk of flight, or
 - (2) serious risk that the person will attempt to obstruct justice.

18 U.S.C. § 3142(f)(1), (2) (p. 143, 98 Stat. 1979).

6. Detention hearing

- a. The hearing is to be held at the initial appearance unless the government or the defendant moves for a continuance. On such a motion, the hearing may be continued not more than five days at defendant's re-

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- quest, not more than three days at government's. Longer continuances are allowed for good cause. 18 U.S.C. § 3142(f) (pp. 143-44, 98 Stat. 1979-80).
- b. The defendant shall be detained during the period of a continuance and may be detained pending completion of the hearing once begun. *Id.*
 - c. The defendant has the right to counsel and appointment of counsel. *id.*
 - d. The Federal Rules of Evidence do not apply. However, the defendant may present witnesses and may cross-examine witnesses who appear at the hearing. *Id.*
 - e. Rebuttable presumptions--
 - (1) that no condition will reasonably assure appearance and safety if there is probable cause to believe that defendant has committed a federal drug offense carrying ten years or more or has violated 18 U.S.C. § 924(c) (use of firearm to commit a felony); and
 - (2) in a hearing on a motion under 5a above, that no condition will reasonably assure safety if the defendant has previously been convicted of certain offenses committed while on release pending trial for a federal, state, or local offense.
- 18 U.S.C. § 3142(e) (pp. 142-43, 98 Stat. 1978-79).
- f. The facts supporting a finding that no condition or combination of conditions will reasonably assure safety must be supported by clear and convincing evidence. 18 U.S.C. § 3142(f) (pp. 143-44, 98 Stat. 1979-80). No standard of proof is set forth for a finding that no condition or combination of conditions will reasonably assure appearance.
 - g. There is some question whether the rebuttable presumptions shift the burden of proof or merely impose on the defendant a burden of going forward. The presumption of e(1) above was held to shift only the burden of production in United States v. Chimurenga, No. 84 Cr. 818 (RLC), slip op. at 12-13 (S.D.N.Y. Nov. 5, 1984) (Grubin, Magistrate) (available on WESTLAW). Although this conclusion was cited with

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approval in United States v. Payden, No. S84 Cr. 566 (DNE), slip op. at 18-19 (S.D.N.Y. Dec. 3, 1984) (Edelstein, J.) (available on LEXIS and WESTLAW), it was rejected in United States v. Aiello, No. S84 Cr. 881 (KTD), slip op. at 8-14 (S.D.N.Y. Nov. 30, 1984) (Duffy, J.) (available on LEXIS and WESTLAW).

h. Written findings and reasons are required if detention is ordered. 18 U.S.C. § 3142(i)(1) (p. 145, 98 Stat. 1981). They are not explicitly required if release is ordered, but should be considered in a contested case because, as is noted below, the government may appeal.

7. There are requirements about the contents of both release and detention orders. 18 U.S.C. § 3142(h), (i) (pp. 144-45, 98 Stat. 1880-81). In the case of release, these include a mandatory condition that the person not commit a federal, state, or local crime during the period of release. 18 U.S.C. § 3142(b), (c)(1) (p. 141, 98 Stat. 1977).

8. Ten-day detention for the benefit of other authorities is authorized if a person is arrested while on pretrial release, probation, or parole, or is an alien not admitted for permanent residence, and the judicial officer finds he "may flee or pose a danger to any other person or the community." 18 U.S.C. § 3142(d) (p. 142, 98 Stat. 1978).

C. Release and Detention After Trial

1. While awaiting imposition or execution of sentence

- a. The defendant shall be ordered detained unless the judicial officer finds by clear and convincing evidence that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released. 18 U.S.C. § 3143(a) (p. 145, 98 Stat. 1981).
- b. When sentencing guidelines take effect, this rule will apply only if the applicable guideline recommends a term of imprisonment. Crime Control Act § 223(f)(1) (p. 192, 98 Stat. 2028). There is no explicit rule when the guideline does not recommend a term of imprisonment.

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c. The reference to awaiting "execution" of sentence was intended to make clear that a person may be released for a short period after sentence "for such matters as getting his affairs in order prior to surrendering for service of sentence." S. Rep. No. 98-225, p. 26. The language appears to accommodate voluntary surrender.

2. Pending appeal where sentence was imprisonment

a. The defendant shall be ordered detained unless the judicial officer finds by clear and convincing evidence that defendant is not likely to flee or pose a danger and that the appeal is not for purpose of delay "and raises a substantial question of law or fact likely to result in reversal or an order for a new trial." 18 U.S.C. § 3143(b) (pp. 145-46, 98 Stat. 1981-82).

3. Meaning of "likely"

- a. If "likely" means "probable," there will be almost no cases in which a trial judge could find that an appeal was "likely to result in reversal or an order for a new trial."
- b. If "likely" means something less than "probable" (such as a substantial possibility), it becomes easier to find that an appeal is likely to result in reversal but harder to find that a defendant is not likely to flee or pose a danger.
- c. "Under the current 18 U.S.C. 3148, release can be denied if it appears that the appeal is frivolous or taken for delay. The change in subsection (b) requires an affirmative finding that the chance for reversal is substantial." S. Rep. No. 98-225, p. 27.

D. Release or Detention of a Material Witness

1. The existing provision of law is substantially reenacted in form, but the substance changes because it incorporates by reference the provisions governing release or detention of defendants before trial. 18 U.S.C. § 3144 (p. 146, 98 Stat. 1982).
2. Authority to order the arrest of a material witness is made explicit. Id.

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E. Appeals from Release or Detention Orders

1. Either the government or the defendant can seek review of a magistrate's decision and appeal from district court decisions. The appropriateness of release conditions may be raised on appeal (not merely the question of release vs. detention). 18 U.S.C. § 3145 (p. 146, 98 Stat. 1982); 18 U.S.C. § 3731, as amended by Crime Control Act § 205 (p. 150, 98 Stat. 1986).

F. Sanctions

1. The criminal penalties for failure to appear are changed. They are also made clearly applicable to knowing failure to surrender for service of sentence. 18 U.S.C. § 3146 (pp. 146-47, 98 Stat. 1982-83).
2. An extra term of imprisonment is provided for conviction of an offense committed while on release. The provision appears to contemplate enhancement of the sentence on the underlying offense rather than an additional count along the lines of 18 U.S.C. § 924(c). It also appears to be mandatory: at least two years if the new offense is a felony, at least ninety days if a misdemeanor (apparently including petty offenses). 18 U.S.C. § 3147 (p. 147, 98 Stat. 1983). The mandatory feature is to be dropped when guidelines take effect. Crime Control Act § 223(g) (pp. 192-93, 98 Stat. 2028-29).
3. There are new provisions for revoking release, upon motion of the government and after a hearing, if a condition of release is violated. 18 U.S.C. § 3148(b) (pp. 147-48, 98 Stat. 1983-84).
4. A judge may commence a prosecution for criminal contempt if a condition of release is violated. 18 U.S.C. § 3148(c) (p. 148, 98 Stat. 1984).

G. Retroactive Application

1. The provision for pretrial detention orders was held not subject to the ex post facto clause in United States v. Payden, No. S84 Cr. 566 (DNE), slip op. at 3-6 (S.D.N.Y. Dec. 3, 1984) (Edelstein, J.) (available on LEXIS and WESTLAW).
2. It was held in Payden, supra at 6-9, that a detention hearing may be held on the government's motion even

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though the motion was not made at the initial appearance. The opinion seems to support the proposition that a detention hearing could be held on the government's motion even if the initial appearance antedated October 12, 1984.

3. In United States v. Davis, No. 82 Cr. 564-CSH (S.D.N.Y. Nov. 21, 1984) (Haight, J.) (available on LEXIS), the court revoked bail pending appeal, previously granted, on the basis of the change in the controlling legal standard.
4. The Department of Justice takes the position that the new standards apply to pending cases, and may be invoked by the government or by a defendant who is in custody for failure to make bail. As a matter of policy, government attorneys are advised to move for revocation of bond and detention before trial only if significant new information bearing on risk or safety is developed. They are advised to move for revocation of bond pending appeal in every case "unless it is clear that the defendant could satisfy the new criteria . . . for post-conviction release." U.S. Dep't of Justice, Handbook on the Comprehensive Crime Control Act of 1984 and Other Criminal Statutes Enacted by the 98th Congress 27 (1984).

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VI. REPEAL OF YOUTH CORRECTIONS ACT
(Chapter II of Crime Control Act)

A. Introduction

1. The Youth Corrections Act is repealed in its entirety. Crime Control Act § 218(a)(8) (p. 191, 98 Stat. 2027).
2. "[T]he repeal of chapter 402 . . . shall take effect on the date of enactment." Crime Control Act § 235(a)(1)(A) (p. 195, 98 Stat. 2031).
3. The principal source of legislative history is S. Rep. No. 98-225 (the Senate report on the Crime Control bill).

B. Application to Pre-Enactment Offenses

1. "The following provisions of law . . . shall remain in effect for five years after the effective date as to an individual convicted of an offense . . . before the effective date . . . :
". . . .
"(E) Sections 5017 through 5020 of title 18, United States Code, as to a sentence imposed before the date of enactment." Crime Control Act § 235(b)(1) (p. 196, 98 Stat. 2032).
2. Clear implications are that--
 - a. no provisions of the Youth Corrections Act apply to a sentence imposed after the date of enactment even though the offense and conviction occurred before enactment, and
 - b. only sections 5017 through 5020 (involving release from custody, supervision, revocation, and apprehension of youth on parole) continue to apply even to an offender sentenced before enactment.
3. However, there appears to be a consensus that the ex post facto clause is applicable:
 - a. It was so held in United States v. Romero, 596 F. Supp. 446 (D.N.M. 1984) (Baldock, J.).

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- b. "Because of ex post facto and other policy considerations," the Department of Justice takes the position that the repeal "is applicable only as to offenses committed after the date of enactment." U.S. Dep't of Justice, Handbook on the Comprehensive Crime Control Act of 1984 and Other Criminal Statutes Enacted by the 98th Congress 32 (1984).
- c. The Bureau of Prisons will continue to maintain separate facilities for people sentenced under the Youth Corrections Act, regardless of sentencing date.
- d. The Parole Commission will apparently continue to provide certificates setting aside convictions, also regardless of sentencing date.
- e. Note the risk that administrative policies (and the people who make them) may change before the sentence has been fully served.
- f. If continued application of the Youth Corrections Act is based on the ex post facto clause, an offender who would prefer an adult sentence can presumably claim the benefit of the repeal. In Romero, 596 F. Supp. at 448-49, the court took an "objective look" to determine which provisions of the act were to the advantage of a defendant and therefore saved by the ex post facto clause. It is not wholly clear whether the court regarded various provisions of the Youth Corrections Act as severable, a result that would allow a sentence to incorporate some provisions of the act but not others.

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VII. JUVENILE DELINQUENCY ACT AMENDMENTS
(Chapter XII, Part A, of Crime Control Act)

A. Introduction

1. The Juvenile Delinquency Act is amended to bring more delinquency proceedings into federal courts, to make it easier to prosecute a juvenile as an adult, and to liberalize access to records of delinquency proceedings.
2. There is no effective-date provision; hence, the amendments took effect upon enactment.
3. The principal source of legislative history is S. Rep. 98-225 (the Senate report on the Crime Control bill).

B. New Grounds for Proceeding in Federal Court

1. It is a ground for proceeding in federal court that the violation was committed within the special maritime and territorial jurisdiction and the authorized term of imprisonment is six months or less. 18 U.S.C. § 5032, as amended by Crime Control Act § 1201(a) (pp. 313-14, 98 Stat. 2149-50). This ground was added to make it possible to handle such matters as driving violations and littering violations without the need to investigate the state's willingness to assume jurisdiction. S. Rep. No. 98-225, p. 388.
2. It is a ground for proceeding in federal court that the offense charged is a crime of violence that is a felony or is one of specified drug offenses, and that "there is a substantial Federal interest in the case or the offense" (as certified by the attorney general) to warrant the exercise of federal jurisdiction. 18 U.S.C. § 5032, as amended by Crime Control Act § 1201(a) (pp. 313-14, 98 Stat. 2149-50). "Crime of violence" is defined at 18 U.S.C. § 16, added by Crime Control Act § 1001 (p. 300, 98 Stat. 2136).

C. Amended Rules Governing Prosecution as an Adult

1. The fourth paragraph of 18 U.S.C. § 5032 is amended to

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change the circumstances in which a juvenile may be prosecuted as an adult--

- a. by lowering the minimum age at the time of the alleged offense from sixteen to fifteen;
- b. by expanding the class of serious offenses to include the offenses described in paragraph B2 above; and
- c. by removing the judge's discretion to reject prosecution as an adult in the case of a juvenile charged with committing one of certain serious offenses after his sixteenth birthday who has previously been convicted of one of these offenses.

Crime Control Act § 1201(b) (p. 314, 98 Stat. 2150).

2. Proceedings against a juvenile are not to be commenced until any prior juvenile court records have been obtained. 18 U.S.C. § 5032, as amended by Crime Control Act § 1201(c) (p. 314, 98 Stat. 2150).
3. A juvenile prosecuted as an adult but convicted only of an offense that would not have justified such a prosecution will be treated as a juvenile for purposes of disposition. Id.

D. Revised Provisions on Records

1. The basic rules about nondisclosure, contained in former 18 U.S.C. § 5038(a)-(c), are retained in the corresponding subsections of the new provision, except that references to sealing the record are eliminated. 18 U.S.C. § 5038(a)-(c) (pp. 314-15, 98 Stat. 2150-51). That change is intended to enable court personnel to make disclosure in response to inquiries described in section 5038(a) without the necessity of a court order. 130 Cong. Rec. S267 (daily ed. Jan. 26, 1984).
2. The record of a juvenile delinquency adjudication is required to include a description of the acts on which the findings were based. 18 U.S.C. § 5032, as amended by Crime Control Act § 1201(c) (p. 314, 98 Stat. 2150).
3. Juveniles are to be fingerprinted and photographed if found guilty of committing an act that would, in an adult prosecution, be a felony crime of violence or one of certain other enumerated offenses. The prints and photos

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will be part of the information disclosable under 18 U.S.C. § 5038(a). In the case of a second such adjudication, the juvenile's records are to be transmitted to the FBI. 18 U.S.C. § 5038(d), (f) (p. 315, 98 Stat. 2151).

4. The requirement of prior 18 U.S.C. § 5038(d)(2) that media not publish the name or picture of a person proceeded against as a juvenile is omitted on constitutional grounds. S. Rep. No. 98-225, pp. 392-93.
5. A juvenile prosecuted as an adult is treated as an adult with regard to fingerprinting, photographing, and publicity. 18 U.S.C. § 5038(d), (e) (p. 315, 98 Stat. 2151).

E. Application to Pre-Enactment Offenses

1. It is not wholly clear which of the changes, if any, are subject to the ex post facto clause. Cf. United States v. Romero, supra (in Youth Corrections Act case, ex post facto clause saves judge's discretion to impose a rehabilitative sentence).

Effective now

VIII. FINES (Fine Enforcement Act)

A. Introduction

1. Authorized fines for virtually all offenses are increased, and statutory guidance is provided on the use of fines.
2. Collection and enforcement procedures are revised.
3. Section 12 of the Fine Enforcement Act in substance repeals the amendments to title 18 made by section 238 of the Crime Control Act (pp. 198-203, 98 Stat. 2034-39). Sections 2 through 9 of the Fine Enforcement Act therefore amend provisions of title 18 as they stood before October 12, 1984.
4. Section 12 took effect on the date of enactment of the Crime Control Act. Fine Enforcement Act § 12(b) (98 Stat. 3140). Because of an erroneous reference in the Crime Control Act's effective-date provision (§ 235(a)(1)(B)(ii)(IV) (p. 196, 98 Stat. 2032)), section 238 of the Crime Control Act had not taken effect when the Fine Enforcement Act was enacted. Accordingly, the repeal of the changes made by that section appears to present no retroactivity problems.
5. "The amendments made by sections 2 through 9 . . . shall apply with respect to offenses committed after December 31, 1984." Fine Enforcement Act § 10 (98 Stat. 3138).
6. The principal source of legislative history is H.R. Rep. No. 98-906, 98th Cong., 2d Sess. (1984).

B. Authorized Fines and Guidance About Imposition

1. The permissible fine for an offense is the largest of--
 - a. the amount specified in law defining the offense;
 - b. double the gross pecuniary gain derived by the defendant from the offense;

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- c. double the gross pecuniary loss caused by the offense to another person; or
- d. the following:

	<u>Individual defendant</u>	<u>Other defendant</u>
Any felony; misdemeanor resulting in death	\$250,000	\$500,000
Other misdemeanor punishable by more than 6 months	\$100,000	\$100,000

18 U.S.C. § 3623, added by Fine Enforcement Act § 6 (98 Stat. 3137).

- 2. There is a limit on the aggregate fines that may be imposed on a defendant "at the same time for different offenses that arise from a common scheme or plan, and that do not cause separable or distinguishable kinds of harm or damage." It is twice the amount imposable for the most serious offense. 18 U.S.C. § 3623(c)(2), added by Fine Enforcement Act § 6 (98 Stat. 3137).
- 3. The statute includes a list of factors to be considered in determining whether to impose fine and how much. 18 U.S.C. § 3622(a), added by Fine Enforcement Act § 6 (98 Stat. 3136-37).
- 4. If the defendant has a restitution obligation as a result of a conviction, the court shall impose a fine or penalty "only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution." 18 U.S.C. § 3622(b), added by Fine Enforcement Act § 6 (98 Stat. 3137).

C. Collection and Enforcement

- 1. Fines are to be paid to the attorney general except that the attorney general and the director of the Administrative Office may jointly provide by regulation that fines and penalties for certain categories of offenses will be paid to the clerk of court. 18 U.S.C. § 3565(d), added by Fine Enforcement Act § 2(3) (98 Stat. 3135).
- 2. The judgment shall include the name and address of the defendant, the docket number of the case, and the amount

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FINES

of the fine. If other than immediate payment is specified, the judgment shall include the payment schedule and shall require the defendant to notify the U.S. attorney of any change in the defendant's name or address. 18 U.S.C. § 3565(b)(1)(B), (C), added by Fine Enforcement Act § 2(3) (98 Stat. 3135).

- 3. There are lien provisions based on provisions of the Internal Revenue Code. 18 U.S.C. § 3565(a)(2)-(5), added by Fine Enforcement Act § 2(3) (98 Stat. 3134-35).
- 4. The court may impose a committed fine only if the court finds "present ability to pay." 18 U.S.C. § 3565(a)(1), as redesignated and amended by Fine Enforcement Act § 2(1), (2) (98 Stat. 3134).
- 5. Absent exceptional circumstances, a court that stays a fine must order that the defendant (1) deposit the amount of the fine in the registry of the district court; (2) provide a bond or other security; or (3) not transfer or dissipate assets. 18 U.S.C. § 3624, added by Fine Enforcement Act § 6 (98 Stat. 3138).
- 6. Probation officers are required to report to the court any failure of a probationer to pay an amount due as fine or restitution. 18 U.S.C. § 3655, paragraph added by Fine Enforcement Act § 5 (98 Stat. 3136).
- 7. Interest will run if a fine is to be paid in installments or is otherwise not paid immediately, and a 25 percent penalty is imposed if a payment is overdue more than ninety days. 18 U.S.C. § 3565(b)(2), (c), added by Fine Enforcement Act § 2(3) (98 Stat. 3135).
- 8. A new offense of willful failure to pay is created. 18 U.S.C. § 3621, added by Fine Enforcement Act § 6 (98 Stat. 3136).

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IX. SPECIAL ASSESSMENT ON CONVICTED PERSONS
(Chapter XIV of Crime Control Act)

A. Introduction

1. The court is required to impose an assessment on each convicted person for the benefit of a Crime Victims Fund. The uses of the fund are discussed in part XII of this outline.
2. The provision "shall take effect thirty days after the date of enactment." Crime Control Act § 1409(a) (p. 342, 98 Stat. 2178).
3. The principal source of legislative history for chapter XIV is S. Rep. No. 98-497, 98th Cong., 2d Sess. (1984). It indicates that the purpose of the special assessment is to raise revenue, but includes no interpretative commentary.

B. Amount of Assessment; Application

1. "(a) The court shall assess on any person convicted of an offense against the United States--
 - "(1) in the case of a misdemeanor--
 - "(A) the amount of \$25 if the defendant is an individual; and
 - "(B) the amount of \$100 if the defendant is a person other than an individual; and
 - "(2) in the case of a felony--
 - "(A) the amount of \$50 if the defendant is an individual; and
 - "(B) the amount of \$200 if the defendant is a person other than an individual."

18 U.S.C. § 3013(a), added by Crime Control Act § 1405 (pp. 338-39, 98 Stat. 2174-75).

2. The assessment is to be collected in the same manner as a fine (for which collection procedures are changed in the Fine Enforcement Act). 18 U.S.C. § 3013(b), added by Crime Control Act § 1405 (p. 339, 98 Stat. 2175).

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3. Some implications

- a. The assessment requirement probably applies separately to each count for which a defendant could be separately punished.
- b. It apparently applies to petty offenses, but not to forfeiture of collateral.
- c. The Department of Justice takes the position that it applies to convictions under the Assimilative Crimes Act, 18 U.S.C. § 13. U.S. Dep't of Justice, Handbook on the Comprehensive Crime Control Act of 1984 and Other Criminal Statutes Enacted by the 98th Congress 184 (1984).
- d. No exception is provided for indigent defendants.
- e. Rule 11(c)(1) of the Federal Rules of Criminal Procedure may be implicated. It requires that the court, before accepting a plea of guilty or nolo contendere, determine that the defendant understands "the mandatory minimum penalty provided by law, if any."

C. Application to Pre-Enactment Offenses

1. Although the statute provides for an effective date "thirty days after the date of enactment," which was November 11, 1984, it does not specify whether assessments are to be imposed for convictions on and after this date or offenses committed on and after this date.
2. The Administrative Office has taken the position that the assessment provision applies to convictions obtained on and after the effective date but that the ex post facto clause bars application to offenses committed before enactment. See Memorandum from Dewey R. Heising, Chief, Division of Financial Management, to Clerks of District Courts (Nov. 30, 1984).
3. The Department of Justice has taken the position that, "[t]o assure compliance with the ex post facto clause of the Constitution," the assessments should be imposed only for offenses committed on and after November 11. U.S. Dep't of Justice, Handbook on the Comprehensive Crime Control Act of 1984 and Other Criminal Statutes Enacted by the 98th Congress 187 (1984).

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X. OFFENDERS WITH MENTAL DISEASE OR DEFECT
(Chapter IV of Crime Control Act)

A. Introduction

1. Statutory provisions governing the insanity defense are enacted. They include a provision for a verdict of "not guilty only by reason of insanity," which verdict will result in an automatic civil commitment.
2. The Federal Rules of Evidence are amended to bar expert testimony on the ultimate issue of mental state or condition.
3. Chapter 313 of title 18, dealing with mental defectives, is rewritten.
 - a. A new provision requires judicial approval before a convicted inmate can be transferred to a prison psychiatric hospital.
 - b. Provisions about competency to stand trial and civil commitment of offenders due for release are rewritten.
4. The principal source of legislative history is S. Rep. No. 98-225 (the Senate report on the Crime Control bill).
5. There is no effective-date provision; hence, these amendments took effect upon enactment.

B. Insanity Defense

1. It is an affirmative defense that "the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts." 18 U.S.C. § 20(a), added by Crime Control Act § 402 (p. 221, 98 Stat. 2057). This formulation does not allow an insanity defense based on a defendant's inability to conform his conduct to the requirements of the law.
2. The defense may be raised on motion of the U.S. attorney

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or the court as well as by the defendant. 18 U.S.C. § 4242(b) (p. 223, 98 Stat. 2059).

3. If the defense is raised, the possible verdicts are guilty, not guilty, and not guilty only by reason of insanity. Id.
4. The defendant must prove the defense by clear and convincing evidence. 18 U.S.C. § 20(b), added by Crime Control Act § 402 (p. 221, 98 Stat. 2057).
5. A defendant found not guilty only by reason of insanity is to be committed. A hearing is to be held within forty days to determine whether release would create a substantial risk of bodily injury to another person or serious damage to property due to a present mental disease or defect. 18 U.S.C. § 4243(a)-(d) (p. 223, 98 Stat. 2059).
 - a. The burden of proof to demonstrate absence of risk is on the defendant: by clear and convincing evidence if the offense involved bodily injury to another or serious damage to property or a substantial risk of such injury or damage; otherwise by a preponderance. 18 U.S.C. § 4243(d) (p. 223, 98 Stat. 2059).
 - b. If the defendant is not released at the hearing, the attorney general is to try to persuade a state to assume responsibility, but is to hospitalize the person in a suitable facility until such efforts succeed. 18 U.S.C. § 4243(e) (pp. 223-24, 98 Stat. 2059-60).
 - c. Thereafter, if the director of the facility in which the person is hospitalized believes the person is ready for release or conditional release, the director shall file a certificate with the court. The court may release the person or hold a release hearing. 18 U.S.C. § 4243(f) (p. 224, 98 Stat. 2060). Hearings may also be held on the defendant's motion. 18 U.S.C. § 4247(h) (pp. 230-31, 98 Stat. 2066-67).
6. If the government fails to establish that the defendant had the mental state necessary to be guilty, the defendant is apparently entitled to a simple verdict of not guilty, without the civil commitment consequences.
7. The insanity defense provisions are based on a District of Columbia statute. Decisions of the District of

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Columbia Court of Appeals, published in the Atlantic Reporter, may be helpful.

8. Retroactive application

- a. In United States v. Kowal, Cr. No. H-84-1 (PCD) (D. Conn. Oct. 26, 1984) (Dorsey, J.) (available on WESTLAW), it was held that both the change in definition of insanity and the change in burden of proof are subject to the ex post facto clause. The same conclusion with regard to shifting the burden of proof was reached in United States v. Williams, 475 F.2d 355 (D.C. Cir. 1973).
- b. The Department of Justice accepts the view that the statutory changes in definition and burden of proof do not apply to conduct antedating enactment of the statute. The Department has also concluded that the provision for automatic commitment does not apply to defendants acquitted under the old rules, since the mere existence of a reasonable doubt about the defendant's sanity may not be sufficient to support an involuntary commitment. U.S. Dep't of Justice, Handbook on the Comprehensive Crime Control Act of 1984 and Other Criminal Statutes Enacted by the 98th Congress 65 (1984).

C. Amendment to Rule 704, Federal Rules of Evidence

"No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone." Crime Control Act § 406 (pp. 231-32, 98 Stat. 2067-68).

D. Hospitalization of Imprisoned Persons

1. If a prisoner serving a sentence of imprisonment objects to being transferred to a suitable facility for care or treatment of a mental condition, a government attorney may file a motion with the court, at the request of the Bureau of Prisons, for an order committing the person for hospitalization. A hearing is required. 18 U.S.C. § 4245 (p. 226, 98 Stat. 2062). Hospitalization under this provision may not extend beyond expiration of sentence. 18 U.S.C. § 4245(d) (p. 226, 98 Stat. 2062).

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2. At the time of sentencing, the court may direct, after a hearing, that a convicted defendant be committed for hospitalization. Such a commitment is deemed to be a provisional sentence for the maximum authorized term for the offense. 18 U.S.C. § 4244 (pp. 225-26, 98 Stat. 2061-62).
 - a. The defendant will apparently serve the maximum term unless it is earlier determined that he is no longer in need of custody for care or treatment. See 18 U.S.C. § 4244(e) (pp. 225-26, 98 Stat. 2061-62).
 - b. If it is earlier determined that the defendant is no longer in need of custody for care or treatment, the court may proceed to final sentencing. Id.
3. The provision governing hospitalization of an imprisoned person due for release but suffering from a mental disease or defect is similar in substance to the prior 18 U.S.C. § 4247, although much more detail is provided. 18 U.S.C. § 4246 (pp. 226-29, 98 Stat. 2062-65).

E. Incompetency to Stand Trial

1. The provision governing competency to stand trial is also similar in substance to prior law. 18 U.S.C. § 4241 (pp. 221-23, 98 Stat. 2057-59).

Effective now

XI. FORFEITURE AMENDMENTS
(Chapters III, XIV, and XXIII of the Crime Control Act)

A. Introduction

1. Chapters III and XXIII of the Crime Control Act make amendments concerning forfeiture in RICO and drug cases.
 - a. Chapter XXIII is in substance an amendment to chapter III. In form, much of chapter XXIII consists of further amendments to provisions of titles 18 and 21 as amended by chapter III, some of which undo things done in chapter III. This circumlocution resulted from considerations of legislative strategy.
 - b. The forfeiture amendments made by these two chapters were designed to perfect existing forfeiture authorities and to extend the authority for criminal forfeiture to all felony drug offenses.
 - c. The chapters have no effective-date provisions; hence, the amendments took effect upon enactment.
 - d. The principal source of legislative history is S. Rep. No. 98-225 (the Senate report on the Crime Control bill).
2. Section 1406 of the Crime Control Act adds a new provision authorizing forfeiture of the "collateral profits of crime"--proceeds received in exchange for interviews, movie rights, etc.
 - a. This provision became effective thirty days after enactment. Crime Control Act § 1409(a) (p. 342, 98 Stat. 2178).
 - b. The principal source of legislative history is 130 Cong. Rec. H12083-87 (daily ed. Oct. 10, 1984) (remarks of Congressman Rodino).

B. Criminal Forfeiture Under the RICO Statute

1. 18 U.S.C. § 1963 is rewritten. Crime Control Act §§ 302, 2301(a)-(c) (pp. 204-08, 356, 98 Stat. 2040-44, 2192).

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2. The rewritten section confirms that the forfeiture provisions reach proceeds of racketeering activity or unlawful debt collection in violation of 18 U.S.C. § 1962. The language, reported by the Senate Judiciary Committee before the Supreme Court's decision in Russello v. United States, 104 S. Ct. 296 (1983), is consistent with the outcome of that case. 18 U.S.C. § 1963(a)(3) (p. 204, 98 Stat. 2040).
3. Property transferred to a person other than the defendant after the commission of the offense is made subject to orders of criminal forfeiture. A transferee who is a bona fide purchaser is given the opportunity to establish that fact by a preponderance of the evidence in an ancillary proceeding, in which case the court shall amend the order. 18 U.S.C. § 1963(c), (m) (pp. 204, 207-08, 98 Stat. 2040, 2043-44), as amended by Crime Control Act § 2301(c) (p. 356, 98 Stat. 2192).
4. Orders to restrain the destruction or removal of forfeitable property may be issued before indictment after notice and hearing. 18 U.S.C. § 1963(e) (p. 205, 98 Stat. 2041). Post-indictment orders do not require notice and hearing. See id.; S. Rep. No. 98-225, p. 203.
5. The court is authorized, upon application by the United States, to appoint appraisers, receivers, trustees, etc., to protect the interest of the government in property ordered forfeited. Income from an enterprise that has been ordered forfeited may be used to offset the expenses of the enterprise. 18 U.S.C. § 1963(f) (pp. 205-06, 98 Stat. 2041-42).
6. The court is authorized to order the taking of depositions to facilitate the identification or location of property declared forfeited and the disposition of petitions for remission or mitigation of forfeiture. 18 U.S.C. § 1963(l) (p. 207, 98 Stat. 2043).
7. A new procedure is provided under which third parties claiming ownership of property that has been ordered forfeited may assert that claim in court in an ancillary proceeding. 18 U.S.C. § 1963(m) (pp. 207-08, 98 Stat. 2043-44), as amended by Crime Control Act § 2301(c) (p. 356, 98 Stat. 2192).

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C. Criminal Forfeiture in Drug Cases

1. The existing forfeiture provisions applicable to continuing criminal enterprises are repealed. Crime Control Act § 305 (p. 214, 98 Stat. 2050). A new section 413 is added to the Comprehensive Drug Abuse Prevention and Control Act of 1970. Crime Control Act §§ 303, 2301(d)-(f) (pp. 208-213, 356-57, 98 Stat. 2044-49, 2192-93).
2. The new section applies to all felonies in titles II and III of the Drug Abuse Prevention and Control Act. New section 413(a) (pp. 208-09, 98 Stat. 2044-45), as amended by Crime Control Act § 2301(d) (pp. 356-57, 98 Stat. 2192-93).
3. Procedures are generally similar to the revised procedures for criminal forfeiture under the RICO statute.
4. A rebuttable presumption is created that property acquired during the period of violation is subject to forfeiture if the government shows that there was no likely legitimate source for such property. New section 413(d) (pp. 209-10, 98 Stat. 2045-46), as redesignated by Crime Control Act § 2301(e)(2) (p. 357, 98 Stat. 2193).
5. Seizure warrants are authorized in addition to restraining orders. New section 413(f) (p. 211, 98 Stat. 2047), as redesignated by Crime Control Act § 2301(e)(2) (p. 357, 98 Stat. 2193).

D. Civil Forfeiture in Drug Cases

1. Real property is made subject to the civil forfeiture provisions. 21 U.S.C. § 881(a)(7), added by Crime Control Act § 306(a) (p. 214, 98 Stat. 2050).
2. If the defendant is criminally charged, venue in a civil forfeiture case is expanded so that suit may be brought where the defendant is found or in the district in which the criminal prosecution is brought. 21 U.S.C. § 881(j), added by Crime Control Act § 306(f) (p. 215, 98 Stat. 2051).
3. Section 607 of the Tariff Act of 1930 (19 U.S.C. § 1607) is amended to expand the class of property that may be forfeited in an administrative proceeding if the forfeiture is uncontested. The dollar limit is raised from \$10,000 to \$100,000; in addition, administrative forfei-

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ture applies to any vessel, vehicle, or aircraft, regardless of value, that was used to import, export, or otherwise transport or store any controlled substances. Crime Control Act § 311 (pp. 217-18, 98 Stat. 2053-54). Because 21 U.S.C. § 881(d) makes the forfeiture provisions of the customs laws applicable to domestic drug violations, these changes affect domestic transactions as well as imports and exports.

4. The Department of Justice takes the position that the provision making real property subject to civil forfeiture is applicable only to offenses committed after the enactment of the Crime Control Act, but that the amendments affecting venue and the limits on administrative forfeiture may be applied to offenses committed before the enactment date. U.S. Dep't of Justice, Handbook on the Comprehensive Crime Control Act of 1984 and Other Criminal Statutes Enacted by the 98th Congress 53-54 (1984).

E. Forfeiture of Collateral Profits of Crime

1. This provision applies only to convictions for offenses resulting in physical harm to an individual. 18 U.S.C. § 3671(a) (p. 339, 98 Stat. 2175).
2. Forfeiture is of proceeds received from a contract relating to depiction of the crime or an expression of the defendant's thoughts, opinions, or emotions about the crime. Id.
3. Forfeiture is initiated on motion of the U.S. attorney. Id.
4. Proceeds are to be held in escrow for five years, and may be levied upon to satisfy (1) a federal court judgment in favor of a victim of any crime of which the defendant has been convicted or (2) a fine imposed by a federal court. If ordered by the court, the escrow account may be used to satisfy a state court judgment in favor of a victim or to pay for legal representation of the defendant in matters arising from the offense of conviction. 18 U.S.C. § 3671(c)(1) (pp. 339-40, 98 Stat. 2175-76).
5. At the end of the five-year escrow period, the court is to direct the disposition of the funds. It "may require"

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payment into the Crime Victims Fund established by chapter XIV of the Crime Control Act, but apparently has unlimited discretion to direct disposition. 18 U.S.C. § 3671(c)(2) (p. 340, 98 Stat. 2176).

XII. MISCELLANEOUS PROVISIONS

A. Appeals from New Trial Orders

1. 18 U.S.C. § 3731 is amended to allow a government appeal from an order "granting a new trial after verdict or judgment." Crime Control Act § 1206 (p. 317, 98 Stat. 2153).
2. There is no effective-date provision; hence, the amendment was effective upon enactment.

B. Redefinition of Petty Offense

1. "Any misdemeanor, the penalty for which, as set forth in the provision defining the offense, does not exceed imprisonment for a period of six months or a fine of not more than \$5,000 for an individual and \$10,000 for a person other than an individual, or both." 18 U.S.C. § 1(3), as amended by Fine Enforcement Act § 8 (98 Stat. 3138).
2. The constitutionality of the new amounts was supported by the House Judiciary Committee largely on the basis of increased per capita income since the \$500 limit was established in 1930. H.R. Rep. No. 98-906, 98th Cong., 2d Sess. 19-20 (1984).
3. Note that under the Fine Enforcement Act (part VIII of this outline), fines for misdemeanors carrying six months or less may sometimes be based on doubling the pecuniary gain derived from or loss caused by the offense, in which case the defendant's exposure could be much greater than the fine set forth in the statute defining the offense.
4. The redefinition applies "with respect to offenses committed after December 31, 1984." Fine Enforcement Act § 10 (98 Stat. 3138).

C. Increases in Compensation for Prosecutors and Defense Counsel

1. The maximum salary that may be paid to U.S. attorneys is increased, except in four districts in which the higher level was previously authorized. 28 U.S.C. § 548, as

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amended by Crime Control Act § 1701 (pp. 348-49, 98 Stat. 2184-85).

2. Public defenders may be indirect beneficiaries of the above change because, under 18 U.S.C. § 3006A(h)(2)(A), the compensation of a public defender may not exceed the compensation of the U.S. attorney for the particular judicial district.
3. Both maximum hourly rates and case compensation limits under the Criminal Justice Act are doubled. 18 U.S.C. § 3006A(d), as amended by Crime Control Act § 1901 (pp. 349-50, 98 Stat. 2185-86).
 - a. The new hourly rates apply to services rendered on and after October 12, 1984. Memorandum from William E. Foley, Director, Administrative Office of the United States Courts, to Judges, United States Courts of Appeals, et al. (Oct. 29, 1984).
 - b. The new case compensation limits apply to any claim in which some portion of the claim is for services rendered on or after October 12. Id.

D. Other Miscellaneous Provisions

1. Injunctions against fraud: A new provision authorizes civil proceedings to enjoin the commission of criminal fraud by mail, wire, radio, or television. 18 U.S.C. § 1345, added by Crime Control Act § 1205 (pp. 316-17, 98 Stat. 2152-53).
2. Witness protection program: The authority for the witness protection program is rewritten, with substantially more statutory guidance than was found in the prior law. 18 U.S.C. §§ 3521-28, added by Crime Control Act § 1208 (pp. 317-27, 98 Stat. 2153-63); Crime Control Act § 1209(b) (p. 327, 98 Stat. 2163). Under the new 18 U.S.C. § 3524 (pp. 323-26, 98 Stat. 2159-62), district courts are given authority to modify state court orders involving parental rights when a protected person has custody of a child and the child is relocated with the protected person.
3. Justice Department operating guidelines: The attorney general is required to report within one year on the operation of internal Justice Department guidelines, including the advisability of legislation that would

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prohibit defendants from relying on violations of the guidelines as grounds for dismissal, suppression of evidence, or the vacation of convictions. Crime Control Act § 1211 (pp. 328-29, 98 Stat. 2164-65).

4. Foreign evidence: Provisions governing authentication of foreign records and procedures for obtaining foreign depositions in criminal cases are added to title 18. A statute of limitations may be tolled to permit foreign evidence to be obtained. 18 U.S.C. §§ 3505-07, 3292, added by Crime Control Act §§ 1217, 1218 (pp. 329-31, 98 Stat. 2165-67). Time may be excluded from Speedy Trial Act computations. 18 U.S.C. § 3161(h), as amended by Crime Control Act § 1219 (p. 331, 98 Stat. 2167). These amendments took effect thirty days after enactment. Crime Control Act § 1220 (p. 331, 98 Stat. 2167).
5. Trademark amendments: The Lanham Act is amended to authorize a court in an infringement action to order seizure of the goods involved upon ex parte application of the plaintiff. A cause of action for wrongful seizure is also created. The bill requires the court, unless extenuating circumstances are found, to award treble profits or treble damages in an infringement action if the infringement consisted of knowing use of a counterfeit mark. Crime Control Act § 1503 (pp. 343-47, 98 Stat. 2179-83).
6. Labor-racketeering amendment: Claims of federal preemption with regard to certain state laws governing service in a position in a local labor organization are negated. Crime Control Act § 2201 (p. 356, 98 Stat. 2192).
7. Wiretap amendments: An amendment to 18 U.S.C. § 2516 enlarges the list of offenses of which evidence may be sought through wiretaps. An amendment to 18 U.S.C. § 2518(7) adds "immediate danger of death or serious physical injury to any person" to the justifications for emergency interception without a court order. The deputy attorney general and the associate attorney general are given authority to authorize applications for court-ordered wiretaps and to designate officers to conduct emergency wiretaps. Crime Control Act § 1203 (p. 316, 98 Stat. 2152).
8. Venue amendments: The bill repeals 18 U.S.C. § 3239, which limits venue for some crimes involving threatening communications to the district of the communication's

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- origin. The result is to make these cases subject to 18 U.S.C. § 3237(a), under which venue lies in any district from, through, or into which the communication moves. The bill also amends 18 U.S.C. § 3237(a) to make it apply to the importation of an object or person into the United States, so that venue will lie in any district through or into which the object or person moves. Crime Control Act § 1204 (p. 316, 98 Stat. 2152).
9. Drug diversion control amendments: A number of amendments are designed to strengthen the regulatory authority of the attorney general over the manufacture and distribution of controlled substances in order to deal more effectively with diversion of drugs of legitimate origin into the illicit market. Crime Control Act §§ 506-525 (pp. 234-41, 98 Stat. 2070-77).
 10. Justice assistance amendments: An Office of Justice Programs is created within the Department of Justice, headed by an assistant attorney general, with responsibility for statistical, research, and other assistance to state and local law enforcement. The statute authorizes a new program of grants to states and localities for anticrime programs (somewhat similar to the programs of the defunct Law Enforcement Assistance Administration), as well as a new program of grants for prison construction projects. Crime Control Act §§ 601-609AA (pp. 242-71, 98 Stat. 2078-2107). The statute also makes it clear that the survivors of federal judicial officers and probation officers are eligible for the \$50,000 federal benefit for survivors of law enforcement officers and fire fighters killed in the line of duty. Crime Control Act § 609F (pp. 262-64, 98 Stat. 2098-100).
 11. Amendments on programs for juveniles: The bill reauthorizes grant programs to assist in combatting juvenile delinquency and providing emergency shelter for runaways. It authorizes a new program of assistance to programs relating to missing children. Crime Control Act §§ 610-670 (pp. 271-93, 98 Stat. 2107-29).
 12. Surplus property amendments: The federal statute permitting surplus federal property to be donated to states and localities for certain purposes is amended to include use as a correctional facility among the purposes. Crime Control Act §§ 701-702 (pp. 293-95, 98 Stat. 2129-31).

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13. Monetary instrument reporting amendments: The bill amends the reporting requirements of 31 U.S.C. 5316 to require that a report be filed by a person who "attempts to transport" monetary instruments or have them transported. It also raises the size of transactions that must be reported. Crime Control Act § 901(c) (p. 299, 98 Stat. 2135). The first of these amendments was intended to provide a predicate for charging a violation of the reporting requirements under 31 U.S.C. § 5322 before the offender's departure from the United States. S. Rep. No. 98-225, p. 302. The bill also (1) authorizes warrantless searches upon reasonable cause to believe that a monetary instrument is "being transported in violation of" 31 U.S.C. § 5316 (a provision that does not forbid transportation), and (2) authorizes rewards for information leading to a civil penalty, criminal fine, or forfeiture for a violation of the reporting and record-keeping requirements. Crime Control Act § 901(d), (e) (pp. 299-300, 98 Stat. 2135-36).
14. Seizure of prison contraband: A new provision, 18 U.S.C. § 4012, authorizes Bureau of Prisons employees to summarily seize contraband. Crime Control Act § 1109(d), (e) (p. 312, 98 Stat. 2148).
15. Reemployment rights of United States marshals: Marshals who were appointed to their positions from the competitive service are given rights to reemployment in the competitive service in certain circumstances. 28 U.S.C. § 576, added by Crime Control Act § 1211 (p. 327, 98 Stat. 2163).
16. Agents of foreign governments: Certain functions related to agents of foreign governments are transferred from the secretary of state to the attorney general. Crime Control Act § 1209 (p. 328, 98 Stat. 2164).
17. Notice on social security checks: Effective in the fall of 1985, social security checks and the envelopes in which they are mailed are required to carry a notice of the penalties for forgery. Crime Control Act § 1212 (p. 329, 98 Stat. 2165).
18. National Drug Enforcement Policy Board: A National Drug Enforcement Policy Board is created, effective January 20, 1985, to coordinate the activities of the several departments and agencies with responsibilities for drug

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law enforcement. Crime Control Act §§ 1301-1307 (pp. 332-34, 98 Stat. 2168-70).

19. Crime Victims Fund: A Crime Victims Fund is established, to be financed (up to \$100 million per year) with the proceeds of fines, penalty assessments (discussed above), forfeited bail bonds and collateral, and forfeitures of profits from defendants' contracts for books, articles, or other publicity about their crimes. The fund is to be used to make grants to state programs for compensating crime victims and to state programs for assisting crime victims through crisis intervention counseling, aid in participating in court proceedings, etc. Not more than 5 percent of the fund may be used by the attorney general to provide services to victims of federal crimes. Crime Control Act §§ 1401-1405, 1407 (pp. 334-41, 98 Stat. 2170-77).
20. Parole amendments: The parole statute, 18 U.S.C. § 4207, is amended to require the Parole Commission to consider any statement by a victim of the offense about the harm done. Department of Justice guidelines under section 6(a) of the the Victim and Witness Protection Act, 18 U.S.C. § 1512 note, are to provide for notification of the date of the parole hearing. There is also an amendment streamlining the Parole Commission's administrative appeal procedures. Crime Control Act § 1408 (pp. 341-42, 98 Stat. 2177-78).

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Index to Crime Control and Fine Enforcement Acts*

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Adult prosecution, juvenile offenses	1201	18 U.S.C. § 5032	313-14 2149-50
Aircraft sabotage, terrorism	2012-14	18 U.S.C. §§ 31, 32 49 U.S.C. §§ 1301, 1471-72	351-54 2187-90
Ammunition, armor-piercing	1006(a)	18 U.S.C. § 929	303 2139
Armed career criminals, firearms	1802-03	18 U.S.C. app. § 1202(a), (c)	349 2185
Armor-piercing bullets	1006(a)	18 U.S.C. § 929(a)	303 2139
Arson	1014	18 U.S.C. § 844	306 2142
Assault, federal officers	1012	18 U.S.C. § 1114	306 2142
Bail, failure to appear following release	203	18 U.S.C. § 3146	146-47 1982-83
Bail Reform Act	202-10	18 U.S.C. §§ 3141-51	140-51 1976-87

*References are to the Crime Control Act unless otherwise indicated. Page numbers with three digits refer to the enrolled bill (H.J. Res. 648); those with four digits refer to volume 98 of Statutes at Large. This index was prepared by the staffs of Senior Circuit Judge John D. Butzner, Jr., and of the library of the United States Court of Appeals for the Fourth Circuit.

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