

# CRS Report for Congress

## Federal Crime Control: Background, Legislation, and Issues

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# Federal Crime Control: Background, Legislation, and Issues

## Summary

States and localities have the primary responsibility for prevention and control of domestic crime, while the federal government's role is limited. As crime became more rampant, the federal government increased its involvement in crime control efforts. Over a period of 10 years, Congress passed five major anti-crime bills and increased appropriations for federal assistance to state and local law enforcement agencies. Since the 9/11 terrorist attacks, however, federal law enforcement efforts have been focused more on countering terrorism and maintaining homeland security. Amid these efforts, however, Congress continues to address many crime-related issues.

Many have attributed the increased attention the federal government gave to crime issues in the 1980s and 1990s to the rising crime rates. The crime rates, for example, began to increase in the 1960s, peaking in the late 1980s and mid-1990s and began to decline in the late 1990s. The continued decline in the crime rates in the early 2000's coincided with national attention being focused away from domestic crimes and more on securing the homeland against terrorism. During this period, Congress began to focus federal funding on first responders, while funding to state and local law enforcement for traditional crime fighting activities has seen a mix of increases and decreases. In 2005, however, the *violent* crime rate began to slightly increase and continued to increase in the first six months of 2006. The recent increase in the violent crime rate, however, continues to remain at an over 30 year low.

The 110<sup>th</sup> Congress is considering a variety of crime-related legislation, some of which have already been reported out of committee and/or passed one or the other Chamber. For example, on May 3, 2007, the House passed the Local Law Enforcement Hate Crimes Prevention Act of 2007 (H.R. 1592); on May 12, 2007, the House passed the COPS Improvement Act of 2007 (H.R. 1700) and on May 24, 2007, the Senate passed a different version of the COPS Improvement Act of 2007 (S. 368); on April 19, 2007, the Senate passed the Court Security Improvement Act of 2007 (S. 378) and on June 7, 2007, the House Subcommittee on Crime, Terrorism, and Homeland Security favorably reported the Court Security Improvement Act of 2007 (H.R. 660) to the House Judiciary Committee; and on May 9, 2007, the House Judiciary Committee favorably reported the Second Chance Act of 2007 (H.R. 1593) to the House. In addition to the aforementioned legislation that have seen some congressional attention, the 110<sup>th</sup> Congress may also consider other crime-related issues such as: addressing the sentencing disparity in current law between crack and powder cocaine; stemming gang-related violence; reauthorizing the Juvenile Justice and Delinquency Prevention Act; reforming the Federal Prison Industries; reforming the federal sentencing system; and providing oversight of the various Department of Justice grant programs and of the sex offender registration and community notification programs as well as the federal grant program that provides assistance to states to develop or enhance its civil commitment programs for sex offenders. This report will be updated as warranted.

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# Federal Crime Control: Background, Legislation, and Issues

## Introduction

The prevention and control of *domestic* crime has traditionally been a responsibility of state and local governments, with the federal government playing more of a supportive role. The federal government increased its involvement in domestic law enforcement through a series of grant programs to encourage and assist states and communities in their efforts to control crime and in the expansion in the number of offenses that could be prosecuted in the federal criminal justice system.

Over a ten-year period (1984-1994), Congress enacted five major anti-crime bills<sup>1</sup> and increased appropriations for federal assistance to state and local law enforcement agencies. As a result, the Federal Bureau of Investigations (FBI) had seen an expansion of its role in fighting domestic crime as Congress began to add more crimes to the federal criminal code that were previously under the sole jurisdiction of state and local governments. Within the past several years, however, some federal assistance to state and local law enforcement has declined and the FBI refocused its resources on countering terrorism as federal post 9/11 law enforcement efforts have focused primarily on protecting the nation against terrorist attacks.

The policy question facing Congress is what is the role of the federal government in crime control? Specific areas related to this issue that are discussed in this report include Should federal jurisdiction over hate crimes be broaden? Should the Department of Justice's (DOJ) Community Oriented Policing Services (COPS) program be restructured? Should the federal government provide additional and new funding for court security and states' victim/witness protection programs? Should the federal government play a larger role in reintegrating ex-offenders into the community? Should the federal mandatory minimum penalties for crack and powder cocaine be equitable? Should the federal government play a role in stemming gang-related violence? Should the federal government weigh in on what should be the proper treatment of juvenile offenders? Should certain products produced and services provided by federal inmates be opened to a competitive bidding process? Should the federal sentencing scheme be reformed in light of the 2005 U.S. Supreme Court case *U.S. v. Booker* (125 S.Ct. 738 (2005))? Should Congress exercise its oversight role of several Department of Justice grant programs, including the Edward Byrne Memorial Justice Assistance Grant (JAG) and the Community Oriented

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<sup>1</sup> See for example, the Crime Control Act of 1984 (P.L. 98-473); the Anti-Drug Abuse Act of 1986 (P.L. 99-570); the Anti-Drug Abuse Act of 1988 (P.L. 100-690); the Crime Control Act of 1990 (P.L. 101-647); and the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322).

Policing Services (COPS) grant program? Should Congress exercise its oversight role of various grant programs that provide assistance to states' sex offender registration, community notification, and civil commitment programs?

This report focuses on the aforementioned crime-related issues and legislation that have been introduced and/or acted upon in some instances with respect to these issues. This report, however, does not cover issues related to homeland security, terrorism, abortion, and illicit drug and gun control.<sup>2</sup>

## Crime Statistics

As previously mentioned, the prevention and control of domestic crime has traditionally been a responsibility of state and local governments, with the federal government playing more of a supportive role. The federal government began to take a more direct role in crime control, however, as the violent crime rate increased and some questioned the ability of state and local law enforcement to combat the growing problem with limited resources at their disposal.

The Federal Bureau of Investigation's (FBI) Uniform Crime Report (UCR) program compiles data from monthly reports transmitted directly to the FBI from approximately 17,000 local police departments or state agencies. Of interest to lawmakers are the two indices of crimes that are the basis of the UCR. The Part I index includes the four major *violent crimes* of homicide and nonnegligent manslaughter, forcible rape, robbery and aggravated assault. The Part II index includes the *property crimes* of burglary, larceny-theft, motor vehicle theft and arson. The UCR collects crime data from the various state and local law enforcement agencies and presents it in a variety of formats in the UCR. The data on which the crime rates are derived are crime incidents reported to the police (as opposed to arrests made by police or cases cleared by the police).

Although the UCR is most commonly referenced when discussing crime rates, another measurement is worth noting. The National Crime Victim Survey (NCVS), which is administered by the Department of Justice (DOJ) Bureau of Justice Statistics (BJS), is a comprehensive, nation-wide survey of victimization in the United States. Since not all crimes are reported to local law enforcement, NCVS data attempts to address under-reporting issues in the UCR by asking respondents if they have been victimized any time in the past year. Each year, data are obtained from a nationally representative sample of 77,200 households comprising nearly 134,000 persons on the frequency, characteristics and consequences of criminal victimization in the United States.<sup>3</sup> The NCVS asks respondents if they have been the victim of rape,

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<sup>2</sup> See the CRS website at [[http://apps.crs.gov/cli/level\\_2.aspx?PRDS\\_CLI\\_ITEM\\_ID=28](http://apps.crs.gov/cli/level_2.aspx?PRDS_CLI_ITEM_ID=28)] for related reports on homeland security and terrorism. For information on abortion issues, see CRS Report RL33467, *Abortion: Legislative Response*, by Karen J. Lewis and Jon O. Shimabukuro. For information on gun control issues, see CRS Report RL32842, *Gun Control Legislation*, by William J. Krouse.

<sup>3</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Crime* (continued...)

sexual assault, robbery, assault, theft, household burglary, and motor vehicle theft. NCVS data allows DOJ Bureau of Justice Statistics (BJS) to estimate the likelihood of victimization for the population as a whole as well as for segments of the population such as women, the elderly, members of various racial groups, city dwellers, or other groups. For the most part, the NCVS generally trends similar to the UCR. For the purpose of this report, however, we will be presenting and analyzing *crime rates* as reported by the UCR program.

## Violent and Property Crime Rates

According to the UCR, the violent and property crime rates began to increase sharply in the 1960s. The increase continued throughout the 1970s and into the early 1980s. By the mid-1980s, however, both crime rates began to decline. While there were some fluctuations in the crime rate in the late 1980s to early 1990s, both rates began a steady decline in 1992 that continued until 2005 (see **Figures 1 and 2**). While the violent crime rate continued to decline overall into the new millennium, it increased slightly in 2005 and continued to increase in the first six months of 2006. The recent increase in the violent crime rate, however, continues to leave the rate near a 30-year low. The overall property crime rate continued to decline in 2005 (see **Figure 1**).<sup>4</sup>

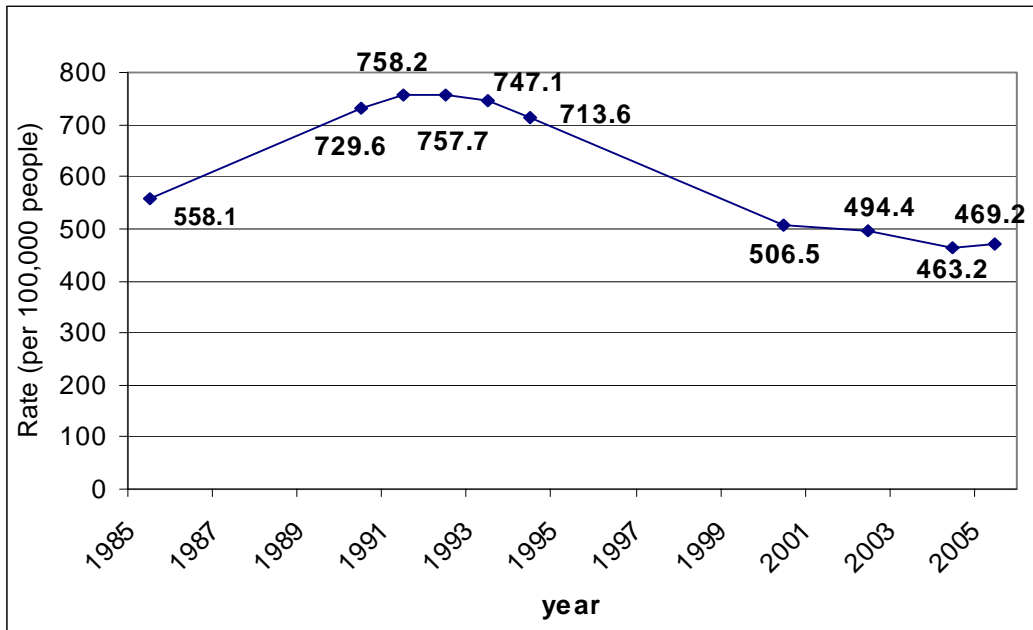
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<sup>3</sup> (...continued)

and *Victims Statistics*, available online at [<http://www.ojp.usdoj.gov/bjs/cvict.htm>], accessed April 10, 2007.

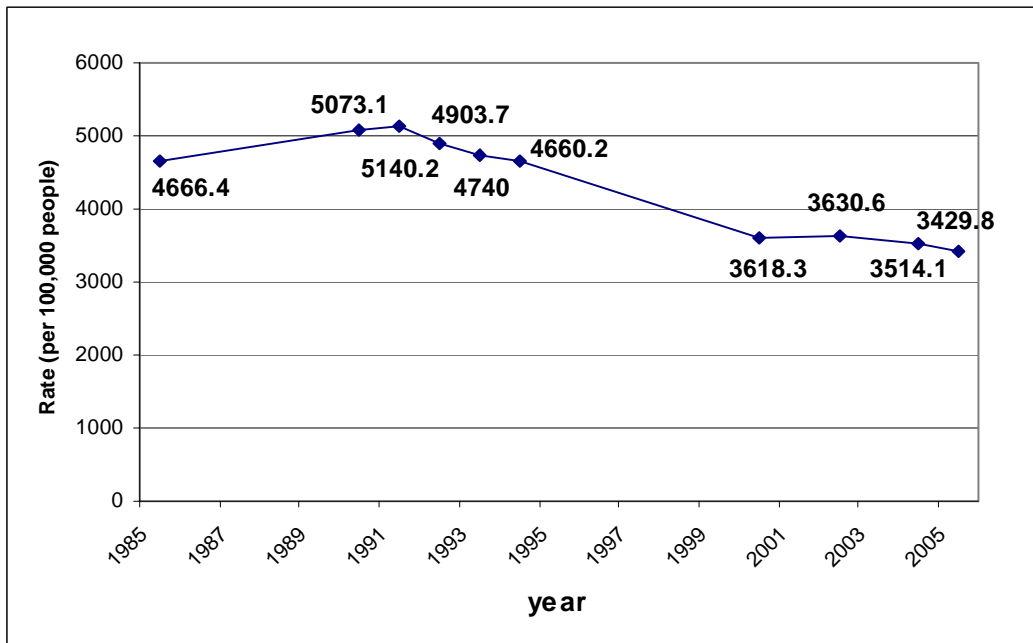
<sup>4</sup> Although the overall property crime continued its downward trend in 2005, the burglary and arson crime rates saw an increase for that year.

**Figure 1. Violent Crime Rates, 1985-2005**



**Source:** FBI's UCR for each respective year (see 1965, 1970, 1975, 1980, 1985, 1990, 1995, 2000 and 2005 Federal Bureau of Investigation U.S. Department of Justice, *Crime in the United States Uniform Crime Report*).

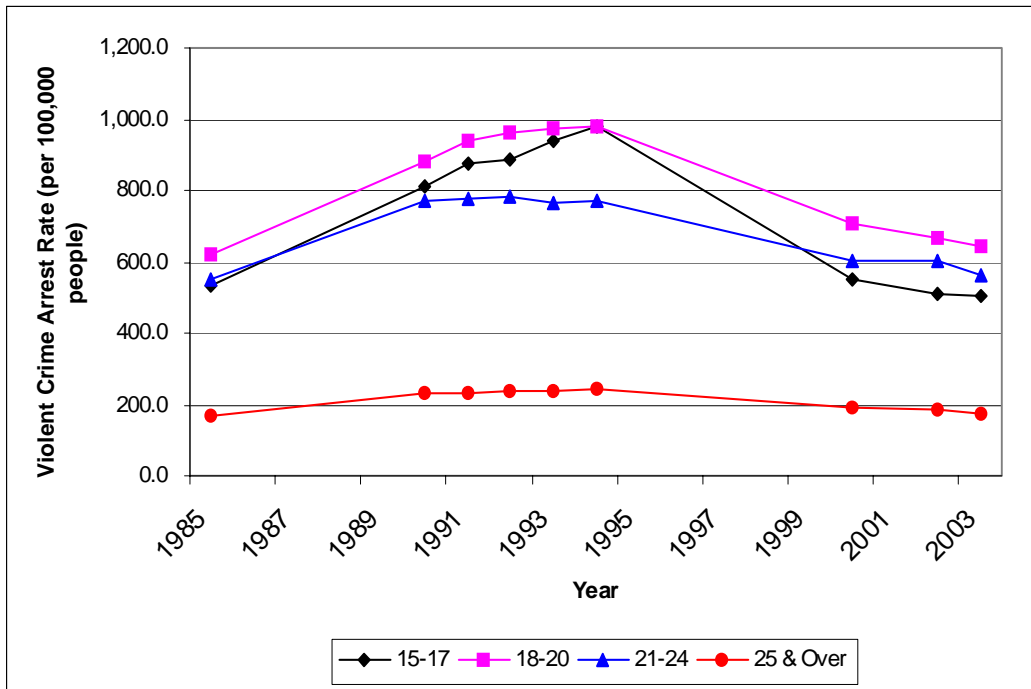
**Figure 2. Property Crime Rates, 1985-2005**



**Source:** FBI's UCR for each respective year (see 1965, 1970, 1975, 1980, 1985, 1990, 1995, 2000 and 2005 Federal Bureau of Investigation U.S. Department of Justice, *Crime in the United States Uniform Crime Report*).

**Youth and Young Adult (18-24) Violent Crime Arrest Rate.**<sup>5</sup> An interesting phenomenon was occurring during the mid- to late 1980s and into the early 1990s (the same period when the nation’s overall crime rate was declining)—the youth and young adult *arrest* rates, in general, and violent crime *arrest* rates specifically, were increasing (see **Figure 3**). This upsurge in the youth and young adult arrest rates, however, did not negatively influence the overall crime rates, primarily due to the overall decline in the two populations that is underscored by the “baby boomer” population (25+) whose numbers in the population continued to outpace the youth and young adult population numbers. As discussed below, the baby boomer population saw a decline, for the most part, in their violent crime arrest rate. **Figure 3** depicts the violent crime arrest rate for the youth, young adult and adult population for 1985-2005.

**Figure 3. Estimated Arrest Rate by Age Group, 1985-2003**



**Source:** CRS presentation of Bureau of Justice Statistics arrest data by age group, number and rates for total offenses, violent offenses, and property offenses, 1970-2003, Dec. 2004.

**Note:** According to BJS, the number of arrests presented differ from other published numbers because of weighting. The weighting procedure calculates the proportion of all arrests attributable to an age group and multiplies this percentage by the total estimated number of arrests to determine an estimated count.

<sup>5</sup> Because data on crime rates were not available for population groups in the 1980s and 1990s, we turned to the arrest rate to provide an illustration of demographic occurrences during the early period of the decline in the crime rate. One should not draw comparisons, however, between the *arrest* rate and the *crime* rate.



The decline in the crime rate has led recent Congresses, in part, to take another look at federal funding for state and local law enforcement. Despite the declining crime rates, however, Congress continued to pass “get tough” measures for certain categories of offenders by increasing existing penalties or creating new categories of penalties (i.e., mandatory minimum sentences). Following is a discussion of legislation that have been introduced and/or seen legislative action in the 110<sup>th</sup> Congress and selected crime-related issues that the Congress may consider.

## Hate Crimes<sup>6</sup>

Under current federal law, hate crimes are limited to certain civil rights offenses. The issue facing the Congress is whether it should consider legislation to broaden federal jurisdiction over hate crimes by establishing additional categories of hate crime offenses that could be prosecuted in a federal court. In 2005, there were 7,163 reported incidents of hate crimes. Before a crime is labeled a hate crime, law enforcement must reveal sufficient evidence to lead a reasonable person to conclude that the offender’s actions were motivated, in whole or in part, by his or her bias. There is little disagreement that some criminal acts are motivated due to a bias based on race, religion, sexual orientation or ethnicity. There *is*, however, disagreement with respect to the level of *federal* intervention. While some argue that greater federal involvement would ensure that such crimes are systematically addressed, others contend that federal involvement would be redundant and in addition to the legal prohibitions for these crimes (in their traditional form) that already exist under either federal or state law.

For several Congresses, attempts had been made to stiffen penalties for crimes of violence motivated by bias. The 110<sup>th</sup> Congress is considering such legislation, and on May 3, 2007, the House passed the Local Law Enforcement Hate Crimes Prevention Act of 2007 (H.R. 1592). A similar measure, S. 1105, has been introduced in the Senate.

## Community Oriented Policing Services (COPS)<sup>7</sup>

The 109<sup>th</sup> Congress passed legislation that reauthorized the COPS program through FY2009.<sup>8</sup> In addition to reauthorizing the program, the act changed the COPS program into a single grant program. Prior to this, the COPS program consisted of several different subgrant programs. The 110<sup>th</sup> Congress, however, is considering legislation that would restructure and further reauthorize the COPS

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<sup>6</sup> For additional information and legislation in the 110<sup>th</sup> Congress on hate crimes, see CRS Report RL33403, *Hate Crime Legislation*, by William J. Krouse; and CRS Report RL32850, *Hate Crimes: Legal Issues*, by Paul S. Wallace.

<sup>7</sup> For additional information on the COPS program, see CRS Report RL33308, *Community Oriented Policing Services (COPS): Background, Legislation, and Issues*, by Nathan James.

<sup>8</sup> See the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162).

program. Two bills have seen legislative action thus far. For example, on May 12, 2007, the House passed the COPS Improvement Act of 2007 (H.R. 1700) and on May 24, 2007, the Senate passed a different version of the COPS Improvement Act of 2007 (S. 368). In general, both bills would, among other things, expand the scope of the COPS grant programs, make COPS an exclusive component of DOJ and authorize appropriations for COPS.

## **Court Security<sup>9</sup>**

The 2005 Atlanta court shooting that killed several court personnel, including a judge, brought national attention to the issue of court security. While legislation was introduced and passed in one Chamber in the 109<sup>th</sup> Congress, legislation was not enacted. In the 110<sup>th</sup> Congress, several pieces of legislation have been introduced and on April 19, 2007, the Senate passed the Court Security Improvement Act of 2007 (S. 378), and on June 7, 2007, the House Subcommittee on Crime, Terrorism, and Homeland Security favorably reported a similar bill (H.R. 660) to the House Judiciary Committee. Among other provisions, both bills would increase penalties for certain crimes committed against certain categories of federal employees and their family members, including federal judges. These bills would also increase penalties for certain illegal acts that are committed against jurors, witnesses, victims and informants, as discussed below.

## **States' Victim/Witness Protection Program**

Witness intimidation reduces the likelihood that citizens will engage with the criminal justice system, which could deprive police and prosecutors of critical evidence.<sup>10</sup> It can also reduce public confidence in the criminal justice system and it can create the perception that the criminal justice system cannot protect citizens. Witness intimidation can be the result of actual or perceived threats from an offender or his associates, but it can also be the result of more general community norms that discourage residents from cooperating with the police or prosecutors.<sup>11</sup>

The 110<sup>th</sup> Congress is considering legislation that would provide incentives for states to enhance their victim/witness protection programs. For example, H.R. 660 and S. 378 would expand an existing grant program so funds could be used for states and local governments' victim/witness protection programs. H.R. 933 and S. 79 would establish a Short-term State Witness Protection Section within the U.S. Marshals Service (USMS). The Short-term State Witness Protection Section would

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<sup>9</sup> For additional information and legislation in the 110th Congress on court security, see CRS Report RL33473, *Judicial Security: Comparison of Legislation in the 109<sup>th</sup> Congress*, by Nathan James, and CRS Report RL33464, *Judicial Security: Responsibilities and Current Issues*, by Lorraine H. Tong.

<sup>10</sup> Kelly Dedel, *Witness Intimidation*, July 2006, Washington DC: Department of Justice, Community Oriented Policing Services, p. 6, available online at [<http://www.cops.usdoj.gov/mime/open.pdf?Item=1762>], accessed January 10, 2007.

<sup>11</sup> *Ibid*, p. 3.

provide protection for witnesses in state and local trials involving homicide or other major violent crimes pursuant to cooperative agreements with state and local prosecutor's offices and the U.S. Attorney for the District of Columbia.

As previously mentioned, the Senate passed S. 378, and on June 7, 2007, the House Subcommittee on Crime, Terrorism, and Homeland Security favorably reported H.R. 660 to the House Judiciary Committee.

## **Offender Reentry**

Each year nearly 650,000 offenders are released from prison and the Bureau of Justice Statistics estimates that over 60% of all released prisoners will commit new offences within three years of their release. The issue facing Congress is how to manage this population once they have been released from custody. There has been recent discussion of reinstating parole at the federal level (for non-violent, drug offenders) and creating and enhancing existing programs that are designed to provide assistance for offenders to prepare them for reentry into their communities. Many studies have shown that reentry initiatives that combine work training and placement with counseling and housing assistance can significantly reduce recidivism rates. Within the federal government and the academic community a broad consensus exists that offender reentry can typically be divided into three phases: programs that prepare offenders to reenter society while they are in prison, programs that connect ex-offenders with services immediately after they are released from prison, and programs that provide long-term support and supervision for ex-offenders as they settle into communities permanently. Both the President's *Serious and Violent Offender Reentry* initiative and recent congressional appropriations in this area have focused primarily on programs for offenders once they have been released from prison.

Two pieces of legislation have been introduced in the 110<sup>th</sup> Congress (the Second Chance Act of 2007/H.R. 1593, and the Recidivism Reduction and Second Chance Act of 2007/S. 1060) that would authorize funding for pilot programs for a wide range of services for offenders reentering the community. These programs fall under four broad categories: substance abuse treatment and counseling, health care-related services, family unification programs, and education programs. On May 9, 2007, the House Committee on the Judiciary favorably reported H.R. 1593 to the House.

## **Mandatory Minimum Sentences and Crack/Powder Cocaine Sentencing Disparities**

Mandatory minimum sentencing laws require offenders to be imprisoned for a specified period of time for committing certain types of crimes. While the intent of mandatory minimum sentencing and other similar measures is to punish the most serious offenders by incarcerating them for long periods, critics contend that the laws are disproportionately applied to nonviolent, minority offenders. While this debate tends to focus on non-violent, drug offenses, it is especially apparent, they argue,

with the crack versus powder cocaine sentencing disparities. Proponents, however, contend that mandatory minimums decrease crime and ensure certainty in the criminal justice system. In addition to serving as a specific deterrent, proponents argue that these measures serve as a general deterrent to potential criminals.

The 1986 and 1988 Anti-Drug Abuse Acts (P.L. 99-570 and P.L. 100-690, respectively) played a pivotal role in the current mandatory minimum sentencing structure applicable to federal drug offenses. The 1986 Act created mandatory minimum sentences for certain illicit drugs that are based on the quantity and type of drug involved in trafficking offenses. The act, however, is most notable for its establishment of what has come to be known as the 100-to-1 quantity ratio between powder and crack cocaine.<sup>12</sup> The 1988 Act required a mandatory minimum sentence for a first time offense of simple possession of crack cocaine. Possession of more than 5 grams of crack cocaine is punishable under the act by a minimum of five years.

Congress, through the Violent Crime Control and Law Enforcement Act of 1994,<sup>13</sup> directed the U.S. Sentencing Commission (Commission) to study the difference in penalties for powder and crack cocaine offenses. Congress was concerned that the penalties for crack and powder cocaine were having a disproportionate effect on minority offenders. In 1995, 1997, 2002 and 2007, the Commission reported to Congress<sup>14</sup> on the disparity in penalties for crack and powder cocaine offenses. In the first report, the Commission called for Congress to equalize the quantities between crack and powder cocaine that trigger a mandatory minimum penalty. However, in their 2002 and 2007 reports, the Commission recommended that the 5-year and 10-year “trigger” quantities for crack cocaine be raised, but not to the level of powder cocaine. While the penalties remain in place at the federal level, some states have begun to take measures to ameliorate the discrepancies in state law.

Several bills have been introduced in the 110<sup>th</sup> Congress that would, in some manner, reduce the mandatory minimum penalty triggers for crack and powder cocaine.<sup>15</sup>

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<sup>12</sup> It takes 100 times as much powder cocaine to trigger the same 10-year mandatory penalty as for a given amount of crack cocaine.

<sup>13</sup> P.L. 103-322.

<sup>14</sup> To gain access to these report, go to [<http://www.ussc.gov/reports.htm>], accessed on June 11, 2007.

<sup>15</sup> See for example, H.R. 79, H.R. 460, S. 231 and S. 1383.

## Gangs<sup>16</sup>

Gangs continue to be a problem throughout America. According to a survey of law enforcement agencies on the characteristics of youth gangs conducted by the National Youth Gang Center (NYGC),<sup>17</sup> gang activity is pervasive in both urban and rural America. Cities with populations of 250,000 or more all reported youth gang problems in 2002. Of cities with populations between 100,000 and 249,999, 87% reported youth gang problems. Among responding suburban county agencies, 38% reported gang activity, as did 27% of responding smaller city agencies, and 12% of responding rural county agencies. Youth gangs were active in more than 2,300 cities with a population of 2,500 or more and in more than 550 jurisdictions served by county law enforcement agencies.

Policymakers have long considered solutions to youth gang violence that include a combination of prevention, intervention, and suppression efforts. However, as gang violence increases, some are calling for different approaches to the issue. For example, should the tools used by law enforcement for certain crime-related activities (i.e., interception of wire, oral, and electronic communications) be expanded to cover violations committed by criminal street gang members? Should provisions in the Racketeer Influenced and Corrupt Organization (RICO) Act be extended to members of criminal street gangs? Should federal authority to prosecute juvenile gang members as adults be expanded to younger juveniles?

Over the years, Congress has passed legislation that enhanced criminal penalties for gang-related crimes and created programs designed to prevent youths from joining gangs. Several bills targeting the gang problem have been introduced in the 110<sup>th</sup> Congress. Among other provisions, some of the bills would broaden the scope of the federal government's role in prosecuting violent crimes committed by members of gangs. Some of the bills would include provisions for prosecuting criminal street gang enterprises similar to the existing Racketeer Influenced and Corrupt Organization (RICO) statutes for prosecuting cases involving federal racketeering. One of the more controversial provisions in at least one of the bills pertains to the age at which a juvenile could be transferred for criminal prosecution, which would provide for the transfer of juveniles to adult criminal prosecution at the age of 16. Some of the bills would provide for increased mandatory minimum penalties for gang-related offenses. In at least one of the bills, the death penalty would provide for certain gang-related crimes. Some of the bills would create and authorize designated high-intensity interstate gang activity areas (HIIGAs). Some of the bills would reauthorize the Gang Resistance Education and Training (G.R.E.A.T) program and authorize appropriations for state and local reentry courts. Additionally, some of the bills would also authorize grant programs that would

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<sup>16</sup> Portions of this section were taken from CRS Report RL33400, *Youth Gangs: Background, Legislation and Issues*, by Celinda Franco.

<sup>17</sup> See [<http://www.iir.com/nygc/>], accessed on June 12, 2007.

increase prosecutorial resources to more effectively prosecute gang violence, among other things.<sup>18</sup>

## **Juvenile Justice and Delinquency Prevention Act (JJDP) Reauthorization<sup>19</sup>**

As more focus is being placed on young offenders, some have questioned the way in which the United States treats the population in the nation's criminal justice systems. Over the past thirty years, the federal juvenile justice system has generally moved from a focus on rehabilitation to a focus on holding juveniles accountable for their actions. In a larger sense, this is the underlying tension that drives the national debate surrounding the juvenile justice system: rehabilitation versus retribution. This debate may come into focus again because the authorization for the Juvenile Justice Delinquency and Prevention Act (JJDP) is set to expire in 2007 and the 110<sup>th</sup> Congress will likely be reauthorizing this piece of legislation. The last time the JJDP was reauthorized, during the 107<sup>th</sup> Congress in 2002, P.L. 107-273 restructured many of the grant programs aimed at preventing juvenile delinquency, repealed a large number of smaller grant programs and consolidated most of their purpose areas into one large block grant that emphasized accountability and graduated sanctions. Most of the programs that were repealed, however, continued to receive annual appropriations even as the overall juvenile justice appropriation has decreased by over 50%. The theme of holding juveniles accountable for the crimes they commit continued into the 108<sup>th</sup> and 109<sup>th</sup> Congresses as several pieces of legislation attempted to lower the age of culpability for certain gang-related offenses. The core issues in the larger juvenile justice debate will remain the same during the 110<sup>th</sup> Congress: whether rehabilitation should be the driving theme in handling and processing of young offenders through the criminal justice system *or* whether a more punitive approach that emphasizes their responsibility for the crimes they commit should be directed at this population. Another issue that may arise involves the apparent dichotomy between the legislation, which features three broad overarching grant programs, and the appropriations that continue to fund the smaller grant programs that were repealed in 2002.

## **Federal Prison Industries<sup>20</sup>**

UNICOR, the trade name for Federal Prison Industries, Inc., is a government-owned corporation that employs offenders incarcerated in correctional facilities under the Federal Bureau of Prisons. FPI manufactures products and provides services that

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<sup>18</sup> These bills include S. 144, S. 456, S. 990, H.R. 367, H.R. 638, H.R. 880, H.R. 1069, H.R. 1070, H.R. 1184, H.R. 1582, H.R. 1645, and H.R. 1692.

<sup>19</sup> Portions of this section were taken from CRS Report RL33947, *Juvenile Justice: Legislative History and Current Legislative Issues*, by Blas Nunez-Neto.

<sup>20</sup> For additional information, see CRS Report RL32380, *Federal Prison Industries*, by Nathan James.

are sold to executive agencies in the federal government. The question of whether FPI is unfairly competing with private businesses, particularly small businesses, in the federal market has been and continues to be an issue of debate. At the core of the debate is FPI's preferential treatment over the private sector. FPI's enabling legislation and the Federal Acquisition Regulation require federal agencies, with the exception of the Department of Defense, to procure *products* offered by FPI, unless authorized by FPI to solicit bids from the private sector. It is this "mandatory source clause" that has drawn controversy over the years and is the subject of current legislation. Although federal agencies are not required to procure *services* provided by FPI, they are encouraged to do so.

Although the Administration made several efforts to mitigate the competitive advantage FPI has over the private sector, Congress has taken legislative action to lessen such impact on the private sector. For example, in 2002 and 2003, Congress passed legislation that modified FPI's mandatory source clause with respect to procurements made by the Department of Defense and the Central Intelligence Agency;<sup>21</sup> and in recent years, Congress passed legislation limiting federal agencies use of appropriated funds for the purchase of products or services manufactured by FPI unless the agency determines that the products or services provide "... the best value to the buying agency pursuant to government-wide procurement regulations...."<sup>22</sup>

Legislation has been introduced in the 110<sup>th</sup> Congress that would, in essence, eliminated FPI's mandatory source clause. For example, the Federal Prison Industries Competition in Contracting Act of 2005 (H.R. 2965) and S. 749 would have phased out over five years FPI's mandatory source clause with respect to *products* produced by FPI and would have ceased treating FPI as a preferential provider for *services*.

## Other Issues

The 110<sup>th</sup> Congress may consider additional crime-related issues as discussed below.

### Federal Sentencing Structure<sup>23</sup>

In 1984, Congress passed legislation that led to the creation of federal sentencing guidelines. The Sentencing Reform Act of 1984 (Chapter II of the Comprehensive Crime Control Act of 1984; P.L. 98-473), in essence, eliminated

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<sup>21</sup> See the National Defense Authorization Act for FY2002 (P.L. 107-107); the Bob Stump National Defense Authorization Act for FY2003 (P.L. 107-314); and the Intelligence Authorization Act for FY2004 (P.L. 108-177).

<sup>22</sup> See §637 of the Consolidated Appropriations Act, 2005 (P.L. 108-447).

<sup>23</sup> For additional information on this subject, see CRS Report RL32766, *Federal Sentencing Guidelines: Background, Legal Analysis, and Policy Options*, by Lisa M. Seghetti and Alison M. Smith.

indeterminate sentencing at the federal level. The act created the United States Sentencing Commission (Commission), an independent body within the judicial branch of the federal government and charged it with promulgating guidelines for federal sentencing. The purpose of the Commission was to examine unwarranted disparity in federal sentencing policy, among other things.<sup>24</sup> In establishing sentencing guidelines for federal judges, the Commission took into consideration factors such as (1) the nature and degree of harm caused by the offense; (2) the offender's prior record; (3) public views of the gravity of the offense; (4) the deterrent effect of a particular sentence; and (5) aggravating or mitigating circumstances.<sup>25</sup> In addition to these factors, the Commission also considered characteristics of the offender, such as age, education, vocational skills, and mental or emotional state, among other things.<sup>26</sup> Prior to the recent Supreme Court ruling (*U.S. v. Booker*, see discussion below), the guidelines were binding, and they were also subject to statutory directives, including mandatory minimum penalties for specific offenses set by Congress.<sup>27</sup>

On January 12, 2005, the U.S. Supreme Court ruled that the Sixth Amendment right to a trial by jury requires that the current federal sentencing guidelines be advisory, rather than mandatory.<sup>28</sup> In doing so, the Court struck down a provision in law that made the federal sentencing guidelines mandatory,<sup>29</sup> as well as a provision that governed the standards of appellate review of departures from the guidelines.<sup>30</sup> In essence, the Court's ruling gives federal judges discretion in sentencing offenders by not requiring them to adhere to the guidelines unless the offense carried a mandatory sentence; rather the guidelines can be used by judges on an advisory basis.<sup>31</sup> As a result of the ruling, judges now have discretion in sentencing

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<sup>24</sup> The Commission was also mandated to examine the effects of sentencing policy upon prison resources (e.g., overcrowding) and the use of plea bargaining in the federal criminal justice system.

<sup>25</sup> See 18 U.S.C. §994(c).

<sup>26</sup> See 18 U.S.C. §994(d).

<sup>27</sup> Mandatory minimum sentencing laws are separate from the federal sentencing guidelines. Over the years, Congress has directed the U.S. Sentencing Commission to integrate mandatory minimum penalties it has passed into the federal sentencing guidelines.

<sup>28</sup> See *U.S. v. Booker*, 125 S.Ct. 738 (2005).

<sup>29</sup> According to the ruling, a provision in current law makes the guidelines binding on all judges. The provision, 18 U.S.C. §3553(b), requires courts to impose a sentence within the applicable guidelines range.

<sup>30</sup> See 18 U.S.C. §3742(e).

<sup>31</sup> While the Court struck down a provision that made the federal sentencing guidelines mandatory, the Court also noted that current law "... requires judges to take account of the guidelines together with other sentencing goals." See 18 U.S.C. §3553(a). The Court also struck down a provision that governed the standard of appellate review of sentences that were imposed as a result of a judge's departure from the guidelines. The Court noted, however, that current law "... continues to provide for appeals from sentencing decisions (irrespective of whether the trial judge sentences within or outside the guidelines range)." See 18 U.S.C. §3742(a),(b).



defendants unless the offense carries a mandatory sentence (as specified in the law). While some view the ruling as an opportunity for federal judges to take into consideration the circumstances unique to each individual offender, thus handing down a sentence that better fits the offender, others fear that such discretion may result in unwarranted disparity and inconsistencies in sentencing across jurisdictions that led to the enactment of the guidelines in 1984.<sup>32</sup>

As a result of the ruling, many questioned whether Congress should amend current law to require federal judges to follow guided sentences, or permit federal judges to use their discretion in sentencing under certain circumstances. Possible congressional options include (1) amend the sentencing ranges by increasing the top of each guideline range to the statutory maximum for each given offense; (2) require jury trial or defendant waiver for any enhancement factor that would increase the sentence for which the defendant did not waive his rights; or (3) take no action, thus permitting judicial discretion in sentencing in cases where Congress has not specified mandatory sentences.

### **Oversight of DOJ Grant Programs<sup>33</sup>**

DOJ grant programs and appropriations will continue to be an issue of oversight for the Congress. In the 109th Congress, the Edward Byrne Memorial State and Local Law Enforcement Assistance (Byrne Formula) and the Local Law Enforcement Block Grant (LLEBG) programs were combined to create the Edward Byrne Memorial Justice Assistance Grant (JAG) program. Funding under the JAG program in FYs 2005-2006 was less than the total amount of funding appropriated to the Byrne Formula program and LLEBG in FYs 1996-2004. Congress has also reduced appropriations for the Community Oriented Policing Services (COPS) since FY2002. The JAG and COPS programs are the primary programs for providing federal assistance to state and local law enforcement and many officials in the law enforcement communities have expressed concern over the decrease in grant monies made available to them through the programs. Critics contend, however, that while these programs have seen a reduction in funding, grant programs geared towards countering terrorism have seen an increase in funding and state and local law enforcement agencies are often the recipients of these grants. The Violence Against Women Act (VAWA) was also reauthorized in the 109<sup>th</sup> Congress, however, funding for most of the new VAWA programs created in the reauthorization act did not receive appropriations.

Some critics have expressed concern that the decrease in federal funding that some of these programs have seen in recent years has made it harder for state and local law enforcement to combat violent crime. Moreover, they argue, that the recent increase in the national violent crime rate is evidence that the federal government

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<sup>32</sup> See for example, Erik Luna, "Misguided Guidelines: A Critique of Federal Sentencing," *Policy Analysis*, no. 458, November 1, 2002.

<sup>33</sup> For additional information on DOJ grant programs and oversight-related issues, see CRS Report RL33489, *An Overview and Funding History of Select Department of Justice (DOJ) Grant Programs*, by Nathan James.

should place more focus on providing assistance to state and local law enforcement.<sup>34</sup>

## **Civil Commitment of Sex Offenders**

In recent years, Congress passed legislation to protect the public from sex offenders by increasing penalties for sex crimes and by requiring sex offenders to be tracked after they are released. While the monitoring of sex offenders will continue to be an issue of oversight, new interests have developed as several states have taken action to *permanently* commit sex offenders to some type of supervision once their sentences have expired. Legislation was enacted in the 109<sup>th</sup> Congress that creates a grant program to assist states with establishing, enhancing, or operating civil commitment programs *and* clears the way for a federal civil commitment program.<sup>35</sup> Policy arguments concerning these laws, however, question their constitutionality, cost, and effectiveness.

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<sup>34</sup> See for example the May 23, 2007 Senate Judiciary Committee hearing on “Rising Crime in the United States: Examining the Federal Role in Helping Communities Prevent and Respond to Violent Crime” congressional testimony of the National Sheriff Association’s President, Ted Kamatchus, [[http://www.sheriffs.org/GovtAffairs/Testimony/Kamatchus\\_Violent\\_Crime\\_5-23-07\\_final\\_\\_4\\_.pdf](http://www.sheriffs.org/GovtAffairs/Testimony/Kamatchus_Violent_Crime_5-23-07_final__4_.pdf)], accessed on June 12, 2007.

<sup>35</sup> See P.L. 109-162.

## **Appendix A: Selected Crime-Related Legislation Enacted in the 109<sup>th</sup> Congress**

### **The Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248)<sup>36</sup>**

Legislation was enacted in the 109<sup>th</sup> Congress that examines more closely registration and notification law and federal funding for state registration enforcement. The Adam Walsh Child Protection and Safety Act of 2006 (H.R. 4472, as amended; P.L. 109-248) was signed into law on July 27, 2006. The act provides a comprehensive national approach to addressing the issue of sex offenders by requiring the establishment of a national public registry with information on individuals convicted of a criminal offense against a minor or on violent predators who victimize children. The act also tightens registration requirements; provides for additional mandatory minimum penalties for sex offenders in certain instances; creates grant programs for states to enhance, operate, or create a civil commitment program; and creates a civil commitment program at the federal level.

### **The Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162)<sup>37</sup>**

**Department of Justice Reauthorization.** The 109<sup>th</sup> Congress passed legislation that reauthorizes many of the agencies and programs under DOJ's jurisdiction. The Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162) authorizes appropriations for DOJ for FY2006 through FY2009. Among other provisions, the act codifies the existing Edward Byrne Memorial Justice Assistance Grant (JAG) program, the Executive Office of Weed and Seed, and the Community Capacity Development Office (CCDO). Moreover, the act reauthorizes and restructures grant programs under the Community Oriented Policing Service (COPS) and the Violence Against Women offices and creates an Office of Audit, Assessment and Management.

**Consolidation of Certain Office of Justice Programs.**<sup>38</sup> The structure of federal funding for state and local law enforcement assistance received congressional attention during the 109<sup>th</sup> Congress. While the Administration had proposed decreasing the funding amounts and reorganizing some of these programs

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<sup>36</sup> For additional information on sex offender legislation, see CRS Report RL32800, *Sex Offender Registration and Community Notification Law: Enforcement and Other Issues*, by Garrine Laney; and CRS Report RL33967, *Adam Walsh Child Protection and Safety Act: A Legal Analysis*, by Charles Doyle.

<sup>37</sup> For additional information on P.L. 109-162, see CRS Report RL33111, *Department of Justice Reauthorization: Provisions to Improve Program Management, Compliance, and Evaluation of Justice Assistance Grants*, by Nathan James.

<sup>38</sup> For additional information on the JAG program, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant Program: Legislative and Funding History*, by Nathan James.

for several years, it wasn't until the 108<sup>th</sup> Congress that two federal grant programs were consolidated into a newly created program, as discussed briefly below.

For several years, the Administration had proposed consolidating the Edward Byrne Memorial Formula and Local Law Enforcement Block Grant (LLEBG) programs into a new Edward Byrne Memorial Justice Assistance Grant (JAG) program. Congress, however, first considered consolidating the two grant programs in the 108<sup>th</sup> Congress. Through an appropriations act (the Consolidated Appropriations Act, FY2005; P.L. 108-447), the 108<sup>th</sup> Congress consolidated the grant programs into a newly created JAG program, and in January 2006, legislation was enacted that authorizes appropriations for the program through FY2009.<sup>39</sup> Overall funding for both programs in the FY2005 appropriations decreased 12% (or \$268 million) from FY2004, and in FY2006, Congress again decreased funding by \$121 million from FY2005.<sup>40</sup>

**Community Oriented Policing Services (COPS).**<sup>41</sup> During the 103<sup>rd</sup> Congress, legislation was passed that encouraged community policing approaches (i.e., placing more police officers “on the beat”) for state and local law enforcement agencies by creating a federal grant program for community policing. Funding for the newly created Cops on the Beat program (now more commonly known as the COPS program) was authorized through FY2000. The COPS program provides assistance to eligible police departments to help improve community policing efforts and law enforcement support activities. The program requires that at least 85% of the grant money be used for the following: (1) to hire or rehire police officers; (2) procure equipment; (3) pay overtime; or (4) build support systems.

The authority for the COPS grant program lapsed at the end of FY2000. Congress, however, has continued to appropriate funding for the program. The 109<sup>th</sup> Congress passed legislation that reauthorizes the program and realigns some of the COPS activities to other accounts.<sup>42</sup>

**Violence Against Women Act (VAWA).**<sup>43</sup> The original Violence Against Women Act (VAWA), enacted as Title IV of the Violent Crime Control and Law Enforcement Act (P.L. 103-322), became law in 1994. To address violence against women, VAWA established within DOJ and the Department of Health and Human Services a number of discretionary grant programs for state, local and Indian tribal governments. The 109<sup>th</sup> Congress passed legislation that reauthorizes VAWA (P.L. 109-162). Among other provisions, the act encourages collaboration among law enforcement, judicial personnel, and public and private sector providers to victims

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<sup>39</sup> See P.L. 109-162.

<sup>40</sup> The Administration's FY2006 budget request, however, proposed to eliminate the JAG program, Congress continued to provide appropriations for the program.

<sup>41</sup> For additional information on the COPS program, see CRS Report RL33308, *Community Oriented Policing Services (COPS): Background, Legislation, and Issues*, by Nathan James.

<sup>42</sup> See P.L. 109-162.

<sup>43</sup> For additional information on VAWA, see CRS Report RL30871, *Violence Against Women Act: History and Federal Funding*, by Garrine P. Laney.

of domestic and sexual violence. It also addresses the special needs of victims of domestic and sexual violence who are elderly, disabled, children, youth, and individuals of ethnic and racial communities, including Native Americans. The act provides emergency leave and long-term transitional housing for victims. The act makes these provisions gender neutral and requires studies and reports on the effectiveness of approaches used for certain grants in combating domestic and sexual violence.

### **The DNA Fingerprinting Act of 2005 (P.L. 109-162)**

Title X of P.L. 109-162, the DNA Fingerprinting Act of 2005, made several changes to current law. Among other provisions, the act authorizes federal authorities to take DNA samples from larger categories of individuals, including those who are arrested and detained, and include the DNA analysis in the FBI's Combined DNA Index System (CODIS). The act, however, requires the Director of the Federal Bureau of Investigation to expunge the DNA analysis from CODIS of arrestees for whom the Attorney General receives a certified copy of a final court order that establishes the charge has been dismissed, resulted in an acquittal, or that no charge was filed within the applicable time period. The act also requires the Director of the Federal Bureau of Investigation to expunge the DNA analysis from CODIS of individuals whose convictions have been overturned.