"An Ounce of Prevention . . .": Restriction Versus Proaction in American Gun Violence Policies

Lynn Murtha

Suzanne L. Smith
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AMERICAN GUN VIOLENCE POLICIES

Gun violence in America has risen to startling heights. While the societal and economic costs of gun violence continue to rise, our political system remains impotent in its efforts to curb this
national epidemic. Throughout history, the most popular methods employed in attempting to control gun violence have been restrictive in nature. Restrictive gun control methods, however, ignore the violence behind the guns, and as a result, have been ineffective in modern society. On the other hand, less popular proactive methods seek to eradicate crime by attacking the root causes of violence, and seem to be more efficient since they address violence at its source, rather than allowing it to materialize in the form of violent crime.

Two of this country's most recent gun control efforts illustrate this dichotomy of restrictive and proactive gun control legislation. The Brady Handgun Violence Prevention Act ("Brady Act"), requiring a five-day waiting period before the purchase of a hand-

One approach to the gun violence problem is to view it as a public health issue. Reducing Gun Violence: Hearings on S. 1882 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 103d Cong., 1st Sess. (1994) (statement of Dr. Timothy Wheeler, M.D., Chairman, Doctors for Responsible Gun Ownership) (calling gun violence "infectious disease"). "America has plenty of gun control, but very little violence control. It is a lot tougher to deal with the person behind the gun than the gun itself. Guns are not the root of violent behavior." Id. Dr. Wheeler urged Congress to focus more on violence control and consider people as the cause of violence, not guns.


8 See generally Mark K. Benenson & Donald B. Kates, Jr., The Effect of Handgun Prohibitions in Reducing Violent Crime, in Restricting Handguns: The Liberal Skeptics Speak Out 91-118 (Don B. Kates, Jr. ed., 1979) (finding states which ban handguns have equivalent or higher levels of violent crime compared to states which do not); Colin Greenwood & Joseph Magaddino, Crime, Suicide, and Accidents: Some Cross-national and Cross-cultural Comparisons, in Restricting Handguns: The Liberal Skeptics Speak Out 31, 65 (Don B. Kates, Jr. ed., 1979) (finding gun control laws have no effect on homicide). But see Philip J. Cook, The Effect of Gun Availability on Violent Crime Patterns, 455 ANNALS AM. ACAD. POL. & SOC. SCI. 63, 76 (1981) (concluding that restricting guns would have little effect on robbery and assault, but would reduce homicide rates).

9 See Barry Krisberg, Ph.D., Are You Now or Have You Ever Been a Sociologist?, 82 J. CRIM. L. 141, 142-45 (explaining trend away from policy based on causation towards policy based on retribution (citing J. Wilson, THINKING ABOUT CRIME (1975) and E. Van Den Haag, PUNISHING CRIMINALS (1975))).

10 See Polsby, supra note 7, at 70 (noting that traditional crime control measures such as stiffer sentences cannot consistently affect criminal behavior as long as there is no perceived alternative to crime).

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gun, is largely ineffective as a measure aimed at reducing this country's violent crime statistics. The Brady Act focuses exclusively on restricted access to handguns, and ignores completely the motivations and societal influences leading up to the violent act. The crime prevention programs in the Violent Crime Control and Law Enforcement Act of 1994 ("Anti-Crime Act"), on the other hand, deal directly with the sources of violence and attempt to alleviate the crime problem from a proactive stance.

The history of American gun control policies illustrates the ongoing policy debate as to the relative worth of both restrictive and proactive measures of crime control. Part One of this Note is a historical exposition and evaluation of gun control laws in the United States through 1986, discussing early American gun control measures, the Omnibus Crime Control and Safe Streets Act of 1968, the Gun Control Act of 1968, and the Firearms Owners' Protection Act of 1986. Part Two examines the legislative histories and motivations behind the recently enacted Brady Act and the Anti-Crime Act. This discussion will emphasize the futility of

12 Id. The Brady Act also requires local law enforcement officials to make reasonable efforts to determine whether a potential purchaser is forbidden, under federal, state, or local law, from buying a handgun. Id. § 922(s)(2). Furthermore, the law directs the Attorney General to establish a national instant criminal background check system to be used by firearms dealers to allow for "point-of-purchase" background checks. Pub. L. No. 103-159, § 103(d), 107 Stat. 1536 (1993). This section provides for the establishment of a national instant criminal background check system. Id. The system, consisting of both federal and state criminal records, is to be developed within five years from the date of enactment. Id. Once the background check system is functional, the waiting period provision would be faded out and inquiries would be based upon the national instant check system. 18 U.S.C. § 922(t)(1) (Supp. V 1993).


Since over 80% of felons purchasing guns avoid legitimate dealers, a waiting period will have little impact on the crime rate. Id.

14 Id. at 2003. Detractors of the Brady Bill argued that the bill will not solve the nation's crime epidemic because it does nothing to keep handguns out of the hands of violent criminals. Id. They argued that the bill's major flaw is that it deals only with firearms sales from legal dealers. Id. Thus, law-abiding citizens who attempt to purchase firearms for lawful purposes will be affected by this regulation of firearms transactions. Id.

15 See Anti-Crime Act §§ 30101-40703, 50101-100003, 15001-150007, 170101-270002.

16 Id. §§ 30401, 30402, 32001, 32101, 32401. Grant programs in the Anti-Crime Act attempt to reach local communities, and serve as a basis for deterring crime and preventing and reducing the motivation to commit violent crime. Id. These programs are designed to look behind the criminal and help cure behavioral and motivational problems in order to prevent repeat offenses. Id. §§ 32001, 32101.

17 See infra notes 100-22 and accompanying text (discussing current restrictive measures); see also infra notes 123-90 and accompanying text (discussing importance of proactive methods).


restrictive methods of gun control and the potential for real crime reduction with proactive social programs. Part Three analyzes the efficacy of restrictive methods of gun control in addressing the problems of violence in America. Finally, Part Four focuses specifically on the prevention programs embedded in the Violent Crime Control and Law Enforcement Act of 1994, and discusses how such programs address the prime causes of gun violence in America. Part Four also addresses certain criticisms of the crime prevention programs of the Anti-Crime Act and offers suggestions for improvement with regard to the structure of the legislation.

I. HISTORICAL DEVELOPMENT OF GUN CONTROL LEGISLATION THROUGH 1986

A. Early American Firearms Control Efforts

The English common law provided for a right to keep, carry, and use firearms. Those who participated in the American Revolution and adopted the Bill of Rights insisted on common-law principles, and believed the right to keep and bear arms for individual self-defense, in conjunction with the right to combine into dependent militias for defense, to be fundamental. One of the earliest American efforts to control weapons occurred in 1837, when states passed legislation recognizing the dangers of carrying concealed weapons. Because many of these restrictions focused on the manner of carrying weapons, they were upheld on constitu-

21 STEPHEN P. HALBROOK, THAT EVERY MAN BE ARMED 49 (1984) (noting that those prosecuted for riding armed and those who possessed arms in violation of gaming laws were acquitted).

22 Id. at 55 (noting that in 1791, ratification, in part, of Bill of Rights, included recognition that private individuals would never be disarmed).

23 Act of December 25, 1837, Digest of the Statute Laws of the State of Georgia in Effect Prior to the Session of the General Assembly of 1851, at 818 (1851) (noting that horsemen's pistols, the largest and heaviest in use, were exempt from the Act); see also David T. Hardy, The Firearms Owners' Protection Act: A Historical and Legal Perspective, 17 CUMB. L. REV. 585, 589 n.20 (1987) (observing that Act of 1837 was nullified as violating Second Amendment in Nunn v. State, 1 Ga. 243 (1846)).

24 Aymette v. State, 21 Tenn. 119, 123-24, 2 Hum. 154, 159 (1840). The court stated: To hold that the legislature could pass no law upon this subject by which to preserve the public peace, and protect our citizens from the terror which a wanton and unusual exhibition of arms might produce, or their lives from being endangered by desperadoes with concealed arms, would be to pervert a great political right to the worst of purposes, and to make it a social evil of infinitely a greater extent to society than would result from abandoning the right itself.

Id.
tional grounds. By the end of the nineteenth century, additional state restrictions on the sale or carrying of handguns were enacted, and in 1927, the federal government reinforced state efforts by banning the shipment of firearms, concealable on one's person, through the mails. Growing crime rates in the late 1920's and the early 1930's had become a national problem reaching beyond the capacity of existing gun restrictions. Public officials advocated stricter gun control legislation, and manipulated the public perception of crime as an alarming national invasion.

Soon thereafter, Congress enacted the National Firearms Act of 1934, which was directed towards the regulation of machine guns, sawed-off shotguns and rifles, silencers, and concealable firearms, specifically exempting pistols and revolvers from its coverage. The law was not retroactive, but it did require those who already owned firearms to register their arms within sixty days of enactment.

25 See State v. Buzzard, 4 Ark. 18 (1842) (holding Arkansas statute declaring it illegal to carry concealed weapon to be constitutional); Nunn v. State, 1 Ga. 243, 251 (1846) (holding state legislature had right to prescribe mode of carrying arms, but not if manner prescribed amounted to prohibition); Aymette, 21 Tenn. at 158-59 (holding state legislature had right to restrain act prohibiting wearing of weapons "not usual in civilized warfare"). But see Bliss v. Commonwealth, 12 Ky. (2 Litt.) 90, 91-92 (1822) (holding since wearing of concealed weapons was legitimate when Constitution was adopted, such right could not be restrained).

26 See Hardy, supra note 23, at 589 n.21. The author cites other state firearm legislation, including the Act of Mar. 18, 1889, 1889 Ariz. Sess. Laws 16 (prohibiting the carrying of pistols within any settlement, town, village, or city), and the Act of June 11, 1870, ch. 13, 1870 Tenn. Pub. Acts 23 (prohibiting the carrying of handguns and other weapons in "public assemblies of the people").


28 See Hardy, supra note 23, at 590 n.24 (illustrating crime problems of late 1920s and early 1930s by describing collapse of Chicago's criminal processing system due to increase in homicide rate).

29 Id. (noting Attorney General Cummings' comment that America is being terrorized by group of thugs larger than United States Army).


31 See National Firearms Act: Hearings on H.R. 9066 before the House Comm. on Ways and Means, 73d Cong., 2d Sess. 1-3 (1934) (noting bill's slow start due to mishandling by Department of Justice); see also Hardy, supra note 23, at 592 (commenting that mishandling of bill did not diffuse drive for federal regulation of firearms).

32 See Hardy, supra note 23, at 593 n.38 (noting specific amendment deleting pistols, revolvers, and sporting arms from bill).

33 Id. at 592 (stating that extending registration requirement to all firearm owners was proposed in substitute bill). But see Haynes v. United States, 390 U.S. 95, 99-100 (1968) (striking down registration requirement of National Firearms Act, 34 years later, as violative of Fifth Amendment's Self-Incrimination Clause).

The Omnibus Crime Control and Safe Streets Act of 1968 ("Omnibus Crime Act")\(^{34}\) was enacted to provide assistance to state and local governments in reducing the incidence of crime, and to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems.\(^{35}\) The underlying purpose of the handgun control portion\(^{36}\) of the Omnibus Crime Act was to keep firearms out of the hands of those not legally entitled to possess them for reasons of age, criminal background, or incompetency, and to assist state law enforcement authorities in combatting increasing crime rates.\(^{37}\) Congress's concerns were centered on the ease and anonymity with which individuals could acquire firearms.\(^{38}\) This was especially troublesome with regard to criminals, juveniles lacking parental consent, drug addicts, and mental defectives.\(^{39}\) Legislators felt that in order to solve problems of increasing crime in America, it was essential to establish adequate federal control over all persons in the business of importing, manufacturing, or dealing in firearms.\(^{40}\) Public opinion polls in 1968 indicated that most Americans favored stricter gun control,\(^{41}\) and desired even stricter measures than were provided for in the handgun control measures of the Omnibus Crime Act.\(^{42}\)

Highly publicized violent crimes using rifles or shotguns, including the assassinations of President John F. Kennedy and Martin

\(^{34}\) Pub. L. No. 90-351, 82 Stat. 226 (1968) (titles IV and VII were later incorporated into Gun Control Act of 1968).


\(^{36}\) Id. at 2113 (embodying firearms regulations exclusively in title IV).

\(^{37}\) Id. at 2113-14 (stating need for national firearms policy).

\(^{38}\) Id. at 2164 (noting two prime sources of firearms for criminals, juveniles, and mental defectives are through mail-order carrier source and through out-of-state, nonresident source).

\(^{39}\) Id. at 2114 (noting certain classes of individuals whose possession of firearms is contrary to public interest).


\(^{41}\) S. Rep. No. 1097, supra note 3, reprinted in 1968 U.S.C.C.A.N. at 2249 (indicating that three out of four Americans favored stricter gun control, and two out of three gun owners also supported more stringent measures).

\(^{42}\) Id. (recognizing that unlimited gun trafficking threatens law-abiding citizens, gun owners favored registration by 56% in 1966, and by 1967, 66% supported registration).
Luther King, Jr., and the shooting of Medgar Evers, sent Congress a message that any truly effective firearm measures must restrict long guns as well as handguns. Moreover, reports that firearms were used in fifty-eight percent of robberies, thirty percent of homicides each year, and one of every five assaults, added to Congress's realization that existing laws were not enough to control crime. The Gun Control Act of 1968 ("Gun Control Act") represented a major effort on the part of the federal government to curb growing use of firearms in violent crimes, focusing on restricted public access to firearms. The Gun Control Act provided a more effective licensing system for firearms, strengthening the firearms provisions of the Omnibus Crime Act, which regulated only handguns. The Gun Control Act restricted transactions involving rifles and shotguns, tightened control over the shipment and sale of destructive devices, and prohibited the sale of firearms to unlawful users of narcotic drugs and adjudicated mental defectives. The Gun Control Act also was designed to assist and en-

43 H.R. REP. NO. 1577, supra note 2, reprinted in 1968 U.S.C.C.A.N. at 4413, 4426 (commenting on incidents which should have been subject to stricter controls).
44 Id. at 4413 (noting incidents involving rifles or shotguns that have been cited to further illustrate demand for more restrictive transactions).
45 Id. at 4425 (noting that need for immediate action can no longer be ignored).
48 Id. at 4411. The official purpose of the legislation was "to strengthen Federal controls over interstate and foreign commerce in firearms and to assist the States effectively to regulate firearms traffic within their borders." Id.; Huddleston v. United States, 415 U.S. 814, 824 (1974) (quoting S. REP. NO. 1501, 90th Cong., 2d Sess. 22 (1968)). The Act's purpose was to keep "firearms out of the hands of those not legally entitled to possess them because of age, criminal background or incompetency." Id.; see also Marc C. Cozzolino, Comment, Gun Control: The Brady Handgun Violence Prevention Act, 16 SETON HALL LEGIS. J. 245, 247 n.16 (1992) (citing Huddleston v. United States, 415 U.S. 814 (1974)). Congress believed that the best way to deter black market transactions was to ensure that "firearms were channeled through federally licensed dealers to eliminate mail order purchases and the generally widespread commerce in them." Id.; Laurel Loomis, A New Look at Gun Control Legislation: Responding to a Culture of Violence, 27 BEV. HILLs B. ASS'n J. 161, 162 (1993). Congress saw the need to address public outrage over escalating gun violence and focused its efforts on limiting the public availability of firearms. Id.
49 H.R. REP. NO. 1577, supra note 2, reprinted in 1968 U.S.C.C.A.N. at 4412. The "more effective" licensing system was imposed on those who commercially deal in firearms. Id. The licensing system also limited lawful transactions involving the sale or exchange of firearms to those between Federal licensees, or to those between persons who reside in the same state. Id.
50 Id. at 4413 (stating that legislation was designed to control indiscriminate flow of firearms across state borders, and aimed at restricting firearms transactions not addressed under title IV of Omnibus Crime Act).
51 Id. Restrictions on rifles and shotguns were similar to those provisions found in title IV of the Omnibus Crime Act, applying to handguns. Id. One difference was that long guns could be sold by licensed dealers to persons 18 years of age or older, while handguns only
courage states and local communities to adopt and enforce stricter gun control measures. The Gun Control Act laid the basic foundation for firearms restrictions which have been subject to controversial debates regarding legislative attempts to expand gun control laws.

C. The Firearms Owners’ Protection Act

In 1986, the trend towards stricter gun control seemed to swing in favor of gun advocates with the passage of the Firearms Owners’ Protection Act (“FOPA”). FOPA was the first comprehensive redraft of a federal firearms law since 1968, and was designed to relieve sportsmen and firearms owners and dealers from unnecessary burdens of the Gun Control Act. FOPA expanded the number of persons who could engage in firearms transactions or importation without a license or complying with recordkeeping requirements. At the same time, it enhanced the ability of law en-
forcement to fight violent crime. FOPA also provided that those who carry or use firearms in the commission of federal drug offenses would be subject to mandatory prison terms. In addition, FOPA expressly permitted the transportation of unloaded, inaccessible firearms in interstate commerce notwithstanding any state law to the contrary. FOPA effectively overruled six United States Supreme Court decisions and revamped previous interpretations of the Gun Control Act. FOPA's imposition of a knowledge or intent element of proof with respect to all Gun Control Act offenses makes it more difficult to prosecute gun cases. This aspect of the Gun Control Act weakens existing gun laws, and may not be the solution for controlling violent crime.

58 Id. By changing the definition of who is required to obtain a license, Congress believed that the definition would seriously weaken the effect of the Gun Control Act. Id.

59 Id. at 1327 (stating purpose of legislation also included enhancement to fight narcotics trafficking and to improve administration of Act).

60 H.R. REP. No. 495, supra note 55, at 19, reprinted in 1986 U.S.C.C.A.N. at 1345 (noting difficulty state prosecutors will have to resolve and rebut when interstate commerce began and ended); see Hardy, supra note 23, at 587 (commenting that as long a person is not barred from transporting arms by Act, this provision may affect laws of at least 21 states).

61 See Hardy, supra note 23, at 585-86 nn.8-10 (citing cases involving issues arising under Gun Control Act, such as forfeiture, warrantless searches, and scienter requirements).


63 Id. at 1344-46. Other negative aspects of FOPA assessed by the Bureau of Alcohol, Tobacco, and Firearms included: 1) permitting interstate sales of firearms by licensees to nonlicensees if applicable state and local law are complied with; 2) prohibiting unannounced inspections and prohibiting use of evidence uncovered in such inspections; 3) allowing licensees to dispose of firearms without maintaining records of such transactions, if firearms have been in the licensee's personal collection for at least one year; 4) not permitting license denial or revocation on grounds that applicant or licensee was prosecuted in a criminal case and acquitted; 5) precluding forfeiture of firearms on grounds which the owner or possessor was prosecuted in a criminal case and acquitted; and 6) weakening existing mandatory penalty provision related to use or carrying of firearms in commission of a federal crime of violence by adding element that the carrying be "in the furtherance of" the violent crime. Id.
II. Exposition of Legislative Histories and Motivations Behind the Brady Handgun Violence Prevention Act and the Violent Crime Control and Law Enforcement Act of 1994

A. The Brady Handgun Violence Prevention Act

The Brady Handgun Violence Prevention Act\textsuperscript{64} was named after James S. Brady, who was crippled in John Hinckley Jr.'s 1981 attempt to assassinate President Ronald Reagan.\textsuperscript{65} Like the Gun Control Act of 1968, the Brady Act was an attempt to address problems of gun violence by restricting access to guns.\textsuperscript{66} Congressional debate on the Brady Act suggests that the Act was intended to prevent tragedies similar to that of the attempted assassination in 1981.\textsuperscript{67} Although that incident focused national attention on the issue of gun control, legislation was not introduced in Congress until seven years later.\textsuperscript{68} Offered as an amendment to the Gun Control Act of 1968, initially proposed legislation provided for a seven-day waiting period before "any person could sell, deliver or transfer a handgun"\textsuperscript{69} to any unlicensed person under the Gun

\textsuperscript{65} Howell Raines, Reagan Wounded in Chest by Gunman; Outlook "Good" After 2-hour Surgery; Aide and 2 Guards Shot: Suspect Held, N.Y. Times, Mar. 31, 1981, at A1. Hinckley fired six shots at the former President as Reagan walked to his limousine after a meeting at a Washington D.C. hotel. Id. One bullet struck Mr. Reagan in the chest collapsing his left lung. Id. White House Press Secretary, James S. Brady, was hit above the left eye and doctors believed the trauma so severe as to probably cause permanent brain damage. Id.
\textsuperscript{66} See 18 U.S.C. § 922(s)(B)(i)-(vii) (Supp. V 1993). To have a valid transfer, an individual cannot be under indictment or convicted of a crime punishable by imprisonment exceeding one year; cannot be a fugitive from justice; cannot be an unlawful user of or addicted to a controlled substance; cannot be adjudicated a mental defective; cannot be an alien in the United States; cannot have been discharged dishonorably from the Armed Forces; and cannot be an individual who has renounced his United States citizenship. Id.
\textsuperscript{69} H.R. Rep. No. 47, supra note 68, at 5 (indicating that for valid transfer to an unlicensed individual, dealer must receive statement from purchaser, and must verify identification presented by purchaser).
Control Act. In response, those opposed to the waiting period offered legislation which would require the development of a computerized system for the immediate and accurate identification of felons attempting to purchase firearms. 

This second proposal, when brought before the full House for a vote, eventually won out and was adopted as part of the Anti-Drug Abuse Act of 1988.

A waiting period bill, eventually approved by Congress, was introduced in February, 1993. This final version, signed into law by President Bill Clinton on November 30, 1993, required a five business day waiting period before the purchase of a handgun and the eventual establishment of a national instant criminal back-

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70 See id. at 4-5. The bill in question also would require a purchaser to sign a sworn statement by which the local chief law enforcement officer would verify that the sale of a handgun to the purchaser would not violate any federal, state, or local law. Id. The bill was introduced on June 30, 1988 as an amendment to the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 6213, 102 Stat. 4360 (1988) (hereinafter Anti-Drug Abuse Act of 1988). Id.

71 H.R. REP. No. 47, supra note 68, at 6. This legislation was offered as a substitute for Representative Feighan's amendment, but it was rejected by the House Judiciary Committee. Id.

72 Cozzolino, supra note 48, at 248 (noting successful vote of Representative McCollum's amendment).

73 Anti-Drug Abuse Act of 1988 § 6213. In September 1988, Representative McCollum again offered his amendment as a substitute for Representative Feighan's gun control waiting provisions. H.R. REP. No. 47, supra note 68, at 6. At this time, the House adopted the McCollum amendment as part of the Anti Drug Abuse Act of 1988. Id. According to the amendment, the Attorney General was instructed to establish a plan for the implementation of a felon identification system, and then report back to Congress after the Act's passage. Id. The Attorney General's initial report concluded that a point-of-sale system would be more cost-efficient than a waiting period provision. Id.; see also Draft Report on Systems for Identifying Felons Who Attempt to Purchase Firearms, 54 Fed. Reg. 26,903 (1989); Cozzolino, supra note 48, at 249. Attorney General Richard Thornburgh's initial report to Congress revealed two options regarding a felon identification system: 1) point-of-sale identification; and 2) pre-approval procedure. Id.

74 H.R. REP. No. 344, supra note 2, at 14, reprinted in 1993 U.S.C.C.A.N. at 1991 (noting that H.R. 1025 was introduced by Representatives Schumer and Sensenbrenner). In 1991, Representative Edward Feighan introduced H.R. 7 which included changes from earlier bills, such as: 1) the requirement that the statement made by the prospective purchaser be sworn; 2) an expansion under the "permit to possess" exemption to include person with a valid permit to possess issued five years prior to the current sale; 3) background checks done by the state included in permit exemption can be performed by a state government official; and 4) the exemption of mail order sales of firearms from coverage. H.R. REP. No. 47, supra note 68, at 1-2. This bill enumerated instances where the waiting period would be waived including: 1) A statement, from the chief law enforcement officer, given to the dealer stating that the firearm is needed due to a threat to the purchaser's or a family member's life; 2) If a purchaser presents a permit issued no more than five years earlier under the required licensing system in the state where the transfer is to occur; or 3) If the state already has a law requiring a waiting period of at least seven days or has a system that can verify that the transfer of a handgun to the purchaser would not be unlawful. Id.; cf. 18 U.S.C. § 922(s)(B), (C)(XII), (D) (1993) (corresponding provisions of Brady Act).

ground check system whereby background checks could be conducted at the point of purchase.  

While it may be as long as five years before a federal check system is implemented, an interim procedure delegating the background check to local law enforcement officers has met considerable resistance and judicial challenges on constitutional grounds. Most agree that a more centralized system of gun regulation and registration is necessary, and that it should, after all, be just as difficult, if not more so, to procure a gun as it is to obtain a drivers license. By no means, however, should the Brady Act be considered a "cornerstone" in regulating violence in America.
The next major crime initiative followed soon after the Brady Act. The Violent Crime Control and Law Enforcement Act of 1994 was termed "the biggest crime bill in history" by one commentator. Furthermore, President Bill Clinton posited that it would make "every neighborhood in America safer." The Anti-Crime Act, while perpetuating legislative focus on gun control as a means of crime control, also signified a shift away from the typical restrictive measures on firearms transactions, and towards proactive measures involving crime prevention.

Legislation which would eventually serve as the basis for the Anti-Crime Act was introduced in October of 1993. It provided for grants to increase police presence, and for the expansion and improvement of cooperative efforts between law enforcement agencies and members of the community in order to address crime problems and otherwise enhance public safety. Because of substantial differences between House and Senate versions of the bill, a conference committee was convened. The resulting conference


82 Id. This statement seems hard to support considering that only about 5% of violent crimes fall under federal jurisdiction. Id.; see also Steven Duke, Clinton and Crime, 10 Yale J. on Reg. 575, 577 (1993). "[C]rime is essentially a problem for the states, beyond the control of the federal government." Id.

83 See Anti-Crime Act, § 30201(a)(2)(A)-(H). These programs provide preventive measures to educate, rehabilitate, and prevent juvenile violence, juvenile gangs, and the use and sale of illegal drugs by juveniles. Id. The Act combines the banning of various assault weapons with social preventive programs as an effort to reduce violence. Id. §§ 110103, 30102.


86 See 140 Cong. Rec. 2609 (daily ed. Apr. 21, 1994); see also 139 Cong. Rec. S16933 (daily ed. Nov. 22, 1993) (statement of Sen. Chafee). The Republican Senator, from Rhode Island, emphasized that in order for the Senate to prove just how tough on crime it is, the Senate has approved amendments which do not stand up to careful scrutiny and will be damaging to the federal justice system if enacted into law. Id. He asserted that most members would not support the federal government usurping local control of the Nation's schools and that by federalizing crime after crime we are headed in the direction of a centralized national police department. Id. at S16934. This bill was passed with the support of Republicans by a vote of 95 to 4. 139 Cong. Rec. S16288 (daily ed. Nov. 19, 1993).
The final version of the crime bill, as approved by Congress, has undergone substantial changes from previously introduced crime legislation. The Anti-Crime Act focuses on increasing the na-

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88 See Dewar, supra note 81, at A1. Republicans argued that the conference version was fattened with "social pork" by the House-Senate conferees. Id. Republicans also claimed that the conference report contained more "pork" than the Senate bill which was passed in November of 1993. Id.

89 See infra notes 91-94 and accompanying text (discussing Republican attempt to reduce prevention funding and increase criminal penalties).

90 See Dewar, supra note 81, at A1 (chiding Republicans for voting for Senate bill in November of 1993, and now voting against conference report).

91 Id. Senator Bob Dole led the initiative for these proposed amendments which could have been adopted into the conference version by a procedure requiring at least 41 votes. Id.

92 Id. (noting Republican insistence on stronger punishment provisions as well as elimination of nearly all spending for prevention programs, which they labelled "social pork").


94 See Howard Kurtz, The Teflon Congress: In the Media, Capitol Hill Gets Coddled While Clinton Gets Clobbered, Wash. Post, Sept. 4, 1994, at C1. It appears that a great deal of political gamesmanship occurred in Congress prior to the passage of the Anti-Crime Act. When the Senate first passed the crime bill in November 1993, many Republicans supported it. Id. However, just when it looked as though President Clinton might win a major legislative victory, most GOP members in the House and Senate suddenly voiced new objections to a measure for which they had already voted. Id.; see also Karen Tumulty,
tion’s police force by allocating $13.4 billion of its $30.2 billion budget for localities to hire 100,000 new police officers. Second, in order of monetary importance, the Anti-Crime Act provides $9.9 billion in state grants to build new prisons and establish “boot camps” for young offenders. Both police and prison programs saw an increase in funding between the version that was blocked by the House on August 11, 1994 and the version that actually was approved by both houses. Federal funding for crime prevention and antidrug efforts, on the other hand, was reduced by $1.8 billion from the original to the final version of the law. Even

Weary Senate OKs Crime Bill After a GOP Challenge Fails, L.A. TIMES, Aug. 26, 1994, at A1. The section of the bill most harshly criticized by the Republicans would give $6.9 billion to crime prevention programs. Id. Senate Judiciary Committee Chairman Joseph R. Biden, Jr. noted that years of political struggle had produced dramatic changes in the general thrust of the measure and stated that “[t]his is the first bill ever, including the original one I wrote six years ago, that actually had included a significant commitment to local law enforcement, significant commitment to prisons, significant commitment for prevention—a formula every single criminologist in American has agreed with.” Id.

The legislation has changed from a five year measure to a six year legislative program with $13.5 billion to be spent on state, local and federal law enforcement. Id. Of this amount, $8.8 billion would be aimed at the hiring of 100,000 new officers to carry out community policing. Id. There have been many doubts that this figure could sufficiently carry out what is required. Id.


Anti-Crime Act, §§ 20101, 20109. The statute defines “boot camps” as:

[A] correctional program of not more than six months incarceration involving—(A) assignment for participation in the program, in conformity with State law, by prisoners other than prisoners who have been convicted at any time of a violent felony; (B) adherence by inmates to a highly regimented schedule that involves strict discipline, physical training, and work; (C) participation by inmates in appropriate education, job training, and substance abuse counseling or treatment; and (D) post-incarceration aftercare services for participants that are coordinated with the program carried out during the period of imprisonment.

Id. § 20108; see David Lamb, Last Shot to Salvage Their Loves: First-Time, Nonviolent Offenders Get a Chance at Redemption by Going Through ParaMilitary Boot Camps, L.A. TIMES, Jan. 17, 1993, at A1. “Boot camps” first introduced in 1983, provide military-style treatment for nonviolent first-time offenders, as an alternative to traditional incarceration. Id. Based on the premise that young offenders need discipline to help them resist crime and effectively interact in society, the Clinton-supported program is an increasingly popular way to reduce prison overcrowding. Id. In 1993, 27 states and the federal government used penal boot camp facilities. Id.; see also, Duke, supra note 82, at 583 (noting President Clinton has advocated “boot camps” since his presidential campaign).

See Dewar, supra note 81, at A1 (noting Crime Bill saved in House by rare bipartisan agreement to cut prevention funding while adding money for prisons and police).

Charles V. Zehren, Still at Odds, Moderates Shoot For Consensus on Crime Bill, N.Y. NEWSDAY, Aug. 21, 1994, at A6 (reporting that in cutting crime bill to $30 billion, at least two-thirds of reductions came from crime prevention and social spending programs); cf. Duke, supra note 82, at 578 (noting escalation in resources spent in war on drugs). "From a total of less than $3 billion spent during the first half of the 1970s, the budget has inexor-
though the passage of the Anti-Crime Act is a major effort at crime control, there is much doubt as to whether the law will have any effect on reducing existing crime. Some feel that social prevention programs are a waste of taxpayer dollars, while others believe that restrictive methods of gun control simply do not work.

III. Examination of the Efficacy of Restrictive Methods of Gun Violence Control

Although the Brady Act was aimed at preventing violence such as the 1981 assassination attempt which crippled James Brady, even a cursory review of the Brady incident and other highly publicized shootings indicates that the Brady Act would not have prevented them from occurring. For example, the Brady Act would not have prevented John Hinckley, Jr. from acquiring the .22 caliber pistol he used in his assassination attempt. Even if Hinckley were subject to a five-day waiting period, a background check would have revealed no criminal record or history of mental illness disqualifying him from firearm ownership. Similarly, the Brady Act would not have prevented the more recent “Long Island Railroad Massacre.” Colin Ferguson, convicted for six deaths

bly grown to more than $12 billion per year in 1992.” Id. (citing THE WHITE HOUSE, BUDGET SUMMARY, NATIONAL DRUG CONTROL STRATEGY (Jan. 1992)).

99 See Tumulty, supra note 94, at A1. Senate Republicans who opposed the bill doubted that it would make the nation feel any safer. Id. Senator Orrin Hatch, for example, called the bill “a gravy-sucking pig” and claimed that it “is not tough on crime.” Id.

100 See infra notes 101-07 and accompanying text (discussing violent incidents which could not have been prevented by government regulation). But cf. Hearings on H.R. 1025, supra note 67, at 182-83 (testimony of Neal Knox, Firearms Coalition). Gun control advocates maintain that self-defense requires that individuals be able to obtain handguns without a waiting period. Id. Mr. Knox cites examples of criminal activity which could have ended in the death of or injury to the victim, had the victim been required to wait even five days to purchase a handgun. Id.

101 Hearings on H.R. 1025, supra note 67, at 184 (statement of Neal Knox noting Hinckley purchased gun almost six months prior to perpetration of crime). But see Tracy Thompson, Hinckley Seeks to End Interview Ban: Would-Be Assassin Tells U.S. Judge He’s a Political Prisoner, WASH. POST, Aug. 8, 1989, at A9 (reporting Hinckley’s statement that existence of waiting period might have dissuaded his assassination attempt).

102 See Hearings on H.R. 1025, supra note 67, at 184 (statement of Neal Knox arguing ineffectiveness of Brady bill).

103 See Maureen Fan et al., The LIRR Slaughter: Nightmare Aboard Car 3, NEWSDAY, Dec. 12, 1993, at 4. The accused, Colin Ferguson, allegedly opened fire on a crowded Long Island Railroad rush hour train. Id. The gunman emptied his first 16 bullets, and as he paused to load his next clip, he was subdued by passengers on the train. Id. Five died instantly and a sixth person died later. Id. But see Tom Diemer, Gun-Control Group Calls Licensing all Handguns, PLAiN DEALER (Cleveland), Dec. 9, 1993, at A1 (reporting statement of Representative Charles Schumer insisting that LIRR tragedy could have been prevented by ammunition ban in Anti-Crime Act).
resulting from a shooting spree on the Long Island Rail Road, obtained his weapon in California, a state which already requires gun purchasers to pass a background check and endure a statutory waiting period three times more stringent than provided for in the Brady Act. Like Hinckley, Ferguson had no disqualifying record of mental illness or felony convictions which would have prevented him from buying his gun from a federally licensed dealer.

Opponents of the Brady Act cite countless examples of random gun violence which could not have been prevented by any amount of gun control. Setting aside the Hinckley and Ferguson examples, it is evident that most criminals do not buy their weapons from licensed gun dealers, and that the vast majority of violent crime in America is committed with illegally obtained guns. Moreover, no reduction in crime rates has been reported in states

104 Gun Used in Commuter Shooting Legally Bought After 15 Day Wait, Plain Dealer (Cleveland), Dec. 9, 1993, at 10A. On April 22, 1993, Colin Ferguson, a Jamaica native, living in New York for the past year, checked into a California motel. The next day he left a 25 percent deposit on a Ruger 9mm semiautomatic pistol, after completing state firearms purchase forms and producing proof of California residency—a state drivers license listing the motel as his address. Id. On May 9, Ferguson returned to the gun shop, completed additional federal forms, paid the balance due, and walked out with the gun. Id.


107 See Claude Lewis, Gun Control Would Reduce the Killing, Phila. Inquirer, Dec. 27, 1993, at A15. Many killings sparked by drugs, liquor, and lust, or which stem from a deep sense of injustice by people with no record of violence cannot be prevented by the Brady Act. Id. In one incident, a young law-abiding victim, Teressa Clark, was gunned down, allegedly, by her former boyfriend, who was apparently determined to kill her. Id. The Brady Act could not have prevented such a senseless killing. Id. But see Laurent Belsie, Shooting Fires Gun Control Debate, Christian Sci. Monitor, Apr. 26, 1990, at 6. Assailant, Reginald Moreman, carrying papers that he was recently released from a mental institution, opened fire on a lunch crowd in a shopping mall, killing one man and injuring four others. Id. Police did not know how Moreman obtained the gun, but the Brady Act might have prevented his obtaining the gun. Id.

108 See H.R. Rep. No. 344, supra note 2, at 9, reprinted in 1993 U.S.C.C.A.N. at 886. "Criminals obtain guns from a number of sources: they steal them, they get them from friends or associates, and they buy them from professional gun runners on the black market." Id.; see also James D. Wright & Peter H. Rossi, Armed and Considered Dangerous: A Survey of Felons and Their Firearms 182-88 (1986). Based on a survey data of nearly 2,000 convicted felons, only one in six acquired their handgun through a legitimate retail outlet. Id. One-third admitted stealing their most recent handgun. Id.

109 See H.R. Rep. No. 344, supra note 2, at 37, reprinted in 1993 U.S.C.C.A.N. at 2007 (dissenting views of Hon. Lamar Smith). "Since over 80 percent of felons purchasing guns avoid going to legitimate dealers to buy them, a waiting period will have little impact on crime rate." Id.
that already have waiting periods.\textsuperscript{110} Throughout consideration of the Brady bill, numerous witnesses bombarded Congress with statistical arsenals in order to fortify their argument that the law was “useless, but harmless,” and “merely a symbolic gesture.”\textsuperscript{111} Both sides of the debate supplied unsubstantiated rhetoric.\textsuperscript{112} The bill was enacted when many of those initially in opposition decided it would not be a significant infringement on gun owners’ rights.\textsuperscript{113} Despite serious doubts as to the Brady Act’s potential efficacy, gun control advocates hailed the Brady Act as the “cornerstone of a serious gun control policy” in America, representing a significant step towards reducing this country’s epidemic of gun violence.

\textsuperscript{110} See Hearings on H.R. 1025, supra note 67 (statement of Richard Gardner). In 20 of the 22 states with waiting periods, there was actually an increase in violent crime rates from 1987 to 1991, a rate greater than the national trend. \textit{Id.} Mr. Knox, of the Firearms Coalition, pointed to a study commissioned by the Carter Administration which found “no evidence that waiting period laws have succeeded in reducing the violent crime rate . . . .” \textit{Id.} (testimony of Neal Knox). “Most of the nation’s firearms crimes occur in cities and states with gun laws far more restrictive than this bill, such as Washington, D.C., where handguns are banned.” \textit{Id.; cf.} Richard Licayo, Beyond the Brady Bill, Time, Dec. 20, 1993, at 28. In the twenty-five states with waiting periods, only one to two percent of perspective buyers are turned away. \textit{Id.}


\textsuperscript{112} See Andrew Jay McClurg, The Rhetoric of Gun Control, 42 AM. U. L. REV. 53, 54-55 (1992). “When Congress debated the Brady Bill . . . rhetoric flowed freely on both sides.” \textit{Id.; cf.} Hearings on H.R. 1025, supra note 67, at 68 (testimony of Sarah Brady). “Too many Americans are being killed. Too many children are being shot. Too many families are being destroyed. Too many lives are being shattered by gunfire.” \textit{Id.; James S. Brady, Congress Didn’t Want to See . . . , N.Y. TIMES, Apr. 3, 1990, at A23. Arguing in support of the Brady Bill, Jim Brady wrote: “[I]f the bill had been law in March 1981, Mr. Hinckley would not have been able to purchase the handgun he used against President Ronald Reagan, and I would not have been wounded and disabled.” \textit{Id.}

\textsuperscript{113} Hearings on H.R. 1025, supra note 67, at 127 (testimony of Richard Gardiner of National Rifle Association (“NRA”)). Gardiner argued that the NRA opposed the Brady Bill’s waiting period, but it supported the development of an instantaneous point-of-purchase background check for potential purchasers. \textit{Id.}

It could be argued that the NRA, who presumably represents a large number of gun retailers, opposed the five day wait because of a possible adverse effect on gun sales. The opposite, however, has proven to be true. See John Mintz, No. 1 With Bullet—Sales Are Booming, But U.S. Gunmakers Fear Legal Curbs and Foreign Rivals, Wash. Post., Jan. 16, 1994, at H1 (reporting gunmakers have seen increase in sales because of threat of gun regulation). Opponents of the waiting period, relied on the “prior restraint” issues involved in the abortion debate. \textit{Hearings on H.R. 1025, supra note 67, at 119 (testimony of David B. Kopel) (relying on Planned Parenthood Ass’n of Nashville, Inc. v. McWherter, 817 S.W.2d 13 (Tenn. 1991)). “If a three day waiting period in the implicit right to terminate the life of a fetus violated the Constitution, then surely a five government-working-day waiting period on the explicit constitutional right to keep and bear arms is also a constitutional violation.” \textit{Id.}
violence. However, since the Brady Act fails to address the motivations of criminals, like Ferguson and Hinckley, it is misleading to praise it as a remedy for gun violence.

While the ready availability of guns is a convenient excuse for this nation's violent crime epidemic, statistical comparisons to other civilized nations seem to prove that these justifications are, at best, pretextual. In 1990, handgun-related incidents killed twenty-two people in Great Britain, eighty-seven in Japan, sixty-eight in Canada, and over 24,000 in the United States. A study of gun control measures in foreign countries indicated no particular correlation between the severity of gun control measures and the prevalence of gun violence. Unfortunately, emotion, fear, and rhetoric dominate the gun control debate in America. Accordingly, politicians, who must react to the desires

114 Eckholm, supra note 67, § 4, at 1 (statement of Sarah Brady). Mrs. Brady's determination seems to have set a precedent, paving the way for further control measures, including fingerprinting and distribution of guns on a "needs" basis. Id. Mrs. Brady is chairwoman of Handgun Control, Inc., and wholeheartedly supported the background checks and waiting periods suggested by the Brady Bill. Id. The Brady Bill received the support of four out of five gun owners. Id.

115 See Sheley, supra note 7, at 2279-87 (discussing policy designed to address racial inequality); Michael Alexander, Black Rage, N.Y. NEWSDAY, May 9, 1994, at B4 (discussing possibility of insanity defense based on racial discrimination in LIRR case). Experts believe that the "black rage" defense, a variation on the battered wife or abused child syndromes and based on racial stress which produces rage and anger, has little chance of success. Id.; see also Irving R. Kaufman, The Insanity Plea on Trial, N.Y. TIMES, Aug. 8, 1982, § 6, at 16. John Hinckley, Jr. shot Ronald Reagan as an "act of love" for the film star Jodie Foster. Hinckley's insanity plea was successful and he was found not guilty by reason of insanity on all charges. Id.

116 Hearings on H.R. 1025, supra note 67, at 68-70 (statement of Sarah Brady, Handgun Control, Inc. appealing to Congress to pass Brady Bill before "more lives are needlessly lost of handgun violence"). But see DeConcini, Dennis, Hails Crime Bill Passage, CONGRESSIONAL PRESS RELEASES, Aug. 26, 1994 (announcing that Senator DeConcini voted for Brady bill and believes it to be an important step in regaining control of our streets, but still does not believe it to be cure-all).


119 See generally David B. Kopel, The Allure of Foreign Gun Laws, J. MED. ASS'N OF GA., Mar. 1994, at 153. The author surveyed gun control policy and cultural differences in Great Britain, Switzerland, and Japan, and attributed relative success or failure in controlling violence to the socialization of a nation's youth. Id. at 154. The author notes that Switzerland, which requires certain citizens to keep an assault weapon in their home, has a very low murder rate. Id.; see also Benenson & Kates, supra note 8, at 98. "The fact that Canada's violent crime rates have long been far below ours suggests . . . that gun laws are completely irrelevant to social, cultural and institutional factors which cause some societies to be plagued by violent crime while others are not." Id.

120 See generally McClurg, supra note 112, at 57. Shocking gun violence statistics validate the American public's emotion and fear related to violent crime. Id. See also, H.R. REP. No. 344, supra note 2, at 37, reprinted in 1993 U.S.C.C.A.N. at 2007 (dissenting views of Hon. Lamar Smith). "Every year, nearly five million people in the United States are victims
of their constituents, have consistently focused their attention on gun control, rather than violence control. The crime prevention programs of the Violent Crime Control and Law Enforcement Act of 1994, however, attempt to deal with the primary causes of America's skyrocketing crime statistics.

IV. PROACTIVE LEGISLATION: PREVENTION PROGRAMS OF THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

The effort to attack crime at its source is not a novel idea. In 1964, President Lyndon B. Johnson appointed a National Crime Commission ("the Crime Commission") to study the causes of crime and recommend prevention policies. The Crime Commission's research was called "the most comprehensive study of crime ever undertaken in this country." The findings of the Crime Commission indicated that most crimes are committed by young men, and that urban areas have disproportionately higher crime rates. The Crime Commission's report also noted that relying on parental authority to instill in young people the values necessary of violent crime. In the United States a murder is committed every 21 minutes, a rape every five minutes, a robbery every 46 seconds, and an aggravated assault every 29 seconds." Id.; see also Cozzolino, supra note 48, at 245 (citing Handgun Crime Victims: A Special Report, BUREAU OF U.S. DEPT. OF JUSTICE, July 8, 1990 stating between 1979 and 1987, criminals armed with handguns assaulted 693,000 people). But see McClurg, supra note 112, at 64-80 (accusing politicians of playing on fear and appealing to emotion, sympathy, pride, popular opinion, and improper authorities to advance their position against firearms). These fallacies "encourage the listener to substitute emotion for reason as the basis for deciding an issue." Id. at 79; 140 CONG. REC. S12557 (daily ed. Aug. 25, 1994) (statement of Sen. Hatch, commenting on assault weapons ban). "[I]t is based on hysterical fear and is unjustified in both law and in fact." Id.

121 See McClurg, supra note 112, at 54 (noting plethora of political discourse surrounding gun control, placing focus on political rather than safety concerns). "[O]pinions about gun control are almost always passionately held and in diametric opposition." Id. "Regrettably, while there is room for reasonable persons to disagree about gun control, we have as a nation chosen to disagree in a most disagreeable manner." Id. at 57-58.

122 H.R. REP. No. 324, supra note 2, at 1, reprinted in 1994 U.S.C.C.A.N. at 1802 (stating purpose of Anti-Crime Act). Although the main purpose of the Act was to increase police presence at the state level, the Act contains extensive grants for social programs to prevent crime. Id. See Anti-Crime Act, §§ 30101-40703, 90101-100003, 15001-150007, 170101-270002. Contra 140 CONG. REC. S12557 (daily ed. Aug. 25, 1994) (statement of Sen. Ted Stevens, criticizing Anti-Crime Act for not complying with goal of improving country's law and order system). "A true crime bill must deal with stopping criminals and strengthening the entire law enforcement and criminal justice system. I still believe this bill does not do that." Id.

123 See Duke, supra note 82, at 586-87 (observing that appointment of Commission came soon after John F. Kennedy's assassination).


125 Duke, supra note 82, at 587 (reporting Commission's findings).
sary to become productive members of society was no longer viable.\textsuperscript{126} Realizing poverty and racial discrimination were among the major causes of crime, President Johnson launched his “War on Poverty.”\textsuperscript{127} Instead of waging the “war” through crime policies,\textsuperscript{128} however, President Johnson’s efforts were concentrated on strengthening civil rights and ending racism in America.\textsuperscript{129}

Focusing on causation characterized crime control policies of the 1960’s and early 1970’s.\textsuperscript{130} Since then, however, the value of sociological evaluation has been questioned and funding for studies has decreased.\textsuperscript{131} In efforts to appear “tough on crime,”\textsuperscript{132} politicians have increased funding for incarceration and focused on individual accountability for criminal acts rather than social causation.\textsuperscript{133} At a National Crime Summit in 1991, then Attorney General Richard Thornburgh epitomized general attitudes towards crime prevention efforts in his statement that, “[w]e are not here to search for the root causes of crime or to discuss sociological theory.”\textsuperscript{134} He summarily dismissed the debate over crime causation as a discussion which “will go on for decades.”\textsuperscript{135} Social causation was barely mentioned at that summit and had received little attention until the Violent Crime Control and Law Enforcement Act of 1994.\textsuperscript{136}

The Anti-Crime Act seems to indicate a shift in focus back to causation issues. The Anti-Crime Act is the first major effort ad-

\textsuperscript{126} Id. (observing that often such authority does not exist).
\textsuperscript{127} Id. (noting effects on crime and young people from poor conditions of life).
\textsuperscript{128} S. Rep. No. 1097, supra note 3, reprinted in 1968 U.S.C.C.A.N. at 2123. Although the findings of the Commission apparently were fully considered in the drafting of the Omnibus Crime Act, most mention of “prevention” in the Act can be found in provisions for increased federal funding for state and local law enforcement. Id. at 2115-23.
\textsuperscript{129} Duke, supra note 82, at 587 (noting that President Johnson’s programs were stifled by unrest from Vietnam War).
\textsuperscript{130} Krisberg, supra note 9, at 142 (referring to President Kennedy’s Office of Juvenile Delinquency and President Johnson’s Commission on Law Enforcement and the Administration of Justice).
\textsuperscript{131} Id. In the decade following Johnson’s “War on Poverty,” critics—both progressive and conservative—increasingly questioned sociological approaches to crime. Id. The author also notes that the Vietnam War played a part in shifting the focus away from social causation. Id.
\textsuperscript{132} Id. at 144 (noting that politicians’ fears of being labelled “soft on crime” have stifled debate on crime prevention).
\textsuperscript{133} Id. at 144 (noting that between 1980 and 1988, prison population grew by 90% and jails grew by 110% even though there was no corresponding increase in crime rate).
\textsuperscript{134} See id. at 141 (quoting Thornburg in discussion of delinquency theory, research, and national policy agenda).
\textsuperscript{135} Krisberg, supra note 9, at 141 (noting immediate importance of stopping crime in streets).
\textsuperscript{136} Id. at 143 (noting that funding for social research waned during Reagan era).
dressing the sources of crime since President Johnson appointed
the Crime Commission, and contains various grant programs to
fund state and local crime prevention efforts. The remainder of
this Note will focus on these prevention programs and will offer
suggestions which might have alleviated a large part of the criti-
cism that the Anti-Crime Act faced upon its passage.

First, embedded within the Anti-Crime Act is a provision calling
for the establishment of a National Commission on Crime Control
and Prevention ("Commission"). The focus of the twenty-eight
member commission will be on crime and violence in general, the
causes of drug use, violence in schools, and violence
against women. These priorities generally reflect the overall fo-

137 Duke, supra note 82, at 586-88 (commending President Clinton's long term vision for
reducing crime).
138 See, e.g., Anti-Crime Act, §§ 30101-30104 (Ounce of Prevention Council); id. §§ 30201-30208 (Local Crime Prevention Block Grant Program); id. §§ 30301-30307 (Model Intensive Grant Program); id. §§ 30401-30403 (Family and Community Grant Program).
140 See Anti-Crime Act, § 270002. In addition, the President is to convene a national
summit on violence in America prior to the establishment of the Commission. Id. § 270001.
141 Id. § 270002(a)(1)-(3). Ten members are to be appointed by the President, nine by the
President pro tempore of the Senate, and nine by the Speaker of the House of Representa-
tives. Id. The Anti-Crime Act imposes restrictions on the appointment of members in order
to ensure a balance between Democrats and Republicans. Id.; see also id. § 270002(c)(1)-(4).
The Anti-Crime Act further requires that appointees be experienced in the areas of crime
and violence generally, the causes of the demand for drugs, violence in schools, or violence
against women. Id.
142 Id. § 270002(b). In studying crime and violence in general, the Commission will,
among other things: (1) review "the effectiveness of traditional criminal justice approaches
in preventing and controlling crime and violence"; (2) examine the "impact that changes in
Federal and State law have had on controlling crime and violence"; (3) examine "the prob-
lem of youth gangs and [provide] recommendations as to how to reduce youth involvement
in crime"; and (4) examine "the extent to which the use of dangerous weapons in the com-
mision of crimes has contributed to violence and murder in the United States ...." Id.
§ 270004(b)(1), (2), (4), (5).
143 Id. § 270002(b). Evaluation of the causes of the demand for drugs will involve exami-
nation of: "root causes of illicit drug use and abuse in the United States ... characteristics
... including age and social, economic and educational backgrounds" of potential drug
users; "environmental factors that contribute to illicit drugs use ...., including the correla-
tion between unemployment, poverty and homelessness and drug experimentation and
abuse"; and "cultural values, attitudes and traditions ... [and] physiological and psycholog-
ical factors that contribute to the desire for illicit drugs." Id. § 270004(c)(1)(A)-(E).
144 Id. § 270002(b). The Commission will attempt to define the causes and scope of the
national problem of violence in schools, and investigate youth gangs and their relation to
school violence. Id. The extent to which dangerous weapons and the school environment
have contributed to violence in schools will also be examined. Id. Current approaches to
preventing violence in school will also be reviewed. Id. § 270004(d)(1)-(7).
145 Anti-Crime Act § 270002(b). Current federal, state, and local laws regarding violence
against women will be reassessed, and prosecutorial procedure will be evaluated. Id. The
need for a uniform statutory response to sex offenses and domestic violence will be ad-
dressed, and more attention will be focused on the needs of the victims of such crimes. Id.
1994] "AN OUNCE OF PREVENTION" 227
cus of the Anti-Crime Act. The purposes of the Commission include: the development of a “comprehensive proposal for preventing and controlling crime and violence in the United States”; the highlight of successful model programs in crime prevention and control; the extension of crime prevention and control “beyond the traditional criminal justice community”; and the study of economic and social factors leading to or contributing to crime and violence.

Overall, the Commission seems reminiscent of President Johnson’s National Crime Commission. Although the findings of the 1994 Commission probably will mirror those of the 1964 Crime Commission, hopefully the report will illuminate a path towards the eradication of the roots of criminal behavior so that prevention programs can be targeted more precisely at the causes of crime in 1994. Considering that the Commission will not issue a report on its findings for at least two years, however, it seems that the current prevention programs of the Anti-Crime Act might be lacking in direction. The proliferation of and decentralized control over the Anti-Crime Act’s prevention programs may be the

§ 20004(e)(1)-(11); see also Catherine S. Manegold, Quiet Winners in House Fight on Crime: Women, N.Y. TIMES, Aug. 25, 1994, at A19. The Anti-Crime Act proved to be a major victory for women. Id. “The bill includes an almost wholesale adoption of the Violence Against Women Act . . . .” Id. See generally Anti-Crime Act § 40001 (Violence Against Women); see also id. § 110401 (prohibiting “disposal of firearms to, or receipt of firearms by, persons who have committed domestic abuse”).

See Anti-Crime Act, §§ 40001-40703 (focusing on Violence Against Women); id. §§ 150001-150007 (addressing juvenile involvement in gangs); id. §§ 90101-90208 (addressing penalties for drug convictions).

Id. § 270003(1) (including cost estimates for implementation of recommendations of Commission).

Id. § 270003(2); see also id. §§ 30101-30307 (establishing grant fund focusing on model programs).

Id. § 270003(3); see also Hattie Ruttenberg, The Limited Promise of Public Health Methodologies to Prevent Youth Violence, 103 YALE L.J. 1885, 1909-10 (1994) (noting that problem of youth violence is beyond scope of traditional criminal justice system).

Anti-Crime Act § 270003(5). Other purposes of the Commission include the coordination of crime control programs of various jurisdictions, maximizing correctional facility space, and studying impact of crime on minorities, including women. Id. § 270003(4)(6)-(11).

See supra notes 122-30 and accompanying text (discussing President Johnson’s National Crime Commission).

Duke, supra note 82, at 587 (commenting that Commission’s report “could have been written today”). Crime-generating factors reported 30 years ago, such as poverty and racial discrimination, and bad housing and commercial exploitation are still the nation’s crime problems today. Id.

Anti-Crime Act § 270008 (requiring that Commission produce report within two years from date of its formation, and that Commission terminate thereafter).

See, e.g., id. § 30102 (Ounce of Prevention Grant Program appropriations controlled by Ounce of Prevention Council); id. § 30201 (Local Crime Prevention Block Grant program
result of an inadequate foundation upon which to base a focused prevention effort.

First, the Anti-Crime Act provides for the formation of the Ounce of Prevention Council ("Council"), which will coordinate and administer certain crime prevention programs funded under the Act. The Council will oversee a grant program focused on "reducing gang membership and the effects of substance abuse while providing alternatives to at-risk-youth." With appropriation provisions through the year 2000, the Council will be allotted approximately $18 million per year to carry out its functions.

Next, the Anti-Crime Act establishes the Local Crime Prevention Block Grant Program, under which approximately $76 million per year will be allocated to state and local governments in order to enable the development of a wide variety of crime prevention programs with a focus on education, job saturation training,

appropriations controlled by Attorney General); id. §§ 30401-30402 (Family and Community Endeavor Schools Grant Program appropriations controlled by the Secretary of Health and Human Services); id. § 32401 (Gang Resistance Education and Training appropriations controlled by Secretary of Treasury).

Id. § 30101(a). The Council will consist of the Attorney General, the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Labor, the Secretary of Agriculture, the Secretary of the Treasury, the Secretary of the Interior, and the Director of the Office of National Drug Control Policy, any other officials of the executive branch appointed by the President, and any staff necessary to carry out the functions of the Council. Id. § 30101(a)(1)-(3).

Id. § 30101(b). The Council will coordinate "any program authorized under the [Anti-Crime Act], only at the request of the Council member with jurisdiction over that program . . . ." Id. The Council's "administrative functions" shall include responsibility for planning and developing a "comprehensive crime prevention program catalogue," and providing "assistance to communities and community-based organizations seeking information regarding crime prevention programs and integrated program service delivery, and development of strategies for program integration and grant simplification." Id. § 30101(c).

Id. § 30102(a). "The Council may make grants for—(1) summer and after-school . . . education and recreation programs; (2) mentoring, tutoring, and other programs involving participation by adult role models (such as D.A.R.E. America [Drug Abuse Resistance Education]); (3) programs assisting and promoting employability and job placement; and (4) prevention and treatment programs to reduce substance abuse, child abuse, and adolescent pregnancy, including outreach programs for at-risk families." Id; see also David D. Dotson, Do Crime Prevention Plans Work?, L.A. Times, Aug. 30, 1994, at A15 (commenting on success of L.A. Police Department's D.A.R.E. program).

Anti-Crime Act § 30102(c) (making programs addressing gang membership and substance a "priority" of Council). Focus on youth and gang membership pervades the 1994 Crime Bill. See, e.g., id. §§ 140001-140008 (providing stricter penalties and prosecution for juveniles); id. § 150001 (providing stricter penalties for and prosecution of gang members).

Id. § 30104. Appropriations start at $1,500,000 for 1995 gradually increasing to $18,900,000 each for the years 1999 and 2000. Id.

Id. §§ 30201-30208 (establishing Local Crime Prevention Block Grant Program).

Id. § 30202(a). Up to 2.5% of these funds can be used by the Attorney General to defray administrative costs. Id. § 30202(b).
and alternatives to crime for at-risk youth. The distribution of funds under this program, which is controlled by the Attorney General, is to be proportionate to the number of violent crimes reported by the state or local government in 1993.

A third type of grant program, also overseen by the Attorney General, is the Model Intensive Grant Program. Under this program, federal funds are granted to local programs which utilize community resources in attempting to discourage crime and provide meaningful and lasting alternatives to criminal activity.

These model programs are to be innovative and varied in their approaches to crime prevention to allow for comparison and study. Approximately $125 million per year through the year

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162 Id. § 30201(a)(2). Among the purposes of these programs are the “[e]ducation, training, research, prevention, diversion, treatment, and rehabilitation programs to prevent juvenile violence, juvenile gangs, and the use and sale of illegal drugs by juveniles.” Id. § 30201(a)(2)(A). Programs also will focus on prevention of crimes against the elderly. Id. § 30201(a)(2)(B). The Youth Fair Chance Program provides employment opportunities for disadvantaged youths. Id. § 30201(a)(2)(D). Olympic Youth Development Centers will provide supervised after school and weekend sports and recreation programs. Id. § 30201(a)(2)(F). Other prevention programs can be found in § 30201(a)(2)(G)-(N).

The Anti-Crime Act allows funding for “[m]idnight sports league programs that shall require each player in the league to attend employment counseling, job training, and other educational classes provided under the program, which shall be held in conjunction with league sports games at or near the site of the games.” Anti-Crime Act § 30201(a)(2)(E); see Flanigan, supra note 4, at D1 (projecting midnight basketball might save lives and money); Elizabeth Shogren, Midnight Basketball is Winner on Street, L.A. TIMES, Aug. 19, 1994, at A18. “Midnight basketball is intended to lure young men off the streets during the peak crime hours of 10 p.m. and 2 a.m. It requires them to attend workshops on everything from job training to sexually transmitted diseases as a condition of playing. Some of the programs require the players to pursue a high school diploma.” Id.; Cynthia Tucker, Midnight Basketball, S.F. CHRONICLE, Sept. 16, 1994, at A23. “Midnight Basketball is for those kids who have not been taught to be at home by 10 p.m., or who have rebelled against their parents’ orders. . . . [i]t is no magic solution. But it is a whole lot better than nothing.” Id.; Michael Wilbon, The GOP’s Midnight Madness, WASH. POST, Aug. 19, 1994, at D1 (examining controversy surrounding Midnight Basketball). George Bush named Midnight Basketball in his “1,000 points of light” program. Id. Midnight Basketball is “about providing opportunity for young adults to escape drugs and the streets and get on with their lives.” Id. But see Dotson, supra note 157, at A15 (observing that inner city youth activities such as Midnight Basketball drew more criticism than any other crime prevention programs); Michael Wilbon, Midnight Basketball is a Success, WASH. POST, Aug. 21, 1994, at 33. Republicans argued that a $40 million commitment to Midnight Basketball symbolized what was wrong with the crime package. Id.

163 Anti-Crime Act § 30204(a)(b); see id. § 30204(a). “For each payment period, the Attorney General shall allocate . . . (1) 0.25 percent to each State; and (2) . . . an amount that is equal to the ratio that the number of [ ] violent crimes reported by such State to the Federal Bureau of Investigations for 1993 bears to the number of [ ] violent crimes reported by all States to the Federal Bureau of Investigation.” Id.

164 Id. § 30301(a)(1). This grant program provides that “not more than 15 chronic high intensive crime areas” may receive funds “to help develop comprehensive model crime prevention programs.” Id.

165 Id. § 30301(a)(1)(B), (C) (limiting model programs to 15 chronic high crime areas).

166 Id. § 30301(b)(1), (2) (stating that Attorney General should give priority to those programs that are innovative and varied in their approaches for purposes of awarding grants).
2000 is appropriated for this program. The Attorney General is required to prepare a report evaluating these model programs and making recommendations for the implementation of a national crime prevention program.

Finally, the Anti-Crime Act provides funds for the Family and Community Endeavor Schools Grant Program. Funds for this program, averaging about $150 million per year through the year 2000, are to be controlled by the Secretary of Health and Human Services and the Secretary of the Department of Education. The funds are to benefit community-based organizations in areas with a particularly high number of children from families living below the poverty line. Recognizing that children exposed to poverty are at a higher risk of failure, Congress also increased funding for extracurricular and academic programs in public schools in poverty-stricken areas.

Although many still consider access to guns to be the source of this nation's crime problem, most Americans probably would agree that crime is generally traceable to unemployment, deterioration of the family, substandard education, and a national drug crisis. The crime prevention programs of the Anti-Crime Act ad-

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167 Id. § 30307 (discussing Authorization of Appropriations).
168 Id. Anti-Crime Act § 30305 (requiring report to be issued no later than December 31, 1998).
169 Id. §§ 30401-30403 (combining Community Schools Youth Services and Supervision Grant Programs Act of 1994 and Family and Community Endeavor Schools Act). The list of crime prevention programs continues, but the Family and Community Endeavor Schools Grant Program will be the last discussed for purposes of illustration in this Note. See, e.g., id. § 30701 (Assistance for Delinquent and At-Risk Youth); id. §§ 30801-30802 (Police Recruitment); id. §§ 31001-31002 (Local Partnership Act); id. §§ 31101-31133 (National Community Economic Partnership); id. §§ 31501-31505 (Urban Recreation and At-Risk Youth); id. §§ 31701-31708 (Community-Based Justice Grants for Prosecutors); id. §§ 31901-31922 (Family Unity Demonstration Project); id. § 32401 (Gang Resistance Education Training).
170 Id. § 30403 (discussing Authorization of Appropriations).
171 Id. § 30401(c) (vesting allocation authority in the "Secretary"); id. § 30401(b) (defining "Secretary" as Secretary of Health and Human Services).
172 Id. § 30402(c) (giving "Secretary" power to make grants under Family and Community Endeavor Schools Grant Program); id. § 30402(l) (defining "Secretary" as Secretary of Department of Education).
173 Id. Anti-Crime Act § 30401(c)(1)(A) (establishing ratio of allocable funds to number of poverty-stricken families).
174 Id. § 30402(d) (Families and Community Endeavor Schools Grant Program).
176 Id. at 181 n.6 (showing opinion polls reveal most Americans believe that drugs and unemployment are main factors responsible for increase in violent crime); see also Polsby, supra note 7, at 57 (attributing crime problem to poor education and lack of jobs).
dress the problems from which crime stems, yet the programs still have been severely criticized by some as “social pork” and a waste of money.\textsuperscript{177} Prevention efforts generally have received less funding than other provisions of the Anti-Crime Act, such as the expansion of prisons and federal funding of local law enforcement.\textsuperscript{178} This allocation of funding seems misdirected when considered from a “cause/effect” perspective. The legislation’s monetary focus is on “effect” rather than “cause.”\textsuperscript{179} For example, while the establishment of “boot camps”\textsuperscript{180} for young offenders may be a worthy program, an even better effort would go towards realizing that the country’s youth need an education, a job, and a stable family in order to have an opportunity to escape the categorization of “youthful offender.”\textsuperscript{181} While the government cannot ignore the

\textsuperscript{177} See Tumulty, supra note 94, at A1. Senate Minority Leader Bob Dole criticized the Bill’s social programs, saying the effort was “business as usual—spend a lot of money and tell people you’re going to solve their problems.” \textit{Id.} Those who scoffed at the suggestion that the crime measure would make the nation safer and more secure criticized the bill as including “a number of old-fashioned liberal social-spending programs wrapped in the guise of crime-fighting provisions.” \textit{Id.}; Dotson, supra note 157, at AA5. “Most of the rancor surrounding the crime bill,... is reserved for crime prevention programs,” which aim to diminish crime by changing individual attitudes, thus behavior.” \textit{Id.} The article also comments on the difficulty of measuring an absence of crime, which may result from any one of the proposed prevention programs. \textit{Id.} Crime statistics are easily manipulated, and accurate evaluation is difficult. \textit{Id.}

\textsuperscript{178} See Tony Snow, Crime Bill Wastes Money, U.S.A. TODAY, Aug. 29, 1994, at 9A (noting $23.3 billion allotment to hire police and construct prisons, while $6.9 billion is for prevention programs, including antidrug proposals).

\textsuperscript{179} See, e.g., H.R. REP. No. 344, supra note 2, at 7, reprinted in 1993 U.S.S.C.A.N. at 1984 (stating purpose of Brady Bill is to prevent convicted felons and other persons who are barred by law from purchasing handguns from licensed gun dealers, manufacturers, or importers); Ralph Z. Hallow, Assault on Weapons Gains Popularity, Lacks Proof, \textit{Wash. Times}, May 5, 1994, at A8 (quoting Daniel D. Polsby, Northwestern University Law Professor). “Guns don’t increase national rates of crime and violence—but the continued proliferation of gun-control laws almost certainly does.... [C]riminals are willing to pay the high price imposed by gun controls to earn the profits guns bring. They will get guns no matter what.” \textit{Id.} But see \textit{Neil Weiner et al., Violence: Patterns, Causes, Public Policy} 386 (Robert K. Merton ed., 1990). In presenting an overview of violence in America, the authors state: “[Although] firm conclusions cannot be drawn from case studies, they suggest that gun control can reduce homicide rates. However, gun control legislation must focus on owning or carrying guns rather than on mandatory sentences for crimes committed with a gun.” \textit{Id.}

\textsuperscript{180} See supra note 96 (describing boot camps).

\textsuperscript{181} Duke, supra note 82, at 585 (noting young offenders need education, jobs, guidance, and support of intact families). “There can be no peace in our cities when 60 to 70% of the young men in large areas in the cities are neither lawfully employed nor in school....” \textit{Id.}; see also Lamb, supra note 96, at A1. The author noted that penal boot camps provide discipline, drug counseling, and classroom learning. \textit{Id.} Boot camp supporters say that “scores of young men and women have found in boot camps the self-respect, discipline, education and coping techniques needed to live in a society that initially contributed to their criminal activity.” \textit{Id.}
"effect," more attention must be given to the "cause." A reduction in drug abuse prevention spending, in the course of consideration of the law, also seems shortsighted, considering the close correlation between drug use and sales and the possession and use of firearms. Despite its good intention, in the words of one commentator, the national crime policy "seeks to stop the flow of water by catching it rather than by turning off the faucet from which it pours."

Nonetheless, some criticisms of the overall structure of the prevention efforts of the Anti-Crime Act may be well founded. The Ounce of Prevention Council ("Council") was added to the Crime bill in order to streamline federal funding of crime prevention programs. While the Council can coordinate programs authorized under the Anti-Crime Act, it is not required to do so. Furthermore, although the Council has its own grant program the funding of which it controls, funding for the remainder of the prevention programs provided for under the Anti-Crime Act is controlled by

182 See Ronald Smothers, Miami Tries Treatment, Not Jail, in Drug Cases, N.Y. TIMES, Feb. 19, 1993, at A10. Some states, however, are looking at prison alternatives that focus on the cause of the crime. Id. Dade County, Florida, for example, provides a closely-monitored outpatient treatment program for drug addicts. Available to nonviolent first or second time offenders, the program, run since 1989, encourages and enables participants to get jobs, education, and job training, in addition to providing drug treatment and counseling. Id. About 40% of offenders in the alternative outpatient drug treatment program complete it, and less than 10% of those have subsequently been convicted. Id.

183 See Bruce L. Benson, Is Property Crime Caused by Drug Use or by Drug Enforcement Policy?, APPLIED ECON., July 1992, at 679 (establishing correlation between drug enforcement and property crime); Duke, supra note 82, at 581 (suggesting legalization of drugs would save money and reduce crime). While drug sales are associated with firearm possession and use among inner-city youth of all races, the "war on drugs" actually increases violence by causing an escalation in the street price of drugs, leading to a higher level of crime by drug users. Id. at 577-82; see also Shelley, supra note 7, at 2281 (asserting that to reduce drug activity is to reduce crime rates). But see id. "The drug situation has worsened the problems of crime and violence in the inner city; however it has not done so in a vacuum. Rather, drug activity is as much a symptom of larger societal problems as a cause." Id. While drug activity sometimes precipitates violence, often violence would occur anyway. Id. (citing Joseph F. Sheley, et al., Firearms, Violence and Youth: A Report of the Research Findings 65 (Aug. 1992) (unpublished report).

184 Sheley, supra note 7, at 2287, 2290 (referring to anticrime policies that ignore facts of American life such as major structural changes and African-American population's disadvantage in impoverished urban and larger, national economies). "[T]he system cannot gain control over a phenomenon embedded in larger structural flaws by attacking its symptoms." Id.


186 Anti-Crime Act § 30101(b) (providing that Council "may" coordinate programs authorized under the Anti-Crime Act at request of Council member).

187 Id. § 30102 (Ounce of Prevention Grant Program).
either the Attorney General,\textsuperscript{188} the Secretary of Health and Human Services,\textsuperscript{189} or the Secretary of the Department of Education.\textsuperscript{190} Such decentralized control of funding seems to defeat the stated purpose of the Ounce of Prevention Council and lends itself to duplication of efforts and funding. A more efficient system would require that control of funding and programming be centralized in the Ounce of Prevention Council.

**CONCLUSION**

The American tendency to attack firearms violence by restricting access to guns has proven ineffective in the war on gun violence. Since the early nineteenth century statutes regulating the carrying of handguns and the carrying of concealed weapons, gun control restrictions have become more and more stringent, and the only measurable result has been an overall increase in the crime rate. While protecting lawful purchases of handguns, the waiting period provision in the Brady Act does not offer a solution to the massive amounts of illegal handgun transfers. The Anti-Crime Act, while continuing to place further restrictions on the possession of firearms, realizes that crime control measures also must reach beyond those methods commonly employed. The Anti-Crime Act presents a firm commitment to the thorough examination of the prime causes of gun violence in America. Despite certain problems regarding the unavailability of current and comprehensive research upon which to base a direction for the prevention programs, and the lack of a centralized entity to control programming and funding of prevention programs, the Anti-Crime Act represents a necessary shift in focus back to causation issues and marks the first step towards eradicating the root causes of crime in America.

*Lynn Murtha & Suzanne L. Smith*

\textsuperscript{188} See *id.* § 30201(a)(1) (Local Crime Prevention Block Grant Program); *id.* § 30301(a) (Model Intensive Grant Programs).

\textsuperscript{189} *Id.* § 30401 (Community Schools Youth Services and Supervision Grant Program).

\textsuperscript{190} *Id.* § 30402 (Family and Community Endeavor Schools Grant Program).