



# Federal Crime Control Issues in the 111<sup>th</sup> Congress

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## Summary

States and localities have traditionally been responsible for preventing and controlling domestic crime. As crime rates continued to increase throughout the 1960s, 1970s, and 1980s, the federal government increased its involvement in crime control efforts. Over a period of 10 years (1984-1994), 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, federal law enforcement efforts have been focused on countering terrorism and maintaining homeland security. Amid these efforts, however, Congress has continued to address many traditional crime-related issues.

After peaking in the early 1990s, violent and property crime rates have generally tended to decrease. Despite this decline, policy makers have remained concerned with combating the various types of crime that still exist around the country.

This report aggregates various issues surrounding federal crime control into five broad themes: violent crime control, combating fraud and theft, drug control, sentencing reform, and state and local justice assistance. Within these themes, the report examines more specific issues that confronted the 111<sup>th</sup> Congress. Issues discussed under the umbrella of violent crime control include hate crimes, gangs, and gun control. Issues related to the federal government's efforts to combat fraud and theft include identity theft and organized retail crime. A perennial drug control issue discussed is that of drug trafficking. Congress also considered sentencing reform issues such as disparities in crack and powder cocaine sentencing as well as early prison release. With respect to state and local justice assistance, issues regarding the adequacy of federal assistance grants to state and local law enforcement—via the Community Oriented Policing Services (COPS) Program—and the proposal of a new witness protection grant program as well as juvenile justice are discussed.

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## 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. As crime rates continued to increase throughout the 1960s, 1970s, and 1980s, the federal government increased its involvement in domestic crime control efforts. It did so primarily through a series of grant programs to encourage and assist states and communities in their efforts to control crime, as well as through the expansion in the number of offenses that could be prosecuted in the federal criminal justice system.

Over a 10-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 Investigation (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 has refocused its resources on countering terrorism as federal law enforcement efforts since September 11, 2001 (9/11), have focused primarily on protecting the nation against terrorist attacks.

A major policy question facing Congress is, What should be the role of the federal government in crime control? More specifically, what should its role be in controlling violent crime, combating fraud, setting drug control policy, and overseeing Department of Justice (DOJ) grant programs?

## Crime Statistics<sup>2</sup>

As mentioned, the prevention and control of domestic crime has conventionally been under the purview of state and local governments. However, as the violent crime rate increased in the 1960s, 1970s, and 1980s, and some questioned the ability of state and local law enforcement to combat the growing problem with limited resources at their disposal, the federal government began to take a more direct role in crime control. The following section discusses the trends in the nation's violent and property crime rates over the past two decades.

The FBI's 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 FBI collects data on the number of offenses known to police, the number and characteristics of persons arrested, and the number of "clearances" for eight different offenses, collectively referred to as Part I offenses. Part I offenses include murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. Within the Part I offenses, crimes are categorized as either violent or property crimes. *Violent*

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<sup>1</sup> The five major anti-crime bills are 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).

<sup>2</sup> For additional information on crime statistics, see CRS Report RL34309, *How Crime in the United States Is Measured*, by Nathan James and Logan Rishard Council.

*crimes* include murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault. *Property crimes* include burglary, larceny-theft, motor vehicle theft, and arson. The FBI also collects data on the number of arrests made for 21 other offenses, known as Part II offenses.<sup>3</sup> 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 offenses *reported* to the police (as opposed to arrests made by police or cases cleared by the police).<sup>4</sup>

## Violent Crime Rate

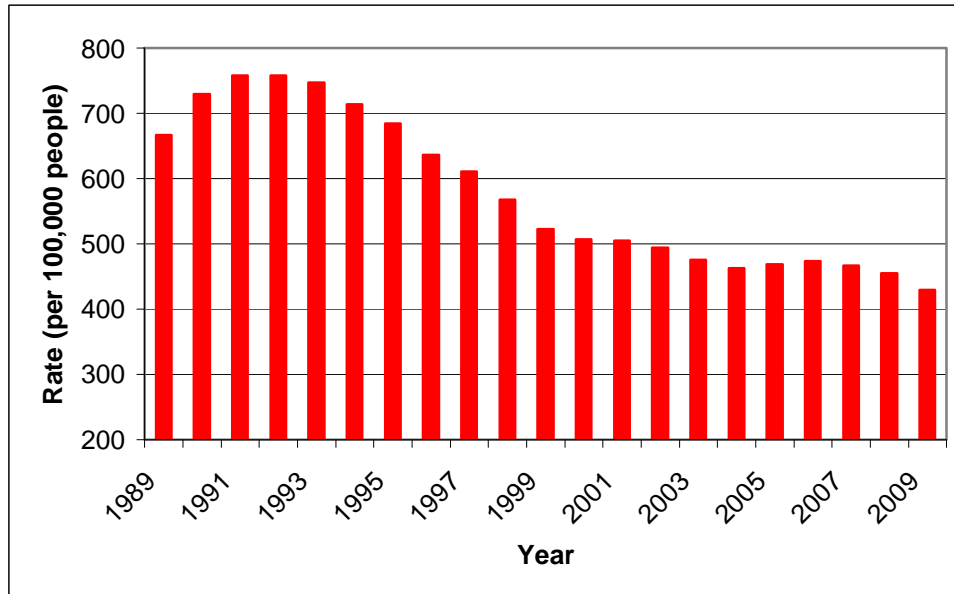
Based on analysis of the UCR data, the national violent crime rate began to increase sharply in the 1960s. The increase continued throughout the 1970s and into the early 1990s, peaking in 1991. By the mid-1990s, however, the violent crime rate began to decline, as illustrated in **Figure 1**. The violent crime rate continued to decline into the new millennium, and despite slight increases in 2005 and 2006, it declined once again in 2007. This decline continued through 2009, with the violent crime rate at its lowest level since the mid-1970s.

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<sup>3</sup> Part II offenses include Other Assaults; Forgery and Counterfeiting; Fraud, Embezzlement; Stolen Property: Buying, Receiving, or Possessing; Vandalism; Weapons: Carrying, Possessing, etc.; Prostitution and Commercialized Vice; Sex Offenses; Drug Abuse Violations; Gambling; Offenses Against the Family and Children; Driving Under the Influence; Liquor Laws; Drunkenness; Disorderly Conduct; Vagrancy; All Other Offenses; Suspicion; Curfew and Loitering Laws (Persons under 18); and Runaways (Persons under 18).

<sup>4</sup> The UCR is most commonly referenced when discussing crime rates, and for the purpose of this report, we present and analyze crime rates as reported by the UCR program. However, the National Crime Victim Survey (NCVS), administered by the Department of Justice (DOJ) Bureau of Justice Statistics (BJS), is another measurement tool. It 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 comprised of nearly 134,000 persons on the frequency, characteristics and consequences of criminal victimization in the United States. The NCVS asks respondents if they have been the victim of rape, sexual assault, robbery, assault, theft, household burglary, and motor vehicle theft. NCVS data allows 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 trends similarly to the UCR.

Figure I. Violent Crime Rate, 1989-2009



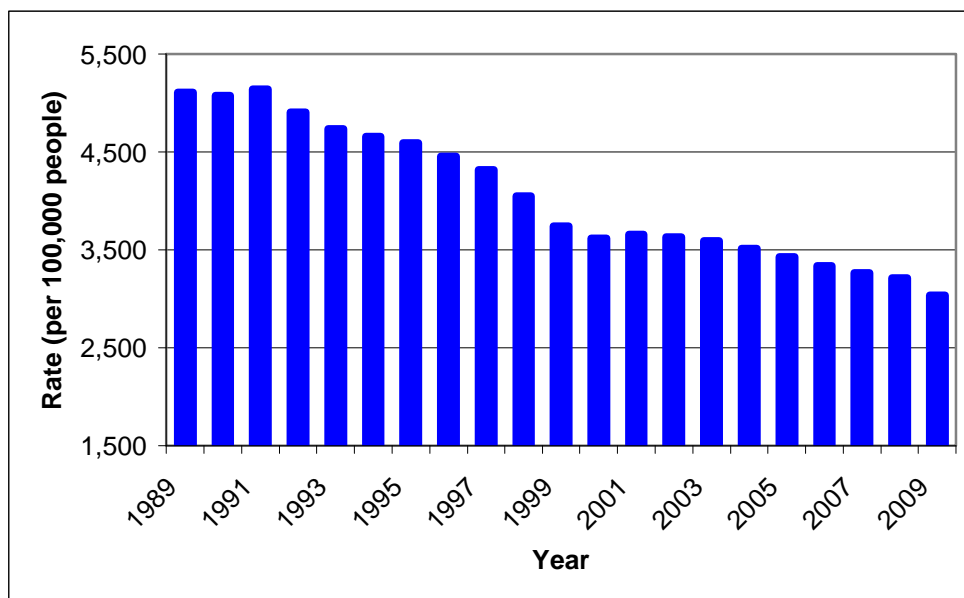
**Source:** CRS presentation of FBI's UCR data for each respective year (see 2009 Federal Bureau of Investigation, U.S. Department of Justice, *Crime in the United States Uniform Crime Report*).

**Notes:** Data for the first six months of 2010 are preliminary and thus not yet included in this figure. They are available online at <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/preliminary-crime-in-the-us-2009>.

## Property Crime Rate

Similar to the general decline in the national violent crime rate since the mid-1990s, the national property crime rate has trended downward as well, as illustrated in **Figure 2**. The property crime rate began to steadily decline in the early 1990s, increased slightly in 2001, and then continued to decline through 2009.

Figure 2. Property Crime Rate, 1989-2009



**Source:** CRS presentation of FBI's UCR data for each respective year (see 2009 Federal Bureau of Investigation, U.S. Department of Justice, *Crime in the United States Uniform Crime Report*).

**Notes:** Data for the first six months of 2010 are preliminary and thus not yet included in this figure. They are available online at <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/preliminary-crime-in-the-us-2009>.

Despite the declining crime rates, Congress has continued to debate measures that may further decrease both violent and non-violent crime as well as provide assistance to state and local criminal justice systems. Following is a discussion of selected crime-related issues that were of concern for the 111<sup>th</sup> Congress.

## Violent Crime Control

The national violent crime rate has generally decreased since the mid-1990s. However, interest in combating violent crimes across the United States has remained.<sup>5</sup> Although policy makers have been concerned with all forms of violent crimes, the selected issue areas discussed below were of interest to the 111<sup>th</sup> Congress. One of the primary questions spanning these issues was, What should be the federal government's role in combating various crimes? Another general issue was whether Congress has provided the best regulatory, investigative, and prosecutorial tools to counter violent crime around the country.

<sup>5</sup> See U.S. Congress, House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Commerce, Justice, Science, and Related Agencies Appropriations for 2010*, Part 8, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., April 2, 2009. See also U.S. Congress, Senate Committee on the Judiciary, *New Strategies for Combating Violent Crime: Drawing Strategies from Recent Experience*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 10, 2008.

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

Current law defines hate crimes to include any crime against either person or property, in which the offender intentionally selects the victim because of the victim's actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation.<sup>7</sup> Although hate crimes may fall under the categories of both violent and property crimes, policy makers tend to focus more attention on those hate crimes that may be classified as violent crimes.<sup>8</sup> Current federal hate crime law also prohibits the use of force, or threat of force, to injure, intimidate, or interfere with any persons for reasons related to their race, color, religion, or national origin, while they are engaged in certain federally protected "civil rights" activities.<sup>9</sup> In 2009, there were 6,604 reported incidents of hate crimes.<sup>10</sup> For statistical purposes, a crime is labeled a hate crime if there is 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.<sup>11</sup>

One issue the 111<sup>th</sup> Congress faced was whether federal jurisdiction over hate crimes should be broadened by adding federal penalties for hate crimes that currently fall under the jurisdiction of state, tribal, local, and municipal authorities. Although some argue that greater federal involvement would ensure that hate crimes are systematically addressed, others contend that additional federal penalties for hate crimes would be redundant and largely symbolic, as penalties for those crimes already exist under state law. Another issue was whether the definition of hate crimes should be broadened to include crimes motivated by additional biases, such as a bias toward gender identity. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Division E of P.L. 111-84, among other things, includes gender identity in the list of bias-motivated hate crimes. In addition to questioning whether federal hate crime jurisdiction should be broadened, another issue that Congress considered was whether there should be greater federal assistance to state and local law enforcement in not only investigating and prosecuting hate crimes, but in categorizing and reporting them as well.<sup>12</sup> Finally, Congress also considered whether to include crimes against the homeless population in the crime data collected by the Federal Bureau of Investigation.<sup>13</sup>

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<sup>6</sup> For additional information and legislation in the 111<sup>th</sup> Congress on hate crimes, see CRS Report RL33403, *Hate Crime Legislation*, by William J. Krouse.

<sup>7</sup> P.L. 103-322, referenced by 28 U.S.C. § 994 note. P.L. 111-84 amended the definition of hate crimes to include crimes victimizing individuals on the basis of gender identity.

<sup>8</sup> See, for example, testimony before the U.S. Congress, Senate Committee on the Judiciary, *The Matthew Shepard Hate Crimes Prevention Act of 2009*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., June 25, 2009.

<sup>9</sup> 18 U.S.C. § 245.

<sup>10</sup> U.S. Department of Justice, Federal Bureau of Investigation, *Hate Crime Statistics, 2009*, <http://www2.fbi.gov/ucr/hc2009/incidents.html>.

<sup>11</sup> P.L. 101-275. Legislation introduced in the 111<sup>th</sup> Congress (H.R. 823) would have required that the Attorney General obtain additional statistical information on hate crimes to include those crimes motivated by gender prejudice.

<sup>12</sup> The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Division E of P.L. 111-84, among other things, authorizes the Attorney General to provide assistance (technical, forensic, prosecutorial, or other), when requested by a state, local, or tribal official, for crimes that (1) would constitute a violent crime under federal law or a felony under state or tribal law, and (2) are motivated by the victim's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. It also amends the Hate Crime Statistics Act to require that data are collected on offenses related to gender and gender identity, as well as on offenses committed by or directed against juveniles.

<sup>13</sup> For instance, H.R. 3419 and S. 1765 would have included crimes against the homeless in the crime data collected by the government.



## Gangs<sup>14</sup>

Similarly to hate crimes, gang crimes may be classified as both violent crimes and property crimes. In discussing gang crimes, however, policy makers have tended to focus attention on strategies to curb violent gang crimes rather than gang-related property crimes.<sup>15</sup> According to a survey of law enforcement agencies on the characteristics of youth gangs conducted by the National Youth Gang Center (NYGC),<sup>16</sup> gang activity is pervasive in both urban and rural America. According to the NYGC, an estimated 774,000 gang members and 27,900 gangs were active across the United States in 2008. Of the cities, suburban areas, towns, and rural counties surveyed, about 32.4% experienced gang problems in 2008.<sup>17</sup>

Policy makers 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, policy makers in the 111<sup>th</sup> Congress considered whether to create new or expand on existing grant programs to provide funding for research on gang prevention.<sup>18</sup> They also considered grant programs that could provide funding for gang-specific investigations and prosecutions.<sup>19</sup> Also, the 111<sup>th</sup> Congress debated whether or not it would be necessary or beneficial to include gang-specific provisions in the Racketeer Influenced and Corrupt Organization (RICO) Act<sup>20</sup> in order to aid in prosecuting gang members for specified gang crimes. Congress did not choose to expand federal authority to prosecute juveniles, including gang members, as adults.<sup>21</sup> Another issue that the 111<sup>th</sup> Congress considered was whether to amend the federal criminal code to update the definition of a gang as well as criminalize specified gang crimes.<sup>22</sup> The Government Accountability Office (GAO), for instance,

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<sup>14</sup> For additional information, see archived CRS Report RL33400, *Youth Gangs: Background, Legislation, and Issues*, by Celinda Franco.

<sup>15</sup> Most recently in the 110<sup>th</sup> Congress, several hearings were held to address issues relating to gang crimes and, in particular, gang violence. See, for example, U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Addressing Gangs: What's Effective? What's Not?*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 10, 2008. Similar hearings were not held in the 111<sup>th</sup> Congress.

<sup>16</sup> The National Youth Gang Center partnered with the National Gang Center to form a new National Gang Center. More information can be found at <http://www.nationalgangcenter.gov/>.

<sup>17</sup> Arlen Egley, Jr., James C. Howell, and John P. Moore, *Highlights of the 2008 National Youth Gang Survey*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, March 2010, <http://www.ncjrs.gov/pdffiles1/ojjdp/229249.pdf>. The data for 2009 are currently unavailable.

<sup>18</sup> H.R. 1022 and S. 132, would have, among other things, authorized grants for crime prevention programs for gang members and at-risk youth. Similarly, H.R. 1064 and S. 435 would have, in addition to authorizing grants for gang and youth crime prevention, established an advisory panel to assist the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in assessing practices to prevent criminal gang activity as well as resources needed for gang activity prevention and intervention.

<sup>19</sup> For example, H.R. 1022 would have, among other things, provided grants for prosecutors and law enforcement to assist in identifying gang members and violent offenders.

<sup>20</sup> Title IX of the Organized Crime Control Act of 1970 (P.L. 91-452) created RICO. It allows for the prosecution of anyone who participates or conspires to participate in a criminal enterprise/organization through two acts of "racketeering activity" within a 10-year period of time. The predicate offenses for racketeering include various state and federal crimes listed in the U.S. Code. RICO is codified at 18 U.S.C. § 1961-1968. For more information, see CRS Report 96-950, *RICO: A Brief Sketch*, by Charles Doyle.

<sup>21</sup> H.R. 2857, for instance, would have extended the Attorney General's authority to prosecute juveniles aged 16 and older as adults if it is alleged that they committed specified crimes.

<sup>22</sup> For example, H.R. 1022, H.R. 2815, and H.R. 2857 would have, among other things, defined criminal street gangs and gang crimes.

reports that a uniform definition of “gangs” across federal investigative agencies may enhance coordination of gang-related data collection across agencies.<sup>23</sup>

## **Gun Control<sup>24</sup>**

Statistics on crime and mortality are often used in the gun control debate. For instance, in 2009, 67% of homicides with a known cause were firearm-related.<sup>25</sup> Congress has continued to debate the efficacy and constitutionality of federal regulation of firearms and ammunition, with advocates arguing both for and against greater gun control. Proposals to legislatively restrict the public availability of firearms have raised various crime-related questions, including whether increased regulation of firearm commerce or ownership might significantly affect the rates of violent crimes such as homicide, assault, and robbery.

There were several firearm-related issues that the 111<sup>th</sup> Congress considered. One was the federal government’s role in legislating on individuals’ rights to carry concealed weapons.<sup>26</sup> A second issue was whether background check records for approved firearm transactions should be retained to enhance terrorist screening.<sup>27</sup> Another issue revolved around whether there should be further regulations on certain firearms previously defined in statute as “assault weapons” or on certain long-range .50 caliber rifles. Yet another issue Congress considered was whether to require background checks for private firearm transfers at gun shows.<sup>28</sup>

## **Combating Fraud and Theft**

Policy makers have been concerned with the prevalence and types of fraud committed across the country.<sup>29</sup> In response, the 111<sup>th</sup> Congress passed the Fraud Enforcement and Recovery Act of 2009 (FERA),<sup>30</sup> in part to address mortgage, securities, commodities, and financial fraud, among other things. The broad policy issue cross-cutting various types of fraud and theft was whether the federal response has or can effectively keep pace with the evolving nature of these crimes. As the nature of these crimes changes, how can policy makers provide the necessary resources and update the criminal statutes to allow for effective investigation and prosecution of these crimes?

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<sup>23</sup> U.S. Government Accountability Office, *Better Coordination and Performance Measurement Would Help Clarify Roles of Federal Agencies and Strengthen Assessment of Efforts*, GAO-09-708, July 2009, <http://www.gao.gov/new.items/d09708.pdf>.

<sup>24</sup> For additional information and legislation in the 111<sup>th</sup> Congress on gun control, see CRS Report RL32842, *Gun Control Legislation*, by William J. Krouse.

<sup>25</sup> See <http://www.fbi.gov/ucr/ucr.htm>. Statistics for 2010 are still preliminary, and thus, are not included in this report.

<sup>26</sup> P.L. 111-24 contains a provision that allows private persons to carry firearms in national parks and wildlife refuges.

<sup>27</sup> For example, H.R. 2159 and S. 1317 would have, among other things, authorized the Attorney General to deny the transfer of firearms or the issuance of firearms and explosives licenses to known or suspect terrorists.

<sup>28</sup> H.R. 2324 and S. 843 would have, for instance, required gun show operators to register with the Attorney General and would have required background checks for the transfer of firearms between unlicensed individuals at gun shows.

<sup>29</sup> U.S. Congress, Senate Committee on the Judiciary, *The Need for Increased Fraud Enforcement in the Wake of the Economic Downturn*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., February 11, 2009.

<sup>30</sup> P.L. 111-21.

## Identity Theft<sup>31</sup>

Identity theft is the fastest growing type of fraud in the United States, and the Federal Trade Commission (FTC) estimates that identity theft costs consumers about \$50 billion annually.<sup>32</sup> In 2009, about 11.1 million Americans were reportedly victims of identity theft—an increase of about 12% over the approximately 9.9 million who were victimized in 2008.<sup>33</sup> In addition, identity theft is often interconnected with various other criminal activities, ranging from credit card and bank fraud to immigration and employment fraud. Consequently, the 111<sup>th</sup> Congress debated the federal government’s role in preventing identity theft and its related crimes, relieving the effects of identity theft on its victims, and providing the criminal justice system with effective tools to investigate and prosecute identity thieves.

In preventing personal information from falling into the hands of identity thieves, one issue that the 111<sup>th</sup> Congress confronted was whether it is the federal government’s role to regulate the availability of personally identifiable information (social security numbers, in particular) in the public, as well as in the private, sector. One policy option considered was to provide specific agencies with the rulemaking authority to set standards for the sale of personally identifiable information in the private sector.<sup>34</sup> Policy makers also considered prohibiting the use of personally identifiable information on government documents, such as Medicare identification cards, and Congress passed the Social Security Number Protection Act of 2010 (P.L. 111-318) that prohibits the display of social security numbers on government-issued payment checks.<sup>35</sup> Another issue at hand was that in the instance of a data breach, should there be more strict requirements regarding the reporting of the data breach? For instance, policy makers considered whether to require the reporting of data breaches to law enforcement or to individuals whose personal information may have been compromised.<sup>36</sup> Another issue that the 111<sup>th</sup> Congress considered in attempt to punish or deter identity thieves was whether the list of predicate offenses

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<sup>31</sup> For additional information on identity theft, see CRS Report R40599, *Identity Theft: Trends and Issues*, by Kristin M. Finklea.

<sup>32</sup> As referenced in Nikki Swartz, “Will Red Flags Detour ID Theft?” *Information Management Journal*, vol. 43, no. 1 (Jan/Feb 2009), pp. 38-41.

<sup>33</sup> Javelin Strategy & Research, “Javelin Study Finds Identity Fraud Reached New High in 2009, but Consumers are Fighting Back,” press release, February 10, 2010, <https://www.javelinstrategy.com/news/831/92/Javelin-Study-Finds-Identity-Fraud-Reached-New-High-in-2009-but-Consumers-are-Fighting-Back/d,pressRoomDetail>.

<sup>34</sup> H.R. 122 and S. 141, for example, would have granted the Attorney General, in conjunction with the Chairman of the Federal Trade Commission and Commissioner of the Social Security Administration the rulemaking authority to set rules and standards for the sale and purchase of social security numbers.

<sup>35</sup> For instance, H.R. 3306 would have, among other things, restricted the sale or display of SSNs by government entities and the display of SSNs on government-issued ID cards such as Medicare cards. H.R. 122 and S. 141 would have similarly restricted the sale, display, or purchase of SSNs.

<sup>36</sup> H.R. 123, for example, would have required consumer reporting agencies to report suspected identity theft to the U.S. Secret Service and the Attorney General, as well as required the Secret Service to report identity theft to the Federal Bureau of Investigation or the Department of Homeland Security if there are suspected terrorism or immigration elements. Additionally, H.R. 133 would have required the Commissioner of Social Security to report suspected identity theft to the individual at risk as well as to the appropriate law enforcement authorities. Further, H.R. 2472 would have facilitated federal agency sharing of social security data in order to prevent identity theft. Suggested measures would have required the Commissioner of Social Security to provide the Secretary of Homeland Security with the personally identifiable information of individuals in the instance that the Commissioner determines that a SSN has been used with multiple names. Additionally, S. 1119 would have required the Secretary of the Treasury to notify any taxpayer of suspected identity theft, and S. 1490 would have, among other things, required businesses where there has been a breach of personally identifiable information, to notify the potentially-impacted individuals of the data breach.

for aggravated identity theft should be expanded to include additional crimes commonly facilitated by identity theft.

## **Organized Retail Crime**

It has been estimated that organized retail crime (ORC) may cost the retail industry over \$30 billion dollars each year.<sup>37</sup> In addition to the lost income to retailers, ORC can pose both economic and health risks to society; states suffer lost tax revenue, and individuals may face health risks from consuming stolen items such as baby formula or over-the-counter medication that have not been stored properly by ORC thieves. Stolen goods are resold in both national and international, physical and Internet-based marketplaces.

Although there is little debate that ORC is a federal issue—thieves cross state lines to commit crimes and store goods, and they resell the illegally obtained items without regard for district lines—the debate arises over the federal government’s role in combating it. In particular, the 111<sup>th</sup> Congress questioned whether there are currently effective investigative and prosecutorial tools in place to combat ORC or whether the criminal code should be amended to include specific provisions criminalizing it.<sup>38</sup> Another question debated was whether the federal government should play a role in regulating online marketplaces to ensure that law enforcement is able to obtain information to investigate potentially fraudulent sellers.<sup>39</sup>

## **Drug Control**

The National Drug Intelligence Center (NDIC) has indicated that illicit drugs—particularly their trafficking and abuse—remain a significant threat to American society. Drugs are involved in other violent and non-violent crimes; as of 2009, about 53% of the total federal prison population had been convicted and sentenced for drug-related offenses.<sup>40</sup> Policy makers have been concerned with combating drug crimes and sentencing offenders. Questions remain, however, whether current drug policies are effective in reducing domestic production, trafficking, and use of illicit drugs.

Drug trafficking organizations (DTOs) pose economic and social threats to the United States, and according to the NDIC, Mexican DTOs are now the largest drug trafficking threat.<sup>41</sup> The NDIC estimates that Mexican DTOs maintain drug distribution networks, or supply drugs to distributors, in at least 230 U.S. cities.<sup>42</sup> Some areas of the country have experienced higher

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<sup>37</sup> See the FBI’s information on organized retail theft at <http://www.fbi.gov/page2/april07/retail040607.htm>.

<sup>38</sup> H.R. 1173 and S. 470 would have, among other things, expanded the definition of fraud involving an access device and directed the U.S. Sentencing Commission to review the guidelines for persons convicted of ORC. H.R. 1173 would have defined organized retail crime as a federal crime and provided for civil forfeiture of assets involved in the commission of ORC.

<sup>39</sup> For example, H.R. 1166 and H.R. 1173 would have imposed specific reporting requirements on operators of online marketplaces regarding high-volume sellers selling goods suspected of being obtained through ORC.

<sup>40</sup> U.S. Department of Justice, National Drug Intelligence Center, *National Drug Threat Assessment 2010*, February 2010 (hereinafter NTDA, 2010).

<sup>41</sup> NTDA, 2010.

<sup>42</sup> National Drug Intelligence Center (NDIC), *National Drug Threat Assessment, 2009*, U.S. Department of Justice, Product No. 2008-Q0317-005, December 2008, <http://www.usdoj.gov/ndic/pubs31/31379/index.htm>.

incidences of drug trafficking than others, and currently 14% of U.S. counties are designated as High Intensity Drug Trafficking Areas (HIDTAs).<sup>43</sup> The HIDTA Program provides additional federal resources to areas plagued by drug trafficking and promotes multilateral coordination among drug control organizations. Policy makers in the 111<sup>th</sup> Congress questioned whether to designate (via legislation) more counties as part of HIDTAs.<sup>44</sup> Other policy options debated for including additional areas with an increased prevalence of drug trafficking into the HIDTA program included adjusting the *criterion*<sup>45</sup> for inclusion into the HIDTA program or adjusting the *unit*<sup>46</sup> of inclusion into the program.

Policy makers remained concerned that escalating drug-related violence in Mexico along the U.S.-Mexico border may spill over in to the U.S.<sup>47</sup> For example, there have been anecdotal reports of increased drug-related violence, such as kidnappings related to drug smuggling (also related to other crimes such as human smuggling). Issues facing the 111<sup>th</sup> Congress included whether to authorize additional funding for increased law enforcement initiatives along the Southwest border as well as whether to direct the formulation of border task forces specifically to address drug-related violence.<sup>48</sup> In addition, Congress considered whether to increase penalties for the manufacture, possession, distribution, or trafficking of illegal substances.<sup>49</sup>

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<sup>43</sup> Areas designated as HIDTAs are those that are determined to exhibit serious drug trafficking problems that may negatively impact other areas of the country. Office of National Drug Control Policy, *The High-Intensity Drug Trafficking Area Program: An Overview*, <http://whitehousedrugpolicy.gov/hidta/overview.html>.

<sup>44</sup> Currently, HIDTAs are designated by the Director of the Office of National Drug Control Policy (ONDCP), in consultation with the Attorney General, Secretary of Treasury, Secretary of Homeland Security, directors of various national drug control program agencies, and the appropriate governors. In the 111<sup>th</sup> Congress, H.R. 1871 would have designated seven counties in Arizona as part of the Southwest Border HIDTA. H.R. 2494 and S. 1075 would have designated four counties in New York as part of the New York/New Jersey HIDTA.

<sup>45</sup> According to ONDCP (<http://whitehousedrugpolicy.gov/hidta/overview.html>), the current criterion for HIDTA inclusion takes into account “[t]he extent to which the area is a significant center of illegal drug production, manufacturing, importation, or distribution; [t]he extent to which [s]tate, local, and tribal law enforcement agencies have committed resources to respond to the drug trafficking problem in the area, thereby indicating a determination to respond aggressively to the problem; [t]he extent to which drug-related activities in the area are having a significant harmful impact in the area, and in other areas of the country; and [t]he extent to which a significant increase in allocation of Federal resources is necessary to respond adequately to drug-related activities in the area.”

<sup>46</sup> The current unit of inclusion into a HIDTA is the county.

<sup>47</sup> See, for example, U.S. Congress, House Committee on Homeland Security, Subcommittee on Border, Maritime, and Global Counterterrorism, *Border Violence: An Examination of Homeland Security Department Strategies and Resources*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., March 12, 2009 and U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Southern Border Violence: Homeland Security Threats, Vulnerabilities, and Responsibilities*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., March 25, 2009.

<sup>48</sup> For example, H.R. 1437 would have directed the Secretary of Homeland Security to establish a Southern Border Security Task Force that would coordinate law enforcement efforts to combat crimes related to drug trafficking along the Southwest border. H.R. 1448 would have, among other things, authorized the Secretary of Homeland Security to award grants to support law enforcement operations within 25 miles of the Southwest border. H.R. 1900 would have authorized increased funding for federal law enforcement agents and resources along the Southwest border. It would also have authorized the Attorney General to award grants to support law enforcement operations within 25 miles of the Southwest border.

<sup>49</sup> For example, H.R. 2469 would have increased sentences or imposed mandatory minimum sentences for specified crimes related to the manufacture, possession, distribution, or trafficking of controlled substances. It would also have affected sentencing for such crimes committed in conjunction with specified offenses or in specified locations.

## Sentencing Reform<sup>50</sup>

Judges have discretion in sentencing defendants unless the offense carries a mandatory sentence, as specified in the law.<sup>51</sup> While some view this 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 judicial districts such as those that led to the original enactment of federal sentencing guidelines in 1984.<sup>52</sup> With respect to sentencing, several issues confronted the 111<sup>th</sup> Congress. As discussed below, one issue was whether Congress should eliminate or reduce the disparity in federal sentences for crack and powder cocaine violations. Another issue was whether the federal prison system should allow for early release for certain prisoners under certain circumstances.

### 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. The intent of mandatory minimum sentencing is to punish the most serious offenders by incarcerating them for long periods. Proponents contend that mandatory minimums decrease crime, serve as deterrents, and ensure certainty in the criminal justice system. Critics, however, argue that the laws are disproportionately applied to non-violent, minority offenders. One overarching issue facing Congress was whether the mandatory sentences imposed on offenders are the most appropriate sentences. While the debate over mandatory minimum sentences tends to focus on non-violent, drug offenses, it is especially apparent with the crack-versus-powder cocaine sentencing disparities.<sup>53</sup>

Congress, through the Violent Crime Control and Law Enforcement Act of 1994,<sup>54</sup> directed the U.S. Sentencing Commission (the Commission) to study the difference in penalties for powder and crack cocaine offenses.<sup>55</sup> In 1995, 1997, 2002 and 2007, the Commission reported to

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<sup>50</sup> For an overview of federal sentencing, see CRS Report RL32766, *Federal Sentencing Guidelines: Background, Legal Analysis, and Policy Options*, by Lisa M. Seghetti and Alison M. Smith.

<sup>51</sup> In *U.S. v. Booker*, 125 S.Ct. 738 (2005), the Court ruled that the federal sentencing guidelines are advisory—not mandatory—unless the offense carries a mandatory sentence.

<sup>52</sup> See for example, Erik Luna, “Misguided Guidelines: A Critique of Federal Sentencing,” *Policy Analysis*, no. 458, November 1, 2002.

<sup>53</sup> The 1986 and 1988 Anti-Drug Abuse Acts (P.L. 99-570 and P.L. 100-690, respectively) played pivotal roles 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; under this act, it took 100 times as much powder cocaine to trigger the same 10-year mandatory penalty as for a given amount of crack cocaine. 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 was punishable under the act by a minimum of five years.

<sup>54</sup> P.L. 103-322.

<sup>55</sup> As mentioned, the 1986 Anti-Drug Abuse Act (P.L. 99-570) established the 100-to-1 quantity ratio between powder and crack cocaine; it takes 100 times as much powder cocaine to trigger the same 10-year mandatory penalty as for a given amount of crack cocaine. The Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) directed the Sentencing Commission to report on the sentences for the possession and distribution of the different forms of cocaine.

Congress on the disparity in penalties for crack and powder cocaine offenses.<sup>56</sup> 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 1997, 2002, and 2007 reports, the Commission recommended that the five-year and 10-year “trigger” quantities for crack cocaine be raised, but not to the level of powder cocaine. While the penalties remained in place at the federal level, some states have begun to take measures to ameliorate the discrepancies in state law. In November 2007, the Commission enacted a retroactive amendment lowering the recommended penalties for crack cocaine offenses, but it does not impact the mandatory minimum penalties that are in current law.<sup>57</sup> The 111<sup>th</sup> Congress passed the Fair Sentencing Act of 2010 (P.L. 111-220), reducing the statutory 100:1 ratio in crack/powder cocaine quantities that trigger the mandatory minimum penalties under 21 U.S.C. § 841(b)(1) to a ratio of 18:1. It also removes the mandatory minimum five-year sentence for simple possession of crack cocaine.<sup>58</sup>

## Early Release

As Congress addresses issues related to the incarceration of non-violent drug offenders and increased overcrowding in federal prisons, one option that has been receiving considerable attention is early release. In 1984, parole was eliminated in the federal criminal justice system, pursuant to the Sentencing Reform Act of 1984.<sup>59</sup> As a result, the majority of federal inmates are serving their sentences in full.<sup>60</sup> One question raised in the 111<sup>th</sup> Congress was whether there should be some form of early release for federal prisoners.<sup>61</sup> Another consideration for the 111<sup>th</sup> Congress involved the mechanism by which early release should be determined; possible options included expanded good time credit or credit from employment or service while in prison.<sup>62</sup>

A second issue that confronted the 111<sup>th</sup> Congress surrounded juvenile prisoners sentenced to life in prison without the possibility of parole. Some have argued that juveniles committing adult crimes should receive the same sentences as adults committing the same crimes. Others, however, have argued that juveniles should not be sentenced to life in prison without the possibility of parole for a variety of reasons, including the cognitive differences between adults and juveniles. Because it ordinarily defers to state juvenile authorities, the federal government has a limited role in administering juvenile justice.<sup>63</sup> However, the federal government has used grant programs, such as those authorized by the Juvenile Justice and Delinquency Prevention Act,<sup>64</sup> in order to influence the states’ juvenile justice systems. In this light, policy makers have deliberated whether

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<sup>56</sup> These reports are available at <http://www.ussc.gov/reports.htm>.

<sup>57</sup> For additional information, see CRS Report RS22800, *U.S. Sentencing Commission’s Decision on Retroactivity of the Crack Cocaine Amendment*, by Brian T. Yeh.

<sup>58</sup> For additional information, see CRS Report RL33318, *Federal Cocaine Sentencing Disparity: Sentencing Guidelines, Jurisprudence, and Legislation*, by Brian T. Yeh.

<sup>59</sup> The Sentencing Reform Act is in Title II of P.L. 98-473. See 18 U.S.C. §3624(a), (b).

<sup>60</sup> A small number of federal inmates are eligible for parole because they were sentenced prior to the enactment of the Sentencing Reform Act of 1984.

<sup>61</sup> H.R. 61, for example, would have directed the Bureau of Prisons to provide good time credit policy for offenders who, among other things, had not been convicted of a violent crime.

<sup>62</sup> H.R. 1475, for instance, would have provided for a reduction in prison sentence from good time credit and/or from exceptional service/employment while in prison.

<sup>63</sup> For additional information on the federal government’s role in juvenile justice policy, see CRS Report RL33947, *Juvenile Justice: Legislative History and Current Legislative Issues*, by Kristin M. Finklea.

<sup>64</sup> P.L. 93-415

to incentivize a system that includes the possibility of early release. One policy option that the 111<sup>th</sup> Congress considered was whether to utilize grant monies as incentives for states to establish a review board that could evaluate cases of juveniles sentenced to life in prison and make decisions regarding early release.<sup>65</sup>

## **State and Local Justice Assistance**

Department of Justice (DOJ) grant programs and appropriations is a perennial issue of oversight and legislation for Congress. While some programs provide assistance to state and local law enforcement, others provide assistance to other aspects of justice administration around the country. Many of these grant programs have experienced decreases in funding.<sup>66</sup> One overarching issue that the 111<sup>th</sup> Congress considered was the adequacy of funding provided for justice assistance programs. Yet another aspect of these grant programs that Congress considered was their scope, including whether the number of grant programs should be changed or their purpose areas altered.

### **Community Oriented Policing Services (COPS)<sup>67</sup>**

The COPS program was created by Title I of the Violent Crime Control and Law Enforcement Act of 1994.<sup>68</sup> It aims to increase community policing in part by awarding grants to state, local, and tribal law enforcement agencies for hiring and training new officers as well as for several non-hiring purposes, including developing crime-prevention technology and strategy. The 109<sup>th</sup> Congress passed legislation that reauthorized the COPS program through FY2009.<sup>69</sup> In addition to reauthorizing the program, this legislation also consolidated the COPS program into a single grant program. Prior to this, the COPS program consisted of several different subgrant programs.

Several COPS-related issues were before the 111<sup>th</sup> Congress. One was whether to reauthorize the COPS program, as the most recent authorization expired at the end of FY2009.<sup>70</sup> Another issue was whether to increase funding levels for the program. The 111<sup>th</sup> Congress provided supplemental funding for COPS in addition to its annual appropriation; Congress included a \$1 billion appropriation for COPS hiring grants in the American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5). A third issue was whether the COPS program should be restructured or maintained.

Several bills were introduced in the 111<sup>th</sup> Congress that would have modified the COPS program, reauthorized appropriations for the program, or both. Three of these bills—H.R. 1139, S. 167, and

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<sup>65</sup> For example, H.R. 2289 would have required that all juveniles sentenced to life without parole are given the opportunity for parole or supervised release at least once during the first 15 years' imprisonment and at least once every subsequent three years.

<sup>66</sup> U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Office of Justice Programs: Oversight*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 18, 2008.

<sup>67</sup> For additional information on the COPS program, see CRS Report RL33308, *Community Oriented Policing Services (COPS): Background, Legislation, and Funding*, by Nathan James.

<sup>68</sup> P.L. 103-322.

<sup>69</sup> See the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162).

<sup>70</sup> H.R. 1139, H.R. 1568, H.R. 5264, and S. 167 would have, among other things, authorized the COPS program.



H.R. 1568—would have reauthorized appropriations for the COPS program. In addition, H.R. 1139 and S. 167 would have, among other things, changed COPS from a single-grant to a multi-grant program and made the COPS Office an exclusive component of the Department of Justice (DOJ). H.R. 3154 and S. 1424 would have required the Attorney General to award grants to units of local government with high violent crime rates so they could increase the size of their police forces. H.R. 1139 was the only one of the five bills discussed above to receive any legislative action; the bill was passed by the House, but no action was taken by the Senate.

In addition to the \$1 billion COPS received under the ARRA, Congress appropriated \$550.0 million for COPS for FY2009 under the Omnibus Appropriations Act, 2009 (P.L. 111-8) and \$791.6 million for FY2010 under the Consolidated Appropriations Act, 2010 (P.L. 111-117).

## Juvenile Justice<sup>71</sup>

As more focus is being placed on young offenders, some have questioned the way in which the United States treats this population in the nation's criminal justice systems. Over the past 30 years, the juvenile justice system has generally shifted from a focus on rehabilitation to a greater 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 has been in focus again because authorization for the various Juvenile Justice Delinquency and Prevention Act (JJDP) provisions expired in FY2007 and FY2008. The last time the JJDP was reauthorized in 2002,<sup>72</sup> Congress restructured many of the grant programs aimed at preventing juvenile delinquency; a large number of smaller grant programs were repealed, and most of their purpose areas were consolidated into one large block grant requiring accountability and graduated sanctions. Many of the programs that were repealed, however, continue to receive annual appropriations even as the overall juvenile justice appropriation has decreased by about 25% since FY2002.<sup>73</sup>

A core issue in the larger juvenile justice debate is whether rehabilitation should be the driving theme in the handling and processing of young offenders through the criminal justice system, or whether a more punitive approach that emphasizes young offenders' responsibility for the crimes they commit should be the focus.<sup>74</sup> In addition, when considering the possible reauthorization of the JJDP, the 111<sup>th</sup> Congress also debated the adequacy of existing grant programs and whether new grant programs should be enacted.<sup>75</sup>

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<sup>71</sup> For additional information on juvenile justice, see CRS Report RL33947, *Juvenile Justice: Legislative History and Current Legislative Issues*, by Kristin M. Finklea.

<sup>72</sup> See the 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act (P.L. 107-273).

<sup>73</sup> For additional information on juvenile justice funding, see CRS Report RS22655, *Juvenile Justice Funding Trends*, by Kristin M. Finklea.

<sup>74</sup> Some legislation introduced in the 111<sup>th</sup> Congress would have increased the ability to use juvenile justice grant money for rehabilitative purposes (S. 678, the Juvenile Justice And Delinquency Prevention Reauthorization Act of 2009), while other legislation would have maintained the current trend toward a focus on accountability (H.R. 1514 and S. 2866, the Juvenile Accountability Block Grants Program Reauthorization Act of 2009).

<sup>75</sup> Legislation (S. 678, H.R. 6029) would have, among other things, modified State reporting requirements, which may have aided in clarifying and meeting core requirements on reducing disproportionate minority contact with the juvenile justice system and preventing youth awaiting trial from being held in adult facilities. H.R. 1064 and S. 435 would have, among other things, amended the JJDP to authorize grants to assess evidence-based practices to reduce juvenile delinquency. Further, H.R. 1873 and H.R. 1931 would have, among other things, provided grants to states to provide mental health treatment to juveniles in custody or those at risk for coming in contact with the juvenile justice system.

## Witness Protection Program

While the crime rates have generally tended to decrease in recent years, certain jurisdictions have seen an uptick in their crime rates, especially the violent crime rate. In an effort to address the issue, in part, some have called for the establishment of a grant program that would provide funding to states and localities to establish or maintain programs that provide protection or assistance to witnesses involved in homicide, serious violent felony, or serious drug cases.<sup>76</sup>

H.R. 1741, the Witness Security and Protection Grant Program Act of 2010, would have, among other things, created a grant program to provide funding to state, tribal, and local governments to establish or maintain witness protection programs for witnesses in cases involving homicide, a serious felony or drug offense, or gangs or organized crime. The bill was passed by the House and referred to the Senate by the Judiciary Committee. The full Senate did not consider the bill.

## Criminal Justice System Review

Partly in response to the United States having the highest reported incarceration rate in the world,<sup>77</sup> legislation was introduced in the 111<sup>th</sup> Congress that would have established a commission to undertake a comprehensive review of the U.S. criminal justice system. The National Criminal Justice Commission Act of 2010 (H.R. 5143, S. 714)—passed by the House—would have, among other things, established a 14-member commission to evaluate costs, practices, and policies of federal and state criminal justice systems around the country. Upon completion of the review, the commission would have been charged with providing recommendations to Congress regarding potential policy changes to reduce incarceration rates, decrease prison violence, improve prison administration, utilize proven strategies to reduce criminal behavior, bolster reintegration of ex-offenders, reevaluate criminalization of and treatment for selected drug-related crimes, improve treatment for mental illness, and enhance law enforcement response to criminal organizations.

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<sup>76</sup> In 2008, Congress enacted the Court Security Improvement Act of 2007 (P.L. 110-177). The law, in part, expanded an existing program so funds could be used for witness and victim protection. For additional information on P.L. 110-177, see CRS Report RL33473, *Judicial Security: Comparison of Legislation in the 110<sup>th</sup> Congress*.

<sup>77</sup> The Bureau of Justice Statistics (BJS) reports that at the end of 2008, federal and state correctional facilities had jurisdiction over 1,610,446 prisoners. For more information, see William J. Sabol, Heather C. West, and Matthew Cooper, *Prisoners in 2008*, Bureau of Justice Statistics, NCJ 228417, December 2009, <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf>.

## Acknowledgments

For additional information on specific issues covered in this report, please refer to the contact information for the key policy staff below.

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