The Senate met at 10 a.m. and was called to order by the Honorable Mike Crapo, a Senator from the State of Idaho.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Loving Father, as we begin this day we are very aware of a stirring in our minds and a longing in our hearts to renew our relationship with You. We have learned that this is a sure sign that You are urging us to come to You in prayer long before we call on You. You have created the desire to know, love, and serve You. The feeling of emptiness inside alerts us to our hunger and thirst for a right relationship with You. It is a great encouragement to realize that our longing for truth, knowledge, insight, and guidance is a response to Your desire to give us exactly what we need for each challenge or opportunity. We trade in our old habit of self-reliance for Your supernatural strength and superlative wisdom. It is a joy to be reminded that this is Your Nation. You are waiting to bless us and have specific answers to our needs prepared to give us as we listen to You in prayer all through this day. We place our trust in You. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. Thurmond].

The legislative assistant read the following letter:

U.S. Senate, President pro Tempore, Washington, DC, May 19, 1999

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable Michael D. Crapo, a Senator from the State of Idaho, to perform the duties of the Chair.

Strom Thurmond, President pro tempore.

Mr. CRAPO thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore, The Senator from Utah is recognized.

SCHEDULE

Mr. HATCH. Mr. President, this morning the Senate will resume debate on the juvenile justice bill. Under a previous order, amendments that qualify under the list may be offered until 12:30 p.m. today. At 12:30 p.m., the Senate will begin debate on amendments numbered 357, 358, 360, and 361 which were previously offered to the bill. Each of the four amendments will have 10 minutes of debate equally divided with stacked votes to begin at 1 p.m. Senators are encouraged to offer their amendments this morning so we can finish this important legislation in a timely manner.

I thank my colleagues for their attention.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

VIOLENT AND REPEAT JUVENILE ACCOUNTABILITY AND REHABILITATION ACT OF 1999

The ACTING PRESIDENT pro tempore. The Senate will now resume consideration of S. 254, which the clerk will report.

The legislative assistant read as follows:

A bill (S. 254) to reduce violent juvenile crime, promote accountability by and rehabilitation of juvenile criminals, punish and deter violent gang crime, and for other purposes.

Pending:

Frist amendment No. 355, to amend the Individuals with Disabilities Education Act and the Gun-Free Schools Act of 1994 to authorize schools to apply appropriate discipline measures in cases where students have firearms.

Wellstone amendment No. 356, to improve the juvenile delinquency prevention challenge grant program.

Sessions-Inhofe amendment No. 357, relating to the placement of a disclaimer on materials produced, procured or disseminated as a result of funds made available under this Act.

Wellstone amendment No. 358, to provide for additional mental health and student service providers.

Hatch (for Santorum) amendment No. 359, to encourage States to incarcerate individuals convicted of murder, rape, or child molestation.

Ashcroft amendment No. 361, to provide for school safety and violence prevention and teacher liability protection measures.

The ACTING PRESIDENT pro tempore, The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent to continue for 1 minute, the time not taken from either side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, also for the advice of our colleagues, the distinguished Senator from Utah and I continued work on the managers' package, which we worked on over the weekend, last night, and we will be prepared to present that fairly soon.

If I could have the attention of the Senator from Utah for just a moment, I suspect what we would probably do at that time, when it is prepared, is to move to set aside other things so we could do that and go forward with it.

I mention this because several Senators had asked about where it was—it is a complex thing—to help make sure we get the drafting all right.

Mr. HATCH. Mr. President, I think we are just about done with the drafting of it. I know staff on both the minority and the majority side are finishing that up as we speak, so I agree

--

*This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.*
with the Senator. When we get that finally done, we will interrupt everything and set matters aside so we can pass the managers' amendment.

I notice the distinguished Senator from New Jersey is prepared to offer his amendment again. Could I ask the other sponsors how many further gun amendments are we going to have? I would at least like to know.

Mr. LEAHY. The Senator asks a legitimate question. That is why I asked about the managers' package. Some are holding to the view where the managers' package goes, and it will probably depend upon what happens with the amendment of the distinguished senior Senator from New Jersey.

Let me try to get a more specific answer. That does not answer the question of the Senator from Utah. As this debate starts—we are running some trampolines now—I will try to get that answer for the Senator as quickly as I can.

Mr. HATCH. The reason I bring that up is we have had enough time on gun amendments, it seems to me. There has been a lot of getting together, and I have helped to lead that. I think it is about time we get on to the rest of this bill, which is much more important than the gun aspect of this bill. There is a huge number of things we do in this bill to try to stop juvenile crime in this country, and especially violent juvenile crime. This bill will help to alleviate that. So I want to finish the bill, and I think we ought to do the very best we can to do that.

Mr. LEAHY. If the Senator will yield, I would note that we had a list of over 90 amendments entered under a consent agreement last Friday. We have pared that back to about a dozen or less. So we are making significant progress. I think what we want to do is make sure as amendments are coming up, the few that are left, Senators are not held up in introduction, as the Senator from California, Mrs. BOXER, was yesterday, or Senator LAUTENBERG last Friday.

Now we can move on. We have gone from 90 down to about a dozen. The managers' package is making a lot of that possible. Again, I commend the Senator from Utah for his work on this, and we should continue.

But while the Senator from New Jersey is debating his amendment, I will try to get a clearer answer for the Senator from Utah.

Mr. HATCH. Mr. President, let me say one other thing. This is an amendment that has already been debated, and it was defeated. So it is coming back again substantially in the same form.

Now, I was told yesterday that the minority believes they have narrowed their amendments down to about eight. As I understood it, they figured they would have three more gun amendments, including this, and possibly a fourth.

All we want to know is how many are we going to have and what are they so we are sure of what is going to come up. But in all honesty, I do not want to just keep debating the same subject over and over when we have made real honest and decent efforts to try to resolve these problems.

Mr. LEAHY. Mr. President, that is a point I would like to know. Other than that, I can, just exactly how many more gun amendments are we going to have to put up with or are we going to do the rest of the bill. Are we going to get something seriously done about juvenile crime or are we going to keep on to the same points in the Chamber, to the extent Senators think they are making them?

That is what I am concerned about. I would like to pass this bill which will make a real difference on accountability, making kids who commit violent acts responsible for their actions. For the first time, we actually have prevention moneys, more than accountability moneys. We are doing something about the cultural problems in this society, which has a whole lot about the cultural problems—that really will work if we can just get this bill passed. Of course, we are going to get tougher on violent juveniles in the sentencing phase and a number of other ways from a law enforcement standpoint.

We have spent most of our time in the last 6 days—now 7 days—on gun amendments. We have made a real effort to try to accommodate people on the other side and some of our own side—to resolve these matters. I think we have largely resolved them. Be that as it may, we will go on from here.

Mr. LEAHY. Mr. President, again, I ask consent not to have my time come from anybody else. We are making progress. As I said, we had 90 possible amendments entered as a consent agreement last Friday. We pared that back to a dozen or less. The distinguished Senator from Utah said yesterday he thought they would need about seven from their side. They offered four. That leaves about three more.

I point out that sometimes this debate is wise. When the Craig amendment first came up, the Senator from New York, Mr. SCHUMER, and I came on the floor and said there were some very serious problems with it, that part of the drafting was left out, that it did things that were contrary to what the Senator from Idaho, Mr. CRAIG, had said it did. We were told by the Senator from Idaho that we were flatout wrong, that there was no such thing. It was a good amendment. It was adopted, then, on virtually a party line vote.

The next day, as soon as the press had analyzed it, they found exactly what the Senator from New York and I had said was accurate, that what the Senator from Idaho said was not accurate. There was a great flapdoodle over that—out from the early unpublished Jefferson's "Manual on Parliamentary Procedure," I tell Mr. Dove, the Parliamentarian.

It comes back again now, redrafted. And then, after that, it was pointed out that there were other errors, and we were told again we were wrong. A third part of the draft is coming back. Frankly, Mr. President, sometimes the amendments do a little bit longer if amendments do not do what the sponsors say they do.

With that, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey is recognized.

AMENDMENT NO. 362
(Purpose: To regulate the sale of firearms at gun shows)

Mr. LAUTENBERG. I thank the Chair, and I thank my colleague from Vermont.

I particularly pay a note of respect to our colleague from Utah, the chairman of the Judiciary Committee and the manager on the Republican side, for this juvenile justice bill. I know how anxious he is to effect a compromise that permits us to move ahead with legislation which is constructive. I have never known him to obstruct for the sake of obstruction. I appreciate his interest in moving this bill, as we should like to do.

Mr. President, I ask unanimous consent to set aside the pending amendments and send a compromise gun show amendment to the desk.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. HATCH. Reserving the right to object, I did not hear.

The ACTING PRESIDENT pro tempore. Will the Senator restate his unanimous consent request.

Mr. LAUTENBERG. Surely. I first paid extensive compliments to the Senator from Utah.

Mr. LEAHY. There was no objection to that part.

Mr. HATCH. I am happy to hear that.

Mr. LAUTENBERG. Did I hear an objection from the Senator from Vermont?

Mr. HATCH. Could I understand what the unanimous consent request is?

Mr. LAUTENBERG. Mr. President, what I want to do is to see if we can present a compromise position that takes care of some of the problems which still exist after we passed the Craig-Hatch amendment, which differs from my original language to an extent that I think makes it more palatable to our friends on the other side. I go through my presentation on the amendment. It is obvious that we want to do what we can.

While the Senator from Utah was occupied, I did say that I have never known him to obstruct for the purpose of obstruction but, rather, to effect change. I think it is fair to say there is a significant amount of interest on the Republican side in the changes we have made to try to limit the definition of gun shows, to try to make certain we have not increased the bureaucratic or the regulatory requirements such that substantially more paperwork is involved. We are not attempting to keep
files open on people for whom there is no discredited information, changes of that nature.

Mr. President, I hope the Senator from Utah and other Members of the Senate will look at what we have and give us the chance to have a review of it.

Mr. HATCH. Could I ask—

The ACTING PRESIDENT pro tempore. The Chair notes that under the previous order, the Senator has the right to send his amendment to the desk, and the Chair does not interpret the unanimous consent request to be anything other than that. Does that clarify the situation?

Mr. HATCH. His amendment will go in order after the amendments that were—

The ACTING PRESIDENT pro tempore. That is correct. The Chair does not interpret the unanimous consent request to change the order of the presentation of the amendments. It does interpret the request simply to be present the Senator’s amendment at this time.

Mr. HATCH. The reason I was concerned is that we set these in order by unanimous consent. I had to go to great lengths to get that done. That is fine with me, if that is the understanding.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative assistant read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for himself and Mr. KERREY, proposes an amendment numbered 362.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that reading of amendments be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The text of the amendment (No. 362) is printed in today’s RECORD under “Amendments Submitted.”)

Mr. LAUTENBERG. I thank, again, the Senators from Utah and Vermont.

Mr. HATCH. Will the Senator from New Jersey yield? Could we have a copy of the amendment. It is certainly nice to know what is going on. That is what I am concerned about. If we are going to have amendments, I at least want to know what they are, because I have gone to great lengths to try to bring both sides together. I don’t want to be blind-sided by amendments at the last minute here. I would like to at least know what is in this amendment. I think I have a pretty good idea, but I would like to know.

Mr. LAUTENBERG. Mr. President, in response to the Senator from Utah, there is no intent to offer anything that hasn’t been discussed or anything that is a radical change that further limits the activities of legitimate transactions at a gun show.

This amendment which I send up now has been modified by Senator Bob KERREY from Nebraska. He has signed on as a cosponsor. His input has been truly valuable in crafting a workable proposal. He comes from a largely rural State where guns are a significant part of the State’s culture. I really appreciate his strong support of my amendment.

This amendment is offered in a bipartisan fashion to finally close the gun show loophole for us to come to an agreement on the gun show debate. It is very much in the minds of the public. There was a poll just done, an ABC-Washington Post poll, which said, in response to the question, Would you support or oppose a law requiring background checks on people buying guns at gun shows? the support level was 89 percent. So it does not leave a lot of room for doubt.

Last week the Senate did cast two votes on different gun show proposals. My amendment was defeated by a slim majority of 51 votes. Obviously, we had Republican support. There were several absences, primarily from the Democratic side, people were called away, some for emergencies and illness. And after a few days deliberation, a couple of days later, the Hatch-Craig amendment was offered, and it passed by only one vote, with five Senators not voting; there were a total of 95 votes cast. The result was 48-47. So we are not in a ballpark when it comes to thinking about what ought to happen. People are very wary and upset by the fact that guns can be purchased without any identification of the buyer. I call it “buyers anonymous.” The public is in obvious distress about the way things have been done in the past.

We are not going to interrupt the process whereby people who are not felons and are of sound mind can buy a gun. We are not looking to interrupt the process of the interested purchaser in buying a gun. But we know that, just as with other transactions—vehicles, for instance—there is a recognition of who is buying a vehicle. The same thing ought to be true when we talk about guns.

So that is what brings us to the position we are in. I asked several Senators who were leaning to my position to improve the amendment that I originally offered. This new version that we have sent to the desk reflects the suggestions of both Republicans and Democrats. First, the definition of “gun show” is modified. I have actually taken language from the Hatch-Craig amendment and included it. I point that out because I want to try to effect a consensus, and that is why we have included this language from the Hatch-Craig amendment in this revised version.

Now, my new language clarifies that we are only talking about events where firearms are exhibited and offered for sale. We are not talking about transactions between individuals or neighbors.

The second change that we have made would clarify what qualifies as a firearm sale or transaction. When drafting my original amendment, in order to prevent people from circumventing the background check by completing a sale outside the gun show that actually began in the show, but is completed, for instance, in the parking lot, we wanted to close that loophole. So that occurred would perhaps have a chance to note the changes that were made and would encourage them to join in with us and pass this legislation. Some of my colleagues have suggested the original language was too broad, so I have narrowed it to ensure that legitimate gun sellers are not subject to penalties.

Additionally, during the course of the debate, some of my opponents have suggested law that would lead to a national registry of gun owners. My amendment had nothing remotely resembling a national registry of firearm owners. It simply required gun sales to go through an existing national instant criminal background check system. They argue that it is the first step toward a national registry of firearm owners. They raise the specter of a national registry because they want to scare people away from reasonable, commonsense gun proposals.

I tell you, we are going to make certain that doesn’t happen, because I believe there is no basis for that argument. I have made a modification to try to deal with that issue once and for all.

My amendment would change the Bureau of Alcohol, Tobacco, and Firearms from keeping any records on qualified purchasers—in other words, law-abiding citizens who are allowed to buy a gun—for more than 90 days. After 90 days, they have to scrap it if it has no value. The personal information in any way, has no criminal record, has no problem with violence, has not been noted for violent behavior, has not had any serious mental disorder, and we are satisfied to have those records expired after 90 days because there is no value to them, for one thing, and, secondly, it seems to suggest that what we want to have is, again, a registry on everybody. That is not the case.

President, I believe citizens don’t have anything to worry about. After 90 days, they can be absolutely sure that there will be no Government record of their gun transactions whatsoever. Finally, Senator KERREY, Senator SCHUMER, Senator BOXER, Senator KENNEDY, and I worked to streamline the requirements for gun show promoters. My revised amendment eliminates all unnecessary paperwork and bureaucratic red tape that was purportedly contained in the original Lautenberg amendment. The reason I say “purportedly” is because that is the way some
of our colleagues on the other side interpret it. Well, I want to make sure that the record is clear and, thus, we were truly circumspect in the way we asked for this data to be presented and for this amendment to be offered.

I think my colleagues on both sides of the aisle who have helped me work on these issues. This is a compromise from my original position, but my mission is to accomplish the goal, and the goal very simply is to satisfy the American people. It is not just curiosity; it is fear; it is their belief that anybody who buys a gun ought not to be anonymous in that purchase, especially when we know that so many of those transactions have occurred at gun shows. So that is the purpose of this change. We need this amendment to close the gun show loopholes once and for all.

Now, although the Hatch-Craig amendment may have generated a well-intentioned effort to address the gun issue, it did create additional problems. If we leave the language in this bill as it presently is with the Hatch-Craig amendment, our gun laws are actually going to be weaker. I know that is not the intention of the authors. This is a Senator from the East and a Senator from the West doing this combination is a very good one. It is a bipartisanship amendment. Let's close the loopholes. We need this amendment.

As a consequence, I am hopeful that we will get strong support on this amendment. The American public overwhelmingly support, I point out. That is an enormous number. What I am hoping is that finally the voices of the parents, those who are concerned about the safety of our communities, our schools, who have seen violence in their streets, are heard. If we can, without harm to those who want to observe a legitimate request, continue to do that, I am hopeful that we are going to be able to alert some of those who oppose it to the fact that with the change, they have seen violence in their streets, heard. If we can, without harm to those who want to observe a legitimate request, continue to do that, I am hopeful that we are going to be able to alert some of those who oppose it to the fact that with the change, the Lautenberg-Kerrey amendment.

I urge my colleagues to support this bipartisan amendment. Let's close the gun show loophole once and for all.
aggressively; it was a high priority. Under this Project Triggerlock proposal, I sent out a newsletter on guns called “Triggerlock News,” to the local sheriffs and chiefs of police explaining to them what the Federal laws were.

Federal laws against guns are very strong. If you go out and get a gun during a drug offense or a burglary, it is 5 years without parole consecutive to any punishment you get on the underlying offense. In Federal court you have the Speedy Trial Act. People have to be tried promptly. In Federal court when you have a speedy trial and the individual is already out on bail or parole, the judge usually will deny them bail. So you could have a case where only times these violent criminals are denied bail, then they are tried within 60 days, and removed from the community for 5 years and more. That was a high priority with me.

This administration under Attorney General Reno has allowed those prosecutions to drop, to the point where she appointed by President Bush. And President Clinton has now appointed all 93 U.S. attorneys around the country. His U.S. attorneys have allowed gun prosecutions to decline 40 percent, from 7,000 to 4,200. And, remarkably, she got it to the point where they have gone forward with this idea that the way to fight violent crime and keep people from using guns illegally is to pass more laws. But they are not enforcing the laws they pass.

For example, there were 6,000 incidents of firearms carried on school grounds last year, according to the President. And within the last several years this Congress, at the request of the President, passed a law to make it a Federal crime to carry a firearm on school grounds. Yet out of 6,000 incidents, fewer than 10 cases were prosecuted each of those 2 years. It is a Federal crime in America to deliver a firearm to a teenager under most circumstances.

That Federal crime, that Federal law, was passed several years ago at the request of the President. Yet his administration, and said he was directing his U.S. attorneys in the Department of Justice and the Department of Treasury, of which ATF is a part, to increase their prosecutions.

Yet when we had Attorney General Reno testify just this month before the Judiciary Committee, she said we are not making any big commitment on that. She has a study going on and it has to be done individually and we are just not going to do what they did in Richmond.

The clear impression was that not only was she not in accord with what I believe the law of the United States requires, but she did not go along in accord with the wishes of the President of the United States.

Mr. KERRY. The Senator didn't vote for the Brady amendment. I think it has meaning. In the past, I measured whether or not I was in accord with what I believe the law of the United States requires. Traditionally, we have let principal sponsors be allowed to speak. The Senator is always courteous in all these occasions. Would the Senator be willing to let him proceed?

Mr. SESSIONS. I yield to the Senator from Massachusetts.

Mr. KERREY. The Senator didn't take too much time at all. It is within your right to do it. I do have a markup with the Finance Committee and I appreciate very much the Senator yielding to me so I can make a couple of points about this amendment.

First of all, I do believe in the second amendment. I believe in the right to bear arms. I think it has meaning. In the past, I measured whether or not I will vote for changes in the law that restrict a citizen's right to own a gun that reduces their right by imposing waiting periods or increased licensing requirements by a simple test: Will this reduce the number of people who are having their rights violated by either being shot at, shot, or killed as a consequence of people who acquire guns illegally, using those guns to commit a crime?

I voted for Brady. I voted for the so-called assault rifle ban, though it didn’t really ban rifles; it banned some Steroids. They were aggressively prosecuting individuals who utilized guns illegally, and the President’s own U.S. attorney attributed their aggressive prosecution of current gun laws for a 40-percent reduction in murder and a 21-percent reduction in violent crime.
features. I feel confident when I vote for something that I think works.

What we have here, and I think both sides are agreeing, is a significant loophole in the law. There are thousands of gun shows every year where not only can law-abiding citizens go, but a convicted felon, whether or not they are men-...
May 19, 1999
CONGRESSIONAL RECORD — SENATE S5513

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. I am going to yield to the distinguished Senator from Massachusetts. I just want to thank the Senator for getting here and making the speech. I am glad we could accommodate him. I am going to accommodate the Senator from Massachusetts now, and then hopefully I will have something to say about this when he has finished.

I should, though, in the meantime, of the distinguished Senator from New Jersey, is there a possibility of us agreeing to a time agreement on this since the main proponents on this have spoken to it?

Mr. LAUTENBERG. Mr. President, in response to the Senator from Utah, we have several colleagues who want to speak.

Mr. HATCH. Will the Senator just consider that, and then maybe, while the Senator from Massachusetts makes his remarks, chat with me and we will see if we can come to agreement?

Mr. SCHUMER. If the Senator will yield, I have been waiting patiently. I certainly want to speak on this. I probably will speak for no more than 5 or 6 minutes.

Mr. HATCH. I think everybody is trying to get this bill over with at this point. At least I hope so.

Mr. BOXER. If the Senator will yield, I only need 2 minutes to make my remarks.

Mr. HATCH. I am happy to defer remarks of mine until the distinguished Senators from Massachusetts and New York and California speak.

Mr. LEAHY. We know the three who are going to speak. During the time they are speaking, I will run the traps on our side and try to get as concise and accurate a time agreement as we can.

Mr. HATCH. I would like to have time agreements on the other amendments, if we can. Will the Senator from Massachusetts give us some indication of how long he may speak? I will have to be in the floor to the Finance Committee for a vote and I would like to know, if I may, how long the Senator will speak.

Mr. KENNEDY. Probably less than 15 minutes.

I would like to just be able to proceed.

Mr. HATCH. I understand the Senator from Massachusetts, 10 or 15 minutes for sure, and then the Senator from New York at least 5 minutes, and then the Senator from California.

Mr. KERREY. Reserving the right to object.

Mr. HATCH. I just want to have some idea. I would also like to have the floor protected, and I know my colleague from Vermont will, while I go to vote on this Finance Committee bill. I yield the floor.

Mr. LEAHY. There will be no comments entered while the Senator is gone.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, during the debate and discussion here on the floor of the Senate in regard to the new ammunition, in regard to the prosecutions and also during the period of the Judiciary Committee, I think we ought to really set the record straight. The record was set straight in the Judiciary Committee by the Attorney General, but it has been misrepresented here on the floor of the Senate by those who ask why are we considering this amendment when we are not really prosecuting all the gun laws on the books with regard to this and somehow suggesting that those of us who are concerned about the easy access of weaponry to children and criminal elements in our society really should pay more attention to the prosecutions and doing something to make it more difficult for children and for those who should not own the weapons to own them.

The fact is, overall firearms prosecutions are up. Although the number of Federal prosecutions for low-level offenders—persons serving sentences of 3 years or less—has gone down, the number of higher-level offenders—those serving sentences of 5 or more years—is up by nearly 30 percent in recent years. At the same time, the total number of Federal and State prosecutions is up sharply. About 25 percent more criminals are sent to prison for State and Federal weapons offenses than in 1992, 20,000 to 25,000.

As the Attorney General pointed out, those that ought to be handled at the local level are being handled by State prosecutors, and those that are more serious are being handled by Federal prosecutors. That record has been made in the Judiciary Committee. Maybe those who oppose this kind of common sense legislation have some kind of thrill out of misrepresenting the facts. The facts have been laid out by the Attorney General before the Judiciary Committee and they are as I have stated them, and as represented by the Justice Department. By misrepresenting and saying total prosecutions by the Federal Government are down, they are telling half the story. They are not saying what is happening in State and local prosecutions. When you look at State prosecutions, local prosecutions, and Federal prosecutions, they are up, and up significantly. I think we ought to put that aside.

We are making worthwhile progress in the Senate on these gun control issues. I join in paying tribute to my colleagues—Senator LAUTENBERG, Senator KERREY, Senator SCHUMER, Senator BOXER, Senator DURBIN, and others on both sides of the aisle—who have been advancing sensible and responsible and reasonable and concessionary recommendations. That is what they are. They are common sense recommendations which, when put into effect, are going to reduce the opportunity for easy access to weapons which are too often used either accidentally or intentionally, perhaps even in the increased incidents of suicide, or purposely by children or young people in this country.

One of the most important measures, which is before us, is closing the gun show loophole and closing it not just part way but all the way. As was pointed out, last week the Senate failed twice to close that flagrant loophole, and inadequate loopholes of their own that the country was outraged by the Senate's hypocrisy.

Now, on the third try, we have a chance to do the job right and close the gun show loophole lock, stock, and barrel.

The gun show loophole is a hole below the waterline of our gun control laws. It makes a mockery of responsible gun control. Yet, the initial attempt by our Republican friends to close it was a travesty, as has been pointed out.

It left the gun show loophole wide open. It created a pawnshop loophole. It reduced background checks from 3 business days to 24 hours, including Sundays. It allowed the interstate sale of firearms, potentially undermining State laws across the country. It prevented gun tracing. And it created a sweeping immunity for gun sellers.

The most recent version was the same. It is irresponsible and wrong. It is time for us to stop buckling to the gun industry and do what is right.

There is a real chance that the tragedy in Littleton would never have happened without the easy access to guns that the gun show loophole supplies.

One incredible statistic summarizes the magnitude of the problem we face. In 1996, the most recent year for which information is available, handguns were used to murder 9,390 people in the United States.

I might mention why it is difficult to get gun figures. We are using 1996 figures because the power of the NRA prohibits the Centers for Disease Control from collecting that information. The only way they can get the information is to look at the death certificates, and that is enormously costly and takes an incredible amount of time. We are prohibited—the country is prohibited—from having even the most recent and accurate information about gun deaths. If it is not a problem, why does the National Rifle Association oppose us in having that kind of information? And they have opposed it. They prohibit us from getting that information, so we use the 1996 figures—9,390 people in the United States.

In countries with tough gun control laws, the firearm homicide rate is over 97 percent lower—97 percent. The number of handgun murders in 1996 were 2 in New Zealand, 15 in Japan, 30 in Great Britain, 106 in Canada, and 213 in Germany. The case for strong gun control is overwhelming. It saves lives. It
saves children. It saves whole communities.

Another shocking statistic makes the same point. Each day across America, 13 more children die from gunshot wounds. That is the equivalent of one Littleton each day, every day somewhere in America.

How can the Senate continue to play ostrich—head in the sand, ignoring this overwhelming need? How many more Littletons do we need? How many more wake-up calls will it take? When will we finally do what it takes to keep children safe and stop sleepwalking through crisis after crisis after crisis after crisis of gun violence?

If the Senate cannot even close the gun show loophole, we may well be condemning communities across the country to a future Littleton tragedy of their own.

It is wrong for the Senate to say that easy access to guns had nothing to do with what happened at Columbine High School. It is wrong for the Senate to whistle past the graveyard of Littleton. It is wrong for the Senate to pretend to make minor adjustments in the gun laws, while gaping loopholes, like the gun show loophole, need to be closed. It is wrong for the Senate to give the National Rifle Association a veto over the reforms that cry out to be taken in the wake of that tragedy.

Littleton shocked the conscience of the country, and it finally seems to have shocked the conscience of the Senate. It is clear that the Senate should return to the gun show loophole and try again to close it before more innocent lives are lost. And, like closing the gun show loophole, there are other urgent steps that need to be taken.

Gun laws work. The facts speak for themselves. It is long past time for the Senate. It is clear that the Senate will not have this revolving-door justice any longer.

We know many examples of how tough gun laws, in combination with other preventive measures, are having a direct impact in reducing crime. In Massachusetts, we have some of the strongest laws in the country. There are tough restrictions on carrying concealed weapons. Local law enforcement has discretion in issuing the permits required by law, and an individual must show a clear need.

The minimum age for sale of handguns has been raised to 21.

There are increased penalties for felons who possess firearms.

Adults are liable if a child gets an improperly stored gun and uses it to kill or injure himself or someone else.

Firearms must be stored with child safety locks.

We have a gun-free schools law.

We have enhanced standards for licensing gun dealers.

A permit is required for private sales.

Saturday night specials are banned.

Lost or stolen firearms must be reported.

These are common sense requirements that save lives and impose no problem whatsoever for legitimate hunters and sports persons.

Look at what has happened in terms of firearm homicides in Boston. These figures are reflected across our Commonwealth. We have seen in 1993, 65; 1994, 64; and then 39, 24, 26, 4. So far this year, there has not been a single youth homicide in 128 schools.

Tough gun laws do work. Tough gun control, tough preventive action. That is what we stand for. And the results are out there.

When we compare States with strong gun laws to those that have weak gun laws, the results are dramatic. In 1996, for Massachusetts, the number of gun deaths for persons 19 years old or younger was 2 per 100,000.

In States that have the weakest gun laws, the numbers were significantly higher: 5.9 gun deaths per 100,000 in Indiana; 9.2 gun deaths per 100,000 in Mississippi; 5.1 gun deaths per 100,000 in Utah; 6.9 gun deaths per 100,000 in Idaho—2 gun deaths per 100,000 in Massachusetts.

It is clear that strong gun laws help reduce gun violence, yet when Democrats have proposed steps to take guns out of the hands of young people—proposals that would save lives—the Senate has too often said no.

The overwhelming majority of the American public wants to pass reasonable gun control measures.

The American people clearly want these common sense laws on the books, and they will just as clearly hold Congress accountable if we fail to act or only pretend to act. The lesson of the Senate's past failed attempts to close the gun show loophole is clear: The American people will hold us accountable if we refuse to act. Nothing concentrates the minds of Members of Congress like the knowledge that they are about to be hung out to dry at the next election. So let's concentrate on closing the gun show loophole and the other blatant loopholes in the Nation's gun laws.

Just finally, I put in the Record that the ATF has examined the number of crime guns traced during 1996 and 1997 to federally licensed firearm dealers and to federally licensed pawnbrokers. While 31 percent of the federally licensed dealers had one or more crime guns traced to them, 35 percent of the federally licensed pawnbrokers had one or more crime guns traced to them.

It seems that everything cries out for this particular amendment. Let's take action toward what is right for the children in America, the families in America, and to reduce violence in America.

I thank the Chair.

Several Senators addressed the Chair.

Mr. PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I thank the Senator from Massachusetts.

I think, in fundamental principles, we are in accord on the efficacy. The virtual elimination of guns in America, we cannot be together on. I think the second amendment provides for that. But tough law enforcement, as the Senator said, tough gun control—I would say, tough gun prosecutions—and prevention do work.

The Boston project is a good model for America. One of my staff members has been there to try to analyze how it is they have achieved such success. The reason is they really enforce the law. They go out and deal with these young gang members. If they have them on probation, they monitor them. They talk to them. They say: You are supposed to be at home at 7 o'clock at night, the probation officers do not work from 9 to 5 in Boston. They will work from 1 until 10 o'clock at night, and they will go out with police officers and actually verify whether or not those young people are complying with the probation and parole requirements placed on them. What is happening in America is our court systems are so overwhelmed with juvenile crime that they have not been able to even carry out their mandates. If you give them the power, you need to make sure they honor and comply with the terms of the probation. One possibility is to do drug testing, so that they are not getting back on drugs which may be driving them to crime. The other possibility is by going to school on time; or if they have a job, showing up on time for it; if they have a curfew placed on them, being home in their bed and not running the streets at night.

These are the kinds of things in which Boston has invested. We asked: Well, what happens when a young person in Boston does not do what they say—for example, they have been caught in a burglary, have been released on probation, and have been running around with a gang. The judge says: Don't hang around with that gang anymore; be in at 7 o'clock; and be at school on time.

What happens if they do not do go to school, and continue being a gang member? What happens if they do not come home at night when they are supposed to or otherwise do not comply with the judge's order? In most cities, unfortunately, nothing happens.

If you care about children, you will make sure something happens, because we want to intervene early in their lives in order to direct them on a new and healthy path. If we love these children, and really care about them, we will not have this revolving-door justice that goes on in America.

There was a night watchman killed by three young people in Alabama just 3 years ago when I was the attorney general of Alabama. I called the chief of police and asked the chief: Chief, what is the criminal record on these three youngsters? They were out loose. One of them had 5 prior arrests, another one had 5 prior arrests, and one had 15 prior arrests. That is the pattern in America.

Mr. BUTTERFIELD. Who has written on this subject numerous times for the New York Times, did a study of the Chicago juvenile court system. He
found they spend 5 minutes per case. These children are not being confronted effectively by the court system when they are beginning to get in trouble. We need to make that first brush with the law their last. And it does include tough law enforcement. You have to implement children who refuse to take advantage of the opportunities that have been given them.

So we do have money in here that would allow for alternative schools to be built, for drug treatment programs, for mentoring, and counseling to occur, and for drug testing to find out whether young people are on drugs. All of those funding programs, and many more, are here to help strengthen juvenile justice.

I say to those who care about juvenile justice in America today, go down and talk to your judges, your district attorneys, and your chiefs of police. Ask them what is needed in their local juvenile court system in order to make them attempt to intervene and change the lives of young people who are getting in trouble. You will find that those judges will have a list of things they wish they could have. This bill would fund virtually every one of them.

It would give matching funds to expand detention facilities. It would give more money for drug treatment and other activities of this kind. It would allow each community to make application for funds to fill the misdirected hands in their system so that they could have a comprehensive, coordinated effort against crime.

I think we can make progress in that regard. I hope we can go on and move this bill to final passage.

I see the Senator from New York would like to comment.

Mr. SCHUMER addressed the Chair.

Mr. SCHUMER. The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I thank the Presiding Officer for yielding and the Senator from Alabama for his courtesy, as well as all the other Senators.

I think, my colleagues, this afternoon will be a moment of reckoning on the floor of this Senate. The vote that will occur on closing the gun show loophole—really closing the gun show loophole—will be historic, because it will really mark the difference as to whether guns are going to be sold or whether we are going to continue the same game we have been playing for the last 4 years.

What game is that? The game is a simple one. When the public gets aroused, it too often because of a tragedy, then some of us try to deal with the causes of that tragedy in a variety of different ways, including reasonable restrictions preventing children, preventing felons, from getting guns.

What has occurred is, those who oppose us have said: Oh, we agree with you. And they put in a substitute amendment which does not close the loophole. They put in a substitut which makes it appear as if the problem is being solved but does not solve it. Then, inexcusably, another tragedy occurs.

Today is the day we can stop that. We can stop with the modest, simple measure to close the gun show loophole, to really close it.

Now, let me go over, for my colleagues—and then I want to talk to a little bit about what the Senator from Alabama had the status of the present legislation that has passed on the floor of the Senate and what we are attempting to do with the Lautenberg amendment this afternoon. Right now, after passage of the Hatch-Craig amendment, we give with one hand and take away with another. There are, right now, three types of people under the status of this legislation who can go to gun shows and sell guns: One is federally licensed dealers. These people, since 1968, whether they sell at gun shows or anywhere else, have to keep records and, since 1993, with the passage of the Brady law, have to do background checks. They always have and they will continue to, unless we repeal that for some unforeseen circumstance.

Of course, there are those who are not licensed dealers. Under present law, they could sell up at gun shows and sell guns without background checks, without recording processes. The Craig-Craig amendment corrected that. That amendment, prevents that from happening. A background check would have to be done, as it should. There shouldn't be any loopholes.

The country came together in 1993, passed the Brady law, and it has worked. It has worked dramatically so. It has worked so that over 250,000 felons who walked into licensed dealers were refused guns.

Let me show you how it has worked in the last four years. Since last Wednesday, May 12, 1999, when the Senate missed the opportunity to close the gun show loophole once and for all, the FBI, using the Brady law's national instant check system, stopped 1,550 felons, fugitives, stalkers and others who should not have guns from buying licensed guns. In one week, 1,500 people were stopped. But in that same week, sure as we are here, some of those very same people went to gun shows and bought guns without a check. What kind of mindless gun control is there when the dealer has to do the check but you can easily go to a gun show and get around it.

Over this past weekend, there were a minimum of 32 gun shows. In every one of those shows, children, felons, the mentally incompetent, and stalkers could go buy guns without ever being detected. Why?

Because of the public outcry about what went up in Littleton, the Senator from Utah and I told the Senator from Arizona, got together and said: Wait a minute, we thought we were really closing the gun show loophole. It wasn't. And so this Craig-Hatch amendment evolved.

But the same darn thing occurred. So while closing the loophole for non-licensed dealers, they opened it up for a whole new category of people called special licensees. What was the reason to have a special licensee? Nobody has figured that out. But a special licensee can go to a gun show, under the status of the Hatch-Craig amendment, and not do a background check.

It is a shell game. On the one hand, we are not going to let unlicensed dealers do this, and then we say, but if you become a special licensee, you can.

The American people are just appalled at what this Senate is doing. A special measure like closing the gun show loophole, which can be done easily and quickly and noncontroversially, can't pass. We have to do an elaborate kabuki dance to make it seem as if we are doing something but not do anything at all.

So this is a moment of reckoning for the Senate. Are we going to step up to the plate and just close the gun show loophole once and for all by passing the amendment this afternoon, or are we going to continue to play games? I say to my colleagues, playing games won't do anymore. There has been a sea change in the American people in the last few weeks, because they are fed up.

After Brady, something happened. Before Brady, the Brady lobby would tell citizens throughout America, if Brady passes, the hunting rifle your Uncle Willy gave you when you were 14 will be confiscated and some people in big black boots will knock on your door and take your guns. It was a message of fear.

Well, wherever I go in my great and diverse State, I ask people who are gun owners, has the Brady law interfered with your right to bear arms? And they say no. So the fear tactics that the NRA has used, the scare tactics, the big lie is losing velocity. That is why they have lost members, half a million, in the last few years. That is why they are unable to garner support.

Now, because of the tragedy at Littleton, there seems to be a whole change in public opinion. They say, enough already. It is not just among Democrats like myself who have been arguing for these changes for over a decade. You have two candidates for the Republican nomination for Senate who have had the courage to say the NRA is not always right. In 1996, no candidate, much as they wanted to,
would dare say that. That is as good an indication of the change in public opinion as any.

I respect Elizabeth Dole; I respect John McCain. They do not agree with me about everything on guns. I do not expect them to. But on logical, rational methods of closing loopholes of a law that has received overwhelming public support and, more importantly, has been successful, 1,500 felons last week stopped from getting guns by Brady, how we have to go to gun shows to get around the law to buy those same guns we don’t know.

Not only did the Hatch-Craig amendment fail to deal with the gun show loophole; it added three more loopholes.

Pawnshops: There has been a law that has worked. It said, you are a person; you go bring your gun to a pawnshop, before you retrieve it, let there be a background check—no harm to anybody. That has been in place since, I believe, 1997; it may have been 1996. It has worked. Hundreds of felons, I think it is 254, have been caught going to pawnshops, and all of a sudden we are going to give up. Again, give with one hand take away with the other.

What are we saying? Do we want to have a loud speaker go up and down the streets of our country saying: Hey, felons, hey, kids, here are ways to get around the Brady law; you don’t need a background check. That is what we are doing here in the Senate.

Then we have opened another loophole. This one is totally befuddling. The instant check system has worked.

It was proposed by people who didn’t agree with me when we wrote the Brady law. But we said let’s see if this works. Well, it has, in about three-quarters of the cases. So people can get their check instantly and then go out of the gun shop with their gun. No problem, as far as I am concerned. Some people think a cooling off period is important, and it is the main purpose, in my judgment, three big ones. Why? Well, I know why. We all know why. It is because of the power of the gun lobby, because of the power of the NRA. There is no other reason. I have been asking for a rational reason why, and you hear “too much bureaucracy,” or something like that.

Well, in this juvenile justice bill, we are creating a lot more bureaucracy to put more kids in prison who commit serious crimes. I agree with that. I am a pretty tough-on-crime guy. But we don’t get up on this side and say: too much bureaucracy. We don’t hear colleagues on the other side say: too much bureaucracy. That is a false argument if there ever was one.

People want bureaucracy when they want Government to do something. If you want to put kids or felons away, it is more bureaucracy, more prosecutors. I am for it, but it is more bureaucracy. The instant check system has worked. Why in God’s name did we reduce that to 24 in the Hatch-Craig amendment? Why?

So what are we saying? Do we want to say: we can go across the country to sell a gun where there is a glitch in the.computer, and in Rochester, NY, to do better prosecute the gun show loophole. If you can do it quicker, and it may be, but the main purpose we agree with me when we wrote the instant check system has worked. The instant check system has worked. Hundreds of felons, I think it was before the legislation, and anyone, if there ever was one.

The bottom line is a simple one. In the legislation we passed by one mere vote last week, we did not close the gun show loophole. We closed one little loophole and opened up another one to take its place. It is as wide open as it was before the legislation, and anyone, as my colleague from Nebraska has pointed out, could become a special licensee; and then we created three more loopholes.

Mr. President, we would have been better off without Hatch-Craig than we would have been with it. It was easier to stop children and felons from getting guns before Hatch-Craig than it is now, if it were to become law. So who are we kidding?

Then one final argument to my colleagues, to my friends on the other side—the Senator from Alabama is not here, but he will be even more ably represented by the Senator from Idaho. That chart has been up here for a long time. I think we have heard more talk about that chart than about a lot of the legislation we are talking about. But that is fine. That is a legitimate argument, in my judgment. But I ask my friends—they say there is not enough prosecution of firearms violations. I agree with them. I agree with the Senator from Pennsylvania, in the budget last month, we put in a proposal to add $33 million to what has been appropriated for the U.S. Attorney in Philadelphia, and in Rochester, NY, to do better prosecutions of those who violate Federal firearms laws.

As you know, most of the firearms laws are State. It has never been a Federal responsibility. Folks on the other side want to make it one, and that is fine with me. I am not one who says the Federal Government should not be involved in crime fighting. In fact, over the years, we have had the Federal Government to be involved in crime fighting. But, again, why does prosecuting those who violate our firearms laws contradict closing the gun show loophole? It doesn’t. Both should be done. They should go together.

As I mentioned before, in the debate we had with the Senator from Idaho a while back, there are grieving families in Littleton. There may be prosecutions of some who gave guns to Mr. Klebold and Mr. Harris, who created the tragedy. I am sure those prosecutions don’t make the parents of the 13 dead children feel any better. I saw one of them begging us on television at the rally in Denver last week. They would both like to do both: prosecute those who violate firearms laws, but at the same time prevent children like young Harris and Klebold from getting guns to begin with.

A prosecution occurs after the crime. It is sometimes deters crime because people don’t want to be prosecuted. I have been tough on crime—for mandatory minimum sentences, and for incarceration—my whole career. But, in God’s name, don’t use that as a worthy cause for an excuse to do for simple, moderate things such as closing the gun show loophole, closing the pawnshop loophole and allowing the FBI system to check when the instant check system doesn’t work.

In conclusion, I know my friends from Nebraska and Utah wish to speak. This afternoon will be a moment of reckoning on this floor. It will determine, very simply, whether we are going to persist, as we have in the last few days, about coming up with solutions that don’t do the job—that we are almost designed not to do the job—or whether we can actually do some real good in a simple measure, sponsored by the Senators from New Jersey and Nebraska, and close the gun show loophole. The yes and nays this afternoon will determine which side each Senator is on. The eyes of America will be upon this floor this afternoon. Let us pray we do the right thing.

I yield the floor.

Mr. Hatch. Mr. President, I have been working very closely with the Democratic leadership to try to get this matter to a conclusion. As I understand it, including this gun amendment, there are two others, and possibly a third besides, as an amendment. We are going to try to finish this bill.

Now, my personal impression is that they have gone too far. They are pushing this way too far. As the manager of this bill, I have tried to bring both sides together, and we have made a real effort to do so. I am starting to question whether or not we are getting a good-faith effort on the other side.
Now, this is the second time we have debated the Lautenberg amendment—the second time. To be honest with you, there is so much more in this bill than just the gun matters. I have helped to effectuate compromise on the gun amendments. I believe this has been to the satisfaction of most all Democrats and most all Republicans—not all on either side. Here is where we are. We have fought back amendments on one side. I was told by colleagues on the other side they have on their list of amendments to eight and that three, maybe four, including this amendment, would be on gun control.

Today, they tell us that maybe they can agree to limit amendments. I have chatted—and others on our side, too, to try to resolve these problems. The gun issue is an evolutionary issue; there is no question about it. We are trying to find ways of satisfying the vast majority of Senators. So far, we have been able to do that, except with regard to the Lautenberg amendment. There is a very good reason why we will not vote for the Lautenberg amendment, or why we are going to vote for a tabling motion. Much has been said about the black market push that is going to happen if we get too bureaucratic about it, where people won’t go to gun shows, where they will just sell them on the black market. That is the last thing on Earth I want, but that is what is going to happen.

I have to tell you, it is time to cut the rug. It is rug-cutting time. We are giving the Lautenberg vote not because we think it is a worthy thing to do but because they are insisting on it. But there is a time when good faith says we move the bill. If Lautenberg is passed, so be it. If it does not pass, then we will see.

I have been saying for a long time that there have been numerous delays in debate on this matter. I have had some indications that there are going to be some more delays. We will have to see.

I am going to encourage my friends on the other side to limit the time.

Let’s get time agreement. Let’s move ahead. Let’s save the time of everybody in the Senate, and let’s get a bill that will do something about juvenile justice in this country and about solving some of these serious problems we have.

Mr. REID. Mr. President, will the Senator yield?

Mr. HATCH. Yes; I am happy to yield to my friend from Nevada.

Mr. REID. I have been here this morning, and, of course, the manager of the bill has been here all morning. I want to say to everyone within the sound of my voice that nothing has changed on this side of the aisle since yesterday. We have agreed to cut down our amendments from about 90 to a handful of amendments. We have indicated that as far as gun amendments, we had a finite number of those we were going to offer. I don’t know what has gone on in the debate here this morning. I have been trying to follow this—that is about the only thing I can do. Senator from Utah should realize that nothing has changed since yesterday. We want to have a bill. We have worked hard to cut down the number of amendments. My friend, the manager of the bill, has worked all weekend with the staff to prepare down these amendments. In short, we want a bill to go forward. We want to finally resolve something that the American people can be proud of. We have agreed not only on the number of amendments but we have been very fair on the time allocation.

On this amendment today, there has been a good debate. We haven’t taken an inordinate amount of time.

In short, I say to my friend, who was kind enough to yield to me, that nothing has changed since yesterday. We feel very strongly about our positions. We are happy to defend them, articulate, and advocate them this morning.

Mr. HATCH. If the Senator will yield, I will tell him that the majority leader has asked me to get a time agreement when we finally vote. I think we are there. If you are down to eight, or actually seven after this one, I can get ours cut down once we know where we are, and then we can have final passage, and hopefully before the end of the day. I think we can do it.

Mr. REID. I would say to my friend from Utah, we have been waiting for the managers’ amendment to be accepted. I would note that at that time, we will be in a position to lay out what our amendments are. We will have time agreements on them.

As far as final passage, we know that there can be games played with that unless we set a time certain for final passage. We want a bill passed. We want it to pass in a very short period of time. Nothing has changed since yesterday on this side of the aisle. We want to move forward in an expeditious manner.

Mr. HATCH. I appreciate my colleague’s remarks. I believe him and have great respect for him, as he knows.

Let me just say this: The managers’ amendment is basically agreed to between the two managers. It is a matter of making the final drafting changes, as I understand it. We intend to have that done and filed and approved, hopefully, and probably this afternoon, it seems to me. We want to do that. But let’s move this ahead.

Let me just finish my remarks on this, because I forgot that the distinguished Senator from California needs a chance to make her remarks. She said she would be 2 or 3 minutes.

Mrs. BOXER. Yes. Let me just say that I want to defer to Senator KERREY because he has such time problems. I have cleared my desk this morning so I can be here all day. I decided it would be fair to allow the Senator from Nebraska to proceed.

Mr. HATCH. I would like to make remarks in rebuttal, if I may, because Senator KERREY has already spoken. But if he needs to speak, I will be happy to yield to him. If the Senator from California is going to speak for 2 or 3 minutes, I will be happy to yield.

Mrs. BOXER. I will yield, and wait until the Senator from Utah finishes his remarks, and see where we are at that point.

Mr. HATCH. I thank the Senator very much.

I have been saying for a long time that how the Congress will deal with firearms violence is an inordinate process that this cannot do in a short period of time. There are so many of us who feel very strongly about our positions.

Mr. REID. Mr. President, will the Senator yield?

Mr. HATCH. I would like to make remarks in rebuttal, if I may, because Senator KERREY has already spoken. But if he needs to speak, I will be happy to yield to him. If the Senator from California is going to speak for 2 or 3 minutes, I will be happy to yield.

Mrs. BOXER. I will yield, and wait until the Senator from Utah finishes his remarks, and see where we are at that point.

Mr. HATCH. I thank the Senator very much.

I have been saying for a long time that the Congress will deal with firearms violence is an inordinate process. Congress is unable to do this, and I think it is time to let this Congress do its job. We have been here all day, and, of course, the manager of the bill believes this is necessary.

Several days of debate last week, Republicans took a step to require background checks at gun shows within the States, including the second amendment. We are here to do what is best for our children and to uphold the Constitution of the United States, including the second amendment. We are not here to score debating points, it seems to me. That type of comment, it seems to me, is very unconstructive and not conducive to getting a bill that will help our children and our country as a whole.

I would note that the evolution of this matter continues. This time, the supporters of the Lautenberg amendment are making changes to their proposal to bring it closer to our plan that we passed in the Hatch-Craig amendment. My sense and hope is that our efforts will continue to evolve and we will be able to find common ground. That to me would be a great, great accomplishment. But I haven’t seen that yet. We are evolving towards that.

I appreciate that my colleagues have recognized that the concerns we raised were legitimate and they have taken some steps in this current amendment to address the concerns. But I certainly
don’t think they have gone far enough. I think they have gone too far in making it look like the only matter to consider on this whole bill happens to be guns.

Let’s review how we got here. Under current law, non-licensed individuals can sell firearms at a gun show without obtaining a background check. This was the loophole that the President, the Lautenberg amendment sponsors, and others said they were concerned about. Yet, the bill as amended last week requires background checks for these transactions at gun shows.

Under current law, persons who only want to sell firearms at a gun show are not licensed at all and perform no background checks. Our bill as amended requires sellers to obtain a federal license to sell firearms at a gun show. Because these special licensees, or temporary dealers, are now included in the Gun Control Act, they are subject to the background check requirements.

Our proposal also prevents the Federal Government from taxing background checks. The liability protection and tax relief were powerful incentives for persons to have background checks.

That is why we put them in the Hatch-Craig amendment.

Last week, when we first debated the Lautenberg amendment, we pointed out several problems.

First, the Lautenberg amendment’s definition of a gun show was, at best, unfocused. If two neighbors got together with 25 guns each and sold a gun, they would have been surprised to find that they had created a gun show and were criminals under the Lautenberg amendment because they did not conduct a background check or get a permit from the ATF.

We understand that the revised Lautenberg amendment now modifies the definition of “gun show” to conform with what is already in the bill, what we put in the Hatch-Craig amendment. It isn’t totally that way because they still have their 50-person standard, and so forth, but basically they have come our way on it.

My colleagues on the other side of the aisle complain that the bill’s current definition of “gun show” would allow “hundreds of guns” to be sold at flea markets that do not fall under the 10 or more exhibitor or 20 percent exhibitor rule. Of course, if a very few sellers were selling hundreds of firearms, they would in all likelihood be engaged in the business—and that is an important phrase—in the business of selling firearms without a license. Under current law, such persons are subject to fines, prison sentences or both.

Secondly, the Lautenberg amendment allowed the imposition of taxes and fees on background checks that constitute a substantial cost for complying with the law. Now what does that do? That is going to force people not to go to gun shows where they can legitimately sell them with background checks now that we require it in this bill, and to go off and sell them on the black market.

What are we trying to do and what it seems to me will be the inevitable result of some of the approaches under the Lautenberg amendment, will be that we will create a huge black market. This is exactly the opposite of what we want to accomplish. I am sure that the distinguished Senator from New Jersey does not want to accomplish that, nor anybody else on this floor, but think it through. It doesn’t take many brains to realize that is what will happen.

We understand the revised Lautenberg amendment does not “impose” taxes on sellers and purchasers. However, the tax to which we objected is paid by the buyer or entity that conducts the background check, not to a nonlicensed buyer or seller. Of course, the licensee, special licensee or special registrants now in this bill will pass this fee on to the buyer or seller who will then pass it on to the seller or they will pass it on. They will not just do this out of the goodness of their heart. As they do that, people will go into the black market to sell their guns, the exact opposite of what the distinguished Senator from New Jersey and I and others, who are really trying to do something constructive in this area, want to occur.

In short, notwithstanding its appearance, the revised Lautenberg amendment allows for an ATF taxing authority loophole. The revised amendment seemingly concludes that we were right, but does not correct the problem. So on this provision we have a major concern.

Third, the Lautenberg amendment required gun show organizers to obtain advanced permission from the ATF before holding a gun show. It doesn’t take many brains to realize that is something nobody wants to agree with who believes that gun shows are a time-honored right in this society under the second amendment.

We understand that the revised Lautenberg amendment currently before the Senate that will be at the end of this amendment chain to be voted upon eliminates the advance permission requirement. However, gun show organizers are still required to keep extensive records, so there is a substantial burden that would be required, over-regulatory burden.

Fourth, the Lautenberg amendment imposed extensive recordkeeping requirements for sales between non-licensed individuals, thus driving up the cost of the background check and intruding into the privacy of law-abiding citizens.

That is just typical of what we have to face around here in the zeal to score points on guns. We understand that the revised Lautenberg amendment may require less records to be kept and may require the Federal Government to destroy records held by the instant check operator, yet dealers must still keep all records on the buyer. Further, the implication that requiring records to be destroyed after 90 days conveys a new benefit is not accurate. 18 U.S.C. section 922(t)(2)(C) already requires the instant check operator to destroy records of checks that were approved, and the FBI currently destroys the records after 90 days. There is no new benefit in this system compared to current law. So the Lautenberg amendment does not improve current law at all. It just obscures it.

Some have complained that the Republican plan promotes unaccountable interstate gun peddling by gun dealers. Under current law, a dealer from one State can go to a gun show in another State and solicit sales to return home to his licensed premises, however, to ship the firearm. And the shipment must be to a licensed dealer. That is current law.

Our amendment allows one federally licensed firearms dealer to deliver the firearm to another federally licensed firearms dealer who is located out of State. He still cannot deliver a firearm to a nonlicensed individual, but only to a licensed dealer. Thus, the purveyor-dealer will have to log the firearm into his inventory, will be subject to inspection by the Bureau of Alcohol, Tobacco and Firearms to find that firearm, and will have to conduct a background check to sell a firearm to a nonlicensed dealer. This is about the most regulated sale of a firearm for which the Federal law provides.

Next, some have stated that the current bill’s provision for granting civil liability protection to persons who properly act with firearms, by bestowing qualified immunity on persons who properly act with firearms, by bestowing qualified immunity on persons who properly act with firearms, by bestowing qualified immunity on persons who properly act with firearms, by bestowing qualified immunity on persons who properly act with firearms, by bestowing qualified immunity on persons who properly act with firearms, does not have a result. They say that the revised Lautenberg amendment provides no immunity for people who transfer guns to felons and others who intend to use the gun to commit violent crimes or felonies.

The bill, as amended, recognizes that persons who act properly with firearms—this is the amendment by Hatch-Craig—including firearms transactions, should not be subject to suit. Indeed, only yesterday, the Senate recognized the value of providing limited immunities to persons who act properly with firearms, by bestowing qualified immunity on persons who properly act with child safety laws. This is a key incentive in the Kohl-Hatch-Chafee child safety lock amendment. The same reasons for affording civil liability protection apply here. Keep in mind we have a situation here that brings both sides together. The current Lautenberg amendment split both sides apart and will result, in my opinion, in more black market sales in this country, to the detriment of the country.

Further, some complain that our bill dismisses certain suits. These are only those suits at which nonlicensed individuals have voluntarily sold a firearm
through a licensed dealer who conducted a background check. If persons are now voluntarily having background checks performed at gun shows, they should not be penalized for doing so. That is something we want to encourage. We want to give incentives for that.

I also note that the bill provides no immunities for criminal sales of firearms. If a seller knowingly transfers a firearm to a buyer who will use that firearm to commit a crime of violence or a drug trafficking crime, he is subject to severe criminal penalties. Further, if the seller is convicted of that offense, the bill expressly provides that he is not entitled to civil immunities. Thus, he could be sued for compensatory and punitive damages.

Some have complained that the bill, as amended, does not impose stiff enough penalties on special licensees and special registrants for the failure to obtain a background check. However, it suspends the license and imposes a fine on dealers who do not conduct a background check. Our bill maintains the current penalties for background check failures and imposes tough mandatory minimums for the knowing transfer of a firearm to a juvenile who will use that firearm in a crime of violence. That is a major change. And we put it in our bill. In fact, a lot of these things that were requested by the President we have in the bill. We had them in there before he requested them. I suspect he might have had somebody look at the bill.

Further, through our aggressive firearms prosecution program, the CUFF Program, and the prosecution reporting requirement, we ensure that some of these violations actually will be prosecuted by the Attorney General—something that hasn’t been undertaken in earnest over the last 6 years.

Remember, of the thousands of possible prosecutions, the Attorney General only prosecuted one Brady case, one Brady background check violation, from 1996 through 1998. Of the thousands they claim, 225,000 turned back felons, one prosecution.

The Lautenberg amendment not only fails to include the tough mandatory minimums found in the Republican plan, it acquiesces in the Attorney General’s almost complete failure to prosecute Brady violations. This makes no sense. Congress passed criminal statutes; it is the duty of the Attorney General to enforce those laws. Our bill recognizes that we have a problem at the Department of Justice and our bill does something about it. Some have also stated that our bill has the potential for invading the privacy of gun owners by nonspecial registrants and special licensees to conduct background checks. This argument goes that by requiring the Instant Check operator to destroy records of firearm background check immediately, special licensees and special registrants will be able to conduct background checks on anyone, even non-gun buyers, and there will be no audit trail to catch them.

Of course, special licensees and special registrants will have to undergo a background check, a field examination, and an interview just to obtain their license or a special license. They must keep records of the persons for whom they used the Instant Check system. Thus, the ATF can take these records, contact the persons listed, and determine if they attempted to purchase a gun using the services of the special licensee or special registrant. If they did not, the special licensee or the special registrant will be held accountable, just as dealers are now.

Further, gun owners would much rather entrust their privacy interests to special licensees and special registrants than to the Federal Government. The argument that more record keeping on lawful gun ownership by the Federal Government would protect privacy better than less record keeping by the Federal Government carries little weight.

Mr. President, all of these concerns are less than compelling. The plain fact of the matter is that the revised Lautenberg amendment, though improved to some extent from the Republican proposal, is still not as good as the current bill as amended.

The revised Lautenberg amendment still fails to provide qualified immunity to persons who obey the law and act appropriately with firearms, even after the Senate voted only yesterday to provide qualified immunity when parents properly use child safety devices or child trigger locks.

The revised Lautenberg amendment still fails to provide tax relief to licensees and others who perform background checks. And the revised Lautenberg amendment still fails to relieve gun show operators or organizers of substantial new recordkeeping requirements.

Some are complaining that the 24-hour requirement for instant check is not good enough. They would require 3 days. But gun shows only last 3 days. If we do not have a 24-hour instant check requirement, the gun show is going to be over. The ATF has the technology and the funding to get the job done in 24 hours, and it should. We should not force people into a black market where there are no licenses, no records, and no background checks. We do not need to do that.

Further, we even offered to make the background check requirement for special licensees express. But my colleagues on the other side of the aisle rejected this, or objected to my modification of my own amendment, one of the few times in my 23 years where a Senator was refused the right to modify his own amendment to please the other side—even though it was not necessary, in my view, and I think in the view of any reasonable person who looks at it.

I want to make sure that persons who sell a substantial number of guns come inside the gun show and get a Federal license. These special licensees must submit to a background check and an ATF interview, they must comply with the Gun Control Act, and they must conduct background checks—some of which has simply into red tape that both sides ought to be willing to agree to.

Mr. President, there is one firearm-related provision on which I hope we can reach bipartisan agreement. And that is the treatment of pawn shops, gunsmiths and repair shops that have traditionally been exempt from the requirement to conduct background checks when they simply return a firearm to its owner. Under the 1993 Brady law, States required pawn shops to report the pawn of a firearm to State or local law enforcement agencies. Thus, there was already a state law check on the firearm. The Brady law, however, when it passed inadvertently required a Federal background check on returned firearms in addition to the state check. The pawn shops raised concerns because State law already required them to undergo a background check and background check on a background check to be returned before returning a firearm to its rightful owner affected their business.

Because these were real concerns, many in Congress supported an exemption to the Brady law which exempted pawn shops, gunsmiths, and repair shops from the Federal background check. It passed the Congress as part of the 1994 crime bill. Many of the people attacking the Hatch-Craig amendment’s so-called pawn shop loophole voted to do the same thing in 1994 when the crime bill passed. Frankly, if what we included in the Hatch-Craig amendment is a loophole, it was a loophole when Senator LAUTENBERG voted for the crime bill in 1994 when President Clinton signed it into law.

Indeed, after the Brady law passed, Senator SCHUMER even wrote a letter to the Treasury Department asking them to draft regulations to exempt pawn shops from the Federal background check requirement. To be fair, however, I should note that then-Congressman SCHUMER did vote against the amendment to the 1994 crime bill that provided the statutory exemption for pawn shops, but he still took a position in his 1994 letter to the Treasury Department which is consistent with our amendment.

If the pawn shop exemption from a Federal background check is a loophole now, it was a loophole in 1994 when Senator SCHUMER asked the Treasury Department to draft it.

The Craig amendment that we passed last Wednesday, since 1994, since the exemption for pawn shops that had been part of the Brady law for 4 years. Thus, this was not a major change in law, but a change back to how the Brady law read from 1994 to November 1998 when the exemption lapsed as the Instant Check system became effective.

However, I know that the good Senator from New York has legitimate
concerns and wants to address those concerns. Neither of us want a person to commit a crime and then get a fire-arm. However, I believe neither of us want to overburden legitimate business transactions.

As I stated repeatedly—it is my goal to find common ground on these issues. Wherever possible, I want to do what’s best for our children and the public in a manner which is consistent with our oath as Senator to uphold the Constitution. Frankly, I viewed this provision as a technical matter—one which should not be politicized.

I just have a minute more to go, maybe a minute and a half, because I know there is limited time here.

Let me just sum it up. Thus, the revised Lautenberg amendment is a small step in the right direction. And I sincerely appreciate that step. However, in my view, it fails to go far enough, and it may create more problems than it solves.

The current bill as amended strikes the appropriate balance between the privacy interests of law abiding citizens and the public interest in preventing criminals from obtaining guns. The powerful incentives included in our plan that persons comply with the mandatory background check requirement on all sales at gun shows. The Republican plan also gives law abiding gun owners the peace of mind that they have not inadvertently transferred a firearm to a felon, and requires the Attorney General to begin prosecuting the criminals who violate the existing gun control laws, something that has not been done, now, for a number of years, maybe the whole time of this administration—since the Brady bill.

Accordingly, when the time arrives, I will move to table the revised Lautenberg amendment in order to allow the bill as currently amended to stand, because I think we can do a better job of accomplishing what everybody here seems to want, everything the current Lautenberg amendment will do. I am sorry this took so long. I apologize to my colleagues, but it was important to make these points.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. LEAHY. Will the Senator yield me 30 seconds?

Mr. KERREY. Yes, Mr. President.

Mr. LEAHY. Mr. President, I never knew how much control I had over the schedule of debate, other than to find any time I step off the floor for a few minutes I can almost be guaranteed my friend from Utah will have a criticism of the way we are handling things over here.

So, while we are both on the floor, I tell him we have pared back to a dozen or fewer from the 90 possible amendments entered in the consent agreement last Friday. We have made significant progress. But also, because a number of Senators have pulled down amendments over here, amendments on our side, we have done it notwith

standing what we had to put up with when the Senator from New York and I were virtually ridiculed when we pointed out the flaws in the original Craig-Hatch gun legislation, something that took 2 days of voting and revoting as they drafted and redrafted and re-drafted all the same evidence.

They do not want to have up-or-down votes; they want to table everything. We have not done that on one the other side came up with yesterday that would have walked all over our State legislation. It would have killed it.

The fact of the matter is, we are going to have a series of votes this afternoon. If Senators will work at it, we can finish this bill today. But I say, as I said before, it is the Senators who should set the schedule, it is the Senators who should set the debate, and not the gun lobbyists.

The PRESIDING OFFICER. Mr. BURKS. The Senator from Nebraska.

Mr. KERREY. Mr. President, the Senator from Utah said we are trying to make this amendment look like the Republican amendment. I may want to look like the Senator from Utah in many other ways, but we did not try to make this amendment resemble in any way the present amendment that was adopted last week.

I appreciate very much the concern about the regulation. In fact, as I said, the Senator from New Jersey made a number of changes to reduce the regulatory requirements. All we have left are the same regulatory requirements that all licensed gun dealers have to go through.

We will see about 3.5 million handguns sold this year through licensed dealers and 2 million in nonlicensed environments. What we are trying to do, for those of us who believe that background checks—there are some who do not. There are some who voted against the Brady bill and did not like the background checks. We have left, but I think they have worked. They have reduced in America the number of felons who have handguns. They have reduced the number of people who are dangerous with guns from having handguns. It is generally accepted that the evidence shows Brady has worked and it has made America safer as a consequence.

What we have, though, is a regulatory differential. All of us can understand that if you have people regulated one way and another group of people are regulated another way, it can produce some significant distortions in people’s behavior.

Right now, it is easier to go to the 2,000 to 3,000 gun shows every year and buy a handgun or another gun than it is from a licensed dealer. Why because you do not have to go through a background check. You do not have to do the same things that you do through a licensed dealer. I do not know if the gun show promoter was raised when Brady was passed. Perhaps it was. We did not create a black market with Brady. We still have people who are either felons or who should not have handguns, who are mentally unstable, or have something in their background that makes them, in the judgment of law enforcement, dangerous to own a gun.

Mr. HATCH. Will you be able to Senator yield?

Mr. KERREY. I have 9 minutes left.

Mr. HATCH. If the Senator will yield on that point, it is not Brady we are talking about. It is gun shows we are trying to resolve, and if we do not resolve it right, you are going to create a black market.

Mr. KERREY. But the Senator said his fear with the regulation is that we are going to have black markets. All done—and I urge colleagues, especially the public to listen—is we say to a gun show operator, like every other licensed dealer, a gun show promoter has to register with ATF and pay a small fee.

We are not passing on the cost of the background check. Brady does not allow that. I voted against that. It does not allow us to pass on the cost of the background check. All it says to the gun show operator is you have to do the same thing a licensed gun dealer has to do. You have to register with ATF and pay a small fee.

Secondly, the gun show vendor has to show proof of identification when they check in at the gun show to verify they are who they claim to be. And the third requirement, hardly a prohibitive burden, in my judgment, is they have to notify people at the show that there are going to be background checks. We can do that with a sign.

Neither one of these three things is what I call a burdensome regulation, for gosh sakes. They are what licensed dealers have to do, exactly what licensed dealers have to do.

Again, last week when the Craig-Hatch amendment was adopted, the headline in the Omaha World Herald was, “Republican’s Close Gun Show Loophole.” Under this amendment, there is what you claim to be an exception. It is true gun shows will have to do background checks, except for people who have special licenses. Look who gets a special license: Somebody who is buying or selling firearms solely or primarily at gun shows. That is the first exception. Basically, I am saying, yes, if you are a gun show, you have to do a background check, you have to do everything a licensed dealer has to do unless you are a gun show. I am a gun show, you do not have to do it. That is one of the exceptions provided in this law.

Again, if you want to go home and say, yes, I voted to close the gun show loophole, right in this thing it says I cannot sell a special license to operate a gun show without having to do background checks if I am buying or selling firearms solely or primarily through gun shows. It does not get the job done.

We impose regulations on licensed gun dealers. I have no idea licensed gun dealers in Nebraska. I said earlier, I am a supporter of the second amendment. I believe the right to bear arms
VerDate Mar 15 2010 22:04 Nov 01, 2013 Jkt 081600 PO 00000 Frm 00015 Fmt 0624 Sfmt 0634 E:\1999SENATE\S19MY9.REC S19MY9mmaher on DSKCGSP4G1 with SOCIALSECURITY

My answer, as just one Senator, is: As long as it takes to change this. We have to change the reality that our children face.

When you ask parents today, do they feel secure when they send their kids off to school, no, they don’t.

One of the things we could do is close the gun show loophole. Senator Lautenberg offered us that opportunity. It was voted down yesterday. Senator Kerrey have teamed up. They have made a few changes which I think strengthen the amendment. We want to try again to close the gun show loophole.

I ask unanimous consent that this op-ed in the Los Angeles Times by Janet Reno be printed in the Record.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Los Angeles Times]

LET’S CLOSE THE GUN SHOW LOOPHOLE

(By Janet Reno)

The U.S. Senate has a historic opportunity to make our streets and communities safer by closing the loophole that lets fugitives and other prohibited people buy deadly weapons at gun shows without Brady background checks. Last week, the Senate passed an amendment that is supposed to close the loophole but creates new ones, letting criminals redeem their guns from pawnbrokers without background checks, weakening the Brady checks that currently are made at gun shows and, for the first time in more than 30 years, allowing federal firearms dealers to cross state lines to sell guns.

I have watched this debate unfold with sadness, but I remain committed to working with the Senate on this issue. In 1993, we worked in a bipartisan fashion to pass the Brady law, which has prevented more than 250,000 felons and others who should not have guns from getting them. I am hopeful that this spirit of bipartisanship and, together, take the common-sense step of expanding the Brady law’s protections to gun shows.

So far, the Senate has passed two gun show amendments, but neither one actually closes the gun show loophole. Although the second proposal is in some ways better than the original, regrettable—and contrary to some reports—the modified amendment leaves the most dangerous loopholes of the original amendment untouched and adds at least one more, by weakening the Brady checks currently done at gun shows.

While the new proposal would require some background checks at gun shows, it would not ensure that all sales go through a check. Moreover, it cuts back the time that law enforcement has to complete a Brady background check from three business days to 24 hours, even though the court records that are sometimes needed to complete the check are due on weekends when most gun shows take place. This increases the chances that criminals will be able to buy weapons at weekend gun shows, because if the background check cannot be completed within 24 hours, the criminal can get the gun. Although more than 70% of Brady background checks can be completed within 24 minutes, some law enforcement officers to track down additional records.

May 19, 1999

CONGRESSIONAL RECORD—SENATE

S5521

This country safer for children. The debate comes on how you do it.

The distinguished Senator from Utah said: You’re pushing gun amendments on us. And just how far do you want to go?

I hope colleagues who are genuinely trying to close this loophole will consider that this amendment gets the job done; this amendment will make America safer. It is not an unreasonable change in the law. For those of us who believe the right to bear arms has meaning, it is a reasonable change. In fact, I think it is going to make it more likely that we will keep the laws that will allow law-abiding Americans to own guns and use those guns to hunt, to target practice, and all the other legal applications for which, obviously, guns are used. I hope this amendment is considered seriously by colleagues who want to close this loophole and support the Lautenberg-Kerrey amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, it is now 12:19. I understand the distinguished Senator from Utah has 3 minutes.

I ask unanimous consent that the Senator from Utah wants 3 minutes.

Mr. HATCH. I thank the Chair. I thank the Senator from Utah for extending me this courtesy.

I have been sitting on the Senate floor since about 10 this morning listening to what has been a very fine debate. What I would like to do in these 3 minutes is put this whole debate into the context of reality.

We can talk theoretically, but I think reality has finally begun to hit the American people. I think that is why we have seen, finally, proper attention given to sensible gun laws.

We can see here in the 11 years of the Vietnam war, tragically we lost 58,168 of our finest people. That is 58,168 families devastated—devastated—by such a loss. Who knows what the potential of those people would have been? Certainly we know that war brought this country to its knees, and whether you supported it or did not, everyone—everyone—grieves that loss.

In 11 years in America in the war at home, 396,572 gun deaths, I say to my friends on both sides of the aisle, 11 years, almost 400,000 of our people killed. 396,572 families devastated. Many of those are children. Every day in this country we have the equivalent of a Columbine loss. Thirteen children a day are killed in my home State of California. The No. 1 cause of death to children lives in America. Gunshots.

So what are we trying to do in this debate with the juvenile justice bill on both sides? I think we want to make

In Omaha, you have to go to both the police department and to the sheriff’s office in order to eventually do a transaction when you are purchasing a handgun. It may have seemed unreasonable in the beginning, but it is working. It is making our country safer.

I hope colleagues who are genuinely trying to close this loophole will consider that this amendment gets the job done; this amendment will make America safer. It is not an unreasonable change in the law. For those of us who believe the right to bear arms has meaning, it is a reasonable change. In fact, I think it is going to make it more likely that we will keep the laws that will allow law-abiding Americans to own guns and use those guns to hunt, to target practice, and all the other legal applications for which, obviously, guns are used. I hope this amendment is considered seriously by colleagues who want to close this loophole and support the Lautenberg-Kerrey amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, it is now 12:19. I understand the distinguished Senator from Utah has 3 minutes.

I ask unanimous consent that the Senator from Utah wants 3 minutes.

Mr. HATCH. I thank the Chair. I thank the Senator from Utah for extending me this courtesy.

I have been sitting on the Senate floor since about 10 this morning listening to what has been a very fine debate. What I would like to do in these 3 minutes is put this whole debate into the context of reality.

We can talk theoretically, but I think reality has finally begun to hit the American people. I think that is why we have seen, finally, proper attention given to sensible gun laws.

We can see here in the 11 years of the Vietnam war, tragically we lost 58,168 of our finest people. That is 58,168 families devastated—devastated—by such a loss. Who knows what the potential of those people would have been? Certainly we know that war brought this country to its knees, and whether you supported it or did not, everyone—everyone—grieves that loss.

In 11 years in America in the war at home, 396,572 gun deaths, I say to my friends on both sides of the aisle, 11 years, almost 400,000 of our people killed. 396,572 families devastated. Many of those are children. Every day in this country we have the equivalent of a Columbine loss. Thirteen children a day are killed in my home State of California. The No. 1 cause of death to children lives in America. Gunshots.

So what are we trying to do in this debate with the juvenile justice bill on both sides? I think we want to make

In Omaha, you have to go to both the police department and to the sheriff’s office in order to eventually do a transaction when you are purchasing a handgun. It may have seemed unreasonable in the beginning, but it is working. It is making our country safer.

I hope colleagues who are genuinely trying to close this loophole will consider that this amendment gets the job done; this amendment will make America safer. It is not an unreasonable change in the law. For those of us who believe the right to bear arms has meaning, it is a reasonable change. In fact, I think it is going to make it more likely that we will keep the laws that will allow law-abiding Americans to own guns and use those guns to hunt, to target practice, and all the other legal applications for which, obviously, guns are used. I hope this amendment is considered seriously by colleagues who want to close this loophole and support the Lautenberg-Kerrey amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, it is now 12:19. I understand the distinguished Senator from Utah has 3 minutes.

I ask unanimous consent that the Senator from Utah wants 3 minutes.

Mr. HATCH. I thank the Chair. I thank the Senator from Utah for extending me this courtesy.

I have been sitting on the Senate floor since about 10 this morning listening to what has been a very fine debate. What I would like to do in these 3 minutes is put this whole debate into the context of reality.

We can talk theoretically, but I think reality has finally begun to hit the American people. I think that is why we have seen, finally, proper attention given to sensible gun laws.

We can see here in the 11 years of the Vietnam war, tragically we lost 58,168 of our finest people. That is 58,168 families devastated—devastated—by such a loss. Who knows what the potential of those people would have been? Certainly we know that war brought this country to its knees, and whether you supported it or did not, everyone—everyone—grieves that loss.

In 11 years in America in the war at home, 396,572 gun deaths, I say to my friends on both sides of the aisle, 11 years, almost 400,000 of our people killed. 396,572 families devastated. Many of those are children. Every day in this country we have the equivalent of a Columbine loss. Thirteen children a day are killed in my home State of California. The No. 1 cause of death to children lives in America. Gunshots.

So what are we trying to do in this debate with the juvenile justice bill on both sides? I think we want to make
With all of the flaws and loopholes created by this amendment, even in its modified version, is there a better alternative? Fortunately, there is. Last November, President Clinton directed Attorney General Robert E. Rubin and me to make recommendations on closing the gun show loophole. We published a report in January that lays out a streamlined approach, using federal and state licensed firearms dealers to do all the background checks at gun shows, even for unlicensed sellers. We also proposed a way to get limited direct tracing on the many different models of guns sold so that we would have the ability to trace the guns if they were later used in a crime. In contrast, the amendment will delay direct tracing ability, because checks will be done by people who have no obligation to cooperate with tracing requests.

Our proposal allows gun shows as we know them to continue but ensures that no one who is barred from having a gun can buy one at a gun show. The carefully drafted bill by Sen. Frank R. Lautenberg (D-N.J.) follows many of our recommendations.

There is still time for the Senate to revisit this flawed amendment and adopt legislation that plugs the gun show loophole once and for all. We want to work with Congress to develop sound, workable and effective proposals to close loopholes in our gun laws. The current amendment, even as modified, moves us in the wrong direction.

Mrs. BOXER. I simply say that Janet Reno has talked here about why it is important to try to finally close this loophole. She points out that the Senators on the other side who offered their loophole closing simply did not close the loophole. Senator KERREY pointed out that new designation of dealers who were exempted. The PRESIDING OFFICER. The Senate from Alabama is recognized.

Mr. WELLSTONE. Mr. President, I am going to ask a question about that, my friends. This weakens the law from its current status. I ask for 30 additional seconds, and then I will close.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. The pawnshop loophole, which was opened up by my friends on the other side, if you are going to a pawnshop, you are five times more likely to be a criminal. What they do is steal the background check. What else do they do to weaken the current law? They say that you can keep records and to comply with all of the provisions of the Gun Control Act. If we regulate gun shows without a special license, we will force these people into the black market. So let's require them to be licensed. That is one of the points I was making there. All the other points I made I do not think have been rebutted at all.

Mr. President, we now reach that point where we have the debate on four amendments, 10 minutes equally divided. The vote will be on the Ashcroft amendment No. 356; then we will go to the Sessions amendment No. 337; then to the Ashcroft amendment No. 361; and then the Santorum amendment No. 360, with the votes to occur beginning at 1 p.m., as I understand it.

Should we go with Sessions first? I will be happy to do that. Let me rearrange the order. We will start with Sessions amendment No. 337, then Wellstone amendment No. 356, then Ashcroft amendment No. 361, and then Santorum amendment No. 360, OK.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Sen. Frank R. Lautenberg (D–N.J.) follows and the vote will be on the Santorum amendment No. 360.

Mr. SESSIONS. Mr. President, is there a time agreement on this debate? The PRESIDING OFFICER. Ten minutes equally divided.

Mr. SESSIONS. Mr. President, from time to time, those of us in Congress hear complaints about governmental literature, including pamphlets, booklets and booklets paid for by the taxpayers who believe there is contained within them messages, content, material, tenacities, and philosophies that they believe are unjustified. It is not possible, frankly, for us to manage that, as probably most people think we do. Particularly, this juvenile crime bill will produce about $1 billion in new spending for juvenile crime, and over half of that will be for prevention. Much of it will then be used, as part of the Office of Juvenile Justice and Delinquency Prevention's antiviolence program, the Members of Congress. As chairman of the Youth Violence Subcommittee, we have over sight over the Office of Juvenile Justice programs. We look at Office of Juvenile Justice programs. If we are getting a lot of complaints about the material, we can raise that with them and make sure they are exercising legitimate supervision over those materials.

It is a simple amendment. I do not think it would cost anything. The Attorney General could certainly be able to receive these materials, assemble them, and summarize them for the Congress. They could be maintained so that if anybody wanted to, they could go read the complaints. I think it would result in high-quality literature. In fact, I think that if a person knows when they are producing literature that it is required to put on it information concerning the material. I think this material is produced accurately and fairly.

So the question is: What do we do about it? Someone suggested that, well, you need to pass a law that prohibits them from spending money on what things that may offend me. I am not sure how we could write a law that would say that. I am not sure we even ought to attempt to do that.

But there is a problem, a disquieting, an unease in America about some of the material getting printed at taxpayers' expense. Both liberals and conservatives sometimes are not happy with material. So I thought this would be a suggestion that we might try with regard to the funds expended under this juvenile offender accountability grant program that we have.

There would be a disclaimer, language placed on all literature funded by this bill. It would simply say this: "These materials are printed at Government expense." In addition, it would have these words: "If you object to the accuracy of the material, the completeness of the material, the representations in the material, including objections to the material's characterizations of persons' religious beliefs, you are encouraged to direct your complaints to the Office of the Attorney General of the United States."

It directs the Attorney General to designate an office. There is an address that will be put on the literature to receive the information, and if we are getting a lot of complaints about the material, we can take a look at them. If it is inaccurate or discriminates against a particular group, then we ought to be prepared to ask questions in our oversight capacity in Congress. As chairman of the Youth Violence Subcommittee, we have oversight over the Office of Juvenile Justice programs. We look at Office of Juvenile Justice programs. If we are getting a lot of complaints about the material, we can raise that with them and make sure they are exercising legitimate supervision over those materials.
the people that I am hearing from, and that I think most of us are hearing from, is that people who go to gun shows are good people. A gun show is a traditional thing.

Has my time expired?

THE PRESIDING OFFICER. The Senator is correct.

Mr. SESSIONS. Mr. President, I ask unanimous consent for 1 additional minute.

THE PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. They are getting tired of being blamed. These are good people. The murder rate in Washington, DC, is one of the highest in America. Who suggests that the guns criminals have here come from gun shows? That is not where guns used in crime are coming from. What I am hearing is, let us prosecute the criminals with the guns. That is why General Reno’s comments are, to me, frustrating, almost irritating, because during hearings we have seen a collapse of the prosecution of criminals with guns, a 40-percent decline. At the same time, we want to shift burdens on people who are not committing crimes. That is what is causing the tension here.

Senator HATCH has worked very hard with the Members of the Democratic Party to try to reach an agreement in which we can maintain accurate controls over guns that are sold in gun shows and so forth but, at the same time, not burden excessively innocent people.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, I do not know of any opposition to the amendment or anybody to speak on it. I wonder if the minority will yield back its time?

Mr. President, I ask unanimous consent that we reserve the time in opposition to this amendment and we move on to the next amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I suggest the absence of a quorum with the time charged to the proponents on this amendment.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. HATCH. Mr. President, I suggest the absence of a quorum with the time charged equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 358, AS MODIFIED

Mr. WELLSTONE. Mr. President, I ask unanimous consent that my amendment, as modified, be sent to the desk. I believe this has been cleared with the other side. It is technical. There were some original cosponsors, Senator Mikulski and Senator Harkin.

The PRESIDING OFFICER. Is there an objection? Without objection, it is so ordered.

Mr. HATCH. Mr. President, reserving the right to object, what is the change that was sent? I am sorry.

Mr. WELLSTONE. The amount of money originally was improperly designated. I also added two original cosponsors.

Mr. HATCH. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment (No. 358), as modified, is printed in today’s Record under “Amendments Submitted.”)

Mr. WELLSTONE. Mr. President, let me just start out by saying that one of the real weaknesses in this legislation as it is now written is that there is no specificity about the allowable use of funding for school-based counseling or mental health services to all students through qualified counselors or psychologists or social workers.

My colleague, Senator Sessions, has referred to other activities that can be funded under title V, but this phrase is vague. It gives no encouragement to schools to use the funding that they need to have the counselors.

The only place where we might see an opportunity for counseling services would be in boot camps and community-based projects and services, but kids already have to be delinquent in order to receive this kind of counseling.

Mr. President, what I say here today is that I do not know about other colleagues, but as I travel Minnesota, what I hear more than anything else, above and beyond the need to get tougher on guns, is, Senator, we need more counselors. We need to have a infrastructure of support for our children in our schools. This amendment is the 100,000 school counselors amendment.

This amendment would call for funding from the Federal Government, on a one-third, one-third, one-third matching basis. It would be $340 million a year over the next 5 years. Now, my colleagues on the other side of the aisle may stand up and say: This is $340 million a year.

To that, I say to my colleagues on the other side: When are we going to get serious? We continue to talk about children. We continue to talk about our concern for children. Now we are talking more and more about our concern for at-risk children. Now we are talking more and more about how to get to kids before they get into trouble. And what we hear all across our land from our educators, from women and men who are working with children every day, is that we don’t have the funding for counselors.

Mr. President, right now we have an average of about 1 counselor per 500 students across the land. One counselor for 500 students. That counselor can’t even begin to reach out and help some of the kids who are in trouble.

This is a huge weakness in this legislation. If we want to get to kids before they get into trouble, if we want to respond to the voice in the country about what we need to do better—and I hear this from everyone in Minnesota—then we need to support this 100,000 school counselors amendment. There is nothing we can do that would be more important.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HATCH. Mr. President, I yield such time as he needs to the distinguished Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. The Senator from Missouri is here, and when he is ready, I will yield to him.

Mr. President, I am not hearing every day that what we need as a No. 1 priority of schools in America is more counselors. We need to hear how many needs in schools. Maybe we need to expand Head Start, maybe we need other programs, maybe we need computers, or mentoring programs, some of which work well. We have not had hearings on it. This is an issue that ought to be raised in the Senator’s Education Committee, and it ought not to be part of a crime bill at this time.

Mr. HATCH. Mr. President, let me once again start by complimenting the Senator from Minnesota’s commitment to the problems associated with mental health conditions.

I share his commitment, but I have a number of grave concerns about his amendment to provide $1 billion a year in new funding to hire over 100,000 school-based mental health personnel.

As I noted in my statement yesterday, there is no evidence whatsoever to support the assertion that the recent tragedies in Colorado and Oregon would have been prevented by having more school counselors.

Let me reiterate what I observed yesterday: it has been reported that both Mr. Harris and Dylan Klebold had undergone therapy, had received some kind of counseling, had had management training and had gotten affirmative evaluations from counselors.

One of Dylan Klebold’s teachers had expressed concern about some of the things he was writing in English class to a counselor.

It has also been reported that the 15-year-old Oregon killer, Kip Kinkel was currently in counseling, along with his parents, when he killed them and went on to kill two of his classmates and injure a number of other students.

Please don’t misunderstand me, Mr. President, I do not want in any way to undercut the very fine and vital work done by counselors in my state of Utah
and around the country. I respect them. Their work is important and valuable and I support their efforts 100 percent.

I merely make the point that more counselors would not have prevented these tragedies.

Additionally, Mr. President, as a parent and grandparent, I have an almost knee-jerk reaction whenever I hear that the federal government is—once again—attempting to micromanage public education.

I believe that we can best support our local schools by adequately funding current federal education programs and allowing state and local education agencies the flexibility to make important education decisions unencumbered by federal regulation.

I sincerely believe that $1 billion of new federal taxpayer dollars will not do as much to encourage a renewed commitment to strengthen mental health outreach as local school boards, parent groups and local civic mental health and law enforcement organizations working together.

This amendment is a Washington knows best, big money, unfunded answer to complicated questions that can best be addressed through local efforts.

Mr. President, I get a little tired of seeing some of our colleagues throwing money at issues without regard to costs. I am getting a little tired of hearing that the answer to everything addressed here is simply to throw more money at it. There is no question that counselors can be effective, but a lot of other things are too, and we have a lot of effective programs in this bill. Frankly, it is time to get this bill passed and quit delaying it.

Mr. WELLSTONE. Mr. President, I ask unanimous consent for 30 seconds to respond.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. This is a modified amendment. It is for $340 million a year, not $1 billion, as the Senator said. All Senators should know that.

Second of all, I get a little tired of Senators talking about how much we care about kids and education, and we can't have our schools and school districts put in some money, which we will match, so we can have more support services for these kids. We gave $8 billion more for the Pentagon than the President wanted. We got funding for breaks for oil companies and money for breaks for all sorts of other special interests. But all of a sudden we don't have the money to provide resources for these school districts.

Mr. HATCH. Mr. President, we continue to throw money at these problems and not solve them. First, the Senator's bill called for $1 billion and now it calls for $340,000,000. Which one is it? And how do we know that this latest amount is what is needed? We can't get extraordinary amounts of money out of thin air and justify spending the amounts because problems may exist. We continue to take time on this floor to delay a bill that can help solve these problems. The fact is that we take care of a lot of these problems in the bill without throwing an inordinate amount of money toward them.

Mr. WELLSTONE. Mr. President, I resent the implication that this is taking up time and delaying this bill.

Mr. President, if you were worried about at-risk kids and helping kids before they get into trouble and wind up incarcerated and committing violent crimes, then you would want to support the kind of support services we can provide in schools.

Mr. HATCH. Mr. President, I don't want to take too much time, but I will take 30 more seconds.

Look, you are not the only Senator on this floor who cares about kids. I have a record of 23 years of leading a fight for most of the children's programs that have passed here. And every one of them takes into careful consideration what should or should not be spent—child care, the child health insurance bill; you name it, I have been there. Right now, I am raising over $2 million for the Pediatric AIDS Foundation. I don't need to be lectured by the Senator from Minnesota, whose answer to everything is to throw more money at every problem.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that I be allowed to respond to that commitment.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. I object, unless it is for 30 seconds.

Mr. WELLSTONE. I can do it in 30 seconds.

The PRESIDING OFFICER. The Senator is recognized for 30 seconds.

Mr. WELLSTONE. Senator, I would never criticize your record. You are a friend. But why can't you respond to the remarks you made on the floor of the Senate that this kind of an amendment is taking up people's time and delaying passage of this bill. This is very relevant to what we need to do to help kids before they get into trouble. I am surprised that my colleague, with all of his good work, doesn't understand that.

I yield the floor.

The PRESIDING OFFICER. All time has expired.

AMENDMENT NO. 361

The PRESIDING OFFICER. Under the previous order, we will proceed to amendment No. 361, sponsored by Senator ASHCROFT, with 10 minutes equally divided.

The Senator from Missouri is recognized.

Mr. ASHCROFT. Mr. President, I want to thank a number of Senators before I begin making my remarks because this amendment is the culmination of the work of a number of individuals, including Senators HUTCHISON, DeWINE, SALLARD, ARAHAN of Michigan, Greggs of New Hampshire, HELMS of North Carolina, and Senator COVERDELL of Georgia. All of these individuals participated to assemble the components of this amendment, which is an amendment designed to promote safety in our schools and to prevent violence in our schools. So I thank all of those Senators. If any of them comes to the floor, I will happily yield to them so that they can make the emphasis to the items they brought to the table here.

This amendment contains a number of provisions that give schools and communities additional ways to prevent violence in schools. It would free local school districts to put Federal money to use where the Federal money will do the most good to prevent future violence.

Under this amendment, schools will be able to choose where best to spend Federal resources under titles 4 and 6 of the Elementary and Secondary Education Act. These are allowable uses which would include violence prevention training, school safety equipment and metal detectors, or for school resource officers.

The amendment clarifies that nothing in Federal law stands in the way of a local decision to introduce a dress code or school uniform policy. Without taking away the power of the States and local school districts to make such a policy.

The amendment contains a provision that provides certain liability protections for school personnel when they undertake reasonable actions to maintain order and discipline in safe educational circumstances or to promote school safety. This is a very important provision.

This one, sponsored by Senator COVERDELL of Georgia, offers teachers limited civil liability against frivolous and arbitrary lawsuits.

We don't really need for teachers, who need to be involved in disciplining students, to be thinking about the fact that they are going to be sued if they exercise the right kind of discipline.

The limits are reasonable. They are against frivolous and arbitrary lawsuits—the kind of limit that we placed to help encourage volunteerism last year when we had the Volunteer Protection Act. That is the kind of thing we want to do to make sure that teachers can have better control and are free to take necessary steps to provide discipline in the classroom.

Senator HELMS' language makes certain that a school discipline record follows a student when a student transfers to another public or private school. This language allows schools to run background checks on any school employee who works with children. I think this is reasonable. We should
know who the individuals are who are employed in our schools. Providing this kind of capacity and opportunity is a step in the right direction, a step forward. It is necessary for schools, especially given the mobility of students and families, to be able to know about the discipline record of a student who comes to the school. Learning too late can be a deadly matter, as I learned a few years ago in a tragic case in St. Louis, where a student transferred from one school to the next and the discipline record didn’t follow. And before they learned of this student’s propensity to stalk young women, he murdered another student, stalking a woman, a young woman, into the restroom of a high school.

Senator DeWine has a provision that allows the coordination of adolescent mental health and substance abuse services. That is part of this amendment.

The amendment includes language from Senator Abraham that allows schools to use Safe and Drug Free Schools funds for drug testing. Students who are the subject of serious discipline problems may well be better off if the capacity of asking them to undergo drug tests. We fund it and provide the availability or the freedom to use funds in that respect.

I really want to thank my colleagues who worked with me on this task force: Senators DeWine, Hutchinson, Gregg, Allard, Coverdell, Helms, and Hatch.

I look forward to the passage of these proposals that are included in this education task force package: the amendments on school safety and violence prevention, and safety and security in our schools.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

By the way, the Chair informs the Senator from Missouri that his time has expired.

Mr. Ashcroft. The Senator from Missouri has the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. Leahy. Mr. President, I am going to speak on the Sessions amendment No. 357, and I understand there is time in opposition. Am I correct?

The PRESIDING OFFICER. There are 5 minutes remaining on that time.

Mr. Leahy. Mr. President, notwithstanding my friendship with the Senator from Alabama, I will oppose his amendment.

The amendment mandates that all Federal, State, or local governments and nongovernmental entities that receive any funds under this bill have to place a written disclaimer on all materials produced or distributed to the public.

The amendment also mandates the Attorney General report every six months to Congress on all public comments received based on these disclaimers, although it doesn’t say how many hundreds of people may have to be hired to do this.

The amendment is unfortunate. We are trying to pass a serious and comprehensive bill to address juvenile crime. I don’t understand why the other side would be insisting on placing a one-paragraph disclaimer on all publications from any entity that receives funds under this bill. This would apply to any nonprofit organization that uses Federal support under this bill.

For example, suppose the Boys and Girls Clubs used it to set up an afterschool process. Do they have to put a disclaimer on the door to the room of a high school.

The amendment is also dangerous because it can siphon off funds that can be used to prevent juvenile crime and punish juvenile offenders. It places an unfunded mandate on Federal, State, and local governments. It takes resources away from real crime-fighting programs. It shows how much it is going to cost State, Federal, and local governments and nonprofit organizations to comply with this disclaimer requirement.

How much does it cost the Department of Justice? I would like to know how much it is going to cost for the 6-month reporting requirements. Obviously, the Department of Justice should have people devoted to crime fighting and who will be there to tally reports. And it will not be fanciful to think of somebody who got called out at third base in a softball game put together by the Boys and Girls Clubs who thinks the Attorney General should look into it.

The Department of Justice already prints its notice and address on all publications. Why a further unfunded mandate? Unless we have questions and answers about how much it is going to cost and how much it is going to take away from real crime fighting, I would oppose it.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. Kennedy. I believe we have 5 minutes. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. Kennedy. Mr. President, I yield myself 4 minutes.

Mr. President, this amendment is harmless, though I question how effective and useful it is.

It provides for some coordinated mental health services at the level. But there is already some limited mental health coverage in the underlying bill. And I find it interesting that the Senator from Missouri rejected our proposal to give SAMHSA the resources to really do a good job.

The amendment provides for background checks on school employees. That’s already allowable under current law.

You allow schools to require uniforms. There is nothing to prohibit that now. It creates a Commission on Character. That is fine.

But if we really wanted to make a difference, we would fulfill the commitment made last year to reduce class sizes by hiring 100,000 new teachers. Teachers should not have to do crowd control.

If we really wanted to make a difference, we would help communities build new classrooms and schools and modernize their facilities. This means smaller classes and smaller schools, so teachers and school officials get to know the children they teach. You have heard of “road rage.” Well some schools have “hall rage,” where hallways are so crowded, that actually increase violence in schools.

If we really wanted to make a difference, we would expand after school programs to attend to children in the afternoons—keeping them off the streets out of trouble. Each day, 5 million children are left home alone after school, and that is unacceptable.

If you asked parents what is most important to reducing youth violence—uniforms or smaller classes—I am certain that smaller classes would win hands down.

If you asked parents what is most important—a character commission or after school programs—the after school programs would win hands down.

If you asked parents what is most important—to reiterate that you can conduct background checks on teachers or building more classrooms and better classrooms—the better classrooms would win hands down.

So I see nothing harmful in this amendment, but I hope we can get to the real issues that concern parents and communities—smaller classes, better schools, more after school programs.

I withhold the remainder of the time.

The PRESIDING OFFICER. Is time being reserved?

Mr. Kennedy. I yield the remainder of my time.

The PRESIDING OFFICER. All time on this amendment has expired.

AMENDMENT NO. 360

We will now move to amendment No. 360.

Who yields time?

Mr. Santorum. Mr. President, I rise to support my amendment. The amendment is offered to address a problem in this country which we have talked a lot about here, which is the short amount of time that people serve
in prison and, in fact, are sentenced to prison for the most violent of crimes in our society.

The chart says the average prison time served for rape in this country is only 9½ years, and that, by the way, is a slight increase for the past decade. Average prison time served for child molestation is 4 years; 4 years for child molestation. The average time served for homicide is just 8 years.

These statistics are for time served. Time sentenced, in many cases, is just a little bit more than that, but not significantly more than that.

It is a very serious problem, particularly in the area of raping and sexually molesting a child, where the recidivism rate is very high, where we are putting back on the street to terrorize our citizens, people who should be incarcerated for a much longer period of time.

A group of Members, MATT SALMON in the House and Representatives, and I, in the Senate, have introduced a bill called Aimee’s law, named after Aimee Willard, a victim of a horrible rape and murder in the city of Philadelphia by a man, Arthur Bomar, who was released from prison in Nevada—released after murder in Nevada, released after not serving his full sentence. By the way, he was violent in Nevada and had assaulted a woman while in prison, but Nevada let him out early. Unfortunately, Arthur Bomar found Aimee Willard and her niece was brutally murdered and raped.

Aimee’s mom, Gail Willard, has put together a group of people who said it is time to get people who are convicted of these horrible crimes to serve out their sentences and to send a message to States—many States in this country have very light sentences for many of these crimes—to send a message to States that we want tougher sentencing laws on the books for these violent crimes and violent criminals.

MATT SALMON introduced in the House, and I introduced an amendment in the Senate, which does something very simple: If someone is released from prison as a result of these kinds of violent acts, they are released from prison and go to another State and they commit one of these crimes, that the State that released that prisoner has to pay the costs of apprehension, prosecution, and incarceration to the State that has to deal with this person that was removed.

It takes the Federal funding stream—we have Federal funds that go to all the States—and basically takes some of those Federal funds and shifts them from State to another. It is a matter of designating some Federal funds, rather than to Pennsylvania, because Pennsylvania let someone out early and that convicted felon went to Ohio and committed a crime—Pennsylvania would lose Federal funds—to Ohio to pay for Federal apprehension, prosecution and incarceration of that criminal.

This is a bill supported by 39 victims’ rights organizations, including: KlaasKids Foundation and Polly Klaas’ father, Marc Klaas; Fred Goldman; Gail Willard; the Fraternal Order of Police; Law Enforcement Alliance of America; International Children’s Rights Resource Center; Justice for All; National Association of Crime Victims’ Rights; the Women’s Network for Financial and Economic Rights; Aimee’s mom, Gail Willard. We are trying to send a very clear message that these crimes should be dealt with seriously. A child molester who receives 4 years in prison, when you consider the recidivism rate, is an abomination.

We have 134,000 convicted sex offenders right now living in our communities because of these kinds of laws and because of the enforcement and prosecution deficiency by our courts or by our parole systems. We have to do something about this to protect our children, to protect our society from the rapists and child molesters and murderers in our society.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. VOINOVICH). The Senator has 5 minutes in opposition.

Mr. LEAHY. Mr. President, I do not oppose this amendment. I think it is, in fact, an improvement. The amendment is a good idea. State sentencing for state crimes is a state matter.

The amendment provides that in any case in which a person has violated one of more of the following offenses—he is convicted of murder or rape or a dangerous sexual offense as defined by state law, and that person previously has been convicted of that offense in another state, the state of the prior conviction will have deducted from the Federal criminal justice fund it receives, and transferred to the state where the subsequent offense occurred, the cost of the apprehension, prosecution, and incarceration of the offender, unless the original state has: (1) adopted the federal truth in sentencing—imposes a sentence on persons for these offenses that is at least 10 percent above the average term of imprisonment for that offense that is imposed in all states; and (2) made the particular offender serve at least 85 percent of his sentence.

Mr. President, my opposition to this provision is based primarily on federalism. States should be free to adopt the sentences that they choose. They should also be able to adopt the parole policies of their choice. States that impose short sentences or lenient parole policies will bear most of the cost themselves if released criminals commit future offenses.

Under this amendment, states must adopt the federal sentencing guidelines if they wish to be certain to avoid losing federal funds. The states will have their sentencing policies for these offenses not drafted by their state legislators in their state capitals, nor even by judges who lose the ability to exercise whatever discretion in sentencing their states permit. Instead, the unelected bureaucrats of the

One big problem in Sec. (c)(1)(B) is that the cost of incarceration of an individual can’t be known unless one can predict his or her life span.

An unwieldy procedure will not help this cause. It will set it back. I am afraid, and I cannot vote for it.

Mr. THOMPSON. Mr. President, I am saddened by the tragic circumstances that have motivated my distinguished colleague from Pennsylvania to offer his amendment. It is understandable that concerned citizens hope to avoid crime committed by people who are released from prison. And I might favor states increasing the length of sentences of violent offenders. But that choice should be that of the states, and not one essentially forced on states by the Federal Government for fear of losing their criminal assistance funds. That view by itself leads me to oppose this amendment. A particular way in which this amendment will operate causes me particular concern.

States are not mere appendages of the federal government, to be told what to do by the Federal Government’s bidding every time we think we’ve got a good idea. State sentencing for state crime is a state matter.

The amendment provides that in any case in which a person has violated one of more of the following offenses—he is convicted of murder or rape or a dangerous sexual offense as defined by state law, and that person previously has been convicted of that offense in another state, the state of the prior conviction will have deducted from the Federal criminal justice fund it receives, and transferred to the state where the subsequent offense occurred, the cost of the apprehension, prosecution, and incarceration of the offender, unless the original state has: (1) adopted the federal truth in sentencing—imposes a sentence on persons for these offenses that is at least 10 percent above the average term of imprisonment for that offense that is imposed in all states; and (2) made the particular offender serve at least 85 percent of his sentence.

Mr. President, my opposition to this provision is based primarily on federalism. States should be free to adopt the sentences that they choose. They should also be able to adopt the parole policies of their choice. States that impose short sentences or lenient parole policies will bear most of the cost themselves if released criminals commit future offenses.

Under this amendment, states must adopt the federal sentencing guidelines if they wish to be certain to avoid losing federal funds. The states will have their sentencing policies for these offenses not drafted by their state legislators in their state capitals, nor even by judges who lose the ability to exercise whatever discretion in sentencing their states permit. Instead, the unelected bureaucrats of the

One big problem in Sec. (c)(1)(B) is that the cost of incarceration of an individual can’t be known unless one can predict his or her life span.
United States Sentencing Commission will set the sentences for state criminals who commit these offenses. I have no criticism of these individuals pursuing the task that Congress has given them, particularly since their work is subject to judicial review. But we were not and should not be given the power to set state sentences, unanswerable to the states who will be forced to silently acquiesce to their efforts.

In addition, a state seeking to retain its federal funding by complying with the three conditions of this amendment would incur much greater expense than any loss of funds it would sustain if it were not to comply with the conditions. States who seek to sentence at more than 110 percent of the average will be required to spend huge sums on new prisons to hold these offenders. In addition to construction costs, there will be additional costs of personnel and other operating expenses. Such long sentences will also mean that the states will incur huge medical expenses for older prisoners, for fear of losing federal funds if they were released and committed new offenses. If a state wanted to increase the costs without the amendment, it could do so, but this bill will for all practical purposes force states to do so without funding any of the resulting costs. In addition, states sentencing for such a long duration of time will be sentencing wisely. Some offenders deserve parole. Not all offenders are incorrigible. Some offenders can be helped by religion or counseling to lead law abiding lives, returning to their families, safely living among the community, avoiding the need for states to incur costly prison expenses, and actually becoming productive, taxpaying citizens. This amendment essentially deprives a state of that choice, and may result in the unjustified continuation of imprisonment of certain persons, harming the person, his family, the community, and taxpayers generally.

The 110 percent of the national average sentence requirement is troubling for other reasons as well. By definition, half the states will be below average, and even a larger number will not sentence for 110 percent or more of the national average. That will mean that most states will not be able to avoid the risk of losing their federal funds, no matter how hard they try to comply with the amendment’s conditions. And since the average is not static, a state that is above 110 percent in one year may not be at that level the following year. As a result, the amendment would result in states continuously increasing their sentences in what will probably be a vain effort to be one of the above average states. And how will the average be calculated? Is a 99 year sentence longer or shorter than a life sentence? Is a death sentence imposed after the offender has served more than 110 percent of a life sentence without parole? I suppose states will have an incentive under this bill to adopt not only a death penalty, but to sentence the defendant to 1000 years besides. It is not Washington’s business whether or not a state has a death penalty for state crimes. That decision should be made by the people of a state and no one else, consistent with constitutional requirements.

Apart from opposing this amendment on federalism grounds, I also note the existence of significant drafting problems that will result in what I am sure the sponsors would consider to be unintended consequences. For instance, the amendment defines “murder” and “rape” by reference to state law. But some states will never be in a situation in which a person convicted of murder has been released from serving a murder sentence or rape sentence in their state. For instance, Vermont has no crime of rape, but only sexual assault. No one can be convicted of rape who was convicted of rape previously in Vermont. Wisconsin has no rape or murder statutes, but simply intentional homicide and sexual assault. One can well imagine that if this amendment passes, states will manipulate the label placed on various conduct so that it can make sure to convict as many of its citizens as possible of “murder” or “rape” however defined under another state’s law—and in such a way as now not remotely considered to constitute these crimes—while convicting persons in their own state for “intentional homicide” or “rape.” That kind of manipulation will produce virtual anarchy. While the House companion bill avoids this particular problem because it defines these offenses without regard to state law, I note that the House bill is equally objectionable in its own way, since the crimes that it covers are broader than the Senate bill, extending to crimes that few would consider exceptionally serious, and thus causing greater expense to the states than the Senate bill if loss of funds is to be avoided. Moreover, under the House bill, unlike this amendment, a state is never free from the risk of losing funding, since it will be liable for a released offender’s offense for the rest of his life, regardless of the length of his sentence or actual imprisonment before release.

We have eliminated parole at the federal level. But there are many fewer federal than state parolees. If a state would rather spend money on education, effective prevention programs than on very long sentences, it should be able to do so without federal interference. Some prisoners may deserve parole. Others may not. And so long as there is parole, as in every other human endeavor, mistakes will occasionally be made, sometimes with serious consequences. The people who make those decisions and the state lawmakers—not federal lawmakers—should continue to set parole policy, and they should continue to be held accountable for their states for those decisions. The track record of Congress in knowing just how crime should be punished should give pause to anyone who thinks states and the American people would necessarily benefit more from a congressionally mandated approach to this issue than from experimentation among the states.

Mr. President, I sympathize with those who are the victims of crimes caused by parolees. I understand the sincere motives of my colleagues who support this legislation. But I strongly believe that it is misguided and runs counter to our system of federalism. It will cost states billions of dollars without any guarantee of retaining full federal funding. It may prevent sensible parole policies in particular cases. I have also pointed out a number of practical problems with the amendment’s drafting. For all of these reasons, I oppose the amendment.

Mr. LEAHY. Mr. President, I ask unanimous consent it be in order to ask for the yeas and nays on all four of the remaining amendments.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON AMENDMENT NO. 377

The PRESIDING OFFICER. The question is on agreeing to the Sessions amendment.

The yeas and nays have been ordered. The clerk will call the roll.

The PRESIDING OFFICER. The legislative clerk called the roll.

Mr. REID. I announce that the Senator from New York (Mr. MOYNIHAN) is necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN) would vote “no.”

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 43, as follows:

[Rollcall Vote No. 127 Leg.]

YEAS—56

Abraham
Allard
Ashcroft
Bennett
Bond
Brownback
Burns
Campbell
Chafee
Chamblen
Collins
Coversfield
Craig
Crapo
DeWine
Domenici
Enzi
Fitzgerald
Frist
Gorton
Gramm
Grassley
Hagel
Hatch
Holms
Hutchison
Johnson
Kyl
McCain
Mikulski
Moshanski
Nickles
Roberts
Roth
Santorum
Sessions
Shelby
Smith (N.D.
Smith (O.)
Snowe
Specter
Stevens
Thomas
Thompson
 Thurmond
Voinovich
Warner

NAYS—43

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Brooks
Bunning
Byrd
Bunning
Conrad
Daskie
Dodd
Durbin
Edwards
Fengold
Fenster
Graham
Harkin
Hollings
Inouye
Johnson
Kennedy
Kerry
Kerry
Kohl
Lautenberg
Leahy
Levin
Lincoln
Mikuleksi
Murray
Nelson
Reid
Robb

S5527
May 19, 1999
CONGRESSIONAL RECORD—SENATE
The amendment (No. 357) was agreed to.

Mr. LOTT. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LOTT. Mr. President, we have three more votes now in the stacked sequence. I ask unanimous consent that in this series the next three votes be limited to 10 minutes in length.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

AMENDMENT NO. 358, AS MODIFIED

Mr. WELLSTONE. Mr. President, could I ask a question. We now have 1 minute each: is that right?

The PRESIDING OFFICER. That is correct.

Mr. WELLSTONE. Mr. President, could we have order, please.

The PRESIDING OFFICER. The Senate will be in order.

Mr. WELLSTONE. Could I also ask whether this is my amendment on school counselors?

The PRESIDING OFFICER. It is the Wellstone amendment No. 358.

Mr. WELLSTONE. Thank you, Mr. President.

Mr. President and colleagues, I have offered this amendment with Senator MIKULSKI and Senator HARKIN. This amendment would provide $340 million a year for 100,000 school counselors, social workers and child psychologists to back them up.

Everywhere you go, you hear from people at the school district level: We will contribute money, but can you get some money to us so we can have more counselors in our school so that we can give more support to these kids before they get into trouble?

You will not hear your education community and your teachers and men and women who work with children talk about anything more than the need to have more counselors. One counselor for 500 students or 1,000 students cannot identify these kids in trouble, cannot help these kids. If we really care about providing these services, then we are going to be willing to make the investment.

I hope this amendment will have a very strong vote.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Is this amendment No. 358?

The PRESIDING OFFICER. Yes.

Mr. HATCH. This amends the Elementary and Secondary Education Act of 1965, originally to provide $1 billion more—modified now to provide $340 million, after modification, a year in new funding to hire 141,000 school-based mental health personnel: 100,000 school counselors, 21,000 school psychologists, and 20,000 school social workers. These funds have to be matched by the States and localities.

Now look, this is another attempt to micromanage our educational system in this country—Washington. It is an expensive add-on that should not be on this particular bill.

I made the case earlier that we are in favor of counselors, but there is a limit to everything, and the counselors may not be the answer here, especially in the Klebold matter—and a number of other matters where the boys were under counseling.

The fact of the matter is, this is another “Let’s throw money at it” at the cost of society.

The PRESIDING OFFICER. The time has expired. All time has expired.

Mr. HATCH. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The result was announced—yeas 61, nays 38, as follows:

[ Rolcall Vote No. 128 Leg.]

YEAS—61

Abraham
Allard
Ashcroft
Bennett
Brownback
Bunning
Burns
Byrd
Campbell
Chafee
Chambliss
Cochran
Collins
Conrad
Cupp
Dean
Dorgan
Durbin
Edwards
Feingold
Frist
Gramm
Grassley
Griffith
Hatch
Helms
Hollings
Hunt
Inhofe
Jeffords
Kennedy
Keyes
Kyl
Lott
Leahy
Lugar
Mack
McCain
McClellan
McCaskill
McCotter
McConnell
Mikulski
Miller
Mitchell
Moynihan
Murray
Nains‐38

NAYs—38

Akaka
Baucus
Bayh
Biden
Breaux
Bryan
Cleland
Daschle
Dodd
Durbin
Edwards
Feingold
Feinstein
Graham
Harkin
Inouye
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Levin
Lieberman
Lincoln
Mikulski
Murray
Reed
Reid
Robb
Rockefeller
Sarbanes
Schumer
Santorum
Sasser
Sarles
Schatz
Saxton
Shelby
Smith (OR)
Smith (NH)
Snowe
Specter
Santorum
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Santorum
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Santorum
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Santorum
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Santorum
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Santorum
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Santorum
Santorum
Sessions
Shelby
Smith (NH)

The motion to table was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, if we are going to finish this bill, we are going to have to move things along more quickly. We are seeing end-of-this-bill possibilities, but we are not going to ever finish the bill if these votes are going to go on forever. Ten-minute votes should not take an half hour.

I respectfully suggest that we move on more quickly so we can get to the substance of this bill.

AMENDMENT NO. 360

Mr. LEAHY. I say to the Senator from Utah, we would be willing to speed up things and accept the amendment of the Senator from Pennsylvania, if the Senator from Pennsylvania wishes. If they are interested in speeding up the time, we can do that. Obviously, the Senator from Pennsylvania is entitled to a rolcall vote, but we can save ourselves 15 or 20 minutes if we just accept it.

Mr. HATCH. Why don’t we just have the rolcall vote and everybody will come immediately.

Mr. SANTORUM. I yield back my minute.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 360 of the Senator from Pennsylvania, Mr. SANTORUM.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that Senator from Kansas (Mr. ROBERTS) is necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN) would vote “nay.”

The result was announced—yeas 61, nays 38, as follows:

[ Rolcall Vote No. 129 Leg.]

YEAS—81

Abraham
Allard
Ashcroft
Baucus
Bayh
Biden
Breaux
Bryan
Cleland
Daschle
Dodd
Durbin
Edwards
Feingold
Feinstein
Graham
Harkin
Inouye
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Levin
Lieberman
Lincoln
Mikulski
Murray
Reed
Reid
Robb
Rockefeller
Sarbanes
Schumer
Santorum
Santorum
Sessions
Shelby
Smith (OR)
Smith (NH)
Snowe
Specter
Santorum
Santorum
Sessions
Shelby
Smith (OR)
Smith (NH)
Snowe
Specter
Santorum
Santorum
Sessions
Shelby
Smith (OR)
Smith (NH)

The motion to table was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, if we are going to finish this bill, we are going to have to move things along more quickly. We are seeing end-of-this-bill possibilities, but we are not going to ever finish the bill if these votes are going to go on forever. Ten-minute votes should not take an half hour.

I respectfully suggest that we move on more quickly so we can get to the substance of this bill.

AMENDMENT NO. 360

Mr. LEAHY. I say to the Senator from Utah, we would be willing to speed up things and accept the amendment of the Senator from Pennsylvania, if the Senator from Pennsylvania wishes. If they are interested in speeding up the time, we can do that. Obviously, the Senator from Pennsylvania is entitled to a rolcall vote, but we can save ourselves 15 or 20 minutes if we just accept it.

Mr. HATCH. Why don’t we just have the rolcall vote and everybody will come immediately.

Mr. SANTORUM. I yield back my minute.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 360 of the Senator from Pennsylvania, Mr. SANTORUM.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that Senator from Kansas (Mr. ROBERTS) is necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN) would vote “aye.”

The result was announced—yeas 61, nays 38, as follows:

[ Rolcall Vote No. 129 Leg.]

YEAS—81

Abraham
Allard
Ashcroft
Baucus
Bayh
Biden
Breaux
Bryan
Cleland
Daschle
Dodd
Durbin
Edwards
Feingold
Feinstein
Graham
Harkin
Inouye
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Levin
Lieberman
Lincoln
Mikulski
Murray
Reed
Reid
Robb
Rockefeller
Sarbanes
Schumer
Santorum
Santorum
Sessions
Shelby
Smith (OR)
Smith (NH)
Snowe
Specter
Santorum
Santorum
Sessions
Shelby
Smith (OR)
Smith (NH)

The motion to table was agreed to.
The PRESIDING OFFICER. This is the Frist-Ashcroft amendment.

Mr. FRIST. Mr. President, we are returning to an amendment that was offered at the end of last week, which is a very simple amendment as written. It addresses the loophole that is at the heart of the juvenile justice issue and discussion in the last week. It has to do with bombs and guns in schools. It is as simple as that.

It addresses the issue of how to make our schools as safe as we possibly can. We start with, I believe, the juvenile justice bill which has made real progress but absolutely to my mind must include an amendment that addresses this issue of guns in schools and bombs in schools in an area where we, because of previous legislation that we passed, have created a loophole that means that a student coming into a school who has a firearm may be treated very differently from a student who comes in the next day to that school with a firearm. Our amendment is that any child who comes into a school with a gun or a bomb will be treated equally, will be treated fairly, will not be discriminated against one way or another.

Our amendment ends a mixed message that the Federal Government today, because of legislation we passed, sends to American students on the issue of firearms in schools. "Firearms," for the purpose of this amendment, are bombs and guns in schools.

We look at Littleton, CO, with 15 dead and 23 wounded. We look at Pearl, MS, with 2 dead and 7 wounded; Paducah, KY, 3 dead, 5 wounded; Jonesboro, AR, 5 dead, 10 wounded; Springfield, OR, 2 dead, 22 wounded.

These are all shootings, horrific shootings. They claimed the lives of 27 students and teachers. Thus, we come back to this simple amendment which closes a loophole that we created that has to do with bombs and guns and firearms in schools.

The Individuals with Disabilities Education Act is a law which I have strongly supported, and I have worked very, very hard in the past two Congresses to improve, to modernize, to strengthen. Under that act, a student with a disability who is in possession of a gun or a firearm at school is treated differently than a student who is not disabled or who is not in special education.

Again, it goes back to that fundamental issue of one child in a special education class who brings a gun or a bomb to school is treated preferentially compared to another child who does not have a disability or is not in special education who brings a gun or a bomb to school.

All of us represent States and have our own constituency. Therefore, I look at my home State of Tennessee. The Individual with Disabilities Education Act conflicts with our zero tolerance law which says that students may be expelled for 1 year if they bring a bomb or a gun or a firearm to school. That is zero tolerance. It is the law of the land in Tennessee. Yet, we have passed in this body Federal legislation which says there is a certain group of students, about 14 percent of students in the State of Tennessee, to whom that does not apply. That whole different set of standards. What our amendment does is it says, no, if you bring a bomb or a gun to school, you are going to be treated like every other student.

Under IDEA, local school authorities have several hoops to remove a dangerous special education student who brings a gun into the classroom. School personnel may suspend the child for up to 10 days. School personnel may place the child in an interim alternative educational setting for 45 days. School personnel may ask a hearing officer to place a child in an interim alternative educational setting for up to 45 days if it is proven that that child is a threat to others in his current placement. School personnel may conduct a manifestation determination review to determine whether or not there is a link between that child's disability and the behavior. Let me repeat. If the hearing officer determines that the behavior of bringing a gun into the classroom was a manifestation of the disability, the student can go right back into that school, right back into that current placement, and that is the problem.

People say that does not happen. It does happen. In my own State of Tennessee, in Nashville, just over a 1-year period, there were eight students who brought guns into school who were not in special education and of those eight, six were in special education. Three of those six, it was found that bringing a gun into the school was a manifestation of their disability and, therefore, they ended up back in the classroom. Students who were not in special education were expelled under the law under which 86 percent of the other students fall.

Clearly, the way we have set up this federally mandated disciplinary procedure determines a mixed message about guns in our schools. It basically says if you are in special education, you are going to be treated in a special way if you bring a gun into school, but if you are not in special education you are going to be treated like everybody else and you are going to be expelled. What a mixed message when we are talking about the shootings, the 27 deaths in our classroom and schools that we have witnessed, we must respond.

As earlier stated, if a student with a disability is expelled, that student...
must be provided alternative educational services while a nondisabled student, somebody who is not in special education who is expelled for the same offense, will not necessarily receive alternative educational services, which just shows how we are treating a student who comes into the classroom with a gun differently if they happen to be disabled compared to other students.

The amendment that I, Senator ASCRIBBT, Senator HELMS, Senator COVINGTON, and Senator ALLARD, as the initial sponsors, have put forward, allows principals and other qualified school personnel the flexibility to do something that seems so basic. And that is, to treat all students the same if they bring a gun into the classroom, period. No more complicated than that. It does not matter race, it does not matter financial status, it does not matter educational status, everybody gets treated the same.

It allows school authorities to discipline all students in the same way if they bring a gun, we are not talking about threats, and we are not talking about even other weapons. We have this amendment focused on guns and bombs, nothing else; we are talking about the schoolroom.

This amendment does not force local school authorities to have a uniform disciplinary policy. We recognize that every situation needs to be judged as just that, an individual, unique situation. It simply gives them the flexibility to enforce discipline in that local school as they see fit, with the overall objective to assure, to ensure, to guarantee the safety of those students whom every day we send into those classrooms.

The amendment is firearms specific. There have been others who have asked us to at least look at expanding it to other weapons, but we have this amendment really quite narrow; we are talking about firearms.

I mentioned the Nashville statistics. These statistics are really hard to obtain. You always hesitate, when that is the case, to generalize. So I want to make it very clear, I do not want to generalize, but I do want to illustrate how, in one community where I live, this loophole has the potential for causing real harm, I believe.

In the 1997–1998 school year in Nashville, TN there were eight firearms infractions. Of those eight, six were students with disabilities. They were in special education.

I might add that overall in the State of Tennessee it is between 13 and 14 percent, or about one out of eight students, who are in special education classes.

Of these six special education students, three were expelled outright because they found, in the manifestation process, that the disability and their bringing a gun into the classroom were unrelated. Three of those students were not expelled, because the possession of the firearm was found to be a manifestation of that child’s disability. It was three students who went right back into the classroom, again, potentially putting the lives of others in danger.

We might hear, well, nobody has been killed yet in the last year or the last 2 years. Really, I think that is a whole separate issue. The whole idea is that we are treating people differently if they have brought a gun or a firearm into the room.

These statistics show that three people out of the eight had come back into the classroom because a manifestation of disability was bringing a gun into the classroom. It is kind of hard to imagine, but that is what the ruling was.

With that, let me close and simply say that when it comes to possession of a firearm or a gun, the Federal Government really should not, I believe, be tying the hands of our local education officials. We trust our principals, our teachers, those who are in charge of discipline.

Again, I say this. When we are focusing on guns and firearms in the classroom, I just find it hard to believe, and really there is absolutely no excuse for any student to intentionally bring a gun or a bomb to school.

Students with disabilities really should not be able to hide behind, not just their disability, but their behavior as well. It is very clear. What is happening is we set this structure up, the Individuals with Disabilities Education Act, with this single provision that allows certain students to potentially hide behind the legislation, not their disability, but behind the legislation and, thus, avoid punishment that a nondisabled student would undergo.

The amendment is simple. It is straightforward. It means that all students will be treated equally. If they bring a firearm in the room, I urge its support and hope it will be brought to a vote shortly.

Mr. HARKIN. Would the Senator yield for a colloquy or engage in any kind of question and answers?

Mr. FRIST. Sure.

Mr. HARKIN. Mr. President, the Senator from Tennessee knows I have the highest respect for him. In fact, I have always found him to be a very thoughtful Senator, especially when it comes to the issues of disability policy.

When the Senator first came to the Senate, he became chairman of the then-existing Disability Policy Subcommittee in the Labor and Education Committee, and I was his ranking member. I thought he did a great job.

As a matter of fact, under his chairmanship, we were able to get through the revisions of the Individuals with Disabilities Education Act, which we had been attempting to do for several years. In fact, it took 3 long years to get all the groups to finally agree on the revisions and the amendments to the Individuals with Disabilities Education Act, I say that as a way of background.

The Senator from Tennessee was very heavily involved in that process. We were able to get the bill passed in May. I think it was, of 1997. It was strongly supported in the Senate and in the House, and passed, and was signed into law by the President.

My friend from Tennessee gave an example of the students in his home community. He gave an example of eight students, six of whom were disabled, at least under an IEP, as I understand it; and that three, as I understand it, were expelled right away because it was not a manifestation; but it is the loophole statement that three went right back into the classroom.

The Senator, in a private conversation, told me about this once before. If I am not mistaken, was this not during the school year of 1995–1996 or 1996–1997?

Mr. FRIST. It was 1997–1998. Mr. HARKIN. It was 1997–1998. So the regulations under the Individuals with Disabilities Education Act did not go into effect until March of 1999. That is 2 months ago.

I say to the Senator from Tennessee that school he is talking about was still operating under the old test.

The old system said you could place a child with a disability in an interim educational setting for up to 45 days if the child brought a gun to school. That is the old bill.

The new bill says, the one for which I have been advocating for, the 1997–1998 statistics have just come out a couple months ago—the Senator is right, a decision is made, and if it is not a manifestation of a disability, they can be expelled immediately. If, however, it is a manifestation of a disability, the child can be placed, under the old bill, for up to 45 days in an interim educational setting, and then if the school officials believe the child is still a danger, if the child is likely to injure him- or herself, or to others.

I ask the Senator from Tennessee, the example you gave is under the old bill. The new bill says that at the end of 45 days, the school can go to an impartial hearing officer and keep that child out for another 45 days. I ask the Senator if that is not a correct interpretation?

Mr. FRIST. The 1999 statistics have been that there have been nine firearm violations, nine firearm infractions this year as of yesterday. Of these nine infractions, four involved special education students. In two of these cases, the students were expelled but given alternative services because they were not expelled because the possession, walking into the school with a firearm, was found to be a manifestation of the disability. He is back in school today.

Mr. HARKIN. I don’t know that I hear the Senator have to speak a little slower, I would appreciate it. I understand that you said recently, I do not know if you have given me—
Mr. FRIST. The figures you gave were for calendar year 1999.
Mr. HARKIN. The figures I gave 15 minutes ago in my presentation were from 1997–1998. I just gave you the ones for 1999.
Mr. HARKIN. What you said is that for 1999, this school year; I do not know if the Senator means the school year of 1999 or January until now.
Mr. FRIST. The statistics as of yesterday, up until about 24 hours ago, there were nine infractions over the previous 10 months in Nashville, TN. Four of those are special education students, four of the nine.
Mr. HARKIN. Four of the nine were special ed. Two were expelled because it was determined not to be a manifestation. What happened to the other two?
Mr. FRIST. One right now is back in the classroom. And because of the finding during that 45-day period you spoke of, that it was a manifestation of the disability, they could not treat the student like anybody else.
The other student case is now pending, going through the bureaucratic determination process.
Mr. HARKIN. I say to the Senator, you say that this one child was put in an interim setting for 45 days. Now this child is back in the classroom. Can the Senator tell me what the principal or did the school officials ask for a hearing to keep the child in the alternative setting for an additional 45 days, which they are allowed to do under the new law? Did they do that?
Mr. FRIST. I will have to check and get back with you. I think the Senator’s point is important. That is why I spelled it out earlier. For a student with a disability, you have the 10 days which you can be removed from the process. If you brought a gun into the school, you could be removed for 10 days. Then you have a 45-day period during which this determination is made. If you brought the gun because you had a disability, you can, as I have demonstrated with this most recent student from a month ago, plus the three from last year, you can go back into the classroom during that 45-day period. I think that is the issue that we want to close, which is basically saying, it doesn’t matter whether you have a disability or not, if you walk into a classroom with a gun, you should be treated like everybody else.
Mr. HARKIN. I say to the Senator from Tennessee—and surely we can get this right; it may take a little bit of discussion, but I think we can get it right—the situation he just described is true to the point where the child can be put in an alternative setting for up to 45 days. Under the new law, which, I again point out, just went into effect this year, the school can keep that child out not only for 45 days but for another 45 days and another 45 days. All the school has to do is go to the impartial hearing officer and say: ‘This child brought a gun to school. It is a manifestation of his disability, but under these circumstances, this kid is a danger to these other students and should be kept in an alternative setting for another 45 days.
Mr. FRIST. Is it true that the school can do that? So that if the facts are, as the Senator said, the kid is back in the classroom; obviously the school officials felt the kid was not a danger to anyone and they let him back in the school.
Mr. HARKIN. What you said is that not local control? The local school officials had to decide that child was not a danger and let him back in. There is no other way it could happen. I ask the Senator if that is not so?
Mr. FRIST. That what is not so?
Mr. HARKIN. Let me try again. The kid brought the gun.
Mr. FRIST. This is our wording: School personnel may discipline a child with a disability who carries or possesses a gun or firearm to or at a school, on school premises or at a school function under the jurisdiction of the State or local education agency in the home in which such personnel may discipline a child without a disability, period. That is all we are saying. I don’t see how you cannot agree that you should treat every child who comes into a school with a gun or bomb the same. How can you separate one group of people out?
Mr. HARKIN. Let us look into that. 
Mr. FRIST. You can look into it. But your 10 days or 45 days is missing the point of the amendment. The amendment is what you read. You treat everybody the same.
Mr. HARKIN. Well, let us look at that. I think the Senator said he supports IDEA. He supports the Individuals with Disabilities Education Act. The fact is that we do treat children with disabilities different than we treat other children. Does every child in a school have an IEP, I ask the Senator?
Mr. FRIST. No. But my whole argument is, should they bring a bomb into the schoolroom, would you treat them differently and let them go back in. That is what I am saying. There are some times that you cannot segregate a group of people and say, you get a special education, you come to bombs and guns coming to the school room. That is the point that I am making.
Mr. HARKIN. Let me respond to the Senator on that. I am trying to follow this logically and not to get too inflamed here.
If we believe that a child with a disability is treated differently than a child without a disability—we accept that. A child with a disability has an individual education program. There are certain laws that we have passed which if a State wants to accept Federal monies, they abide by. No local education agency has to abide by the laws of IDEA. If they take the money, now, they would still have to provide a free and appropriate public education to kids under Federal court rulings.
Again, I say to the Senator from Tennessee, that as long as we treat children with disabilities differently, and we do because they are disabled, we then take it to the step that the Senator said. Should we treat a disabled child who brings a gun to school differently from a child who is not disabled? I think that is a good question. At first blush, it might seem to the casual observer that no, they should be treated the same.
I say to the Senator from Tennessee, let’s take two children. One is a child with no disability, has an IQ of 120, has good grades, comes from a pretty decent family, who all of a sudden gets a mean streak and brings a gun to school. That is one kid.
Let’s say we have another kid. He has an IQ of 60. He is mentally retarded. He has cerebral palsy. His lifetime has been one of being picked on by other kids and made fun of. Because of IDEA, he is now in a regular classroom. Some kids know up the pickle and say, look, junior, we know your old man has a gun at home and he has a couple of pistols. If you don’t bring one of those pistols to us tomorrow, we are going to cut your ears off. The kid has an IQ of 60. He is mentally retarded. He has cerebral palsy, maybe even suffers a little bit from schizophrenia, I don’t know.
The kid is terrified. He goes home. He sneaks the old man’s gun. He takes it to these kids, and he gets caught by the principal or someone who sees the gun and said, he should do this differently than the kid with a 120 IQ, who knew exactly what he was doing and who had a mean streak and brought that gun to school?
Mr. FRIST. Yes. Mr. HARKIN. The Senator can say yes. I say no.
Mr. FRIST. Let me respond to the question. They absolutely should. If two children walk in, regardless of the one who has a gun and the other who has a gun and has an IQ of 60, when it comes to removal from the room and being kept out, they should be treated exactly the same. It should be by local control. It doesn’t mean let them in or keep them out. It means having the decision made by the principal and not by the well-intended legislation that has this huge loophole in it.
Treat every child who brings a gun or a bomb to the room the same, regardless of the one who is above or below the mean ethic you can make the story seem. The big thing is that you treat them the same. It is the principal and the teacher and...
the people locally who decide, not the Senate.

Mr. HARKIN. Now, I believe the Senator made a very important point there in his first comment to me. The Senator said that if two kids—the ones I described—bring a gun to school, they should be treated exactly the same in terms of removal. I agree with the Senator. In terms of removal, they should be treated the same. Today, under IDEA, they are treated the same. In terms of getting them out of the classroom immediately, they are treated the same.

When the difference occurs is later on during the 45-day period, where it is examined as to why the kid brought the gun to school, and whether it was a manifestation of his disability or not. I ask my friend from Tennessee this straightforward question: Is it true that under IDEA, as it is today, if a disabled child brings a gun to school and a nondisabled child brings a gun to school, they are both treated the same in terms of removal?

Mr. ASHCROFT. That is totally incorrect. I just gave you an example where there were eight students in Tennessee. One was expelled because he did not have the disability, and three others were back in the classroom. Do you call that being treated the same? Absolutely not.

The whole purpose of my amendment is that, if you bring a gun or a bomb to the classroom, you be treated exactly the same. And if you don’t have a disability in a special education class, you are out of school, no questions asked. If you have a disability, there are at least three out of eight chances you are back in the classroom within 45 days. That is not the case.

Mr. HARKIN. Let me try again. Let’s talk about removal. Talk about day one. Two kids bring a gun to school. One is disabled and one is not. Is it true that the principal can immediately expel both students on that day and get them out of school?

Mr. FRIST. No. He can suspend, not expel. That student has to go through a manifestation process, an initial 10-day period and then 45 days with a determination, and that student can be back in the classroom as has been demonstrated in Nashville, TN, and other places. Anybody can check their own statistics.

Mr. ASHCROFT. Will the Senator yield for a question?

Mr. FRIST. I yield to my colleague from Missouri for a question.

Mr. ASHCROFT. Mr. President, I ask the Senator from Tennessee, when a student is subject to an IEP and is disciplined for bringing a gun to school now, is it not an immediate discipline of expulsion for a year as it is for others; is it for a limited period of time? What is that first interval of discipline that is provided for under IDEA?

Mr. ASHCROFT. For students with a disability who bring a gun to school, there is an initial 10-day period in which they can be taken out and then a 45-day period during which that manifestation process takes place.

Mr. ASHCROFT. May I pursue an additional question. So there is a disparity right away. The student without an IEP is expelled for a year.

Mr. FRIST. It is zero tolerance in Tennessee and in most States today. If you don’t have an IEP, or are not disabled, you are expelled under zero tolerance for a year.

Mr. ASHCROFT. Under an IEP, you have an initial 10-day suspension, and legal proceedings start to determine whether or not his disability or special education status caused or was related to the bringing of the gun, brandishing of the gun, or bringing the pipe bomb or a firearm into the classroom was a manifestation of your disability?

Mr. FRIST. That is correct. Mr. CRAPO assumed the Chair.)

Mr. ASHCROFT. When you talk about a manifestation of a disability, what does that mean? That you bring a gun to school because you are disabled? Is that what you are saying? Or could that mean because you are severely emotionally disturbed, for instance?

Mr. FRIST. It certainly could. The manifestation process is a complicated process and one to reach out to people. The term can certainly mean that.

Mr. ASHCROFT. So it could be that a student who is severely emotionally disturbed is protected from being expelled for a full year, based on the fact that he is severely and emotionally disturbed and that resulted in the bringing of the gun?

Mr. FRIST. That is correct.

Mr. ASHCROFT. Then the suspension—if you got past the 10 days, you could suspend the student for 45 days.

Mr. FRIST. During which that so-called manifestation process takes place.

Mr. ASHCROFT. That is related to whether or not his disability or special education status caused or was related to the bringing and brandishing of the gun?

Mr. ASHCROFT. That is correct.

Mr. ASHCROFT. That is correct.

Mr. ASHCROFT. Now, these determination proceedings, do they involve substantial expense for the school?

Mr. FRIST. They certainly do, and it is very expensive. The process itself is a process that I think can be important and useful. So the overall manifestation process, as we look at IDEA, is something that I am not necessarily critical of. It is the idea of taking a disability and saying the disability and bringing them back in the school with unequal treatment.

But the answer is yes. I travel around Tennessee and people tell me this manifestation process can be very expensive because it involves lawyers.

Mr. ASHCROFT. Thousands of dollars?

Mr. FRIST. Yes, thousands of dollars.

Mr. ASHCROFT. That lasts 45 days, according to the Senator from Iowa, and you have to have another hearing to have another 45 days.

Mr. FRIST. There can be an extension for another 45 days if a determination is made. You go for 45 days, and it can go another 45, although, usually if it is a manifestation, after 45 days the student is back in school.

Mr. ASHCROFT. The theory of the legislation probably provides a basis for having this series of bureaucratic trials and hearings every 45 days as people are litigating whether or not you could keep a very, very dangerous person out of school.

Mr. FRIST. That is the way it is written, to take 45 days. Your fundamental question is, did the disability cause you to bring the gun to school?

That is hard to imagine, to be honest. It seems that if it is the cause, you would not want to put them back in school. The idea of having 45 days and another 45 days if they are threatening, as the Senator from Iowa mentioned, conceptually, that is pretty good. It seems that it is expensive, or something frustrating, something that can be treated, and a kid is violent underneath, and they did bring a gun to school. You are going to want to give the kid the benefit of the doubt. You are not going to say keep them another 45 days and then another. If the kid comes in and says, “I am sorry,” you say, “Go back to school.”

That is just treating people differently because they happen to have to go through this bureaucratic rights to remain in school, or reenter school.

It seems to me that goes to the heart of what we are talking about—whether or not a student who has a problem that causes the student to be involved in bringing a gun—that is, the manifestation proceedings. Part of the evidence or manifestation of the problem is that you come to school with a gun. That provides the authority for reentering the same as other students but would have a very tactical set of bureaucratic rights to remain in school, or reenter school.
I think that describes the loophole we have talked about. We created it here in the Senate.

Mr. FRIST. No. It is that loophole that has been created.

I think what my theory is as I look and talk to people around Tennessee. Whether people are supporting individual disabilities or not, it is not about that. It has to do with the great fear I have in this unequal treatment of people, and allowing that special group of people with an offense of bringing a gun to school or a bomb to school to go back into school when you don’t let anybody else go back into school. I will tell you, to me, that is a potentially devastating loophole we have created. It hasn’t anything to do with the disability. That is my greatest fear. That is why the amendment is on the floor.

Mr. HARKIN. Will the Senator yield for an observation and again for a question?

Mr. FRIST. I don’t mind people making a decision one way or another on these things. I hope we base it on factual circumstances. The fact is that what the Senator, my friend from Missouri, just described is the idea in the old law, going back 20 years. We had the 45-day period, at the end of which kids can go back to school. We changed that. The final regulations on that didn’t become final until March of this year when we put the 45 days in, at the end of which, if the school officials believe that the child is still a danger, they can go to a hearing officer, and say, hey, because of all these reasons, that kid should be kept out of school for another 45 days.

I say to my friend from Tennessee that I don’t have that much lack of faith in my school principals and officials. If they look at this kid and say, wait a minute, this kid is a danger, they are going to go to a hearing officer and say, wait a minute, keep that kid out.

So I want to make it clear that what my friend is talking about is the old law. That is all I want to make clear.

Mr. ASHcroft. I think it is important to accept the fact that you have faith in the school administrator and the principal, because under the proposal from Tennessee, and under my proposal and under the Gun-Free Schools Act for schools, which we passed, a principal has the discretion of being able to allow a student to reenter. And, if you trust the principals, you trust the school official, that is an available opportunity as it exists and would exist if we were to pass this amendment providing for uniformity, because we allow the treatment under our proposal to be identical to the treatment for any other student not treated under an IEP. And principals have the discretion to allow such other students back into the classroom.

Mr. HARKIN. If the school officials say it is a manifestation, Mr. FRIST. That is right. I think that is going to be different, because we are basically going to say let these school principals and officials make the ultimate decision, and not an officer who happens to be assigned to manage that particular case, who is going to develop a relationship with that student and family, and who says, “Please let him go back to school.”

Let’s treat everybody the same. Let the authorities, the principals, the teachers, make that decision instead of separating them out, since we know they come back into the school.

Mr. HARKIN. Let me again read the amendment.

School personnel may discipline a child with a disability for having a firearm, firearm clip, explosive, firearm ammunition, handgun, or firearm to or at school, on school premises, or at a school function under the jurisdiction of a State or a local educational agency in the same manner in which such personnel may discipline a child without a disability.

Again, I have given examples of people going back into the schoolroom. Let me give two other examples.

This is an article in the Washington Times.

Fairfax County, Virginia, school officials learned that a group of students were in possession of a loaded .357 magnesium handgun on school property. They moved quickly to expel the six students. Five students were expelled. One student, a special education student who had a learning disability, who they called a “weakness in written language skills,” continued to receive an education. School officials reported that this child bragged to other teachers and students that he could not be expelled because he was in special education.

That is the signal we have sent through IDEA, through this loophole in our legislation, not the overall legislation. The overall legislation is great.

In the Cobb County school system in Atlanta, not too far from where I am, two students, who were initially expelled for bringing a handgun and ammunition clip to school, were also protected by IDEA because they were special education students. There is just too much of this special treatment.

Our simple amendment basically says, disabled or not, educational status or not, whoever you are, you need to be treated the same where such personnel “may discipline” a child the same without a disability.

Mr. HARKIN. May I ask the Senator another question?

Mr. FRIST. Yes.

Mr. HARKIN. Does the amendment also not seek services for these kids under paragraph (b), “ceasing to provide education”?

Mr. FRIST. We basically say we will treat those students with a gun or a firearm the same as nondisabled students.

The whole cessation of services we are not here to debate. Everyone will be treated the same, whether disabled or not disabled.

Mr. HARKIN. It is part of the amendment?

Mr. FRIST. That is correct, but not that other students have cessation of services. The 85 percent of American students out there not classified as disabled have cessation of services.

Treat them the same.
Mr. HARKIN. One of the reasons I think the Senator will find the Parent Teachers Association, Association of Police Chiefs and other police around the country opposing this amendment is they think the worst thing we could possibly do would be to take kids who are severely emotionally or otherwise—disabled and throw them out on the streets.

Mr. FRIST. We are not saying that. We are saying treat them the same. We are not telling them they have to cease services.

I hope you have more respect for the services that will be needed and helpful. We are not saying you have to cease services. You can still provide the services. We are saying treat everybody the same.

Mr. HARKIN. The reality of the situation and the reason we have IDEA—and we hear it all the time; I hear it from my principals, too, I say to my friend from Missouri—sometimes it is tough to put up with the kids with special needs. They need a lot of attention. Sometimes they are a little rascals. Sometimes the principals throw up their hands and want to get them out of the classrooms. The teachers want to get them out of the classrooms. They are hard to deal with. These are kids with disabilities.

Time after time, for every story either of my friends relates about principals or others who are at wit’s end because they cannot come up with ten other stories of parents with kids who are disabled and how those kids were mistreated in school.

The reality of the situation is—and this is only my feeling—if you take two kids, one disabled maybe with a learning disability, maybe with other problems, who has been mainstreamed in school, expel him as you do a regular student and leave it up to the principal to say, OK, you can let him back in when you want, I think that principal will have a lot of pressure on him to let one kid back in, maybe, depending on the circumstances, but that disabled kid, that kid causes a lot of problems, costs a lot of money, we will keep him out.

I am just telling Senators that has been the situation for the past 30 to 50 years in this country. That is why we have IDEA. That is why we have individualized education programs for those kids. That is the reality of the situation.

Mr. FRIST. But the Senator from Iowa understands that we are not saying keep the students out forever. We are saying if you keep the nondisabled student out for the rest of the year, you are going to have to keep the nondisabled student out for the rest of the year.

In fact, if you look at nondisabled students in terms of cessation of services, because the implication is people are so bad and mean they will cut off services, you look at the nondisabled students in Nashville, TN expelled under zero tolerance, 55 percent of those are provided services. I guess the Senator argues that of the disabled there will be such intense discrimination against that group of people, and I understand Senator HARKIN has fought the battles here for 20 years, and I respect that tremendously. I guess I have more faith in our principals and in suspensions that if you treat everybody the same, that is exactly what you will do.

Mr. ASHCROFT. Will the Senator yield?

Mr. HARKIN. Will the Senator yield?

Mr. FRIST. I yield to the Senator from Missouri and then the Senator from Iowa.

Mr. ASHCROFT. What I appear to be hearing is if they are treated the same as nondisabled students, that is kind of a discrimination.

That is equity and parity in treatment. It doesn’t stack up to discrimination, in my judgment.

I wonder if the Senator from Tennessee is aware of the letter from the National School Boards Association regarding the Frist-Ashcroft amendment to S. 254.

Mr. FRIST. I have not seen that.

Mr. ASHCROFT. It is an interesting letter on behalf of the Nation’s 95,000 local school boards. This is from the executive director, Anne L. Bryant, executive director of the National School Boards Association:

The National School Boards Association urges you to support the Frist-Ashcroft amendment to S. 254 that would enhance the safety of all students from gun violence.

We are not talking about the vast number of individuals that are participants in the IDEA program. The number is vast, with 13 or 14 percent in Tennessee, and 13 or 14 percent of the students in Missouri and Iowa. These are not people who show up for school with guns very often. When some of them do, they are threatening the others.

When a person shows up with explosives or a gun at school, the objective there ought to be school safety. It ought to be to address that.

The amendment provides school officials with the discretion to suspend or expel students covered by the Individuals with Disabilities Education Act in the same manner as other students in cases where they bring firearms to school.

It has been stated there is a lot of opposition. This is a letter from the 95,000 members of the School Boards Association stating this is the right thing to do.

Mr. FRIST. I think we have been very careful to try to get this amendment as tight and focused as we could, talking about guns in the classroom, bombs in the classroom.

We have gone so far to put wording in the bill to say they intentionally have to bring that gun into the school or the classroom. We have done our best to get it as narrow and focused as we possibly can.

It comes down to safety. We are on the juvenile justice bill. We had these terrible 27 deaths from guns in classrooms, and this bill goes right at the heart. Again, not the disability community or individuals with disabilities. I count myself among their greatest advocates, but I am concerned that we create a huge loophole that puts our children at risk. That is why I am here.

Mr. HARKIN. Let me ask the Senator.

Mr. JEFFORDS. Will the Senator answer a question?

Mr. FRIST. Did the Senator from Vermont have a question?

Mr. JEFFORDS. I would like to volunteer this point.

Mr. HARKIN. Come on over. We are all friends.

Mr. JEFFORDS. I listened very carefully. I think when you get right down to the basic question, the final analysis, should the school have to afford an alternative education situation and pay for it. It is a matter of dollars and cents. It has nothing to do with the safety of the children or anything else.

Under the circumstances you are dealing with here, if a child comes in with a gun, if it is somebody without an IEP or whatever, they can be thrown out of school and they can be let back into school. That is entirely the discretion of the school officials. They can say this is an aberration or whatever.

If a child with a disability comes in, then you go through the 45 days to assess as to whether or not it was as a result of disability. If it was not the result of a disability, then the child can be disciplined as any other child. If, on the other hand, it was the result of a disability, then they are required to provide an alternative educational situation. It may or may not cost something, but that child is not in the classroom. So no child goes back into the classroom if they are a threat to the classroom.
What it comes down to, and what the school officials object to, as I understand it, is that they have to set up a special 45-day program for this child, and pay for it. The reason is not to protect the school or protect the kids; it is to make sure they do not have to provide the funds. You can keep those 45 days going forever. Then that costs money. So this is not a safety question. This is a money question. The school boards are saying they don't want to pay for those 45 days. That is what they are saying.

Mr. FRIST. That is not what I heard. Basically, what I hear from the superintendents and the principals is the safety end of it. The expense is expensive, it has been pointed out. What I am dealing with is the safety end of it, the fact that our principals' hands are tied because of the way the legislation is written, because of the threat of lawyers, of trial lawyers who threaten to sue the school boards based on our bill that they basically are saying the students come back in the classroom, when the student without the disability is out for the school year.

Mr. ASHCROFT. Will the Senator from Tennessee yield for a question?

Mr. FRIST. I will.

Mr. ASHCROFT. I ask him if his experience has been similar to mine. I have probably gone to 30 or 40 school districts in the last 3 months, visiting school districts. I have found people are very concerned about the safety of students. My own view of it has been totally based on that suggested by the Senator from Vermont, saying that school safety is not the question here. I talked to one superintendent. This did not happen to be an IEP student who carried the gun to school but who threatened to kill other students in school seven times.

Of course, because of the problems in effecting discipline, they kept the students in school. Finally the student shot another student. Safety issues are involved. I have heard from that suggested by the Senator from Vermont, saying that school safety is not the question here. I talked to one superintendent. This did not happen to be an IEP student who carried the gun to school but who threatened to kill other students in school seven times.

Mr. FRIST. There have been 27 people murdered.

Mr. ASHCROFT. This is not just a financial issue when someone brings a pipe bomb to school. That is a safety issue. Sure it costs money to put the person in alternative settings, and it costs money to have a hearing every month. There are massive costs. I will not deny those are very serious costs. But let us not suggest—at least to the school districts that I dealt with—that there are no safety issues involved when people bring pipe bombs to school. Does that comport with the Senator's experience in Tennessee?

Mr. FRIST. Yes, it does. The purpose of the amendment is just that. It goes back to having safe schools. That is what we have been debating so much over the last several days. I will yield the floor. Other people want to go forward, but let me just close and say the purpose of this amendment is real simple. That is to get rid of a loophole which allows one group of students to be treated differently. If they both brought a gun to the school, the loophole being that a group of students are ending up back in school where one group of students is expelled. All this amendment says is, let's treat everybody the same and let's have those decisions made locally.

I yield the floor to the ACTING PRESIDENT pro tempore, The Senator from Vermont.

Mr. ASHCROFT. Mr. President, I would just like to sum it up. What we are talking about are the problems we have had from the beginning of time, the problems that children with disabilities have and how we handle them.

The reason we created IDEA, the reason it was passed, is that we were not allowing the children with disabilities to get any education. It went to the U.S. Supreme Court. A consensus decision by a number of courts, I should say, was reached, in which they determined that if you are going to provide a free and appropriate education generationally to the public, you have to have an appropriate education for children with disabilities. And we funded that. We required that. That is why we are here today.

What we are now dealing with is do we not want to provide those services. If a student has a disability and provided a threat to the school, it is perfectly clear, if it is a result of a disability, you have to provide that child with an education as the Constitution requires, because, if it was the result of a disability, he is not really responsible for it, so you have to provide it. That gets expensive.

If it was not part of the disability, then the child is just treated as any other child. They need for a different or additional IEP, away from the classroom setting; the child gets treated and handled like anyone else.

Mr. ASHCROFT. Will the Senator yield for a question?

Mr. JEFFORDS. Will the Senator yield?

Mr. ASHCROFT. I will be happy to yield.

Mr. ASHCROFT. Is it the Senator's position, then, if a student is the subject of an IEP, a special education student, and brings a gun to school and it is determined that student did not bring it as a manifestation of the disability?

Mr. JEFFORDS. Right.

Mr. ASHCROFT. Are you in your position, then, that the school can expel him without any responsibility to provide services?

Mr. JEFFORDS. That is not correct. Mr. HARKIN. They have to provide services for him. They have to provide services.

Mr. ASHCROFT. Wait a second. Apparently, there appears to be a difference between you and the Senator from Iowa. I was just going to indicate—is it your view in the event the dismissal comes because the gun was not a manifestation, that there is no responsibility?

Mr. JEFFORDS. He is just treated like anyone else at that point as far as discipline, is my understanding.

Mr. HARKIN. If I might interject myself into this a little bit?

Mr. JEFFORDS. I yield to the Senator from Iowa.

Mr. HARKIN. I respond to the Senator from Missouri that services always have to be provided. Educational, medical, mental health, those kinds of services do have to be provided. But if it was not a manifestation of a disability, of course, the kid can be expelled from school.

Mr. ASHCROFT. So the distinction is not that the law provides that there can be no services, or will be none, your view is directly contrary to that of the Senator from Vermont, that services must be provided on a continuing basis, even if it was not a manifestation. But he can be kept out of the school.

Mr. JEFFORDS. That is in the law.

Mr. ASHCROFT. I think it is in the law. That is why I was asking the Senator.

Mr. JEFFORDS. He may not have to return to the school.

Mr. HARKIN. If the Senator will yield?

Mr. ASHCROFT. Not providing them at the school. That is where you do get into expensive treatments, where you get to $60,000, $70,000, $80,000 a year to provide the student with individualized home-based education.

But the point is, the purpose of the amendment of the Senator from Tennessee, which I am very grateful for the opportunity to participate in with him, is to provide an equity in services. When you suggest that there is an equity for those who are subject to an IEP, but the violation is not a manifestation of the disability, that there is not any requirement for services, that simply not true. The law provides those services must continue.

I think the fundamental point the Senator from Tennessee and I want to make is this. There are not very many people who are bringing guns to school. There are very few of them. And even fewer who would bring guns or pipe bombs to school are students with a disability.

But for those who do, the school officials ought not to have to go through tortuous legal proceedings and labored determinations of manifestations and the like for those who bring pipe bombs and guns to school. We ought to be able to trust the principals to say: You don't belong here in school. You will come back in the same manner that other students.

Mr. JEFFORDS. I might point out, under your theory here, if a child with a disability comes in, and it is not a manifestation of disability, they are not entitled, under the IDEA, to have any education at all. You just get rid of them. Get rid of the one who came in who was not disabled.

Mr. ASHCROFT. That is exactly the kind of parity we are talking about. If
a person brings a weapon to school, the principal has the right to say: You do not belong in school and you are not going to disrupt or threaten the safety of this school environment and you are not entitled to special services, especially in cases where bringing a weapon to school had nothing to do with your disability.

I believe it ought to be the case, and this amendment provides we give school administration officials the kind of discretion they have in their own states and under the Gun-Free Schools Act we passed a couple years ago where the principal has the discretion to expel them for a year, with the discretion to allow them to reenter on his or her determination or school authorities’ determination.

Mr. HARKIN. Will the Senator yield?

Mr. JEFFORDS. Under these circumstances which we are talking about—expelled but not a manifestation—then a child is expelled from school, entitled to educational services. That is the difference. That means an additional expense. The child who does not have a disability and is thrown out of school has to find another school, has to get a tutor or do something else. We are all talking dollars and cents. We are talking about a cost that is added by virtue of the fact that you must provide special services.

Mr. HARKIN. If the Senator will yield.

The PRESIDING OFFICER. The Senator from Missouri—

Mr. JEFFORDS. I have the floor.

The PRESIDING OFFICER. The Senator from Vermont has the floor.

Mr. HARKIN. If the Senator from Vermont will yield for a question.

Mr. JEFFORDS. I yield to the Senator from Iowa.

Mr. HARKIN. I say to the Senator from Missouri, as long as it takes to reach some parameters on this, the fact is, the principal’s hands are not tied right now in getting kids out of school immediately. Will the Senator agree with that or not? No?

Mr. ASHCROFT. For expelling students.

Mr. HARKIN. Getting them out of the school immediately if they bring a gun to school.

Mr. ASHCROFT. For the first 10 days, they can get them out of school. Mr. Jeffords. For five days.

Mr. ASHCROFT. Then it takes additional proceedings to get to the 45-day period.

Mr. HARKIN. No, it doesn’t; no, no, it doesn’t; no, it doesn’t. No.

Mr. ASHCROFT. On the 11th day, you have to start a different regime that includes providing separate services, education in another setting if you don’t provide it at school.

Mr. HARKIN. But they can keep them out of school for 45 days.

Mr. ASHCROFT. They can keep them out of a regular classroom.

Mr. HARKIN. Wherever they brought the gun to school, they can keep them out of that school for 45 days. The law is pretty clear. I don’t know what we are debating here.

Mr. ASHCROFT. In all deference to the Senator, the law is clear and the law provides substantial disparate or different treatment, and the treatment is not in accordance with very serious problems in the real world. It causes problems because we let students who bring guns into school back into the school system because of this system.

Mr. HARKIN. Let’s take it one step at a time. I say to my friend. I am trying to get to this one point. Are the principal’s hands tied if a kid brings a gun to school—I don’t care if they are disabled or not. In getting that kid immediately out of school for up to 45 days. I think the law is clear, they can do that; they don’t have to show anything.

Mr. ASHCROFT. They have responsibilities when they do that that they don’t have with other students.

Mr. HARKIN. Again, I am just saying—

Mr. ASHCROFT. So if you are talking about hands tied, you may not tie their hands, but you force them to busy their hands doing a whole variety of other things.

Mr. HARKIN. Again, I say to my friend—

Mr. ASHCROFT. That results in those kids showing up in school far earlier than they otherwise would. It may not work that way on the floor of the Senate, but that is the way it works in school.

Mr. HARKIN. I want to take it step by step.

Mr. ASHCROFT. Sure.

Mr. HARKIN. Step by step. The first step is getting the kid out of school because there is a clear danger. You want to get him out of there.

I want to make it clear, we all understand that a principal can get that kid out of school and bring him to the police station right now and say: Come and get this kid; he has a gun. They can take him down to the police station. The police can do it. They have that right now. Even if the kid is severely disabled, one can say, please come and pick him up and take him to the police station now. Their hands are not tied. I want to take the first step in getting the kid with a gun out of the school. I just hope that my friend will agree that the principal can do that.

Mr. ASHCROFT. You are asking me that question?

Mr. HARKIN. Yes.

Mr. ASHCROFT. The principal can do that.

Mr. HARKIN. Thank you.

Mr. ASHCROFT. And this amendment is designed to extend the quality of treatment that you appear to admire at the first of the process through the process adequately so that we protect the safety of the school environment for a much longer period of time.

Mr. HARKIN. OK. Now, my friend and I agree that the principal can get the kid out immediately. Let’s take the second step: timeframe. For a disabled kid, it can be up to 45 days. They don’t have to do anything. They can keep him out for 45 days. They don’t have to show anything. They can keep him out for 45 days.

Mr. ASHCROFT. They do have to do things.

Mr. HARKIN. Provide services in education.

Mr. ASHCROFT. That is different than with other students.

Mr. HARKIN. That is true.

Mr. ASHCROFT. When we take these steps, let’s tell the whole story about each step.

Mr. HARKIN. For the disabled child, they do have to continue to provide services.

Mr. ASHCROFT. If they don’t let him back in, for that student, they have to set up some other school for him, and that could even be a school that is housed with a full-time teacher and all the kinds of assistance the student might need.

Mr. HARKIN. It would be in an alternative setting to be determined among the parents, the hearing officer and the school.

Mr. ASHCROFT. And that is totally different than it is for a nondisabled student.

Mr. HARKIN. I agree with you.

Mr. ASHCROFT. Good. Good. Here we are, for the first 10 days, both can be sent out of school, but after the 10th day—

Mr. HARKIN. I think then while we agree that the principal can get the kid out right away and can get him out for 45 days, our disagreement, it seems to me, is not so much on getting the kid out of the school immediately and getting the immediate danger out; it seems to me our disagreement is what happens later, what happens with those kids later on, how are they treated and how, if at all, they are let back in the school. That seems to be our disagreement.

Mr. ASHCROFT. That is a very significant point here, and if I just take you to the schools, and the best information we have in this debate is what the Senator from Tennessee has brought us, that they are treated de facto and significantly different number of them are back in schools prematurely because the schools feel like they have to let them back in at a time when, according to their testimony, they are uncomfortable about it.

Mr. HARKIN. Again. I think we can work through this. I hope. We may not always agree. I am trying to get down to the nub of the problem.

Mr. FRIST. Will the Senator.

Mr. HARKIN. And it seems to me that we do agree. I understood—

Mr. FRIST. This Senator does not agree.

The ACTING PRESIDENT pro tempore. The Senator from Vermont has the floor.

Mr. FRIST. Will the Senator from Vermont yield?

Mr. HARKIN. Will the Senator yield further?
Mr. JEFFORDS. Let me get organized here. I yield to the Senator from Iowa. Please refer back to me and then I will recognize the others, and we will have an orderly process here.

Mr. HARKIN. The point I am trying to make is that in the initial statement made by the Tennessee Senator talked about the Littleton school shooting and kids bringing guns to school and getting these dangerous kids out of school. I agree. I just want to point very clearly that in terms of a child bringing a gun to school, a principal right now can deal with a kid who is disabled just as they can with a kid who is not disabled, in terms of getting that kid out of school, having the police haul them away, have them book him, have them charge him with a crime or anything else. I just wanted to make that point very clear, that they can get those kids out of that school.

Now we are going to get into the next stage, which happens with those kids. That is the only point I want to make. I thank the Senator.

Mr. FRIST. Will the Senator from Vermont yield for a short period?

Mr. JEFFORDS. Yes.

Mr. FRIST. For the last 45 minutes, we have had the Senator from Iowa talking to me or talking to the body trying to explain so everybody can understand this process that we have set up for individuals with disabilities, which as the Senator from Alabama pointed out, is very complex issues.

We have a 10-day period where we have one set of rules which I agree that basically you do the same for an individual with a disability and nondisability. Then you have a 45-day period, which, as the chart that we saw earlier shows, in terms of a manifestation process, is confusing and is a difficult process. It is an evolving process and one that has changed over time so that we can consider individuals with their disabilities and what their special needs are.

Our point, and I know the Senator from Iowa keeps shifting away from it, but I am going to keep coming back to it, because the amendment is so simple. Our point is to close a loophole that if a disabled student brings a gun or a bomb in the classroom, they end up back in this classroom. If you do not have a disability you are not in the classroom, you are out. That is the whole point.

The point I want to make is, we can march through the whole 10-day period, the 45-day period, another 45-day period of threatening and all that. That is the whole point, that we have barrier after barrier after barrier for a group of people who brought a gun into the classroom, with our children around, and they brought a gun there. We have all these barriers set up for one group of students, but for the other group of students they are out for that year. We say, they are not the same. That is all the amendment does.

Mr. JEFFORDS. That is, unfortunately, not the way the courts have ruled as to how a State has to handle those situations. Students with disabilities are entitled to an IEP. They are entitled to special education and related services. They can be denied going back into the classroom if they are in any way a threat to that classroom. If a disabled student brings a gun to the classroom, that isn’t going to change. And this law will not change.

Mr. ASHCROFT. Does the Senator from Vermont yield?

Mr. JEFFORDS. Yes.

Mr. ASHCROFT. On what basis does the court say they are entitled to an IEP?

Mr. JEFFORDS. That goes back to the 14th amendment.

Mr. ASHCROFT. The Individuals with Disabilities Education Act, isn’t it?

Mr. JEFFORDS. Based on constitutional decisions that were levied back in the late 1960s and 1970s, which determined that we have an equal opportunity to children with disabilities. Part of that equal opportunity is appropriate education, which takes into consideration the nature of the disability.

Mr. HARKIN. Will the Senator yield to me to elaborate a little further?

Mr. JEFFORDS. Yes.

Mr. HARKIN. I say to my friend from Missouri that prior to the two 1972 cases, the PARC case and the Mills case, it was not the courts and by others, that there were millions of kids in our country who were denied an education simply because of their disability.

In both the PARC case—that is the Pennsylvania Association of Retarded Children—and the Mills case here in the District, the courts said, basically, look, if a State provides a free public education to its children—now, a State does not have to, States do not have to provide a free public education; there is no constitutional mandate for that, by the way. But the court said, if a State provides a free public education, under the 14th amendment to the Constitution it cannot deny a free public education, just as it cannot deny it to a child who is black, because of race, color, creed, national origin, sex, it cannot deny a free public education to a child with a disability; and, furthermore, the court said, because of the disability, the education must not only be free but must be an IEP.

So I say to my friend—and I will just go through this a little bit longer—the States, then, were faced with a constitutional mandate that they had to provide a free appropriate public education to kids with disabilities.

The States were panic stricken. How were they ever going to afford to do this? They came to Congress. Congress said: OK. We will set up a law. We called it the Individuals with Disabilities Education Act, passed in 1975. Both the Senator from Vermont and I were in the House at the time. We set up a law, and we said: OK. We want to have some national standards. We do not want to have 50 different standards. We want to set up national standards for providing services to kids with disabilities. We do not want 50 different things out there.

So we set up IDEA. We said our objective was to provide 90 percent of the funding. By the way, we haven’t, and we ought to.

Mr. ASHCROFT. Glad to have your support on that, Senator.

Mr. HARKIN. I always have. We ought to fully fund IDEA. But I just want to walk through this.

So we set up IDEA, and we said, if you, State of Missouri, would like to have the money we can provide, then you have to adhere to IDEA. No State, including the State of Missouri, has to abide by any of the provisions in IDEA if they do not want to accept any of the money.

Mr. SESSIONS. Will the Senator yield?

Mr. JEFFORDS. I yield to the Senator from Alabama.

Mr. SESSIONS. I have been traveling in my State and talking with educators. I have never had any issue that is of more concern to them than the problems of enforcing discipline caused by the IDEA Act. What we are doing in our schools today is not required by the Constitution. And sooner or later the people are going to rise up and put an end to it. Let me just share this thought with you. Taking a gun to school by a student is a Federal crime. What if they are put in jail, do they have to be sent back to the school? That is just the point.

Let me read this letter I received just a few weeks ago from one of Alabama’s most experienced attorneys general: He has been a leader in the State Attorney General Association.

Dear Jeff:

I am writing you this letter concerning my general outrage over the laws of the Federal Government and how they are being administered in relation to school violence.

I had already been having meetings with our Superintendent of Education concerning new rules and interpretations of rules based on what I believe to be the Federal Disabilities Act.

The general thrust of the matter is that violent children are being kept in school because of the Federal Rules relative to disabilities. I can point to at least seven to nine occasions in Baldwin County—

His county—in which I believe expulsion was called for, but could not be accomplished because of the interpretation of the Disabilities Act. I realize that mental disorders can be a disability, but the primary concern should be...
the safety of the children who are not caus-
ing any difficulties.

Our schools simply do not have sufficient
resources for one on one education and I
would say some other members of Alabama's delegation would review this
problem which I believe to be epidemic
throughout this Country.

Here is an example cited in the Mobile
Press Register about a 14-year-old stu-
dent classified as “EC,” emotionally
conflicted. He had to be assigned an
aid to go to school, to go to class with
him. One aide to this one student be-
cause of his problems, an aide assigned
to him, one aide for the whole school,
during bus rides to and from school. The
student was accused of assaulting his aide
while the aide tried to stop him from
trying to wreck the schoolbus.

These are the kinds of things that have
ever happened all over America. This
bill does not go far enough, in my opin-
ion. It only says, if you bring a deadly
weapon to school, and in violation of
Federal law, you have to be treated
like everybody else, and you do not get
special protections because you are emo-
tionally conflicted.

In fact, emotionally conflicted kids
may often be the most dangerous ones,
the ones most likely to come back in,
say, 6 months from now and kill some
innocent child in a classroom or shoot
their teacher. This is a good step for-
ward. I would like to, if I could, be list-
ed as a cosponsor of the legislation.

Thank you, Mr. Chairman, for your
leadership on so many matters of edu-
cation. I just wanted to share those re-
marks.

Mr. HARKIN. Will the Senator yield?

Mr. JEFFORDS. I appreciate the re-
marks.

I, again, point out, if the child is vio-
lent and it is not a manifestation of
their disability, they can be treated
like anyone else as far as removal from
school. If it is a manifestation, then
special rules apply. Those special rules
may well determine that they not be in
the general classroom. That process may require maybe an aide to be assigned to them. That is the way
the law works.

Many, many students who have dis-
abilities have special aides assigned to
them. We cannot let these kinds of
dangerous incidents of violence throw
out the whole law. We have to examine
exactly how you handle stu-
dents with disabilities, and situations
where the disability results in school
violence; where they can be
removed from the classroom; they can be
removed from the school.

But they must to be provided an
appropriate education under the law.

Mr. SESSIONS. If a child is emo-
tionally conflicted and brought a gun
to school on one occasion, why do we
think he might not do that on another
occasion, even some months later? It is
a safety question for the school.

This is a modest step in the sense
that it doesn't say you can do anything
if he beats up another student; it just
says that if he brings a deadly weapon
to the school, he can be treated like
any other student and be removed. I
think that is a good step and support
the amendment.

Mr. JEFFORDS. They can be re-
moved either way. It is just a question
where they end up—whether they end
up going outside of the school and join-
ing the school district or whether they
get a special educational situation outside
of the classroom, outside of the school.

Those are the kinds of problems we
must address whether or not they have
a disability.

Mr. SESSIONS. All I would say is the
district attorney, David Whetstone, is
a reasonable man. He is very con-
cerned. I am hearing repeatedly from
school superintendents and principals
that no matter what we say about, in
theory, how this law works, in practi-
cality, it is endangering the lives of
students, disrupting classrooms, caus-
ing teachers to quit, and costing untold
amounts of money. In fact, the super-
intendent from Vermont did testify
that 20 percent of the school system's
budget goes to special education students.

Somehow we have gotten out of sync
here. We need to move back to a more
modest ground, I say.

Mr. JEFFORDS. I say if the Congress
achieves the productive goal or trying to do, or
particularly what the Republicans are try-
ing to do, fully fund IDEA, then many
of those concerns would go away. But
we are far, far from providing the State
and local governments the money we
told them we would.

Mr. SESSIONS. You have been a
champion of that, but even then our
goal is to do 40 percent, not 100 per-
cent.

Mr. JEFFORDS. I was referring to
about 100 percent of the 40 percent.

Mr. SESSIONS. We haven't even hon-
ored our commitment to do 40 percent.
But even then, 60 percent of it would be
carried by the local school system.

Mr. JEFFORDS. You are accurate.

Mr. HARKIN. Will the Senator yield
briefly?

Mr. JEFFORDS. I yield to the Sen-
ator from Iowa.

Mr. HARKIN. I wanted to respond
to my friend from Alabama.

It seems to me the argument is, it
costs too much money to take care of
kids with disabilities. I remind my
friend from Alabama, that Supreme
Court right across the street, less than
2 months ago, had a case from Iowa,
Garrett case. Here was a kid who
was on a breathing device in school
every day, had to have a nurse with
him every day because they had to
clean the phlegm out of his throat and
his lungs. He was on a breathing de-
vice, severely disabled. His mind was
fine, mind was great—the kid knew
what was going on, a good student.

The school didn't like it because it
was costing them a lot of money—I say
to my friend from Alabama—so they
took the case to the Supreme Court.
That Supreme Court over there, in a 5–
2 decision, including some of the most
conservative Members of that Court,
said that under the Constitution of the
United States they had to provide that
opportunity. We can argue about how
we provide it, but, please, don't tell me
that somehow, because these kids cost
a lot of money, we have to give them
less in their lives than kids who are
disabled.

I yield the floor.

Mr. JEFFORDS. I am glad to yield to
one of you, and then I am yielding my-
self off the floor. I yield to the Senator
from Missouri.

Mr. ASHCROFT. Mr. President, I
want to bring the attention of the Sen-
ate to what I believe to be the law in
this situation, that absent specification
in the IDEA law itself, the exten-
sion of continuing services is not re-
quired according to, I think, the best
on-point legal decisions in cases where
a person would otherwise have forfeited
his right to school because of the dis-
ciplinary problem.

The case of Virginia Department
of Education v. Riley, from the Fourth
Circuit, found that the plain language
of IDEA did not condition the receipt
of IDEA funds on the continued provi-
sion of educational services to expelled
children with disabilities and that in
order for Congress to place conditions
on the State's receipt of funds, Congres-
sion must do so clearly and unambigu-
ously. Therefore, that is one of the
reasons the law was changed following
that.

Mr. HARKIN. What was the date of
that case?

Mr. ASHCROFT. That is prior to the
change in the law, I say to the Senator
from Iowa. I am explaining, that is one
of the reasons the law was changed. I
think you changed the law, and the
source of the mandate that services be
provided, according to that case and
according to the response of the Con-
gress, was the change of the law.

So the Constitution does not provide
a mandate that people have to be given
continuing services forever in dis-
ciplinary cases, which has been sug-
gested.

The point is, the Constitution hasn't
been so construed, I don't believe. I
think what the law has basically said
is that that comes from what we did in
the amendment of the law a year or
two ago. Was that in 1997? Given that,
if the source of that responsibility is
the law, it becomes clear to me that we
can change the law and alter the re-
sponsibility, as Congress.

Now, I think this has been both en-
tertaining and somewhat instructive.

Mr. HARKIN. Mr. President, I
want to say to my friend from Missouri—

Mr. JEFFORDS. I want to let the
Senator from Missouri finish so I can
depart.

Mr. ASHCROFT. How nice.

Mr. HARKIN. I want to tell him he is
right.

Mr. ASHCROFT. If the Senator wants
to tell me I am right, first of all, I need
relevant moments here to catch me when
I fall over. But I am delighted.

Mr. HARKIN. I wanted to say that
the Senator was right and I missed

May 19, 1999
myself. That Court across the street said the law was clear, that they had to do it. It was not the Constitution.

Mr. ASHCROFT. I want to get back to the fundamental point, and there are about three of them. I will try to make it slightly less, that the law does provide for differential treatment. If it didn’t provide for differential treatment, we wouldn’t have the law. As a matter of fact, part of it was in response to this Fourth Circuit opinion, and the Congress acted. In so providing a big loophole for guns and firearms in the school.

We basically provided a basis for differential treatment for people who are the subject of IEPs, these special education students, who might be—I forget what the Senator from Alabama said—emotionally distressed, or troubled, or severely emotionally distressed. They might be able to come to school and have different treatment if they carry a gun to school than if someone else does.

The simple fact is that the Senator from Tennessee and I believe we ought to give authority to school principals to deal with such cases as frightfully as they do with other cases. This is in light of the fact that when you get out, not in the Chamber of the Senate, not in the theory of the bureaucracy, but when you get out into local schools, the law operates to constraining those school officials to have students come back to school who have carried guns to school and pipe bombs to school. They have carried them in, and it is not in the best interest, according to school officials, to have the students back in, but they are back in.

We simply want to liberate school principals and school officials to say to people who bring guns and pipe bombs, firearms, to school, you can’t do that. It was not the Constitution. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, there has been an extended debate here by the Senators from Missouri, Iowa, Vermont, Tennessee, and others who have spoken about this. I know these are extremely important amendments, especially to the primary sponsors, and the Senator from Iowa and the Senator from Mississippi and the other.

My perspective is that as ranking member and floor manager on this side of the bill, I look at a whole lot of amendments. At one time, we had a couple hundred amendments. We whittled those down. Dozens of Senators on both sides of the aisle have agreed to withhold their amendments. I spent the weekend talking with Senators, asking them to withhold their amendments. And they did. Others we were able to negotiate, a managers’ package, something I am still waiting to hear back on from the other side. I assume we will get that.

Many Senators on both sides will see the bulk of their amendments in the managers’ package. But at some point, we have to go on.

I suggest, for whatever it is worth, whatever is done, whatever is passed, whether it is the amendment of the Senator from Missouri, or whether it is the amendment of the Senator from Iowa, this issue will be in conference. The Senator from Utah and the Senator from Vermont, as the two main conferees, will have to try to work out yet another overall compromise. We have had debate for almost 2 hours. We are beyond reasonable to ask that the Senator from Missouri and the Senator from Iowa simply allow the Senate to accept both amendments by a voice vote. They will be in the bill. The practical effect of that, I might say, will not be any different if a vote were to be taken. They will be in the bill. The practical result, which will, in the end, still be the same.

Mr. FRIST. Mr. President, I ask unanimous consent to add Senator COLLINS as a cosponsor, along with Senator Sessions, if he has not already been added, to the Frist-Ashcroft amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, there is no need for this amendment. IDEA already contains provisions to ensure that schools are able to remove truly dangerous children from the classroom. But it also ensures that these children receive the services they need—not only educational services, but counseling, behavior modification, and other related services—so that their bad behavior will hopefully not happen again. This makes more sense than simply sending kids out of the streets, which is exactly what the Frist-Ashcroft amendment proposes to do.

The worst example of what happens when students are sent home without necessary services happened last year in Springfield, Oregon. When Kip Kinkel brought a weapon to school, he was immediately suspended. He went home with his gun, killed his parents, then returned to school and started firing.

The greatest protection a school can provide to its students and community is to be aware of the warning signs of danger and provide the services that can prevent the student from using violence.

Why would we want to strip those very protections from our schools and communities by amending IDEA to end all services to students with disabilities? In fact, why don’t we have these protections in place regarding all children, not just those children served under IDEA?

Although several of our colleagues here today have pointed to all sorts of horror stories allegedly involving IDEA students, I would urge my colleagues to get the facts straight.

(1) For the vast majority of children with disabilities, most discipline problems can be handled by implementing their individualized educational plan, which now includes behavior management strategies.

(2) IDEA currently allows a school to suspend a child for up to 10 days per incident.
(3) Moreover, IDEA allows a school to discipline a child with a disability just like it would discipline any other child, so long as that child’s behavior is not a manifestation of his or her disability. Mr. President, the IDEA took three long years to reauthorize, and was the product of bipartisan negotiations involving both chambers of Congress and the Administration, with extensive public input.

The IDEA regulations have just been issued, and they particularly strengthen the area of disciplinary procedures. In many places, schools are only starting to learn the tools that are available to them under current law in cases where disciplinary actions that could be prevented with early intervention.

In fact, GAO is currently doing a study as to whether schools have enough flexibility to discipline children with disabilities. In this letter I received dated April 29, they stated that work on this study should take two reasons: first, the regulations are not currently available, but is being collected this year; and second, the regulations have only recently been published, allowing insufficient time for their results to be felt and measured.

I ask that the text of this letter be printed in the Record following my remarks.

Mr. President, at this point I believe it is not necessary and in fact it would be unconscionable and premature to amend IDEA and risk compromising the implementation of this landmark legislation.

Special education students should not be the scapegoats here. And let me state again, not one of the children involved in the tragedies that we have witnessed over the past two years was a special ed. student. We need to focus this legislation on strengthening all school fora for all of our children, and stop blaming IDEA.

Mr. President, I want to join with the sheriffs, district attorneys, leaders of police organizations, violence prevention scholars, and school psychologists and counselors, in urging all my colleagues to vote against the Frist-Ashcroft amendment.

Mr. CAMPBELL. Mr. President, I intend to vote in favor of the pending amendment offered by my colleague, Senator ASHCROFT, to enhance school safety. This bill is based in large part on the work of the Republican Juvenile Crime Task Force, on which I served. I am pleased to see that the amendment includes three provisions I proposed to the Task Force to help make our children’s schools safer.

The first provision authorizes the use of funds to train for pupil personnel, including custodians and bus drivers. These key people on and near school grounds can be helpful in finding suspicious objects, pipe bombs, or other means of harm if they had the proper training. These personnel can be utilized for identifying potential threats, crisis preparedness, and emergency response. I intend to build on this work in the FY 2000 Treasury appropriations bill by supporting the role of the Bureau of Alcohol, Tobacco and Firearms in training school personnel in the detection of weapons and explosives.

Mr. President, this amendment authorizes the use of funds for the purchase of school security equipment and technologies, such as metal detectors, electronic locks, and surveillance equipment. This provision, S 296, the “Students Learning in Safe Schools Act of 1999” which I introduced on May 11, 1999.

The third provision would invest more resources in School Resource Officers, including community policing officers. This important initiative expands the Cops in Schools program which I was pleased to author as S. 2235 in the 105th Congress. This bill was enacted into law in 1998 and this Spring the Justice Department is making $60 million available for this program in this year alone. School Resource Officers work with children, parents, teachers and principals to identify dangers and potentially dangerous kids before violence erupts and innocent children get hurt. This amendment includes many other important provisions to enhance school safety. I urge my colleagues to join me in voting in favor of this amendment.

I thank the chair and yield the floor.

Mr. FRIST. Mr. President, let me briefly comment on what I think is most appropriate. We have spent a couple of hours on the Ashcroft amendment. It is a pretty clear and pretty straightforward amendment. We have debated some very useful aspects. I would like a vote on this amendment, because I think it will improve safety in our schools. It closes this loophole. I feel very strongly about not postponing it until later, or deferring it, or handling it in conference. I would like to see an up-or-down vote on it and move on after that.

Mr. ASHCROFT. Mr. President, I ask for the yeas and nays on the amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HARKIN. Mr. President, we have had a pretty good debate, and it has been said that it has taken 2 hours. That doesn’t bother me. I have spent years on this bill. I spent years on it. I spent my entire lifetime with a disabled brother. Do you think 2 hours means anything to me? It doesn’t mean anything to me. We spent 3 years on this bill—3 years—bringing IDEA up to pre-1975 conditions where we know that children with disabilities were excluded from the opportunity to receive a free and appropriate public education.

I say to my friend in Tennessee that he was right then. Mr. President, he was right then. Now we are caught up with the issue of guns and bombs.

Mr. FRIST. Will the Senator yield?

Mr. HARKIN. The Senator was always kind enough to yield to me. I would certainly respond with the same kind of favor in response to the Senator from Tennessee.

Mr. FRIST. Does the Senator from Iowa believe there should be two standards, if one child with a disability walks into a school with a gun and a child without a disability walks in with a gun, if there is a zero tolerance policy for the States, the individual who walks in with the gun should be back in the classroom within 45 days when the person without a disability is totally disallowed?

Mr. HARKIN. I say to my friend from Tennessee, I use his own words. He said this is a “double standard.” I say no.

Mr. FRIST. Let me also say that in this bill, if you look on page 3, lines 1 through 8, in terms of intentional or non-intentional, in terms of whether or not someone brings a gun or a fire arm.

Mr. HARKIN. Where is the Senator reading from?

Mr. FRIST. In terms of “intent.” We have narrowed this bill so specifically
Mr. HARKIN. Is the Senator talking about subsection (a)(2) on page 3?
Mr. FRIST. Yes.
Mr. HARKIN. I read that. It says, "Nothing in clause (I)(1) shall be construed to prevent a child with a disability who is disciplined pursuant to the authority provided under clause 1)—that is, expulsion—"from asserting a defense that the carrying or possession of the gun or firearm was unintentional or innocent."
I ask the Senator, to whom does that child assert the defense?
Mr. FRIST. To whom?
Mr. HARKIN. Yes. Mr. FRIST. To the people he jeopardizes the lives of who might come into that classroom a gun. Is it intentional or not intentional when you come in? It should not matter other than it is intentional. He needs to be treated the same as everyone else. If you are placed out of the classroom, if you do not have a disability, you ought to be placed out of the classroom for that same period of time whether you have a disability. All children should be treated the same.
Mr. HARKIN. We have already been through that. I don't know if we need to go over it again. We have already decided that if a kid brings a gun to school, the principal can take that kid out of that school immediately, can call the police and have the police come and haul them away.
Does the Senator disagree with that?
Mr. FRIST. That is the not issue. It is what happens back in the classroom. I pointed out again and again the statistics of individuals with disabilities, because of this special loophole, who end up within 45 days back in the classroom bringing a gun the first time, the second time, and ending up back in the classroom. If you do not have a disability, you cannot end up in the classroom. Let's treat everyone the same if they bring a gun or if they bring a bomb into the classroom. That is what the amendment is about.
Mr. HARKIN. The Senator says a kid can assert a defense that the carrying or possession was unintentional. I ask, to whom? It doesn't spell it out here. They can assert a defense. But assert it to whom? The principal?
Mr. FRIST. Yes. To the local authority, to the principal, to the teacher. That is correct.
Mr. HARKIN. He can assert that defense?
Mr. FRIST. That is correct.
Mr. HARKIN. That it was unintentional. And what kind of process is set up which would ensure that there would be a fair and impartial hearing on that?
Mr. FRIST. The same process that applies to every other student, the other 85 percent of the students in the classroom. That is the whole point. Let's treat everyone the same. If they come into a classroom with a gun or a bomb, they should be treated the same. The local authorities do. The principal does. The teachers do. That is the whole point. Let's treat them the same. It is what equity is all about when we are talking about guns in the classroom, bombs in the classroom. You treat them the same. They don't end up back in the classroom.
That is the fundamental essence of what this amendment is all about. You treat them the same.
Mr. HARKIN. If I might remind the Senator that he started off talking about the Littleton incident. I am going to get into this, because I think it is important. I ask the Senator—I will start with a statement. I hope it is not disputable that in the last 39 months there have been eight school shootings in which kids have died. How many of those involved a kid with a disability? I ask the Senator.
Mr. FRIST. I have not seen those statistics. I would be happy to take a look at them.
Mr. HARKIN. I will say it and open it up to any repudiation. There have been eight school shootings in 39 months. Not one of those involved a kid with a disability—not one. Yet we have an amendment going after kids with disabilities? I ask the Senator.
Mr. FRIST. Will the Senator yield?
Mr. HARKIN. Of course, I yield.
Mr. FRIST. How many people have to die or be murdered before the Senator from Iowa is willing to close this loophole? Do you want to wait? Is that the point of using statistics? Wait until people are murdered? We know people with disabilities who bring a firearm or a bomb to school are ending up back in school when students without disabilities are not. When I say wait to wait until statistics show people are murdered?
Mr. HARKIN. No. That is why we changed IDEA 2 years ago. I say to my friend, to provide that whoever brings a gun or weapon to school can be immediately removed by the police and taken down to the police station. That is why we did that.
Mr. FRIST. That gets them out for 10 days.
Mr. HARKIN. No.
Mr. FRIST. Then what?
Mr. HARKIN. During that 45 days, I say to my friend, during the 45 days—he should know this; I am sure he does—during the 45 days there is an Individualized Education Program, an IEP, developed during that 45 days. That IEP will address behavior modification, therapy services, and intervention to make sure the behavior does not occur again. This IEP protects not just the child but protects the school. The only way a school needs to let a kid back in is if that kid is meeting the objectives in the IEP and the school wants them back in. That is the process.
Mr. FRIST. Will the Senator yield?
Mr. HARKIN. Sure. I would be glad to yield.
Mr. FRIST. There were eight students in Tennessee a year and a half ago brought firearms in the school. We have gone through this, I know. Two had no disability and were expelled. They are out. Six of the eight were disabled students, individuals with disabilities, and were in special education. For three of those who brought the gun to the classroom, it was related to a manifestation of their disability. It has to be that the individuals with disabilities have individual needs that have to be addressed. They should be addressed. Constitutionally, they should be addressed. Ethically, they should be addressed.
When it comes to a firearm, or a when it comes to a bomb, after those 45 days, three of those eight students in Tennessee who brought a bomb to the classroom, or a gun, or firearm, firearm, deadly weapon, ended up back in school through this loophole. When none of the other students without a disability had that loophole. They entered back into the school.
When you keep saying get them out for 10 days, in truth, whether it is 35 or 45 days, they are back in the classroom and treated in a different way. I say treat them the same.
Mr. HARKIN. Again, I ask my friend from Tennessee, was that under the old law or the new law?
Mr. FRIST. Those eight, may have been under the old law, I am not sure. I gave other statistics with the nine students from this year. I will have to check on that.
I don't want to stress the statistics too much. I keep using them because I have a great fear something bad will happen as a result of the law we created.
I can say on the 45-day period which we have talked about and worked on writing together, if a person is a threat during that 45 days, and your team says you are a threat, the Senator is exactly right, they can be kept out another 45 days. After that 45 days, what? I guess it can keep going on. We have great faith in that.
As someone who has, as the Senator, seen a lot of individuals with disabilities, if somebody brings a gun into the classroom and they are expelled like everybody else for 10 days and go through a manifestation period, I don't know exactly how to know whether that individual is threatening. We have to go through all the disabilities. That will be a tough diagnosis to make in terms of saying, no, you are too threatening. When parents are there who are saying go back; teachers, lawyers, who say he hasn't done anything over the last 15 or 20 days, maybe we should let him go back.
That is what our bill gets out. Treat everybody the same, if you have a disability or no disability. If you bring a gun or firearm to school, you should be treated the same. The same applies to cessation of services. You should be subjected to the same making of the local principals and teachers, terms of services, as well as in terms of expulsion.

Mr. SESSIONS assumed the Chair.

Mr. HARKIN. I say to my friend from Tennessee that the example he keeps using from Tennessee did occur under the old law, not the new law. I hope we can forget about using that example.

Under the new law we passed, we do provide that 45 days can be extended indefinitely if the school officials feel that child is a threat either to himself or herself or to the school.

Again, I just hope that example is not used because it confuses people. We shouldn’t be confusing people when the new law is different than the old law. I take a back seat to no one when it comes to the issue of safety in schools. I just put two daughters through public schools all their lives. One just graduated from college; my second daughter is a senior in public high school—student body president, too, I might add. Why not brag? If you can’t brag about your kids, what can you brag about?

Both my wife and I have always been concerned about safety at school. We have talked a lot about it with our daughter, Jenny, so I don’t take a back seat to anyone in terms of safety. There are few things as critical to any parent as making sure the kids are safe when they go out the door in the morning and when they come home in the afternoon.

I think the recent tragedies in Colorado are the culmination, the end result, of eight school shootings in 39 months—Oregon, Kentucky, Mississippi, and—again, to my friend from Tennessee, the kid in Oregon was expelled, went home, got a gun and came back and shot kids. I don’t know if expulsion helped in that case. If you want to base this on the fact that expulsion will make the kids safer in school, I say look what happened in Oregon. It didn’t seem to work there.

I do believe that what has happened during these 39 months and what happened in Littleton is, indeed, a call to action to our families, to our churches, schools and communities.

Mr. HATCH. Will the Senator yield?

Mr. HARKIN. I am just getting on a roll.

Mr. HATCH. Will the Senator yield to his friend on the other side?

Mr. HARKIN. I yield without losing my right to the floor.

Mr. HATCH. I have to ask the Senator, this debate has gone on for quite a while. It has been one of the better debates I have ever seen or listened to, on both sides.

It is clear we have a difference of opinion. It is clear both sides think they have a legitimate case to make. I know the distinguished Senator is one of the champions for persons with disabilities, as am I. We have worked closely together through the years. I understand the difficulties that are involved here. I understand his sincerity.

I also asked the Senator from Missouri and the Senator from Tennessee. They are decent people. They are good men. The Senator from Tennessee is a major force on the Labor Committee, as is the distinguished Senator from Iowa. I think the recent tragedies in Colorado and the amendments—the amendment of the Senators from Tennessee and Missouri and the amendment that the Senator from Iowa and the amendment that the distinguished Senator from Missouri and the Senator from Tennessee want a vote on their amendment. I can understand why the Senator wants a vote on his amendment. It is a legitimate way to resolve an issue. I don’t know which way the votes will go, on either issue and I take a great interest in this as well. But there will be a conference and we will probably resolve these issues in the best interests of all.

My position is we have had a lengthy debate. I have deliberately stayed off the floor because I wanted Senators to have a free and open debate on this. But it seems to me we have had the debate. Basically, both sides have really explained their positions. Everybody knows what they are.

My suggestion is we go to a vote on the amendment of the Senator from Missouri and the Senator from Tennessee, up or down, and then if they lose, they lose. Then I will ask unanimous consent that the next amendment that is offered. I will see that the Senator gets an amendment immediately following. If you win, you win; if you lose on this one, you lose.

Mr. LEAHY. Mr. President, while the Senator is thinking over his offer, and he will yield without losing his right to the floor, during the few moments when the Senator from Utah was otherwise engaged on the Senate floor and I discussed this with him, I made a suggestion to the Senator that I think all people could hear one last explanation on the differences between the two sides.

What I want to avoid is a filibuster. I want to avoid the Senator feeling he has to now delay this whole bill because he feels deeply about this issue. I feel deeply about it, too. I think these Senators on this side feel deeply about it. You feel deeply about it. Frankly, there is still a conference where we can work with both sides to see if we can resolve this as we go to conference. But I would like to see it to go back this bill forward, because it is an important bill and every day we delay—we all know once we get it through the Senate, the
bill has to come through the House. Then we have to go through conference. Then we have to send it down to the President. If he signs it, then it becomes law.

We are talking weeks or months before the Senate just will not pass that might prevent the more Columbine High School massacres. But we have to get this done.

We also have a supplemental appropriations bill that has to be brought up, but important. It is not fair to hold this bill hostage—either side—now. It is not fair to hold this bill hostage because of a dispute that literally is a legitimate dispute on both sides that can be resolved by voting. Let the chips fall where they may. I have had to do that. I have had to eat a lot of stuff here on the floor.

Mr. LEAHY. As have I.

Mr. HATCH. As has the distinguished Senator from Vermont.

As managers, we are trying to bring people together. I say to the distinguished Senator from Iowa, I believe he has faith that I will always try to do what is right for persons with disabilities. I will use my optimum good efforts to try to make sure this matter is resolved in a manner that is credible and acceptable to both sides—or at least as acceptable as can be to both sides. But I would like to set a time limit for further debate, which I hope will not be very long because you have been debating now for hours. I think virtually everything has been said that needs to be said. Then let’s just go to those votes.

The Senator is not on a list right now, to come up. I do not believe, after this amendment. But I will get you on the list. I will ask unanimous consent you be given that privilege. I think it is fair. I think it is a way of resolving this. I don’t want to see a filibuster here at the last minute on a bill of this importance. When this could be resolved through voting and when I am giving the Senator a shot at his amendment, which basically rebuts theirs, immediately following it. I think that is fair. It is a reasonable way of doing it.

You are dealing with two managers who have done their utmost to bend over backwards for everybody on the floor. I have even bent over backwards for the Senator from Minnesota, time after time—I finally got a smile out of him. It is the only time he smiled all day.

But I would like to see my friend from Iowa do that. If he would, I would personally appreciate it. I would like to get this bill done, at least pushed forward as far as we can. I believe we can finish this bill tonight if we have time today. We have had 7 days on this bill. I would hate to go on 8 days, but I would even do that if we have time agreements on when we vote, and I would even do that if we have time today. We have had 7 days on this bill. I would hate to go on 8 days, but I would even do that if we have time agreements on when we vote, and I would even do that if we have time agreements on when we vote, and I would even do that if we have time agreements on when we vote.

I say to my friend from Utah, it is because I believe I will respond to my friend immediately. Right. That is if we ever get it passed.

Mr. HARKIN. Kids with disabilities haven’t been shooting anybody. I mean, let’s be honest about it. The reason this bill is here on this floor is because of what happened in Littleton, CO. The Senator from Tennessee, when he first started out.

Mr. HATCH. Will the Senator yield on that point, just on that point? I am sorry to interrupt him, but this bill has been in the works for 2 solid years. We have worked with our colleagues on the other side repeatedly. I think the distinguished Senator from Vermont and I are together on the managers’ package. It is very comprehensive. This is not some quick thing. We have worked very hard on it. Littleton—yes—

Mr. HARKIN. But what precipitated bringing it to the floor?

Mr. HATCH. I would have brought it to the floor before Littleton, but we didn’t have the time to do it. But it certainly helped.

Mr. HARKIN. Everyone hears talk about school shootings and school violence. As I have pointed out, as I said to my friend from Utah, there have been eight school shootings in 39 months and 27 have been killed. Not one of those involved a kid with a disability. Not one. Two years? We spent 3 long years, and I spent years before that. We spent 3 years hammering out an agreement because there was this clash between the school boards and the principals and the teachers and the parents of kids with disabilities—3 years we sat in rooms around here.

Mr. HATCH. And I am a strong supporter.

Mr. HARKIN. We finally got it resolved. I can remember as though it was yesterday when we went to the Mansfield Room. It was Newt Gingrich, I believe, from Georgia. Loudermilk, then were Democrats and Republicans and the disability community and representatives of the principals and the school boards.

We sat in that room right there, that Mansfield Room, and we all said halle-lujah, we all agree. We didn’t all get what we wanted. Parents had to give up something. Principals gave up something. But we got a bill we all agreed we were going to live with and work with.

We agreed in that room that we were not going to go back and make changes on this bill. We were going to give it a chance to work. These are the changes we made.

I talk again to my friend from Tennessee, he keeps bringing up this example—that happened under the old law, not the new one. The new law. I say to my friend, the regulations for the new IDEA, just went into effect in March of this year. I have been on the Department of Education for a year to get these regs out, but they received them in March. We have not even given it a chance to work. Yet, that great bipartisan effort, that bipartisan solution that we had that took the IDEA amendments of 1997, somehow is now being torn apart.

Why? Because of school shootings—what is going on?—when none of these kids were disabled?

Mr. HARKIN. To see my friend from Vermont is a nice guy. The last thing he would want to do is to be mean to anybody. But I have to tell you, if you back up and see it from where I am coming from, I have to tell you honestly, with all due respect, this is almost scapegoating my kids. My kids didn’t shoot anybody. My kids with disabilities haven’t done anything. Why are we doing this?

Mr. HATCH. Will the Senator yield without losing the right to the floor?

Mr. HARKIN. Let me please finish. This amendment does not belong in this bill.

If I am going—if I am taking time, I say to my friend, the only reason I am taking time is because I think there are a lot of Senators here who do not understand what is going on. They have not had the privilege I have had of working on disability issues for 25 years. I believe they need to be informed.

It took us 2 hours today simply to get us to agree that if a kid brings a gun to a school, regardless of whether that kid is disabled or not, they can kick him out right away and take him to the police station. It took us 2 hours just to get that agreement.

Now we are onto another phase, and that phase is what happens after they are removed. I do not think it has been fully fleshed out yet as to why there is a process set up for kids with disabilities. Then we have to get to the third step and that is what happens at that point in time, at the end of 45 days. If I take some time, I say to my friend from Utah, it is because I believe
have an obligation to my families with kids with disabilities—

Mr. HATCH. I know that.

Mr. HARKIN. To be able to look
them in the eye and say: I did everything
humanly possible to make sure that
every Senator who comes down
and casts that vote knows exactly
what that vote is about. I do not believe
I have done my job yet. I, obviously,
have not done my job yet.

Mr. HATCH. Will the Senator yield?

Mr. HARKIN. And I am going to take
more time to do my job.

Mr. HATCH. Will the Senator yield
without losing his right to the floor?

Mr. HARKIN. I yield without losing
my right to the floor.

Mr. HATCH. I am suggesting we take
some more time, but that we agree on
a time limit so everybody in the Sen-
ate knows. What that does for you—
you are concerned about Senators
learning, knowing what to do and hear-
ing your position—when they know
there is a certain—what is important
Senators generally try to listen. I am
not asking you not to take more time.
I am not asking you to not filibuster.
I am asking you—

Mr. HARKIN. I am just not certain
how much time it is going to take me.
That is why—

Mr. HATCH. I am asking you to set a
reasonable time limit. I am also sug-
gesting, as somebody who has been
around here as long as the Senator
from Iowa, that the time-honored way
to resolve these matters when you have
a legitimate, honest difference of belief
is to vote. Right now, the Senator does
not have the right to a vote on his
amendment, as I understand it.

Mr. HARKIN. I have my amendment
filed.

Mr. HATCH. You cannot bring it up.

Mr. HARKIN. I have my amendment
filed.

Mr. HATCH. I want your amendment
to come up after this.

Mr. HARKIN. I have my amendment
filed.

Mr. HATCH. You cannot get it up
in this context without unanimous con-
sent. I will get that for you.

Mr. HARKIN. I can get it up anytime.

Mr. HATCH. Sure you can. What I am
saying is, let’s vote, but do it after you
have a reasonable time to explain your
position. But let’s set a time limit so
99 Senators are not held up.

Mr. LEAHY. Mr. President, I won-
der—

Mr. HARKIN. I still have the right to
the floor. I yield, again, without losing
my right.

Mr. LEAHY. Mr. President, we are
trying to do a number of things. One,
the Senator from Utah and I are re-
flexing our respective parties. We
want to get through the bill, get a final
vote one way or another and do it in
such a way as to protect Senators on
both sides of the aisle. He has a respon-
sibility for his side of the aisle, and I
have responsibility for my side of the
aisle. I take that responsibility strongly.
Senators have a right to be heard
and a right to vote. But at some point,
we have to wrap it up and vote.

Mr. HATCH. That is right.

Mr. LEAHY. May I suggest this: Sen-
ators may have good, strong debates on
this—and I yield to nobody in my ad-
miration of the Senator from Iowa and
what he has done. I have taken his lead
on so many issues involving the dis-
abled because he is a recognized na-
tional expert on this.

My suggestion, another possibility, is
we set the time—starting our voting—
there are some things we have al-
ready done. We finished debate, or all
but the last couple of minutes of de-
bate, on the Lautenberg amendment.
Let’s vote on that. Let’s vote on some-
thing on the chairman’s side of the
aisle and maybe set it in such a way
that those votes will come within a few
minutes of each other.

During that time, Senators will be
able to talk more. The Senator from
Utah and I will be able to bring up
the amendment and then see if it is
possible to have time agreements,
but time agreements in such a way
that Senators will know this amend-
ment comes up at this time, this
amendment comes up at another time,
so there will be time for them.

I suggest that as a possibility. We
also know that as much as we talk, of-
tentimes these things are worked out
during a rollcall vote. That is one way
we can do it.

Mr. WELLSTONE addressed the
Chair.

Mr. LEAHY. The Senator from Iowa
has the floor.

The PRESIDING OFFICER. The Sen-
ator from Iowa has the floor.

Mr. HARKIN. Again, I yield without
losing my right to the floor.

Mr. WELLSTONE. Mr. President, I
will take just a moment. I certainly
pay tribute to the—I have not heard
more passionate, more heartfelt, more
substantive, more persuasive oratory
and argument on the floor of the Senate
than what Senator HARKIN has done.
I thank him as a friend.

I say to my colleagues, if I can get
their attention for a moment—Senator
LEAHY and Senator HATCH—if there is
agreement to see what can be resolved
in discussions while Senators come to
agreement with one another, I would
be very pleased, on behalf of myself and
Senator KENNEDY, to have the pending
amendment, and that the regular order be, for
taking up the Frist amendment, then the Harkin
amendment—so Senator HARKIN’s amendment
will immediately follow—the Wellstone amendment
and then the Lautenberg amendment, and then we
will have one from our side as well at
that point. Is there any objection to
that order?

Mr. HARKIN. I reserve the right to
object.

Mr. HATCH. I am putting it in the
order I think you want to be in.

Mr. HARKIN. I reserve the right
to object, and I say this—

Mr. HATCH. This is not the vote. I
am just putting the order together.

Mr. HARKIN. I understand. I am say-
ing if there is a vote on the Frist
amendment, then what kind of time is
allocted to the Senator from Iowa for
his amendment?

Mr. HATCH. We have to agree on
this. We are not setting time limits.

Mr. HARKIN. You are just setting
the order.

Mr. HATCH. I want to set a time—
Mr. HARKIN. Will you read that
again?

Mr. HATCH. I am asking unanimous
consent that the order of the next
amendments to be voted upon be
Frist-Ashcroft, Harkin, Wellstone
and then Lautenberg and then one
from our side.

Mr. HARKIN. I think there may be
some people here who may want—

Mr. HARKIN. Only if that order is
locked in totally.

Mr. HATCH. It is locked in, but it
is locked in in a way that protects you—
that is what I am trying to do here—so
everybody knows what the matter is. I
am putting in an order so that you can
immediately follow the Frist amend-
ment.

Mr. HARKIN. You say that upon
completion of a vote on the Frist-
Ashcroft amendment?

Mr. HATCH. Then you have a right
to call up your amendment.

Mr. HARKIN. Then I have a right.

Mr. HATCH. That is what I am say-
ing.

Mr. HARKIN. Don’t put it in that
wording because that locks in the order
and because there may be votes before
the Frist amendment.

Mr. HATCH. No, there will not be
votes before Frist.

Mr. HARKIN. Then I object.

Mr. HATCH. Why? This protects you.

Mr. HARKIN. We may want to lay it
aside and go to another amendment.

Mr. HATCH. We can do that. This is
to benefit you. You don’t give up one
thing other than you get in line; you are not in line now, behind the Frist amendment. To be frank with you, my purpose is to give you a shot at your amendment. If theirs happens to be adopted, you have a shot at yours which flows in the same race.

Mr. HARKIN. Actually, it does not do away with it. It modifies it; it does not do away with it.

Mr. HATCH. But it puts you in a position, and you don’t lose a thing.

Mr. LEAHY. Reserving the right to object, and I will not object. I suggest, again, what I suggested earlier: if this can be set aside, go to the Lautenberg amendment and vote on it very quickly, one on your side that can be voted on quickly thereafter, and then go back to the Frist-Ashcroft amendment, partly so that we can talk during the votes. I don’t make that as a request, but I suggest that really as a way out of all of this without giving up anything.

Mr. HATCH. With the same understanding that Senator HARKIN has the right to the floor, that is just not acceptable. The Senators from Missouri and Tennessee want a vote on their amendment. They are willing to go ahead with Senator HARKIN’s amendment. They are willing to go ahead with Senator HARKIN’s amendment immediately following, if I understand it, and let the chips fall where they may.

I just want to move this ahead. I am trying to protect you so you are in order to come in at that point. If you don’t want to, that is fine with me. It is an advantage to you.

Mr. HARKIN. I don’t know that it makes a lot of difference.

Mr. HATCH. It keeps the thing focused so people know what you are talking about. To me, that is a reasonable request.

Mr. HARKIN. Well—

Mr. HATCH. Let me withdraw it then. I don’t care. What I am trying to do, I am trying to do so Senator HARKIN agrees without you losing the right to the floor. I am trying to move this ahead. I am making a legitimate good-faith effort to move it ahead. It is apparent that we are not going to have a vote until we have the Ashcroft-Frist, Frist-Ashcroft amendment voted on.

I would like, then, to give you the opportunity to have your amendment called up, which modifies their amendment. Then we will have a vote on your amendment. Then we go and just keep going, as we have done. We are not going to move ahead until we vote on this amendment. If you are going to filibuster, that is another matter.

Mr. HARKIN. I say to the Senator that I may still move to table the Frist-Ashcroft amendment.

Mr. HATCH. That is a right the Senator has.

Mr. HARKIN. I have a right to do that.

Mr. HATCH. Sure.

Mr. HARKIN. I may move to table; whereupon, after that motion to table is dispensed with, one way or the other—obviously, I am sure I would lose on that—the bill then becomes open to amendment. I may have some amendments to the Frist-Ashcroft amendment.

Mr. HATCH. Amendments or an amendment. Mr. HARKIN. Amendments. And that could only occur, if I understand the parliamentary procedure, after a motion to table is dispensed with.

The PRESIDING OFFICER. No amendment is in order at this point.

Mr. HARKIN. Again.

Parliamentary inquiry. If I move to table the Frist-Ashcroft amendment, and that is disposed of, as I understand the unanimous-consent request, the bill then would be open for amendment—or the amendment would be open then after there is an action on it, on that amendment, on the motion to table.

The PRESIDING OFFICER. If the Frist amendment were tabled, the question would recur on the Lautenberg amendment.

Mr. HARKIN. No. No. What would happen if the Frist amendment were not tabled?

Mr. HATCH. Parliamentary inquiry. I do not think the Lautenberg amendment is next on the list.

Mr. HARKIN. If I might, Mr. President, reclaiming my right to the floor—

Mr. HATCH. Could I have that parliamentary inquiry? I just want to know, what is the motion? I do not think Lautenberg is next.

Mr. HARKIN. On the parliamentary inquiry, I just want to read from the unanimous-consent request, Order No. 8.

Ordered further. That the following amendments be the only remaining first degree amendments in order, with relevant second degree amendments in order thereto only after a vote on or in relation to the first degree amendments and the amendments limited to time agreements, where noted, all to be equally divided in the usual form.

So, obviously, a tabling motion would be a vote in relation, and therefore reading that, I submit, that then relevant second-degree amendments would be in order. I make that parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Iowa is correct that a second-degree amendment would be in order if the motion to table the Frist fails. Mr. HARKIN. I thank the Chair.

Mr. HATCH. What I propose does not change that at all. If we put these amendments in order, the Frist-Ashcroft, Harkin and Wellstone and Lautenberg, that still does not take away your right to move to table and then file a second-degree amendment, if you desire to. We would have to dispose of the Frist-Ashcroft amendment first. And you would have every right to do that.

Mr. HARKIN. Again—

Mr. LEAHY. Is that correct?

Mr. HATCH. Is that correct? All I am doing is setting the order in which these things would follow. He would not be deprived of moving to table the Frist-Ashcroft amendment, and if it is not tabled of offering amendments.

Mr. HARKIN. Offering amendments. The PRESIDING OFFICER. Under the interpretation of your consent request, a vote on Frist would include either a motion to table or an up-or-down.

Mr. HATCH. I do not understand. The PRESIDING OFFICER. If your interpretation of your consent request is that a vote on Frist includes a vote to table, then we would be correct in that we have agreement on that.

Mr. HATCH. Well, I think we would. Mr. HARKIN. You want to read that unanimous consent request again? I am still—

Mr. HATCH. I ask unanimous consent that Senator HARKIN be permitted to offer his amendment, and that the regular order be the Frist-Ashcroft amendment, and if there is a motion to table by Senator HARKIN, and it is not tabled, then it would be open for—

Mr. HARKIN. Or any motion to table.

Mr. HATCH. Any motion to table, and it is not tabled, then it would be open for a second-degree amendment. But immediately following the disposition of that would be the Harkin amendment with the same conditions, the Wellstone amendment with the same conditions, and the Lautenberg amendment with the same conditions.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Reserving the right to object, then under his proposal, how many second-degree amendments could be offered to the Frist-Ashcroft amendment if, in fact, the tabling motion was not agreed to?

The PRESIDING OFFICER. How many angels can dance on the head of a pin?

Mr. LEAHY. I did not hear the response.

Mr. ASHCROFT. How many angels can dance on the head of a pin?

The PRESIDING OFFICER. If the motion to table the Frist amendment fails, then that amendment is open to relevant second-degree amendments.

Mr. HARKIN. Relevant second-degree amendments, in the plural?

The PRESIDING OFFICER. That is correct.

Mr. HARKIN. Let me ask one other question about this unanimous consent request. Let’s say someone wants to set this aside and move on to another amendment. Would that be allowed under this proposal?

Mr. HATCH. With unanimous consent, it would.

Mr. LEAHY. That would require unanimous consent, I would assume.

The PRESIDING OFFICER. It would require unanimous consent.

Mr. HARKIN. Just as it does now. The unanimous consent request, again, because I really want to protect my rights, and I just want to make sure my rights are fully and adequately protected. I ask the Senator if perhaps it could be reduced to writing or something just so I can take a look at it. I
Mr. HATCH. We will be happy to do that.

Mr. HARKIN. I just want to make sure my rights are protected. That is all.

Mr. HATCH. I withdraw my unanimous consent request at this particular point.

THE PRESIDING OFFICER. The request is withdrawn.

Mr. HATCH. We may want to set this aside for that purpose. If we do, I will ask the Senator, would the Senator please give some consideration to my request that we have a time agreement—I am not suggesting what time, but that we have a time agreement on the Frist-Ashcroft amendment so that everybody here knows what is going on? Then people will listen to his recitation of what he believes as to the situation. Can you give us a time agreement?

Mr. HARKIN. Not at this time I cannot, I say to my friend. I cannot at this time.

THE PRESIDING OFFICER. The Senator from Iowa has the floor.

Mr. HARKIN. Mr. President, as I said, take a backseat to no one in my concern for safety in schools, having a daughter who is a senior in high school now and a daughter who just graduated from college, both of whom have attended public schools all of their lives. I do say that what has precipitated this bill has been the recent tragedy in Littleton, CO, and the eight shootings over 39 months in our public schools in America. These tragedies have, instead, called us to action, called us as families, churches, schools, communities, parents, teachers, and, yes, as lawmakers.

I hope these tragedies lead us all to take positive and constructive steps to reduce the likelihood of any recurrence. We want to make sure all of our schools are places of learning, not of fear.

But we should not let this tragedy of Littleton lead us into emotional, unfounded, though well-intentioned actions which can harm the most vulnerable in our society, and those are our kids with disabilities.

I know that the amendment is well-intentioned, The Senator from Tennessee and the Senator from Missouri are good men. But this would amend the Individuals with Disabilities Act, and I believe in the deepest part of my being that this amendment will have just the opposite effect. If enacted, it will do a couple of things. It will make our schools and communities less safe, and it will take back on all the advances we have made in our country to ensure that kids with disabilities have a fair shot at the American dream.

This amendment targets a group of students who are more likely to be the victims of school violence than the perpetrators. It is the kids with disabilities, now mainstreamed into our schools, who are beat up on, preyed upon, made fun of by nondisabled kids. Time and time again, it is the kids with disabilities who are the victims of the violence. This has been true for a long time, a long time.

Why are we singling them out with this amendment? None, not one, of the eight school shootings in the last 39 months was perpetrated by a child in special education. So why do we have this amendment?

Well, I want to point out, sadly, four of the students shot in the rampage at Columbine High School were special ed kids—four of them. So why are we singling out kids with disabilities? Why are we changing a law that we passed 2 years ago, that we just got the regulations issued in March of this year, which has not had even an opportunity to work? Why are we doing it?

Well, I forget which Senator it was who said, well, we do not want to wait until something bad happens. My gosh, under that philosophy, what else can we do to our schools? How about all the kids with disabilities? What are we going to do with them if we don't want to wait until something bad happens? That philosophy can take you down a lot of a road of dead-end alleys. I think the answer to "we don't want to wait until something bad happens" is exactly why we passed the amendments to the Individuals with Disabilities Education Act 2 years ago. That is why we passed the Individuals with Disabilities Education Act 2 years ago.

I hope everyone heard here today—we finally got an agreement on that—that if a kid brings a gun to a school, regardless of whether that kid is disabled or not, they can call up the police and have that kid hauled down to the police station immediately, immediately. Now, when there is some thought around here that somehow because a kid is disabled, the principal has to go through all kinds of hoops to get them out of school, I say that is not true. And we finally at least got that nailed down today.

I yield to my friend from Minnesota. Mr. WELLSTONE. I want to ask the Senator one question.

Mr. HATCH. Would the Senator yield for another inquiry from the manager? Mr. WELLSTONE. I want to ask the Senator one question.

Mr. HATCH. Would the Senator yield for another inquiry from the manager? Mr. WELLSTONE. I yield to the Senator.

Mr. HATCH. I have been trying to avoid a filibuster here on a bill that I think everybody admits is very important. The Senator has indicated he is willing to filibuster. And as somebody who has been around here a long time, who knows how to do it, I recognize one when I see one.

Let me make an offer here that I think is superfair. I have tried to make an offer that the Senator get in line right behind this amendment so he has every shot and opportunity to make his argument. Let me ask Senators FRIST and ASHCROFT, as well, would both sides be willing—since we know 60 votes is the key, would both sides be willing to do this: That we call up for a vote, after another reasonable time for final debate here, but hopefully a very short time, call up the Ashcroft-Frist/Frist-Ashcroft amendment? And if it does not get 60 votes and we call yours up right behind it, if neither of them gets 60 votes, we pull them both, rather than have a filibuster here—excuse me, Lautenberg and Frist, OK.

Let me ask, I have to ask the Senator from Vermont. It has been suggested that since we have problems with this amendment, which is 60 votes, if they don't get 60 votes, we pull it. We do the same with the Lautenberg; if he doesn't get 60 votes, we pull that.

Mr. HARKIN. You are going to have to ask Senator Lautenberg that.

Mr. LEAHY. You are talking about the—

Mr. LAUTENBERG. I didn't hear the question.

Mr. LEAHY. I want to make sure I understand this. If the Senator from Utah is suggesting that if the most hotly contested gun amendment does not get 60 votes, we throw it out—

Mr. HATCH. Right.

Mr. LEAHY. If the Senator from Utah is suggesting that if the most hotly contested gun amendment does not get 60 votes, we throw it out. Mr. HATCH. Right.

Mr. LEAHY. If the Senator from Utah is suggesting that if the most hotly contested gun amendment does not get 60 votes, we throw it out. Mr. HATCH. Right.

Mr. LEAHY. If the Senator from Utah is suggesting that if the most hotly contested gun amendment does not get 60 votes, we throw it out—

Mr. HATCH. Right.

Mr. LEAHY. If the Senator from Utah is suggesting that if the most hotly contested gun amendment does not get 60 votes, we throw it out.

Mr. HATCH. Right.

Mr. LEAHY. If the Senator from Utah is suggesting that if the most hotly contested gun amendment does not get 60 votes, we throw it out. Mr. HATCH. Right.

Mr. LEAHY. I don't think anybody is going to accept that.

Mr. HATCH. We throw this one out and that one out.

Mr. LEAHY. I think there is a better way of doing that. I was discussing it with the distinguished Senator from Mississippi. I would like to listen to his suggestion.

Mr. LOTT. Who has the floor?

THE PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Iowa has the floor.

Mr. LOTT. Will the Senator from Iowa yield to me?

Mr. HARKIN. Of course.

Mr. LOTT. I think everybody is trying to see what it was. I thought that idea just proposed might work, but it looks as if that would be objected to.

What I would like to propose as an alternative—and it is being typed up now, and we want both sides to look at it—is that we go forward. We set aside the pending amendment, and we go forward with a series of votes, including probably the managers' package, which a lot of people have been interested in working with the distinguished Senator from Tennessee, and then go to a Smith-Jeffords amendment and have a vote. Then go to Wellstone and have a vote, and then to a McConnell.

So we would have a series of stacked votes while we continue to work to see how we can resolve other outstanding issues. But rather than just continuing to talk back and forth without making progress, looking at the hard here, if we could have a series of, I believe it would be five votes—six votes now—I think that would be one way to give us time so we could make progress and
give us time to continue to work on these other issues.

Mr. LAUTENBERG. Will the majority leader yield?

Has the Smith-Jeffords amendment been sent up and discussed? We have seven or eight amendments that have already been offered, and I do not know why we are—maybe I do know why and I just don't want to realize after this very amiable discussion, Mr. Leader, that we had earlier about how we were going to cooperate and let the public hear what we are really doing here.

I ask—we have several amendments, on both sides—what would the regular order be, Mr. Leader? As I understand it, the Parliamentarian can answer that. There was no Smith-Jeffords in there. We have an order, and it would be nice to not suddenly suggest that perhaps 60 votes would do it. And then we could hear—

Mr. LOTT. Well, 60 votes—it was suggested.

Mr. LAUTENBERG. In good fellowship, I know.

Mr. LOTT. It was suggested. This is not taking everything in the exact order. We have been moving the order around back and forth since Monday. For the managers' amendment—usually you don't do that until the last thing. In a show of good faith, an indication from Senator LEAHY was that Senators would like to have that done and see what is in it. We would put it first in the pending order, which would not be the way it is always done, but it would be constructive. Then Lautenberg, I think, would be the next pending thing. And these others, I am not sure of the exact order they are in, but I propose that we do them that way so we can move forward.

Mr. LEAHY. Mr. President, I might say, if the Senate from Iowa will yield so I may respond.

Mr. HARKIN. Yes.

Mr. LEAHY. I find much in the proposal—I realize it is going to be typed up and has not been made yet, but the proposal by the Senator from Mississippi is a good one for moving us forward. I am not sure the managers' package would even need a roll call vote. If that is the case, the first roll call vote will be on the amendment of the Senator from New Jersey, and the next one would be—well, it would be what the distinguished leader has spoken. Again, based on the experience I have had managing bills, I tend to agree with the distinguished majority leader. This might be a good way to get us moving. I also suggest that it protects the Senator from Iowa, the Senator from Mississippi, and the Senator from Tennessee. But it moves us forward.

Mr. LOTT. Right. We are having this typed up now. We will get copies to the managers on both sides and the leadership. But I believe this is one way to keep the bill going. We have had a good lengthy discussion today, and there is a fundamental disagreement on this.

At some point, I hope the Senator from Iowa—like on Lautenberg and on these others, we worked through this without second-degreesing, without obstructing. You all have had some amendments you don't like, and we have a few amendments we don't like, but in the end you vote. If you win, you win; if you lose, you lose. It still has to go to conference and all that. I hope we can get an agreement on this. I don't think anybody is disadvantaged. I think everybody will have a fair shot. Senator FRIST, ASCRICK and the Senator from Iowa can talk during the votes and see if we can find a way to bring it to a conclusion.

Mr. WELLSTONE. Mr. President, I ask the Senator from Iowa to yield for a question.

Mr. HARKIN. I still have the floor. I will yield without losing my right to the floor.

Mr. WELLSTONE. My question is really a-.split the Senator from Iowa to my colleague from Utah. The amendment I have been trying to get on the floor is the Wellstone-Kennedy amendment dealing with disproportionate minority confinement. I assume when we listed the amendments that already has a 2-hour limit set. Mr. LOTT. If the Senator from Iowa will yield, he is getting to be a really good traffic cop here.

Mr. HARKIN. Red light, green light.

Mr. WELLSTONE. Well, we are trying to get the amendment, which deals with a very important issue, into the floor. I am asking under those circumstances, and being the poor debater that I am, I don't believe that I have fully stated how this affects families with kids with disabilities. It will probably take a little longer simply because I am so poor at getting across my point, it seems. So I am going to have to take a look at that before I make any decisions. I am not going to answer hypothetical questions.

Mr. LOTT. Mr. President, I suggest the absence of a quorum.

Mr. LEAHY. I ask if it might be in order to suggest the absence of a quorum, which I am not doing, but to do that under a unanimous consent, that at the completion of it the Senator from Iowa would be allowed to reclaim the floor.

Mr. LOTT. I ask the Senator from Iowa if he will be willing to have a vote on his amendment in the sequence we are talking about here?

Mr. HARKIN. I want to see the lay of the land before I answer a question like that.

Mr. LOTT. I am inquiring because I had nobody to ask that. You all have had a good, full debate. I wondered if you would not be ready to go to a vote now.

Mr. HARKIN. No. I don't feel that I am. I haven't even finished my statement yet. As I said earlier to my friend from Utah, I believe there are a lot of misperceptions out there on this amendment, and being the poor debater that I am, I don't believe that I have fully and adequately represented what this means to families with kids with disabilities. It will probably take a little longer simply because I am so poor at getting across my point, it seems. So I am going to have to take a look at that before I make any decisions. I am not going to answer hypothetical questions.

Mr. LOTT. Mr. President, I suggest the absence of a quorum.

Mr. HARKIN. I have the floor.

The PRESIDING OFFICER. The Senator from Iowa has the floor.

Mr. LOTT. Mr. President, I will yield to the leader to do that. I ask unanimous consent that when the quorum call is dispensed with, this Senator, the Senator from Iowa, be given the right to the floor at that point in time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. If the Senator will yield the floor, you will have the floor when we return, too. That was agreed to. I will put in a quorum call to try to work this out.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.
Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR
Mr. HARKIN. Mr. President, I ask unanimous consent that the privileges of the floor be granted to Lucille Zepf for the pendency of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Under the previous arrangement, I further suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I thank Senator DASCHLE for his comments. I very strongly feel that to cut down the list.

Mr. ASHCROFT. Is it possible to modify this consent request to say the Frist-Ashcroft amendment would be the pending business at the conclusion of the right to object, let me just remind everyone that we have approximately 24 hours left of this week. In that timeframe we have to do not only the rest of this bill but the supplemental appropriations bill. The only way we are going to finish this is if everybody is willing to cooperate a little bit more and indulge the leadership and the managers of this bill in such a fashion that will allow completion.

It has been difficult, and, I must say, increasingly frustrating, for those who have tried to work through all of this in a way that would allow some reasonable conclusion. It seems the longer we work on it, the more everyone’s back is up. It is possible we work together and try to resolve this matter. We have been on this bill now for over a week. It is time to bring it to a successful conclusion.

I ask the cooperation in the remaining hours of this debate on the part of Members on both sides, so that we can finish it.

I have no objection.

Mr. LOTT. I thank Senator DASCHLE for his comments. I very strongly feel the same way. We have come a long way on this bill. The underlying bill was one that had bipartisan support. We have narrowed down the number of amendments to a finite list. Senator R  e has worked very diligently to accomplish that. We must deal with the supplemental appropriations bill before we go on in order to do that, we will have to have some cooperation.

I have been criticized because I have maybe tried to be fair, everybody has that fair, straight-up shot: No second-degrees, make your point, have the vote, win some, lose some. If we go with that attitude, we can complete this list and the other amendments and complete this bill and do the supplemental.

Mr. LEAHY. Reserving the right to object, and I will not object, I think this is a good step forward. The Senator from Utah and I and the Senator from Mississippi have worked very hard, along with appropriate other people, to cut down the list.

I ask one question, because it is one we are obviously going to be asked: Under this agreement, when will we vote on the Lautenberg gun amendment? When would the leader expect we would be voting on the Lautenberg amendment?

Mr. LOTT. There will be an effort for that to be either the first or the second vote. The pending business, I believe, would be the Ashcroft-Frist issue. We would have to dispose of that and then we would go to, I hope, a series of additional amendments which would lead off, I presume, with Lautenberg right at the front.

In order to do that before we did Ashcroft-Frist, we would have to get another agreement. I would like to do it because I think that is an issue that a lot of people feel very strongly about. I would like to do it like the rest. It is time to vote.

Mr. LEAHY. The distinguished leader is saying it would not be voted on tonight?

Mr. LOTT. No, it would not be voted on tonight. What we would do, for these four amendments, is debate and then vote, and the pending business would be the Frist-Ashcroft amendment at the end of that. I want to make that clear so you are not dispositioned by that.

Mr. ASHCROFT. Is it possible to modify this consent request to say the Frist-Ashcroft amendment would be the pending business at the conclusion of the right to object, and no later at the onset of the business tomorrow morning?

Mr. LOTT. That is the status. But I would be glad to modify it to that extent, because it just confirms what the status is, procedurally, anyway.

The PRESIDING OFFICER. Is there objection to the unanimous consent as amended?

The Senator from Iowa.

Mr. HARKIN. I agree with Senator Ashcroft with one proviso, if we say that the Senator from Iowa retaining the right to the floor when the Senate returns to the Frist-Ashcroft amendment."

I have the right to the floor now. I had the floor. I just want to make sure when this amendment comes back up that I have the right to the floor.

Mr. LOTT. That is the procedure? Did he have the floor anyway?

I am told you have that right anyway, so I don’t think we give anything up by including it in the unanimous consent request.

Mr. HARKIN. OK.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Then I would add we would then pass this amendment by voice vote. I was just kidding, Mr. President.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. That last part was not included.

Mr. LOTT. That was not there.

Mr. LEAHY. That was not included.

The PRESIDING OFFICER. Without objection, it is so ordered.
Mr. LOTT. Mr. President, we are now anxiously awaiting the comments of the Senator from Minnesota. We hope he will feel free to condense his time. Oh, the managers’ amendment would be first. We expect there would be stacked votes in sequence between 7:30 and 8.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have a managers’ amendment which has been cleared on both sides as far as I know. This amendment is a compilation of amendments by Members on both sides.

The PRESIDING OFFICER. The Senate will come to order. The Senator from Utah has the floor.

Mr. HATCH. I now ask unanimous consent that any pending amendments be temporarily set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 363

Mr. HATCH. Mr. President, I send a managers’ amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself and Mr. LEAHY, proposes on bloc an amendment numbered 363.

(The text of the amendment is printed in today’s RECORD under “Amendments Submitted.”)

Mr. LEAHY. Mr. President, the Chairman and I have been able to put together a package of amendments that improve S. 254 in a number of ways that should please Members from both sides of the aisle. We have accomplished this task by finding the middle ground, and the bill will be a better one for it.

I said last week during the Senate’s consideration of this bill that we should not care whether a proposal comes from the Republican or Democratic side of the aisle. A good proposal that works should get the support of all of us. Our first question should be whether a program or proposal will help our children effectively, not whether it is a Democratic or Republican proposal.

This managers’ amendment and package of amendments reflects that philosophy. It shows that when this body rolls up its sleeves and gets to work, we can make significant progress. I commend the Chairman for his leadership and his effort and I am glad we were able to work together constructively to improve this bill.

Many Members had good additions and modifications to make to this bill, and we have agreed to accept them in the managers’ package of amendments.

In addition to the amendments included in the package, the chairman and I have worked together on a managers’ amendment to address a number of my longstanding concerns with the underlying bill and to explain what those changes accomplish.

I noted my concern at the beginning of this debate that the State prerogative to handle juvenile offenders would be undermined by this bill. The changes we made to the underlying bill in the managers’ amendment satisfies my concerns. For example, S. 254 as introduced would repeal the very first section of the Federal Criminal Code dealing with “Correction of Juvenile Offenders.” This is the section that establishes a clear presumption that the States—not the federal government—should handle most juvenile offenders—18 U.S.C. section 5001. While the original S. 254’s proposal to the President and Senate, the managers’ amendment retains it in slightly modified form.

In addition, the original S. 254 would require Federal prosecutors to refer most juvenile cases to the State in cases of “concurrent jurisdiction . . . over both the offense and the juvenile.” This language created a recipe for sharp lawyering. Federal prosecutors could avoid referral by simply claiming there was no “concurrent” jurisdiction under the criminal or other differences between the federal and state crimes. Even if the juvenile’s conduct violated both Federal and State law, any difference in how those criminal laws were written could be used to argue they were different offenses altogether. This was a huge loophole that could have allowed federal prosecutors to end-run the presumption of referral to the State.

We fix this in the managers’ amendment. We give the discretion whenever the federal government or the State have criminal laws that punish the same conduct and both have jurisdiction over the juvenile, federal prosecutors should refer the juvenile to the State in most instances.

Finally, I was concerned that, contrary to current law, a federal prosecutor’s decision to proceed against a juvenile in federal court would not be subject to any judicial review. The managers’ amendment would permit some judicial review, except in cases involving serious violent or serious drug offenses.

Another area of concern has been the ease with which S. 254 would allow federal prosecutors to prosecute juveniles 14 years and older as adults for any felony.

While I have long favored simplifying and streamlining current federal procedures for trying juveniles, I believe that juvenile offenders should be treated as children and must be dealt with in juvenile courts. Federal courts should be used only in cases involving serious violent or serious drug offenses.

In the last Congress, S. 10 either eliminated or gutted each of these core protections. The chairman and Senator Sessions significantly improved S. 254 in this regard, and I commend them for that. The managers’ amendment continues to make progress on the “sight and sound separation” protection and the “jail removal” protection.

Specifically, the managers’ amendment would make judicial review of parental detentions in rural areas give their consent to have their children detained in adult jails after an arrest, the parents may revoke their consent at any time. In addition, the judge who approves the juvenile’s detention must determine it is in the best interests of the juvenile, and may review that detention—as the judge must periodically—in the presence of the juvenile.

The managers’ amendment also clarifies that juvenile offenders in rural areas may be detained in an adult jail for up to 48 hours while awaiting a court appearance, but only when no alternative facilities are available and
appropriate juvenile facilities are too far away to make the court appearance or travel is unsafe to undertake.

The managers' amendment contains a significant improvement in the sight and sound separation requirement for juvenile offenders in both Federal and State custody. S. 254 has been criticized for allowing “brief and incidental” proximity between juveniles and adult inmates. This amendment fixes that by incorporating the guidance from current regulations for keeping juveniles separated from adult prisoners. Specifically, the managers' amendment would require separation of juveniles and adult inmates and excuse only “brief, inadvertent or accidental” proximity in non-residential areas, which may include dining, recreational, educational, vocational, health care, entry areas, and passageways.

I am pleased we were able to make this progress. I appreciate that a number of our colleagues, as do I, about how S. 254 changes the disproportionate minority confinement protection in current law. This will be an important debate, and I continue to believe we should support an amendment intended to correct that part of S. 254.

S. 254 includes a $200 million per year Juvenile Delinquency Prevention Challenge Grant to fund both primary prevention and intervention uses after juveniles have had contact with the juvenile justice system. I and a number of other members were concerned that in the competition for grant dollars, the primary prevention uses would lose out to intervention uses in crucial decisions on how this grant money would be spent.

With the help of Senator Kohl, we have included in the managers' amendment a clear earmark that 80 percent of the money, or $160 million per year if the bill is fully funded, is to be used for primary prevention uses and the other 20 percent is to be used for intervention uses. Together with the 25-percent earmark, or about $112 million per year if that program is fully funded, for primary prevention in the Juvenile Accountability Block Grant that was passed by the Senate in the Hatch-Biden-Sessions amendment, this bill now reflects a substantial amount of solid funding for primary prevention uses.

I expressed some concern when the Senate passed the Hatch-Biden-Sessions amendment authorizing $50 million per year for prosecutors and different kinds of assistance to prosecutors to speed up prosecution of juvenile offenders. We had cut out the $25 million, but the managers' amendment did not authorize any additional money for judges, public defenders, counselors, or corrections officers. The consequence would be to only exacerbate the backlog in juvenile justice systems rather than helping it.

The managers' amendment fixes that by providing $50 million per year available in grant funds to be used for increased resources to State juvenile court judges, juvenile prosecutors, juvenile public defenders, and other juvenile court system personnel.

I mentioned before that S. 254 includes a sense-of-the-Senate resolution urging States to try juveniles 10 to 14 years old as adults for crimes, such as murder, that would carry the death penalty if committed by an adult—the resolution does not urge the death penalty for such children. While Vermont is probably one of the States that expressly allows for the trial of juveniles 10 years and older as adults for certain crimes, I do not believe that this is a matter on which the Senate must or should opine. The managers' amendment correctly deletes that sense-of-the-Senate from the bill.

These improvements to S. 254 in both the managers’ amendment and in the managers’ package of amendments make this bill worthy of our support, and I am glad to do so.

The chairman and I have agreed that Members from both sides of the aisle had good additions and modifications to make to this bill, and we have agreed to the managers’ amendment. Let me give some examples of amendments we have agreed to incorporate into the bill.

Senators LANDRIEU and SCHUMER proposed amendments to the Juvenile Delinquency Prevention Challenge Grant program to help abused, foster, and adopted children so they will not fall through the cracks and become at-risk for delinquency.

Senators FEINGOLD sponsored an amendment to help schools use caller-ID to deal with bomb threats.

Senator DODD sponsored an amendment to help schools fund character education initiatives.

After five years, I believe that I can say that the effort to bring character education to our schools has been a success. In New Mexico, 200,000 kids and 90 percent of our schools participate in some form of character education, and all 20 States have a Character Counts pilot projects around the nation centered on increasing resources to State juvenile court judges, juvenile prosecutors, juvenile public defenders, and other juvenile court system personnel.

That legislation helped foster the growth of the Character Counts movement across a few schools in a few states.

The amendment that the Senate has agreed to accept today will expand upon that effort. The bill provides $25 million in funding for character education through the Department of Education, including $15 million for schools and $10 million for after-school programs.

My colleagues have heard me talk before about the Character Counts program, where children and teachers use six pillars of character and incorporate them into their daily lessons. Things like trustworthiness, respect, responsibility, fairness, caring, and citizenship.

After five years, I believe that I can say that the effort to bring character education to our schools has been a success. In New Mexico, 200,000 kids and 90 percent of our schools participate in some form of character education, and all 20 States have a Character Counts pilot projects around the nation centered on increasing resources to State juvenile court judges, juvenile prosecutors, juvenile public defenders, and other juvenile court system personnel.

This amendment would require separation of juveniles and adult inmates and excuse only “brief, inadvertent or accidental” proximity in non-residential areas, which may include dining, recreational, educational, vocational, health care, entry areas, and passageways.

I am pleased we were able to make this progress. I appreciate that a number of our colleagues, as do I, about how S. 254 changes the disproportionate minority confinement protection in current law. This will be an important debate, and I continue to believe we should support an amendment intended to correct that part of S. 254.

S. 254 includes a $200 million per year Juvenile Delinquency Prevention Challenge Grant to fund both primary prevention and intervention uses after juveniles have had contact with the juvenile justice system. I and a number of other members were concerned that in the competition for grant dollars, the primary prevention uses would lose out to intervention uses in crucial decisions on how this grant money would be spent.

With the help of Senator Kohl, we have included in the managers' amendment a clear earmark that 80 percent of the money, or $160 million per year if the bill is fully funded, is to be used for primary prevention uses and the other 20 percent is to be used for intervention uses. Together with the 25-percent earmark, or about $112 million per year if that program is fully funded, for primary prevention in the Juvenile Accountability Block Grant that was passed by the Senate in the Hatch-Biden-Sessions amendment, this bill now reflects a substantial amount of solid funding for primary prevention uses.

I expressed some concern when the Senate passed the Hatch-Biden-Sessions amendment authorizing $50 million per year for prosecutors and different kinds of assistance to prosecutors to speed up prosecution of juvenile offenders. We had cut out the $25 million, but the managers' amendment did not authorize any additional money for judges, public defenders, counselors, or corrections officers. The consequence would be to only exacerbate the backlog in juvenile justice systems rather than helping it.

The managers' amendment fixes that by providing $50 million per year available in grant funds to be used for increased resources to State juvenile court judges, juvenile prosecutors, juvenile public defenders, and other juvenile court system personnel.

I mentioned before that S. 254 includes a sense-of-the-Senate resolution urging States to try juveniles 10 to 14 years old as adults for crimes, such as murder, that would carry the death penalty if committed by an adult—the resolution does not urge the death penalty for such children. While Vermont is probably one of the States that expressly allows for the trial of juveniles 10 years and older as adults for certain crimes, I do not believe that this is a matter on which the Senate must or should opine. The managers' amendment correctly deletes that sense-of-the-Senate from the bill.

These improvements to S. 254 in both the managers’ amendment and in the managers’ package of amendments make this bill worthy of our support, and I am glad to do so.

The chairman and I have agreed that Members from both sides of the aisle had good additions and modifications to make to this bill, and we have agreed to the managers’ amendment. Let me give some examples of amendments we have agreed to incorporate into the bill.

Senators LANDRIEU and SCHUMER proposed amendments to the Juvenile Delinquency Prevention Challenge Grant program to help abused, foster, and adopted children so they will not fall through the cracks and become at-risk for delinquency.

Senators FEINGOLD sponsored an amendment to help schools use caller-ID to deal with bomb threats.

Senator DODD sponsored an amendment to help schools fund character education initiatives.

After five years, I believe that I can say that the effort to bring character education to our schools has been a success. In New Mexico, 200,000 kids and 90 percent of our schools participate in some form of character education, and all 20 States have a Character Counts pilot projects around the nation centered on increasing resources to State juvenile court judges, juvenile prosecutors, juvenile public defenders, and other juvenile court system personnel.

That legislation helped foster the growth of the Character Counts movement across a few schools in a few states.

The amendment that the Senate has agreed to accept today will expand upon that effort. The bill provides $25 million in funding for character education through the Department of Education, including $15 million for schools and $10 million for after-school programs.

My colleagues have heard me talk before about the Character Counts program, where children and teachers use six pillars of character and incorporate them into their daily lessons. Things like trustworthiness, respect, responsibility, fairness, caring, and citizenship.

After five years, I believe that I can say that the effort to bring character education to our schools has been a success. In New Mexico, 200,000 kids and 90 percent of our schools participate in some form of character education, and all 20 States have a Character Counts pilot projects around the nation centered on increasing resources to State juvenile court judges, juvenile prosecutors, juvenile public defenders, and other juvenile court system personnel.
agreed to help bring Character Counts to other areas of the country where maybe it has not caught on quite as well as it has in my state or Connecticut. I thank the Senate for accepting my amendments and I yield the floor.

PREVENTING DELINQUENCY THROUGH CHARACTER EDUCATION

Mr. DODD. Mr. President, I am pleased to join with the distinguished Senator from New Mexico in offering this amendment to provide support for character education projects in schools and in after-school programs. These programs, organized around character education, would provide alternatives to youth at risk of delinquency and work specifically to reduce delinquency, school discipline problems and truancy and to improve student achievement, overall school performance, and youths' positive involvement in their community. Our amendment—which I understand will be considered as part of the managers' package—would authorize no less than $25 million per year for character education in schools and in after-school settings.

I am not here today to claim that character education is the answer to all the questions that have been posed to us as policy makers, parents and community members in the wake of the tragedy at Littleton, CO.

But character education is part of the answer. Today's children have so many obstacles to overcome, including violence, drug use, peer and cultural influences, and too much unsupervised time on their hands. As a society, we must find ways to help these children become responsible citizens, to distinguish between right and wrong. To do this, we must build on traditional education by nurturing students' character.

That is fundamentally what character education is about—it is about reinforcing the elements of character which bind us together into communities and into this great nation. Ideas like—trustworthiness, respect, responsibility, fairness, caring and citizenship—underlie all of our government and civic organizations. We must reinforce these beliefs with our children at every opportunity.

Parents have the primary responsibility here. Churches and other community organizations support these efforts through mentoring programs and projects that provide guidance to at-risk children, as well as other forms of support and encouragement. In order to reach their potential to become good citizens, and productive members of their community, these young men and women must have a trustworthy adult in their lives.

I believe in the power of mentoring, because I've seen it firsthand in my own state of Nebraska. In Nebraska, we have a fantastic program run by Tom and Nancy Osborne called TeamMates. Tom and Nancy started TeamMates to reach their potential to become good citizens, and productive members of their community, these young men and women must have a trustworthy adult in their lives.

And that is what this amendment does. It would set aside $25 million for school-based and after-school programs in character education. Schools could use these funds to work with parents and develop a character education program for their schools. We have seen so many successful programs in schools in my own state of Nebraska and I am particularly pleased to highlight one that has been very highly encouraging. Principals and administrators have commented on the positive attitude they see in students in just the first year of their relationship with a mentor. And 99% of the mentors choose to continue their relationship with their students after the first year.

The response to TeamMates has been highly encouraging. Principals and administrators have commented on the positive attitude they see in students in just the first year of their relationship with a mentor. And 99% of the mentors choose to continue their relationship with their students after the first year.

Right now there are 475 TeamMate matches throughout Nebraska. And they hope to have a total of 900 a year from now.

We have another terrific mentoring program in Omaha called All Our Kids, which began in 1989 at McMillan Junior High School. At present, nearly 80 mentors are providing guidance to at-risk junior and senior high school students.
And All Our Kids enjoys a strong relationship with the Omaha Public Schools System. OPS staff work closely with All Our Kids staff to identify students who need the services provided by its long-term mentoring and scholarship programs.

With our help, TeamMates, All Our Kids, and other promising mentoring programs throughout the nation will be able to expand the horizons of more young people by providing them with caring adults to show them the way.

I also want to thank the managers for accepting my Sense of the Senate urging the President of the United States to allow each Federal employee to take one hour a week to serve as a mentor to a young person in need.

Recently, Jim Otto, Nebraska State Director of the U.S. Department of Agriculture, called me and said, "I read what you said about the importance of youth mentoring and I wanted to let you know that I’m a mentor in the TeamMates mentoring program in Lincoln. I want you to know it’s been a great experience."

Jim said he was fortunate that his employer allowed him to take one hour a week of administrative leave to spend time with his student. But he also said that some of his colleagues in other Federal agencies and departments were not so fortunate. Many employees would like to become mentors, but they just can’t take time away from work.

Now, we have a lot of dedicated individuals throughout the nation who serve as mentors. Several members of my own staff participate in the Everybody Wins program in the D.C. Public Schools. And, as I mentioned earlier, we have great mentoring programs in Nebraska. But we need more adults to say, “I want to make a difference.”

The purpose of this legislation is to enable more adults to take the time to contribute to the well-being of their communities. It’s just one hour a week, but it makes a child’s life through my participation in a wonderful program started by Senator Hammarskjold. Every week, I have the privilege of spending an hour or so with a boy named Jamal. It has been a pleasure to watch him learn and grow into a fine, confident, young man.

I would encourage any of my colleagues who want to make a real difference to become a mentor. At-risk young people with mentors are 46 percent less likely to use illegal drugs and half as likely to skip school than at-risk youth without mentors. Nearly three-quarters of young people with mentors indicate that their mentors have helped to raise their goals and expectations.

Unfortunately, there are too many at-risk youth who do not have an adult willing or able to give them the regular, individual attention they need.

The amendment offered by Senator KERREY and I would help to ensure that exemplary youth mentoring programs in each of our states are funded by the Juvenile Delinquency Prevention Challenge Grant program established in this bill. I believe this would be a good investment in our young people, and I again thank my colleagues for their support of this amendment.

Mr. KOHL. Mr. President, I rise to express my appreciation to the managers of this bill for agreeing to include the amendment my amendment to authorize the FAST (Families and Schools Together) program. Over the last few weeks, we have all spent much time mourning lost children—whether they are lost to bullets or to the lure of a violent culture, whether they end their lives holding a gun or facing one. And we have spent much time discussing the many factors that can lead our young people to be involved in gun violence, mindless ‘T.V.,” or savage movies, or violent video games, or illegal drugs. But we know that a child is most likely to be lost—most likely to fall under the influence of these evils—when he or she is alone, cut off from parents, teachers, and the community.

FAST is a successful program that finds troubled youth and reconnects them with their schools and families. FAST brings at-risk children, parents, and educators together to help them learn to succeed at home, in school, and in their communities. FAST helps ensure that youth violence does not proliferate to our schools and communities by empowering parents who are helping to improve children’s behavior and performance in school, preventing substance abuse, and providing support and networking for families by linking them to community resources and services.

Currently, the FAST program—which was created in my home state of Wisconsin—is being implemented in 484 schools in 34 States and five countries. It has received numerous national honors and awards, and is supported by the Department of Education, Department of Justice, Office of Juvenile Justice Delinquency Prevention, Department of Health and Human Services, Office of National Drug Control Policy, Substance Abuse and Mental Health Services Administration, National Institute of Mental Health, Head Start, the Harvard-Ford Foundation, and the United Way of America.

My amendment is simple and effective. It authorizes $12 million a year for the next five years to the Office of Juvenile Justice and Delinquency Programs in the Department of Justice for FAST sites and programs and $2 million will be used for research and evaluation of FAST. This amendment will allow more communities across the nation to reap the benefits of FAST—and will go a long way toward preventing youth violence in this country.

Mr. President, one of the best ways to prevent youth violence is by building and preserving close, healthy relationships within families. The FAST program is instrumental in achieving this goal, and has been proven to work in reducing behavioral problems among troubled youth. I am pleased that Senators HATCH and LEAHY have recognized the importance of this small, yet vitally important program by including the FAST amendment in the manager’s package. I thank them for their efforts in working with me on this amendment.

I yield the floor.

Mr. KENNEDY. Mr. President, today we are offering an amendment to the juvenile justice bill to authorize funding for the National Institutes of Health to carry out a broad-based initiative for basic research into youth violence. This research will look into the fundamental cause of such violence and will be linked to research on the most effective ways to prevent it.

Clearly, we must do more to enhance our understanding of the fundamental psychological, behavioral, and social factors that contribute to violence by young people.
NIH currently provides modest support for behavioral research related to violence, but the research is seriously under-funded in light of the obvious magnitude of the problem. In addition, the current funding is spread across many NIH Institutes and some important research is funded at inappropriate levels.

This coordinated initiative, relying on the Office of Behavioral and Social Sciences Research at NIH, will enable NIH to respond more quickly to the crisis of youth violence. It will help us to intervene early, eliminate the gaps in current knowledge, and focus more effectively on the important high priority questions that scientists in the field have identified.

Violence is also a public health problem, and it is as perilous as any epidemic. The tragic shooting rampage by the two students in Colorado shocked the country into a greater sense of urgency about youth violence. Many elements contribute to violent behavior, and it is seldom traced to any single cause.

These causes need to be better understood if we are to design effective methods for treatment and prevention. We also need a greater understanding of how to apply the knowledge that we already have.

More effective school, family and community prevention activities can be designed on the basis of what we learn from research and from the practical experience of clinicians, educators, and social scientists. The goal of this research effort will be to develop better organizational models of effective partnerships among scientists, public agencies, and community members. The research will also address the psychological impact of violence on the victims, since many perpetrators of violence were themselves victims of violence earlier in their lives.

Our proposal for greater NIH research is an essential part of the answer we are seeking to the tragedies of juvenile violence, and I urge the Senate to support it.

FAST PROGRAM

Mr. FEINGOLD. Mr. President, I rise today to support Senator Kohl’s amendment which was included into the Juvenile Justice bill’s Manager’s Package. Mr. President, Senator Kohl’s amendment would expand the Families and Schools Together or FAST program to reach the many at-risk students in need. FAST is an award winning drug abuse prevention program that supports and empowers parents to be the best line of defense between their children and the dangers of drug abuse. The program uses a cooperative approach that gives parents professional support to prevent and confront drug abuse in the home.

I am proud to report, Mr. President, that the FAST program, which has received many awards and honors since its founding 10 years ago, was founded in my home state of Wisconsin by Dr. Lynn McDonald. Dr. McDonald is one of the nation’s experts on the prevention of drug abuse by young people. The unique FAST program is today being used in 484 schools in 34 states and five countries.

Research indicates that to be most effective, substance abuse prevention programs should be implemented when children are young. Researchers also believe that prevention efforts that focus on family and peer relationships can greatly reduce risk factors for our children. While no one solution will rid our society of youth crime, the most effective way to prevent drug abuse, it is critical that we make available to students, parents and schools successful programs that can make a difference. FAST has a proven track record: it has been tried, adapted, implemented and studied. It is clearly a program that has proven successful and should be expanded to reach more families in need.

It is important to note, Mr. President, that we are not powerless to help prevent destructive behaviors, such as drug use. In that state where the FAST program requires a strong, committed partnership between schools and families to help the students at risk and to intervene successfully to prevent the downward cycle of drug abuse, which too often leads to youth violence.

I support this amendment, Mr. President, because I know that FAST is a prevention program which helps young children at risk for developing problems later on—by working with them and their family early on. Senator Kohl’s amendment is a wise investment at the front end to catch students before their risky behavior results in tragic consequences for themselves and their families. With assistance from the FAST program, families become their own child’s best prevention resource.

WORKER PROTECTION

Mr. KENNEDY. Mr. President, we have been engaged over the last week in the most difficult, task of defining how the nation will address the problem of youth violence and crime. Our goal is to develop steps that will be more effective in protecting society against juvenile crime and enabling youth to become productive and successful members of our society.

We must also protect the rights of the men and women in the criminal system responsible for working with juvenile offenders. It is in the nation’s interest to ensure that the workers who receive federal dollars for their juvenile justice programs administer these programs in a manner that protects the worker, the juvenile offender, and ultimately, the taxpayers and citizens.

This amendment early ensure that workers who provide juvenile justice services do not lose their jobs, their existing bargaining rights, or a loss of benefits if their program receives federal funds.

This is not a new concept. Since enactment of the Juvenile Justice and Delinquency Prevention Act in 1974, Congress has recognized the importance of making sure that the rights of state workers are protected in juvenile justice programs funded with federal money. Current law provides that the distribution of federal funds for state juvenile justice programs will not displace workers, negatively reduce their wages or impinge on existing collective bargaining agreements.

The intent of the current law, and of this amendment, is two-fold: to protect workers’ rights, and to protect the taxpayer and the children. Since the early 1970s, the law has protected the employment rights of tens of thousands of state workers in the court system and the juvenile justice system. These men and women, whose jobs are funded through grants to the states, are at the core of our juvenile justice system.

They perform vital work, supervising and training troubled youths in the courts and in the parole system. Even with the protections under current law, and even when workers are covered by collective bargaining agreements, these are not high paying jobs. Salaries go from the high teens to the low thirty thousand dollar range.

The law also ensures the quality of the services provided by these workers. Protecting the right of experienced workers maintains the stability of the workforce and ensures that well-trained, qualified personnel are staffing the juvenile justice system. If we are serious about protecting society against violent youth—if we are serious about rehabilitating young people and safely returning them to society, then we need well-trained and experienced workers and a stable workforce with adequate skills and training in our juvenile justice system.

This amendment will make sure that existing collective bargaining agreements, and the rights under those agreements, would not be disturbed when a state program receives a federal grant. For workers who are not covered by a collective bargaining agreement, this amendment may be the only job protection they have when their program is funded under a federal grant.

We all agree that the juvenile justice system must be improved. Let’s also agree that preserving the existing rights of state juvenile justice workers, who are providing critical service to existing employment relationships, are essential components that must be part of an improved system. I urge my colleagues to vote for this amendment.

DEMONSTRATION PROGRAM FOR HIGH RISK YOUTH

Mr. GREGG. Mr. President, America is struggling with a disturbing and growing trend of youth violence. While it is true that crime is generally down in many urban and suburban areas, it is equally true that crime committed by teenagers has risen sharply over the past few years and it is expected to continue to rise. Crime experts who study demographics warn of a coming crime wave
based on the number of children who currently are younger than 10 years old. These experts warn that if current trends are not changed, we might someday look back at our current juvenile crime epidemic as “the good old days.”

Thirty years ago, Daniel Patrick Moynihan, then an official of the Johnson Administration, wrote that when a community’s families are shattered, crime, violence and rage “are not only to be expected, they are virtually inevitable.” He wrote those words in 1965. Since then, arrests of violent juvenile criminals have tripled.

If we have learned anything from this debate and from all the research that has been done on juvenile violence, it is that there is no magic bullet, no single solution or panacea to the problem of rising juvenile crime. Juvenile crime is a complex problem that demands a myriad of responses. It is a problem that demands a partnership solution involving community organizations (families, churches, schools, community groups, and non-profit organizations) in preventing and confronting juvenile crime with the moral ideals that defeat despair and nurture lives.

This amendment is a step in that direction and I urge its adoption.

“PARTNERSHIPS FOR HIGH-RISK YOUTH”

Mr. KENNEDY. Mr. President, I support Gregg’s “Partnerships for High Risk Youth” amendment. This amendment establishes a national demonstration project to identify the most effective practices and programs for reducing youth violence. This initiative will provide 12 high-risk cities across the nation with funds to carry out local demonstration projects. These initiatives will help us learn much more about the best programs for reducing youth violence. Communities across the country will benefit from the knowledge.

The successful violence prevention programs take a comprehensive approach to youth violence. The goal is to reach out to youth and their families on a variety of levels. Diverse groups—law enforcement, schools, mental health professionals, religious organizations, parents, and teachers—all need to join forces. This amendment supports this vital type of cooperation. The knowledge we gain will save lives. Communities across the country will be able to learn from these successful models and develop similar programs in their own towns and cities.

Boston has long understood the importance of community cooperation, and we have hand-dusted the successful model. The Boston Ten Point Coalition is committed to helping at-risk children reach their full potential, and it offers training, technical assistance, resource development, and networking opportunities to churches and other community groups interested in mentoring, advocacy, economic alternatives, and violence prevention. Its goal is to build a coalition of churches nationwide, united in their commitment to changing children’s lives and reducing violence.

This amendment will help outstanding initiatives like this across the country, and I urge the Senate to support it.

VIOLENCE PREVENTION TRAINING FOR EARLY CHILDHOOD EDUCATORS

Mr. DODD. Mr. President, one of the best ways to approach juvenile justice is to prevent violent offenses from occurring in the first place. Therefore, I am pleased to offer the “Violence Prevention Training for Early Childhood Educators” amendment to S. 254, the Children’s Health Insurance Program Act of 1997. This amendment would provide $15 million in grants for preschool and Head Start teachers to learn violence prevention skills.

All of us have been shaken by the tragedy at Littleton, CO. Americans are left searching for answers to many questions. How could these teenagers have committed such brutality? What happened to the innocence and joy of youth? How can society help prevent such deadly behavior from happening again?

One of the most effective solutions is to begin violence prevention at an early age. This program is a carefully thought-out program aimed at true prevention. It is designed to help early childhood educators—the people who work directly with young children in preschools, child care centers, and elementary schools—learn the skills necessary to prevent violent behavior in children.

The amendment would provide support to programs that prepare these professionals so that early childhood teachers, child care providers, and counselors are able to teach children how to resolve conflicts without violence. In addition, these professionals are in the perfect position to reach out and extend these lessons to parents and help whole families adopt these powerful skills.

Research has demonstrated that aggressive behavior in early childhood is the single best predictor of aggression in later years. Children observe and imitate aggressive behavior over the course of many years. They certainly
have plenty of exposure to violence, both in the streets and at home. A Boston hospital found that 1 out of every 10 children seen in their primary care clinic had witnessed a shooting or stabbing before the age of 6. I am proud to report that in my home State of Connecticut, 1 in 10 teens have been physically abused. Alarming, more than a third of teenage boys report that they have guns or could get one in less than a day. In these circumstances, aggression becomes very well-learned by the time the child reaches adolescence.

We must provide children with strategies for altering the negative influences of exposure to violence. Early childhood offers a critical period for overcoming the risk of violent behavior and later juvenile delinquency. And the proper training of professionals who work with young children offers one of the most effective avenues for reaching these kids.

This is not to suggest that early childhood professionals would replace parents as a source of teaching social skills and acceptable behavior. Instead, these teachers should demonstrate these skills with the children in their care and be encouraged to work with the whole family to address conflict without violence and aggression.

In 1992, Congress enacted similar legislation to provide grants for programs that address these kinds of early childhood education and violence counseling. These grants funded some remarkable programs. In my home state, a program at Eastern Connecticut State University trained students—half of whom were minority, low-income individuals—to be teachers in their own communities, and trained child care providers in violence prevention with young children.

Unfortunately, just as these efforts were getting off the ground and starting to show promising results, the funding for the program was rescinded as part of the major 1994 rescission bill. Looking back, after the horrible events in Littleton, CO, Springfield, OR, and too many other communities, I think we can clearly see that was a mistake. Hindsight is always clearer—but let’s not make the same mistake going forward. Let’s reinvest in these efforts so that we can prevent our children from developing into violent juvenile offenders.

Preventing future acts of violence is an issue that rises above partisan politics. I think we can all agree that steps need to be taken to reduce the development of violent behavior in children. Please let us in this effort to begin creating a safer society for everyone, especially our children.

TRUANCY PREVENTION

Mr. DODD. As many of my colleagues know, I have worked consistently for the last several years to address what I believe to be the key “gateway” offenses leading to delinquency and serious crime among our youth—Truancy. Working with Senator Sessions, we have been able to include language encouraging states and local communities to pursue truancy prevention programs with the assistance they will receive under this bill. I want to thank Senator Sessions for working with me on this effort.

Truancy is a dangerous and growing trend in our nation’s schools. It not only prevents our children from receiving the education they need, but it is often the first warning of more serious problems to come. Truant students are at greater risk for falling into substance abuse, gangs, and violent behavior. For many students, truancy is the beginning of a lifetime of problems.

It is estimated that, in the past ten years, truancy has increased by as much as 67 percent. On an average school day, in the United States, as many as 15 percent of junior and senior high school students are not in school. In some urban schools, absentee rates approach 50 percent. Alarming, the problem is most prevalent among those prevalent in our elementary schools. Almost one quarter of Connecticut’s truants were 13 or younger.

By some estimates, truants cost our nation more than $20 billion in lost productivity from those who would have otherwise stayed in school. Yet this sum does not include the billions more in dollars spent on law enforcement, foster care, prisons, public assistance, health care and other social services.

Fortunately, truancy is a solvable problem. Many communities, including many in Connecticut, have set up early intervention programs—to reach out and prevent truancy before it leads to delinquency and more serious criminal behavior. A number of Connecticut cities have brought back truant officers, hired drop-out prevention workers, held parents accountable for their students’ absences, denied credit to students with unexcused absences, and have created truancy courts.

These programs are showing signs of success. Several towns have reported dramatic drops in daytime burglary rates—some as much as 75 percent—after instituting truancy prevention initiatives.

Unfortunately, communities have had difficulty implementing these programs as truancy is considered an educational rather than a criminal justice issue, and, with growing classroom enrollment, schools that are financially-strapped schools simply do not have the resources to adequately address this problem.

The provision that Senator Sessions and I are adding to the juvenile justice bill will ensure that communities have the wherewithal they need to respond to this increasingly serious problem. The legislation’s goal is to promote anti-truancy partnerships between local law enforcement agencies, schools, parents, and community organizations. While each state will design its own program which works for it, I believe that there are certain key components of successful programs.

First, parents must be involved in all truancy prevention activities and they must be given incentives to face up to their own responsibilities. Second, students must understand that they will face firm sanctions for truancy. Third, all truancy prevention programs will use law enforcement, educational, agencies, parents, and youth serving organizations—must work together to help solve this problem.

Truancy is an early warning that a child is heading in the wrong direction. I am hopeful that states and communities will use this new authority to support high quality truancy partnership projects. And we can move on to spend more time celebrating the accomplishments of our children than grieving over lost opportunities to stop the cycle leading to violent crime.

FEDERAL SON OF SAM LEGISLATION

Mr. DORGAN. Mr. President, last year, I introduced a bill to correct problems with the Federal Son of Sam Law that were identified by the United States Supreme Court. Today, I am reintroducing this legislation, which deals with a continuing problem. The New York statute analyzed by the Supreme Court, as well as the other federal statutes back to the 1930s, are severely flawed. I am amendments to the Son of Sam statute to be both over inclusive and under inclusive: Over inclusive because the statute included all expressive works, no matter how tangentially related to the crime; under inclusive because the statute included only expressive works, not other forms of property.

To correct the deficiencies perceived by the Court, this bill changes significantly the concepts of the Federal statute. Because the Court criticized the Federal statute in striking down New York’s law, it is clear that the Court found the statute to be both over inclusive and under inclusive: Over inclusive because the statute included all expressive works, no matter how tangentially related to the crime; under inclusive because the statute included only expressive works, not other forms of property.

The bill now introduce attempts to correct constitutional deficiencies cited by the Supreme Court in striking down New York’s Son of Sam law. In its decision striking down New York’s law, the Court found the statute to be both over inclusive and under inclusive: Over inclusive because the statute included all expressive works, no matter how tangentially related to the crime; under inclusive because the statute included only expressive works, not other forms of property.

To correct the deficiencies perceived by the Court, this bill changes significantly the concepts of the Federal statute. Because the Court criticized the Federal statute in striking down New York’s law, it is clear that the Court found the statute to be both over inclusive and under inclusive: Over inclusive because the statute included all expressive works, no matter how tangentially related to the crime; under inclusive because the statute included only expressive works, not other forms of property.

To correct the deficiencies perceived by the Court, this bill changes significantly the concepts of the Federal statute. Because the Court criticized the Federal statute in striking down New York’s law, it is clear that the Court found the statute to be both over inclusive and under inclusive: Over inclusive because the statute included all expressive works, no matter how tangentially related to the crime; under inclusive because the statute included only expressive works, not other forms of property.

To correct the deficiencies perceived by the Court, this bill changes significantly the concepts of the Federal statute. Because the Court criticized the Federal statute in striking down New York’s law, it is clear that the Court found the statute to be both over inclusive and under inclusive: Over inclusive because the statute included all expressive works, no matter how tangentially related to the crime; under inclusive because the statute included only expressive works, not other forms of property.

To correct the deficiencies perceived by the Court, this bill changes significantly the concepts of the Federal statute. Because the Court criticized the Federal statute in striking down New York’s law, it is clear that the Court found the statute to be both over inclusive and under inclusive: Over inclusive because the statute included all expressive works, no matter how tangentially related to the crime; under inclusive because the statute included only expressive works, not other forms of property.

To correct the deficiencies perceived by the Court, this bill changes significantly the concepts of the Federal statute. Because the Court criticized the Federal statute in striking down New York’s law, it is clear that the Court found the statute to be both over inclusive and under inclusive: Over inclusive because the statute included all expressive works, no matter how tangentially related to the crime; under inclusive because the statute included only expressive works, not other forms of property.

To correct the deficiencies perceived by the Court, this bill changes significantly the concepts of the Federal statute. Because the Court criticized the Federal statute in striking down New York’s law, it is clear that the Court found the statute to be both over inclusive and under inclusive: Over inclusive because the statute included all expressive works, no matter how tangentially related to the crime; under inclusive because the statute included only expressive works, not other forms of property.

To correct the deficiencies perceived by the Court, this bill changes significantly the concepts of the Federal statute. Because the Court criticized the Federal statute in striking down New York’s law, it is clear that the Court found the statute to be both over inclusive and under inclusive: Over inclusive because the statute included all expressive works, no matter how tangentially related to the crime; under inclusive because the statute included only expressive works, not other forms of property.
Mr. KOHL. That is correct.

Mr. CHAFEE. Finally, would you further concur with me that our definition of a “secure gun storage or safety device” is not intended to include a permanent feature of a home or motor vehicle, such as a closet or glove box, even though such environments also may be locked?

Mr. KOHL. I would agree.

Mr. CHAFEE. Finally, would you further concur with me that the definition of such devices in our amendment is intended solely to include personalized guns, lockable devices which either are affixed to a firearm directly, or to the safes or others, or to secure locked containers or safes.

Mr. KOHL. I would agree.

Mr. CHAFEE. Finally, would you further concur with me that our definition of a “secure gun storage or safety device” is not intended to include a permanent feature of a home or motor vehicle, such as a closet or glove box, even though such environments also may be locked?

Mr. KOHL. I would agree.

Mr. KENNEDY. Mr. President, for the past several days, we have debated the best practices and programs for preventing youth violence. We have disagreed on a number of issues including the need to restrict guns, invest in after-school and counseling services and mental health services for troubled youths and children. But there is one issue that members on both sides of the aisle agree on—parents play an important role in their children’s lives.

Mr. President, for our Federal statute, enacted to ensure that criminals not profit at the expense of the victims of firearms and victim’s families, is not perceived to be unconstitutional. I believe victims of crime deserve quick action on this bill, drafted to ensure that they are not the source of profits to those who committed crimes against them. I ask for your support.

Mr. CHAFEE. I just want to be clear about the civil liability provisions. Does this bill create civil liability immunity for gun manufacturers, dealers of guns accessed in the home, or manufacturers or distributors of safety devices?

Mr. KOHL. No. It creates civil liability immunity only for gun owners.

Mr. CHAFEE. Does this bill create civil liability immunity only for gun owners who use a safety device?

Mr. KOHL. That is correct.

Mr. CHAFEE. Does that immunity apply if the gun owner is negligent—even if he doesn’t actually give anyone permission to use the gun, but for example leaves the key to the lock sitting next to the gun?

Mr. KOHL. No.

Mr. CHAFEE. And is it correct that this section does not change in any way existing product liability law?

Mr. KOHL. That is correct.

Mr. CHAFEE. And, finally, is it correct that any pending suits against gun owners would be allowed to continue?

Mr. KOHL. That is correct.

Mr. CHAFEE. I thank the Senator once again. On another matter, I want to make equally clear for the record exactly what a “secure gun storage or safety device” is and is not. Specifically, would the Senator from Wisconsin agree with me that the definition of such devices in our amendment is intended solely to include personalized guns, lockable devices which either are affixed to a firearm directly, or to the safes or others, or to secure locked containers or safes.

Mr. KOHL. I would agree.
We know that suffering abuse as a child is strongly related to subsequent delinquency and abusive behavior later in life. But improved parenting skills can help break this vicious cycle. Parenting support and education have been proven to reduce abuse. In the Prevention and Early Intervention Programs, high-risk mothers were randomly assigned to one of two groups. One group received visits by specially trained nurses who provided coaching in parenting skills and other advice and support. The other group received no services. For those who received the assistance, child abuse was reduced by 80% in the first 2 years. Five years after the services ended, these mothers had only one-third as many arrests, and their children were only half as likely to be delinquent.

Law enforcement officials also recognize the benefits of training parents. More than 9 out of 10 police chiefs (92%) agreed with the statement, “America could save $1.5 billion if government invested more in programs to help children and youth get off to a good start” by “fully funding Head Start for infants and toddlers, preventing child abuse, providing parenting training for high-risk families, improving schools, and providing after school programs and mentoring.”

These law enforcement officers are right. Parenting classes in conjunction with early education programs improve caregiving skills and reduce crime dramatically and they reduce the likelihood of later delinquent behavior. A High/Scope Foundation study at the Perry Preschool in Michigan provided at-risk 3 and 4 year-olds with a quality Head Start-style preschool program, supplemented by weekly in-home coaching for parents. Two decades later years later, by age 27, those who had been denied the services as toddlers were five times more likely to be delinquent by age 16. We pay a high price for abuse and neglect. In addition to its damaging psychological consequences, it is estimated that $22 billion is spent each year on services for abused children, their parents, and foster care families. Investing in prevention programs, particularly parent support and education, will significantly reduce these abuse-related expenditures.

There is no question that investing in parents will pay off. When we don't make this investment, we all pay more later, not just in terms of lives and fear, but also in tax dollars. The “Parenting as Prevention” Act, which Senator STEVENS and I are proposing, will provide incentives that will improve parenting skills.

To identify the best parenting practices, a National Parenting Support and Education Commission will be established. The Commission will identify the most effective parenting practices, including the best strategies for disciplining children and youth, the best approaches for building integrity and character, and the best techniques for ensuring healthy brain development.

The Commission will conduct a review of existing parenting support and education programs, and will provide Congress with an administration with a detailed report of its findings. Perhaps, most important, essential parenting information will also be provided to parents—no new family will leave a hospital or adoption agency without information on how to best care for a baby. In Massachusetts, such an initiative is already underway.

Our amendment also supports the establishment of a grant program to strengthen state in initiatives for supporting and educating parents. Block grants to help support initiatives from the Department of Health and Human Services to the states. Each state will establish their own Parenting Support and Education Council to award local grants. States will use their funds to establish support and resource centers for parents and to strengthen support programs for children and teenagers. The grant program will support a wide variety of parental support initiatives including: home visits; counseling programs; distribution of parenting and early childhood development materials; the development of support programs for parents of young children and teenagers; respite care for parents of children with special needs; and the creation of a national toll free number that will offer counseling and referral services for parents.

Finally, our amendment will improve mental health services for violence-related stress and trauma. A National Parenting Support and Education Commission will be established. The Commission will identify the best practices for dealing with these problems. In the long run, successful early intervention is the best way to modify the culture of violence instilled in so many children.

I urge my colleagues to support this amendment. Investing in parents and children is one of the best ways to prevent youth violence and we clearly need to do more in order to achieve this important goal.

I ask unanimous consent that letters of support for this amendment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

**The Latin School of Chicago**, Chicago, IL. May 18, 1999.

**Dear Senator Kennedy:** I am writing to support your efforts at adding The Stevens-Kennedy Amendment to S. 254—the Parenting as Prevention Act. I have working at parenting education for two decades. I have taught parent education to lawyers, social workers, teachers, parents and students in k-12 settings in some of the most violent neighborhoods in Chicago. I have been able to prove that it does help children and parents. I have also more options to understand the needs of children and others and to choose non-violent solutions to problems.

I have also been working for several years on women’s advocacy grants that support and get some consensus regarding best practices. We need support and resources to do this. Many of us have been doing this for years at our own expense because we know how important parent education and support is to parents and future parents. Thank you for your efforts and please call upon me in any way I can to support your good work. We need this Act to do our good work.

Very sincerely yours,

Dana McDermott Murphy, Adjunct Professor, Family Studies Program—Loyola of Chicago; Coordinator, Parent Education Initiative, The Latin School of Chicago; Member, Advisory Council of the National Parent Education Network; and Member, Advisory Board of the Parenting Project—Boca Raton, FL.


Senator Edward Kennedy, co-Chair Parenting Coalition International, Washington, DC.

**Dear Senator Kennedy:** I am in support of the Stevens/Kennedy Amendment to S. 254 entitled “PARENTING AS PREVENTION.”

The provision of the Amendment, including the establishment of a Parenting Support and Education Commission, a State and Local Parenting Support and Education Grant Program, and the Problems of Violence Related Stress to Parents and Children, could not be more needed, or more timely. I am confident that the Amendment will make a significant contribution in addressing the pressing needs of parents in our country, and thus in preventing the tragic problems among children and youth that confront our nation today.

You are to be commended for your leadership in bringing forward this critically important legislative initiative. In addition to serving as Administrator of Parenting Programs at MIT, I am Chief Consultant to the Harvard Parenting Projects and Director of the Harvard Project on the Parenting of Adolescents at the Harvard School of Public Health. I am also Founding Chair and National Liaison for the National Parenting Education Network.

If there is any assistance that I can provide to the new Commission, I would be very happy to do so.

Respectfully yours,

A. Raar Simpson, Ph.D., Administrator, Parenting Programs.
and support the premise that parents are the single most important factor in determining the success or failure of their child. Beyond a doubt, based on the very latest research, parents are their child’s most influential teachers. Therefore, it stands to reason that parents truly desire to learn the skills and attitudes they need in order to be the best parent they can be for their child. Parents know that their skills and attitudes do not come naturally; they are learned. We need programs that will ensure that parents are taught those skills and attitudes using the most positive methods available. Too many of them have learned negative parenting through the bad examples of their own parents.

We believe that positive messages to our children instead of the poor, often confusing scenarios, we present to them now. I believe providing the states with funds to help them implement such programs would be most desirable, but only if we have a true method of determining that the monies are being spent correctly on parenting materials that have been proven to make a difference in the lives of both parents and their children, and that such programs are making a difference.

Sincerely,

Gretchen Gleave, Vice President.
Perry of Baylor College of Medicine says, “If anything we now know that children are more vulnerable to trauma than adults.” Perry estimates that over 5 million children in the United States experience traumatizing violence every year, including 1 million who are victims of abuse or neglect.

Programs that help parents raise responsible, healthy adults save lives and money. For example, a RAND cost-benefit estimate of the PEIP program concluded that the savings to government alone (excluding other benefits to society at large) were four times the costs, and that figure did not include many earnings, such as expected lower welfare payments, and special needs, except for children beyond age 5, or the extra taxes they may pay as adults. RAND found that government savings from the program exceeded program costs by the time children were four years old.

If we can be of further help as you consider this amendment, please don’t hesitate to call us.

Sincerely, Sanford A. Newman, President.

Mr. KENNEDY. Mr. President, I ask unanimous consent that a summary of the Senate report from the following amendment be printed in the Record.

There being no objection, the summary was ordered to be printed in the Record, as follows:

SUMMARY OF THE STEVENS AMENDMENT—PARENTING AS PREVENTION ACT

The Parenting as Prevention Act addresses youth violence and juvenile delinquency by providing support and training to parents and potential parents to improve their parenting skills and focus their attention on brain stimulation to improve early childhood development.

A Rand study shows that for every dollar invested in parenting and early childhood education through brain stimulation, at least $4 are saved in later prison costs, rehabilitation costs, special education expenses, welfare payments, etc. GAO puts the savings at above $7 for every dollar invested.

This state block grant program would be administered by the Secretary of Health and Human Services and developed in cooperation with the Attorney General who has responsibility for justice programs such as Boys and Girls Clubs, the Secretary of Education who provides support to early childhood learning, the Secretaries of Labor and Urban Development who would help distribute materials on brain development and best parenting practices to mothers of new babies on brain development and best parenting practices (cited as the best way to reduce child abuse, a leading cause of juvenile violence and violent crime); and parent training programs.

(1) Parenting support programs for young children including distribution of parenting materials on brain development and best parenting practices, one visit to mothers of new babies on brain development and best parenting practices (cited as the best way to reduce child abuse, a leading cause of juvenile violence and violent crime); and parent training programs.

(2) Parenting support for teenagers including providing parenting materials in conjunction with existing programs such as Boys and Girls Clubs, YMCA, after school programs, and parent training classes, support groups, and mentors.

(3) Parenting support and education resource centers including a national 800 toll free number offer counseling, parenting advice, and referral to existing programs; and respite care for families with children with special needs (retarded, mentally ill, behavior disorders, FAS/FAE).

A state which gets a grant to provide a statewide program or a local group would only have to report back every two years, but would have to use specific performance measures, i.e. things like improvement in IQ scores, school grades, etc.

No more than 5% of the money could be used for administrative costs. The typical rate is 18-30 percent.

A state would have to maintain its existing effort, i.e. it can’t cut its existing state program and replace it with a federal grant.

The program is authorized at such sums as necessary.

Finally, the bill creates a program to reverse bad brain wiring caused by exposure to physical or sexual abuse or family/community violence. Research shows early intervention to be much more effective than later rehabilitation efforts as an adult.

Again, best practices for dealing with these problems would be identified by regional centers of excellence on psychological trauma and response.

Indian tribes, Native Hawaiians and other non-profits would be eligible for grants which would last for 3 years.

This program is authorized at such sums as are necessary.

Mr. HATCH. Mr. President, I ask unanimous consent the amendment be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. The amendment (No. 363) was agreed to.

Mr. WELLSTONE. Mr. President, I send an amendment to the desk on behalf of myself, Senator KENNEDY, Senator FEINGOLD, and Senator FEINSTEIN.

The PRESIDING OFFICER. The clerk will report.

The legislative assistant read as follows:

The Senator from Minnesota [Mr. WELLSTONE], for himself, Mr. KENNEDY, Mr. FEINGOLD, and Mrs. FEINSTEIN, proposes an amendment numbered 364.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 129, strike lines 6 through 14, and insert the following:

“(24) address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards, the disproportionate number of juvenile members of racial minority groups who come into contact with the juvenile justice system.”

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, let me talk in a general way about this.

This legislation deals with juvenile justice. This amendment focuses on the justice part. We speak to what is called disproportionate minority confinement. What that really means, in concrete terms, to use one example, is African American kids ages 10 to 17 make up 15 percent of the population, but 26 percent of all juvenile arrests, 32 percent of delinquency referrals to juvenile court, 46 percent in public and private prisons in public long-term institutions, and 52 percent of cases judicially waived to criminal court; that is, adult court.

In the current legislation, what we have done is we turn the clock back a long ways. In the past, since the late 1980s, we have always tried to deal with this question of disproportionate minority confinement. What this legislation does is to essentially reverse this progress. I think, roughly speaking, about 33 percent of the population, ages 10 to 17, are minority youth. They represent about 66 percent, or thereabouts, of kids who are now incarcerated. The question is, Why?

There are lots of different reasons. Let me just list some that come from Department of Justice reports, some lessons that have been learned from some five different States. Some of the factors that can contribute to minority overrepresentation can be: racial ethnic bias, insufficient diversion options, system labeling, barriers to parental access for poor juvenile delinquents, community integration, low income jobs, few job opportunities, few community support services, inadequate health and
welfare resources, inadequate early childhood education, inadequate education quality, lack of cultural education, single-parent homes, economic stress, limited time for supervision. The factors go on.

But the key to an effective juvenile justice system is to treat every offender as an individual, to treat every offender fairly, and to provide the needed services to all. All youth who come into contact with the juvenile justice system should receive fair treatment. Surely every Senator agrees with that proposition.

The disproportionate minority confinement requirement in the current law is bringing about change and focusing attention on the problem. The current law says we call upon States to try to come to terms with this question. We call upon States to collect the data. We call upon States to think about whether or not there are steps that can be taken to put into effect some of these programs and some of the steps that could be taken to deal with this problem, to bring about more fairness, to end some of the discrimination.

As you look at this graph here, when you have 15 percent of young people ages 10 to 17, African American, but 46 percent of the juveniles in public, long-term institutions are African American kids, this ought to bother all of us. We ought to change this with this amendment. William Raspberry wrote in the Washington Post last week:

"At the very least, they are the type of kids that are overrepresented at every stage of the juvenile justice system. As you look at this graph here, when you have 15 percent of young people ages 10 to 17, African American, but 46 percent of the juveniles in public, long-term institutions are African American kids, this ought to bother all of us. We ought to change this with this amendment."

This amendment has nothing to do with quotas. This amendment has nothing to do with quotas. This amendment has nothing to do with quotas. This amendment has nothing to do with quotas. This amendment has nothing to do with quotas. This amendment has nothing to do with quotas. This amendment has nothing to do with quotas.

That is what is so incredible about this legislation right now. It is as if starting in the late 1980s and then going to 1993 we recognized this problem, reformed the juvenile justice legislation, up to this bill, we have said to States: You need to collect the data; you need to look at this problem; you need to try to address this problem.

This piece of legislation essentially guts this effort, and the amendment that we have offered is essentially the same House language that is now in the Senate on record supporting the disproportionate minority confinement requirement which now is in existing law that addresses a very serious and a very real problem.

It is well-documented that in every State—nearly every State—including my State of Minnesota, minority youth are overrepresented at every stage of the juvenile justice system, particularly in secure confinement. For example, a study in California showed that minority youth who committed the same offenses received more severe punishments and were more likely to receive jail time than white youth who committed the same offenses.

Another study in Portland, OR, found minority youth being locked up at a rate several times higher than their arrest rates. We ought to be concerned when, roughly speaking, 7 out of every 10 youths in secure confinement are minority juveniles in our country, a rate more than double their percentage of the youth population. Should we be concerned about that? Isn't this juvenile justice legislation? Let's look at the justice part.

We have close to 7 out of 10 kids who are in confinement in our country today who are locked up, incarcerated—juveniles, who are kids of color, who are term institutions are African American kids, double their percentage of the population. We have way too many examples of kids having committed the same offense as white kids but receiving stiffer sentences or winding up incarcerated, and it is not right. It is unconscionable. It is unacceptable.

I do not think this whole problem of disproportionate minority confinement is the product of bigoted or racist authorities, though there is too much bigotry and there is too much racism. It is far more complex, and it results from all kinds of things, including the likelihood that minority youth are more likely to be poor, they are going to be unable to find work, uneducated, or, as William Raspberry suggests in his column, or they are politically unconnected, which means they will be less likely to have their children released to their custody by police officers and judges.

From William Raspberry's piece:

"Forty States are doing good work. The Department of Justice issued a report several months ago which talked about some of those lessons earlier on and the kinds of efforts these States—Arizona, Iowa, North Carolina, Florida, and Oregon—are taking."
of fact, it is very important that we continue to identify some of the problems we have to confront as a nation that deal with race. We are not talking about segments of the population; we are talking about the question of race.

And I want every Senator to focus his or her attention on this—takes the House language, which was passed by 400 votes, and we talk about the importance of addressing the juvenile delinquency prevention efforts and elimination improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

The current law, before this piece of legislation, acknowledges race is an issue. Whether we want to talk about it or not, whether we want to recognize it or not, whether we are comfortable with this amendment is an issue that arose overnight.

In 1988, over a decade ago, the Coalition for Juvenile Justice released a report to Congress on race in the system called ''The Delicate Balance.'' They made the point, and this became part of the law that we had to do better as a nation, that we should be troubled by this, that we should be troubled that close to 70 percent of the kids who are locked up are kids of color, minority youth.

We want to make sure there is no discrimination. We want to make sure kids are treated fairly. We want to make sure that all of our citizens have some confidence in this justice system. Well, this piece of legislation takes us a long ways back, a long ways back.

For those who want to talk about the constitutionality of the DMC provision, it is just a scare tactic. It is just a fig leaf. I read the language of the amendment which makes it crystal clear that we are not talking about numerical standards or quotas. I would like to read from a letter and ask unanimous consent that this be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1.)

Mr. WELLSTONE. This is from 23 law professors endorsing the constitutionality of the disproportionate minority confinement amendment. I just read:

There can be no serious constitutional objection to the DMC requirement in existing law. First, it does not single out members of racial minorities for any sort of distinctive treatment, nor does it impose any sanctions on anyone else. The Supreme Court's decisions made it clear that constitutional questions arise, not merely from the use of racial terms or otherwise compiling census information about race would be unconstitutional—but only if there is some burden or benefit allocated on the basis of race. . . .

And I want to make one point that crosses this minimum threshold.

This letter goes on and makes really an important point. I want to just make it real clear that the disproportionate minority confinement amendment that I bring to the floor with Senator Kennedy is about race. Can I say this one more time to colleagues? Because when you vote on this, please understand this amendment is about race. Please understand that this amendment has the support of probably every single civil rights organization in our country. Please understand that this amendment has the support of just about every single children's organization you can think of, starting with the Children's Defense Fund.

Please understand that this amendment and your vote is all about race, because please understand that we are doing better, but to have a really better America we have to do even better when it comes to questions of race and discrimination.

Please understand that many citizens in our country do not have complete confidence in the fact that the minority community sees that close to 70 percent of their kids are locked up, when their kids make up not even 35, 33 percent of the population, and when they see that kids of color wind up incarcerated, kids who do not, having committed the same offense, or given longer sentences, and when they see all the ways in which there is discrimination—and we have not come to terms with what is really going on with so many kids in these communities. Many of these minority communities in our country very suspicious of a piece of legislation which focuses on juvenile justice but takes out the language we had in our legislation dealing with kids that assures that States will collect the data and will look at this question and try and do better.

I am telling you, this is a huge vote. This is all about race. It is about the disproportionate share of minority youth in our juvenile justice system. It is about helping States come up with plans to enhance prevention, to work with communities. It is not about releasing individuals from confinement because of their racial makeup or about instituting some kind of quota system. It is about fairness. It is about ending discrimination. It is about justice. It is about doing better as a nation. It is about doing better for all of our children, including children of color.

And I think this amendment has such intense, broad support. And it is why 400 Members in the House of Representatives voted for this amendment.

Mr. DURBIN. Will the Senator yield? Mr. WELLSTONE. I yield to the Senator or yield the floor, if you like. Mr. DURBIN. I ask the Senator from Minnesota to simply yield for a question.

Let me say at the outset that I am honored to support this amendment. I am glad that Senator Wellstone, Senator Kennedy, and many others have joined in this effort.

For those who question whether Senator Wellstone's testimony before the Senate is accurate, I share with them some statistical information which came as a shock to me. General McCaffrey, who is our Nation's drug czar, appeared before the Senate Judiciary Committee last year. I asked General McCaffrey if the statistics I had read were accurate.

The statistics I had read were as follows: 12 percent of the American population is African American; 33 percent of those committing drug crimes are African American; 33 percent of those arrested are African American; 50 percent of those convicted are African American; and 67 percent of those in jail and in jail in drug crimes are African American.

This is clearly completely disproportionate. This segment of the population has been focused on and what Senator Wellstone is seeking to do with this amendment, is to make it certain that we do not close our eyes to the reality. The statue of justice can keep a blindfold over her eyes with the scales before her; we cannot put a blindfold on our eyes. We have to be open to the reality that if we are discriminating against any group of Americans, regardless of their background or color, ethnic origin or race or religion, we have to be sensitized to it.

I do not know why this bill takes a step backwards. Thank goodness for the amendment offered by Senator Wellstone and others which puts us back on the right track to be honest and fair in the administration of justice in America.

I proudly stand in support of your amendment. I thank the Senator for his leadership. Mr. WELLSTONE. I thank Senator DURBIN. He would like to be added as an original cosponsor. I would be very proud for him to do that. I ask unanimous consent that Senator DURBIN be added as an original cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Thank you, Mr. President.

I have visited some of these facilities and they are pretty troubling. When you visit—I think, again, of the visit to Tallulah, LA—there and there is just a sea of, in this particular case, African American faces, young kids—many of them, by the way, locked up for as long as 23 hours in solitary confinement. That is part of what they do there—it is troubling.

I think in the State of Louisiana—I do not know what the overall percentage of the population is, but I think about 40 percent of the kids that are confined there are African American. Here is what makes this so troubling.

It would be easy—I want every Senator before the eyes. We have to attribute this large discrepancy to the fact that young people of different racial groups commit different types of crimes.
In 1992, though, there were significantly higher rates of admission of African American juveniles for every offense group. Please listen to that, because I do not want some colleague to come out on the floor and say: Well, there is a reason for this. These kids commit these offenses six times more likely.

Crimes against persons: Black males and females were six times more likely to be admitted to State juvenile facilities than their white counterparts—same six times more likely.

Property crimes: Black males were almost four times more likely to be admitted to State juvenile facilities than white males, and black females were almost three times more likely to be committed than white females.

Drug offenses: Black males were confined at a rate 30 times that of white males. In fact, among all offense categories, black youth were more likely to be detained than white youth during every year between 1985 and 1992. Nor was it more likely to be removed from their families than white youth. Black youth are also much more likely to end up in prisons with adult offenders.

In 1985, nearly 10,000 juvenile cases were transferred to adult criminal court by judicial waiver. Of those proceedings, cases involving black youth were 50 percent more likely to be waived than those involving white youth. Overall, again, black youth, in terms of all children and adolescents waived to adult court, and in most States minority juveniles were overrepresented on average in these adult jails at a rate more than 2 1/2 times their proportion of the total youth population. These are damning statistics.

When he was director of the Massachusetts Department of Services, Commissioner-Member Jerome Miller wrote of the cumulative effect of decisions made throughout the juvenile justice process:

I learned very early on that when we got an African American youth, virtually everything from arrest summaries to family history to rap sheets to psychiatric exams to waiver hearings, as to whether he would be tried as an adult to final sentencing, was skewed. If a middle-class white youth was sent to us as dangerous, he was much more likely to be found dangerous than the African American teenager with the same label. Usually the white kid had been afforded competent legal counsel, appropriate psychiatric and psychological testing, been tried in a variety of privately funded options and, all in all, had been dealt with more sensitively and more individually at every level of the juvenile justice process. For him to be labeled dangerous, he usually had done something that was very serious. By contrast, the African American teenager was dealt with as a stereotype from the moment he was picked up. He was there.

When we look at the end result of this system of justice and see this disproportionate confinement of minorities, are we to turn our backs on that? Am I going to walk away from that? What do we do to this Nation and our system of laws if we do? We risk, I am afraid, a disintegration of a sense of community in America, a disintegration of respect for law. Then we all suffer, not just African Americans, but also Hispanic Americans, those of every color and hue and ethnic background.

So I support this amendment, an amendment that passed overwhelmingly in the House of Representatives. I call upon States to continue to try to make better decisions. As the Senator from Minnesota has said, every Senator should not be able to support this piece of legislation if this amendment, which is the same language passed by 400 Members of the House of Representatives—what has to include some Republicans; am I correct?

Mr. DURBIN. Yes. Mr. WELLSTONE. Does not pass in the Senate. What in the world is going on on the floor of the Senate that we are unwilling to come to terms with this really huge, stark problem in America? Why is the world am I even out here having to debate this?

I am going to reserve the remainder of my time. Mr. DURBIN. Will the Senator yield? Mr. WELLSTONE. How much time do I have on my side?

The PRESIDING OFFICER (Mr. Grams). The Senator from Minnesota has 31 minutes 35 seconds.

Mr. WELLSTONE. I am pleased to yield to the Senator from Illinois.

Mr. DURBIN. Let me say to the Senator from Minnesota, again, in support of this amendment—and I am happy to be a cosponsor of it—the important aspect in the administration of justice that is often overlooked is respect for the law. We teach our children to respect the law. We try to make certain that they understand that the perpetrator of a crime is black, white, or brown, male or female, it is irrelevant. They should be treated under our system of justice fairly and the same.

But when we look at the end result of this system of justice and see this disproportionate confinement of minorities, are we to turn our backs on that? Am I going to walk away from that? What do we do to this Nation and our system of laws if we do? We risk, I am afraid, a disintegration of a sense of community in America, a disintegration of respect for law. Then we all suffer, not just African Americans, but also Hispanic Americans, those of every color and hue and ethnic background.

So I support this amendment, an amendment that passed overwhelmingly in the House of Representatives. I call upon States to continue to try to make better decisions. As the Senator from Minnesota has said, every Senator should take this amendment very, very seriously.

I yield back to the Senator.
We hope that this information is useful as you continue your debate on this legislation.

Sincerely,
Mark Tushnet, Carmack Waterhouse Professor of Constitutional Law, Georgetown University Law Center; Milner Ball, Professor of Law, University of Georgia School of Law; Taunya Lovell Banks, Professor of Law, University of Maryland School of Law; Kelley H. Bartges, Associate Clinical Professor of Law, University of Richmond Law School; Steve Berenson, Assistant Professor of Law, Stetson University College of Law; Peter Byrne, Professor of Law, Georgetown University Law Center; Sherryl D. Cashin, Associate Professor of Law, Georgetown University Law Center; Sherman L. Cohn, Professor of Law, Georgetown University Law Center; John M. Copacino, Professor, Georgetown University Law Center; Michael Dale, Professor of Law, Shepard Broad Law Center, Nova Southeastern University; Steven Drizin, Northwestern University School of Law; John S. Elson, Professor of Law, University of California, Irvine School of Law; Dan Filler, Professor of Law, University of Alabama School of Law; Pamela S. Graham, Clinical Professor of Law, North Carolina Central University School of Law; Gerard F. Glyn, Visiting Professor of Law, Barry University School of Law; Martin Gugino, Professor of Law, University of New York School of Law; Randy Hertz, Professor of Law, New York University School of Law; Paul Holland, Visiting Associate Clinical Professor of Law, George Washington University School of Law; Steven Loffredo, Associate Professor of Law, Shepard Broad Law Center, Nova Southeastern University; Kimberly E. O'Leary, Associate Professor of Law and Director of Clinical Programs, University of Dayton School of Law; Mari Matsuda, Professor, Georgetown University Law Center; Daniel Kanstroom, Associate Clinical Professor of Law, Boston College Law School; Madeleine Kurtz, Acting Professor of Law, University School of Law; James Madison College of Law, University of Wyoming; Suzy Maranto, Clinical Professor of Law, Boston College Law School; Linda Landsterg, Professor of Law, University of Virginia School of Law; Ted Moss, Professor of Law, University of Virginia School of Law; Paul O'Neil, Professor of Law, Pace University School of Law; Bill Patton, Whittier College of Law, School of Law; Patricia Roth, Georgetown University Law Center; Phillip G. Schrag, Professor, Georgetown University Law Center; Abbe Smith, Associate Professor, Georgetown University Law Center; Kim Taylor-Thompson, Professor of Clinical Law, New York School of Law; Wendy W. Williams, Professor of Law, Georgetown University Law Center; Stephen Wisner, William O. Douglas Clinical Professor of Law, Howard University School of Law;

The PRESIDING OFFICER: Who yields time?

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. HATCH. As usual, I have to commend the Senator from Minnesota for his heart and for his desire to try to resolve problems that are difficult in our society. I have to say that I am concerned about the complete confinement of minority youth, especially young African Americans and Hispanics, in our society—especially African Americans because it is disproportionate. If you really stop and think about it, the issue is who is committing the crimes.

I also agree it would be wonderful if we had a perfect system of rehabilitation for these young people. There is a juvenile justice bill that includes an additional $47 million in addition to the $4.6 billion we spend annually for helping young people to get rehabilitated or to help prevent crime to begin with. I think that is the right direction.

It is probably true in history that has 45 percent of the money in the bill for law enforcement and accountability purposes and 55 percent of the money for prevention purposes. But, you know, you still can't ignore the fact that these kids are committing crimes. Just because you would like the statistics to be relatively proportionate, if that isn't the case, because more young people commit crimes from one minority classification to another, then we have to do something that makes sense to our States. We called upon our States to really look at this problem and try to address this problem.

Again, we were making progress up to this legislation. We were making progress. We did something that made sense to our States. We called upon our States to look at this problem and try to address this problem.

Mr. President, I reserve the remainder of my time.

EXHIBIT 1

MAY 17, 1999.

HON. EDWARD M. KENNEDY, U.S. Senate, Washington, DC.

HON. DIANNE FEINSTEIN, U.S. Senate, Washington, DC.

HON. PAUL D. WELLSTONE, U.S. Senate, Washington, DC.

DEAR SENATORS KENNEDY, FEINSTEIN, and WELLSTONE: As the Senate is considering S. 254, the Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999, it has come to our attention that the sponsors of S. 254 have altered the language of the Disproportionate Minority Confinement (DMC) mandate in current federal law by removing any reference to the word minority. The act as currently written is unconstitutional. We believe this argument is without merit.

There is no serious constitutional objection to the DMC requirement in existing law. First, it does not single out members of racial minorities for any sort of distinctive treatment. If the law currently written imposed a burden on anyone else, the Supreme Court's decision makes it clear that constitutional questions arise, not merely from the use of racial terms in a law, or otherwise compelling constitutional information about race would be unconstitutional—but only if there is some burden or benefit allocated on the basis of race. Cf. Anderson v. Celebrezze, 375 U.S. 397 (1964). The DMC requirements do nothing that crosses this minimum threshold.

Second, the DMC mandate is designed to identify institutional racial discrimination is occurring in the juvenile justice system. The Supreme Court has held that practices that result in disproportionate burdens on racial minorities are unconstitutional if they have been adopted intentionally to have that effect. Washington v. Davis, 426 U.S. 229 (1976). The DMC requirements, however, merely require that the state's classification. Juveniles must be classified according to race in order for criminal classification. If a higher proportion of young African Americans are committing the crimes, do we just ignore that because we don't like the fact that it is disproportionate compared to Hispanic Americans because it is disproportionate? Is this the right direction? I don't think that is the right direction. As the Supreme Court announced in the 1979 decision of Personnel Administrator of Massachusetts v. Feeney:

A racial classification, regardless of its purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification.

Now, such a classification could be upheld if there is an extraordinary justification, but that is not evident here. I just hear that there are more young African American kids who go to jail than white kids; therefore, there must be something wrong with the system.

I don't agree with that. If there are more young African American kids...
committing crimes, and especially vicious crimes and violent crimes, you don’t help the problem by saying they should not be punished and they should not be incarcerated somehow or other be sent to—unless there is a justification for that.

Now, according to Personnel Administrator of Massachusetts v. Feeney, a 1979 decision:

A racial classification, regardless of its purpose, is unconstitutional if it is not narrowly tailored to achieve a compelling governmental interest.

This amendment does not pass strict scrutiny. ‘‘compelling interest’’ the Supreme Court has recognized in this context is the remediation of past discrimination. Moreover, the Court requires a particularized showing of past discrimination. I don’t think anybody would disagree with that.

Here there is no such proof of discrimination, and the current law, which this amendment replicates—and, I might add, expands—is not narrowly tailored to remedy past discrimination. In fact, the Justice Department regulations under current law require States to intervene regardless of the cause of disproportionate confinement. Instead of remediating past discrimination, much of the current law is aimed at preventing crime committed by juveniles of all races and recognizing that prevention programs. This amendment, it seems to me, is not only unconstitutional, it is wrong.

S. 254 has a better provision. It requires that prevention resources be directed to ‘‘segments of the juvenile population’’ that are disproportionately detained. Such ‘‘segments of the population’’ could include, for example, certain socioeconomic groups that are more likely to be at risk. S. 254 directs prevention resources to such groups who need these resources the most.

Finally, not only is this amendment unconstitutional, it sets a terrible precedent. The premise of this amendment—requiring States to provide racial groups special attention if members of those groups are disproportionately likely to be detained—could be used to justify racial profiles. In my opinion, racial profiling is also unconstitutional. The Senate cannot, on the floor of the Senate or in the rules, allow for the underwriting of unconstitutional classifications.

The Government simply cannot use race as a classification or a factor in the criminal justice system, because our system of justice should be color blind. If it is not, then I will work to correct that. But I don’t have any evidence that it is not at this particular point, other than the visceral feeling of some that because more young African Americans than whites are convicted and sentenced to detention, there must be something wrong with the system.

Mr. President, I strongly urge the Senate to oppose this amendment. I also understand that in our society a lot of young African American kids, a lot of young Hispanic kids, a lot of young Native Americans—and you can just go down almost every minority; there are literally dozens of minorities in this country—a lot of them don’t have the best chance in this life. They are born into situations where there is no father, or they have a father who takes off on them, or they have a father who won’t accept responsibility. They start off with a couple of strikes against them. I acknowledge that. We have to do something about that. But that doesn’t mean we have to start racial profiling or that we have to start racial classifications to get there, unless we can show that there is a reason to have this amendment.

If I might add a final note, I have bent over backwards to craft language which addresses the concerns raised by my colleagues. This legislation is constitutional and it has bipartisan support. Senator BIDEN supports the underlying amendment, and with good reason, because it is constitutional.

Having said all of that, again I will reiterate that I respect my colleagues. I respect their desire to right wrongs in our society. They know that I work on that too. I respect their desire to make sure that everybody is treated equally and in a decent manner. I respect their particular perspective in our society. I join with them in those matters. But this particular amendment, it seems to me, is unconstitutional, and I certainly hope our colleagues will vote against it when I move to table it.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 12 minutes.

Mr. President, I want to first of all, thank my friend and colleague, Senator WELSTONE, for offering this amendment and say that I welcome the opportunity to join with him and urge the Senate to accept this amendment, and to say that I think it is very basic and fundamental to the underlying purpose of the legislation, which is to try to deal with the challenge of juvenile violence in our country today.

Mr. President, the fact is that we should not have to be taking the time to try to put my language because I am sure, as Senator WELSTONE has pointed out, that this language which we are attempting to place into the juvenile justice bill is effectively the language that has been there since 1992. It was placed there as a result of extensive hearings that were held by Congress and the Senate—during that period of time—that showed the disparity of treatment between blacks and whites in the juvenile justice system. There is a range of different aspects of this particular proposal, there must be something wrong with the system.

I say at the outset that we will include in the RECORD a very comprehensive review on the constitutionality of this issue. It is interesting to hear that argument raised at this particular time, because the language has been in effect since 1992 and not challenged on a constitutional basis. It has just been mentioned during the course of this evening.

But, Mr. President, we should not look at this particular undertaking really in the abstraction of just juvenile justice. What we have to understand is that we as a country inscribed
time to talk about this and to debate it, you would find that States are making important progress in many different areas to try to deal with fundamental and underlying causes in their various communities. That is what we need to do. I encourage—quiet, competent, effective work done that can have an impact in terms of trying to make our juvenile justice system fair and equitable for all of the young people in our society.

Mr. President, this issue is of such importance, to be brought back in the time of the evening with the limitations I think really does a disservice to the importance of it. But we are where we are.

Let me mention the particular quote from the director of our Massachusetts Department of Youth Services, Mr. Miller, a very thoughtful, distinguished leader in terms of understanding the problems of juvenile justice. This is what Mr. Jerome Miller wrote about the cumulative effect of decisions made throughout the juvenile justice process:

I learned very early on that when we get an African American youth, virtually everything, from arrest summaries to family history to psychological exams to waiver hearings as to whether he would be tried as an adult, the final sentence was skewed. The middle-class white youth sent to us was more likely to be dangerous than the African American teenager with the same label. Usually the white kid had been afforded competent legal counsel, appropriate psychological testing, and been tried in a variety of privately funded options, and all in all had been dealt with more sensitively and individually at every level of the juvenile justice process. For him to be labeled dangerous, he usually had to have done something very serious, indeed.

By contrast, the African American teenager was dealt with by stereotype from the moment the handcuffs were first put on, to be easily and quickly moved along to the most dangerous end of the violent/nonviolent spectrum. The official common record meant to validate the series of decisions.

It goes on and on.

That is the state of the juvenile justice system in too many constituencies across this country. All this language does is remind us when we are talking about using the word "justice," we are talking about equal justice, equal justice for blacks and browns in our system, equal justice for young people, equal justice for all.

Fundamentally, when we understand the problems we have in our society, to represent here on the floor of the Senate that somehow the juvenile justice system is an exception to all the kinds of challenges that we have in this Nation, I fail, I think, the basic reason and rationality about what is going on in this country. It is not the accepted.

I learned very early on that when we got an African American youth, virtually everything, from arrest summaries to family history to psychological exams to waiver hearings as to whether he would be tried as an adult, the final sentence was skewed. The middle-class white youth sent to us was more likely to be dangerous than the African American teenager with the same label. Usually the white kid had been afforded competent legal counsel, appropriate psychological testing, and been tried in a variety of privately funded options, and all in all had been dealt with more sensitively and individually at every level of the juvenile justice process. For him to be labeled dangerous, he usually had to have done something very serious, indeed.

By contrast, the African American teenager was dealt with by stereotype from the moment the handcuffs were first put on, to be easily and quickly moved along to the most dangerous end of the violent/nonviolent spectrum. The official common record meant to validate the series of decisions.

It goes on and on.

That is the state of the juvenile justice system in too many constituencies across this country. All this language does is remind us when we are talking about using the word "justice," we are talking about equal justice, equal justice for blacks and browns in our system, equal justice for young people, equal justice for all.

Fundamentally, when we understand the problems we have in our society, to represent here on the floor of the Senate that somehow the juvenile justice system is an exception to all the kinds of challenges that we have in this Nation, I fail, I think, the basic reason and rationality about what is going on in this country. It is not the accepted.

That is the effect of this, to try and not prescribe quotas, not get into the numbers game. That has never been part of our position on this provision, but just to hope that communities and States will, hopefully, develop a process and system that will be somehow more sensitive to the challenges we are facing as a country, as a community and in our States in juvenile justice.

This amendment cannot solve the problem and it won't even probably solve the majority of the problem, but perhaps because of it, there will be communities and there will be States that will have a truer system of justice for all the young people of this country. That is really what we ought to be undertaking and what we should be aiming at.

The statistics on the treatment of minorities in the criminal justice system require an immediate response—especially the treatment of juveniles. I strongly support this amendment and I commend Senator WOLLSEN for his leadership. It deals with one of the most serious problems in current law—the disproportionate confinement of minority youths in state juvenile justice systems. In fact, the underlying basis will only make the problem worse, because it eliminates all references to "minority" or "race" and instead refers only to "segments of the juvenile population."

In 1988, after extensive testimony concerning the significant over representation of minority youth in state juvenile justice systems, Congress amended the Juvenile Justice and Delinquency Prevention Act to require states to address this issue. In the 1992 amendments to the disproportionate confinement became a core requirement, by linking future funding to a State's compliance with addressing this basic issue.

Under current law, states are required to do three things: (1) identify the extent to which disproportionate minority confinement exists in their states; (2) assess the reason that it exists; and (3) develop intervention strategies to address the causes. The law does not require and has never resulted in the release of juveniles. It does not require numerical quotas for arrest or release of any youth from custody based on race. In fact, no state's funding has ever been reduced as a result of non-compliance with this provision.

This issue has festered in the juvenile justice system for years. To pretend otherwise is to ignore the facts. Over the past 10 years, documented evidence shows that disproportionately occurs at all stages of the system. African-American youth age 10-17 constitute only 15% of the U.S. population. But they account for 26% of juvenile arrests, 32% of the delinquency referrals to juvenile court, 41% of juveniles detained in delinquency cases, 46% of juveniles in secure corrections facilities, and 52% of juveniles transferred to adult criminal court after judicial hearings.

As these statistics indicate, the over representation of minority youth in the juvenile justice system is a national problem and more involved in the criminal justice system. The result is that African-American youths are twice as likely to
be arrested and seven times as likely to be placed in a detention facility as white youths.

Black males are 6 times more likely to be admitted to state juvenile facilities for crimes against persons than white youths—4 times more likely for property crimes—and 30 times more likely for drug offenses.

Black youths are also much more likely to end up in prison with adult offenders. In 1995, nearly 10,000 juvenile cases were transferred to adult courts, and black youths were 50% more likely to be transferred than white youths.

A study of the juvenile justice system in California found that minority youth consistently receive more severe punishment than white youth, and are more likely to be incarcerated in state institutions than white youth for the same offenses.

A 1998 University of Washington study confirms the justice within the juvenile system. Narrative reports prepared by probation officers prior to sentencing portrayed black juveniles differently from white juveniles.

Black youth offenders were perceived as having character defects—condoning criminal behavior.

White youth offenders were perceived as victims of bad circumstances.

For example, two 17-year-old boys, one black and one white, were charged with first-degree robbery. Neither had a criminal history; each used firearms, and were accompanied by two friends. Listen to the probation officers’ evaluation of the two boys—keeping in mind that 99% of the time, judges follow the recommendation of probation officers.

For the African-American youth, the probation officer wrote:

This appears to be a pre-meditated and willful act by Ed. ... There is an adult quality to this referral. In talking with Ed, what was evident was the relaxed and open way he discusses his lifestyle. There didn’t seem to be any desire to change. There was no expression of remorse from the young man. There was no moral content to his comment.

For the white youth, the probation officer wrote:

Lou is the victim of a broken home. He is trying to be his own man, but ... is seemingly easily misled and follows other delinquents against his better judgment. Lou is a tall emaciated little boy who is terrified of being referred to juvenile court and adult court, at significantly higher rates than white youths, we’re turning our backs on you.

It is essential for this legislation to retain fair requirements to deal effectively with this crisis. Current law does not require the release of juveniles. It does not require incarceration quotas. It does not require any other specific change of policy or practice. It does not take prevention money away from white youths and give it to minorities.

Disproportionate minority confinement is a serious problem requiring an ongoing and continuous effort to achieve a juvenile justice system which treats every youth fairly, regardless of race or background.

Examples of what the states are doing to address this challenge are numerous. In Pennsylvania, the State Commission on Crime and Delinquency provides funding for local prevention and intervention programs, including:

A drop-out prevention program; a program to help young minority female learn work and life skills; a program to decrease the delinquency rate and increase the level of school retention and success among targeted youth through life skills workshops, tutoring and homework assistance, physical fitness and sports, community service projects, and monthly parent group meetings.

By contrast, the underlying legislation encourages states to prosecute even more juveniles as adults. It allows records of juvenile arrests—not necessarily convictions—to be made available to schools, colleges and vocational schools. It requires school districts to mandate policies to mandate expulsion from school for regular possession of drugs, alcohol, or even tobacco.

Disproportionate minority confinement are harsh and unacceptable:

The Sentencing Project reported that ¾ of all African-American males age 14-19 in the United States are under the jurisdiction of the criminal justice system—either in jail, in prison, on probation, or on parole.

The juvenile justice system often acts as a feeder system for minority youth into the adult criminal justice system.

In most states, the result of an adult felony conviction is the loss of voting rights. 1 in 7 of the 10 million black males of voting age are now either currently or permanently disenfranchised. One study found that the political power of the African-American community is a significant impact of arrest or incarceration is often the reduction of future wage earning and employability. One study showed a 25% reduction in the number of hours worked over the next 8 years.

The truly tragic consequences of disproportionate minority confinement are removal of large numbers of potential wage earners, a disruption of family relationships and a growing sense of isolation and alienation from the larger society. These statistics only give us a small glimpse of the harsh consequences. They don’t begin to tell the story of young black youth being targeted, harassed, intimidated, and treated differently because of their race.

The United Methodist Church has said that ignoring discrimination in juvenile sentencing is careless, callous, and discriminatory enforcement of law.’’

Ed Blackmon, Jr., Mississippi State House of Representatives, has said the “So many of these young people have great potential for overcoming their troubles, and becoming successful young men and women in their communities. However, with the absence of good legal representation, and families that are not ‘well-connected’, they find themselves locked up, with very little hope.”

Kweisi Mfume, President and CEO of the NAACP, has said, “The fact that S. 254 eases the requirement that states address the disproportionately high numbers of children of color in juvenile detention facilities is, in itself, a catchphrase.

Marian Wright Edelman, Founder of the Children’s defense fund, has said “With troubling reports of police brutality and racial profiling, Congress must continue to work with the states to ensure that the juvenile justice system affords our youth equitable and fair treatment, and not repeat the previous decade’s worth of progress.”
This past weekend, in her address to the National Conference on Public Trust and Confidence in the Justice System, Supreme Court Justice Sandra Day O'Connor emphasized the need for racial equality and better legal representation, and called for improvements in family and juvenile courts. She also cited a 1999 survey entitled “How the Public Views the State Courts.” According to that survey, 70% of African-American respondents said that African-Americans are systematically treated “Somewhat Worse” or “Far Worse” compared with whites. A substantial number of whites agreed with this assessment.

As Justice O'Connor so aptly stated, “Concrete action must be taken” to erase racial bias.

At the very least, we cannot offered to retreat from the requirements of current law that the states must recognize and address this festering problem. To do less is unacceptable. I urge the Senate to accept our amendment and do the right thing on this critical issue of racial justice.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I yield 10 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 10 minutes.

Mr. DOMENICI. Mr. President, I will speak on our time in opposition to another subject for 10 minutes.

I rise when the issue of media and teen violence. I am sure I cannot do better than Senators who have spent so much time this month on this issue. I congratulate Senators McCAIN, HATCH, BROWNBACK, BOND, and LIEBERMAN for their efforts.

However, because last year I had a personal, although long-distance encounter, with one of the more notorious characters in the media world, I thought I might share that event. First, I wanted to share observations of a more general nature.

First, just four short observations:

One, clearly a large body of research proves that the media target violence to teenagers. The movie and television rating system is too often unenforced. I urge my colleagues to read Sissela Bok’s book, “Mayhem,” for a systematic look at the selling of carnage and rage to our youth by the media pushers.

Second, this issue is not new. Indeed, back in 1993 Senate bill 943, the Children’s Television Violence Protection Act, was introduced in this body. Before that, we had a wide-ranging debate about television and movie violence in the 1960s.

So far, the entertainment industry, using the best public relations that money can buy, and by hiding their refusal to accept any restriction on their poison behind the first amendment of the Constitution, have been able to increase the violence and mayhem of their products without any accountability.

In 1954, the Senate Judiciary Subcommittee, chaired by then Senator Estes Kefauver, asked whether violence in media was destructive. The media kings said more research was needed. In 1969, the National Commission on Violence concluded that years of exposure to violence made the vulnerable among us to engage in violence much more readily and more rapidly.

I should add that CBS executives censored the script of CBS reporter, Daniel Schorr, who then tried to report this finding. The networks were aggressive to the public.

In 1972, a massive report by Surgeon General Jesse Steinfeld concluded that a definite and causal relationship existed between violence viewing and acts of aggression. Then, in 1981, data further supporting Surgeon General Steinfeld’s report was issued. This report was published by the American Psychological Association, a group of Boston pediatricians. They summarized 30 years of research on the subject: Watching violence causes aggressive behavior. That is their conclusion. To use the technical finding, there is a causal link between exposure of children to violent images and subsequent violent behavior.

As Senator BROWNBACK pointed out earlier, there is more and more evidence every single year that violence on television, in music, in movies, damages our children and leads some of them to act out of some of their violence in their lives.

Look at the trend lines. As violence has proliferated in the movies and on TV, juvenile violence has come right along with it and proliferated just as the violence in movies and on television.

Recently, at an event at which he raised $2 million from Hollywood, even President Clinton said, “As studies show, hundreds of vulnerable children are more liable to commit violence themselves as watching violence on television or in the movies.”

Both the American Medical Association and the American Association of Pediatrics have warned against exposing our children to violent entertainment. These doctors have to help rebuild the lives of children emotionally, sometimes physically maimed by elements of the entertainment industry.

Number 4, finally it is clear to me that the relevant committees of the U.S. Congress must continue to focus on this subject because the Congress sometimes has a short attention span, and the mind polluters know this. We have not had a comprehensive, intensive series of investigations.

But Congress should do this: We have subpoena power, which the relevant committees have, and should be used to compel those who hide to come forth and reveal the memos, the research, and the marketing tools they use to sell death and dismemberment to our children.

Mr. President, I hope that Senators will investigate the selling of movies that have the PG-13 ratings to those that are 7, 8 and 9 years of age as happened with Jurasic Park. As Senator LIEBERMAN said recently, “The evidence strongly suggests that Joe Camel has sadly not gone away, but has been adopted by the entertainment industry in disguise.”

In addition, we hope that committees will work on innovative legislation along the lines suggested by Senator BOND that will simply do one thing, the one thing the industry cares about: Making it less profitable to make and sell death and hate. Only by doing that will we force change. We have tried moral suasion and it is not working, although it is by far the best solution.

Let me conclude, Mr. President, with a personal interaction with one of the more outspoken opponents of change, Mr. Edgar Bronfman, chief executive officer of Seagrams Limited, which owns, among other things, Universal Studios and Universal Music Group, the world’s largest record label.

On October 5, 1998, I wrote a letter to him. In that letter, I endorsed the plea of the National Alliance for the Mentally Ill, that Universal Studios, owned by Mr. Bronfman, add a statement to the studio’s remake of the film “Psycho.”

As most of my colleagues know, the subject of mental illness and efforts to help those afflicted, the work to remove the stigma of mental illness has been one of the issues I have worked on for much of my career.

On October 5, 1998, I wrote, “I urge you to endorse the plea of the National Alliance for the Mentally Ill, that Universal Studios, owned by Mr. Bronfman, add a statement to the studio’s remake of the film ‘Psycho.’”

As a personal interaction with one of the more outspoken opponents of change, Mr. Edgar Bronfman, chief executive officer of Seagram Limited, which owns, among other things, Universal Studios and Universal Music Group, the world’s largest record label.

In this letter, I proposed an amendment to the RECORD, as well as the National Alliance for the Mentally Ill bulletin about the movie.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OCTOBER 5, 1998.

Mr. EDGAR BRONFMAN, President and CEO, The Seagram Company Ltd., New York, NY.

DEAR MR. BRONFMAN: As you may know, I have a strong interest in improving the awareness and treatment of mental illness. Improving perceptions and policies toward the mentally ill has become an important goal for both my wife, Nancy, and me.

I am aware that your company, as the owner of Universal Studios, is sponsoring the remake of the film, “Psycho.” The National Alliance for the Mentally Ill (NAMI), has suggested that a message, such as the one below, should be displayed at the beginning of the film. This message would be an important preface to a film that depicts mentally ill characters in explicit forms. I support this initiative to recognize the availability of treatment and improve awareness.
Times have changed since 1960 and I believe it is important to recognize that the mentally ill have a right to medical attention without undue stigma from society. The letter that Mr. Bronfman might read: "Since 1960 when the original film Psycho was made, knowledge of the major mental illnesses has grown enormously. People who suffer from these brain disorders are medically treated and are no more violent than the general population when they are under treatment. "Please view this remake of Psycho keeping in mind that millions of people are affected by these brain disorders. They can now live long, healthy, and productive lives because of medical research and treatment that has occurred over that past three decades. "It is vitally important that we erase the stigma that surrounds mental illness." I appreciate your consideration of this matter and appreciate a positive response.

Sincerely,

PETE V. DOMENICI
U.S. Senator.

STAND AGAINST UNIVERSAL STUDIO’S REMAKE OF THE FILM “PSYCHO”

Universal Studios is starting this week to remake the 1960 film “Psycho,” called a classic because of its master film maker Alfred Hitchcock.

However, NAMI members and friends know—and need to share with the film makers of Psycho—the unfortunate and negative misconceptions of this film, and the title itself, simply refute the damaging and pervasive stigma that already envelopes the lives of people with mental illness.

NAMI is out to Bust Stigma wherever it exists. Each of us must help by letting the owners of Universal Studios know that stereotyping persons with mental illness in “Psycho” is as unacceptable and offensive as stereotyping race, religion, ethnicity or any other physical illness.

Research shows that persons with mental illness do not commit violent acts when they are under treatment and taking their prescribed medications.

Send your letters to: Mr. Edgar Bronfman, Jr., President & CEO, The Seagram Company Ltd., 375 Park Avenue, New York, NY 10152.

Please use the office with your letters! Write yours today and get your friends at home to do the same!!!


Whereas, NAMI, the Nation’s Voice on Mental Illness, works to provide education, advocacy, and support for all those affected by serious brain disorders, such as schizophrenia, bipolar disorder (manic depression), major depression, obsessive compulsive disorder, panic disorder.

And whereas, the 1990’s, known as the “Decade of the Brain,” has shown through advances in scientific research and varied treatments that mental and brain illnesses are no-fault brain disorders that can be effectively diagnosed and treated;

And whereas, NAMI, ever working to combat the pervasive stigma surrounding mental illness, finds images in the mass media that negates and inflates the public’s perception of serious mental illness, such as those portrayed in the 1960 Alfred Hitchcock film “Psycho”, to be unfounded, hurtful, and demeaning to the 100,000 members;

Resolved, That, although NAMI recognizes Alfred Hitchcock as one of the film industry’s most respected, innovative, and influential craftsmen, preeminence for his work in the “thriller” genre and for often focusing on the psychological motivations and underpinnings of his characters; NAMI believes that Alfred Hitchcock’s acknowledged classic “Psycho” was based on outdated, stigmatizing notions of family culpability and violent tendencies in those with mental illness;

And therefore NAMI registers its strongest objection to a remake of the film “Psycho” that perpetuates wrong images wherein individuals with serious mental illnesses are portrayed inaccurately and alluded to disparagingly.

Mr. DOMENICI. About 3 weeks after I sent my letter, on October 29 I received a response, not from Mr. Bronfman, but from one of his lawyers. I ask unanimous consent letter of October 29, 1998, be printed in the RECORD as follows:

There being no objection, the letter was ordered to be printed in the RECORD as follows:


Hon. PETE DOMENICI
U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: Edgar Bronfman, Jr. forwarded to me your letter of October 29, 1998 letter regarding the film “Psycho.” He asked that we carefully consider the issues that you raised.

As you know, “Psycho” is a remake of Alfred Hitchcock’s 1960 film—a work that is widely regarded as a “classic.” The cultural, historic and aesthetic significance of the film was recognized by a Joint Committee of Congress when it selected it for inclusion in the National Film Registry.

The film that Universal Pictures will be re-releasing later this month is as true to the original as any “remake” in the history of our industry. While it is updated for today’s audience in that it is filmed in color and uses modern special effects, it follows the original dialogue and images almost scene-by-scene.

Universal’s Motion Picture Group has given the issues that you raised a good deal of thought. We believe it is significant that the film does not trivialize the issues that you raised or in any way ridicule or belittle those who suffer from mental illnesses. Important, the marketing campaign for the film tracks the storyline and does not attempt to undermine the important progress that society has made toward better understanding mental illness.

The art of storytelling, by its very nature, can involve subject matter that some may find disturbing or uncomfortable. We believe that preambles such as the one you suggest could be a practical matter, be used to address the concerns that may present themselves to some audience.

My colleagues and I at the studio would be glad to meet with representatives from the mental health community. We believe that such a meeting would help us better understand the issues that you raise and heighten our awareness of the progress that has occurred in the field. Because we might find ourselves working on films that address mental health issues in the future, we would welcome the opportunity to enhance our sensitivity to and understanding of the subject matter.

We have been in close meetings with other outside groups to be worthwhile and productive in the past.

Respectfully yours,

KAREN RANDALL
Senior Vice President & General Counsel.

Mr. DOMENICI. To put it in polite terms, the lawyer suggested that

maybe those of us concerned about mental illness could meet with Universal Studio lawyers to talk things through, sort of a therapy session for those too sensitive to the world. But the lawyer was clear, Universal Studios was willing to talk but felt that the Alliance for the Mentally Ill had asked of them and suggested. After all, the movie is a classic, they said, and critics have said so. In short, the message was, you are being a little sensitive, but do not forget the creative genius that is at work here.

Then I read in recent weeks more accounts of the distinguished Edgar Bronfman. It seems he was one of the entertainment kings who refused to attend the Conference on Teen Violence and the Media. He also refused to participate in hearings into teen violence and marketing of violence to teens that Senator BROWNBACK held on May 4 of this year. But this time the gentleman found time to pontificate about those who tried to show leadership and the relationship between the music and television shows and movies he produces and the violence affecting our teenagers. He said, "I am proud that the American people get finger pointing and chest pounding from government officials. And having delivered himself of such nonsense, Mr. Bronfman departed to Florida to dedicate a theme park.

I decided to learn more about him. It turns out he inherited a business from his family—nothing wrong with that. He decided to branch into the media. He now heads Universal Studios, which he inherited from Mr. Edgar Bronfman, but from one of his lawyers. He should be proud. It turns out that one of his musicians is Marilyn Manson, winner of the MTV award for the new best artist of the year. Manson is the author of such classics as “Irresponsible Hate Anthem,” which contains the line, “Let’s just kill everyone and let your God sort them out.” And then using the “f” word.

This was just one song on the Bronfman-produced album, “Anti-Christ Superstar.” I think he should be proud of what he produces.

I say that obviously not meaning it. Even when thoughtful members of the entertainment industry, like Rob Reiner and Joel Schumacher call for real, honest review of the guts, gore, and godlessness Hollywood turns out, the distinguished Bronfman disagrees. That attitude and for its culture of degradation is opportunist. He seems to have a very similar view to that expressed by another Hollywood executive who said the first amendment “keeps the Government from making finger pointing and chest pounding from government officials.” This is more than facile cynicism. It is more than merely mercenary spirit. This is the cry of those who have thrown aside all notions of good and evil and who merely want the rest of us to let them be. They want to sell whatever they can to whoever they can entice and want the rest of us to let them
be. After all, who are we? Parents? Grandparents? Public officials? American citizens? Who are we to criticize them?

These people should look at their deeds and be proud—really proud.

Let by asking simply this question: What in the world would our Founding Fathers make of an interpretation of this great document called the Constitution that claims that the glorification of rape, discrimination, violent death is unequivocally and absolutely protected by freedom of speech?

The result is we are seeing kids imitating art, taking their guns to school, joining gangs, and committing acts of violence. I suspect the Founding Fathers would simply have said: Is this the pathetic pass you people have come to? Shame on you. And we would not have made them proud.

The PRESIDING OFFICER. Who yields time on the amendment? The Senator from Alabama.

Mr. SESSIONS. Mr. President, on behalf of Senator HATCH and the managers of this bill, I would like to make a few remarks at this time on the time of Senator HATCH.

Senator DOMENICI. Thank you very much for your willingness to become engaged in this issue, to confront some of these problems. I, like you, do not believe the airwaves and all this country are necessarily free for every use. I urge that when we are not ready to deal with it.

I wonder if you remember the time when the Pope came to Hollywood, 10 or 12 years ago, and met with movie moguls—at least a decade ago I suppose. I have a vivid recollection of the members coming out of that meeting. He had all the Hollywood titans and moguls there. He talked to them about the need for them to improve the entertainment they were putting out. He urged them to do better.

The Hollywood titans came out and they were interviewed on the television. They said: He made some very good points. We have to consider that. We have to do better.

I remember Charlton Heston came out at the very end and they said: Mr. Heston, do you think anything is going to change?

He looked right in the camera and said: They wouldn't change if the Lord himself spoke to them. They were against ratings and the almighty dollar.

If we do not have power under the first amendment to constrain some of this, I think it is quite appropriate that they be taken to task and they be urged, in the name of decency and humanity, to clean up their act. If you have to make money, do you have to make it at this low a level?

I wonder if the Senator has a comment?

Mr. DOMENICI. I do. I talked to the Senate a little bit lately about character education. I am putting a statement in the record regarding Character Counts, an education program which utilizes six pillars of character. One of them is responsibility and another is trustworthiness. We are all excited about this program and hoping our children will learn responsibility and trustworthiness in the same way that we tell our children to do lies, be responsible for the agreements you make, to the covenants you have, to the institutions you support.

Isn't it interesting, everybody says we ought to be promoting this because our children need it. Actually, I do not know how to stop them. I have described about Hollywood tonight. I do not know how we can do it in law. But sometime or another, somebody has to be responsible. Somebody has to step up to the bar in the movie industry and say we ought to challenge those who work in the industry, who produce these products that are going out to our children and to our people, and see if we can't turn it in another direction.

Do we have to pick the easiest prey, our easiest film that will make money? You know they all make money if you load them with this kind of violence and degradation. Can't the movie industry work on something better? I think that is the challenge, the one we have to face. We have to ask: What are we putting into this program that we are spending our corporate dollars on and see?

Wouldn't that be something, if every chief executive, instead of listening only to his advertising man, had a board that wanted to see what they were buying. Not only by way of advertisements, but also programs they bought? That might be a nice idea, if people started doing that, you might hear some mothers and some grandmothers and some parents speaking out.

Mr. SESSIONS. I think the Senator is correct. We do have authority as Senators to speak out.

The President spoke out in a radio address just a few days ago, according to the Washington Post. He broadcast a radio address bluntly challenging the purveyors of violent movies and video games to accept a share of the responsibilities for the tragedies, such as the Columbine school massacre, based on the evidence that some people become desensitized and are more prone to emulate what they see on the screen.

However, reading this very same article, when he went out, within hours of that radio address, and met personally with the titans of Hollywood, he delivered that message "with all the force of a down pillow."

The Washington Times said he assured the filmmakers that they were not bad people, as they showered him with $2 million. He assured them they had no personal responsibility for the Columbine High School massacre in Littleton, CO. Instead of blaming Hollywood for making violent films, he said the real blame lies with theaters and video stores that show them and sell them to minors.

The President told the audience of stars and studio moguls that they should not blame the gun manufacturers either, but he blamed the Republican Members of Congress who will not enact his gun control laws. The President called for enforceable laws that sustained exposure to "indiscriminate environments can push children into destructive behavior," but he added quickly, the producers, directors, and actors who ponied up $2,500 per couple are not at fault. "That doesn't make anybody who makes any movie or any video game or television program a bad person or personally responsible with one show with a disastrous outcome. There is no doubt for finding violence here." He later went on to note we are going to work it out as a family.

We need to send a clearer message than that. Perhaps his radio message was a better message. It is unfortunate that when he met face to face, he toned it down an awful lot, apparently. I suggest, if the Senator will comment, which one does he think those media moguls are going to believe was his real view, the one he said on the radio or the one he said to them personally?

Mr. DOMENICI. Let me first respond by saying what I forgot to say when the Senator from Alabama first stood up. I should have congratulated him for the excellent job he has done on this bill. He has been on the floor when I have handled lengthy budget bills and a lot of amendments. He was there to encourage me. I think we worked nicely together. He learned some things during the budget resolution. But I marvel at how the Senator has done under very tough circumstances. I commend him for that.

Frankly, it seems to me we need every bit of leadership we can get to assess this issue and be realistic about it. From the President on down, leaders have to tell the truth. Those people who are involved in the business of producing movies and films which our young people view, which we know are more apt to cause them to use guns, are more apt to cause them to do violent things, they need to acknowledge the truth.

For those in the entertainment industry to say there is no proof that movies cause violence, what kind of proof do you need? There are multiple studies that say there is a relationship. Does the Senator remember when he was growing up that people would say, "Well, if you read a good book, it is going to be good for you." Can't it follow that if you read something that is not good, you are apt to learn that also? Whoever defines good or bad, that is up to them. But it is just obvious
S5570

CONGRESSIONAL RECORD — SENATE

May 19, 1999

that one cannot see all of this violence and not be adversely affected by it.

Just starting with that and saying let's all acknowledge that, what do we do about it? There may be a lot of different things. Certainly I do not have the proper expertise and I did not say I did. But I think we ought to begin by saying that we should not get this into the minds and hearts and senses of our young people. We ought to find a way to avoid it. We ought to find a way to give them better things to view, better things to see.

It seems to me the country would be so relieved if some of those leaders in that industry were to step forth and say: We just formed a group that is going to try to do that. We don't know how successful it will be.

They might be shocked. It might be very successful.

I yield the floor.

Mr. SESSIONS. Mr. President, I will briefly make some comments concerning the Wellstone-Kennedy amendment and share some thoughts on this situation with which we are wrestling.

Right across the street on the marble of the U.S. Supreme Court are the words: "The Undersigned.

That is a cornerstone of American thought. It is a cornerstone of our belief of who we are as a people. It is critical that we maintain that in our juvenile and adult court systems, and that in all aspects of our American court systems, that we recognize that people who come before the court must be treated equally, regardless of their station, regardless of their race, regardless of their sex, and regardless of their religion. That is so basic to who we are as a people.

We have not always been perfect in that. In fact, we have made a number of errors over the years. Less than an hour ago, I met in my office with Dr. Glenda Curry, who is the president of Troy State University in Montgomery.

She is completing work on the Rosa Parks Museum. Rosa Parks was a victim of an unfair system, and when asked to move to the back of the bus in Montgomery, AL, in the 1950s, she said no. She refused to move, and she challenged an unjust law and was able to overturn that.

To say we have never had problems or we do not have problems in the fairness of law is not accurate. This Nation has made progress, but we are still moving well to eliminating those kinds of things. They are just not showing that.

I will tell our concerns which are so troubling. Under the previous legislation, that Senators WELLSTONE and KENNEDY proposed to use again in this bill, the law required, before a State can receive money, they have to submit a plan and their plan shall "address efforts to reduce"—reduce—"the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population." It says the numbers have to be reduced based on race.

We need to strive to make sure that nobody is incarcerated who is not guilty of a crime, but we ought not be pursuing the reduction of the proportion of the proportion of juveniles confined if it simply does not meet a perfect numerical percentage.

I believe, as a result of my study of the Supreme Court decision in Adarand as well as other cases, that this is unconstitutional, and it is certainly bad policy.

Under the leadership of Senator HATCH, who is a scholar on these issues and who has held hearings on what to do about quotas and affirmative action, the Judiciary Committee developed and passed this legislation with this language, and we changed it slightly. This plan, which the States have to submit to be eligible for funding shall, "to the extent that segments of the juvenile population are detained or confined in secure detention facilities, secure correctional facilities, jails and lockups, to a greater extent than the proportion of these groups in the general population, address prevention efforts designed to reduce such disproportionate confinement, without requiring the release or the failure to detain any such individual."

In other words, this focuses on the problem more directly. It says that when you have $1 billion of prevention money in this juvenile justice bill, that prevention money needs to be directed to try to prevent crime. But it also suggests that that prevention effort ought to be directed to those kids if they are in a minority population that exceeds the number in the general population in the juvenile court system.

So I think this is a reasonable and constitutional provision. I think it is a good step. I simply and reluctantly must say I have to oppose this amendment. I just do not believe it can be justified under what I understand to be a legitimate constitutional law.

I yield the floor.

Mr. HATCH addressed the Chair.

Mr. HATCH. I am prepared to yield back the remainder of my time if the other side is. But let me just put an article in the Record. It is by the Center for Equal Opportunity entitled "Unconstitutionality of 42 U.S.C. Sec. 5633(a)(23)." It is written by Roger Clegg. I think it makes an awful lot of sense. I ask unanimous consent that it be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Center for Equal Opportunity, May 5, 1999]

UNCONSTITUTIONALITY OF 42 U.S.C. Sec. 5633(a)(23) (Roger Clegg*)

42 U.S.C. sec. 5633(a)(23) requires states that wish to participate in the Formula Grants Program of the Juvenile Justice Delinquency and Prevention Act to submit a plan that shall, inter alia, "address efforts to reduce the proportion of juveniles detained or confined * * * who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population." It cannot be seriously argued that subsection (23) does not use racial classifications and does not encourage funding recipients to do so. Juveniles must be classified according to race in order for subsection (23) to be followed, and different government actions are contemplated depending on those classifications. Further, one set of consequences obtains if minorities are "overrepresented" and another set of consequences if nonminorities are "overrepresented."

In determining whether a racial classification exists, it is always useful to put the shoe on the other foot. Suppose a state announced that it would bring down the number of white people who were detained or confined whenever that number was greater than ten percent of the minority detention and confinement rate. There would be no serious argument that the state was not using a racial classification.

Accordingly, the only remaining legal issue is whether subsection (23)'s racial classification passed "strict scrutiny." This requires that it be justified by a "compelling" interest and that it be "narrowly tailored" to that interest.

Strict scrutiny cannot be passed. The only compelling interest the Supreme Court has required in recent cases is the prevention of past discrimination, and it is difficult to conceive of any other compelling interest here. But remedial justification is clearly insufficient for subsection (23).

In the first place, the subjects of the racial classification here are juveniles, which...
means that they were born in 1982 or later. Thus, they were not alive during the days of slavery or Jim Crow, let alone sufferers during them. Moreover, there is no evidence that a particularized recipient has a current or even recent history of racial discrimination, and there is no requirement under subsection (23) that only recipients with a current or even recent history of racial discrimination be aimed at ending discrimination in the criminal justice system. The Supreme Court has made clear that a particularized showing of past discrimination in the specific context being remedied is necessary. See Croson, 488 U.S. at 498-506 (subpart III-B); see also Bakke, 438 U.S. at 307-10 (subpart IV-B) (opinion of Powell, J.). We note that one study of recent data conducted by the Office of Justice Statistics found that, for cases filed in state courts in the seventy-five largest counties in May 1992, blacks were actually more likely than whites to be acquitted in jury trials for most felony crimes. Robert Lerner, “Acquittal Rates by Race for State Felonies,” in Race and the Criminal Justice System (Center for Equal Opportunity 1999). It is also noteworthy that the federal government is not administering subsection (23) in a way that requires that the racial classification be aimed at ending discrimination in the criminal justice system. To the contrary—if the September 1998 Juvenile Justice Bulletin (“Disproportionate Minority Offender and Discipline Policies: A 1997 Update”), published by the U.S. Justice Department’s Office of Juvenile Justice and Delinquency Prevention, which administers subsection (23), is any indication—most subsection (23) programs are not aimed at the criminal justice system at all, but are instead aimed at preventing antisocial behavior in juveniles from ever occurring in the first place. See also 28 C.F.R. sec. 31.303(j)(3) (1998) (Justice Department regulations require intervention irrespective of cause of disproportion).

This approach makes a great deal of sense—and it underscores why the race-based approach of subsection (23) itself does not. The criminal justice system is not to blame for the disproportionate number of offenders from some minority groups, and the problem of juvenile crime is not limited to any one racial or ethnic group, even if some groups may be disproportionately represented among juvenile offenders. Urging that funding recipients view the problem of juvenile crime as a racial issue is not only the wrong thing to do. Programs for at-risk youth should not be limited to minorities, as if only blacks and Hispanics commit crimes and as if it is not equally tragic when a white youth becomes a criminal.

Indeed, it sets a very dangerous precedent to argue that the government may target racial and ethnic groups for special attention if members of those groups are disproportionately likely to run afoul of the law. Such precedent could be used to justify, for instance, the use of racial profiling by the police. We are, therefore, surprised that the NACCP is urging its members to support subsection (23). See NACCP, Urgent Action Alert—"Re: Juvenile Crime Bills" (Mar. 31, 1999).

Mr. FEINGOLD. Mr. President, I thank you and especially thank the Senator from Minnesota for yielding me the time, but especially for his tremendous leadership on this issue, as well as Senator KENNEDY.

This amendment merely preserves the status quo with respect to the disproportionate minority confinement core requirement of the juvenile justice and delinquency prevention formula grants.

Disproportionate minority confinement is a serious problem in many of our States, and has been for quite some time. Just as an example, in Pennsylvania, studies in the late 1980s showed that while minorities constituted only 12 percent of the juvenile population, they represented 27 percent of juveniles arrested and 48 percent of juveniles charged in court. In 1995, in Ohio, minorities comprised 14 percent of the state’s juvenile population, but 30 percent of those arrested and 43 percent of those placed in secure correctional institutions.

And currently, nationwide, although African Americans constitute only 15 percent of the U.S. population of juveniles, they account for 26 percent of juvenile arrests, 46 percent of juveniles in secure corrections facilities, and 52 percent of juveniles transferred to adult criminal court after judicial hearings.

A study in California showed that minority youths consistently receive more severe sentences than white youths and are more likely than white youths to be sent to the same institutions for the same offenses. And here is another disturbing statistic: nationally, African American males are 30 times—30 times—more likely to be detained in State juvenile facilities for drug offenses than white males. In Baltimore, African American males are roughly 100 times more likely to be arrested for drug offenses than white males.

These statistics are repeated across the country. I sincerely hope that this problem that everyone in this body is concerned about. And it is not just unfairness or discrimination in the juvenile system that should concern us. Because juvenile confinement often is the first step toward a lifetime of going through a revolving door between prison and freedom. Confinement has devastating effects on families as well, and provides tragic role models for even younger children.

We ought to be doing what we can to address these disparities. Although the DMC core requirement is not a panacea, it has been working well in directing attention and resources at this problem. It does not and I repeat, it does not require quotas in detention facilities or direct the release of any juvenile from custody. It simply requires States to develop plans to address the problem.

Since 1992, our States have been required to address DMC in their State plans. Some 40 states have completed the assessment phase and are implementing plans to try to address whatever problems they have identified. They are working on creative approaches and we need to inspect what we have done.

Mr. PRESIDENT. This is well worth the effort on this floor. Again, I strongly commend Senators WELLSTONE and KENNEDY for offering this amendment. I thank the Chair and yield the floor. The PRESIDING OFFICER. Who yields time?

Mr. WELLSTONE. Mr. President, just before we go forward with this time, I understand the Senator from California is going to make a request. For just a moment, before I get started responding, I ask a unanimous consent that this time not be counted against any of us because there may be an interruption here for another amendment.

Mr. SESSIONS. Object. Reserving the right to object, we have been using time. On what subject?

Mr. WELLSTONE. I say to my colleagues, we would not count this time. I am trying to be accommodating to Senators over here who may want to have an amendment. I ask that we use our last 10 minutes. I just want to see...

Mrs. BOXER. Go ahead.

Mr. WELLSTONE. OK. I guess that did not work.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, colleagues, 15 percent, ages 10 to 17, of the kids in this country are black; 26 percent of all juvenile arrests are black; 32 percent of all juvenile convictions in detention referrals to juvenile court are black; 46 percent of juveniles in public long-term institutions are black; cases judicially waived to
Mr. DURBIN. Does the Senator recall the testimony of Senator Hatch before the Senate Judiciary Committee last year and I asked the general, who was in charge of trying to reduce drug crime in America, if it were true that of those committing drug crimes in America, 13 percent are African American, and of those incarcerated for committing drug crimes in America, 67 percent are African American? He said: Yes, it is true, I don't have an answer. And to the amendment of that committee, I don't know if you were there during that questioning, but if you are looking for an indication of why Senator Wellstone’s amendment is important, that statistic alone should give the Senator from Utah pause. I consider that we are not going to release anyone who has been charged with a crime but merely step back and try to make sure the administration of justice is color-blind in this country and that it is fair and try to eradicate the statistic which was quoted and verified by General McCaffrey.

Mr. HATCH. Let me say this again, what are the crimes? What is the extent of the crimes? How serious are they?

The fact that 13 percent of the offenders are African American and 67 percent of those incarcerated are—I don’t see any information here saying that the higher percentage was unjustifiably put in jail. These percentages don’t tell us what the crimes were in the individual cases. If these individuals committed a crime, then they go to jail. Does that mean there are a lot of white people getting off? I don’t see any evidence of that, either.

Do you have evidence that minority juveniles are more likely to be detained for the same crime as white juveniles? I don’t think you do. For example, is there evidence that African Americans who are charged with possession of crack cocaine are given more severe sentences than whites for crack cocaine? Is there evidence? I don’t know of any.

My point is, I don’t think my colleagues on the other side are arguing that if people commit heinous crimes and they are convicted and sentenced to jail that they shouldn’t be. Now, if there is some evidence that law enforcement is ignoring white people who commit these same heinous crimes, then I am with you. I don’t know of any evidence of that.

Statistics are statistics are statistics, but when people go to jail, it is generally because they have committed crimes.

What is your solution? To let them out of jail? Crack cocaine distributors? Is your argument that white crack dealers get away with it because they are smarter or they are protected somehow or other? I don’t think you are making that argument. I can’t imagine you would make that argument. So I don’t know why there is a higher percentage, but I do know that almost without exception—there certainly are some instances where the law applies and I am aware of that—but almost without exception, people who commit these heinous crimes go to jail for them.
May 19, 1999

I don’t think you are arguing to let them out of jail. But then, again, how can you argue, then, that if they are committing the crimes and are going to jail, that for some reason or other there is some reason why they are going to jail when others aren’t. I don’t see the argument myself. Plus, you are adding racial classifications, mandated racial classifications in this amendment. To me it is not even a question of constitutionality. There is no question it is unconstitutional.

With that, I reserve the remainder of my time.

Let me retai it for a second and say one other thing. One would think, listening to my friend from Minnesota, that our bill does absolutely nothing to deal with this problem. You hear this very emotional set of arguments as though the Hatch-Biden-Sessions bill does absolutely nothing about these problems. S. 254, in my opinion, has a much better provision to solve these problems than the distinguished Senator from Minnesota.

The bill as written, as before the Senate, requires that prevention resources be directed to “segments of the juvenile population” who are disproportionately convicted. Now, such “segments of the population” could include, for example, certain socioeconomic groups who are more likely to be at risk. S. 254 directs prevention resources to such groups who need those resources the most. So we try to do something about it rather than just cite statistics.

I don’t see how you get around the fact that these people are sentenced and sent to jail because they have committed crimes. Just because there are statistics that indicate that more than a disproportionate share of the general population is going to jail, I don’t know how in the world you get around the fact that these crimes are being committed by individuals—individuals who happen to be of one race or another. But we do try to address it by directing prevention resources to such groups who need those resources the most. I think that is the way to do it.

I will work with my friends on the other side to see that we do things that make sure those moneys work.

A National Research Council study, published by the National Academy of Sciences no less, found that:

Few criminologists would argue that the current gap between African American and white levels of imprisonment is mainly due to discrimination of sentencing or in any other decisionmaking process in the criminal justice system.

If the National Academy of Sciences is wrong, show me the evidence. Just because this disparity exists, liberals throw their hands in the air and say there must be something wrong, but they can’t prove it, other than to show statistics. I hope they will be with me in saying that people who are justly sentenced for heinous crimes shouldn’t be let off just because there is a disproportionate sentencing because more crimes are committed by one group than another. I don’t see how anybody can argue with that point. You know, it must be nice to always act like you are caring for the little guy, when, in fact, you are not willing to do what has to be done in order to help resolve these problems.

Now, 55 percent of this bill is for prevention—55 percent of it. I don’t remember any crime bill in my time here—there may have been one, but I can’t remember it—where we put more money into prevention. By the way, and you think there was a good thing that we had this core protection, this core requirement in our juvenile justice legislation and it would be a tragic mistake for us to take this protection out that just calls for States to study the problem and try to redress the problem, then you should vote for this amendment.

This is the language of the amendment:

Amends juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate numbers of minority youth who are sentenced to juvenile facilities, to segments of the juvenile population who are disproportionately convicted—

Mr. WELLSTONE. Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 4 minutes.

Mr. WELLSTONE. Mr. President, in all due respect to my colleague from Utah, I don’t think anybody in the civil rights community all across this land will be reassured. I will work with you on the language. With all due respect, some of these arguments about surely you are not for letting blacks out of jail—of course not. The Senator knows what the amendment says. The Senator knows it is not about quotas; it is not about letting anybody out of jail. The Senator is all about calling on States to study the problem. The Senator knows that. We have had this core protection since 1993. Why do you think it is the case? There has been a history for this. It started in 1986. Then we passed this amendment in 1993. It is based upon all kinds of studies, all kinds of work, which has provided the empirical evidence, which should be of no surprise to any Senator here, that we have a problem in our country of disproportionately minority confinement.

We want to try to understand why minority kids who represent about 33 percent of the population represent about 66 percent of the kids who are locked up. We want to come to terms with that. Could it have anything to do with their race, in terms of who gets swept up in the streets? Could it have anything to do with who actually ends up getting a good evaluation or not by a probation officer? Could it have anything to do with who is guilty or not guilty by a judge? Could it have anything to do with who is sentenced and for how long a period of time?

My colleague doesn’t think race has anything to do with this. If you don’t think race has anything to do with this, that we don’t have any problem with discrimination in our country, or that States right now are collecting data to try and look at problems with this problem, which is exactly what our amendment says—continue with this good work—then you should not vote for this amendment. But if you think this is an issue that deals with race in America, that this is a civil rights question, and you think this was a good thing that we had this core protection, this core requirement in our juvenile justice legislation and it would be a tragic mistake for us to take this protection out that just calls for States to study the problem and try to redress the problem, then you should vote for this amendment.

This is the language of the amendment:

Amends juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate numbers of minority youth who are sentenced to juvenile facilities, to segments of the juvenile population who are disproportionately convicted. The Senator knows that. We have had this core protection since 1993. Why do you think it is the case? There has been a history for this. It started in 1986. Then we passed this amendment in 1993. It is based upon all kinds of studies, all kinds of work, which has provided the empirical evidence, which should be of no surprise to any Senator here, that we have a problem in our country of disproportionately minority confinement.

We want to try to understand why minority kids who represent about 33 percent of the population represent about 66 percent of the kids who are locked up. We want to come to terms with that. Could it have anything to do with their race, in terms of who gets swept up in the streets? Could it have anything to do with who actually ends up getting a good evaluation or not by a probation officer? Could it have anything to do with who is guilty or not guilty by a judge? Could it have anything to do with who is sentenced and for how long a period of time?
were convicted for, that somehow there is something wrong with that. Everybody in America knows that people are sentenced to jail because they have committed crimes. I admit that occasionally there are injustices in our courts. They are very rare. When they do occur, I will denounce them as much as my friend from Minnesota.

This is what you call a bleeding heart amendment. They can’t show the facts; they don’t have any facts on their side. They are using statistics. They are ignoring the fact that people convicted of these crimes and need to serve time for them, regardless of skin color; and they are ignoring the fact that we take care of this problem by providing a disproportionate amount of the prevention funds to help segments of the population having difficulties because of socioeconomic difficulties. That is the way to face it and solve the problem. Don’t just complain about the problem. What is the solution? Is it that we allow the people should not serve their time? Should they not be convicted when they sell drugs to our kids? Everybody knows that it happens.

It is nice to talk about civil rights. The fact of the matter is that nobody is more concerned about civil rights than I am. If anyone can show me where there is prejudice, if they can show me where these people are not justly convicted, that is another matter. I will be right there marching with them, but I want to show them that and they know it.

Mr. President, I am going to yield 2 minutes to the distinguished Senator from Alabama, and then I will yield back the remainder of my time.

The PRESIDING OFFICER. That is the way to face it and solve the problem. Don’t just complain about the problem. What is the solution? Is it that we allow the people should not serve their time? Should they not be convicted when they sell drugs to our kids? Everybody knows that it happens.

It is nice to talk about civil rights. The fact of the matter is that nobody is more concerned about civil rights than I am. If anyone can show me where there is prejudice, if they can show me where these people are not justly convicted, that is another matter. I will be right there marching with them, but I want to show them that and they know it.

Mr. SESSIONS. Mr. President, I thank the Senator from Utah for his leadership. He raises a good question about statistics and how they can be misleading. Of course, Mr. President, I have a brief here that was submitted on statistics involving whites and blacks on death row in Alabama. Now, 52 percent of those on death row in Alabama are white; 46 percent are black. But that percentage of the black population is substantially higher on death row than in the State. But the study goes on to show that the percentage of homicides committed in Alabama by blacks was 71 percent; yet, they represent only 46 percent of the people on death row.

So I don’t know what any of those numbers mean. I am not sure they are very beneficial to anybody. But if you look at it one way, it looks like it is unfair. If you look at it another way, it looks like it is not unfair. So the Senator is correct that we need to have proof of individual wrongs instead of passing a law that is going to require the reduction of people in prison based on a statistical study.

I yield the floor.

Mr. HATCH. Mr. President, how much time do I have?

The PRESIDING OFFICER. Seven minutes.

Mr. HATCH. How much does the other side have?

The PRESIDING OFFICER. Zero.

Mr. HATCH. I yield back the remainder of my time and we can yield to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky.

AMENDMENT NO. 365

(Purpose: To discourage the promotion of violence in motion pictures and television processing.

Mr. MCCONNELL. Mr. President, I send an amendment to the desk. The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky (Mr. MCCONNELL), by request, offered an amendment numbered 365.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. 2. PROHIBITION ON PROMOTING VIOLENCE ON FEDERAL PROPERTY.

(a) General Rule.—A Federal department or agency shall not grant a request described in paragraph (1) unless:

(1) considers a request from an individual or an entity for the use of any property, facility, equipment, or personnel of the department or agency for any purpose to film a motion picture or television production for commercial purposes; and

(2) makes a determination as to whether granting a request described in paragraph (1) is consistent with—

(A) United States policy;

(B) the mission or interest of the department or agency; or

(C) the public interest.

shall not grant such a request without considering whether the motion picture or television production glorifies or endorses wanton and gratuitous violence.

(b) Exception.—Subsection (a) shall not apply to—

(1) any bona fide newsreel or news television production; or

(2) any public service announcement.

Mr. MCCONNELL. Mr. President, my understanding is I have 15 minutes.

The PRESIDING OFFICER. That is correct.

Mr. MCCONNELL. I ask the Chair to notify me when I have 3 minutes left.

Mr. President, the amendment that is now pending would require that when granting permits necessary for filming a movie or a TV show on Federal property, or with Federal equipment, the relevant agency’s approval criteria now would include a consideration of whether the film glorifies or endorses wanton and gratuitous violence. The message is simple: The Federal Government will not allow Hollywood to promote excessive and wanton violence in our house.

America’s children are exposed to incessant, endless hours of violent movies and television productions each year. Exposure to this violence desensitizes our children to brutality and killing and gives them “glamorous” murder acts to emulate. This exposure is like pouring gasoline on fire.

Yes, the children who commit terrible acts of violence must have a number of deep and troubling problems. However, the glorified wanton violence depicted in movies and on TV is fuel that Hollywood is dousing on those children and their smoldering internal problems. This is not a revelation. Indeed, a 1996 American Medical Association Study concluded a link between media violence and real life violence has been proven by science time and time again.

Most people know, intuitively, that there is a strong link between media violence and real life. Why is it that no one in Hollywood seems to care? Are they the only ones who are oblivious to this phenomenon? Why is there no shame about the violent junk they are making and marketing to our kids? Why doe we hear Hollywood give speech after speech on every fad-driven cause under the sun, and yet rarely ever do we hear them mention reforming themselves and refraining from marketing violence to our children.

Let’s take a look at some of the media violence that our children are exposed to.

First, let’s go to the movies.

Now, I’m told that Leonardo DiCaprio and Keanu Reeves are two of the biggest teen idols out there today. These photographs are both from recent hit movies—"The Basketball Diaries" and "The Matrix." Thanks to the occupant of the Chair, Senator Brownback, the Republican Senators had an opportunity to see some of the scenes from "Basketball Diaries" recently. That is one of the scenes from it here on my left.

The "Matrix," featuring Keanu Reeves, is here on my right. You can see from these photographs that Hollywood is taking the biggest teen idols and creating these glamorous, powerful, violent images to send out to our young people. These are role models for children.

As you can see here, in "Basketball Diaries," teen idol DiCaprio is wearing a long, black trenchcoat and packing a shotgun. In this movie, DiCaprio’s character has a fantasy of walking into his high school classroom and opening fire on his schoolmates and his teacher.

Thanks to the Senator from Kansas, Mr. President, we had an opportunity to see this scene from that film. I think we would all agree—those of us who saw it—it literally turns your stomach.

These violent images became reality in the community of Paducah, Kentucky, barely 17 months ago. In a Paducah high school, the DiCaprio Dream was played out in real life. I’d like to read for my colleagues an excerpt from a Newsweek article about "Basketball Diaries" and the senseless tragedy in Paducah.

"The Basketball Diaries" may not have been 14-year-old Michael Carneal’s favorite
movie. But one scene in particular stayed with the awkward Paducah, Ky., freshman: a young character’s narcotic-tinged dream of striding into his school, pulling a shotgun from his coat and opening fire. The real-life scene in the bloodied halls of Heath High School last Monday was a long way from Hollywood. Unlike handsome actor Leonardo DiCaprio’s dramatic entrance in 1995’s “Diaries,” skinny, bespectacled Michael bummed a ride to school that day from his 17-year-old sister, Kelly. Instead of cinematic kicking down a classroom door, Michael quietly followed Kelly into the school through the band room, where he told a curious teacher that the four guns bound together and wrapped in an old blanket were “a poster for my science project.” Loitering in the hall, Michael waited for a prayer group of 35 students to lift their bowed heads and say “Amen.” He then took a fifth gun, a semiautomatic .22, from his backpack and fired off 12 shots, killing three students and wounding five. Before the police arrived, Carneal would tell a teacher, “it was like I was in a dream.”

Looking back at Paducah, and now Littleton—and looking at these Hollywood images of teen idols—can leave no doubts. Hollywood violence DOES influence our children, in the worst way.

Let me tell you about this other hit movie—“The Matrix.” The image of this character is strikingly similar to that over here of Mr. DiCaprio. Let me read to you how an article in the Washington Post described watching the Matrix.

The sold-out theatre was filled with younger teens, despite the R rating, and at times I felt as if I were watching a dramatization of the events that had just occurred in Littleton, Colorado.

In one scene, protagonists played by Keanu Reeves and Carrie-Anne Moss arrive at an office building where their adversaries are holed up. Dressed in black leather coats, the pair sprays the lobby with automatic weapon fire. The scene is a gory, gruesomely choreographed ballet of mass killing, a triumph of Hollywood’s ability to represent graphic violence. As bullets riddle a dozen twitching bodies, spent shell casings cascade from a nearby rooftop.

The real-life scene in the bloodied halls of Littleton, Colorado—Michael Carneal, a 14-year-old boy, has never fired a pistol before in his life. His total experience was countless, thousands and thousands of rounds in the videogames. When Michael Carneal opened fire; he fired eight shots... (H) got eight hits on eight different kids. Five of them were head shots. The other three were torso shots. Now, the F.B.I. says in the average engagement, the average officer hits with less than one bullet in five.

Grossman concluded:

Mr. President, I understand that the Motion Picture Association has been lobbying heavily against this amendment. I want to make sure everybody understands what this amendment really does. It is quite mild.

The problems evidenced by these video games and movies are complicated and complex. We are not going to solve them overnight. I do believe it is time that Hollywood take more responsibility. We need to send the message to Hollywood: Don’t bombard our children with gratuitous and wanton violence.

Under the first amendment, we cannot and will not seek to deny the right of free speech to anyone. However, as the Senate, we can encourage Hollywood to take responsible steps to protect our children. We can make sure the Federal Government does not co-star with Hollywood in any movies that glorify or endorse wanton and gratuitous violence.

The Federal Government already currently grants permits to Hollywood, allowing them to film on Federal property or allowing them to borrow Federal equipment such as jeeps or weapons to use in these films. Many government agencies and departments currently cooperate with a film or TV production based on the nature and message of the proposed production.

For example, DOD decides whether to grant Federal filming privileges based on whether a production “appear[s] to condone or endorse activities... [that] are contrary to U.S. Government policy.”

In other words, “Top Gun” is OK, but “GI Jane” is not. The military rolled out the red carpet for “Top Gun” while “GI Jane” had the door shut in her face.

When deciding whether to cooperate with a film, NASA determines whether the “story is reasonably plausible, does not advocate or glorify unlawful acts... or present as factual history things which did not take place.”

The point is the Federal Government is already engaged in a clearance process when a motion picture seeks to be made on Federal property. We are not adding requirements that are not already there, with one exception. In this amendment where Federal agencies are already engaged in a subjective clearance process, either by statute or through policy, we add to it this standard: Promoting and endorsing or glorifying violence.

Clearly, this is not infringing on the movie industry’s first amendment rights. They can simply go out and make their movies somewhere else. What we are saying here, if we are going to use our property, Federal property, and the agency already has a subjective clearance process, we expect the Federal Government to cooperate ‘is in the public interest.’ Let me quote to you from 14 United States Code Section 659, where Congress has mandated in federal statute that the Coast Guard cannot provide special assistance to film producers unless it determines “that it is appropriate, and that it will not interfere with Coast Guard missions.”

The point is the Federal Government is already engaged in a clearance process, when a motion picture seeks to be made on Federal property. We are not adding requirements that are not already there, with one exception. In this amendment where Federal agencies are already engaged in a subjective clearance process, either by statute or through policy, we add to it this standard: Promoting and endorsing or glorifying violence.

Clearly, this is not infringing on the movie industry’s first amendment rights. They can simply go out and make their movies somewhere else. What we are saying here, if we are going to use our property, Federal property, and the agency already has a subjective clearance process, wanton and gratuitous violence needs to be added as a factor.

I reserve the remainder of my time.

Mr. LEAHY. Mr. President, I yield myself such time as necessary out of the time we have available.

I listened to my good friend from Kentucky, and he is my good friend. We have been together on more issues than we have been apart.

I note one thing: As I recall, in reading the reviews of the movie “Matrix”...
Mr. McCONNELL. Will the Senator yield?

Mrs. BOXER. I yield on the Senator's time.

Mr. McCONNELL. I don't have that much time. I ask the Senator if she thinks the standards that currently apply and are used by DOD and mandated by statute for the Coast Guard, which are very subjective, should be repealed?

Mrs. BOXER. Mr. President, I am addressing the Senator's amendment and the Senator's amendment says any department. It uses the words "wanton, gratuitous." I think these words are very, very subjective. It is the reason I didn't vote for Senator Hollings' amendment when he came to the floor—it was the same idea.

My constituents are concerned this amendment would potentially prevent war movies, westerns, or stories about abusive relationships which find peace and harmony in the end from being filmed on Federal property. It gives bureaucrats in many Federal agencies the authority to decide what violence is. I didn't run for this job to be an art critic. That is why when we criticize the art world, I think we have to be very careful, because we are not art critics. Most Members are pretty good at what we do, but we are not art critics; neither is a bureaucrat over at the Interior or FAA or any of the other departments that will now deal with this.

I say, as a parent and a grandparent, I do not want to give this kind of power, this kind of job to an elected, let alone an unelected, person sitting at some Federal agency. I think it is pretty incredible. I do not know where we go from here, I say to the good Senator.

Why not, if you want to take this to the ultimate extreme, then say private property cannot be used, private property cannot be used for this purpose, and tell the people of America how they should use their private property? Where do you stop? This is a slippery slope. We all know that every one of us has to look inside ourselves and do something about this problem of violence. Whether you are a parent or a grandparent or a Senator, whether you are in the movie business, in the TV business, whether you are in the video game business, we all have an obligation—or whether you are a firearms manufacturer. The bottom line is we all have to do more.

But to then say that bureaucrats in the Federal Government are going to make these subjective decisions? I want the people at FAA to fly the planes. I want the people at the Department of Agriculture employees who are not trained as critics of film or critics of television programming the job of deciding whether there is wanton violence.

One of the meanings of "wanton" is excessively luxurious. So, somebody deciding this could decide to go with that definition. Another meaning of "wanton" is without adequate motive or provocation. These words carry different meanings for different people. The Senator from Kentucky has his definition of gratuitous violence, of wanton violence. The dictionary has another. Who knows what the bureaucrat at the FAA will decide violence is, when it is up to him to decide whether his plane is used, or a bureaucrat at the Department of the Interior?

I got a call from a Republican friend who said: Senator, I hope you fight this. We couldn't make a western, we couldn't make a war movie. What about a movie that talks about a family in which there are violent relationships and these all get resolved in the movie? Some of the scenes are rough and difficult, but there is a purpose.

I am sure my friend would say that is not gratuitous, but that is his opinion. It may be the opinion of the bureaucrat sitting in the agency or department that he is now charging with becoming a film critic.
ensure they did not glorify violence. The naval base that was used was Miramar in California.

The fight in “An Officer and a Gentleman” also might be considered excessive by some. What about the gratuitous punch by Jimmy Stewart in “Mr. Smith Goes to Washington”? “The Treasure of the Sierra Madre,” uses the vast national forest lands in its filming, even though most of it was filmed in Mexico. Could part of it be knocked out?

There are only exceptions for news and public service announcements, but any movie that is a historical depiction of a war would be subject to agency bureaucrats deciding whether violence was gratuitous or glorifies violence. Sponsors may say: Let them go somewhere else and do their filming, let them go to private property or parklands or military bases. I think that is a shortsighted response. Some may want to use that property to be authentic.

I am concerned how this is going to work. Do we turn over our scripts? If you are a movie producer or maker, do you turn over the script to the Department of Agriculture, Department of the Interior, Department of Defense first and decide whether it is safe? We may not like all that we see from Hollywood. But I have no confidence in the decisions the agency censors make. I am perfectly capable of censoring what I see. I was perfectly capable, when my children were young, to censor what they saw. But I do not want an official, however well intentioned, in the Department of Agriculture or the Department of Defense or the Department of the Interior, to determine what I see. I retain the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I want to thank the Senator from Kentucky for his amendment, but I want to be clear on one matter, however. It is my understanding that lands under the BLM, Park Service, and Forest Service are in no way covered or affected by the amendment because they do not consider subjective criteria when determining whether to cooperate or grant permits to a film or TV production. Is that correct?

Mr. MCCONNELL. This is correct.

Mr. HATCH. How much time remains on both sides?

The PRESIDING OFFICER. The Senator has 2 minutes 56 seconds in opposition to the amendment and 1 minute 47 seconds on the proponents.

Mr. HATCH. I ask unanimous consent to make but 3 minutes on the side of Senator MCCONNELL and an equal amount of extra time on the side of the minority.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. I didn’t hear the request.

Mr. HATCH. I made an unanimous consent request to give Senator MCCONNELL 3 minutes, which would give him another minute and a half, and give you an equal amount of time on your side.

Mr. LEAHY. You are asking for an extra minute and a half—

Mr. HATCH. For Senator MCCONNELL—

Mr. LEAHY. And an extra minute and a half for this side?

Mr. HATCH. For you.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, I would like to respond that the observations made by the other side have nothing to do with the amendment, nothing whatsoever to do with the amendment.

Any movie company is free to go make a movie anywhere it wants to in the country and say anything it wants to and be as depraved as it wants to be without interference from Government. This amendment is only related to the use of Federal property.

In many federal agencies and departments there are subjective standards being used now to approve or deny cooperation with film production companies. The thing the Senator from Vermont and the Senator from California are complaining about is already occurring. The Department of Defense has very subjective standards it applies to movies now. For example, it did not allow “GI Jane” to be made on Federal property or for Federal assistance. It did not keep the movie from being made, but the Defense Department did not like it; it had a very subjective standard. They said go make your movie somewhere else. They liked “Top Gun.” They allowed it to be made. There is a very subjective standard that applies now.

DOD considers whether a production “appears to condone or endorse activities that are contrary to U.S. Government policy.” That is clearly very subjective. The policy in NASA’s policy includes whether the story is reasonably plausible, does not advocate or glorify unlawful acts or present as factual history things which did not take place—that is fairly subjective.

At the Coast Guard, under statute, the Coast Guard does not provide facilities or assistance to film producers unless the Guard determines it is “appropriate”—very subjective—and that it will not interfere with Coast Guard missions.

Mr. President, a movie company now does not have the inalienable right or constitutional right to come onto Federal property and do anything it wants to. All we are saying, to Federal agencies that have either a policy or a statute giving them the authority to clear, these movies for content—and we’ve seen that some have them now—that they simply add to the list of subjective evaluations they already make a consideration of wanton and gratuitous violence. People who have spoken on the other side of this are not arguing we ought to repeal the current standards because they are very subjective. Maybe they do not want any standard at all to apply with respect to the use of Federal property.

With regard to the parks system, they do not currently have subjective criteria and standard, so this would not apply to them. They are clearly outside of this.

This is a very narrowly crafted message to Hollywood not to produce this kind of gratuitous and wanton violence on Federal property with federal cooperation. It certainly does not take away anybody’s constitutional right to go out and act in as awful a manner as they want to and put it on film. They just wouldn’t be able to do it on Federal property.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, we are all aware of what the military does. The military will permit use—in fact, some suggest even will pay it with the news. They did it during the gulf war. They did it during Vietnam. I suspect they are doing it now.

What I am concerned about, though, is when you talk about the vast forest land and somebody one day in the Department of Agriculture, who works on, I don’t know, dairy price supports, and the next day is going to be the person to censor what goes in that movie, whether that forest can be the back- ground of a movie. If it is under the Department of the Interior controls so much land—I can think of movies, shoot ‘em ups, with Ronald Reagan galloping by the sites in areas controlled by the Department of the Interior. It might have been declined because somebody did not like him. Maybe somebody who normally does fishing permits in the Department of the Interior will determine what movies will be made or what they like or do not like. Open ourselves to a strange area.

Those who are opposed to wanton violence should do as I do—don’t go to those movies. Nothing votes better than your checkbook. If you do not want your children to go to them, don’t buy the movies. The military does not let your children go to them, do not keep the military from being used. Use your checkbook. That is the way to do it.

Do not put our Department of Agriculture and Department of the Interior and others into censorship. Do not let them make some of the mistakes the Department of Defense has made in the past in refusing permission for something because they are afraid it will show a general or a colonel or admiral
making a mistake, because we all know they never do. I can see them deciding it might be gratuitous violence to show—oh, I don’t know—maybe when their bombs go astray and hit the Chi-
inese Embassy. We know they never make a mistake like that, but they may say this is gratuitous violence, so they are not going to allow any help in making such a movie.

I retain the remainder of my time.

Mr. MCCONNELL. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Thirty-four seconds.

Mr. MCCONNELL. Mr. President, it is interesting, in Hollywood lobbying ef-
forts, they always scream censorship. This amendment has nothing to do with censorship. It has to do with the use of Federal property and federal as-
sistance, which is a privilege, not a right.

The Federal Government, through various departments and agencies, al-
ready has very subjective standards. We are simply adding to those kinds of standards one more factor—wanton and
gratuitous violence. No movie company in America has a right to use any and all Federal property and to get federal assistance away. We are just adding one more criterion.

This is a very reasonable amend-
ment. I hope it will be approved by my colleagues.

The PRESIDING OFFICER. The Sen-
ator’s time has expired.

Mr. LEAHY. Mr. President, how much time do I have?

The PRESIDING OFFICER. One minute 17 seconds.

Mr. LEAHY. Mr. President, I can think of some ads I see on local TV at
night that are not violent but I find of a personal nature offensive, some of which are filled with backgrounds of
Government land. Should we start tak-
ing those out?

The fact is, we have a lot of Government sites. Do we stop a movie, for ex-
ample, that is filmed with somebody driving down Pennsylvania Avenue be-
cause the Department of the Interior, the Justice Department, and other Gover-
ment buildings are seen in the background? Do we make sure there is never any depiction of the Capitol? One of the most violent things was “In-
dependence Day” when a model of the Capitol was blown up. There may have been in the models actually made of the Capitol prior to that time. Does that go out?

I suggest these because we are get-
ting into a terribly subjective area, and we are asking people who are trained to do very good things for our Govern-
ment, whether it is fishing permits, lands permits, or agricultural sub-
sidies—they are not trained, nor should they be, in this Nation especially to be censors.

I know the time of the Senator from Kentucky has expired. I yield back all my remaining time.

Mr. MCCONNELL. I ask for the yeas
and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the previous order, the Senator from California is recognized for 10 minutes.

AMENDMENT NO. 318

(Purpose: To reduce both juvenile crime and the risk that youth will become victims of crime and to improve academic and social outcomes for students by providing produc-
tive activities during after school hours)

Mrs. BOXER. Mr. President, I call up amendment No. 319. It is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. Boxer] proposes an amendment numbered 319.

Mrs. BOXER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the follow-

TITLE

AFTER-SCHOOL EDUCATION AND ANTI-CRIME ACT.

SECTION 1. SHORT TITLE.

This Act may be cited as the “After School Education and Anti-Crime Act of 1999”.

SEC. 2. PURPOSE.

The purpose of this Act is to improve aca-
demic and social outcomes for students and reduce both juvenile crime and the risk that youth will become victims of crime by pro-
viding productive activities during after school hours.

SEC. 3. FINDINGS.

Congress makes the following findings:

(1) Today’s youth face far greater social risks than did their parents and grand-
parents.

(2) Students spend more of their waking hours alone, without supervision, compan-
i onship, or activity, than the students spend in school.

(3) Law enforcement statistics show that youth who are ages 12 through 17 are most at
risk of committing violent acts and being victims of violent acts between 3 p.m. and 6 p.m.

(4) The consequences of academic failure are more dire in 1999 than ever before.

(5) After school programs have been shown in many States to help address social prob-
lems facing our Nation’s youth, such as drugs, alcohol, tobacco, and gang involve-
ment.

(6) Many of our Nation’s governors endorse increasing the number of after school pro-
grams through a Federal/State partnership.

(7) Over 450 of the Nation’s leading police
chiefs, sheriffs, and prosecutors, along with presidents of the Fraternal Order of Police and the International Union of Police Asso-
ciations, which together represent 350,000 po-
lice officers, have called upon public officials to provide after school programs that offer recreation, academic support, and commu-
nity service experience, for school-age chil-
dren and teens in the United States.

(8) One of the most important investments that we can make in our children is to en-
sure that they have safe and positive learn-
ing environments in the after school hours.

SEC. 4. GOALS.

The goals of this Act are as follows:

(1) To increase the academic success of stu-
dents.

(2) To promote safe and productive envi-
ronments for students in the after school hours.

(3) To provide alternatives to drug, alco-
hol, tobacco, and gang activity.

(4) To reduce juvenile crime and the risk
that youth will become victims of crime dur-
ing after school hours.

SEC. 5. PROGRAM AUTHORIZATION.

Section 10903 of the 21st Century Commu-
nity Learning Centers Act (20 U.S.C. 8243) is amended—

(1) in subsection (a)—

(A) by striking “States,” and in-
serting “States and among”;

(B) by striking “United States,” and in-
serting “a State”;

(C) by striking “a rural or inner-city com-

munity” and inserting “the communities”;

(D) by striking “(A)” by striking “States, among” and in-
serting “States and among”;

(E) by striking “United States,” and in-
serting “a State”;

(2) in subsection (b) (as so redesignated)—

(A) in paragraph (1), by striking “or con-
sortium”;

(B) in paragraph (2), by striking “and” after the semicolon; and

(C) in paragraph (3)—

(i) in subparagraph (B), by inserting “; in-
cluding programs under the Child Care and
Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.),” after “maximized”; and

(ii) in subparagraph (C), by inserting “stu-
dents, parents, teachers, school administra-
tors, local government, including law en-
forcement organizations such as Police Ath-
letic and Activity Leagues,” after “ag-
cent”;

(3) in subparagraph (D), by striking “or
county” and inserting “or community”;

(4) in subparagraph (E)—

(ii) in the matter preceding clause (I), by
striking “or consortium”; and

(D) in clause (ii), by striking the period and inserting a semicolon; and

(E) by adding at the end the following:

“(4) information demonstrating that the local educational agency will—

(A) provide not less than 35 percent of the annual cost of the activities assisted under the project from sources other than funds provided under this part, which contribution may be provided in cash or in kind, fairly evaluated; and

(B) provide not more than 25 percent of the annual cost of the activities assisted under the project from funds provided by the Secretary under other Federal programs that permit the use of those other funds for ac-

tivities assisted under the project; and
“(5) an assurance that the local educational agency, in each year of the project, will maintain the agency’s fiscal effort, from non-Federal sources, from the preceding fiscal year, for activities the local educational agency provides with funds provided under this part.’’.

SEC. 7. USES OF FUNDS.

Section 10906 of the 21st Century Community Learning Centers Act (20 U.S.C. 8245) is amended—

(1) by striking the matter preceding paragraph (1) and inserting:

‘‘(a) IN GENERAL.—Grants awarded under this part may be used to establish or expand community learning centers. The centers may provide one or more of the following activities:

(1) mentoring programs;

(2) academic assistance;

(3) recreational activities; or

(4) technology training; and

(b) LIMITATION.—Not less than ½ of the amount appropriated under section 10907 for each fiscal year shall be used for after school programs, as described in paragraph (14).

Such programs may also include activities described in paragraphs (1) through (13) that offer expanded opportunities for children or youth.’’.

SEC. 8. ADMINISTRATION.

Section 10906 of the 21st Century Community Learning Centers Act (20 U.S.C. 8245) is amended by adding at the end the following:

‘‘(c) ADMINISTRATION.—In carrying out the activities described in subsection (a), a local educational agency or school shall, to the greatest extent practicable—

(1) request volunteers from business and academic communities, and law enforcement organizations; the Police Athletic and Activity League; and

(2) have that youth in the local community participate in designing the after school activities;

(3) develop creative methods of conducting outreach to youth in the community;

(4) request donations of computer equipment and other materials and equipment; and

(5) work with State and local park and recreation agencies so that activities carried out by the agencies prior to the date of enactment of this subsection are not duplicated by activities assisted under this part.’’.

SEC. 9. COMMUNITY LEARNING CENTER DEFINED.

Section 10906 of the 21st Century Community Learning Centers Act (20 U.S.C. 8246) is amended in paragraph (2) by inserting ‘‘, including law enforcement organizations such as the Police Athletic and Activity League, and after-school programs, as defined by ‘governmental agencies’’.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

Section 10907 of the 21st Century Community Learning Centers Act (20 U.S.C. 8247) is amended by striking ‘‘$20,000,000 for fiscal year 1995’’ and all that follows and inserting ‘‘$600,000,000 for each of fiscal years 2000 and 2001’’.

The entire underlying bill, which we have been working on for 2 years, only authorizes a little over $1 billion in spending a year—our whole bill.

I must object to the amendment of the Senator from California. I appreciate the necessity of after school programs. The reason we support the 21st Century Learning Centers program supports several efforts in my home State of Utah.

The President’s amendment, however, increases the program’s authorization from $20 million annually to $60 million annually. That adds up to $3 billion over 5 years. The entire underlying bill, which we have been working on for 4 years, only authorizes a little over $1 billion in spending a year—our whole bill.

I yield such time as he may need to the distinguished chairman of the Labor Committee.

Mr. JEFFORDS. Mr. President, I rise in opposition to this amendment. I agree very strongly with Senator Boxer’s goal of increasing the availability of positive, engaging activities for school-aged children and youth during the nonschool hours. This is a very important issue that cannot, and should not, be decided within the context of a floor amendment on the juvenile justice legislation.

Even without this year’s Elementary and Secondary Education Act reauthorization, I would have reservations about this amendment. But we do have the Elementary and Secondary Education Act reauthorization in progress, and that is the time when this amendment, or something similar to it, ought to be considered.
As the author of the original 21st Century Community Learning Centers Act, I have an enormous interest in any changes to this legislation, much less changes as dramatic as those proposed in this amendment.

When Congressman Steve Gunderson and I drafted the 21st Century Learning Centers legislation, our purpose was to promote the broader use of school facilities, equipment, and resources. Our largest investment in education is for buildings and equipment, and in most communities these resources are closed more than they are open.

By encouraging schools to share their facilities, equipment, and other resources to meet the broader needs of the community, these centers can expand educational and social service opportunities for everyone in the community.

Until 2 years ago, the Clinton administration failed to support the 21st Century Community Learning Centers, even though it had repeatedly requested that funds for the program appropriated by Congress be rescinded.

Then, last year, the administration, through the competitive grants process, substantially changed the focus and purposes of the first 21st Century Community Learning Centers program. Overnight, this initiative to expand the use of existing facilities became an afterschool program, almost to the exclusion of the multi-purpose community centers which were envisioned when I wrote the legislation.

This dramatic change in direction for the 21st Century Community Learning Centers program raises questions which must be answered before we can consider such a huge expansion of the program. We will be doing that during the reauthorization of the Elementary and Secondary Education Act, which is now being considered in the Committee on Health, Education, Labor and Pensions. We need to address questions such as: Can the legislation still serve the purposes for which it was originally intended, with the current, overwhelming focus on providing afterschool programs? If it is to be an afterschool program, are there changes needed in the legislation to make it more effective?

If this program is to serve primarily as an afterschool program, where do community organizations such as the Boys and Girls Clubs, YMCA, fit in? Public schools currently profit the least than one-third of the afterschool care, with other community groups providing most of the care.

The current grant program clearly demonstrates that schools are, by and large, failing to coordinate their afterschool services with those of other care providers in the community. And the Boxer amendment does nothing but perpetuate that situation. The amendment by Senator BOXER proposes changes that will dilute the act.

The PRESIDING OFFICER. The time in opposition to the amendment has expired.

Mr. JEFFORDS. Thank you, Mr. President, the 1992 Carnegie Corporation report, "A Matter of Time," called for a major national investment in after-school programs for youth. It said, "Risk can be transformed safety for our youth by turning their non-school hours into the time of their lives."

But, we have not done enough to give children the kind of opportunities they need after school. Just ask children if this is true.

Amy, age 14, said "Sometimes there are so many things you can't do. I can't have company or leave the house. If I talk on the phone, I can't let any one know I'm here alone. But I really think they've figured it out, you know."

Cindy, age 16, said, "We need someone to listen to us—really take it in. I don't have anybody to talk to, so when I have a problem inside, I just have to keep it to myself. And there would be more adults that ask questions because that shows that they care and want to know more."

Each day, 5 million children, many as young as 6 or 9 years old, are left home alone on their own supervision. Supervised are more likely to be involved in anti-social activities and destructive patterns of behavior.

We also know that juvenile delinquent crime peaks in the hours between 3 p.m. and 8 p.m. A recent study of gang crimes by juveniles in Orange County, California, shows that 60 percent of all juvenile gang crimes occur on school days and peak immediately after school dismissal.

We need to do all we can to encourage communities to develop activities that will engage children and keep them off the streets, away from drugs, and out of trouble.

Crime survivors, law enforcement representatives, and prosecutors have joined together in calling for a substantial federal investment in afterschool activities. Over 450 of the nation's leading police chiefs, sheriffs, prosecutors, and leaders of local fraternal orders of police, which represent over 360,000 police officers, have called upon public officials to provide more after-school programs for school-age children.

Clearly, financial assistance is needed for activities in states across the country. Too often, parents cannot afford the thousands of dollars a year required to pay for after-school care, if it exists at all. In Massachusetts, 4,000 eligible children are on waiting lists for after-school care, and tens of thousands more have parents who have given up on getting help. Nationwide, half a million eligible children are on waiting lists for federal child care subsidies. The need for increased opportunities is obvious and this amendment helps to meet it.

Senator BOXER's plan will triple the funds for the 21st Century Community Learning Center initiative so that more than 1 million children each year will have access to safe and constructive after-school activities. It also strengthens the current program by including mentoring, academic assistance, and anti-drug, anti-alcohol, and anti-gang activities as allowable uses of the funds.

Additional federal support is essential for communities across the country. This year, the initiative was funded at $200 million. Over 2,000 applicants from across the country submitted proposals. In the U.S. Department of Education for that assistance—but only 184 new grants could be funded. We must do more to meet the high demand for after-school programs across the country.

Communities are working hard to provide these after-school activities for children—but they can't do it alone. They want Uncle Sam to be a strong partner in the effort.

Boston's 2:00-to-6:00 After-School Initiative was created in 1998 to expand and enhance quality after-school programs across the city. It has already succeeded in increasing the number of school-based after-school programs by nearly 50 percent. A total of 43 programs, serving 4,000 children, were created. This year, Mayor Menino has pledged to open 20 more school-based programs. Boston and communities like it throughout the country deserve more assistance in meeting these needs.

The 21st Century Community Learning Centers legislation, our purpose was to transform our youth by turning their non-school hours into the time of their lives. But, we have not done enough to give children the kind of opportunities they need after school. Just ask children if this is true.

Senators, in the legislation to make it more effective.
have demonstrated improvement in school attendance and decreases in juvenile delinquent behavior over the course of the school year. Juvenile crimes have dropped citywide by approximately 10 percent since the program began.

The Baltimore City Police Department saw a 44 percent drop in the risk of children becoming victims of crime after opening an after-school program in a high-crime area. A study of the Goodnow Police Athletic League center in Northeast Baltimore found that juvenile arrests dropped by 10 percent, the number of armed robberies dropped from 14 to 7, assaults with handguns were eliminated, and other assaults decreased from 32 to 20 from 1995 to 1996.

In addition to improved youth behavior and safety, quality after-school programs also lead to better academic achievement by students. At the Beech Street School in Manchester, New Hampshire, the after-school program has improved reading and math scores of students. In reading, the percentage of students scoring at or above the basic level increased from 4 percent in 1994 to one-third in 1997. In math, the percentage of students scoring at the basic level increased from 29 percent to 60 percent. In addition, Manchester saved an estimated $73,000 over three years because students participating in the after-school program avoided being retained in grade or being placed in special education.

One student in the Manchester program said, “I used to hate math. It was stupid. But when we started using geometry and trigonometry to measure the trees and collect our data, I got pretty excited. Now I’m trying harder in school.”

In Georgia, over 70 percent of students, parents, and teachers agreed that children received helpful tutoring through The 3:00 Project, a statewide network of after-school programs. Over 60 percent of parents, parents, and teachers agreed that children completed more of their homework and the homework was better prepared because of their participation in the program.

One 7th-grade student from Georgia said, “I just used to hang out after school before coming to The 3:00 Project. Now I have something to do and my school work has improved!”

In 1996, over half of the students who attended Chicago’s summer program raised their test scores enough to progress in high school.

As Mayor Daley of Chicago said, “Instead of locking youth up, we need to unlock their potential. We need to bring them back to their community and provide the guidance and support they need.”

We should do all we can to improve and expand after-school opportunities—the nation’s children deserve no less.

Mrs. BOXER addressed the Chair. “The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I ask unanimous consent that I be given an additional minute to the 44 seconds.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mrs. BOXER. I thank my friends. Frankly, I am kind of surprised to see my friends on the Republican side disagree so strongly with law enforcement in this country. There is a reason we put this on the juvenile justice bill. It is because we know that kids get into trouble after school. You do not need a degree in criminalology, psychology, or any other “ology” to understand that is what is happening.

When I held crime meetings, town meetings, all throughout the State of California, they can tell you the law enforcement people told me—and that is why the National Sheriffs Association supports our amendment—Senator, when we get them, it is too late. When we get them, it is too late. Prevent the crime first.

It goes to the next chart.

Three o’clock, that is when it happens, folks. They get out of school; they have no place to go; they get in trouble. And I am stunned to see the Senator from Vermont once again opposing this. This isn’t a new program; it is an expansion of the program that was started by President Clinton. And guess what, I say to my friend. They can only fund a minuscule proportion of the applications from the school districts coming from all over the country.

What we would do in this amendment is allow those applications to be funded. This is not new. This is nothing extraordinary. It is expanding this program—the same program—to meet the incredible need.

I agree with law enforcement on this one: Keep our kids busy and happy after school. We will see that crime rate go down.

Thank you very much, Mr. President. The PRESIDING OFFICER. All time has expired on the amendment. Mr. CHAFEE. Let’s vote. Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the first vote be 15 minutes and that the succeeding two votes be 10 minutes each.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HATCH. Mr. President, I move to table and go for 2 minutes equally divided.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I think we have more than adequately answered the arguments made by the distinguished presenter of this amendment. We yield back the remainder of our time.

Mr. President, I ask unanimous consent that the first vote be 15 minutes and that the succeeding two votes be 10 minutes each.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HATCH. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered. The PRESIDING OFFICER. The question is on agreeing to the motion to table amendment No. 364. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 52, nays 48, as follows: [Rollcall Vote No. 130 Leg.]

YEAS—52

Abraham

Allard

Ashcroft

BenNETT

Bond

Brownback

Boxing

Burns

Campbell

Cochran

Collins

Courterdell

Craig

CraPO

Dole

Domenici

Russ

Fitzgerald

McCain

McConnell

NAYS—48

Akaka

Baucus

Bayh

Biden

Bingaman

Boxer

Breaux

Bryan

Byrd

Chafee

Chafee

Dooley

Durbin

Enzi

Feingold

Fitzgerald

Franken

Graham

Harkin

Hollings

Inouye

Jeffords

Johnson

Kennedy

Kerry

Kohl

Landrieu

Leg.

Pistikrovsky

Nickles

Roberts

Roth

Santorum

Sessions

Shay

Smith (N)

Smith (O)

Snow

Snowe

Thomas

Thompson

Thurmond

Voinovich

Warner

Waxman

YEAS—52

Akaka

Baucus

Bayh

Biden

Bingaman

Boxer

Breaux

Bryan

Byrd

Chafee

Chafee

Dooley

Durbin

Enzi

Feingold

Fitzgerald

Franken

Graham

Harkin

Hollings

Inouye

Jeffords

Johnson

Kennedy

Kerry

Kohl

Landrieu

Page 5581
The motion was agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCONNELL. Mr. President, the amendment we are about to vote on is very narrowly drafted to add one additional factor to those Federal agencies that have subjective standards they apply prior to allowing the shooting of a movie on Federal property.

The subject of the amendment is the making of movies on Federal property and with Federal assistance. There are at least three federal entities—the Defense Department, NASA, and the Coast Guard—that currently have quite subjective standards which they apply to the movie industry when asked for permission to make a movie on Federal property or with their cooperation and assistance.

All this amendment does is add one more factor—one, wanton and gratuitous violence—to those standards. Bear in mind this amendment has no first amendment implications at all. Any movie company that wants to make a movie and do anything and say anything and depict anything they want to can continue to do that. They just won’t do it on Federal property.

This is a mild amendment that sends a message to Hollywood.

I hope my colleagues will support it.

Mr. LEAHY. Mr. President, the problem with this, of course, is that nobody wants to start out on a movie, knows exactly what form their movie is going to be in in the end. Basically what you are saying is somebody in the Department of Agriculture—for example, if you want to do something on the eastern forest or have eastern forest in the background—some bureaucrat in the Department of Agriculture has to determine, before you even start filming the movie, what the final edited copy of the movie will look like at the end before the decision can be made. That person at the Department of Agriculture might do dairy price supports one day and Block Buster Steven Spielberg movies the next day.

I understand what my friend from Kentucky wants to do. But the best way to censor violence in movies is don’t go to violent movies. But don’t ask somebody at the Department of the Interior who does fishing permits, for example, to determine whether a national forest can be used as a background somewhere in a movie that has not yet been made.

The PRESIDING OFFICER. The time has expired. The question is on agreeing to the amendment. This will be a 10-minute vote. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The amendment (No. 365) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote.

Mr. ROBB. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCONNELL. Mr. President, the next amendment is the BOXER amendment. There are 2 minutes equally divided.

The Senator from California.

Mrs. BOXER. Mr. President, all we do in this amendment is authorize the amount of money we need to fill the need of all those local school districts which have applied for afterschool programs. We know that at 3 o’clock—this is from the FBI—the crime rate goes up and it does not go down until the parents come home from work. We know that afterschool programs will prevent crime.

We also know the reason all these various law enforcement agencies support this is that this is the way to stop crime from happening in the first place.

Mr. BYRD. Mr. President, may we have order.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from California.

Mrs. BOXER. Mr. President, we hope to cut down juvenile crime. What better way to do it than to listen to law enforcement, including the Police Athletic Leagues and the National Sheriffs Association, and so many police chiefs who tell us: Senators, prevention is the name of the game. Once the kids get into the system, we cannot turn them around.

If we will vote for this, we will authorize the appropriate amount of money the local school districts are telling us meets the needs of 1.2 million children. I hope my colleagues will support this amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. This adds $3 billion to programs we already covered in our prevention programs and does it in a way that has more Federal intrusion. I move to table the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to table amendment No. 319.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 53, nays 47, as follows:

(Recall Vote No. 132 Leg.)

YEAS—53

Abraham

Adler

Ashcroft

Bayh

Biden

Bond

Braun

Brownback

Bryant

Bunning

Burns

Byrd

Campbell

Chafee

Coats

Collins

Conrad

Cupp

Craig

Craiova

DeWine

YEAS—47

Akkak

Baucus

Bingaman

Boxer

Cleland

Daschle

Dodd

Durbin

Feingold

Feinstein

Graham

Hagel

Hollings

NAYS—47

Akaka

Baucus

Bingaman

Boxer

Cleland

Daschle

Dodd

Durbin

Feingold

Feinstein

Graham

Hagel

Hollings

The result was announced—yeas 66, nays 34.

The Senator from California.

Mr. HATCH. This adds $3 billion to programs we already covered in our prevention programs and does it in a way that has more Federal intrusion. I move to table the amendment.

The PRESIDING OFFICER. The Senator from California.

Mr. HATCH. This adds $3 billion to programs we already covered in our prevention programs and does it in a way that has more Federal intrusion. I move to table the amendment.

The PRESIDING OFFICER. The result was announced—yeas 66, nays 44, as follows:

(Recall Vote No. 131 Leg.)

YEAS—66

Abraham

Adler

Ashcroft

Bayh

Biden

Bond

Braun

Brownback

Bryant

Bunning

Burns

Byrd

Campbell

Chafee

Coats

Collins

Conrad

Cupp

Craig

Craiova

DeWine

The amendment (No. 365) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote.

Mr. ROBB. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Amendment No. 319

The PRESIDING OFFICER. The next amendment is the BOYD amendment. There are 2 minutes equally divided.

The Senator from North Carolina.

Mr. BOYD. Mr. President, may we have order.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from North Carolina.

Mr. BOYD. Mr. President, we hope to cut down juvenile crime. What better way to do it than to listen to law enforcement, including the Police Athletic Leagues and the National Sheriffs Association, and so many police chiefs who tell us: Senators, prevention is the name of the game. Once the kids get into the system, we cannot turn them around.

If we will vote for this, we will authorize the appropriate amount of money the local school districts are telling us meets the needs of 1.2 million children. I hope my colleagues will support this amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. This adds $3 billion to programs we already covered in our prevention programs and does it in a way that has more Federal intrusion. I move to table the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to table amendment No. 319.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 53, nays 47, as follows:

(Recall Vote No. 132 Leg.)

YEAS—53

Abraham

Adler

Ashcroft

Bayh

Biden

Bond

Braun

Brownback

Bryant

Bunning

Burns

Byrd

Campbell

Chafee

Coats

Collins

Conrad

Cupp

Craig

Craiova

DeWine

The result was announced—yeas 66, nays 34.
have all been willing to at least make concessions so that we can make progress. Senator DASCHLE and I appreciate that. The consent we will ask would provide for two amendments to be brought up in the morning, and it would be the Gordon Smith-Jeffords amendment, followed by the Lautenberg amendment, with a vote on both of those at 10:30. The pending business is still the Harkin amendment, but we would intend at that time to go to the supplemental bill. We are going to try to get a 2-hour time agreement on that. When that is over, we will be back where we stood with the Frist-Ashcroft amendment. That summarizes the agreement.

Mr. President, I ask unanimous consent that with respect to the Gordon Smith-Jeffords amendment there be 60 minutes for debate, equally divided in the usual form on the Gordon Smith amendment and amendment No. 362, the Lautenberg amendment, to run concurrently beginning at 9:30 a.m. Thursday, and all other provisions of the consent agreement of May 14 remain in place and the amendment be laid down tonight prior to the close of Senate business.

I further ask consent that the vote occur on the Gordon Smith-Jeffords amendment just prior to the vote on amendment 362, under the same time restraints and provisions as provided above.

I further ask that the Senate resume amendment No. 355 immediately following the disposition of amendment No. 362.

Mr. LEAHY. Mr. President, reserving the right to object, and I shall not object. That is with the understanding that the Senator from Iowa is represented under the same circumstances as we were able to then.

Mr. LOTT. He still would have priority recognition under the agreement and under the procedures anyway, but also under the agreement that was included. Both sides of this issue don’t want to lose their positions. But this will allow us to do these two amendments and to do the supplemental, and then that will be the pending issue. We know we have to find a way to get to a conclusion.

I want to emphasize now that we will do the supplemental after those first 2 votes.

Mr. REID. Reserving the right to object. Mr. Leader, would it be possible for the unanimous consent request to be amended to reflect that 15 minutes of the time on the Smith amendment be controlled by Senator SCHUMER, that he take 5 minutes of the 15 minutes, and then the remaining 10 minutes are supplemental.

Mr. LOTT. I think I got lost. Is it just a division of how the time would go on your side?

Mr. REID. Yes. One of our Members wanted to control 15 minutes. He is going to use 5 minutes of it and give the rest to Senator LAUTENBERG.

Mr. LOTT. Mr. President, I amend that UC request to that effect, based on the assurance of the intent given by the distinguished Democratic whip. If it turns out that it is somehow or another not fair, we will revisit that tomorrow. I change the UC to include that request.

Mr. ASHCROFT. Reserving the right to object, and I don’t intend to object, I want to indicate that this is about the fourth time we have displaced this amendment, which I have been working on in conjunction with Senator FRIST. This amendment has been the pending business since last Friday. This is not a novel amendment.

I just want to indicate that I intend to get a vote on this amendment. Votes have been taken on amendments on both sides. The right way to resolve any dispute on this amendment is to vote on it. I have been ready to vote on this amendment for quite some time. I think everyone on both sides of the aisle knows what the amendment is about.

I would just indicate that when this amendment comes back up I will persist in expecting the same courtesy that this body has accorded all other amendments to be accorded to this amendment, and I will work hard to make sure we have an opportunity to vote on it.

Mr. LOTT. Mr. President, I again express my appreciation to Senator ASHCROFT for his willingness to agree to this unanimous consent tonight. He is right. He has said, and my friend Senator HARKIN have agreed to put it aside. I think it will be the fourth time we wouldn’t have been able to get this agreement without their cooperation. I understand their determination on both sides of the issue. I appreciate the fact they were willing to agree to this. Did we get an agreement?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 366

(Purpose: To reverse provisions relating to pawn and other gun transactions)

Mr. LOTT. Mr. President, I send an amendment to the desk on behalf of Senators Smith of Oregon and Jeffords.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi (Mr. LOTT), for Mr. Smith of Oregon, and Mr. Jeffords, proposes an amendment 366.

At the appropriate place, insert the following:

SEC. 1. PROVISIONS RELATING TO PAWN AND OTHER GUN TRANSACTIONS.

(a) Notwithstanding any other provision of this Act, the repeal of paragraph (1) and amendment of paragraph (2) made by subsection (c) with the heading ‘‘Provision Relating to Pawn and Other Transactions’’ of section 4 of the title with the heading ‘‘General Firearms Provisions’’ shall be null and void.

(b) COMPLIANCE.—Except as to the State and local planning and zoning requirements for a licensed premises as provided in subparagraph (D), a special licensee shall be subject to all the provisions of this chapter applicable to dealers, including, but not limited to, the performance of an instant background check.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

MORNING BUSINESS

Mr. NICKLES. I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, May 18, 1999, the federal debt stood at $5,593,840,202,404.86 (Five trillion, five hundred ninety-three billion, eight hundred forty million, two hundred two thousand, four hundred dollars and eighty-six cents).

One year ago, May 18, 1998, the federal debt stood at $5,497,225,000,000 (Five trillion, four hundred ninety-seven billion, two hundred twenty-five million).

Five years ago, May 18, 1994, the federal debt stood at $4,590,202,000,000 (Four trillion, five hundred ninety billion, two hundred two million).

Ten years ago, May 18, 1989, the federal debt stood at $1,485,574,000,000 (One trillion, four hundred eighty-five billion, five hundred seventy-four million) which reflects a debt increase of more than $4 trillion—$4,108,266,202,404.86 (Four trillion, one hundred eighty billion, two hundred sixty-six million, two hundred two thousand, four hundred four dollars and eighty-six cents) during the past 15 years.

CHANGES TO THE BUDGETARY AGGREGATES AND APPROPRIATIONS COMMITTEE ALLOCATION FOR H.R. 1141

Mr. DOMENICI. Mr. President, section 314(b)(1) of the Congressional Budget Act, as amended, requires the Chairman of the Senate Budget Committee to adjust the appropriate budgetary aggregates and the allocation for the Appropriations Committee to reflect an amount provided and designated as an emergency requirement pursuant to 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act.

I hereby submit revisions to the 1999 Senate Appropriations Committee allocations, pursuant to section 302 of the Congressional Budget Act, in the following amounts:

<table>
<thead>
<tr>
<th>Current Allocation</th>
<th>Budget allocation</th>
<th>Excess (deficit)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defense discretionary</td>
<td>279,891</td>
<td>271,403</td>
</tr>
</tbody>
</table>

---

In millions of dollars