LAW ENFORCEMENT MANAGEMENT INSTITUTE

USING FEDERAL CRIMINAL STATUTES TO COMBAT LOCAL VIOLENT CRIME: A GUIDE FOR LAW ENFORCEMENT ADMINISTRATORS

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BY

TOM ROBERTS

UNITED STATES ATTORNEY'S OFFICE

FOR THE EASTERN DISTRICT OF TEXAS

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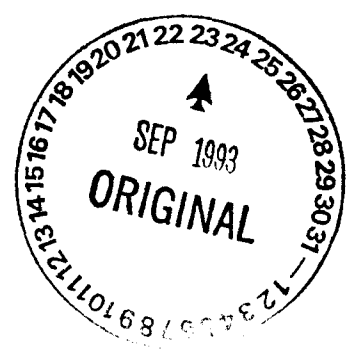

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Introduction

The Texas law enforcement executive is today faced with a most perplexing situation: he has more officers with more technology on the street today than ever before and therefore more criminals are caught, yet the crime problem continues to rise. He then finds himself having to justify to the city council or the county commissioners why more money should be given to his agency and why the crime rate isn't being reduced. More often than not the executive puts most of the blame on another part of the Texas criminal justice system: the prison system. The so-called "revolving door" at Huntsville continues to let out violent and repeat offenders who return to the community to commit other crimes. If only the prison would keep these offenders in prison, the executive reasons, the community would then be safe.

Unfortunately this scenario is played out on an almost daily basis in Texas with little hope of improvement in the immediate future. Statistics indicate that a typical Texas prison inmate serves only 47 days in prison for every year of his sentence or 17% of his time. Once out, 43% of those released return to prison within three years.[1] Parole, once used a reward for desired behavior by inmates, is now exploited to the point of simply being a device to relieve overcrowding and maintain prison populations. Under the rules

of a federal court order the state must maintain a prison population cap of 95% capacity, thus prisoners are released early to make way for other in-coming prisoners. As a rule 150 prisoners are released and/or paroled back into the communities of Texas each day.[2] Alarming as this may be, what is even more alarming is that the individual that is now being released is a more hardened, more violence-prone individual. As the percentage of time served decreases, those convicted of lesser offenses do shorter time or are granted parole while still in county jails. This means that the more hardened criminals inevitably make up an increasing amount of the total prison population and become more likely to be released early to relieve overcrowding.

While the Texas law enforcement executive may feel totally hapless when faced with overwhelming crime problems and the virtual collapse of the criminal justice system in his community, he can take some comfort in the fact that he is certainly not alone. Across the nation community after community is faced with similar problems, some even worse than those in Texas. Nationally federal courts hold some type of control over 42 state prison systems, forcing many to release prisoners early as does Texas.[3] Recent studies indicate just how bad the national crime problem really is. In a report by the International Association of Chiefs of Police statistics indicate that the rate of violent crime - murder, rape, robbery, and aggravated assault - has increased 371% since

1960. In the last 30 years the rate of violent crime has increased nine times faster than the population and is at a point where a citizen of the United States is, on average, the victim of a violent crime every 17 seconds. What is equally alarming is the workload of police agencies across the country. In 1950 there were more than three police officers in the U.S. to respond to every violent crime committed. In 1990 the nation had fewer than one officer to respond to every three violent crimes.[4] The same report goes on to describe how crime, particularly violent crime, impacts the lives of ordinary citizens. It states:

> Violent crimes - murder, rape, robbery, and aggravated assault, cause the greatest and usually irrevocable suffering to victims, constant and often paralyzing anxiety to ordinary citizens, and represent the dominant problem faced by law enforcement agencies. Evidence is irrefutable that violent crime has reached record levels, and that its rise has been virtually uninterrupted in recent decades. All trends indicate that absent immediate and revolutionary interventions, violent crime will continue to increase. America has become less and less safe. Unless reduction of violence is accorded greater priority, American neighborhoods will become even more dangerous.[5]
>
> Violent crime in America has become so widespread, and occurs so randomly, that it profoundly affects the way we think, act, and where and how we live our lives. Violent crime has altered our assessment of the future for ourselves and our families.[6]

Some who study crime have begun to question whether the American people have become so used to violent crime that they have become dulled by its presence. In a speech at the Second Annual FBI Symposium on Addressing Violent Crime through Community Involvement, New York City Police

Commissioner Raymond Kelly remarked:

> "There's no doubt about how violent we've become. The fact is that we have become too tolerant of murder. In New York City, there has somehow arisen a new benchmark for homicides. Over 2,000 homicides a year is considered bad; up to 2,000 is somehow "expected" or "acceptable". The old chestnut of laying things end-to-end to get a sense of proportion becomes frighteningly macabre when you realize that 2,000 bodies laid end-to-end would stretch for over 2 miles.
> "We were not always as tolerant. In an issue of The American Scholar, Senator Daniel Patrick Moynihan writes how shocked the America of 1929 was when seven mobsters were murdered on St. Valentine's Day. 'It would appear,' Senator Moynihan wrote, 'that the society in the 1920's was simply not willing to put up with this degree of deviancy.' But now, it seems, we are. The fact is: our larger cities regularly reach a body count of one-half dozen or more over 2- and 3-day periods, but rarely do we call them "massacres" anymore.
> "Society's increasing tolerance of crime and antisocial behavior, in general, is abetting our own enslavement. The erosion of freedom caused by crime is so pervasive that we are in danger of failing to notice it at all."[7]

Kelly concluded his remarks by stating:

> "The point is: As law enforcement executives and concerned citizens, you can help to deliver a message to Congress. And that message is: Do something!"[8]

Congress has received such a message many times before and, unbeknownst to many people, has taken major steps to "do something" about crime after all. This has been done through two major actions: increased funding for federal law enforcement agencies and additional statutes that target specific criminal acts. For example, by pouring additional funds into the Department of Justice Congress has allowed the hiring of over 800 additional FBI agents and 700 DEA agents

since 1989 alone. The Department has also hired over 1200 federal prosecutors to prosecute the additional increase in criminal cases and has allocated funding for additional federal judges. Accordingly, the prison population of the Federal Bureau of Prisons has increased 62% since 1981 while its funding to house incoming prisoners has increased 470%.[9]

The slow evolution in supporting and cooperating with local law enforcement agencies and targeting specific crimes by the federal government actually began in the early 1980's. In the summer of 1981 Attorney General William French Smith appointed a panel of eight nationally recognized criminal justice experts to closely examine federal, state, and local law enforcement needs. The panel found that cooperation among the three levels of law enforcement (local, state, and federal) was crucial in fighting crime but this cooperation nationwide was uneven, ranging from good in some areas to nonexistent in others. The Attorney General responded to the recommendations of the panel and issued an order instructing every United States Attorney to establish what was termed a Law Enforcement Coordinating Committee in his/her district. The goal of these committees was to "improve the cooperation and coordination among law enforcement groups and thereby enhance the effectiveness of the criminal justice system."[10] Today each of the 93 United States Attorneys has a Law Enforcement Coordinating Committee in place and a full-time Law Enforcement Coordinator whose job it is to assist state

and local law enforcement agencies by providing them with resources from the federal system which will help them on a local level. From this concept has grown many cooperative efforts between federal and state or local law enforcement agencies. Congress responded to the growing crime problem as well and passed a series of acts during the next few years that further enhanced federal and local cooperation, such as the Armed Career Criminal Act of 1984, the Comprehensive Crime Control Act of 1984, the Career Criminals Amendment Act of 1986, and the Firearms Owners' Protection Act of 1986. A segment of each of these acts allowed for specific criminal activity which was once considered a "local" problem to be investigated and/or prosecuted through the federal system. The Sentencing Reform Act of 1984 abolished parole within the federal prison system and substantially reduced and restructured good behavior adjustments, thus an offender sentenced under current federal guidelines must complete 85% of his sentence before being released for any good time provisions compared to an average length of 17% time served in the Texas prison system. This concept has continued with Congress passing even more legislation recently, such as the Gun Free School Zones Act of 1990 and the Anti-Car Theft Act of 1992, which targets specific criminal acts for federal prosecution. This particular legislation will be addressed later in this paper.

As legislation and resources began to come from

Washington regarding violent crime, strategies began to be developed by law enforcement agencies on how to use these resources against increasingly violent criminals. Studies indicated that crime, particularly violent crime, was most often centered around two factors: firearms and drugs. Typically, offenders used firearms as the weapon of choice when a weapon was displayed and one 1986 study indicated that over half (54%) of all state prisoners incarcerated reported that they were under the influence of drugs or alcohol or both at the time they committed the offense for which they were sentenced.[11] It was felt by many police administrators then, and still many today, that if these two factors were reduced or somehow impacted, overall crime rates would then fall. If the punishment for using a firearm while committing a crime was increased substantially, then the incentive for the offender would be to not use a firearm. If the penalty for drug possession or drug trafficking was severe, then offenders would be less likely to use or traffic in drugs. If offenders still chose to use firearms or traffic in drugs then they would be incarcerated for a longer time period, thus their removal from society would make everyone safer. This strategy, right or wrong, continues today in many law enforcement agencies. Whether it is an effective strategy may be open to argument but the fact remains that because of it, and the influence exerted onto the Congress and state legislatures by the public, there are many laws available that

target such offenses. Arguably the strategies of targeting firearms violations and drug violations of the past decade may not have been as successful as had been hoped and perhaps community policing is the proper strategy for today's crime problem. Until the community policing concept is properly defined and in place, however, the police administrator must still deal with violent crime and the drug problem in his community and thus should still seek to use all resources that are available.

Since the early 1980's there has been a tremendous shift in federal law enforcement toward better communication and cooperation with local law enforcement. New federal statutes are replete with mandatory minimum sentences for offenders that guarantee much stiffer prison sentences than through the state system. This paper will focus on the use of federal statutes in combatting local violent crime and will examine the federal resources that are available to the local police administrator. It will examine the federal initiatives and statutes, particularly those in the areas of firearms violations and drug trafficking violations, that have the most impact on violent crime. It will also examine, when possible, the overall effectiveness of these initiatives on the local crime problem where they were implemented. By using these federal initiatives and statutes, whether alone or coupled with community policing strategies, and taking advantage of the current trend of cooperation with federal law

enforcement agencies, the law enforcement administrator can combat local crime more effectively and have much more impact on the crime problem in his community.

Firearms Violations

One of the earliest initiatives used by local and federal law enforcement agencies to combat local violent crime was through a program called "Project Achilles". The strategy behind Project Achilles was that many of the most violent criminal offenders were in fact repeat offenders with felony convictions. As convicted felons, it was illegal for them to be in the possession of a firearm under the provisions of the Armed Career Criminal Act of 1984. Although arrested for a relatively minor offense, should they be in possession of a firearm at the time, more severe federal prosecution was possible with a mandatory fifteen year sentence, thus the firearm became their "Achilles tendon", i.e., their weak point. Though effective, the Project Achilles initiative was somewhat limited in that only felons who had a minimum of three previous convictions for burglary or robbery were eligible to be prosecuted under the program. (The statute has now been expanded and will be discussed in detail later in this paper.) Results were still significant, however. One Project Achilles program in Miami, Florida targeted career criminals for prosecution and set up a joint federal/local

task force to identify, arrest, and prosecute habitual offenders. A study of 400 offenders arrested by the task force showed that with the new federal statute there was a 71% increase in the number of offenders held without bond or failing to post bail and a 59% increase in prison sentences given to the offenders.[12] While it may be difficult to declare with certainty that the Project Achilles program had a significant impact on overall crime, its initial impact meant the imprisonment for fifteen years of thrice convicted felons who were walking the streets with a firearm; felons who obviously had not been rehabilitated by previous prison sentences. Another important part of the Project Achilles program that could not be measured was that it was one of the first long-term cooperative efforts between local and federal law enforcement agencies. The provisions of the new statute allowed for this cooperation and the agencies had responded.

In 1986 Congress amended the Armed Career Criminal Act of 1984 by passing the Career Criminals Amendment Act, further expanding the federal government's role in combating violent crime. When introducing the new legislation the bill's sponsor, Senator Arlen Specter, pointed out just how effective the previous legislation had been in dealing with convicted robbers and burglars by stating that "the time has come to broaden that definition so that we may have a greater sweep and more effective use of this important statute."[13] The new amendment deleted the specific offenses of 'burglary and

robbery' and substituted the phrase 'for a violent felony or a serious drug offense, or both'. This lifted the previous restrictions on the statute and substantially broadened its use against felons. Congress also incorporated the provisions of the act into the Federal Criminal Code where it is now found under Section 924(e) of Title 18 United States Code.

In March, 1991 Attorney General Dick Thornburgh announced a second federal initiative to combat local violent crime on the federal level. Project Triggerlock was designed to target the most violent criminal offenders in the community and prosecute them in federal court under the expanded provisions of Section 924(e). In announcing the program Thornburgh stated that it was "a comprehensive effort to use federal laws pertaining to firearm violence to target the most dangerous violent criminals in each community and put them away for hard time in federal prisons."[14] He further expressed the need for cooperation between local, state and federal agencies by saying, "Project Triggerlock is not intended to compete with or supplant the traditional local response to violent crime. Rather, it is intended to assist state and local authorities in this area of enforcement by providing for complementary federal prosecutions."[15] He went on to direct that the FBI set up violent crime task forces with local law enforcement agencies and that every United States Attorney give top priority in prosecuting Triggerlock cases.

Under the expanded guidelines of Section 924(e) almost

all three time convicted felons can be prosecuted in federal court if found in the possession of a firearm. Since the statute had been expanded to include "violent felonies" or "serious drug offenses" the impact of the initiative was tremendous. Under current case law the following felonies are classified as violent felonies for purposes of Section 924(e):[16]

Robbery	Assault w/deadly weapon
Murder	Voluntary manslaughter
False Imprisonment	Involuntary manslaughter
Felony battery	Vehicular manslaughter
Extortion	Possession of a silencer
Rape	Assault w/intent to rape
Arson	Escape with force
Mayhem	Kidnapping

Structural burglary (residential or commercial but not vehicular)

Thus any offender found in the possession of a firearm who has three final convictions for any of the above felonies faces a fine of up to $25,000 and a **mandatory** fifteen year sentence. The act goes on to forbid the trial court from reducing any of the prison sentence and since parole has been abolished in the federal system, the offender must spend the entire fifteen years in prison before being released.

Similar legislation under Section 922(g) of Title 18 U.S.C. allows for the prosecution of felons even though they have not been convicted of any of the above listed 'violent' felonies. Under 922(g) an offender is subject up to ten years in prison if he receives or possesses either a firearm or ammunition and is classified in at least one of the following categories:

a. a convicted felon (for any crime)
b. a fugitive from justice
c. an unlawful user or addicted to any controlled substance
d. been adjudicated as a mental defective or committed to a mental institution
e. illegally or unlawfully in the United States
f. discharged from the Armed Forces under dishonorable conditions
g. having been a citizen of the United States, renounced his citizenship

Sentencing under this section does not provide for a mandatory prison term as does 924(e) and the trial court may depart downward from the ten year term. However the lack of parole in the federal system assures that the offender will do a substantial part of his sentence and be removed from the street for a much longer time period than were he to be sentenced in state court.

Although the Project Triggerlock program has only been in existence less than three years, figures generated by the program are impressive. Figures released by the Bureau of Alcohol, Tobacco and Firearms indicate that for the period of April 10, 1991 through April 30, 1993 there have been 12,833 cases filed with 7,753 defendants convicted thus far. The average prison sentence given those convicted was 94 months or 7.8 years. Texas leads the nation in those charged with 1454.[17] While 7.8 years may not appear to be a significant amount of time in prison, it must be remembered that in order to receive that same sentence in a Texas prison the offender would have to be sentenced to a term of 46 years, based on the current ratio of 17% of sentenced time versus actual time

served. Statistics recently released by the Dallas Violent Crime Task Force mirror those from throughout the nation. The Task Force, comprised of federal agents and local police officers, has arrested 344 fugitives since March, 1992. Thirty-seven offenders have been prosecuted since that time and the average federal prison sentence has been 25 years.[18]

Section 924(c) provides another avenue in which to attack violent crime. It provides that anyone who 'uses or carries' a firearm during a crime of violence or during a drug trafficking crime will receive a mandatory five year prison sentence to be served consecutively to any other sentence. If the firearm is a machinegun or is equipped with a silencer, the penalty is thirty years imprisonment. As in Section 924(e) the trial court cannot suspend or downward depart from the sentence. This particular section can be used to prosecute a multitude of violent criminal offenses since it is very broadly based. For example, the definition of a 'firearm' includes such devices as a starter gun or the frame or receiver of any firearm, the firearm does not have to be loaded or operable at the time of the offense, and a conviction can be obtained even though the firearm itself cannot be produced as evidence. A 'crime of violence' is defined as the use, attempted use, or threatened use of physical force against the person or property of another, thus such offenses as burglary, robbery, or involuntary manslaughter would fall within this section for prosecution.

The courts have repeatedly held that a "drug trafficking crime" is possession of a controlled substance with intent to distribute.[19] One of the most common scenarios in which this statute is applied is in drug trafficking situations where a distributor is caught with a substantial amount of drugs and a firearm. Under the provisions of Section 924(c) the offender is given the mandatory five year sentence just for the possession of the firearm and then has additional time 'stacked' for the drugs possession. Even though the charges regarding the drugs may be dropped or dismissed in court the sentence for the firearm is still mandatory, therefore this section is an excellent tool for the local law enforcement administrator to use.

One of the more widely publicized federal firearms statutes is Section 922(q), better known as the Gun Free School Zones Act of 1990. The statute prohibits the possession or the discharge of a firearm, except in certain circumstances, within 1000 feet of a public, parochial or private school or on the grounds of a public, parochial or private school. The penalty for violating the statute is a fine up to $5,000 and a prison sentence up to five years. Neither the fine nor the prison sentence is mandatory, thus the trial court may sentence the offender to any range up to the five year limit. The intent of the Gun Free School Zones Act was to provide a safety zone around schools so that children could have a degree of safety. While this was done,

it is important for the law enforcement administrator to look at the statute closely to determine what it **doesn't** prohibit. Under the statute a "school" is defined as one that provides elementary or secondary education, thus a local college or junior college is not covered by the statute. Unlike the Texas criminal justice system where an adult is someone who has reached the age of seventeen, the federal system recognizes someone as an adult when they are eighteen. The federal criminal justice system does not have a juvenile system so as a general rule persons under the age of eighteen are not handled in the federal system.

The term "school zone" has been determined to be the real property of the school district and not such property as vehicles, thus the statute could not be applied if a firearm was taken from an individual while on a school bus outside the 1000 feet boundary of the school zone. One aspect of the statute that can be of great assistance to the local police administrator is the fact that the statute does not require that the school be in session for a violation to occur. If a person over the age of eighteen is apprehended with a firearm within a school zone late at night or even while school is out for summer vacation he can still be prosecuted under the statute.[20] Local police administrators should work closely with the local agents of the Federal Bureau of Alcohol, Tobacco & Firearms when enforcing the elements of this act.

The most recent legislation dealing with violent crime is

the Anti-Car Theft Act of 1992 (18 U.S.C. sec. 2119). Passed by Congress in response to a nationwide rash of violent car thefts, the Act took effect in October, 1992. The statute prohibits the theft or attempted theft of a vehicle by force and violence or intimidation and contains two major features:

1. the offender must be armed with a firearm, and
2. the vehicle stolen must have at some time traveled in interstate or foreign commerce

The statute maintains the definition of a firearm as defined in other statutes but requires that the vehicle stolen must have crossed a state or foreign boundary at some time in its history in order to fall within the federal guidelines. For Texas police agencies this requirement should not pose a problem unless the vehicle is a newly manufactured vehicle from the General Motors plant in Arlington. If that is the case then it must be proven that some major component of the vehicle, such as the motor or transmission, was manufactured outside the state and was transported across state lines for assembly. The penalty for carjacking ranges from a base of fifteen years if no one is injured during the offense up to life in prison if a death results from the carjacking.[21]

No statistics are available at this time to verify the effectiveness of the statute since it has only recently taken effect. However the Department of Justice has made the apprehension and prosecution of carjackers a priority. In a letter to all federal prosecutors former Assistant Attorney

General Robert Mueller stated, "Where appropriate, you will want to seek sentences in these cases at the high end of the sentencing guidelines range. Charging additional offenses will further ensure that violent carjackers are subject to prolonged incarceration. Federal prosecutors are urged to work with state and local law enforcement officials in the investigation and prosecution of violent carjackings."[22]

Drug Violations

When local law enforcement officials think of the prosecution of drug violations in the federal judicial system most believe that the case must involve multi-kilo quantities in order to qualify for federal prosecution. While this may have been true at one time, changes in federal drug laws have virtually eliminated such requirements. Federal restrictions on the acceptance of drug cases for prosecution today are usually based on the availability of manpower or other resources needed to investigate and prosecute the cases rather than any threshold amount of drugs. As was true with changes in firearms laws, the laws regarding drug violations underwent a gradual change throughout the 1980's and today cover a multitude of violations with most having severe penalties. And as is true with federal gun laws, if done wisely, the local police administrator can use these laws in a manner that will have a significant impact on the overall crime picture in

his community. When deciding whether to use federal drug laws on a local problem the old adage of "quality versus quantity" should be kept in mind. Many state drug investigations are capped with a massive roundup of drug suspects and the seizure of a certain amount of drugs and possibly some of the suspect's assets. The federal system is simply not structured to allow for such a flood of defendants at one time. The federal system has a seventy day speedy trial statute which requires that a defendant be tried within seventy days of indictment, thus the investigation must be properly planned before arrests and trials take place. A typical federal drug investigation is carried out over a long period of time at a slow, methodical pace. The end result, however, is that the entire drug trafficking operation has been dismantled and the defendants receive lengthy prison sentences with their assets forfeited to the government. In most cases these assets are then returned to the local police agency who assisted in the investigation. Federal drug prosecutions simply allow for more "bang for the buck" than do most state prosecutions.

Federal drug statutes are found under Title 21 of the United States Code, Sections 801-971 and have been consistently up-dated and amended by Congress to keep up with the changing drug scene. Section 841 is the primary statute under which most violations occur. The language of the statute prohibits an individual to knowingly or intentionally "manufacture, distribute, or dispense, or possess with intent

to manufacture, distribute, or dispense, a controlled substance" and lists various penalties and fines that are based on the type and amount of drug possessed.[23] If the suspect has ever been convicted of a felony drug offense the penalties are usually doubled. If he has two previous convictions the penalty is normally life in prison without release. If death or serious bodily injury has resulted from the use of the drug distributed by the suspect then the penalty range is from twenty years to life without release.

Section 843(b) makes it a felony to use a communication facility to facilitate the commission of a felony drug offense and is particularly useful when investigating organized drug rings. A communication facility is defined as 'any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication'.[24] This would include any pagers or cellular telephones which are commonly used by drug traffickers. Each use of the facility is a separate offense punishable by up to four years imprisonment and a fine up to $30,000. If the suspect has one or more final felony drug convictions, the punishment doubles.

Section 848 is the Continuing Criminal Enterprise statute (commonly called the "Drug Kingpin" statute) and is used to prosecute the head of a drug trafficking organization, whether he is the boss of a large drug organization or the head of a

local crack cocaine gang. The penalties range from twenty years to life imprisonment with fines from two to five million dollars. In order to be convicted under this statute the suspect must meet four standards:

1. he must violate a felony provision of the federal drug laws;

2. the violation must be part of a continuing series of violations, i.e., it cannot be a one-time violation;

3. the operation must involve five or more people with the suspect occupying the position of organizer, supervisor, or other position of management; and

4. the suspect must have obtained substantial income or resources from the activity.[25]

The statute is extremely useful when attempting to combat local drug gangs made up of street level dealers who are loosely controlled by one or more suspects. Even though the leader may not actually come into contact with the drugs or have direct dealings with the dealers, he may still be charged under this statute.

This same statute also contains language that allows the rare use of the federal death penalty in two particular instances. If a suspect is engaged in a continuing criminal enterprise and either kills someone himself or orders it done, then he may receive the death penalty. If the suspect, while committing a drug felony, is attempting to flee apprehension and kills a police officer, they may also be sentenced to

death whether they are part of a continual criminal enterprise or acting alone.[26] It is interesting to note that while the statute allows the death penalty, it does not state how this sentence is to be carried out. There are currently three federal prisoners in the nation awaiting execution while the courts and the Federal Bureau of Prisons try to determine just how they are to be executed.

Section 860 is commonly referred to as the Drug Free School Zones law since it prohibits the sale or manufacture of drugs within 1000 feet of a school. It is often teamed with the Gun Free School Zones Act of 1990 [18 U.S.C. sec. 922(q)] with both referred to as the Gun Free/Drug Free School Zones law. It is very similar with Section 922 but it has provisions not contained in the firearms statute. The most notable difference between the two is that Section 860's prohibition of drugs applies to many more locations than does the firearms prohibitions under Section 922. It prohibits the distribution or manufacture of drugs within 1000 feet of public or private elementary, vocational, or secondary schools and also within 1000 feet of a public or private college, junior college, or university, or a playground. It also prohibits drugs within 100 feet of a public or private youth center, public swimming pool, or video arcade facility. The statute goes on to define a "playground" as any outdoor facility (including its adjacent parking lot) that is open to the public and intended for recreation that contains at least

three pieces of equipment intended for the use of children. While a park or a playground is the obvious location of such equipment the language of the statute would also cover such locations as local fast food restaurants and government housing projects where drug activity may be a significant problem. A "youth center" is defined as any recreational facility and/or gymnasium (and its parking lot) that is intended for the use by persons under eighteen years old which regularly provides athletic, civic, or cultural activities, thus the statute would cover both private and public recreational facilities. A "video arcade facility" is any facility that is accessible to persons under eighteen years of age that is intended for the use of pinball and video machines for amusement that contains a minimum of ten (10) pinball and/or video machines.[27] This particular definition would cover video arcades that may be in shopping centers or malls and such locations as pizza shops or other related businesses as long as they have the required number of machines. This statute can be particularly helpful for the local law administrator in combating gang-related problems.

There are several other federal statutes that could be useful when conducting investigations which, when considered alone, are not that forceful but when used in conjunction with other offenses, can translate into considerable prison time for violators. Section 859 doubles the punishment when the defendant distributes drugs to a person under the age of

twenty-one. If the drug trafficker uses a person under the age of eighteen in his drug operation, Section 861(b) doubles the punishment for which he could be sentenced. The penalties are also doubled if the trafficker distributes drugs to someone who is pregnant under Section 861(f), regardless of that person's age.

One of the most widely used sections of Title 21 is Section 881 which provides for the forfeiture of property used in or derived from criminal activities, particularly drug trafficking. Federal forfeiture laws have been in existence since colonial times when they were used to seize the ships of rum runners but it was not until 1984 that the Comprehensive Crime Control Act amended the customs laws to authorize the Attorney General to retain forfeited property for official use or transfer custody or ownership of the property to any other federal, state, or local law enforcement agency. Since the enactment of this legislation millions of dollars have been seized from drug traffickers and forfeited to local law enforcement agencies. If local law enforcement administrators are not using the federal forfeiture program it is an area that certainly should be considered for two reasons: 1) it can provide much needed resources for his agency in the form of cash or equipment, such as vehicles and, 2) it can be part of a "one-two" punch against a drug trafficking organization that will not only leave the traffickers in prison but will also leave them penniless by seizing all of their assets. As

former Attorney General Dick Thornburgh stated, "It is indeed poetic justice when money seized from illegal drug dealing can be used to arrest, convict and jail other drug dealers."[28]

The federal forfeiture program has three basic methods in which property is forfeited: 1) administrative forfeiture, 2) civil judicial forfeiture, and 3) criminal judicial forfeiture. In an administrative forfeiture, the owner of property that is seized is given written notice of the intent by the government to forfeit the property. Notices are also published in local newspapers. If no one comes forward to claim the property within twenty days, it is forfeited to the government without any court action. Administrative forfeitures are commonly used when large cash seizures are made from drug traffickers at highway interdiction stops. Were the trafficker to file a claim of ownership to the money he would have to appear in court and explain how he came to possess it, thus in all likelihood he fails to claim it and the money is turned over to the government. In such situations the government returns 85% of the proceeds to the agency that seized the proceeds, retaining the other 15% to support the asset forfeiture program and to go towards the construction of new federal prisons. If a claim of ownership is filed, then the claim is resolved through a civil judicial proceeding in federal district court. The person filing the claim must post a bond equal to 10% of the forfeited property or $5,000, whichever is less, to show

that he does intend to contest the seizure. Once in court the matter is treated as a civil matter. The government has the burden of persuading the court that the property is forfeitable and the claimant has an opportunity to explain his ownership of the property. The case is decided on the preponderance of the evidence. Should the government win the case and the property be forfeited, the seizing agency is then given an 80% share of the proceeds, the extra 5% being kept to help pay the litigation costs of the government. Criminal judicial forfeitures are done in conjunction with the criminal prosecution of the defendant. For example, if the defendant is found in the possession of a quantity of drugs while driving a car that also contains a large amount of cash, he will likely be prosecuted for the drug violation. If convicted, the same jury may order that the vehicle and the cash be forfeited to the government since they were used during the commission of a drug offense or are proceeds from such an offense. The government then disperses the property to the seizing agency at the rate of 80%.

Local law enforcement agencies have a great deal of discretion regarding the use forfeited property returned by the federal government but there are certain stipulations that must be met. The Department of Justice policy states the property "must be used for the law enforcement purposes stated" and that the property "will increase and not supplant law enforcement resources of that specific state or local

agency.[29] The policy lists nine areas in which the forfeited property may be used:

1. the purchase of vehicles and equipment;
2. the purchase of weapons and protective equipment;
3. the purchase of investigative communications equipment;
4. the payment of salaries and overtime;
5. the purchase of data processing equipment and software;
6. training expenses;
7. travel expenses;
8. reward money; and
9. costs associated with construction, expansions, improvement or operation of detention facilities.[30]

Since the funds received from forfeited property must be used for law enforcement purposes it is important that the law enforcement administrator educate his city councilmen or county commissioners about the program and not allow his budget to be reduced because of funds received from forfeitures nor should he allow the funds to be diverted to a non-law enforcement operation. The Department of Justice policy does not contain any penalties should such an action occur, however it does have the option of not cooperating with the local agency in any future forfeitures, thus the agency could suffer in the long term. The Department of Justice looks upon the initial forfeiture request by the local agency

as a contract and, once forfeited, the property must be used for the purposes stated in the request.

The amount of funds that a local agency receives from a forfeiture case is determined by the amount of participation by the agency. For example, if a municipal police agency assisted the Drug Enforcement Administration with a narcotics investigation and devoted an equal amount of man-hours to the case as did the DEA, it would receive a 50% share of the forfeited funds, less the required 15% to 20% share mandated to the asset forfeiture fund. If the agency contributed a greater proportion of resources to the investigation, its share of forfeited funds would be greater. The percentages to be shared are agreed upon in advance by the agencies involved before the request for forfeiture documents are filed in court. Often times the main federal investigative agency will forego part or all of its share and give the local agency a larger share of the forfeited funds as a gesture of good will for helping out in the investigation. When multiple agencies are involved the shares are generally lower so that each agency can get at least some part of the assets.

The federal asset forfeiture program is not without critics, however, particularly defense attorneys who have launched court and media campaigns to limit or stop the government from seizing assets. Attorneys have systematically filed appeals in courts in hopes imposing such restrictions and one such case eventually reached the United States Supreme

Court which issued its ruling on June 28, 1993. The case, Austin v. United States, originated in South Dakota where a drug dealer, who pled guilty and received seven years in prison, had his mobile home and his auto body repair shop forfeited since he stored and sold narcotics from each location. His appeal was based on a perceived violation of the Eighth Amendment which states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted".[31] Austin's argument was that the seizure of his property was an excessive fine and/or punishment since he had already been sent to prison. The Supreme Court agreed and reversed the decision with Justice Blackmon stating, "We therefore conclude that forfeiture under these provisions constitutes payment to a sovereign as punishment for some offense and, as such, is subject to the limitations of the Eighth Amendment's Excessive Fines Clause."[32] This decision may have a significant impact on future forfeiture cases on both the state and federal level. According to Assistant United States Attorney Gregg Marchessault of the United States Attorney's Office for the Eastern District of Texas, the Department of Justice is studying the decision carefully to determine what course of action to take. His initial opinion is that the decision has the potential to curtail both administrative and civil judicial forfeitures since they would fall under the Court's definition of punishment. Until the matter is resolved he

stated that all matters involving forfeiture on the local level should be closely monitored by the prosecutors in the case and that local law enforcement administrators should seek guidance from their county or district attorney.[33]

CONCLUSION

For the local police administrator the federal criminal justice system offers a ray of hope in what may seem a hopeless situation. Changed laws and changed attitudes now allow for a greater cooperation between federal and local law enforcement agencies, a situation which works to the benefit of the local agency. Congress has seen fit to enact legislation that allows for an increased presence in local crime problems by federal agencies who typically have greater resources than does the local agency. With a prison system that does not allow prisoners to avoid punishment through a lax parole system and one that is generally considered to be head and shoulders above the Texas prison system, federal law enforcement agencies can compliment local agencies in the battle against violent crime. Mandatory minimum prison sentences ensure that criminals will not be allowed back into the community for many years, often for the rest of their life. Federal agencies continue to offer assistance wherever they can, sometimes using older federal statutes to attack

more recent crime problems. For example, armed robbery, long considered a 'local' problem, has now come to the attention of the FBI. By using a statute commonly referred to as the "Hobbs Act"[34] repeat, violent offenders are being prosecuted in federal court. The statute prohibits the interference with commerce by threats or violence, regardless if the suspect used a firearm or not. Since every convenience store or business is involved in some way with interstate commerce, the statute can be applied to practically every armed robbery. The Dallas Violent Crime Task Force uses this statute in the majority of its prosecutions to target local violent offenders and as Assistant United States Attorney Mike Uhl of Dallas stated, the federal prosecution is the "perfect example of where the government can step in and provide resources to supplement the state system."[35]

The federal criminal justice system is certainly not a panacea for the ills of the Texas criminal justice system. It too has its shortcomings. But by carefully using the strengths of the system and targeting the most violent and dangerous offenders in the community, the local police administrator can have a significant impact on the overall crime problem in his jurisdiction.

Endnotes

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3."The Texas Prison System" Texas Crime, Texas Justice, 90.

4.The International Association of Chiefs of Police, Violent Crime in America: Recommendations of the IACP Summit on Violent Crime (Washington, D.C., 1993), 1.

5.Ibid., 9.

6.Ibid., 1.

7.Raymond W. Kelly, "Toward a New Intolerance of Crime and Violence," F.B.I. Law Enforcement Bulletin (July 1993): 16.

8.Ibid., 19.

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12.J.S. Farrell and J.J. Vince, "Cost Effective Pursuit of the Career Criminal" Police Chief, March 1991, 39-40.

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14.Press release by Attorney General Dick Thornburgh, United States Department of Justice, Washington, D.C., 26 March 1991.

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23.21 U.S.C. sec. 841(a) (1984)

24.21 U.S.C. sec. 843(b) (1984)

25.21 U.S.C. sec. 848 (1984)

26.Ibid.

27.21 U.S.C. sec. 860 (1984)

28.Memorandum by Cary Copeland, Director, Executive Office for Asset Forfeiture, U.S. Department of Justice, Washington, D.C., 14 June 1990.

29.U.S. Department of Justice, Executive Office for Asset Forfeiture, A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies (Washington D.C.: U.S. Department of Justice, 1990), 4.

30.Ibid.

31.U.S. Const., Amdt.8.

32.Austin v. United States, No. 92-6073 (8th Cir. June 28, 1993)

33.Marchessault, Gregg, Assistant United States Attorney, Eastern District of Texas, Tyler. Interview by author, 22 July 1993.

34.18 U.S.C. sec. 1951 (1984)

35.Task Force Unites Police, FBI Against Area's Violent Robbers, Dallas Morning News.

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