Section-by-Section
"Combating Violent and Dangerous Crime Act"

§ 1 – Short Title.

§ 2 – Bank Robbery and Related Crimes.

Amending Definition of Attempted Bank Robbery

Amends the definition of "attempted bank robbery" under 18 U.S.C. § 2113(a) to clarify that the statute punishes ordinary "attempt" offenses, that is, the offender (1) intended to commit bank robbery and (2) took a "substantial step" toward carrying out that intent. See, e.g., United States v. Crawford, 837 F.2d 339 (8th Cir. 1988) (defendant who obtained a ski mask, gloves, weapon, and getaway car, visited the area of the bank he planned to rob, told others about his plan, and was stopped by police driving to the bank, engaged in a "substantial step" supporting his attempted bank robbery conviction).

Legislatively overrules cases that require actual rather than planned violence or intimidation for attempted bank robbery, and fixes a circuit split on the issue. See United States v. Thornton, 539 F.3d 741, 746-47 (7th Cir. 2008) (recognizing the circuit split; requiring actual violence or intimidation for an attempt); compare United States v. Wesley, 417 F.3d 612, 618 (6th Cir. 2005) (rejecting interpretation that the statute "require[s] proof that a defendant actually confronted someone in the bank before he [can] be convicted of attempted robbery."); United States v. Moore, 921 F.2d 207, 209 (9th Cir. 1990) ("Police are not required to delay arrest until innocent bystanders are imperiled.").

In Thornton, the defendant—holding the bank's exterior door handle while wearing a mask and carrying a duffle bag with a machine gun in it—ran away before he could enter the bank and rob it because a customer confronted him. The police arrested him and recovered his disguise, the duffle bag, and the gun. He admitted that he planned to rob the bank at gunpoint. The appellate court reversed his attempted robbery and firearm convictions because he had not yet used or threatened anyone at the bank with violence, though he fully intended to.

In United States v. Bellew, 369 F.3d 450, 453-56 (5th Cir. 2004), the defendant entered a bank wearing a disguise and carrying a briefcase containing a gun, instructions on how to rob a bank, and a robbery demand note. He was arrested before he could commit the robbery and confessed that he intended to rob the bank. The appellate court reversed his attempted robbery and firearm convictions because he had not threaten anyone.

Adding a Conspiracy Provision to the Statute

Adds a conspiracy provision to the bank robbery statute and punishes conspiracy offenses to the same extent as substantive and attempt offenses.

Unlike many other federal criminal statutes, the bank robbery statute does not include a conspiracy provision; consequently, prosecutors must rely 18 U.S.C. § 371 (a general conspiracy statute that limits imprisonment at 5 years) for conspiracies to commit bank robbery, even for armed and violent offenses. This is unlike comparable offenses, such as Hobbs Act robbery. See

18 U.S.C. § 1951(a) (punishing conspiracy offenses to the same extent as substantive and attempt offenses).

§ 3 – Protection of Officers and Employees of the United States.

Under 18 U.S.C. § 111, it is a crime for someone to forcibly assault, resist, oppose, impede, intimidate, or interfere with a federal law-enforcement officer engaged in or on account of the performance of his or her official duties. A defendant can be sentenced for up to 20 years in prison for violating this provision of the code.

Most courts throughout the United States read § 111 as a general-intent crime rather than a specific-intent crime. This means that a prosecutor only has to prove that a suspect knowingly assaulted a person who happened to be a federal officer, not that the suspect knew he or she was impeding the performance of that officer's duties. This is the correct interpretation of § 111.

Three circuit courts of appeal, however – the First, Fifth, and Tenth Circuits – have issued opinions containing language indicating their views that § 111 is a specific-intent crime. See United States v. Caruana, 652 F.2d 220 (1st Cir. 1981); United States v. Taylor, 680 F.2d 378 (5th Cir. 1982); and United States v. Simmonds, 931 F.2d 685 (10th Cir. 1991); compare United States v. Kimes, 246 F.3d 800 (6th Cir. 2001) ("Categorizing [section 111] as a general intent crime furthers the congressional objective: If a person acts in a manner which is assaultive toward a federal official, without specifically intending harm or the apprehension of imminent harm, the official still would be impeded in the performance of his official duties."). This provision corrects the circuit split that currently exists as to whether § 111 is a specific-intent crime or a general-intent crime.

The bill also ensures that § 111 is not misread in the future as overturning Feola v. United States, 420 U.S. 671 (1975), which held that a defendant can be convicted under § 111 without knowing the victim's status as a federal law-enforcement officer, usually meaning the victim was an undercover officer.

§ 4 – Vehicular Hijackings (Carjackings).

Increasing the Statutory Maximum Imprisonment Term for Carjacking

Increases the statutory maximum imprisonment term from 15 to 20 years for carjacking under 18 U.S.C. § 2119(1).

Carjacking is a type of robbery offense. Hobbs Act robbery, 18 U.S.C. § 1951, bank robbery, 18 U.S.C. § 2113, and robbery involving controlled substances, 18 U.S.C. § 2118, for example, are punishable by imprisonment for up to 20 years. Carjacking is typically more violent and/or involves perilous, high-speed vehicular flight.

Providing a Statutory Enhancement Increasing the Maximum Imprisonment Term if the Offender Uses a Dangerous Weapon in Committing or Attempting to Commit Carjacking

Provides a statutory enhancement that increases the maximum imprisonment term to 25 years if the offender uses a dangerous weapon or device in committing, or in attempting to commit, carjacking.

The statute punishing bank robbery, for example, has a statutory enhancement that increases the maximum term of imprisonment to 25 years if the offender uses a dangerous weapon or device in committing, or in attempting to commit, the offense (see 18 U.S.C. § 2113(d)). Many, if not most, carjacking offenses involve the use of a weapon.

Increasing the Statutory Maximum Imprisonment Term for Carjackings Resulting in Serious Bodily Injury

Increases the statutory maximum imprisonment term from 25 to 40 years for carjackings that result in "serious bodily injury," which includes conduct that would violate 18 U.S.C. §§ 2241, 2242 (sexual assault crimes) if committed in the special maritime and territorial jurisdiction of the United States.

Carjacking is inherently violent and perilous, and death is a foreseeable consequence of the offense, see section 2119(3) (prescribing punishment if death results). The offender's taking of the car is itself a dangerous act, and high-speed vehicular flight and perilous police pursuits are common.

The sexual assault crimes referenced in §§ 2241 and 2242 are punishable by up to life imprisonment. Drug offenses under 21 U.S.C. 841 that result in unintended serious bodily injury or death are punishable by imprisonment for not less than 20 years or more than life.

§ 5 – Penalties for Firearms Offenses.

In United States v. Davis, 139 S.Ct. 2319 (2019), the Supreme Court held that the "residual clause" in 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague and concluded that a conspiracy to commit crime of violence does not support a § 924(c) conviction. In Davis, the defendants used and brandished a loaded sawed-off shotgun in several gas station robberies—the object of their conspiracy.

The statute would categorically include "a conspiracy, or an attempt, to commit an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another" as a predicate offense for a § 924(c) conviction. Congress would therefore plainly state that it wants to include categorically conspiracy and attempt offenses in the statutory definition for "crime of violence" under § 924(c).

By specifically including attempt offenses, the statute would also fix and forestall circuit splits. See, e.g., United States v. Walker, 990 F.3d 316, 324-25 (3d Cir. 2021) (the Third, Fifth, Seventh, Ninth, and Eleventh Circuits have all held that "attempted" Hobbs Act robbery is categorically a "crime of violence" under the elements clause of § 924(c), while the Fourth Circuit holds otherwise).

In United States v. Taylor, 979 F.3d 203 (4th Cir. 2020), the defendant and his cohort—armed with a loaded pistol—shot and killed the victim during an attempted robbery, and he was convicted for a § 924(c) offense predicated on the fatal robbery attempt. The Fourth Circuit, however, reversed the § 924(c) conviction, "hold[ing] that attempted Hobbs Act robbery is not 'categorically' a 'crime of violence.'" Taylor, 979 F.3d at 210.

§ 6 – Candy-Flavored Drugs.

Manufacturers and traffickers of marijuana edibles and fentanyl and other illicit drugs are marketing and distributing these highly dangerous drugs as packaged candy (Nerds, Skittles, etc.). For years, there have been reports of children, even younger than 6 years old, overdosing on these drugs due to edible consumption.

This provision is the language of the 2017 Grassley-Feinstein Protecting Kids from Candy-Flavored Drugs Act, which has not been reintroduced as a bipartisan measure this Congress.

The language amends the Controlled Substances Act to provide enhanced penalties for marketing candy-flavored controlled substances to minors.

§ 7 – Establishing a Categorically Violent Means of Kidnapping Under 18 U.S.C. § 1201(a).

Because it is theoretically possible to violate 18 U.S.C. § 1201(a) in a nonviolent way—i.e., kidnapping by persuasion or deception, courts will continue to find that violent kidnappings are not "crimes of violence." This will lead to the under-punishment of serious, forcible kidnappings—notably when the offender uses a gun. Section 2(a) specifically separates persuasion kidnappings and forcible kidnappings, thus creating an offense that categorically qualifies as a "crime of violence."

Kidnapping under § 1201(a) is ordinarily violent—and the offender is usually armed, but as currently written and interpreted the statute cannot support a firearm conviction under 18 U.S.C. § 924(c), which allows increased punishment for the commission of a violent crime with a firearm. Appellate courts have recently concluded that the federal kidnapping statute includes means that do not require the use, threatened use, or attempted use of physical force because the offense may be committed by inveigling or decoying—i.e., kidnapping by "deceit" or "trickery," and the victim can even be held or confined by "mental restraint." See United States v. Gillis, 938 F.3d 1181 (11th Cir. 2019); United States v. Walker, 934 F.3d 375 (4th Cir. 2019); United States v. Jenkins, 849 F.3d 390 (7th Cir. 2017).

In Walker, the defendant was convicted for a § 924(c) offense based on kidnapping. Although he abducted the victim by threatening and brandishing a gun, the firearm conviction was reversed because under § 1201(a) a person can be kidnapped by "nonphysical, nonforcible means." In Jenkins, the defendant also committed a kidnapping with a gun and was convicted for a § 924(c) offense; however, the firearm conviction was reversed because the federal kidnapping statute does not always require as an element, the use, threatened use, or attempted use of physical force. Similarly, in Gillis, the defendant's conviction for a violent felony—based on his

attempt to kidnap and rape an 11-year-old girl—was reversed because § 1201(a) could be violated by inveigling or decoying, conduct that does not require a physical, forcible means.