Section-by-Section
"Combating Violent and Dangerous Crime Act of 2020"

§ 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 – Removing the Common-Law Year-and-a-Day Limitation on Indictments for Federal Crimes Resulting in the Death of the Victim.

This provision formally abolishes the year-and-a-day rule for federal criminal offenses.

Under the common law, "no defendant could be convicted of murder unless his victim had died by the defendant's act within a year and a day of the act." Rogers v. Tennessee, 532 U.S. 451, 453 (2001). The rule dates back to the 13th century when it served as a statute of limitations for private actions for murder as a proxy

for causation. Its primary justification was that medical science was not then capable of establishing the cause of the victim's death when significant time had elapsed between the victim's injury and his death.

Many states, recognizing the futility of a causation rule linked to 13th-century medicine, have abolished it by legislation or judicial fiat. See State v. Rogers, 992 S.W. 2d 393, 397 n.4 (Tenn. 1999) (citing examples); Emily S. Wilbanks, *The Murder Rule that Just Won't Die: The Abolished Year-And-A-Day Rule Continues to Haunt the Florida Courts*, 60 FLA. L. REV. 735, 748-751 (2008) (same), available at http://scholarship.law.ufl.edu./flr/vol60/iss3/6.

In 1909, Congress enacted the federal murder statute, now codified at 18 U.S.C. § 1111. Neither the text of the statute nor the legislative history discussed the year-and-a-day rule. But courts have operated on the presumption that Congress in 1909 intended the murder statute to retain the common law procedures, including the year-and-a-day rule. See United States v. Chase, 18 F. 3d 1166 (4th Cir. 1994) (finding no evidence that Congress intended to override the decision in Ball and abrogate the year-and-day rule); Merrill v. United States, 599 F.2d 240, 241-42 (8th Cir. 1979).

As today's medical technology advances, however, more assault victims are surviving for extended periods of time before succumbing to their injuries. The case results are tragic. See United States v. Stoney End of Horn, No. 13-cr-10062 (D.S.D. Oct. 14, 2014) (where defendant severely beat victim and shattered all the bones in her face resulting in terrible headaches, impaired vision, and problems with balance which eventually led to a coma but victim died 21 months after the assault, and jury found based on uncontroverted medical evidence that defendant's assault caused victim's death, district court vacated the murder conviction based on the year-and-a-day rule).

§ 4 – 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.

§ 5 – Vehicular Hijackings (Carjackings).

Striking Superfluous Element from the Statute

Strikes from 18 U.S.C. § 2119 the superfluous, additional "intent element," requiring that in addition to proof that the offender took a car by violence or intimidation, the evidence must also establish that he acted "with the intent to cause death or serious bodily harm" at the precise moment he took or demanded the car. See United States v. Harris, 420 F.3d 467, 475 (5th Cir. 2005) (holding that there must be "a nexus between the intent to kill or harm and the taking of the car at the precise moment of either the taking of the car or the threat to do so.") (emphasis added); see also United States v. Bailey, 819 F.3d 92, 95 (4th Cir. 2016) ("To satisfy the intent element, the government must show that the defendant unconditionally intended to kill or seriously injure the car's driver[.]") (emphasis added).

Carjacking is a type of robbery wherein an automobile is the object of the crime. Other types of robbery, see, e.g., 18 U.S.C. § 1951 (Hobbs Act robbery), 18 U.S.C. § 2111 (robbery within the special maritime and territorial jurisdiction of the United States), 18 U.S.C. § 2113 (bank robbery), and 18 U.S.C. § 2118 (robbery involving controlled substances), only require that the offender take property from the victim by force and violence, or by intimidation. There is no additional requirement that the evidence must show, beyond a reasonable doubt, that the offender acted with the "intent to cause death or serious bodily injury" at the precise moment he took the property from the victim. Imposing this requirement protects those who commit or threaten violence to get an automobile unlawfully and later claim that they had no intent to kill or badly injure the victim at the precise moment they took the car.

The superfluous, additional requirement has produced logically strained defenses, and even absurd results. For example, in Harris, the defendant shot the victim to death and then took his car, but he testified at trial that he took the vehicle as a "larcenous afterthought" to the murder. 420 F.3d at 468, 478. The appellate court reversed the carjacking conviction, reasoning that a rational jury could not have found beyond a reasonable doubt that, "at the precise moment Harris demanded or took control over the car by force and violence or by intimidation, Harris intended to cause [the victim's] death or serious bodily harm."

In United States v. Applewhaite, 195 F.3d 679, 686 (3d Cir. 1999), the superfluous element also led to an absurd result. The defendants beat the victim unconscious with a bat, hoisted him into the back of his van, and drove away. During the drive, the victim regained consciousness and was then shot three times. The appellate court reversed the carjacking conviction because the evidence "failed to establish the required nexus between the assault and the taking. Rather, the record establishes that the van was taken as an afterthought in an attempt to get [the victim's] limp body away from the crime scene. That is not sufficient to establish the intent required under § 2119." Id. at 685 (emphasis added).

Adding a Conspiracy Offense to the Statute

Adds that an offense under 18 U.S.C. § 2119 includes a conspiracy to commit carjacking, and prescribes the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy. The statute currently only covers substantive and attempt offenses.

Unlike many federal violent crime statutes, see, e.g., 18 U.S.C. § 1951(a) (conspiracy to commit Hobbs Act robbery punished in same fashion as substantive and attempt offenses); 18 U.S.C. §1201(c) (conspiracy to commit kidnapping; same), the carjacking statute does not have a conspiracy provision; consequently, prosecutors must rely on 18 U.S.C. § 371 (a general conspiracy statute that caps imprisonment at 5 years) for an inherently dangerous and violent offense. Comparable offenses are punished much more severely.

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.

§ 6 – 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.

§ 7 – 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.

§ 8 – 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.