SEC. ___ . TECHNICAL AND CLERICAL AMENDMENTS TO CORRECT OBSOLETE CROSS-REFERENCE.

(a) CROSS-REFERENCE AMENDMENTS.—Section 382 of title 10, United States Code, is amended by striking "section 175 or 2332c" in subsections (a), (b)(2)(C), and (d)(2)(A)(ii) and inserting "section 175, 229, or 2332a".

(b) CLERICAL AMENDMENTS.—The heading of such section, and the item relating to such section in the table of sections at the beginning of chapter 18 of such title, are each amended by striking the fourth, fifth, and sixth words.

Section-by-Section Analysis

This proposal would make a technical amendment to section 382 of title 10, U.S. Code, to reflect that section 2332c of title 18, U.S. Code, was repealed by section 201(c)(1) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105-277) and replaced by a new section 229, as added by section 201(a) of that Act,

This proposal would also make a technical amendment to section 382 of title 10, U.S. Code, in conformance with section 1416(c)(2)(A) of the Defense Against Weapons of Mass Destruction Act of 1996 (the National Defense Authorization Act for Fiscal Year 1997; Public Law 104-201; title XIV, subtitle A), as amended by section 605q of the Economic Espionage Act of 1996 (Public Law 104-294) and section 104 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107-56), which enacted section 2332e of title 18, U.S. Code. Section 2332e authorizes the Attorney General to request the Secretary of Defense to provide assistance under section 382 of title 10, U.S. Code, in support of Department of Justice activities relating to the enforcement of section 2332a during an emergency situation involving a weapon of mass destruction.

Changes to Existing Law: This proposal would make the following changes to section 382 of title 10, United States Code:

10 U.S.C. § 382

§ 382. Emergency situations involving ~~chemical or biological~~ weapons of mass destruction

(a) In General. - The Secretary of Defense, upon the request of the Attorney General, may provide assistance in support of Department of Justice activities relating to the enforcement of section 175 ~~or 2332c~~, 229, or 2332a of title 18 during an emergency situation involving a

biological or chemical weapon of mass destruction. Department of Defense resources, including personnel of the Department of Defense, may be used to provide such assistance if –

(1) the Secretary of Defense and the Attorney General jointly determine that an emergency situation exists; and

(2) the Secretary of Defense determines that the provision of such assistance will not adversely affect the military preparedness of the United States.

(b) Emergency Situations Covered. - In this section, the term "emergency situation involving a biological or chemical weapon of mass destruction" means a circumstance involving a biological or chemical weapon of mass destruction -

(1) that poses a serious threat to the interests of the United States; and

(2) in which -

(A) civilian expertise and capabilities are not readily available to provide the required assistance to counter the threat immediately posed by the weapon involved;

(B) special capabilities and expertise of the Department of Defense are necessary and critical to counter the threat posed by the weapon involved; and

(C) enforcement of section 175 ~~or 2332c~~, 229, or 2332a of title 18 would be seriously impaired if the Department of Defense assistance were not provided.

(c) Forms of Assistance. - The assistance referred to in subsection (a) includes the operation of equipment (including equipment made available under section 372 of this title) to monitor, contain, disable, or dispose of the weapon involved or elements of the weapon.

(d) Regulations. - (1) The Secretary of Defense and the Attorney General shall jointly prescribe regulations concerning the types of assistance that may be provided under this section. Such regulations shall also describe the actions that Department of Defense personnel may take in circumstances incident to the provision of assistance under this section.

(2)(A) Except as provided in subparagraph (B), the regulations may not authorize the following actions:

(i) Arrest.

(ii) Any direct participation in conducting a search for or seizure of evidence related to a violation of section 175 ~~or 2332c~~, 229, or 2332a of title 18.

(iii) Any direct participation in the collection of intelligence for law enforcement purposes.

(B) The regulations may authorize an action described in subparagraph (A) to be taken under the following conditions:

(i) The action is considered necessary for the immediate protection of human life, and civilian law enforcement officials are not capable of taking the action.

(ii) The action is otherwise authorized under subsection (c) or under otherwise applicable law.

(e) Reimbursements. - The Secretary of Defense shall require reimbursement as a condition for providing assistance under this section to the extent required under section 377 of this title.

(f) Delegations of Authority. - (1) Except to the extent otherwise provided by the Secretary of Defense, the Deputy Secretary of Defense may exercise the authority of the Secretary of Defense under this section. The Secretary of Defense may delegate the Secretary's authority under this section only to an Under Secretary of Defense or an Assistant Secretary of Defense and only if the Under Secretary or Assistant Secretary to whom delegated has been designated by the Secretary to act for, and to exercise the general powers of, the Secretary.

(2) Except to the extent otherwise provided by the Attorney General, the Deputy Attorney General may exercise the authority of the Attorney General under this section. The Attorney General may delegate that authority only to the Associate Attorney General or an Assistant Attorney General and only if the Associate Attorney General or Assistant Attorney General to whom delegated has been designated by the Attorney General to act for, and to exercise the general powers of, the Attorney General.

(g) Relationship to Other Authority. - Nothing in this section shall be construed to restrict any executive branch authority regarding use of members of the armed forces or equipment of the Department of Defense that was in effect before September 23, 1996.