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## Plan calls for jail time for execs

**In Wall Street speech, the president calls for new checks on corporate fraud.**

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**WASHINGTON** - President Bush's newest plan to clean up corporate America is heavily dependent upon simply exhorting the business elite of the nation to live up to its own better nature.

Mr. Bush's proposal, laid out Tuesday in a Wall Street speech, does contain some potential new enforcement sticks – notably the threat of more time in jail for executives caught in wrongdoing.

But actually convicting company officers of malfeasance has always been a difficult task. And US capitalism is such a complex structure that catching all corner-office crooks is impossible.

These realities, perhaps combined with the MBA president's laissez-faire beliefs, produced an address that calls largely upon American business to heal itself, lest it lose the public trust so crucial to its operation.

"I don't think it's very dramatic," says Cynthia Latta, an economist at DRI-WEFA in Boston.

In his speech, Mr. Bush called for a "new ethic of personal responsibility" in corporate America. He outlined a series of proposals that would double the jail time for executives who break the law and suggested boosting funding for government oversight by 20 percent next year. The president took aim at issue of executive compensation, called on companies to end the practice of making loans to CEOs, and urged the nation's stock exchanges to insist corporate boards be independent. "With strict enforcement and higher ethical standards, we must usher in a new era of integrity in corporate America," Bush said.

It was the third time this year the president has put forth proposals to address corporate malfeasance, and reflects the high stakes – both political and economic – as company after company is found to be manipulating its books.

On the surface, his prescription looks to mirror a traditional GOP approach by emphasizing tough penalties and better law-enforcement over increased regulation and oversight. But the White House is also signaling that it is not far apart from a bill sponsored by Sen. Paul Sarbanes (D) of Maryland moving

through the Senate.

Interviews with law-enforcement experts, however, show just how tough it would be to follow up on one key aspect of the president's plan – the emphasis on criminal treatment for fraudulent executives. Most CEOs can afford some of the best lawyers in the country – many of them former federal prosecutors.

The defense lawyers can ask for delays that stretch into years. And, many times, the CEOs are delving into gray areas of the law involving complex accounting issues well beyond the capability of many jurors to understand. "The key thing is the intent with which it happened," says Frank Velie, a partner at Salans, an international law firm. "Was he cynical or did he have his professional advice?"

Even if the CEO is a crook, catching him will be even more difficult today because of the FBI's new focus on terrorism: The Justice Department can't count on the agency to devote a lot of resources to the case. "There is a huge problem in enforcement resources," says Jack Coffee, a professor at Columbia University Law School.

When the government decides to prosecute a case, it can take years for it to come to trial. For example, four years ago, Cendant Corporation was shocked to discover that it had acquired a company, CUC International, that had inflated itself by \$400 million. Since then, three lower-level workers have pleaded guilty to wire fraud but the president, Kirk Shelton, and the chairman, Walter Forbes, have yet to go to trial.

"It may take the prosecutor three or four years to bring the case and then the defense comes in and says quite reasonably, I need one to two years to get up to speed," says Lawrence Goldman, president-elect of the National Association of Criminal Defense Lawyers in Washington.

In fact, the government itself is not likely to want speedy trials. This year, it rushed to try accounting firm Arthur Andersen and barely won a conviction.

The prosecutors, however, have one advantage: They can threaten to send a college-educated person to jail. That is a powerful inducement to negotiate. "The first thing a defense lawyer says when they walk into the office is how can I keep my guy out of jail, he can't go to jail," says Randall Eliason, a former fraud prosecutor.

Finding the evidence, though, can be difficult. Companies often shred documents, and e-mails are deleted. Computer forensics companies can spend weeks or months trying to retrieve files. "Digital information is so new that a lot of DAs don't know what they have in their hands," says John Wiechman, president of TLSI, Inc., a Dallas-based computer forensics company.

Despite all these obstacles – and the certainty that some CEOs will be acquitted – the government now is likely to be more aggressive in pursuing corporate crooks.