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Locked In

An explosion in the nation's prison population is creating a fiscal black hole for state and federal governments. And the boom has created a powerful corporate constituency to protect prison budgets.

BY W. JOHN MOORE

One million. Justice Department number crunchers guess that the number of inmates in federal and state prisons will reach that milestone around New Year's Day 1995.

No celebration is planned—even by the politicians. Democrats and Republicans alike, who promise that putting enough dangerous people in prison will extinguish America's crime problem. By year's end, the prison system will incarcerate more people than live in Idaho, Rhode Island or any one of eight other states. Imagine guard towers and barbed wire blocking all exits from the city of Dallas.

From 1980-93, the nation's prison population grew 188 per cent, giving the United States the highest incarceration rate in the world. (*See charts, pp. 1785 and 1787.*) "We have an insatiable lust for locking up people," said Alvin J. Bronstein, executive director of the Prison Project at the American Civil Liberties Union (ACLU) in Washington.

Nor is there an end in sight. The population in federal prisons is growing by more than 700 inmates a month, according to the Justice Department. Over the next decade, the federal and state prison population will rise to at least 2.26 million if Congress enacts a pending crime bill that's designed to force murderers, rapists and robbers to serve at least 85 per cent of their sentences, according to a recent study. The study, by the National Council on Crime and Delinquency (NCCD), a nonpartisan research group in San Francisco, warned that its estimate could be too low because it did not consider the effects of "three-strikes-you're-out" laws that put repeat offenders away for life. Several states have enacted such laws, and there is a three-strikes provision in the pending federal crime bill.

The social costs of putting huge numbers of people in prisons across the nation could be immense. "We will have a nation of gulags," said Jerome G. Miller, founder of the nonprofit National Center on Institutions and Alternatives in Alexandria, Va.

And getting a grip on future prison costs is even harder than keeping track of

the number of prisoners. In fiscal 1993, federal and state prison systems spent \$21.3 billion, up from \$14.8 billion in 1985, according to the Criminal Justice Institute Inc. in South Salem, N.Y. The NCCD study estimated that federal and state governments would need another \$351 billion over the next decade to pay for an influx of inmates attributable to provisions in the crime bill.

The tab for prisons will be "astronomical," warned Norman A. Carlson, the former head of the Justice Department's Bureau of Prisons and now criminal justice professor at the University of Minnesota (Minneapolis).

And prison budget figures don't tell the whole story because a growing prison system puts pressure on other government agencies. For example, legal costs stemming from federal prisoners' lawsuits are borne by the Attorney General's office, not by the Bureau of Prisons. Likewise, state attorneys general bear the expense of fighting constitutional challenges brought against their prison systems. Pension benefits for state corrections workers often are paid by other agencies.

Although the swelling prison population hasn't made a dent in the crime rate, it has produced a booming industry. Average daily spending per inmate rose from \$43.54 in 1987 to \$50.22 in 1992, according to the Criminal Justice Institute. Medical costs are way up. So are starting salaries for correctional officers.

Corporate America gets a big piece of the action: Publications for prison officials feature page after page of advertisements for products ranging from riot gear and uniforms to telephones. The prison boom has created a powerful constituency to protect prison budgets.

If prison spending is becoming a fiscal black hole, politicians do not feel much pressure to address the problem because the biggest part of the bill won't be tallied for years. "It's a win-win situation for legislators," said Marc Mauer, deputy director of the Sentencing Project, a nonpartisan Washington research organization. "You can act tough on crime but not have to face the fiscal consequences. In

the long run those costs will be someone else's problem."

Federal and state prison costs are expected to skyrocket as prisoners age and the incarceration of women increases. (For details on the growing female prison population, see box, p. 1786.)

Mandatory sentences imposed in the mid-1980s for federal and state crimes are already keeping many prisoners behind bars longer. In 1986, the average sentence for robbery was four years. By 1991, it was seven and a half years. That trend, coupled with three-strikes provisions, will keep many prisoners behind bars after they reach old age. "We'll need bedpans and walkers, not bars and guards," Carlson said.

A SICK SYSTEM?

Carlson likens the prison system to a balloon. What matters is not just the number of prisoners coming into the system, but how long they stay. "There is a cumulative effect of having all those bodies stacked up. That is how you get these tremendous out-year costs."

The prison buildup since the 1980s, coupled with the pending crime bill, add up to "one of the most significant financial commitments the federal government has ever made," Mauer of the Sentencing Project warned. "And the taxpayer will be paying for this for the next 50 years."

In 1992, state and federal governments added 41,886 prison beds at a cost of \$1.4 billion. But construction costs are only a down payment. "When a legislature decides to spend, say, \$100 million in new construction, it is committing the taxpayers of the state to \$1.6 billion in expenditures over the ensuing three decades," according to the Justice Department's National Institute of Corrections.

Some states find that after building a prison, they can't afford to run it. South Carolina, with the nation's third-highest incarceration rate, spent \$80 million on two prisons but has not opened them because of projected high costs.

Health care is a big worry. In his stump speeches, President Clinton says that if you want guaranteed health care, "go on welfare, go to jail, get elected to Congress or get rich." It's a good line—and true. After decades of litigation, basic health care is a right for prisoners.

But the cost is enormous. And nobody has examined actuarial tables to estimate how the influx of prisoners will affect future health care costs, said Armand Smart, an expert on prison health care at the University of Wisconsin Medical School in Madison. "These costs are huge. And the costs will be borne by our children."



Richard A. Brown

In 1992 alone, governments spent \$1.4 billion to expand prison capacity.

"Prisoners are a very unhealthy subset of the population," Carlson said. Many have ignored preventive medicine. Some have never visited a dentist. Most smoke. A huge percentage have used dangerous drugs, ranging from marijuana to heroin. Others have the AIDS virus.

Mental problems are acute, with more than 35,000 prisoners enrolled in mental health programs last year and another 12,000 in sex-offender programs, according to the Criminal Justice Institute.

"The lifestyle of someone who ends up in prison is one of self-abuse," Smart said. Many develop ailments prematurely. Forty-year-old male prisoners often have heart trouble. And while mammograms for breast-cancer screening are generally recommended for women in their 40s and older, it's recommended that women inmates get a mammogram at age 35.

Older prisoners are a major drain on health care budgets. Nationwide, 44,300 federal and state prisoners were over 55 years old at the end of 1992. In California, a study showed that the 5,500 state prison inmates age 55 and over have annual medical costs of \$60,000-\$80,000 each, compared with \$20,000 for younger inmates. A state prison in Chino, Calif., has a special block for geriatric inmates—nicknamed the Old Man's Dorm—that has done away with bunk beds because inmates are too feeble to climb to the upper bunk.

The benefits of keeping

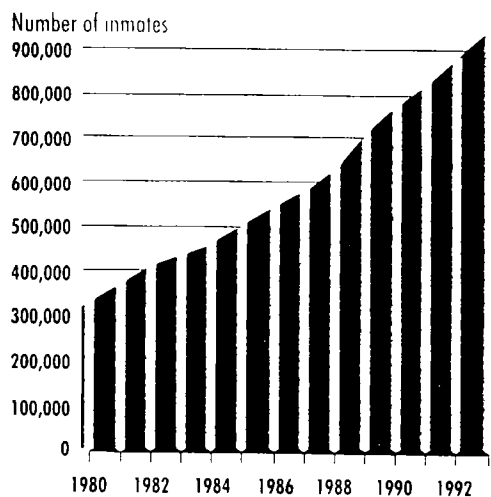
elderly people incarcerated are minimal, prison experts say. Only 2 per cent of inmates over 55 return to prison after their release, according to the Justice Department.

Women prisoners—the fastest-growing segment of the inmate population—have had a major impact on health care costs because of pregnancy, drug dependency, AIDS and other diseases.

"Managing that patient [with multiple health problems] puts a tremendous demand on resources in terms of providing community standard care," said John H. Clark, chief medical officer for the Los Angeles County sheriff and president of the American Corrections Health Services Association.

AIDS looms as a potentially huge cost

GROWTH IN STATE AND FEDERAL PRISON POPULATIONS, 1980-93



SOURCE: Bureau of Justice Statistics

WOMEN BRING PROBLEMS—AND BABIES—TO PRISON

If there is a downside to women's changing role in society, perhaps it can be found in Alderson, W.Va., home of a 1,100-bed minimum-security prison for women.

Built as the first federal women's prison in 1925, this penitentiary in the remote western part of the state is needed now more than ever. From 1987-91, the number of crimes committed by women jumped 16.4 per cent, double the increase in male crime. As a result, the number of women in federal and state prisons surged to 55,365 in 1993, up from 12,200 in 1980.

"Girls and women are casting aside female roles and choosing violent options," Meda Chesney-Lind, a University of Hawaii (Honolulu) criminologist and the author of a recent study on women gang members, told *The Phoenix Gazette*. "The liberation hypothesis

on a pedestal denied them opportunities, but it protected them from some things, including being sent to prison," University of Colorado (Boulder) sociologist Patti Adler said.

"There has been a constricting of judicial discretion, so more women are doing time," said Brenda V. Smith, senior counsel and director of the Women in Prison Project at the National Women's Law Center in Washington.

Many criminologists dismiss as romanticism the notion that the women sent to prison are outlaws who shatter stereotypes just like their counterparts in the corporate suite. Inequality, not liberation, is the culprit, these experts say. Half of women prisoners are black, 43 per cent are victims of physical or sexual abuse and two-thirds had children before they were 18 years old.

"The histories of women prisoners are litanies of victimization," said Denise Johnston, director of the Center for Children of Incarcerated Parents in Pasadena, Calif.

Once they arrive in prison, women pose special problems for authorities. Because women inmates are likelier to have abused drugs than male inmates have, and because many have engaged in prostitution or other risky sexual activity, the incidence of AIDS is higher in women's prisons than in men's. Other problems include high rates of sexually transmitted diseases and increased risks of cervical cancer.

According to Justice Department statistics, 8-10 per cent of women admitted to prison are pregnant, which means that the government is going to pick up the childbirth tab. Moreover, corrections officials must decide what to do with the child. In some prisons, the newborn is taken from the mother within hours of birth.

But public-interest groups have increasingly pressed authorities to let women keep their infants, either in prison or, preferably, in community-based facilities. The Taconic Correctional Facility in Bedford Hills, N.Y., has a 23-bed nursery for infants born in prison, costing approximately \$80,000 a year. "We look at the long-term sav-

ings," Taconic superintendent Bridget P. Gladwin said. None of the approximately 100 women who participated in the program and then were released have returned to prison, she said.

But in most states, the baby is taken from the mother and delivered either to relatives or foster parents.

Infants are only part of the problem in a prison system where 80 per cent of the inmates are mothers, and virtually all of them were the sole support for their children. The current system works on the assumption that a child should not live with a parent who is incarcerated—even in a low-security setting such as a halfway house. Mandatory sentences reduce the chances that mother and child will be reunited. Immigration laws demand that foreign nationals sentenced to more than five years in prison must be deported, with or without their children.

Tracy Huling, a Freehold (N.Y.)-based consultant and an official with the National Network for Women in Prison, says that separating one million children from imprisoned parents will have dangerous repercussions. "There is an intergenerational pattern that we have begun to see that is quite frightening," Huling said. Recent studies show that kids separated from imprisoned mothers are five times likelier to be incarcerated than other children are, she said. "So we are creating a whole new generation at risk."

Demonstration programs in Roxbury, Mass., and San Francisco allowing nonviolent offenders to stay with their children in community-based programs have been effective as lower-cost alternatives to prison. Some of the mothers work, some use food stamps and some collect welfare benefits—all of which cost less than incarceration, Huling said.

Some Members of Congress want to give such programs a shot in the arm. An agreement reached by House-Senate conferees meeting on the crime bill would earmark \$22 million over six years to develop a federal program and five state programs similar to the California and Massachusetts experiments. Nonviolent offenders who are their families' primary caregivers could serve their sentences in supervised homes where they could watch their children.

But in a crime bill larded with punitive provisions, the measure could fall by the wayside.



Richard A. Brown

Brenda V. Smith of the National Women's Law Center
Less judicial discretion means more women behind bars.

includes women who do not operate by a moral code of nice girls."

Some anecdotal evidence buttresses Chesney-Lind's feminist theory of crime. Floridians were shocked when the cold-blooded killer of a German tourist in Miami last year proved to be a woman. Women have started to play a role in the violence-prone drug trade, according to recent studies.

But Depression-era bank robber Bonnie Parker is hardly a role model for most female inmates. Only 32 per cent of women now in prison were incarcerated for violent crimes. The leading offenses are drug possession, followed by drug sales, prostitution and money crimes. And mandatory minimum sentences have forced judges to punish women as severely as men.

"The same attitude that put women

for federal and state prisons. Clark estimated that it would cost \$5.3 million annually just to test the 800-1,000 persons a day who are locked up, however briefly, in Los Angeles County. The drugs needed to treat the county's 600 inmates who have tested positive for AIDS have added \$150,000 to the county's budget for pharmaceuticals, he added. New York state prisons spent \$2 million last year on the anti-AIDS drug AZT.

Future AIDS costs could skyrocket. Of the 5,713 AIDS cases in federal and state prisons on Jan. 1, 1993, almost half were diagnosed in 1992. The number of AIDS deaths in prisons climbed from approximately 200 in 1986 to 702 in 1992.

CUTTING COSTS

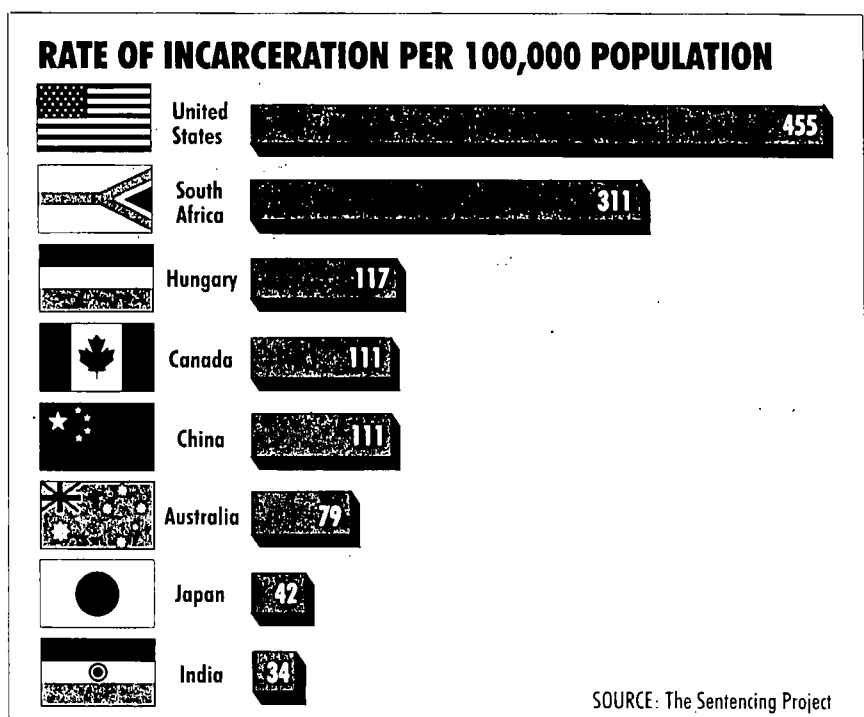
The incarceration craze has provoked a split between conservatives and liberals. But this time there is a bit of role reversal. Now it is liberals who question what kind of bang for the buck the taxpayer is getting from billions of dollars in government spending. There's been no dent in violent crime, and the proportion of killers, muggers and rapists in the prison population has fallen as the number of nonviolent drug offenders has surged. (See chart, p. 1788.) By 1997, it's forecast that 70 per cent of those in the federal prisons will be there for drug offenses.

"Policy makers are going to have to face up to the fact that these are an expensive but not clearly productive use of our resources," said consultant Michael Quinlan, a former head of the Bureau of Prisons.

But conservatives promise results—once their entire plan is implemented. In an influential 1992 article in *Corrections Today*, Eugene H. Methvin, an editor of *Reader's Digest*, promised that doubling the federal and state prison population "to somewhere between 1 million and 1.5 million" while keeping the city and county jail population constant at 400,000, "will break the back of America's 30-year crime wave."

The Clinton Administration has embraced the conservative approach. "Our Administration is committed to pursuing a policy that maximizes the creation of prison space to lock up violent offenders in the most cost-effective and timely manner possible," Bureau of Prisons director Kathleen M. Hawk told the House Judiciary Subcommittee on Intellectual Property and Judicial Administration earlier this year.

The crime bill, now being considered by House and Senate conferees, includes some provisions aimed at underlying causes of crime. But the emphasis is on punishment. The feds would spend \$3 billion to build 10 regional prisons that



would accept inmates from state prison systems. To be able to send inmates to these prisons, states would have to adopt "truth in sentencing" laws requiring many prisoners to serve at least 85 per cent of their sentences. (The bill would also require certain federal prisoners to serve at least 85 per cent of their sentences.) Proponents argue that this approach, along with three-strikes-you're-out laws, will keep bad guys off the street. In 1992, 400,000 people were released from federal and state prisons.

Liberals have long lamented that state and federal officials choose expensive prison-building schemes over less-costly alternatives. The NCCD's study said that federal and state governments could slash their prison and law-enforcement budgets, boost spending on Head Start and youth job programs, and still save \$5.2 billion annually.

Law and order advocates maintain that the benefits of keeping criminals off the street should be deducted from prison costs. Society saves money—everything from insurance to hospital costs—when a dangerous criminal is behind bars.

But conservatives also favor efforts to incarcerate prisoners in the right kind of prison because the costs vary tremendously. The average cost of a bed in a maximum-security prison is \$74,862 a year. The price drops to \$29,034 for a bed in a minimum-security prison.



Marc Maurer of the Sentencing Project
Politicians like to act tough. But who will pay?

Federal prison administrators have taken several steps to reduce costs, including consolidation of various prison sites. Still, the average cost per inmate inched upward in 1993, primarily because of increased salaries for corrections workers, said Robert Newport, the Bureau of Prisons deputy assistant director for administration.

But it's the states that have faced the

biggest squeeze on their budgets, and they have taken the lead in trying to control costs.

North Carolina, in an effort to see that runaway costs don't wreck its budget, has developed a complicated grid to match prisoners' sentences with available cells. The idea is to release less-violent inmates when prisons become overcrowded, while ensuring that the most-dangerous prisoners stay locked up. Although such a system can reduce costs, a similar effort in Minnesota was junked after several prisoners were released early and committed violent crimes.

Many of the states' costs are imposed on them by the federal government or by the judiciary. The prison systems in 42 states currently are operating under court

proach. But by then it could be too late. A network of Wall Street underwriters, architects, builders and developers, corrections officer unions and local communities has developed a huge financial stake in the current system. "Corrections today is a gigantic cash machine," the ACLU's Bronstein said. "There is a correctional-industrial complex."

In fact, some big defense contractors such as Alliant Techsystems Inc., Minnesota Mining & Manufacturing Corp. and Westinghouse Electric Corp. have partially offset the loss of federal spending on weapons by entering the high-technology end of the crime-fighting and prison business.

Every major Wall Street firm has developed a thriving business helping

ments with political clout. In 1990, the California Correctional Peace Officers Association, the prison guards' union, contributed \$1 million to help Republican Pete Wilson become governor. After his election, Wilson began the most expensive prison construction program that any state has ever undertaken; he also supported the union's quest for better retirement benefits.

In 1992, the union contributed \$1 million to political candidates in California, more than the powerful California Teachers Union, which has 10 times more members, and second only to the California Medical Association. This November California voters will vote on a three-strikes-you're-out proposal. So far the guards' union is the initiative's biggest financial supporter, with \$51,000 in contributions, according to state campaign records compiled by the California affiliate of the lobby group Common Cause.

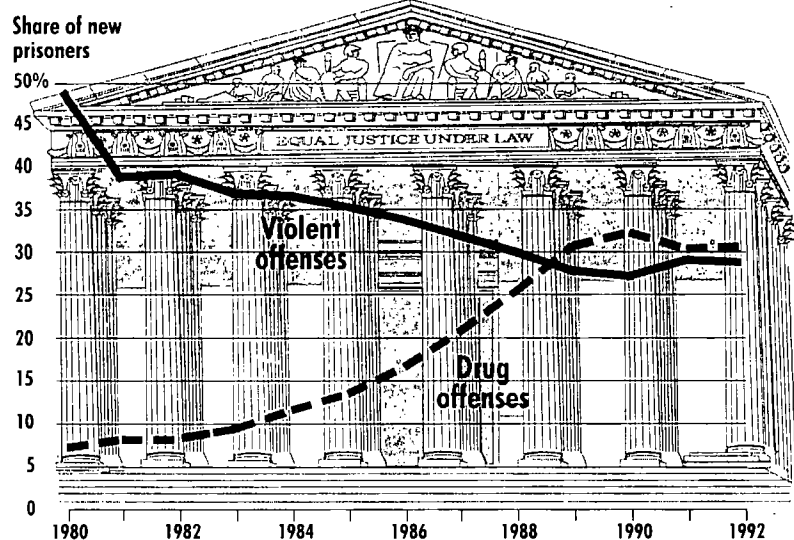
In Washington, the high-powered Corrections Corp. of America, with \$100 million in sales, keeps a careful eye on the crime bill. The legislation, the company's chief financial officer recently told *The Wall Street Journal*, "is very favorable to us." The company recently tapped former Bureau of Prisons chief Quinlan to monitor the bill.

Communities, often in depressed or isolated areas, have also become aroused over the prospects of luring prisons, with their promise of relatively well-paying jobs. In fact, the old military-industrial complex seems to be melding quite nicely with the prison boom. Since 1989, the Bureau of Prisons has opened prison facilities at 4 active military bases and at 10 closed-down bases. In 1996, the bureau will open a combination prison and hospital for 1,655 inmates at the former Camp Butler in Butler, N.C. And local businessmen cheered when Sen. Edward M. Kennedy, D-Mass., announced recently that the Army's Ft. Devens in Ayer, Mass., would be closed and would become the site of a 1,600-inmate prison.

With civic boosters eager for prison jobs, corporate interests hungering for business and a public outraged over violent crime, it's easy to see why politicians have embraced ever-harsher measures to put criminals behind bars.

And the political volatility of the prison issue makes it even more difficult to predict costs. "What you really end up trying to forecast is how politicians will respond to public opinion polls," said criminal justice expert Douglas C. McDonald, a senior social scientist at Abt Associates, a Cambridge (Mass.) consulting firm. "That is how criminal justice policy gets established, and it is not exactly amenable to scientific projections." ■

NEW COURT COMMITMENTS TO STATE PRISONS, 1980-92, BY TYPE OF OFFENSE



SOURCES: National Prisoner Statistics and National Corrections Reporting Program

orders, mandating better health care or reductions in overcrowding.

The pending crime bill would offer states some federal assistance for prison-building—but at a price. "Rather than offering aid to states already facing federal court mandates, . . . [the legislation would require] that states adopt laws that would increase their prison population even further before becoming eligible for federal assistance," the National Conference of State Legislatures complained in a June 8 letter to Senate Judiciary Committee chairman Joseph R. Biden Jr., D-Del. "To be helpful and effective, grants need to be much more flexible."

BENEFITING FROM A BOOM

If prison costs keep rising and the crime rate doesn't plummet, the public may eventually demand a different ap-

proach. But by then it could be too late. A network of Wall Street underwriters, architects, builders and developers, corrections officer unions and local communities has developed a huge financial stake in the current system.

A perusal of advertisements in the American Correctional Association's 1994 convention guide reveals just how much corporate America is excited by the prospects of prison profits. Architects, builders, divisions of *Fortune* 500 companies including Abbott Laboratories and General Electric Co., food-service vendors such as Canteen Corp., and every major telephone company plugged their wares in the catalog, all hoping for a share of the booty.

Smaller companies hyped their accomplishments. "Over one billion in corrections construction across 12 states currently under way," bragged the Atlanta-based Facility Justice Group, a prison construction company.

Some of the beneficiaries of the prison building craze are protecting their invest-

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Crime Bill Restricts Judges in Limiting Prison Population

WASHINGTON (AP) Federal judges will be restricted in their ability to limit state and local prison populations under a provision in the crime bill awaiting President Clinton's signature, its supporters say.

Supporters said the provision raises the amount of proof needed for inmates to obtain a court-ordered prison or jail limit.

But prison-rights advocates said the bill was poorly written and despite its intent might not make it harder for inmates to win their freedom because of overcrowding.

"It's totally unclear as to what this means," said Ed Koren, staff attorney with the National Prison Project of the American Civil Liberties Union. "The law may be superfluous."

Many states and major cities are under federal court orders to limit the population of their prisons and jails. According to Sen. Arlen Specter, R-Pa., nearly 21,000 convicts in 15 states had to be released prematurely last year because of the limits on prison population.

Specter, one of the few Republican senators who voted for the crime bill, said the measure would stop the unnecessary release of prisoners who end up committing more crimes.

The provision requires attorneys for inmates to demonstrate that overcrowding causes an individual prisoner to suffer cruel and unusual punishment, a violation of the U.S. Constitution.

The measure does not prohibit class-action suits but requires proof that every individual in that particular group is adversely affected.

"Caps cannot be made in the abstract," said Bruce Fein, a private attorney who helped draft the measure. "You have to prove that these conditions ... are imposing cruel and unusual punishment."

He said too many judges impose blanket prison caps without determining whether all inmates suffered cruel and unusual treatment. The measure will limit any corrective action to those inmates directly affected by the overcrowded conditions.

But Koren said inmates already have to prove cruel and unusual punishment to obtain a court-imposed prison cap.

"Judges hold a trial, and we put on witnesses," he said. "We show this causes harm, through the mouth of our experts and through the mouths of the prisoners themselves."

The provision was part of the \$30 billion crime bill that also would help pay for an additional 100,000 police officers and ban the sale and manufacture of assault-style weapons.

It was tacked onto the bill through an amendment by Sen. Jesse Helms, R-N.C., and Rep. Charles Canady, R-Fla.

Congress passed the bill last week, and President Clinton is expected to sign it after Labor Day.

The crime bill also covers prison limits imposed through court-sanctioned agreements between inmates and prison officials. The measure will allow those officials to reopen a case at least once every two years.

Koren said prison operators already have that right as long as they can prove changing circumstances.

"Again, I think that this may be superfluous," he said.

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State Backgrounder

No. 972/S

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A Policy Analysis for Decision Makers

December 30, 1993

TRUTH IN SENTENCING: WHY STATES SHOULD MAKE VIOLENT CRIMINALS DO THEIR TIME

INTRODUCTION

More and more state legislators are coming to realize that America's criminal justice system is failing, and that too many Americans literally are dying from a severe case of bad public policy.

ITEM: Consider a heinous crime that has shocked the nation. Twelve-year-old Polly Klaas of Petaluma, California, was abducted from her home during a sleepover with two friends on October 1, 1993, and subsequently murdered. During the abduction, both of Polly's friends were gagged and bound by the assailant, while little Polly was forcibly taken into the night. Richard Allen Davis, the alleged assailant, already had been sentenced to sixteen years in prison for kidnapping, but was released on June 27, 1993, after serving only eight years of that sentence.¹

ITEM: James Jordan, the 56-year-old father of basketball star Michael Jordan, was fatally shot in the chest on Interstate 95 in North Carolina on July 23, 1993. Charged in the murder of James Jordan were Larry Martin Demery and Daniel Andre Green. Demery had been charged in three previous cases involving theft, robbery, and forgery. Green had been paroled after serving two years of a six-year sentence for an assault in which he had hit a man in the head with an axe, leaving his victim in a coma.²

1 Representative Jim Chapman (D-TX), Press Release, December 6, 1993.

2 Michael Tackett and Bob Sakamoto, "Suspects in Jordan Slaying Have Previous Records. The Two Teenagers Charged in the Killing of Michael Jordan's Father Were Arraigned on Monday," *The Chicago Tribune*, August 17, 1993, p. D1.

ITEM: Sister MaryAnn Glinka, aged 50 and a member of the Franciscan Sisters of Baltimore Motherhouse in Baltimore, Maryland, was strangled to death at the convent. Baltimore police concluded that Sister MaryAnn was murdered during a robbery at the convent. On March 21, 1993, Melvin L. Jones was arrested and subsequently charged with robbery and the murder of Sister MaryAnn. The alleged assailant had been sentenced in North Carolina in 1979 to eighteen to twenty years in prison for voluntary manslaughter, but had escaped on November 27, 1986. In 1989, Jones was arrested again in Baltimore for three burglaries, but let out on parole in 1990. In 1991, the North Carolina judiciary sentenced Jones to a year in jail on the escape charge, and contacted Maryland officials in December 1991 to arrange for Jones to be paroled in Maryland.³

Not surprisingly, Americans are increasingly alarmed at news stories of violent crimes committed by individuals who had received long sentences for other crimes and yet were released after serving only a small fraction of their time. This alarm is legitimate, because a high proportion of such early-release prisoners commit serious crimes after being released. If crime is to be reduced in America, this trend needs to be reversed. Experience shows clearly that the first step in fighting crime is to keep violent criminals off the street. Keeping violent criminals incarcerated for at least 85 percent of their sentences would be the quickest, surest route to safer streets, schools, and homes.⁴

Government statistics on release practices in 36 states and the District of Columbia in 1988 show that although violent offenders received an average sentence of seven years and eleven months imprisonment, they actually served an average of only two years and eleven months in prison—or only 37 percent of their imposed sentences.⁵ The statistics also show that, typically, 51 percent of violent criminals were discharged from prison in two years or less, and 76 percent were back on the streets in four years or less.

Consider the median sentence and time served in prison for those released for the first time in 1988:⁶

COMPARING SENTENCES AND TIME SERVED		
Offense	Median Sentence	Median Time Served
Murder	15 years	5.5 years
Rape	8 years	3 years
Robbery	6 years	2.25 years
Assault	4 years	1.25 years

3 Jason Grant, "Parolee Charged in Slaying of Baltimore Nun," *The Washington Times*, March 22, 1993, p. B1.

4 See Bureau of Justice Statistics, U.S. Department of Justice, *National Corrections Reporting Program, 1988*, table 2-7 (1992).

5 See Bureau of Justice Statistics, *National Corrections Reporting Program, 1988*, table 2-4.

6 See Bureau of Justice Statistics, *National Corrections Reporting Program, 1988*, table 2-7.

When these prisoners are released early, a high percentage commit more violent crimes. A three-year follow up of 108,850 state prisoners released in 1983 from institutions in eleven states found that within three years 60 percent of violent offenders were rearrested for a felony or serious misdemeanor, 42 percent were reconvicted, and 37 percent were reincarcerated. Of the violent offenders, 35 percent were rearrested for a new violent crime. Among nonviolent prisoners released, 19 percent were rearrested within three years for a new violent crime.

As a result of these lenient early-release practices and the high percentage of crimes committed by criminals released early, Americans are suffering a fearful epidemic of violent crime. Studies indicate that over 25 percent of all males admitted to prison were being reincarcerated after a new trial for a new offense before the prison term for the first offense had expired. Since 1960, the compounding effect of these crimes by prisoners or early-release prisoners has driven the violent crime rate up by over 500 percent. Now eight out of ten Americans are likely to be victims of violent crime at least once in their lives,⁷ at a total cost of \$140 billion.⁸

Not surprisingly, the fear of violent crime is intensifying. Polls indicate a growing loss of public confidence in their personal safety and the safety of their streets and neighborhoods. Some 90 percent of Americans think the crime problem is growing, and 43 percent say there is more crime in their neighborhood than there was a year ago.⁹ The reason: despite rising arrest rates and prison overcrowding, 3.2 million convicted felons are out on parole or probation rather than in prison. Studies show that within three years, 62 percent of all prisoners released from prison are rearrested,¹⁰ and 43 percent of felons on probation are rearrested for a felony.¹¹

The public understandably wants individuals who have committed serious crimes to be off the streets, serving full prison terms. A recent survey for *Parade* magazine finds that 92 percent of Americans want repeat serious offenders to serve all of their sentence without being paroled.¹² This finding is consistent with an earlier Gallup poll showing that 82 percent of Americans favor making it more difficult for those convicted of violent crimes like murder and rape to be paroled.¹³

The federal government and the states have begun in recent years to address the problem. Toward the end of the Bush Administration, for example, then-Attorney General William Barr issued a report making 24 specific recommendations to the states to help reduce violent crime.¹⁴ The second recommendation was to institute truth-in-sentencing

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- 7 See Bureau of Justice Statistics, U.S. Department of Justice, *Lifetime Likelihood of Victimization*, technical report, March 1987.
 - 8 See U.S. Department of Justice, "The Case for More Incarceration," 1992, p. 16.
 - 9 See CNN/Gallup Poll, cited in *USA Today*, October 28, 1993, p. 1A.
 - 10 See Bureau of Justice Statistics, U.S. Department of Justice, Special Report, *Recidivism of Prisoners Released in 1983*, April 1989.
 - 11 See Bureau of Justice Statistics, U.S. Department of Justice, Special Report, *Recidivism of Felons on Probation*, February 1992.
 - 12 See Mark Clements, "Findings from *Parade's* national survey on law and order," *Parade*, April 18, 1993, pp. 4-7.
 - 13 See George Gallup, Jr., *The Gallup Report*, Report No. 285 (Princeton, N.J.: The Gallup Poll, June 1989) pp. 29, 30.
 - 14 See U.S. Department of Justice, *Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice*, July

laws that restrict the ability of parole boards and prison officials to release a prisoner before a specified percentage of his sentence has been served. As of 1987, the federal system requires prisoners to serve 85 percent of their sentences before they can be released. In 1993, Arizona has passed a similar restriction on early release.

In November 1993, Governors-elect George Allen of Virginia and Christine Whitman of New Jersey promised full support for enactment of truth-in-sentencing laws in their respective states. The time is right for the introduction of truth-in-sentencing legislation in the states where violent criminals are being released before serving the bulk of their sentences.

At the same time, state legislators should get substantial help from Congress. Representative Jim Chapman, the Texas Democrat, and Representative Don Young, the Alaska Republican, have sponsored "The Truth in Sentencing Act of 1993," which would encourage states to adopt truth in sentencing legislation and would help fund truth-in-sentencing programs. Instead of tax increases to finance the enforcement of truth-in-sentencing initiatives, including prison construction, funding would come from reduction of the size of the federal bureaucracy and cuts in federal spending.

HIGH RECIDIVISM: THE FAILURE OF PAROLE

Releasing violent criminals from prison before they have completed their sentences is justified by proponents for one of three reasons: first, prisons are overcrowded and it is too costly to build more prisons; second, "good time" credits, which have the effect of reducing sentences, are and should be given to well-behaved prisoners; and third, prisoners sometimes can be rehabilitated, and so should be paroled.

The problem is that the evidence seriously questions the second and third rationales, and shows the first to be very short-sighted.

Recidivism among violent criminals is high. Consider a three-year follow-up of 108,850 state prisoners released in 1983 from institutions in eleven states, conducted by the Bureau of Justice Statistics.¹⁵ The study, the conclusions of which are consistent with those of other such studies, found that within three years some 60 percent of violent offenders were rearrested for a felony or serious misdemeanor; 42 percent of all violent offenders released were reincarcerated. Of all the violent offenders released, 36 percent were rearrested for a violent crime. Among nonviolent prisoners released, 19 percent were rearrested within three years for a violent crime.

The prisoners in the study accounted for over 1.6 million arrest charges for the time before they had entered prison and for the three years afterwards. These included nearly 215,000 arrests for violent crimes before going to prison and 50,000 violent crimes

1992. For an excellent discussion of these recommendations, see Mary Kate Carey, "How States Can Fight Violent Crime: Two Dozen Steps to a Safer America." Heritage Foundation *State Background*, No. 944/S, June 7, 1993.

15 See Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1983*. See also, Bureau of Justice Statistics, U.S. Department of Justice, Special Report, *Examining Recidivism*, February 1985.

within three years after release. Altogether they were arrested for:

- X 14,467 homicides
- X 7,073 kidnappings
- X 23,174 rapes or sexual assaults
- X 101,226 robberies
- X 107,130 assaults

THE PROBLEMS OF DETERMINING PAROLE

The U.S. Parole Board uses a sophisticated Salient Factor Score (SFS) to guide it in deciding who will be paroled. Unfortunately for law-abiding Americans, the Parole Board turns out to be over-optimistic. Of those classified by the Parole Board staff as "good risks" for parole, the Parole Board assumes that 18 percent will be rearrested and again sentenced to prison for over one year within five years of release. In addition, the Parole Board expects that 29 percent of "fair risks" who are paroled will be resented to over a year in prison within five years of release.¹⁶

Considering the government's—and the American people's—anxiety about risk, this parole policy is remarkable. Where else would such a high failure rate be tolerated, when it results in the death, rape, or injury of ordinary Americans? The Federal Aviation Administration certainly does not allow airplanes to fly with critical parts that fail 29 percent of the time. And the Food and Drug Administration does not allow drugs on the market that have dangerous side effects 18 percent of the time.

Twenty years ago, James Q. Wilson, then a professor of government at Harvard University, asked a basic question about rehabilitation:

If rehabilitation is the object, and if there is little or no evidence that available correctional systems will produce much rehabilitation, why should any offender be sent to any institution? But to turn them free on the grounds that society does not know how to make them better is to fail to protect society from those crimes they may commit again and to violate society's moral concern for criminality and thus to undermine society's conception of what constitutes proper conduct. [Because the correctional system had not reduced recidivism], we would view the correctional system as having a very different function—namely, to isolate and to punish. It is a measure of our confusion that such a statement will strike many enlightened readers today as cruel, even barbaric. It is not. It is merely a recognition that society at a minimum must be able to protect itself from dangerous offenders and to impose some costs (other than the stigma and inconvenience of an arrest and court appearance) on criminal acts; it is also a frank admission that society really does not know how to do much else.¹⁷

¹⁶ See Peter B. Hoffman and James L. Beck, "Recidivism Among Released Federal Prisoners: Salient Factor Score and Five Year Follow-Up," *Criminal Justice and Behavior* Vol. 12, No. 4 (December 1985), pp. 501-507.

¹⁷ See J.Q. Wilson, "If Every Criminal Knew He Would Be Punished If Caught," *The New York Times Magazine*, January 28, 1973, pp. 52-56.

Until there are dramatic improvements in the techniques of rehabilitation and identifying those who can safely be paroled, state legislators would be wise to follow Professor Wilson's admonition: society must protect itself from dangerous offenders and impose real costs on criminal acts. Or, as Douglas Jeffrey, executive vice president of the Claremont Institute says, "We need to put justice back into the criminal justice system by putting convicted criminals behind bars and keeping them there for appropriate periods of time."¹⁸ If state legislators were to adopt that simple mission, today's unacceptable risks to law-abiding Americans would be reduced.

INCARCERATION SAVES MONEY

While full sentences may mean more spending on prison, lawmakers and taxpayers need to understand that early-release programs cost dollars rather than save them. A 1982 Rand Corporation

study of prison inmates found that the average inmate had committed 187 crimes the year before being incarcerated.¹⁹

When criminals are released early, many commit a similar volume of crimes when back on the streets.

The cost of crime committed by these early-release criminals is both direct and indirect. Taxpayers must finance the

criminal justice system. Householders and businesses must buy private protection such as lighting, locks, dogs, fences, and alarm systems. They must buy insurance. The victims lose property and wages, and often incur heavy hospitalization costs.

In addition to the direct costs, there is the hidden cost of crime. Businesses, for instance, pass on to customers some of their costs for security and stolen merchandise. Households also must "pay" for crime by altering their behavior and life style.²⁰ It has been estimated that crime increases in the early 1980s caused "150,000 more New Yorkers to take taxis instead of public transportation; some 140,000 more New York City households sacrificed trips rather than leave their apartments unprotected. 50,000

Crimes Committed by Felons Not Incarcerated	
One Criminal	Crimes Per Year
Burglar	76-118 burglaries
Robber	41-61 robberies
Thief	135-202 thefts
Auto Thief	76-100 auto thefts
Forger	62-98 frauds
Conman	127-283 frauds
Drug Dealer	880-1,299 drug deals

18 Editor's note in Joseph M. and Anne Nutter Bissette, *Ten Myths About Crime and Justice* (Claremont, CA: The Claremont Institute, March 1992).

19 See generally Peter Greenwood et al., *Selective Incapacitation*, Report R-2815-NIJ, The Rand Corporation, Santa Monica, CA, 1982.

20 Edward Zedlewski, *Costs and Benefits of Sanction: A Synthesis of Recent Research*, Unpublished paper, National Institute of Justice, June 1992.

put bars on their windows and 40,000 bought weapons. Even more difficult to assess are the costs of 'urban blight' such as abandoned buildings, unsafe schools, and inner city unemployment. Quite possibly the costs we can't count exceed the ones we can."²¹

It is easy for policy makers to underestimate the tremendous cost of crime, particularly the cost of injuries and deaths of victims. Mark Cohen, a researcher at the U.S. Sentencing Commission, broke new ground in this area in 1988 by using jury verdicts in personal injury cases to estimate the value of injuries to victims. As the table below indicates, the cost to society of each rape is \$51,058, each robbery \$12,594, each assault \$12,028. These as costs are invisible to all but the victims who are the randomly burdened by society's failure to keep repeat offenders in prison.²²

Three years ago, David Cavanagh and Mark Kleiman of the BOTEC Analysis Corporation, a Cambridge, Massachusetts consulting firm, performed an even more ambitious and

Per-Crime Cost of Crime to Victims (1985 Dollars)				
CRIME	DIRECT LOSSES	PAIN AND SUFFERING	RISK OF DEATH	TOTAL COST
Rape	\$4,617	\$43,561	\$2,880	\$51,058
Robbery	\$1,114	\$7,459	\$4,021	\$12,594
Assault	\$442	\$4,921	\$6,685	\$12,028
Larceny	\$179		\$2	\$181

complex cost-benefit analysis of incarceration. The analysis includes as many indirect, societal costs and benefits as possible. Cavanagh and Kleiman estimate the most plausible range of the cost of incarceration of one inmate per year at \$34,000 to \$38,000. But the total benefits occurring from incarcerating that one inmate for a year, eliminating the cost of the individual's probable crimes, could run between \$172,000 and \$2,364,000.²³ In a recent paper Cavanagh and Kleiman computed a range of ratios from 3 to 1 to as high as 17 to 1 of benefits over costs.²⁴ Edward W. Zedlewski, of the National Institute of Justice, estimated a benefit/cost ratio for incarcerating prisoners of 17 to 1.

The 1982 Rand Corporation study finds that the average robber commits between 41 and 61 robberies a year. Mark Cohen estimates that the actual cost to society of each robbery is \$12,569.²⁵ Assuming the cost to society of keeping a robber in prison is Cavanagh and Kleiman's high estimate of \$37,614 a year, from a strictly financial point

21 William W. Greer, "What Is The Cost of Rising Crime?" *New York Affairs*, January 1984, p. 6-16.

22 See Mark Cohen, "Pain, Suffering, and Jury Awards: A Study of the Cost of Crime to Victims," *Law and Society Review* Vol. 22, No. 537 (1988).

23 See generally David P. Cavanagh and Mark A. R. Kleiman, *A Cost Benefit Analysis of Prison Cell Construction and Alternative Sanctions*, May 1990 (prepared under contract with the National Institute of Justice).

24 *Ibid.*

25 Cohen, *op. cit.*

of view it makes sense to incarcerate a robber if that individual commits three or more robberies each year.

Investing in Safety

The imprisonment rate is higher in the United States than it is in other Western democracies mainly because Americans commit crime at a higher rate. The homicide rate in the United States is five times as high as in Europe; the rape rate is more than six times as high; and the robbery rate is four times as high.²⁶

Given the higher crime rates in the United States, and the benefits to society of incarcerating criminals, state and federal officials have underinvested in public safety. According to one estimate, more than 120,000 additional prison beds were needed across the nation at the close of 1990.²⁷ Some might argue that some inmates do not belong in prison, and should be replaced with hardened criminals. But 95 percent of Americans in prison are repeat or violent offenders.²⁸ Despite this enormous need for additional prison space, spending on corrections remains a very small percentage of state and local budgets. In fiscal year 1990, only 2.5 percent of the \$975.9 billion in total expenditures by state and local governments went for corrections (about \$24.7 billion). Investment in new prison construction is only a small fraction of that figure.²⁹

The experience of these states shows the folly of trying to save money by reducing prison budgets, and the benefits of increased prison construction.

MICHIGAN: In the late 1970s, Michigan's state legislators and voters refused to build new prisons. The state soon was forced to deal with severe overcrowding. Governor William G. Milliken granted emergency releases to 20,000 inmates over four years, some more than two years early. The violent crime rate for Michigan, as reported by the FBI, soared 25 percent from 1978 to 1986 amid mounting public outrage.

Starting in 1986, a crash prison-building program doubled the inmate population in five years. Michigan's crime rate dropped. By 1990, robbery and burglary rates each fell more than 20 percent. In Detroit, burglaries went down 32 percent, robberies 37 percent.

CALIFORNIA: Since 1982, Californians have approved \$3.7 billion in bonds to build prisons. From 1980 to January 1991, the inmate population quadrupled from 22,600 to 87,300. By 1990, murder rates fell almost 24 percent from their 1980-1982 peaks, rape fell nearly 28 percent, burglary rates were down 38 percent. This translates as an annual reduction of nearly a thousand murders, 16,000 robberies, and a quarter of a million burglaries.³⁰

26 "International Crime Rates," May 1988, NCJ-110776.

27 See Bureau of Justice Statistics, U.S. Department of Justice, *Prisoners in 1990*, table 9 (1991).

28 See Bureau of Justice Statistics, U.S. Department of Justice, *Prisons and Prisoners in the United States* (1992), p. 16.

29 See Bureau of the Census, U.S. Department of Commerce, *Government Finances: 1989-90* (1991), p. 2.

30 See Eugene H. Methvyn, "An Anti-Crime Solution: Lock Up More Criminals," *The Washington Post*, October 27, 1991, p. C1. Methvyn is a Senior Editor of *Reader's Digest* and served on the President's Commission on Organized Crime from 1983 to 1986.

ILLINOIS: In 1980, the state released 21,000 prisoners three months before completion of their sentences, in an effort to reduce the cost of detention. But while the state saved \$60 million, those prisoners committed 23 murders, 32 rapes, 262 acts of arson, 681 robberies, 2,472 burglaries, 2,571 assaults, and 8,000 other crimes in the three months following their release.³¹

WHY TRUTH IN SENTENCING HELPS

Truth in sentencing will increase the length of time convicted violent criminals are incarcerated. Currently violent criminals are serving 37 percent of the sentence that has been imposed. If required to serve at least 85 percent of their sentences, violent criminals would serve 2.3 times longer than they do now.

If the 55 percent of the estimated 800,000 current state and federal prisoners who are violent offenders were subject to serving 85 percent of their sentence, and assuming that those violent offenders would have committed ten violent crimes a year while on the street, then the number of crimes prevented each year by truth in sentencing would be 4,400,000.³² That would be over two-thirds of the 6,000,000 violent crimes reported in the National Criminal Victims Survey for 1990.³³

Targeting Hardened Criminals

Truth-in-sentencing laws would require state prison officials to retain more prisoners, at a higher cost to the state. But research shows that these prisoners are generally society's most dangerous predators.³⁴ In a landmark study, University of Pennsylvania criminologist Marvin Wolfgang compiled arrest records up to their 30th birthday for every male born and raised in Philadelphia in 1945 and 1958. He found that just 7 percent of each age group committed two-thirds of all violent crime, including three-fourths of the rapes and robberies and virtually all of the murders. Moreover, this 7 percent not only had five or more arrests by age 18 but went on committing felonies. Wolfgang and his colleagues estimate these criminals got away with about a dozen crimes.³⁵ Their studies suggest that about 75,000 new, young, persistent criminal predators are added to the population every year. They hit their peak rate of offenses at about age 16.³⁶

In response to these findings, Alfred Regnery, who was Administrator of the Office of Juvenile Justice and Delinquency Prevention at the Justice Department from 1982 to 1986, funded projects in cities in which police, prosecutors, schools, and welfare and probation workers pooled information to focus on the "serious habitual offender." The program had a significant effect in many cities. Thanks to this Justice Department pro-

31 See James Austin, "Using Early Release to Relieve Prison Crowding: A Dilemma in Public Policy," *Crime & Delinquency*, Vol. 32, No. 4 (October 1986), pp. 480-481.

32 The median number of crimes reported in Rand Study was 15. See Greenwood et al., *op. cit.*

33 See U.S. Department of Justice, *Criminal Victimization in the United States, 1990*, p. 4.

34 Methvyn, *op. cit.*

35 See P. E. Tracy, M. E. Wolfgang, and R. M. Figlio, *Delinquency Careers in Two Birth Cohorts* (New York: Plenum Press, 1990), pp. 279-280.

36 *Ibid.*

gram, for example. Oxnard, California, was able to place the city's thirty most active serious habitual offenders behind bars, and violent crimes dropped 38 percent in 1987, more than double the drop in any other California city. By 1989, when all thirty of the active serious habitual offenders were behind bars, murders declined 60 percent compared with 1980, robberies 41 percent and burglaries 29 percent.³⁷

Thus in conjunction with a criminal justice system that convicts and incarcerates the hardened criminals, a truth-in-sentencing policy will reduce crime by keeping these serious and habitual offenders in prison longer.

How Truth in Sentencing Deters Criminals

Incarceration incapacitates violent criminals, and directly benefits law-abiding Americans, by protecting families and also by yielding greater financial savings from reduced crime than the cost of incarceration itself. But stepped-up imprisonment also deters crime. Criminologist Isaac Ehrlich of the University of Chicago, estimated that a one percent increase in arrest rates produces a one point decrease in crime rates, and a one percent increase in sentence length produces a one percent decrease in crime rates, for a combined deterrent and incapacitation effect of 1.1 percent.³⁸ Observed trends seem to support Ehrlich's broad conclusion and hence the claim of deterrence. When the rate of imprisonment per 100 crimes began dropping in the early 1960s, for instance, the rate of crime per 100 population began to climb steeply.

A recent report by the Dallas-based National Center for Policy Analysis, written by Texas A&M economist Morgan Reynolds, makes a strong case for the deterrence value of longer sentences. According to Reynolds:

Crime has increased as the expected costs of committing crimes has fallen. Today, for a burglary, for example, the chance of arrest is 7 percent. If you are unlucky enough to be one of the 7 percent arrested, relax; only 87 percent of arrestees are prosecuted. Of those, only 79 percent are convicted. Then only 25 percent of those convicted actually go to prison. Multiplying out all these probabilities gives your would-be burglar a 1.2 percent chance of going to jail.³⁹

So, too many criminals do not go to jail for the crimes they commit. Reynolds points out that "once in prison, a burglar will stay there for about 13 months, but since more than 98 percent of burglaries never result in a prison sentence, the average expected sentence for each act of burglary is only 4.8 days. Similar calculations yield an expected punishment in 1990 of 1.8 years for murder, 60.5 days for rape, and 6.7 days for arson. Thus, for every crime, the expected punishment has declined over the decades. The decline continues between 1988 and 1990. When punishments rise, crime falls."⁴⁰ In short, Reynolds's argument is that raising expected punishment deters crime. Expected

37 Methvyn, *op. cit.*

38 See Isaac Ehrlich, "Participation in Illegitimate Activities: A Theoretical and Empirical Investigation," *Journal of Political Economy*, May/June 1973, pp. 521-564.

39 See Morgan O. Reynolds, "Why Does Crime Pay?" National Center for Policy Analysis *Backgrounders* No. 110 (1990), p. 5.

40 *Ibid.*

punishment is a function of the risk of being caught and convicted multiplied by the median time served. Therefore, everything being equal, increasing the length of sentence increases expected punishment, and hence a criminal is more likely to be deterred when the sentence is longer.

Reynolds also finds that since 1960, the expected punishment for committing a serious crime in Texas has dropped by more than two-thirds, while the number of serious crimes per 100,000 population in Texas has increased more than sixfold.⁴¹

While these data do not separate out the deterrent effect of longer sentences from the incapacitation effect, it is clear that longer sentences can generally be expected to reduce crime rates.

OBJECTIONS TO TRUTH-IN-SENTENCING LAWS

State truth-in-sentencing laws have great potential to combat violent crime. While academics and legislators in Washington and the states often focus on long-term solutions to the crime problem, such as social or economic conditions or the "root causes" of crime, the special merit of the truth-in-sentencing approach is simply that it keeps violent criminals off the streets while citizens, legislators, and professionals debate the merits of differing approaches in relative safety. In spite of its appeal to common sense, opponents of truth-in-sentencing legislation often make invalid objections. Some argue that truth in sentencing simply costs too much. But such an objection overlooks the opportunity cost of not keeping dangerous offenders in prison. For example, the cost of incarcerating a criminal is approximately \$23,000 per year, but the cost of that criminal on the street is \$452,000 per year. Some financial estimates are much higher. And, of course, for the families and victims of violent crime, such as James Jordan and Polly Klaas, the human cost is beyond calculation. Others argue that the already large numbers of persons in American jails is an international scandal. While there are indeed more criminals in America who serve more time than criminals in other countries, the fact remains that the violent crime rate in America is proportionately higher than in virtually all other countries. And if there is any scandal, it is the perpetuation of a failing criminal justice system that allows convicted rapists, kidnappers, and armed robbers back on the streets, ignoring the concerns of an American public that desperately needs security from predatory, violent criminals.

Beyond the questions of cost and the higher percentage of individuals being incarcerated, another objection to the enactment of truth-in-sentencing laws is that they ignore the "root causes" of crime. These root causes are often discussed in terms of persistent poverty, poor education, and deteriorating families. Liberal academics, of course, are not alone in addressing these maladies; and conservative social criticism, including recent analyses by scholars from The Heritage Foundation, have enriched the growing national debate on America's failing criminal justice system.⁴² But an academic focus on "root

⁴¹ See Morgan O. Reynolds, *Crime in Texas*, National Center for Policy Analysis Report No. 102 (1991), p. 4.

⁴² For an excellent summary of the relationship between crime and the deterioration of family life, particularly in urban areas, see Robert Rector, "A Comprehensive Urban Policy: How to Fix Welfare and Revitalize America's Inner Cities."

causes," whatever its long-term impact on public policy, should not ignore the fact that violent crime itself immediately aggravates these social problems.

Beyond these general reservations, there are several other objections to truth in sentencing laws:

Objection #1: Truth In sentencing interferes with other policies.

Truth in sentencing does not. For instance, it does not affect *habeas corpus*, mandatory minimum sentences, the exclusionary rule, the death penalty, or gun control. Moreover, truth in sentencing is no threat to existing programs designed to divert criminals from jail or prison, such as community-based corrections, intensive probation, house arrest, restitution, or boot camps for first-time offenders. A judge or jury sentencing a convicted criminal to any of these alternatives would not be in conflict with truth in sentencing. But if a judge or jury imposes a prison sentence on a criminal with such a law on the books, another government official cannot later amend the sentence and send that person to an alternative program not involving incarceration. If a judge or jury feels comfortable permitting alternatives to prison for a criminal after listening to the evidence, learning the criminal's background, and hearing from the victim, then truth-in-sentencing requirements would be satisfied.

Objection #2: Truth in sentencing discriminates against minorities.

Some critics argue that the criminal justice system discriminates against black Americans, and so truth-in-sentencing rules will unfairly hit those inmates. On their face, the raw statistics are indeed disturbing. Blacks comprise only 12 percent of the population, but constitute 48.9 percent of state prisoners and 31.4 percent of federal prisoners. The impact of truth-in-sentencing law would depend on whether blacks or whites are disproportionately convicted of the crimes covered by the laws, and whether parole currently favors blacks or whites. However, these laws would be even-handed. All convicted offenders, regardless of race, would have to serve 85 percent of their sentences before being eligible for parole. A more significant question is whether the higher percentages of blacks in prison are the result of racial bias or of higher rates of crime. A number of studies have been conducted to answer that question and appear to demonstrate that it is higher rates of crime among blacks, and not bias, that accounts for their disproportionate representation in America's prisons.

Example: Alfred Blumstein, Professor of Urban and Public Affairs at Carnegie-Mellon University, in a 1982 study, concluded that about 80 percent of the observed racial disparity in prison population was the result of differential involvement in crime. He acknowledged, however, that the decision to arrest could be affected by bias.⁴³

Heritage Foundation *Memo to President-Elect Clinton* No. 12, January 18, 1993; see also Carl F. Horowitz, "An Empowerment Strategy For Eliminating Neighborhood Crime," Heritage Foundation *Background* No. 814, March 5, 1991.

43 Alfred Blumstein, "On the Racial Disproportionality of United States' Prison Populations," *Journal of Criminal Law and Criminology*, Vol. 73 (1982), p. 1259; U.S. Department of Justice, "The Case for More Incarceration," 1992, p. B4.

Example: Patrick A. Langan, a statistician at the Bureau of Justice Statistics, attempted to test whether bias in arrests might be a factor in the rates of imprisonment. He analyzed the racial composition of lawbreakers from victims' reports to derive an estimate of what the prison composition should be, and then compared that with the actual percentage of black prison admissions. As the adjacent table shows, the estimated percentage was only a few points below the actual percentage.⁴⁴

Estimate of Prison Admissions From Victims' Reports, Compared with the Actual Admissions		
YEAR	Estimated Black %	Actual Black %
1973	48.1	48.9
1979	43.8	48.1
1982	44.9	48.9

Furthermore, a 1990 Rand Corporation study concludes that it is possible to predict with 80 percent accuracy whether an offender will be sentenced to probation or prison.⁴⁵ Adding the offender's race to the equation does not improve the accuracy of the prediction. Race also is unrelated to the length of prison term imposed.

CONCLUSION

The time has come for states to enact truth-in-sentencing laws. There are few viable alternatives that protect citizens from the immediate threat of violent crime. Parole, for example, is a failed experiment. The American people deserve better.

The task before America's state legislators and governors is to pass truth-in-sentencing legislation that would require violent criminals to serve the bulk of their sentences—85 percent is a good benchmark—and to provide the resources it will take to implement such laws. The federal government can encourage this commonsense approach. One such initiative is the Truth in Sentencing Act of 1993, H.R. 3584, introduced by Representatives Jim Chapman and Don Young. This bill would encourage each state to adopt truth-in-sentencing laws and would fund assistance to the states, amounting to \$10.5 billion over five years, to help them implement such laws, including the building and operating of prisons. Trimming the federal bureaucracy, not tax increases, is the financing mechanism for these efforts.

⁴⁴ Patrick A. Langan, "Racism on Trial: New Evidence to Explain the Racial Composition of Prisons in the United States," *Journal of Criminal Law and Criminology*, Vol. 76 (1985) p. 666.

⁴⁵ *Race and Imprisonment Decisions in California* (1990).

The cost of doing nothing is unacceptably high. Crime is a leading concern for Americans. Political leaders and state legislators who can focus the public's attention on a common sense reform like truth in sentencing will be setting the terms of the national debate.

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**STATISTICS FROM MAY 12, 1993 PRISON POPULATION HEARING
TESTIMONY AND RESPONSES TO QUESTIONS
WITNESS: KATHLEEN HAWK, DIRECTOR, BUREAU OF PRISONS**

Federal Prison Population Facts and Figures

1980 -- 25% of prison population consisted of drug offenders
1993 -- 60% of prison population consists of drug offenders
1997 -- 72% of prison population expected to be drug offenders

Total number of drug offenders in prison population is 39,508

50% of drug offenders entering the federal prison system are first time offenders

10% of all inmates now entering the federal prison system are drug offenders who could be considered low level and potentially could be diverted to alternative sanctions

3% of the current population of approximately 76,000 inmates are immediately identifiable from Bureau of Prison records as being as being first time low level offenders with no history of violence. This is about 2,300 inmates.

The Bureau of Prisons suspects that the number of persons who could be determined to be basically "carriers" or "mules" -- those with minimal participation but charged with high amounts of drugs because of amount in total conspiracy or e.g. a handler off-loading charged with entire boat cargo amount is a "very large percentage" of the first time drug offenders.

In 1991, 91% of all defendants sentenced under statutes that carried mandatory minimums were sentenced for drug offenses.

For first time drug offenders there is an 81% success rate in terms of return to the community.

ADDITIONAL FACTS AND FIGURES FROM BUREAU OF PRISONS

Of the 36,491 defendants who received guideline sentences in FY 1992, approximately one-third received mandatory minimum sentences. 15, 289 received drug trafficking sentences of which approximately two-thirds were mandatory minimums.

Drug Mandatory Minimums	All Mandatory Minimums	Sentence
201	221	1 year
4,262	4,989	5 years
4,139	4,194	10 years
273	633	15 years
306	331	20 years
17	22	30 years
57	78	Life



National Institute of Justice

Update

Jeremy Travis, Director

October 1994

Researchers Evaluate Eight Shock Incarceration Programs

In recent years, a number of jurisdictions have implemented shock incarceration (boot camp) programs in an effort to alleviate prison crowding and reduce recidivism. In 1984, just 2 States operated such programs; by 1992, just 8 years later, half the States, plus the Federal Bureau of Prisons, were operating 41 programs, with several other States about to launch programs of their own.

To find out how shock incarceration programs are operating and which objectives they are achieving, the National Institute of Justice (NIJ) sponsored an evaluation of eight adult programs (in Florida, Georgia, Illinois, Louisiana, New York, Oklahoma, South Carolina, and Texas). Results of the study are reported in *Multisite Evaluation of Shock Incarceration*, an NIJ Evaluation Report. In addition to studying effects on recidivism and prison crowding, the evaluation examined the development and implementation of the programs, the attitude changes of offenders during the in-prison phase of the programs, and the impact of the programs on the positive activities of graduates during community supervision.

In all eight programs, offenders participated in a rigorous daily schedule of military drill and ceremony, physical training, and hard labor. Program length ranged from 90 to 180 days. Program participants were generally young males convicted of nonviolent offenses who did not have an extensive criminal history. Beyond this common core, programs varied on characteristics hypothesized to affect the ability of the program to achieve stated correctional goals. For example, programs differed in the type of therapeutic programming adopted as well as the hours per day devoted to such programming. They also varied in size, location (whether located within a larger prison or in a separate facility), intensity of release supervision, and type of aftercare during community supervision.

Impact on recidivism

Recidivism rates of those who successfully completed the shock incarceration program were generally similar to those of comparable offenders who spent a longer time in prison. The lower recidivism rates of some boot camps appeared to result from the process of selecting offenders for the program or from the intensive supervision given after graduation.

In five States (Oklahoma, Texas, Georgia, Florida, and South Carolina), the boot camp experience did not reduce recidivism. In the other three States (New York, Illinois, Louisiana) boot camp graduates had lower rates on one measure of recidivism. Given that all shock incarceration programs are modeled after military boot camps with strict rules and discipline, physical training and hard labor, the different results suggest that the boot camp experience in itself does not successfully reduce recidivism.

Programs in the States that experienced lower recidivism had some similarities. The in-prison phase was followed by a 6-month intensive supervision phase in the community. Each program had a strong focus on rehabilitation, voluntary participation, selection from prison-bound entrants, and longer program duration. Each had a high dropout rate. Any or all of these aspects of the programs could have had an impact on offenders with or without the boot camp atmosphere.

Impact on prison crowding

The major factor influencing prison bed savings was whether the boot camp program targeted prison-bound offenders. To reduce prison crowding, a sufficient number of prison-bound offenders must successfully complete the

program serving less time than they would otherwise have served in a conventional prison.

Thus program design was critical to the successful reduction of prison crowding. Programs that empowered the Department of Corrections to select boot camp participants were most likely to alleviate prison crowding because they maximized the probability of selecting offenders who would otherwise have been sentenced to prison. Other factors that affected the ability of boot camp programs to reduce prison crowding included the restrictiveness of eligibility and suitability criteria (stricter criteria divert fewer prison-bound offenders); length of the program (programs that keep participants in boot camp longer are less likely to reduce prison crowding); and size of the program and graduation rates (smaller programs and those that graduate fewer offenders obviously keep fewer offenders out of prison).

Attitude changes of offenders during the in-prison phase

Unlike inmates incarcerated in conventional prisons, boot camp participants believed that their experience had been positive and that they had changed for the better. Inmates reported that positive benefits of shock incarceration were improved physical health (including learning to live without cigarettes and drugs), educational opportunities, and personal safety. These effects were greater for offenders in boot camps that were voluntary or provided more time for therapeutic activities.

Impact on graduates during community supervision

Boot camp graduates did as well in adjusting to community supervision as parolees who had been released from traditional prisons. Only in Florida did boot camp graduates participate in more positive activities than parolees. Performance of both parolees and boot camp graduates declined over time during the first year of community supervision.

The more intensely offenders were supervised in the community (that is, the more contacts they had with correctional officials), the better they adjusted. Supervision intensity may thus be a key factor in coercing offenders to participate in positive activities during community supervision.

The report's findings were obtained through self-report questionnaires and onsite interviews with boot camp inmates, correctional officers, and probation/parole officers.

The complete report of this study, *Multisite Evaluation of Shock Incarceration*, by Doris L. MacKenzie and Claire Souryal, can be obtained free from the National Criminal Justice Reference Service (NCJRS), Box 6000, Rockville, MD 20850, 800-851-3420. Ask for NCJ # 150062.

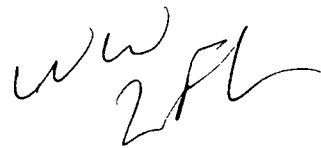
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FEB-07-1994 17:54 FROM BOP CONGRESSIONAL AFFAIRS TO

49149 P.21

Statement of
Kathleen M. Hawk, Director
Federal Bureau of Prisons

Before the
Subcommittee on
Intellectual Property and
Judicial Administration
House Judiciary Committee

February 10, 1994

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you and provide the Department of Justice's views on the prison-related aspects of H.R. 2891, and related legislation.

In approaching this issue, it is increasingly clear that if we as a Nation are serious about the issue of violence, then we must be serious about controlling violent criminals. The Administration is committed to doing just that -- protecting our citizens from violence by locking up those who are truly dangerous, and by making sure these violent offenders are never released prematurely due to lack of prison bedspace.

However, as I will explain throughout my testimony today, as a prison administrator, I believe the best way to protect the public is not by establishing a network of national regional prisons, but rather through a grant-based program of direct assistance to the States. There are no advantages to elevating the confinement function for State offenders to the national level and, as I will mention, there are a number of serious disadvantages.

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Correctional Perspective on the Proposed Legislation

As you are aware, several pieces of legislation were introduced in the 1st Session of the 103rd Congress, with the intent of encouraging and supporting States in the confinement of selected violent, drug, or alien offenders. My testimony will focus on two of these bills -- H.R. 2892 and a section of the Violent Crime Control and Law Enforcement Act of 1993 passed by the Senate last session -- which would have the Federal Government operate a system of national regional prisons, to which states which enact certain sentencing-related changes in their criminal justice systems could send inmates.

The national regional prison proposal in H.R. 2892 directs the Attorney General to establish a Regional Prison Task Force composed of the Director of the Bureau of Prisons and a senior correctional administrator from each participating state. In consultation with this group, the Attorney General would create a nationwide regional prison system plan. The task force would report to Congress on: the definition of the boundaries and number of regional prisons; the terms of partnership agreements; the Bureau of Prisons' administrative role; the determination of any multi-State responsibilities; and, the specification of Federal and State responsibilities for construction and operating costs. The legislation provides that States would be responsible for at least 50 percent of the costs of building and operating

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these facilities. It also ties access to the national regional prison system to certain sentencing and other changes in participating States' criminal justice systems.

While we share the goal of assisting States in increasing their ability to incarcerate violent criminals, the Administration believes that there is no advantage -- and there is considerable disadvantage -- to establishing a national regional prison system. We support an alternative, tested, approach of providing direct Federal assistance to States, and allowing them to pursue their own individual confinement strategies, based on the specific statutes, offender mixes, and correctional resources in each State.

The Administration believes the preferable legislative option is a grant-based strategy, which could more effectively meet States' needs and acceptance by allowing them greater flexibility in responding to violent crime within the context of their individual criminal justice systems. Under this alternative approach, States would still have to enact certain criminal justice reforms related to violent offenders. But, having done so, they then would qualify for monies to construct and operate various types of prison facilities (including State-based regional prison options), or to activate existing prison beds that are currently empty, and to do so in a more effective and timely manner than through new construction. This alternative

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strategy would not involve the Federal Bureau of Prisons as an operational or administrative go-between.

With that as a preface, I would like to provide more specific information about why the Administration is recommending the shift from a national regional prison system to a grant structure.

Limitations of the National Regional Prison Concept

From our standpoint, there are several major limitations in the national regional prisons concept which argue persuasively against its inclusion in this legislation.

Operational Issues

First, despite the fact that the regional prison concept is not new -- many states have explored it -- no multi-state regional prison has ever been opened. As far back as 1973, and later in 1978, groups of states in the Northeast and West extensively considered -- and abandoned -- the possibility of commissioning and operating regional correctional facilities. This suggests there are serious obstacles to be overcome in any enterprise of this kind -- problems which would prevent achievement of the intended effect of the legislation now pending in Congress.

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We have other information that suggests the same conclusion. In 1984, the National Institute of Corrections (NIC) commissioned a study of this issue. That project involved reviewing the previous exploratory assessments, as well as the experience of local jurisdictions with regional jail and detention facilities. The NIC study found that while there seemed at first to be no insurmountable barriers to a regional prison operation, none of the jurisdictions involved in studying such an enterprise came to the conclusion that the benefits outweighed the drawbacks.

Those drawbacks should give us pause as well; I can tell you that as a correctional administrator they greatly concern me.

Those charged with managing multi-jurisdictional facilities would have to deal on a daily basis with major differences among States in areas such as sentencing equity and computation, inmate classification schemes, and fundamental correctional policies. Large-scale regionalization would present great difficulty in maintaining important community ties when inmates are geographically remote from their homes and families. Inmate transportation costs would be significantly increased, as would the security risks associated with moving dangerous offenders to distant institutions. Likewise problematic in such a facility would be inmate industrial work programs, because the various States have significantly different laws regulating prison labor and the sale of prison-made goods, as well as varying statutory

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entitlements to inmate pay and benefits. Resolution of these problems in a national prison setting -- as well as the critical issue of the market impact of an expanded Federal prison industries program -- would be equally serious.

In a related NIC survey of prison administrators, one of the perceived benefits of a potential regional prison came from the ability to place the proportionately smaller number of inmates with special needs (such as the infirm, mentally ill, or those in need of drug treatment) in specialized institutions with programs to meet those needs. This would afford greater economies of scale to States that lack the resources to provide special programming for these subpopulations. It is this narrow area in which some promise might be found for joint prison operations. But it is important to emphasize at the same time there is nothing in such a strategy which argues for direct Federal involvement, or demonstrates that a national system would be more effective than one developed and sustained by State participants.

Cost Concerns

In some ways, the cost issue provides the most dramatic illustration of the burden the Federal Government would be required to undertake if the proposed legislation were to be enacted.

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Taking all construction and operating costs into consideration, the facts here are stark and sobering. Neither the \$3 billion in the Senate bill, nor the \$6 billion that H.R. 2892 would provide -- \$3 billion from both Federal and State sources -- are sufficient to build and operate even a minimum of 10 national regional prisons for more than a few years.

Actual cost projections for this legislation are difficult to calculate, primarily because the Regional Prison Task Force to be created by H.R. 2892 would have a great deal of discretion regarding the number of national regional prisons and the number of inmates they would confine and, obviously we do not know the final form their recommendations would take. However, there is a model from which we can make some hypothetical projections. Two bills, including one recently passed in the Senate, specify that each of 10 national regional prison should confine 2,500 high-security inmates. For illustrative purposes, we will use that bill's structure. Even with this somewhat minimal system (in relation to the broader range of State offenders who would qualify for transfer to national regional prisons under H.R. 2892) the costs are enormous.

Construction costs for the 10 facilities would total about \$2.5 billion. We arrived at this figure by considering not just our experience, but current construction costs in several State correctional systems (California, Michigan, New York, and Ohio)

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8

as well. Our analysis indicates that each new national regional prison bed would cost approximately \$100,000, or a total of \$2.5 billion for 25,000 inmates. And this is just to fund a minimal system.

Analysis of operational costs also requires a look at the likely construction timetable. Given the realities of site acquisition, design and planning, and other factors, about 4 years typically are needed from the time of authorization of a new prison to its activation. A phased activation timetable would be used for a large, complex project of this type; with a 4-year timetable, two new facilities would come on line each year for 4 years, starting in 1998 and continuing through 2002.

Under this schedule, operational costs would climb slowly, but steadily. Confining the first 5,000 inmates would cost almost \$150 million in 1998. An additional 5,000 inmates, added each year through the year 2002, would bring annual operational costs in that year to about \$834 million. Cumulatively, these annual operational costs would reach almost \$3.3 billion by the year 2002.

Adding the two together -- construction costs of \$2.5 billion and operating costs of \$3.3 billion for just the first 6 years -- suggests a total outlay of \$5.8 billion. This means that the \$1 billion provided in the Senate bill clearly would be insufficient

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for this project. The aggregated State and Federal funding of \$6 billion provided in H.R. 2892 is barely enough to see just 10 national regional prisons activated by 2002.

Perhaps equally ominous is that annual funding for continuing operations beyond 2002 would approach and soon exceed \$1 billion. Again, this is just a minimal system -- there is every reason to believe that there are far more potentially eligible State offenders than the 25,000 upon which this projection is based. In short, we think it is obvious that these exceedingly high long-term operational costs are what make national regional prisons a prohibitively expensive proposition -- one that should be set aside in favor of the grant approach we advocate.

As a related issue, I want to note that pending legislation also presents the inevitability of adding a large number of employees to the Federal workforce at a time when we all are concerned with reducing employment levels. Such a major increase -- up to 8,000 new Federal employees for just 10 facilities -- would run counter to efforts being made by the Administration to reduce the Federal workforce in line with the National Performance Review.

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Timeliness

I think we would all agree that the assistance we want to make available to the States should be provided as soon as possible. Yet -- as well-intentioned as the current legislative proposal is -- as I've pointed out, the realities of high-security prison construction mean that no beds in newly-constructed national regional prisons would become available to the States for about 4 years.

There is, however, another aspect to this particular issue which bears on the possible options for providing assistance. A January 1992 NIC survey of State corrections departments found almost 12,000 beds were not being used due to lack of funding. Many of these empty beds were within some of our Nation's largest State correctional systems.

That same study also identified the number of beds planned but not funded, which then totaled more than 52,000. These were beds in the planning stage, which States believed would be well-suited to their needs, but for which they had not as yet identified the source of operational funding. Rather than tying up funds in national regional prison construction projects, grants could be used to provide operational funding to States as these beds -- many of which may be well along in the planning phase -- become available.

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In either scenario -- beds now empty or beds "in the pipeline" -- providing funds directly to States could make prison beds available almost immediately -- long before new national regional prisons could be constructed.

It also is possible that regional groups of States may opt for using grant monies to reconfigure their current bedspace -- again a quicker option than new construction. Renovation and expansion of existing prisons or conversion of other available State institutions, such as mental health facilities, could be funded. To achieve economies of scale, States could consolidate certain resource-intensive inmates (such as sex offenders, and inmates with medical, mental health, or drug abuse treatment needs) in State-managed regional operations. Other options might include one State using grant funds to adapt existing or build new facilities for the purpose of accepting prisoners as boarders from other nearby jurisdictions. These "bed-shifting" strategies would free existing prison space in the individual State correctional systems for violent offenders.

As a final consideration when thinking about providing timely relief to the States, it is possible that some private-sector correctional resources might fit into the picture. There presently are a number of private prisons that could make minimum- and low-security beds available to States, if funds were available. This fact suggests that for some jurisdictions and

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for some minimum- and low-security inmates, such as many aliens now in state custody, states might consider contracting with private corrections firms. This option would permit the states to retain their more violent inmates in the higher-security state prisons.

Conversion of Military Property

There has been some discussion of the possibility of using surplus military bases for correctional purposes, even national regional prisons. We do not see this as a practical solution to the problem of confining violent, dangerous offenders. In virtually every case, existing military facilities are unsuitable for immediate correctional use, and conversion would be prohibitively expensive.

As you are aware, the Bureau is not averse to using military resources; we have aggressively pursued this strategy whenever suitable facilities have been available for lower-security cases. In fact, about one-third of our institutions are located on active or surplus military bases. Most recently, we activated a major operation at Fort Dix, New Jersey, which, when fully activated, may confine up to 3,200 low-security offenders. But over the years, we have found that most military bases are appropriate for confining only minimum- to low-security offenders who present minimal risk to institutional and community safety.

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Existing military structures -- designed for typical non-secure uses -- are extremely expensive to convert to house the type of high-security offender targeted in this legislation. These inmates require supervision and control that cannot be effectively provided in barracks or dormitory-type settings. Retrofitting the support facilities for high-security prison use, areas such as kitchen, laundry, and other structures, is very costly. Second, the demolition and site preparation work associated with building totally new high-security prisons on surplus bases also is very expensive. These front-end costs actually make use of those sites more expensive than construction on land donated to the Bureau of Prisons by localities or available in rural areas for a nominal cost. For these reasons, we do not view the military base option as one that provides a cost-effective solution to the problem of confining high-security offenders defined in this legislation.

There is one possibility that should be mentioned, since existing law already provides for the transfer of surplus military properties to the States. It is conceivable that some "bed-shifting" -- of non-dangerous State offenders to converted military bases made available to the States -- could occur if grant monies were available to facilitate the somewhat lower conversion costs involved for low-security use. Careful screening would be needed to ensure public safety, but it is

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likely that a modest number of higher-security beds could be freed up for violent offenders through such a strategy.

Flexibility

Finally, there is the issue of flexibility in responding to the individual correctional needs of the 50 States, each of which brings to this issue a wide variety of highly specific problems. It is true that officials in every State are concerned about violent crime, but virtually every State is differently positioned to deal with it, in terms of current population levels, ongoing and planned construction, and the legislative foundation from which they would respond to any new Federal initiatives.

While the Federal Government does have an appropriate role in relation to State and local criminal justice systems, a national regional prison system would not provide sufficient flexibility to meet the needs of the various States. Particularly in criminal justice matters, these other levels of government must retain considerable autonomy in responding to the needs of the citizenry.

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19

Grant-Based Option: Flexibility in Meeting States' Needs

Awareness of the significant limitations of a national regional prison system begs the question of how to best meet the States' needs, so let me elaborate on what I have already suggested is the highly preferred option for providing the assistance we all agree is needed by the States.

The proposed national regional prison legislation assumes there is only one solution to the problem of assisting States in incarcerating violent offenders. We believe there could be at least 50 different solutions, because the correctional problems faced by States differ so greatly. Therefore, the approach to helping the States find workable options must be flexible and must provide them with a broad array of practical choices.

It is the Administration's view that rather than create a national regional prison system solely for violent or illegal alien offenders, the Federal Government should establish a grant-based correctional assistance program under the authority of the Attorney General. Grant funds would be directed to the States in order to facilitate the development of creative strategies of the type I have already mentioned. It would maximize support of the States in a far more flexible, timely, and cost-effective manner. States could pursue their own prison expansion initiatives, or enter into multi-State consortia based on any one of several

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models which do not involve direct Federal facility management. This is a far more effective way to expand prison capacity and achieve greater economies of scale in prison operations at the State level, all in a timely manner.

This flexibility is critical because, in working with my counterparts in the States, I have learned that most already are planning for the incarceration of violent offenders, who compose a major portion of most State inmate populations. For many States, the funding assistance provided through Federal grants could be channeled much more effectively, as I have suggested, to support the incarceration of targeted groups of offenders -- those who are more resource-intensive to manage. For many States, relief in these areas would allow them to devote other resources to ensure the incarceration of their violent population for long periods of time, through both direct bedspace and "bed-shifting" strategies.

Under this approach, the Federal role would be to provide financial grants, as well as guidelines and technical assistance on relevant correctional issues. This would significantly assist the States without incurring many of the limitations of the national regional prison proposals previously enumerated. For example, this approach:

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Avoids operational limitations inherent in the national regional prisons concept. States can avoid problems such as moving prisoners further away from their local communities than necessary, or conflicting statutes or regulations governing inmate classification or release, and prison industries.

Eliminates the burden of providing long-term operational funding for a national regional prison system. By using a grant structure, there would be no long-term operational commitment on the part of the Congress to funding such a system, and grants could be directed in a more customized manner toward the most efficient and effective options developed in various states.

Allows monies to be spent in a way to ensure greatest and most timely impact. States would have expedited access to resources already available in some jurisdictions in the form of prisons already constructed, but not activated due to funding problems; states also could explore other more timely options for gaining additional prison capacity.

Avoids the need to create thousands of new Federal Full-time Equivalent Positions. This is especially important in the context of Federal deficit problems and current efforts to reduce the Federal Government by 252,000 positions.

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18

Allows States sufficient flexibility to better utilize the conversion of surplus military property. While surplus military properties are generally not appropriate for housing violent inmates with high-security needs, under this approach, States could use grant funds to convert them to house non-dangerous, lower security inmates who are considered resource-intensive cases; those with medical or drug-treatment needs and some criminal aliens would potentially be groups from which to draw for this strategy.

Conclusion

Let me conclude my comments by reiterating that we believe the concept of a national regional prison system would be a very limited solution to meeting the wide variety of State correctional needs. The operational and cost concerns about a Federal-level approach argue against the current legislation, as do equally valid concerns about timeliness and flexibility.

Our intent in proposing the grant approach is identical to that of Congress and our fellow administrators in the States. We want to make the most effective contribution we can to safeguarding our society against violent criminals. Far from weakening the proposed legislation, the changes I have outlined today would increase the efficiency of Federal funding support and thus maximize the actual benefits to the States.

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Mr. Chairman, this concludes my formal statement. I would be pleased to answer any questions you or the other members of the Subcommittee might have.

11/01/93 16:22 202 514 8639
11-01-93 03:33PM FROM NIC WASHINGTON, D. C.

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11/01/93 14:00 202 514 8639
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11/1/93

FAX TRANSMITTAL

of pages 1

TO: Grace Mastalli
FR: Chris Putala
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At your earliest convenience, I would appreciate the following:

- * Updated Bureau of Prisons figures -- that include FY94 appropriations -- on the unobligated balance in the buildings and facilities account (I think the balance is up to \$1.3 billion.) I attach the copy of what you sent me before FY94 appropriations were completed.
- * Federal Bureau of Prisons inmate population -- annual, from 1980 to 1993.
- * The Regional Prison program -- Sec. 164 (a)(2) of the Republican bill (S.1356) -- requires state to have "pretrial detention similar to that of the federal system under section 3142 of Title 18" Are there any Cliff notes on what the federal pretrial detention system does? Any comparison with what state systems do?
- * One of your faxes (attached) indicates that BOP capital projects take 3 - 5 years to complete. I would like to use that to criticize the Republican regional prison plan -- is that accurate? Are there any updates on the NIC survey of states have correctional facilities built but unopened (the most recent survey faxed in September covered January, 1992)?

11/1/93
To: Grace Mast
OPD/DOJ
NO UPDATE
Available
Larry
Solomon



Office of Policy Development
United States Department of Justice

10th Street and Constitution Avenue, N.W.
Washington, D.C. 20530

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OPD--DRAFT 3-7-94 10:00am

**Title -- Expansion of Correctional and Detention Facilities
to Protect the Public from Violent Criminals**

SEC. 1. DEFINITIONS.

As used in this title --

(1) "correctional or detention facility" and "facility" mean any facility operated by a State or local government, by a number of States jointly, or by a non-governmental entity through contract or other arrangement with a State or local government, which is used to hold or confine persons who are charged with or convicted of crimes or acts of juvenile delinquency, including jails and other detention facilities, prisons, and juvenile facilities;

(2) "serious violent crime" means a crime punishable by imprisonment for a term exceeding one year that involves murder, voluntary manslaughter, knowingly causing serious bodily injury to another, knowingly or recklessly causing bodily injury to another with a firearm or other dangerous weapon, sexual assault or child molestation, kidnapping, arson, extortion, or armed robbery, or an attempt, conspiracy, or solicitation to commit any of the foregoing acts;

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1 (3) "State" means a State of the United States, the District
2 of Columbia, or any commonwealth, territory, or possession of the
3 United States; and
4

5 (4) "qualifying State" means a State that is in compliance
6 with section 3 of this title.
7

8 **SEC. 2. GRANT AUTHORITY.**
9

10 (a) AUTHORIZED PURPOSES. -- The Attorney General may make
11 grants to qualifying States, for use by States and local
12 governments in the States, to assist in ensuring adequate
13 correctional and detention space for --
14

15 (1) persons charged with or convicted of serious
16 violent crimes;
17

18 (2) persons charged or convicted in cases
19 involving conduct and circumstances similar to those
20 described in section 924(c) or (e) of title 18 or
21 section 994(h) of title 28, United States Code; and
22

23 (3) aliens who are in the United States illegally
24 and who are charged with or convicted of crimes of
25 violence (as defined in section 924(c)(3) of title 18,

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1 United States Code) or serious drug offenses (as
2 defined in section 924(e)(2)(A) of title 18, United
3 States Code).

4
5 (b) USE OF FUNDS. -- Funds received by States under this
6 section may be used to --

7
8 (1) develop, acquire sites for, construct, expand,
9 and improve correctional or detention facilities;

10
11 (2) acquire the use of property as correctional or
12 detention facilities by purchase, lease, contract, or
13 other arrangements, or by converting other property
14 into correctional or detention facilities; and

15
16 (3) assist in activating and operating
17 correctional or detention facilities that are
18 unutilized or underutilized because of lack of funding.

19
20
21 **SEC. 3. MEASURES TO PROTECT THE PUBLIC FROM SERIOUS VIOLENT**
22 **OFFENDERS**

23
24 (a) STATE QUALIFICATION. -- A State qualifies to apply for a
25 grant under this title if it has implemented the measures set out

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1 in subsection (b), or has undertaken to adopt or implement such
2 measures and is making substantial progress towards doing so.

3
4 (b) MEASURES TO PROTECT THE PUBLIC. -- The measures referred
5 to in subsection (a) are --

6
7 (1) THREE STRIKES YOU ARE OUT -- sentences of
8 life imprisonment for a specified category or
9 categories of offenders on a third or subsequent
10 conviction for a serious violent crime;

11
12 (2) TRUTH IN SENTENCING -- truth in sentencing
13 laws or rules which ensure that persons convicted of
14 serious violent crimes serve at least 85% of the
15 sentence imposed;

16
17 (3) CRIME VICTIMS RIGHTS -- appropriate
18 recognition of the rights and needs of crime victims ;
19 and

20
21 (4) STRATEGIC PLANNING -- a state-wide management
22 plan to ensure adequate space for the detention or
23 imprisonment of persons charged with or convicted of
24 serious violent crimes.

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1 **SEC. 4. ADMINISTRATION.**

2
3 (a) UTILIZATION OF COMPONENTS. -- The Attorney General may
4 utilize any component or components of the Department of Justice
5 in carrying out this title.
6

7 (b) REGULATORY AUTHORITY. -- The Attorney General may issue
8 regulations and guidelines to carry out this title, including
9 specifications concerning application requirements, selection
10 criteria, duration and renewal of grants, evaluation
11 requirements, matching funds, limitation of administrative
12 expenses, submission of reports by grantees, recordkeeping by
13 grantees, and access to books, records, and documents maintained
14 by grantees or other persons for purposes of audit or
15 examination.
16

17 (c) APPLICATIONS. -- In addition to any other requirements
18 that may be specified by the Attorney General, an application for
19 a grant under this title shall --
20

21 (1) include a long-term strategy and detailed
22 implementation plan, including plans for coming into
23 compliance with section 3 of this title or
24 certification that compliance with section 3 has
25 already been achieved;

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1 (2) provide a description of any construction
2 activities, including cost estimates, that will be part
3 of any plan;

4
5 (3) provide assurances that any funded facility
6 will meet standards of habitability, safety, and
7 provision of necessities for inmates which are
8 consistent with guidelines issued by the Attorney
9 General;

10
11 (4) provide assurances that any funded facility
12 which houses person convicted of crimes or acts of
13 juvenile delinquency will provide programs appropriate
14 for the inmate population, such as work programs,
15 education, job training, and substance abuse treatment;

16
17 (5) provide assurances that appropriate post-
18 release programs that reduce the likelihood of further
19 criminality or delinquency following release will be
20 provided for inmates of any funded facility which
21 houses persons convicted of crimes or acts of juvenile
22 delinquency;

23
24 (6) explain the applicant's inability to obtain
25 adequate funding without Federal assistance;

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(7) certify that the Federal support provided will be used to supplement, and not supplant, State and local sources of funding that would otherwise be available;

(8) identify any related governmental or community initiatives which complement or will be coordinated with the proposal; and

(9) certify that there has been appropriate consultation with all affected agencies.

(d) MATCHING FUNDS. -- The portion of the cost of a program, project, or activity provided by a grant under this title may not exceed 75%, unless the Attorney General waives, wholly or in part, the requirement under this subsection of a non-Federal contribution to the cost of a program, project, or activity.

SEC. 5. TECHNICAL ASSISTANCE AND EVALUATIONS.

(a) TECHNICAL ASSISTANCE AND TRAINING. -- The Attorney General may provide technical assistance and training in furtherance of the purposes of this title.

(b) EVALUATIONS. -- In addition to any evaluation

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1 requirements that may be prescribed for grantees, the Attorney
2 General may carry out or make arrangements for evaluations of
3 programs, projects, and activities that receive support under
4 this title.

5
6 (c) ADMINISTRATION -- The technical assistance, training,
7 and evaluations authorized by this section may be carried out
8 directly by the Attorney General, or through grants, contracts,
9 or other cooperative arrangements with other entities.

10
11 **SEC. 6. AUTHORIZATION OF APPROPRIATION.**

12
13 There are authorized to be appropriated \$2.65 billion to
14 carry out this title, to remain available until expended.