Milly —

please review

prevention /
treatment

— Ellen

CLOSE HOLD

DRAFT

FY 1998 BUDGET APPEAL
FEDERAL DRUG CONTROL PROGRAMS

Executive Office of the President
Office of National Drug Control Policy

3 December 1996

CLOSE HOLD

TABLE OF CONTENTS

SUMMARY OF PROPOSAL

SUMMARY OF PROPOSAL

- OMB's proposed FY 1998 allowance for Federal drug control programs does not provide significant increases in critical areas over FY 1997 enacted levels. At the anticipated level of funding, many drug control agencies will only have sufficient resources to maintain current operational levels. This FY 1998 budget will not be adequate to support the goals of the National Drug Control Strategy and implement the President's program.

- As part of ONDCP's five-year budget process, the National Drug Control Budget is anticipated to reach $23 billion by FY 2002. Consistent with this planning path, for FY 1998 ONDCP has identified $1.1 billion in program increases over the FY 1997 enacted level. These enhancements would provide needed resources to support each of the Strategy's five goals.

- To accommodate ONDCP's plan, close to $18 billion in new resources will be needed over five years, above amounts necessary to maintain current operational levels. However, ONDCP recognizes that to reach a balanced budget in the near term, no significant increases can be accommodated in the discretionary portions of the Federal budget, and some programs will experience funding reductions. Within this tight environment, new spending proposals must be either accompanied by offsets elsewhere in the budget, or new sources of revenue must be identified.

- The President is committed to balancing the budget by 2002. He is also committed to implementing the goals of the National Drug Control Strategy, as well as finding ways to limit the adverse health consequences of smoking cigarettes. Consistent with these three objectives:

    -- ONDCP appeals OMB's initial FY 1998 budget allowance and proposes additional new spending of $1.1 billion to implement the Strategy's goals, and

SUMMARY OF PROPOSAL (CONTINUED)

- -- To fund this proposal, ensure a path to a balanced budget, and to further limit the consumption of cigarettes, ONDCP also proposes an increase in the Federal excise tax on cigarettes sufficient to fund these additional FY 1998 enhancements, as well as provide a source of new revenue to provide for further drug program enhancements over the next five years.

- -- A precise estimate of the required increase in the Federal excise tax on cigarettes needs to be estimated by the Office of Tax Analysis at the Treasury Department. However, the new tax will need to raise net revenue of approximately $18 billion over five years. Based on very preliminary data from Treasury, the required increase would likely be in a range of 25¢ to 30¢ above the current rate of 24¢ per pack.

- The Treasury Department would deposit these additional tax collections in a newly created account, controlled by ONDCP. Money deposited to this account would be available to the Director, ONDCP, without further action by Congress and without fiscal year limitation. Excess balances in the new fund from the earlier years of ONDCP's five-year budget plan would be allowed to accumulate to fund the outyears of the plan. Funds in this account would be made available to implement the Strategy through reimbursable agreements or by transfer of funds to the appropriations of Drug Control Agencies.

FIVE-YEAR BUDGET PLAN

5-YEAR BUDGET PLAN

- The 10-Year National Drug Control Strategy provides a long-range vision for both the direction and scope that current programs must be extended or modified to meet the challenges envisioned over that period. In addition, it identifies new programs that must be created and new initiatives taken to address continuing and emerging drug control issues.

- A 5-Year Budget estimates the resource requirements (personnel, equipment and funds) needed to support the programs and initiatives identified in the initial years of the 10-Year Strategy. The collective efforts on the part of the entire Federal Drug Control Community in the development and planning of these initial years of the Strategy are essential to the ultimate success to be achieved in ridding our society of the consequences of drug use.

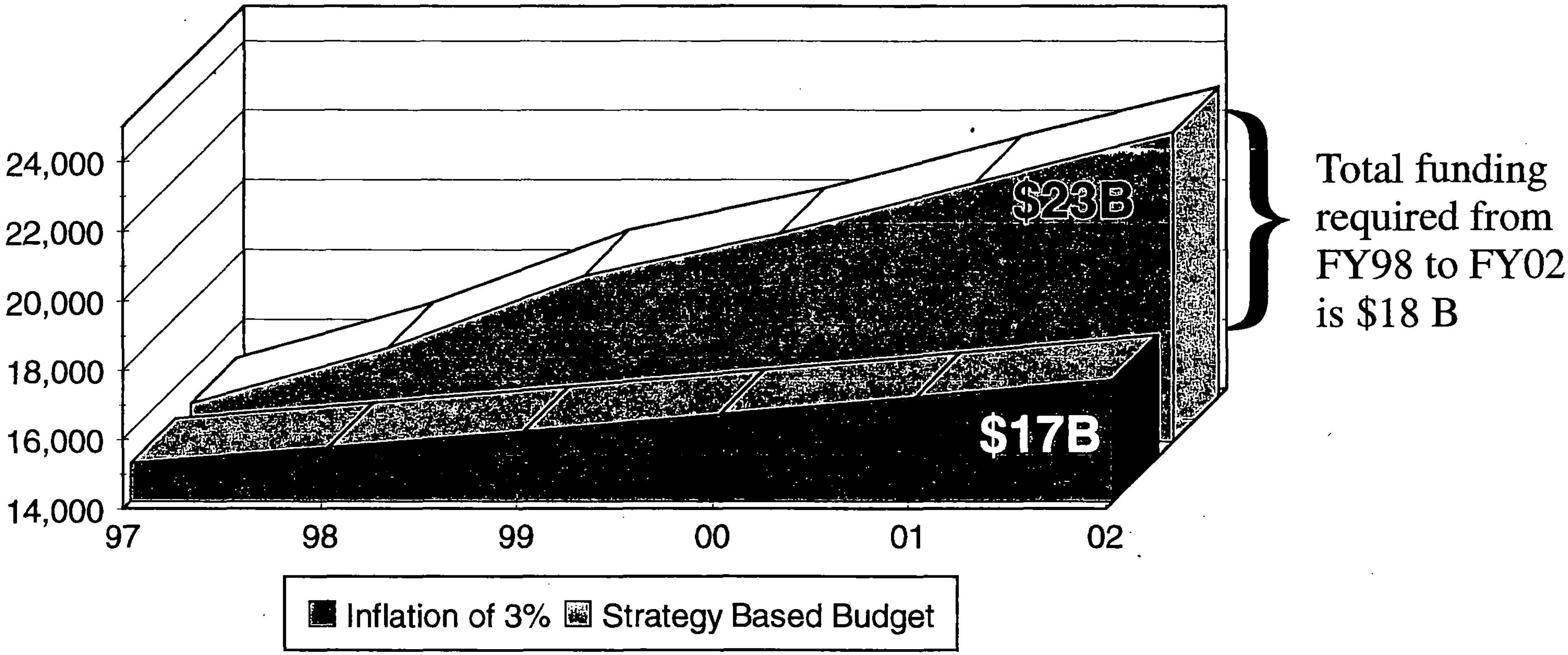
- A practical approach to achieving the needed resources to support the Federal Drug Control Budget is as follows:

  -- Obtain agreement with OMB that they will maintain the purchasing power of the FY 1997 enacted base by funding those programs for inflation (extends the FY 1997 enacted base of $15 billion to $17 billion in FY 2002.

  -- Identify a new source of funding for needed program enhancements that exceed the base level of funding. ONDCP's proposal for increasing the Federal excise tax on cigarettes would provide for these resources. From FY 1998 to FY 2002, the total program requirement is approximately $18 billion. (See accompanying graph.)

  -- Identify additional sources of funding within the base, where appropriate, by eliminating or decreasing programs that are less effective or no longer needed.

BUDGET REQUIREMENTS



- **FY97 Enacted would ramp to $17 B by FY02 with only inflation (assuming 3%/year)**
- **Strategy Based Requirements can accomodate modest growth in FY98 but will require continued investment to a level of $23 B by FY02.**
- **Alternative funding source is needed to finance program growth above the level funded in the extended base.**

DRAFT -- CONCEPT ONLY

BACKGROUND: FEDERAL EXCISE TAX ON CIGARETTES

BACKGROUND: FEDERAL EXCISE TAX ON CIGARETTES

- Currently, the Federal excise tax on cigarettes is 24¢/pack. This tax was last raised On January 1, 1993 from 20¢/pack. For FY 1996, the Treasury Department estimates that collections from this tax will be $5.9 billion.

- The history of the Federal excise tax on cigarettes is highlighted in the following table:

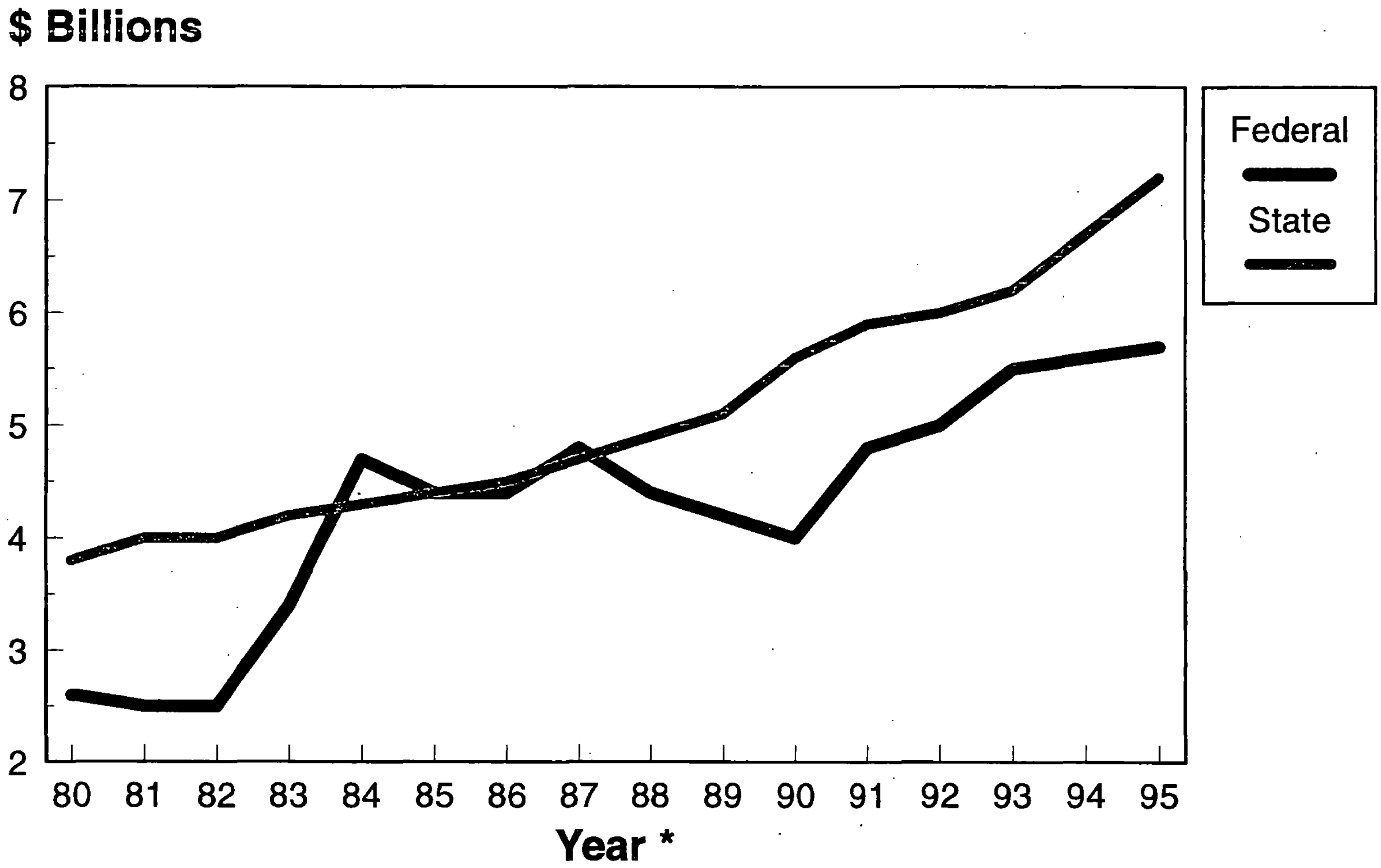
Effective Date	Rate/Pack	Months in Effect
July 1, 1910	2.5¢	87
Oct 4, 1917	4.1¢	17
Feb 25, 1919	6.0¢	256
July 1, 1940	6.5¢	28
Nov 1, 1942	7.0¢	108
Nov 1, 1951	8.0¢	374
Jan 1, 1983	16.0¢	96
Jan 1, 1991	20.0¢	24
Jan 1, 1993	24.0¢	current

- In addition to the Federal excise tax on cigarettes, all states also impose their own excise tax. In 1995, state and local excise taxes on cigarettes raised $7.2 billion. Combined, Federal, state and local excise taxes averaged about 57¢/pack in 1995. This accounted for about one-third of the total retail price of an average pack.

- As additional background, the accompanying graphs provide the following data:

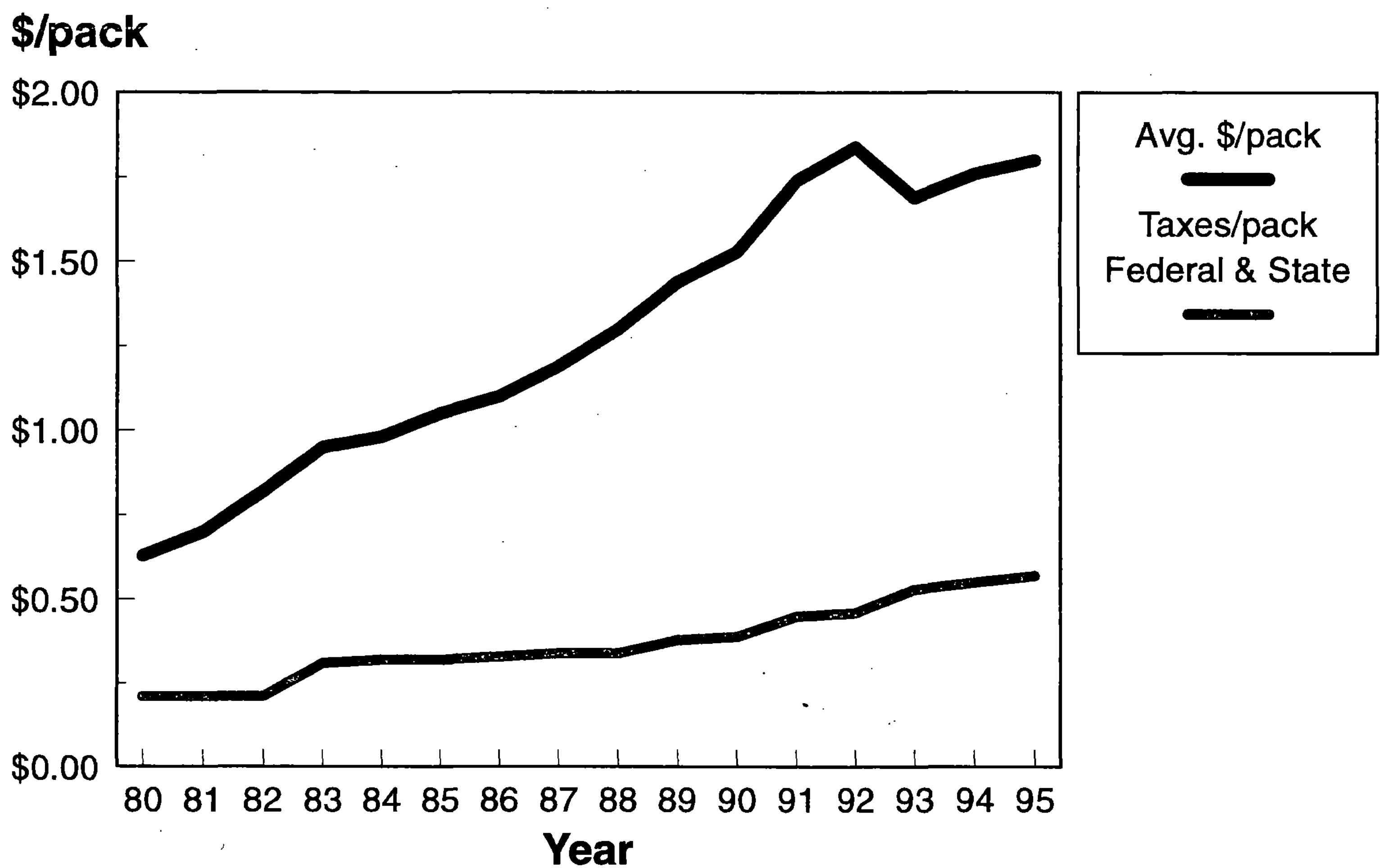
  -- History of Federal and state cigarette tax revenue since 1980
  -- History of average retail price/pack and average Federal and state excise taxes/pack since 1980

HISTORY OF FEDERAL AND STATE CIGARETTE TAX REVENUE



* For year ending June 30

HISTORY OF PRICE/PACK AND TAXES/PACK



OVERVIEW OF EXCISE TAX PROPOSAL

OVERVIEW OF EXCISE TAX PROPOSAL

- ONDCP proposes an increase in the Federal excise tax on cigarettes sufficient to raise net revenue of up to $18 billion over five years. Although the Treasury Department's Office of Tax Analysis will need to compute a precise rate, preliminary data suggests that an increase of 25¢ to 30¢ per pack would be necessary to generate the required revenue. Under this proposal, the current Federal excise tax of 24¢ would increase to 49¢ - 54¢ per pack.

- As background, at the current tax rate of 24¢ per pack, Treasury estimates that an increase of 1¢ per pack would raise an additional $170 million in net revenue. Actual excise tax collections would be greater than $170 million, but this revenue would be partially offset by lower tax collections on income, which would be affect by the new tax.

- As it is collected, revenue from this tax increase would be transferred into a newly created ONDCP account. Although Treasury would make estimated payments during the year, the total transferred in any year would not exceed the new revenue Treasury estimates is derived from the additional tax.

- Funds credited to the new ONDCP account would be available to the Director as a permanent indefinite appropriation, available without fiscal year limitation and without further action by the Congress. Surplus balances remaining in this account at the end of each fiscal year could caryover to the next fiscal year. By allowing balances to accumulate in this way, sufficient resources should be available in this account by FY 2002 to provide full funding for the last year of ONDCP's five-year budget plan. Further, funds in this new ONDCP account would only be available to augment, not supplant, current drug control program levels.

- The Director would be authorized to make funding available from this new ONDCP account in any one of the following three ways: (1) ONDCP could obligate these funds directly for any drug control program which supports the Strategy; (2) these resources could be made available to Drug Control Agencies on a reimbursable basis; and (3) the Director would be authorized to transfer funds (Budget Authority) from this account to any Drug Control Agency or state or local government to support programs which would implement the goals of the Strategy.

FY 1998 INITIATIVES (OMB APPEAL)

SUMMARY OF FY 1998 INITIATIVES TO BE FUNDED WITH NEW ACCOUNT

Revenue derived from the increase in the Federal excise tax on cigarettes would be the principal source of program growth in the National Drug Control Budget for FY 1998 through FY 2002. The pages that follow highlight ONDCP's recommendations for these new resources to implement each goal of the President's Drug Control Strategy in FY 1998. These initiatives represent increases above FY 1997 enacted levels. Below is summarized proposed new funding associated with each goal:

		($ Millions)
Goal 1:	Motivate America's youth to reject illegal drugs and substance abuse.	+$404
Goal 2:	Increase the safety of America's citizens by substantially reducing drug-related crime and violence.	+$234
Goal 3:	Reduce health, welfare, and crime costs resulting from illegal drug use.	+$175
Goal 4:	Shield America's air, land, and sea frontiers from the drug threat.	+$153
Goal 5:	Break foreign and domestic drug sources of supply.	+$176
	Total	+$1,142

FY 1998 INITIATIVES TO IMPLEMENT GOAL 1

Goal 1: *Motivate America's youth to reject illegal drugs and substance abuse.*

ONDCP Initiatives: ($ Millions)

- **Media Campaign** +$175
  Media campaign to focus on a prime-time television audience as public service announcements targeted at youth and their parents on the consequences of drug use and the use of alcohol and tobacco.

Agency Initiatives:

- **Safe and Drug Free Schools and Communities** +$76
  Programs which prevent illegal use of drugs and violence among more than 40 million students at all educational levels.

- **ACF Community Coalitions** +$3
  Coordinate a coalition to plan and provide prevention and treatment services for at-risk youth, And provide technical assistance resources to support Head Start classroom teachers and families.

- **State Incentive Grants for Community-Based Action** +$150
  Targets teenage marijuana and other drug use through the use of peer, parent, business, and school-based coalitions by replicating proven approaches in drug prevention.

Total +$404

FY 1998 INITIATIVES TO IMPLEMENT GOAL 2

Goal 2: *Increase the safety of America's citizens by substantially reducing drug-related crime and violence.*

ONDCP Initiatives:	($ Millions)
• **Break the Cycle** Expands drug treatment for the illegal hard core drug users in need of treatment, and enable drug treatment centers to safeguard drug patients from drug pushers who take advantage of rehabilitating drug patients (post-treatment pusher).	+$113
• **Safe Streets** Expands FBI's Safe Streets program to additional sites. Create nationwide task forces to target street gang involvement and street gang leadership.	+$15
• **HIDTA** Funds one new HIDTA, increases support to existing HIDTAs, and improves networking, intelligence sharing, and joint operations for SWB and Puerto Rico/U.S. Virgin Islands.	+$25

Agency Initiatives:

• **DEA's MET Teams; State & Local Task Force & Domestic Heroin Enforcement** Personnel augmentation for existing MET teams, additional task force operations, and implements DEA's 5 year strategy to reduce supply of heroin in the U.S.	+$25

INITIATIVES TO IMPLEMENT GOAL 2 (CONTINUED)

<u>**Agency Initiatives**</u> **(continued)**:	<u>($ Millions)</u>
• **DEA & FBI SWB Initiative** Continues expansion of DOJ's comprehensive inter-agency strategy against drug trafficking on the SWB. Primary targeting of Mexican Mafia organizations.	+$44
• **Gang Resistance Education and Training (GREAT)/Investigative Partnerships** Expand GREAT program, a school-based prevention program taught by uniformed officers to junior high school students. Funding also included for investigative activities related to gang violence.	+$2
• **FLETC's Master Plan**, New Training Support, and Training Operations Initiatives Provides for current and projected training requirements associated with Federal law enforcement hiring plans.	+$5
• **Arrestee Drug Abuse Monitoring System (ADAM)** This enhancement will expand ADAM to the nation's 75 most populous cities, with an annual outreach to test arrestees in outlying locations including suburban towns, rural communities and tribal lands. The target locations for this effort, the nation's 75 largest cities account for half of all reported murders --- it is in these areas that an understanding of the impact of drugs on crime is most critical.	<u>+ $5</u>
Total	+$234

FY 1998 INITIATIVES TO IMPLEMENT GOAL 3

Goal 3: *Reduce health, welfare, and crime costs resulting from illegal drug use.*

ONDCP Initiatives:	($ Millions)
• **NIDA Treatment & Prevention Research** Expands science-based drug control research to increase the effectiveness and efficiency of drug prevention and treatment programs.	+$100

Agency Initiatives:	
• **Performance Partnership Block Grant** Expands the block grant to a 5 percent increase over the FY 97 request. Program works with states to reduce the incidence and prevalence of substance abuse and dependence, and improve access to appropriate prevention and treatment programs.	+$75
Total	+$175

INITIATIVES TO IMPLEMENT GOAL 4

<u>Goal 4</u>: *Shield America's air, land, and sea frontiers from the drug threat.*

<u>Agency Initiatives</u>:	<u>($ Millions)</u>
• **Intelligence Architecture** Reorganizes counter-drug intelligence architecture to improve coordination and enhanced interoperability with Federal, State, and local law enforcement efforts.	+$1
• **Mobile/Transportable Container Inspection System** Development of new Mobile/Transportable Container Inspection System.	+$5
• **Coast Guard Equipment** Procurement & Facility Upgrades Augments interdiction asset -- shore projects, such as night vision devices and hand-held drug detection sensors.	+$81
• **Coast Guard Aerial & Maritime Operations** Adds funding for interdicting vessels and aircraft smuggling cocaine and marijuana into the U.S.	+$48
• **Customs' South Florida and SWB Initiative** Adds 119 Cargo Enforcement Inspectors at high risk POEs in South Florida and along the SWB, and includes purchases of 2 fixed site and 5 transportable non-intrusive inspection systems.	<u>+$18</u>
Total	+$153

INITIATIVES TO IMPLEMENT GOAL 5

Goal 5: *Break foreign and domestic drug sources of supply.*

ONDCP Initiatives: ($ Millions)

- **Domestic Cannabis Suppression/Eradication** +$14
  Doubles DEA's FY 97 level of effort to increase domestic marijuana investigations and eradication.

- **Vetted Law Enforcement** +$23
  Expands vetted law enforcement units in key source and transit countries. Funds development of trusted law enforcement teams among locals in key countries for cooperative efforts in international drug control.

- **Peruvian Alternative Development Initiative** +$50
  This is the initial funding for a major long-term comprehensive program ($1.5 billion over five years) designed to eliminate all but legitimate medical coca production in Peru.

- **Mexico Transit Support Initiative** +$50
  The funds lay the ground work for a comprehensive integrated engagement with Mexico on all aspects of drug control including production, trafficking, and drug abuse.

- **Domestic Identification & Mapping of Marijuana Growing Areas** +$1
  Develop technical applications to assist in the identification and mapping of potential and actual growing areas of domestic marijuana.

INITIATIVES TO IMPLEMENT GOAL 5 (CONTINUED)

ONDCP Initiatives (continued):	($ Millions)
• **Domestic Marijuana Eradication** Expands DOD's National Guard support to Federal, State, and local law enforcement efforts for marijuana eradication. Also provides resources to Bureau of Land Management for eradication efforts on public lands.	+$10
Agency Initiatives:	
• **Laser Strike, TAGOS Support, & C4I Support** Fleet support for Laser Strike, increased TAGOS costs, and C4I support to JIATF-EAST.	+$6
• **DEA & USA's Methamphetamine Initiative** Funds comprehensive approach to attacking methamphetamine abuse to include seizures of clandestine labs.	+$20
• **IRS's Anti-Money Laundering Initiative** Provides for the assignment of special agents at strategic foreign posts to assist foreign governments in investigating money laundering, and providing assistance on criminal tax and asset forfeiture laws.	+$1
• **FinCEN's Money Laundering Initiative** Implements Presidential Decision Directive 42, which supports the intelligence operations associated with multi-agency anti-money laundering programs.	+$1
Total	+$176

APPENDIX MATERIAL

TOBACCO USE AS GATEWAY TO ILLEGAL DRUG USE

- While there is no direct evidence of a causal relationship between gateway behavior and addictive behavior in later life, the statistical correlations are overwhelming. Children who smoke cigarettes are 5.9 times more likely to use any illegal substance; they are 12.1 times more likely to use marijuana; and they are 19.3 times more likely to use cocaine.

- In recognition of the problem of adolescent tobacco use, the President recently announced new initiatives to curb teenage smoking. These initiatives include:

  -- Prohibiting tobacco advertising on billboards near schools,

  -- Ending the practice of including cartoon characters in cigarette ads, and

  -- Restricting the access of teenagers to cigarette machines.

- Given the evidence that cigarettes are a gateway to the use of other more dangerous drugs, a strong case can be made to discourage cigarette use further, especially by adolescents, through an increase in the Federal excise tax. A tax increase will also serve the dual policy objective of providing additional vital funds to implement the President's Drug Control program goals.

- **Center for Addiction and Substance Abuse, Columbia University** -- A 1994 study shows that cigarette users are at higher risk for illicit drug use. The study demonstrated that 83% of all those who use cocaine smoked cigarettes as a gateway behavior.

- **Institute for Social Research, University of Michigan** -- Data released in 1995 as a result of survey data from the 1994 "Monitoring the Future" study suggests that there is a clear link between cigarette smoking and the use of illegal drugs.

  -- Daily use of marijuana is particularly strongly associated with being a current smoker, especially with being a current heavy smoker. Hardly any 8th graders who have not smoked cigarettes are current daily marijuana users (0.1%), but one-in-every eight of the current pack-a-day cigarette smokers are (12.9%).

  -- Further, hardly any of the 8th graders who have not smoked cigarettes have tried marijuana (2.8%); whereas nearly three-quarters (73%) of the 8th grade pack-a-day smokers have. Thus, the pack-a-day smokers are 26 times more likely to have used marijuana as non-smokers.

  -- Also, the use of cigarettes is far more likely to come before the use of marijuana than after. When 8th graders were asked when they first used marijuana and cigarettes, extremely few said they used marijuana first, some said they began both in the same year, and many said they used marijuana after starting cigarette use. For example, of those who said they first used cigarettes in the 6th grade, only 1.5% said they had previously used marijuana, 6% said they also began marijuana use in the 6th grade, and 28% said they began to use marijuana in the 7th or 8th grade.

  -- The use of illicit drugs other than marijuana --like LSD, cocaine, crack, and heroin -- is also strongly associated with cigarette smoking. For example, among 8th graders, nearly a quarter (23.5%) of the current pack-a-day smokers have tried crack. This is 118 times higher than among 8th graders who never smoked cigarettes, only 0.2% of whom have tried crack.

OTHER POLICY CONSIDERATIONS

- **Cost to Smokers** -- The per capita U.S. consumption of cigarettes is over 90 packs a year, or over 1,800 cigarettes annually. (See accompanying graph.) For a moderate to heavy smoker -- someone smoking an average of three packs per day -- an increase in the Federal excise tax of 25¢/pack would cost that consumer an additional $274 per year.

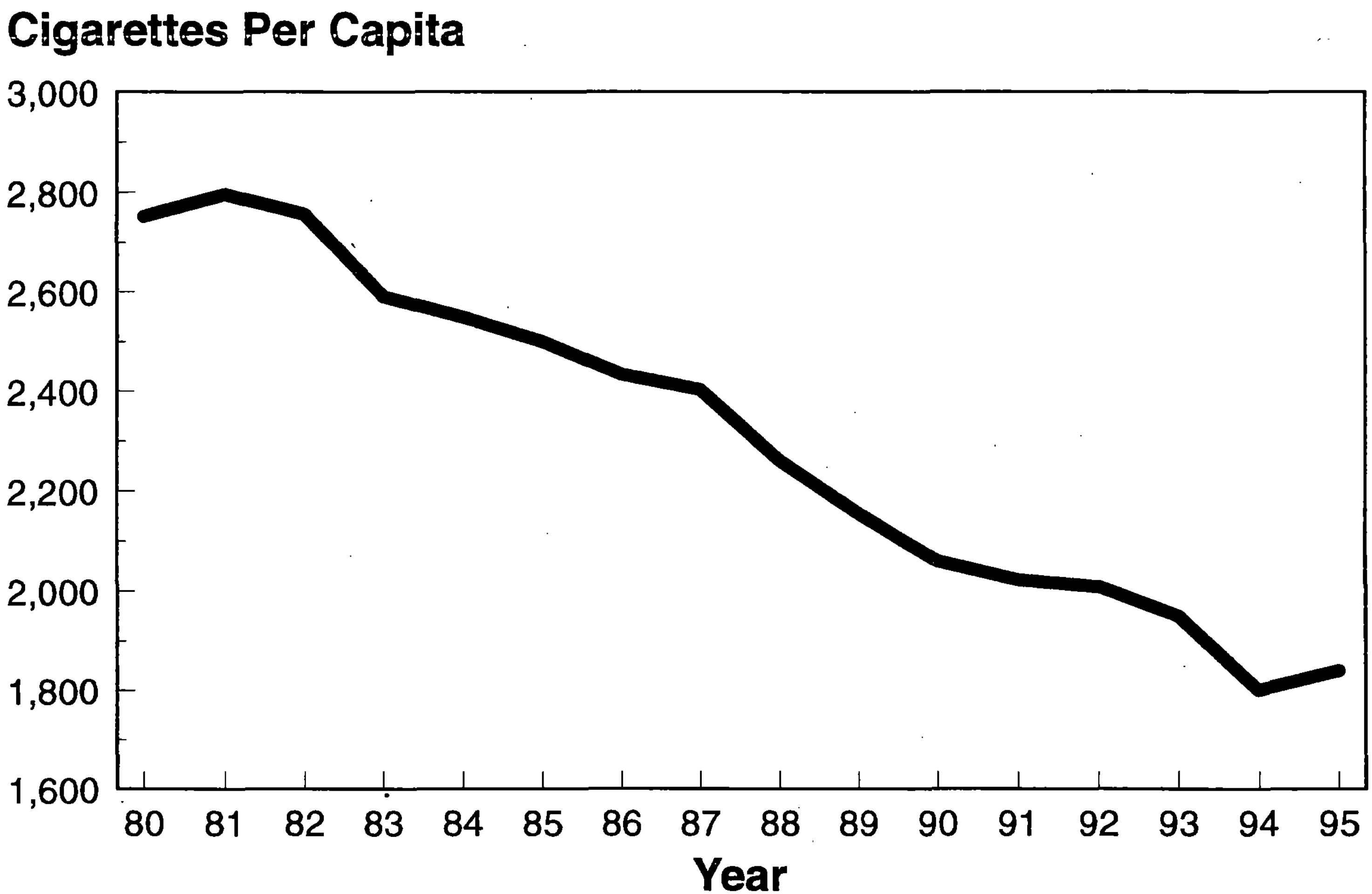
- **Social Costs of Smoking** -- Cigarette smoking accounts for nearly 419,000 deaths annually -- 20 percent of all U.S. deaths. A person dying from smoking related causes loses an average of 20 years off a normal life span. The economic costs of smoking have been estimated at $72 billion a year. The projected health care costs from tobacco-related illnesses which will eventually develop among the current population of teen smokers is $200 billion.

- **Demographics of Those Affected** -- The 1995 National Household Survey on Drug Abuse indicates that past month use of cigarettes by all age groups is fairly evenly distributed by race and ethnicity. However, those individuals who have not completed college are about twice as likely to smoke than those who are college graduates. (See accompanying graphs.) Therefore, the new tax is likely to affect disproportionately those with less education who are unemployed or under-employed. In terms of tax equity and ability to pay, the proposed tax increase would be regressive.

- **Existing State Excise Tax Burden** -- In addition to the nearly $6 billion in Federal excise taxes collected on cigarettes, state and local governments collect in excess of $7 billion. (See accompanying map of excise taxes by state.) The Federal, state and local excise tax burden on cigarettes is already about one-third of the retail price of each pack. Also, a Federal excise tax increase would reduce consumption and reduce state and local excise tax revenues nationwide. Although this is an issue, the national interest in fighting drugs must take precedence.

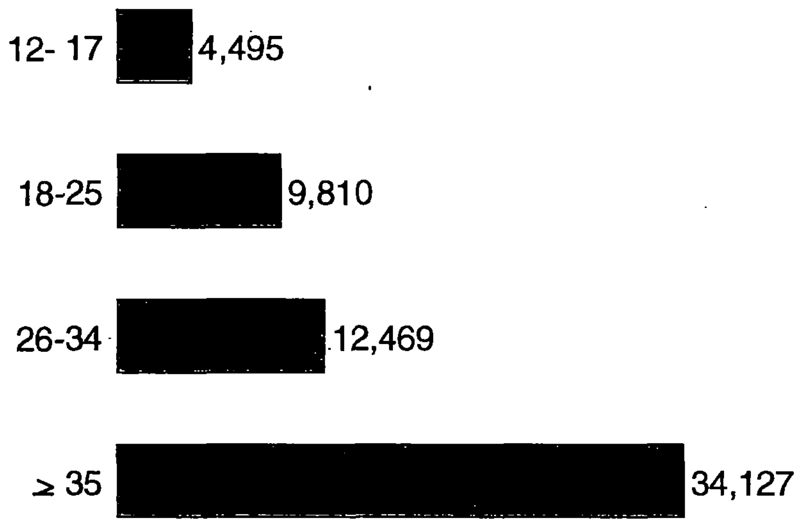
- **Tax Administration Issues** -- Historically, Treasury has objected to earmarking revenue collected for the general operations of the government. However, this issue as well is outweighed by the greater national priority of identifying a dedicated funding source to support the goals of the Drug Control Strategy.

HISTORY OF U.S. CIGARETTE CONSUMPTION PER CAPITA

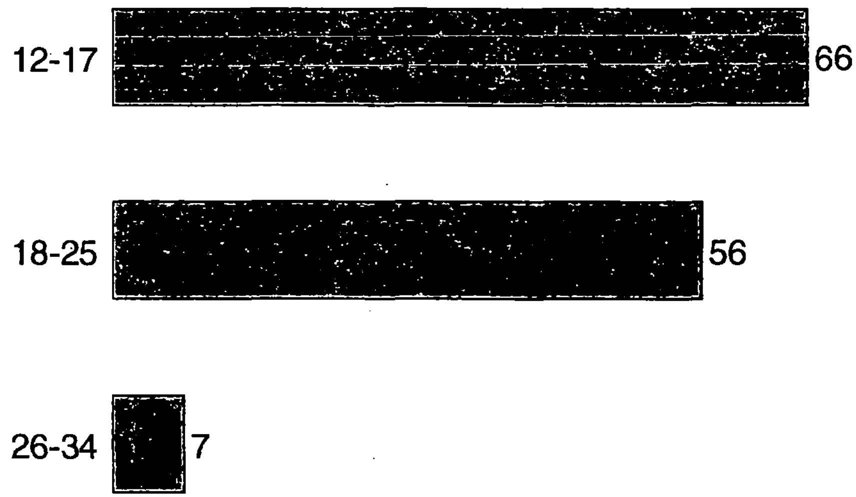


DEMOGRAPHICS OF PAST MONTH CIGARETTE USE
(Thousands of Smokers)

AGE GROUP FOR TOTAL POPULATION



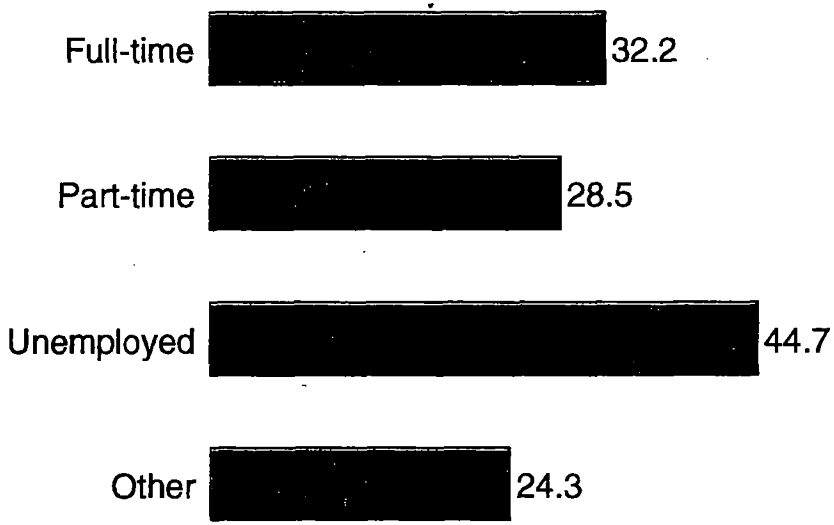
AGE OF FIRST DAILY USE OF CIGARETTES



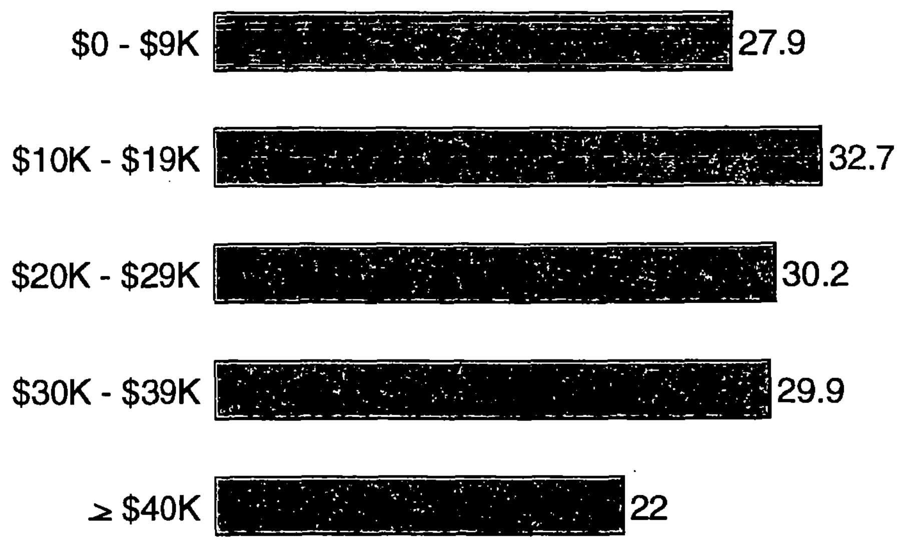
Source: National Household Survey on Drug Abuse 1994 and 1995

DEMOGRAPHICS OF PAST MONTH CIGARETTE USE
(Percent)

CURRENT EMPLOYMENT

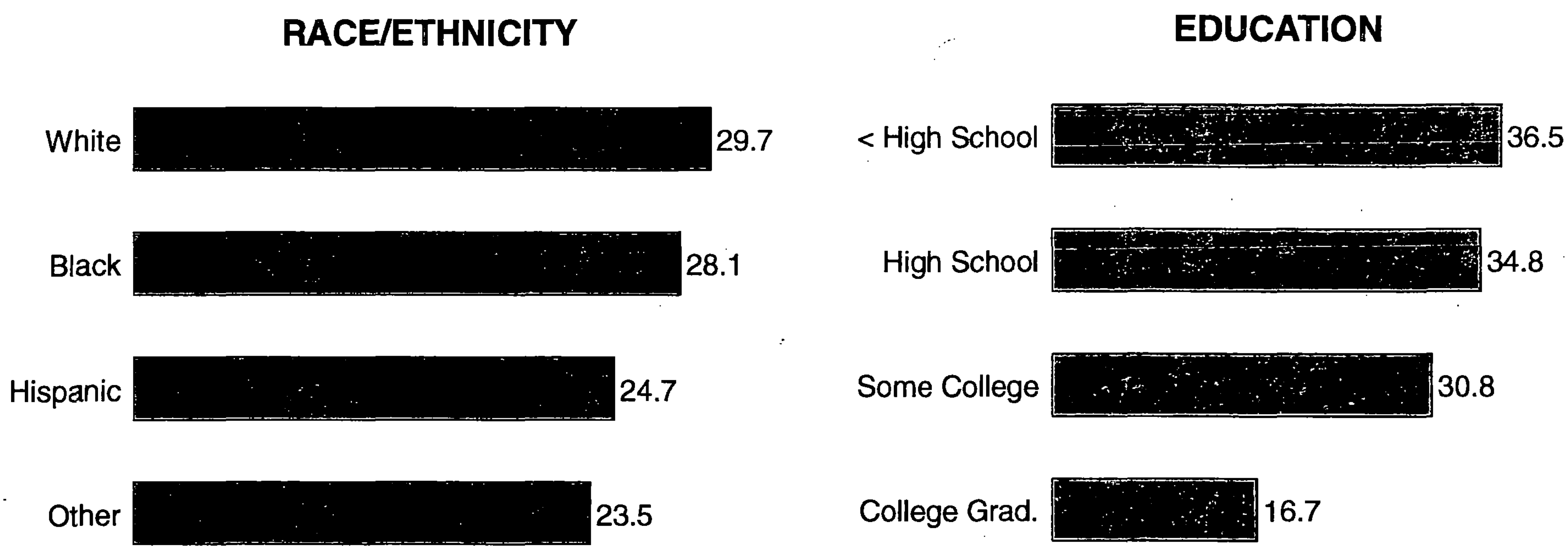


FAMILY INCOME



Source: National Household Survey on Drug Abuse 1995

DEMOGRAPHICS OF PAST MONTH CIGARETTE USE
(Percent)



Source: National Household Survey on Drug Abuse 1995

STATE EXCISE TAXES ON CIGARETTES
CENTS PER PACK
(As of January 1, 1996)

ONDCP OPERATIONAL CONSIDERATIONS

- **Timing of Collections** -- Should this proposal be adopted, the new tax probably would not be effective until January 1, 1998. Even then, significant revenue is unlikely to be credited to ONDCP's account until mid year. Given these timing complications, some key drug program initiatives may be delayed until late FY 1998, or may have to be deferred until early FY 1999.

- **ONDCP Financial Accountability** -- ONDCP's current financial management structure is not well suited for the high degree of financial accountability which would be associated with additional resources in excess of $4 billion. To ensure proper stewardship for these resources, ONDCP should be prepared to conduct its financial operations in a manner consistent with the *Chief Financial Officers Act* and the *Federal Manager's Financial Integrity Act*. This would include a well designed system of funds control, as well as a restructured and expanded financial management staff to account fully for these resources.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20503

February 18, 1997

Dear Ms. ~~Drye~~ Elizabeth

Am writing to enlist your assistance in finding qualified applicants for the position of Director for the Office of Public Affairs. The individual selected will serve as the public affairs and media advisor to the Director of the Office of National Drug Control Policy. Attached is a copy of the Senior Executive Service Vacancy Announcement for that position and procedures for submitting an application.

As Director, selectee is responsible for the development of strategies that inform the public of the drug policy positions and philosophies of this agency and the Administration and for managing media efforts to inform the public on the damages of drug abuse. We are looking for candidates who possess strategic vision, management skills, and professional expertise in public affairs, marketing, and media relations.

ONDCP is going to be an exciting place to work over the next few years, and we are looking for the best and brightest. Request that you share the enclosed announcement with qualified candidates in your industry and community.

Sincerely,

Janet

Janet Crist
Chief of Staff

Ms. Elizabeth Drye
Chief of Staff
Domestic Policy Council
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION

SENIOR EXECUTIVE SERVICE

VACANCY ANNOUNCEMENT

for

OFFICE OF NATIONAL DRUG CONTROL POLICY

ANNOUNCEMENT NO. ONDCP-97-07-RG

Opening Date: FEBRUARY 11, 1997 Closing Date: FEBRUARY 26, 1997

Title: DIRECTOR, OFFICE OF PUBLIC AFFAIRS Salary: $123,100.00
ES-301-03

Location: WASHINGTON, D.C.

Duties:

AREA OF CONSIDERATION: OPEN TO ALL QUALIFIED APPLICANTS

This position has been designated as a Senior Executive Service (SES) position. If not already a member of the SES serving under a career appointment, the individual selected must have his/her executive qualifications certified by a Qualifications Review Board of the Office of Personnel Management before appointment to this position, and will be required to serve a one-year probationary period in this position.

DUTIES: The Director, Office of Public Affairs serves as the public affairs and media advisor to the Director, Office of National Drug Control Policy (ONDCP). Directs the Office of Public Affairs in developing and implementing public affairs and media relations strategies that inform the public of the drug policy positions and philosophies of the Director, ONDCP and the Administration. The incumbent is responsible for setting and maintaining a positive tone in relations with the media and the general public.

AREA OF CONSIDERATION: Applications will be accepted from all qualified persons. Consideration will be extended without discrimination for any non-merit reasons, such as race, color, religion, sex, national origin, political affiliation, marital status, age, membership or non-membership in employee organizations, or non-disqualifying physical handicap.

HOW TO APPLY: In order to receive full consideration, the following documentation must be received by the closing date indicated above. Materials will not be returned. Send (1) an Optional Application for Federal Employment (OF 612); or a resume; or the SF-171, Application for Federal Employment; or other written application, ensuring that all required information shown in the flyer OF 510, Applying for a Federal Job is included in your application; (2) your latest SF-50 "Notification of Personnel Action" if you are a current or former Federal employee; (3) supplemental statement on bond paper which addresses each of the Mandatory Qualifications and Executive Core Qualifications with specific examples of your experience, education, and accomplishments which are applicable to the qualifications; and (4) a supervisory appraisal. Applicants with career appointments in the Senior Executive Service must address only the Mandatory Qualifications. In addition, please complete the attached EOP Applicant Background Survey and submit it with the above documents. This form is voluntary and optional. It will not be part of or considered with your application. It will be used for statistical purposes only. Submit all documents to the Executive Office of the President, Office of Administration, Attn: Personnel Management Division, Room 4013, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503. Applicants submitting applications in postage-paid Government envelopes are reminded of the legal prohibition against the use of such envelopes or other Government property for other than officially approved activities. These prohibitions are contained in 5 C.F.R. 735.205, 39 U.S.C. and 18 U.S.C. Prohibited political recommendations with respect to Federal employment will be returned to the applicant in accordance with 5 U.S.C. 3303.

SECURITY CLEARANCE: A security clearance will be conducted.

DRUG TESTING: The applicant tentatively selected for this position will be required to submit to urinalysis to screen for illegal drug use prior to appointment. After appointment, the employee will be included in the agency's random drug testing program.

MANAGERIAL QUALIFICATIONS: Persons newly selected for appointment to SES positions must have their managerial qualifications approved by the Office of Personnel Management, and they will be required to serve a one-year probationary period.

RELOCATION EXPENSES: Relocation expenses will NOT be paid to the applicant selected.

Oversees the preparation of media presentations for any situation pertinent to the ONDCP mission. Assures that Administration and ONDCP policy initiatives are effectively communicated. Meets with appropriate members of the media, other Federal agencies, state and local government, private industry, associations, and the general public to develop and maintain mutually beneficial relationships.

Applies professional knowledge and skills sufficient to generate and apply management concepts to planning, conducting, and evaluating long-range projects of proposals for the solution of complex public policy questions.

Provides input to the development of major policy speeches and presentations made by the Director and ONDCP senior staff.

Provides on-the-spot, authoritative information to Members of Congress, White House staff, and key officials of other Federal agencies on drug control policy.

QUALIFICATION REQUIREMENTS:

Mandatory Professional/Technical Qualifications:

1. Demonstrated experience in developing and implementing public affairs and media relation strategies.

2. Demonstrated experience and knowledge in applying managerial concepts to planning, conducting, and evaluating long-range projects and proposals.

3. Demonstrated experience in leading interagency efforts to formulate Federal positions on maintaining a positive tone in relations with the media and the general public.

Executive Core Qualifications:

1. Strategic Vision - This core qualification involves the ability to ensure that key national and organizational goals, priorities, values, and other issues are considered in making program decisions and exercising leadership to implement and to ensure that the organization's mission and strategic vision are reflected in the management of its people.

2. Human Resources Management - This core qualification involves the ability to design human resource strategies to meet the organization's mission, strategic vision, and goals to achieve maximum potential of all employees in a fair and equitable manner.

3. Program Development and Evaluation - This core qualification involves the ability to establish program/policy goals and the structure and processes necessary to implement the

organization's mission and strategic vision. Inherent in this process is ensuring that programs and policies are being implemented and adjusted as necessary, that the appropriate results are being achieved, and that a process for continually examining the quality of program activities in place.

4. <u>Resources Planning and Management</u>: This core qualification involves the ability to acquire and administer financial material, and information resources. It also involves the ability to accomplish the organization's mission, support program policy objectives, and promote strategic vision.

5. <u>Organizational Representation and Liaison</u> - This core qualification involves the ability to explain, advocate, and negotiate with individuals and groups internally and externally. It also involves the ability to develop and expansive professional network with other organizations and organizational units.

NOTE: Application must be received in the Office of Administration, Human Resources Management Division by the closing date. Those received by this office after the closing date will be considered **INELIGIBLE**.

IF YOU OMIT ANY OF THE REQUIRED INFORMATION SPECIFIED IN OPTIONAL FORM 510, APPLYING FOR A FEDERAL JOB (COPY ATTACHED), YOUR APPLICATION MAY BE RATED **INELIGIBLE**.

USERS OF TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD) MAY CALL: (202) 395-1160.

OMB Control No: 0300-0010
Expires 8-31-97

Executive Office of the President

APPLICANT BACKGROUND SURVEY

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Executive Office of the President, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

GENERAL INSTRUCTIONS

This information from this survey is used to help insure that agency personnel practices meet the requirements of Federal law. Your responses are voluntary. Answer each of the questions to the best of your ability. Please print entries using capital letters only. Read each item thoroughly before filling in the answer.

Position and Announcement # for which you are applying:
DIRECTOR, OFFICE OF PUBLIC AFFAIRS
#ONDCP-97-07-RG

Date of your application:

Year of Birth:

PRIVACY ACT INFORMATION

GENERAL

This information is provided pursuant to Public Law 9305 79 (Privacy Act of 1974), December 31, 1974, for individuals completing Federal records and forms that solicit personal information.

PURPOSE AND ROUTINE USES

This information is used for research and for a Federal Equal Opportunity Recruitment Program (FEORP) to help ensure that agency personnel practices meet requirements of Federal Law.

EFFECTS OF NONDISCLOSURE

Providing this information is voluntary. No individual personnel selections are made based on this information.

How did you learn of this Position/Announcement?

Please read the subcategories carefully, then categorize yourself in terms of race, ethnicity, disability, and sex, checking only **one** box in **each** category.

RACE

☐ 1. ***American Indian or Alaskan Native:*** A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

☐ 2. ***Asian or Pacific Islander:*** A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, India, Japan, Korea, the Phillippine Islands, and Samoa.

☐ 3. ***Black:*** A person having origins in any of the black racial groups of Africa.

☐ 4. ***White:*** A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

ETHNICITY

☐ ***Hispanic Origin:*** A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race.

☐ ***Not of Hispanic Origin***

DISABILITY

Please provide information on your disability status by checking one of the categories below:

☐ 1. I do not have a disability

☐ 2. Hearing Impairment

☐ 3. Vision Impairment

☐ 4. Missing Extremities

☐ 5. Partial Paralysis

☐ 6. Complete Paralysis

☐ 7. Convulsive Disorder

☐ 8. Mental Retardation

☐ 9. Mental or Emotional Illness

☐ 10. Severe Distortion of Limbs and/or Spine

☐ 11. I have a disability, but it is not listed

GENDER

☐ 1. Male

☐ 2. Female

FOR AGENCY USE ONLY

Date Received (MM/DD/YY)

Occupational Supplement Code

Occupational Series Code

Agency Code

Location

VETERANS' PREFE ENC I H ING

- ❑ If you served on active duty in the United States Military and were separated under honorable conditions, you may be eligible for veterans' preference. To receive preference if your service began after October 15, 1976, you must have a Campaign Badge, Expeditionary Medal, or a service-connected disability. For further details, call OPM at **912-757-3000**. Select "Federal Employment Topics" and then "Veterans." Or, dial our electronic bulletin board at **912-757-3100**.
- ❑ Veterans' preference is not a factor for Senior Executive Service jobs or when competition is limited to status candidates (current or former Federal career or career-conditional employees).
- ❑ To claim 5-point veterans' preference, attach a copy of your DD-214, *Certificate of Release or Discharge from Active Duty*, or other proof of eligibility.
- ❑ To claim 10-point veterans' preference, attach an SF 15, *Application for 10-Point Veterans' Preference*, plus the proof required by that form.

OTHER IMPORTANT INFORMATION

- ❑ Before hiring, an agency will ask you to complete a *Declaration for Federal Employment* to determine your suitability for Federal employment and to authorize a background investigation. The agency will also ask you to sign and certify the accuracy of all the information in your application. **If you make a false statement in any part of your application, you may not be hired; you may be fired after you begin work; or you may be fined or jailed.**
- ❑ If you are a male over age 18 who was born after December 31, 1959, you must have registered with the Selective Service System (or have an exemption) to be eligible for a Federal job.
- ❑ The law prohibits public officials from appointing, promoting, or recommending their relatives.
- ❑ Federal annuitants (military and civilian) may have their salaries or annuities reduced. All employees must pay any valid delinquent debts or the agency may garnish their salary.

P IVACY AND PUBLIC BURDEN STATEMENTS

The Office of Pe al Management other Federal s rate applicants for Federal jobs under the authority of sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of title 5 of the United States Code. We need the information requested in this brochure and in the associated vacancy announcements to evaluate your qualifications. Other laws require us to ask about citizenship, military service, etc.

❑ We request your Social Security Number (SSN) under the authority of Executive Order 9397 in order to keep your records straight; other people may have the same name. As allowed by law or Presidential directive, we use your SSN to seek information about you from employers, schools, banks, and others who know you. Your SSN may also be used in studies and computer matching with other Government files, for example, files on unpaid student loans.

❑ If you do not give us your SSN or any other information requested, we cannot process your application, which is the first step in getting a job. Also, incomplete addresses and ZIP Codes will slow processing.

❑ We may give information from your records to: training facilities; organizations deciding claims for retirement, insurance, unemployment or health benefits; officials in litigation or administrative proceedings where the Government is a party; law enforcement agencies concerning violations of law or regulation; Federal agencies for statistical reports and studies; officials of labor organizations recognized by law in connection with representing employees; Federal agencies or other sources requesting information for Federal agencies in connection with hiring or retaining, security clearances, security or suitability investigations, classifying jobs, contracting, or issuing licenses, grants, or other benefits; public or private organizations including news media that grant or publicize employee recognition and awards; and the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, the National Archives, the Federal Acquisition Institute, and congressional offices in connection with their official functions.

❑ We may also give information from your records to: prospective nonfederal employers concerning tenure of employment, civil service status, length of service, and date and nature of action for separation as shown on personnel action forms of specifically identified individuals; requesting organizations or individuals concerning the home address and other relevant information on those who might have contracted an illness or been exposed to a health hazard; authorized Federal and nonfederal agencies for use in computer matching; spouses or dependent children asking whether an employee has changed from self-and-family to self-only health benefits enrollment; individuals working on a contract, service, grant, cooperative agreement or job for the Federal Government; non-agency members of an agency's performance or other panel; and agency-appointed representatives of employees concerning information issued to an employee about fitness-for-duty or agency-filed disability retirement procedures.

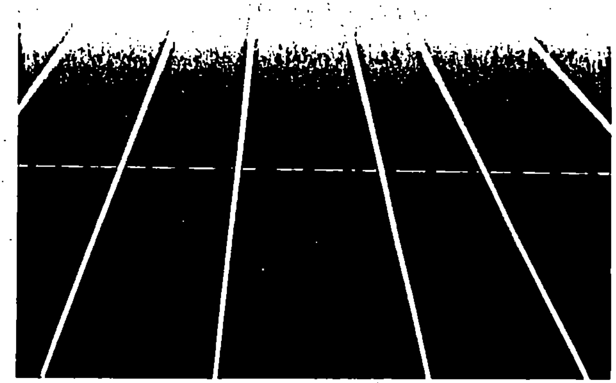
❑ We estimate the public burden for reporting the employment information will vary from 20 to 240 minutes with an average of 40 minutes per response, including time for reviewing instructions, searching existing data sources, gathering data, and completing and reviewing the information. You may send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to the U.S. Office of Personnel Management, Reports and Forms Management Officer, Washington, DC 20415-0001.

Send your application to the agency announcing the vacancy.

Form Approved: OMB 3206-0219 50510-101 NSN 7540-01-351-9177

☆ U.S. GOVERNMENT PRINTING OFFICE: 1995 - 392-274 - 415/09178

Applying for a Federal Job



United States Office of Personnel Management

OF 510
(September 1994)

JOB OPENINGS

For job info on 24 h a /, 7 days a week, call 912-757-3000, the U.S. Office of Personnel Management (OPM) automated telephone system. Or, with a computer modem dial 912-757-3100 for job information from an OPM electronic bulletin board. You can also reach the board through the Internet (Telnet only) at FJOB.MAIL.OPM.GOV.

APPLICANTS WITH DISABILITIES

You can find out about alternative formats by calling OPM or dialing the electronic bulletin board at the numbers above. Select "Federal Employment Topics" and then "People with Disabilities." If you have a hearing disability, call TDD 912-744-2299.

HOW TO APPLY

Review the list of openings, decide which jobs you are interested in, and follow the instructions given. **You may apply for most jobs with a resume, the *Optional Application for Federal Employment*, or any other written format you choose.** For jobs that are unique or filled through automated procedures, you will be given special forms to complete. (You can get an *Optional Application* by calling OPM or dialing our electronic bulletin board at the numbers above.)

WHAT TO INCLUDE

Although the Federal Government does not require a standard application form for most jobs, we do need certain information to evaluate your qualifications and determine if you meet legal requirements for Federal employment. If your resume or application does not provide all the information requested in the job vacancy announcement and in this brochure, you may lose consideration for a job. Help speed the selection process by keeping your resume or application brief and by sending only the requested material. Type or print clearly in dark ink.

Here what your re ume or applicat on mu t contain

(in addition to specific information requested in the vacancy announcement)

JOB INFORMATION

- ❑ Announcement number, and title and grade(s) of the job you are applying for

PERSONAL INFORMATION

- ❑ Full name, mailing address *(with ZIP Code)* and day and evening phone numbers *(with area code)*
- ❑ Social Security Number
- ❑ Country of citizenship *(Most Federal jobs require United States citizenship.)*
- ❑ Veterans' preference *(See reverse.)*
- ❑ Reinstatement eligibility *(If requested, attach SF 50 proof of your career or career-conditional status.)*
- ❑ Highest Federal civilian grade held *(Also give job series and dates held.)*

EDUCATION

- ❑ High school
  - Name, city, and State *(ZIP Code if known)*
  - Date of diploma or GED
- ❑ Colleges or universities
  - Name, city, and State *(ZIP Code if known)*
  - Majors
  - Type and year of any degrees received *(If no degree, show total credits earned and indicate whether semester or quarter hours.)*
- ❑ Send a copy of your college transcript only if the job vacancy announcement requests it.

WORK EXPERIENCE

- ❑ Give the following information for your paid and nonpaid work experience related to the job you are applying for. *(Do not send job descriptions.)*
  - Job title *(include series and grade if Federal job)*
  - Duties and accomplishments
  - Employer's name and address
  - Supervisor's name and phone number
  - Starting and ending dates *(month and year)*
  - Hours per week
  - Salary
- ❑ Indicate if we may contact your current supervisor.

OTHER QUALIFICATIONS

- ❑ **Job-related** training courses *(title and year)*
- ❑ **Job-related** skills, for example, other languages, computer software/hardware, tools, machinery, typing speed
- ❑ **Job-related** certificates and licenses *(current only)*
- ❑ **Job-related** honors, awards, and special accomplishments, for example, publications, memberships in professional or honor societies, leadership activities, public speaking, and performance awards *(Give dates but do not send documents unless requested.)*

THE FEDERAL GOVERNMENT IS AN EQUAL OPPORTUNITY EMPLOYER

~~Schmidt~~ John Schmidt's - oversees Civil Division
office (Kathy Sheafor)
514-9500

Nick Gess

or

→ Chris Sullivan ←

514-3465

DOJ Public Liaison

(say Dennis Burke
told you to call him)

STATUS?
Grace Mastalli - 514-4606

> 11

Do you want to be prompted after each item is displayed? (Y/N)
> n

S866 Dole (R-KS)
Prison Litigation Reform Act of 1995
(BILLTRACK; BillWatch 09/14/95; CRS 10/03/95 -- digest 60 lines)
Item Key: 866

--- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- ---

INTRODUCED: 05/25/95

OFFICIAL TITLE: A bill to reform prison litigation, and for other purposes.

SHORT TITLE AS INTRODUCED:
Prison Litigation Reform Act of 1995

CRS DIGEST:
Prison Litigation Reform Act of 1995 - Amends the Federal judicial code to require a prisoner of a Federal, State, or local institution seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security to submit a certified copy of the prisoner's trust fund account statement for the six-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each institution at which the prisoner is or was confined.

Requires a prisoner who brings a civil action or files an appeal in forma pauperis to pay the full amount of a filing fee. Directs the court to assess, and when funds exist to collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of the average monthly deposits to the prisoner's account or the average monthly balance in the prisoner's account for such six-month period.

Requires the prisoner, after paying the initial partial filing fee, to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. Directs the agency having custody of the prisoner to forward payments from such account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

Sets forth similar provisions regarding the payment of costs by the prisoner.

Revises provisions regarding the appointment of counsel in forma pauperis proceedings to require the court to dismiss the case at any time if the allegation of poverty is untrue or if the court determines that the action or appeal is frivolous or malicious or fails to state a claim on which relief may be granted.

Sets forth provisions regarding: (1) judicial screening of complaints in civil actions brought by prisoners against governmental entities; and (2) limits on Federal tort and civil rights claims by prisoners.

Authorizes the court to revoke earned release credit under specified circumstances.

Amends the Civil Rights of Institutionalized Persons Act to require exhaustion of administrative remedies before permitting a civil action for deprivation of rights.

CRS SUBJECT INDEX TERMS:
- Corrections
- Actions and defenses
- Administrative remedies
- Administrative responsibility
- Appellate procedure
- Civil rights
- Criminal justice
- Frivolous lawsuits
- Government liability
- Imprisonment
- Instalment plan
- Judicial review of administrative acts
- Law
- Legal assistance to prisoners
- Legal fees
- Parole
- Prisoners
- Rights of institutionalized persons
- Social services
- Torts

S1279 Dole (R-KS)
Prison Litigation Reform Act of 1995
(BILLTRACK; CRS 01/23/96 -- digest 107 lines)
Item Key: 4353

--- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- ---

INTRODUCED: 09/27/95

OFFICIAL TITLE: A bill to provide for appropriate remedies for prison condition lawsuits, to discourage frivolous and abusive prison lawsuits, and for other purposes.

Legal assistance to prisoners
Legal fees
Local government
Parole
Parties to actions
Politics and government
Prison overcrowding
Prisoners
Rights of institutionalized persons
Social services
State and local government
State laws
State politics and government

There are no more items to display.

Results: 2 items in BILLTRACK
Search criteria used:
TITLE:PRISON LITIGATION REFORM AND MARK 1 OR 2
Resul

Grace Mastalli: 574-4606

- Prison Litigation Reform Act - Status

John Schmidt - has testified - we submitted comments and changes -

- Part of ~~At~~ Commerce/Justice/State Appropriations
- whole thing is in there

Turn to committee / Authorizing committee to address our concerns

- Dole/Gingrich have committed to NAG that if CR is more than week long - this will move on Appropriations bill and be -
NAG disagrees w/ us on

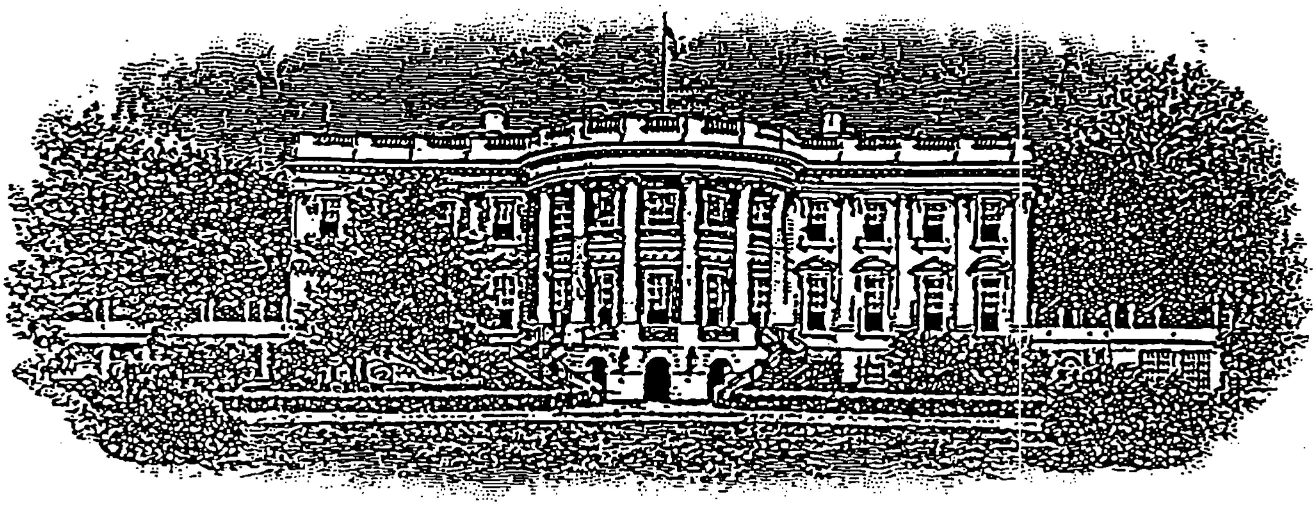
509
418
91

*** ACTIVITY REPORT ***

TRANSMISSION OK

TX/RX NO.	6467
CONNECTION TEL	914154579151
CONNECTION ID	
START TIME	04/15 13:07
USAGE TIME	15'52
PAGES	17
RESULT	OK

The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

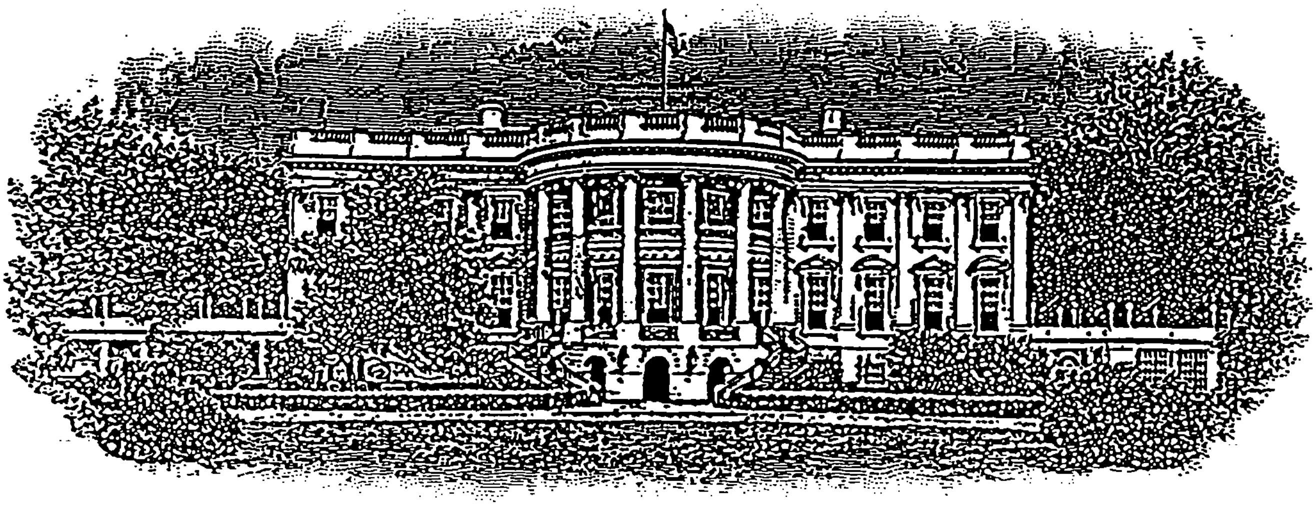
TO: Alison Hardy

FAX NUMBER: 415-457-9151

TELEPHONE NUMBER:

FROM: Elizabeth Drye

The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: Alison Hardy

FAX NUMBER: 415-457-9151

TELEPHONE NUMBER:

FROM: Elizabeth Drye

TELEPHONE NUMBER: 202-456-5573

PAGES (INCLUDING COVER): 17

COMMENTS: Call me - I have some contacts for you at Justice -

Department of Justice

TESTIMONY OF

JOHN R. SCHMIDT

ASSOCIATE ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

REGARDING

OVERHAULING THE NATION'S PRISONS

PRESENTED ON

JULY 27, 1995

Mr. Chairman and Members of the Committee:

Thank you for giving me the opportunity to appear before you today to discuss the progress the Department of Justice has made and some of what we have learned over the past year in implementing The Violent Offender Incarceration and Truth in Sentencing Incentive Grants programs and related provisions of the Violent Crime Control and Law Enforcement Act of 1994. Please include my full written statement in the record.

As you know, last Fall the Attorney General asked me to assume overall responsibility for coordinating the Department's efforts to implement the 1994 Crime Act. I am proud of the Department's strong record of accomplishment in meeting the many related challenges it has faced in the past year. Like the Attorney General, I am confident that with your help, we can assure that timely federal assistance gets to the states that need it to help end revolving door justice.

As you know, Mr. Chairman, the Crime Act authorizes a total of $9.7 billion in prison related assistance over six years, including $1.8 billion to reimburse states for the costs of incarcerating criminal aliens and $7.9 billion to help address the critical need to assist States in expanding correctional facility capacity to ensure adequate space for confinement of violent offenders. The aim of The Violent Offender Incarceration and Truth in Sentencing Incentive Grants is to ensure that violent offenders are not released early because of a lack of secure correctional space and that they remain incarcerated for substantial periods through the implementation of truth in sentencing laws.

The Justice Department already has made considerable progress in implementing the Violent Offender Incarceration and Truth in Sentencing Incentive Grants. We stand ready to provide immediate assistance to state and local correctional systems where facilities are bursting at the seams. The grant program under this existing law is designed to assist states -- and assist them quickly -- to assure that convicted predatory criminals remain incarcerated and incapacitated.

Because implementation of these grant programs is a high priority for the Justice Department, we created a new Corrections Program Office within the Office of Justice Programs to develop and administer these programs. The office is headed by a Director, Larry Meachum, who has more than 30 years' correctional experience and has led state correctional agencies in Massachusetts, Oklahoma, and Connecticut. The Deputy Director, Stephen Amos, is former Director of Research and Evaluation for the Oregon Department of Corrections. Director Meachum reports to Assistant Attorney General Laurie Robinson, who heads the Office of Justice Programs and in turn, reports to me.

Soon after the Crime Act's enactment, the Department began meeting with representatives from national criminal justice organizations, state and local criminal justice agencies, and others to determine how best to implement the new law so that programs were responsive to the needs of state and local communities. Our goal in implementing these prison grant programs is to forge a productive federal, state, and local partnership to strengthen the nation's criminal justice system's ability to effectively deal with career criminals and serious violent offenders.

Some states have made important progress in rejecting and reversing the anti-incarcerative policies that have contributed so heavily to the growth of crime in the past. Few states, however, have gone as far as the federal system in adopting necessary reforms, and it is clear that nationwide much more needs to be done. The prison grants programs of the 1994 Crime Act provide the essential incentives and assistance for adoption at the state level of these urgently needed measures to protect the public from violent criminals. In fact, we are encouraged many states have already taken steps to reform their sentencing laws already in expectation of qualifying for grants under the 1994 Act.

Boot Camp Initiative

On March 1, the Office of Justice Programs issued program guidelines and application materials for the Boot Camp Initiative. For those not familiar with the boot camp concept, a boot camp is a residential correctional program for adult or juvenile offenders. Boot camps provide short-term confinement for nonviolent offenders. Boot camps are generally styled after their military namesakes, and require inmates to adhere to a regimented schedule that involves strict discipline, physical training, and work. Education, job training, and substance abuse counseling or treatment also are provided to help offenders prepare for a productive life in the community.

Research has shown that boot camp programs can reduce institutional crowding and costs, while improving offenders' educational level, employment prospects, and access to community programs. Evaluations of boot camps in New York and Louisiana have found that the programs resulted in reduced costs and reduced recidivism. Our Boot Camp Initiative is based on the results of these evaluations. Applicants were encouraged to incorporate into their programs strategies that were found to be successful in existing boot camps.

We're currently reviewing a total of 89 applications received from 42 states/territories and the District of Columbia. Thirty-nine applications are for boot camp construction, 32 are for planning grants, and 18 are for funds to renovate existing boot camps to increase bed space. More than half the applications are for boot camps for juvenile offenders.

SHORT TITLE AS INTRODUCED:
Prison Litigation Reform Act of 1995

CRS DIGEST:
Prison Litigation Reform Act of 1995 - Revises Federal criminal code provisions regarding remedies for prison crowding to substitute provisions regarding remedies for prison conditions.

Prohibits: (1) prospective relief in any civil action regarding prison conditions from extending further than necessary to correct the violation of the Federal right of particular plaintiffs; and (2) the court from granting or approving any such relief unless that relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation. Directs the court to give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

Authorizes the court to enter a temporary restraining order or an order for preliminary injunctive relief, which shall automatically expire 90 days after its entry, with exceptions.

Prohibits a prisoner release order from being entered unless: (1) a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right and the defendant has had a reasonable amount of time to comply with the previous court orders; and (2) it is entered by a three-judge court, which finds by clear and convincing evidence that crowding is the primary cause of the violation and no other relief will remedy it, and finds by a preponderance of the evidence that crowding has deprived an identifiable plaintiff of an essential human need.

Sets forth provisions regarding: (1) termination or modification of relief; (2) settlements; (3) State law remedies; (4) procedure for motions affecting prospective relief; and (5) the use of special masters.

(Sec. 3) Amends the Civil Rights of Institutionalized Persons Act to require the Attorney General to personally sign any complaint filed, or certification or motion to intervene made, to initiate a civil action under the Act.

Revises provisions of the Act to prohibit any action from being brought with respect to prison conditions by a prisoner until such administrative remedies as are available are exhausted. Specifies that the failure of a State to adopt or adhere to an administrative grievance procedure shall not constitute the basis for an action. Directs the court to dismiss any such action if satisfied that the action fails to state a claim upon which relief can be granted or is frivolous or malicious (and, if a claim is on its face frivolous or malicious, authorizes the court to dismiss the underlying claim without first requiring exhaustion of administrative remedies).

Sets forth provisions regarding: (1) limits on the award of attorney's fees; (2) limits on recovery; (3) hearing location; and (4) waiver of reply.

(Sec. 4) Amends the Federal judicial code to require a prisoner: (1) of a Federal, State, or local institution seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security to submit a certified copy of the prisoner's trust fund account statement for the six-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each institution at which the prisoner is or was confined; and (2) who brings a civil action or files an appeal in forma pauperis to pay the full amount of a filing fee (and directs the court to assess, and when funds exist to collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of the average monthly deposits to the prisoner's account or the average monthly balance in the prisoner's account for such six-month period).

Sets forth similar provisionsregarding the payment of costs by the prisoner.

Revises provisions regarding the appointment of counsel in forma pauperis proceedings to require the court to dismiss the case at any time if the allegation of poverty is untrue or if the action or appeal is frivolous or malicious or fails to state a claim on which relief may be granted.

Sets forth provisions regarding: (1) successive claims; (2) judicial screening of complaints in civil actions brought by prisoners against governmental entities; and (3) limits of Federal tort claims by prisoners.

(Sec. 7) Authorizes the court to revoke earned release credit under specified circumstances.

Amends the Federal criminal code to: (1) direct the Bureau of Prisons, in awarding credit towards service of sentence for satisfactory behavior, to consider whether the prisoner, during the relevant period, has earned or is making satisfactory progress toward earning a high school diploma or an equivalent degree; and (2) provide that credit awarded after the date of enactment of this Act shall vest on the date the prisoner is released from custody.

CRS SUBJECT INDEX TERMS:
Corrections
Actions and defenses
Administrative remedies
Consent decrees
Criminal justice
Frivolous lawsuits
Government liability
Grievance procedures
Injunctions
Judicial review of administrative acts
Law

We expect to award approximately 25 planning grants of up to $50,000; about 5 grants of up to $1 million will be awarded to jurisdictions to renovate existing facilities for use as boot camps, and another 5 grants or so of up to $2 million each will be awarded for construction of new boot camp facilities.

Violent Offender/Truth in Sentencing Programs

While we've been moving forward with the boot camp grant program, we've also made progress in developing the more complex Truth in Sentencing and Violent Offender Incarceration Grant Programs. These programs are scheduled to begin in October, with the start of Fiscal Year 1996.

The statute divides funding equally between the Truth in Sentencing Incentive program and the Violent Offender Incarceration program. Fifty percent of these funds are to be allocated for Truth in Sentencing Formula Grants for states that adopt truth in sentencing laws assuring that second time violent offenders serve at least 85 percent of their sentences. State allocations are based on their UCR rates for Part I violent offenses. The other 50 percent are to be allocated for Violent Offender Incarceration Grants to all states. To be eligible for funding, states must meet several assurances. Both programs require truth in sentencing, but the Violent Offender Incarceration Program is somewhat less stringent in its eligibility requirements.

Specifically, under the Violent Offender Incarceration Program, states must show that they have implemented or will implement truth in sentencing laws that ensure violent offenders serve a substantial portion of their sentences; provide sufficiently severe punishment for violent offenders; and incarcerate violent offenders for a period of time necessary to protect the public.

States must agree to work with local governments. They also must demonstrate that the rights of crime victims are protected. Much like the Byrne Memorial Grants which require state and local planning, states are also to engage in comprehensive correctional planning that includes local governments.
We think this kind of comprehensive planning is essential to implementing an effective program and wisely spending federal dollars. Certainly, this is one lesson -- the need for planning -- that we learned from LEAA.

To be eligible for Truth in Sentencing grants, states must also show that they have in effect truth in sentencing laws that ensure that offenders convicted of a second violent crime serve not less than 85 percent of the sentence imposed or meet other requirements that ensure that violent offenders, and especially repeat violent offenders, remain incarcerated for substantially greater percentages of their imposed sentences. We believe that this is a workable and meaningful goal that states can meet which appropriately targets dangerous career offenders and will measurably improve public safety.

These requirements were outlined in the Interim Final Rule published in the Federal Register last December. Since then, we've been working with state and local officials to solicit suggestions on how to best implement key elements of these programs.

Written responses have been received from governors' offices, departments of correction, sheriffs' departments, local jails, prosecutors and criminal justice organizations. Additionally, to help in formulating these programs we've held workshops with state and local corrections officials. We've also met to discuss related issues with, among others, representatives from offices of prosecutors, state attorneys general and governors, the National Governors Association and the National Criminal Justice Association.

The Department of Justice is committed to ensuring a realistic and workable response to violent crime and truth in sentencing that can provide states the prison beds they need to help assure that violent and predatory offenders are put away -- and put away for a long time. That's what the public wants, that's what the public deserves and we are moving rapidly ahead to deliver that through this program.

Reforms Relating To Prisoner Litigation

The Department also supports improvement of the criminal justice system through the implementation of other reforms. Several pending bills under consideration by the Senate contain three sets of reforms that are intended to curb abuses or perceived excesses in prisoner litigation or prison conditions suits.

The first set of provisions appears in title II of H.R. 667 as passed by the House of Representatives, and in § 103 of S. 3. These provisions strengthen the requirement of exhaustion of administrative remedies under the Civil Rights of Institutionalized Persons Act (CRIPA) for state prisoner suits, and adopt other safeguards against abusive prisoner litigation. We have endorsed these reforms in an earlier communication to Congress.[1] We also recommend that parallel provisions be adopted to require federal prisoners to exhaust administrative remedies prior to commencing litigation.

[1] Letter of Assistant Attorney General Sheila F. Anthony to Honorable Henry J. Hyde concerning H.R. 3, at 17-19 (January 26, 1995).

The second set of provisions appears in a new bill, S. 866, which we have not previously commented on. The provisions in this bill have some overlap with those in § 103 of S. 3 and title II of H.R. 667, but also incorporate a number of new proposals. We support the objectives of S. 866 and many of the specific provisions in the bill. In some instances, we have recommendations for alternative formulations that could realize the bill's objectives more effectively.

The third set of provisions appears in S. 400, and in title III of H.R. 667 as passed by the House of Representatives, the "Stop Turning Out Prisoners" (STOP) proposal. The Violent Crime Control and Law Enforcement Act of 1994 enacted 18 U.S.C. 3626, which limits remedies in prison conditions litigation. The STOP proposal would amend this section to impose various additional conditions and restrictions. We support the basic objective of this legislation, including particularly the principle that judicial caps on prison populations must be used only as a last resort when no other remedy is available for a constitutional violation, although we have constitutional or policy concerns about a few of its specific provisions.

A. The Provisions in § 103 of S. 3 and H.R. 667 title II

As noted above, we support the enactment of this set of provisions.

The Civil Rights of Institutionalized Persons Act (42 U.S.C. § 1997e) currently authorizes federal courts to suspend § 1983 suits by prisoners for up to 180 days in order to require exhaustion of administrative remedies. Section 103(a)-(b), (e) of S. 3 strengthens the administrative exhaustion rule in this context -- and brings it more into line with administrative exhaustion rules that apply in other contexts -- by generally prohibiting prisoner § 1983 suits until administrative remedies are exhausted.

As noted above, we recommend that this proposal also incorporate a rule requiring federal prisoners to exhaust administrative remedies prior to commencing litigation. A reform of this type is as desirable for federal prisoners as the corresponding strengthening of the exhaustion provision for state prisoners that now appears in section 103 of S. 3. We would be pleased to work with interested members of Congress in formulating such a provision.

Section 103(c) of S. 3 directs a court to dismiss a prisoner § 1983 suit if the court is satisfied that the action fails to state a claim upon which relief can be granted or is frivolous or malicious. A rule of this type is desirable to minimize the burden on states of responding unnecessarily to prisoner suits that lack merit and are sometimes brought for purposes of harassment or recreation.

Section 103(d) of S. 3 deletes from the minimum standards for prison grievance systems in 42 U.S.C. 1997e(b)(2) the requirement of an advisory role for employees and inmates (at the most decentralized level as is reasonably possible) in the formulation, implementation, and operation of the system. This removes the condition that has been the greatest impediment in the past to the willingness of state and local jurisdictions to seek certification for their grievance systems.

Section 103(f) of S. 3 strengthens safeguards against and sanctions for false allegations of poverty by prisoners who seek to proceed in forma pauperis. Subsection (d) of 28 U.S.C. 1915 currently reads as follows: "The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." Section 103(f)(1) of S. 3 amends that subsection to read as follows: "The court may request an attorney to represent any such person unable to employ counsel and shall at any time dismiss the case if the allegation of poverty is untrue, or if satisfied that the action fails to state a claim upon which relief may be granted or is frivolous or malicious even if partial filing fees have been imposed by the court."

Section 103(f)(2) of S. 3 adds a new subsection (f) to 28 U.S.C. 1915 which states that an affidavit of indigency by a prisoner shall include a statement of all assets the prisoner possesses. The new subsection further directs the court to make inquiry of the correctional institution in which the prisoner is incarcerated for information available to that institution relating to the extent of the prisoner's assets. This is a reasonable precaution. The new subsection concludes by stating that the court "shall require full or partial payment of filing fees according to the prisoner's ability to pay." We would not understand this language as limiting the court's authority to require payment by the prisoner in installments, up to the full amount of filing fees and other applicable costs, where the prisoner lacks the means to make full payment at once.

B. S. 866

Section 2 in S. 866 amends the in forma pauperis statute, 28 U.S.C. 1915, in the following manner: (1) The authority to allow a suit without prepayment of fees -- as opposed to costs -- in subsection (a) is deleted. (2) A prisoner bringing a suit would have to submit a statement of his prison account balance for the preceding six months. (3) A prisoner would be liable in all cases to pay the full amount of a filing fee. An initial partial fee of 20% of the average monthly deposits to or average monthly balance in the prisoner's account would be required, and thereafter the prisoner would be required to make monthly payments of 20% of the preceding month's income credited to the account, with the agency having custody of the prisoner forwarding such payments whenever the amount in the account exceeds $10. However, a prisoner would not be barred from bringing any action because of inability to pay the initial partial fee. (4) If a judgment against a prisoner includes the payment of costs, the prisoner would be required to pay the full amount of costs ordered, in the same manner provided for the payment of filing fees by the amendments.

In essence, the point of these amendments is to insure that prisoners will be fully liable for filing fees and costs in all cases, subject to the proviso that prisoners will not be barred from suing because of this liability if they are actually unable to pay. We support this reform in light of the frequency with which prisoners file frivolous and harassing suits, and the general absence of other disincentives to doing so.

However, the complicated standards and detailed numerical prescriptions in this section are not necessary to achieve this objective. It would be adequate to provide simply that prisoners are fully liable for fees and costs, that their applications must be accompanied by certified prison account information, and that funds from their accounts are to be forwarded periodically when the balance exceeds a specified amount (such as $10) until the liability is discharged. We would be pleased to work with the sponsors to refine this proposal.

In addition to these amendments relating to fees and costs, § 2 of S. 866 strengthens 28 U.S.C. 1915(d) to provide that the court shall dismiss the case at any time if the allegation of poverty is untrue or if the action is frivolous or malicious or fails to state a claim. This is substantially the same as provisions included in § 103 of S. 3 and title II of H.R. 667, which we support.

Section 3 of S. 866 essentially directs courts to review as promptly as possible suits by prisoners against governmental entities or their officers or employees, and to dismiss such suits if the complaint fails to state a claim or seeks monetary relief from an immune defendant. This is a desirable provision that could avoid some of the burden on states and local governments of responding to non-meritorious prisoner suits.

Section 6 provides that a court may order revocation of good time credits for federal prisoners if (1) the court finds that the prisoner filed a malicious or harassing civil claim or testified falsely or otherwise knowingly presented false evidence or information to the court, or (2) the Attorney General determines that one of these circumstances has occurred and recommends revocation of good time credit to the court.

We support this reform in principle. Engaging in malicious and harassing litigation, and committing perjury or its equivalent, are common forms of misconduct by prisoners. Like other prisoner misconduct, this misconduct can appropriately be punished by denial of good time credits.

However, the procedures specified in section 6 are inconsistent with the normal approach to denial of good time credits under 18 U.S.C. 3624. Singling out one form of misconduct for discretionary judicial decisions concerning denial of good time credits -- where all other decisions of this type are made by the Justice Department -- would work against consistency in prison disciplinary policies, and would make it difficult or impossible to coordinate sanctions imposed for this type of misconduct with those imposed for other disciplinary violations by a prisoner.

We accordingly recommend that § 6 of S. 866 be revised to provide that (1) a court may, and on motion of an adverse party shall, make a determination whether a circumstance specified in the section has occurred (i.e., a malicious or harassing claim or knowing falsehood), (2) the court's determination that such a circumstance occurred shall be forwarded to the Attorney General, and (3) on receipt of such a determination, the Attorney General shall have the authority to deny good time credits to the prisoner. We would be pleased to work with the sponsors to refine this proposal.

Section 7 of S. 866 strengthens the requirement of exhaustion of administrative remedies under CRIPA in prisoner suits. It is substantially the same as part of § 103 of S. 3, which we support.[2]

C. The STOP Provisions

As noted above, we support the basic objective of the STOP proposal, including particularly the principle that population caps must be only a "last resort" measure. Responses to unconstitutional prison conditions must be designed and implemented in the manner that is most consistent with public safety. Incarcerated criminals should not enjoy opportunities for early release, and the system's general capacity to provide adequate detention and correctional space should not be impaired, where any feasible means exist for avoiding such a result.

It is not necessary that prisons be comfortable or pleasant; the normal distresses and hardships of incarceration are the just consequences of the offenders' own conduct. However, it is necessary to recognize that there is nevertheless a need for effective safeguards against inhuman conditions in prisons and other facilities. The constitutional provision enforced most frequently in prison cases is the Eighth Amendment's prohibition of cruel and unusual punishment. Among the conditions that have been found to violate the Eighth Amendment are excessive violence, whether inflicted by guards or by inmates under the supervision of indifferent guards, preventable rape, deliberate indifference to

---

[2] However, there is a typographic error in line 22 of page 8 of the bill. The words "and exhausted" in this line should be "are exhausted."

serious medical needs, and lack of sanitation that jeopardizes health. Prison crowding may also be a contributing element in a constitutional violation. For example, when the number of inmates at a prison becomes so large that sick inmates cannot be treated by a physician in a timely manner, or when crowded conditions lead to a breakdown in security and contribute to violence against inmates, the crowding can be addressed as a contributing cause of a constitutional violation. See generally Wilson v. Seiter, 501 U.S. 294 (1991); Rhodes v. Chapman, 452 U.S. 337 (1981).

In considering reforms, it is essential to remember that inmates do suffer unconstitutional conditions of confinement, and ultimately must retain access to meaningful redress when such violations occur. While Congress may validly enact legislative directions and guidance concerning the nature and extent of prison conditions remedies, it must also take care to ensure that any measures adopted do not deprive prisoners of effective remedies for real constitutional wrongs.

With this much background, I will now turn to the specific provisions of the STOP legislation.

The STOP provisions of S. 400 and title III of H.R. 667 -- in proposed 18 U.S.C. 3626(a) -- provide that prospective relief in prison conditions suits shall extend no further than necessary to remove the conditions causing the deprivation of federal rights of individual plaintiffs, that such relief must be narrowly drawn and the least intrusive means of remedying the deprivation, and that substantial weight must be given to any adverse impact on public safety or criminal justice system operations in determining intrusiveness. They further provide that relief reducing or limiting prison population is not allowed unless crowding is the primary cause of the deprivation of a federal right and no other relief will remedy that deprivation.

Proposed 18 U.S.C. 3626(b) in the STOP provisions provides that any prospective relief in a prison conditions action shall automatically terminate after two years (running from the time the federal right violation is found or enactment of the STOP legislation), and that such relief shall be immediately terminated if it was approved or granted in the absence of a judicial finding that prison conditions violated a federal right.

Proposed 18 U.S.C. 3626(c) in the STOP provisions requires prompt judicial decisions of motions to modify or terminate prospective relief in prison conditions suits, with automatic stays of such relief 30 days after a motion is filed under 18 U.S.C. 3626(b), and after 180 days in any other case.

Proposed 18 U.S.C. 3626(d) in the STOP provisions confers standing to oppose relief that reduces or limits prison population on any federal, state, or local official or unit of government whose jurisdiction or function includes the prosecution or custody of persons in a prison subject to such relief, or who otherwise may be affected by such relief.

Proposed 18 U.S.C. 3626(e) in the STOP provisions prohibits the use of masters in prison conditions suits in federal court, except for use of magistrates to make proposed findings concerning complicated factual issues. Proposed 18 U.S.C. 3626(f) in the STOP provisions imposes certain limitations on awards of attorney's fees in prison conditions suits under federal civil rights laws.

Finally, the STOP provisions provide that the new version of 18 U.S.C. 3626 shall apply to all relief regardless of whether it was originally granted or approved before, on, or after its enactment.

The bills leave unresolved certain interpretive questions. While the revised section contains some references to deprivation of federal rights, several parts of the section are not explicitly limited in this manner, and might be understood as limiting relief based on state law claims in prison conditions suits in state courts. The intent of the proposal, however, is more plausibly limited to setting standards for relief which is based on claimed violations of federal rights or imposed by federal court orders. If so, this point should be made clearly in relation to all parts of the proposal.

A second interpretive question is whether the proposed revision of 18 U.S.C. 3626 affects prison conditions suits in both federal and state court, or just suits in federal court. In contrast to the current version of 18 U.S.C. 3626, the proposed revision -- except for the new provision restricting the use of masters -- is not, by its terms, limited to federal court proceedings. Hence, most parts of the revision appear to be intended to apply to both federal and state court suits, and would probably be so construed by the courts. To avoid extensive litigation over an issue that goes to the basic scope of the proposal, this question should be clearly resolved one way or the other by the text of the proposal.

The analysis of constitutional issues raised by this proposal must be mindful of certain fundamental principles. Congress possesses significant authority over the remedies available in the lower federal courts, subject to the limitations of Article III, and can eliminate the jurisdiction of those courts altogether. In the latter circumstance, state courts (and the U.S. Supreme Court on review) would remain available to provide any necessary constitutional remedies excluded from the jurisdiction of the inferior federal courts. Congress also has authority to impose requirements that govern state courts when they exercise concurrent jurisdiction over federal claims, see Fielder v. Casey, 487 U.S. 131, 141 (1988), but if Congress purports to bar both federal and state courts from issuing remedies necessary to redress colorable constitutional violations, such legislation may violate due process. See, e.g., Webster v. Doe, 486 U.S. 592, 603 (1988); Bowen v. Michigan Academy of Family Physicians, 476 U.S. 667, 681 n.12 (1986); Bartlett v. Bowen, 816 F.2d 695, 703-07 (D.C. Cir. 1987). We therefore examine the proposal's various remedial restrictions from that perspective.

Proposed 18 U.S.C. 3626(a)(1) in the proposal goes further than the current statute in ensuring that any relief ordered is narrowly tailored. However, since it permits a court to order the "relief . . . necessary to remove the conditions that are causing the deprivation of . . . Federal rights," this aspect of the proposal appears to be constitutionally unobjectionable, even if it constrains both state and federal courts.

Proposed 18 U.S.C. 3626(a)(2) bars relief that reduces or limits prison population unless crowding is the primary cause of the deprivation of a federal right and no other relief will remedy the deprivation. We strongly support the principle that measures limiting prison population should be the last resort in prison conditions remedies. Remedies must be carefully tailored so as to avoid or keep to an absolute minimum any resulting costs to public safety. Measures that result in the early release of incarcerated criminals, or impair the system's general capacity to provide adequate detention and correctional space, must be avoided when any other feasible means exist for remedying constitutional violations.

Certain features of the formulation of proposed 18 U.S.C. 3626(a)(2), however, raise constitutional concerns. In certain circumstances, prison overcrowding may result in a violation of the Eighth Amendment, see Rhodes v. Chapman, 452 U.S. 337 (1981). Hence, assuming that this provision constrains both state and federal courts, it would be exposed to constitutional challenge as precluding adequate remedy for a constitutional violation in certain circumstances. For example, severe safety hazards or lack of basic sanitation might be the primary cause of unconstitutional conditions in a facility, yet extreme overcrowding might be a substantial and independent, but secondary, cause of such conditions. Thus, this provision could foreclose any relief that reduces or limits prison population through a civil action in such a case, even if no other form of relief would rectify the unconstitutional condition of overcrowding.

This problem might be avoided through an interpretation of the notion of a covered "civil action" under the revised section as not including habeas corpus proceedings in state or federal court which are brought to obtain relief from unconstitutional conditions of confinement. See, e.g., Preiser v. Rodriguez, 411 U.S. 475, 499 (1973). However, this depends on an uncertain construction of the proposed statute, and the proposal's objectives could be undermined if the extent of remedial authority depended on the form of the action (habeas proceeding vs. regular civil action). Since the relief available in habeas proceedings in this context could be limited to release from custody, reliance on such proceedings as an of limiting the release of prisoners as a remedy for unconstitutional prison conditions.

A more satisfactory and certain resolution of the problem would be to delete the requirement in proposed 18 U.S.C. 3626(a)(2) that crowding must be the primary cause of the deprivation of a federal right. This would avoid potential constitutional infirmity while preserving the requirement that prison caps and the like can only be used where no other remedy would work.

Proposed 18 U.S.C. 3626(b) -- which automatically terminates prospective relief after two years, and provides for the immediate termination of prospective relief approved without a judicial finding of violation of a federal right -- raises additional constitutional concerns. It is possible that prison conditions held unconstitutional by a court may persist for more than two years after the court has found the violation, and while the court order directing prospective relief is still outstanding. Hence, this provision might be challenged on constitutional grounds as foreclosing adequate judicial relief for a continuing constitutional violation.

However, we believe that this provision is constitutionally sustainable against such a challenge. Importantly, this provision would not cut off all alternative forms of judicial relief, even if it applies both to state court and federal court suits. The possibility of construing the statute as not precluding relief through habeas corpus proceedings has been noted above (as has the possibility that habeas may provide only limited relief). Finally, the section does not appear to foreclose an aggrieved prisoner from instituting a new and separate civil action based on constitutional violations that persisted after the automatic termination of the prior relief.

A more pointed constitutional concern arises from the potential application of the restrictions of proposed 18 U.S.C. 3626(b) to terminate uncompleted prospective relief ordered in judgments that became final prior to the legislation's enactment. The application of these restrictions to such relief raises constitutional concerns under the Supreme Court's recent decision in Plaut v. Spendthrift Farm, Inc., 115 S.Ct. 1447 (1995). The Court held in that case that legislation which retroactively interferes with final judgments can constitute an unconstitutional encroachment on judicial authority. It is uncertain whether Plaut's holding applies with full force to the prospective, long-term relief that is involved in prison conditions cases. However, if the decision does fully apply in this context, the application of proposed 18 U.S.C. 3626(b) to orders in pre-enactment final judgments would raise serious constitutional problems.

While we believe that most features of the STOP proposal are constitutionally sustainable, at least in prospective effect, we find two aspects of the legislation to be particularly problematic for policy reasons.

First, the proposal apparently limits prospective relief to cases involving a judicial finding of a violation of a federal right. This could create a very substantial impediment to the settlement of prison conditions suits -- even if all interested parties are fully satisfied with the proposed resolution -- because the defendants might effectively have to concede that they have caused or tolerated unconstitutional conditions in their facilities in order to secure judicial approval of the settlement. This would result in litigation that no one wants, if the defendants were unwilling to make such a damaging admission, and could require judicial resolution of matters that would otherwise be more promptly resolved by the parties in a mutually agreeable manner.

Second, we are concerned about the provision that would automatically terminate any prospective relief after two years. In some cases the unconstitutional conditions on which relief is premised will not be corrected within this timeframe, resulting in a need for further prison conditions litigation. The Justice Department and other plaintiffs would have to refile cases in order to achieve the objectives of the original order, and defendants would have the burden of responding to these new suits. Both for reasons of judicial economy, and for the effective protection of constitutional rights, we should aim at the resolution of disputes without unnecessary litigation and periodic disruptions of ongoing remedial efforts. This point applies with particular force where the new litigation will revisit matters that have already been adjudicated and resolved in an earlier judgment.

Existing law, in 18 U.S.C. 3626(c), already requires that any order or consent decree seeking to remedy an Eighth Amendment violation be reopened at the behest of a defendant for recommended modification at a minimum of two year intervals. This provision could be strengthened to give eligible intervenors under the STOP proposal, including prosecutors, the same right to periodic reconsideration of prison conditions orders and consent decrees. This would be a more reasonable approach to guarding against the unnecessary continuation of orders than imposition of an unqualified, automatic time limit on all orders of this type.