

Violent Offender Incarceration and Truth in Sentencing Incentive Grant Program: Interim Final Rule



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Violent Offender Incarceration and Truth in Sentencing Incentive Grant Program

AGENCY: U.S. Department of Justice, Office of Justice Programs (OJP).

ACTION: Interim Final Rule.

SUMMARY: This Interim Rule implements and requests comments regarding the Violent Offender Incarceration and Truth in Sentencing Incentive Grant Program, Subtitle A of Title II of the Violent Crime Control and Law Enforcement Act of 1994. The Violent Offender Incarceration and Truth in Sentencing Grant Program will provide grants to states, and states organized in multi-state compacts, for assistance to correctional systems. These regulations are being issued in accordance with the mandate in Subtitle A of Title II that rules and regulations regarding the uses of grant funds under this program be issued. While this rule discusses the implementation of the overall Subtitle A program, fiscal year 1995 funds have only been appropriated for the construction-related costs of correctional boot camps.

DATES: Interim rule effective on December 7, 1994; comments must be received March 7, 1994.

ADDRESS: Comments may be sent to Marlene Beckman at the Office of Justice Programs, 633 Indiana Avenue, 13th Floor, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center at 1-800-421-6770 or (202) 307-1480.

SUPPLEMENTARY INFORMATION: Federal funding is authorized under Subtitle A of Title II of

the Violent Crime Control and Law Enforcement Act of 1994 (Subtitle A), Public Law 103-322, for grants to states, and states organized in multi-state compacts, for assistance to adult and juvenile correctional systems. The program recognizes that states and local jurisdictions have experienced substantial increases in jail, prison and juvenile confinement populations in recent years, resulting in escalating costs and serious difficulties in managing overcapacity correctional populations. Because of these constraints, correctional systems have often been unable to implement new programs, develop alternative confinement strategies, or open new facilities. This program seeks to provide funds to address the immediate needs of correctional facilities and programs.

In particular, the program emphasizes the need to make available both conventional jail and prison space for the confinement of violent offenders and to ensure that violent offenders remain incarcerated for substantial periods of time through the implementation of truth in sentencing laws. Accordingly, Subtitle A directs the Attorney General to award grants to construct, develop, expand, modify, operate, or improve correctional facilities, including boot camp facilities and other alternative correctional facilities that will free secure prison space for the confinement of violent offenders.

Fifty percent of the total amount of funds appropriated each year will be allocated for Truth in Sentencing Incentive Grants and the other 50 percent will be allocated for Violent Offender Incarceration Grants, 85 percent of which is to be distributed by specified formula with the remaining 15 percent available for discretionary grant awards.

The formula amount available to carry out the grant programs for any fiscal year will be allocated to each eligible state based on Part 1 violent crime data reported to the Federal Bureau of Investigation for use in the Uniform Crime Reports (UCR). If such data is unavailable, applicants may also utilize figures as reported in publications by the Bureau of Justice Statistics (BJS). (See, e.g., "Census of State and Local Correctional Facilities, 1990.")

The statute contemplates the availability of \$7.9 billion in funding over six years, beginning with \$175 million authorized in fiscal year 1995. It is important to note, however, that Congress appropriated only \$24.5 million for Subtitle A programs for fiscal year 1995. Moreover, the Appropriations Act limits these funds to a discretionary grant program for the construction of correctional boot camps. Specifically, grant awards in fiscal year 1995 are to develop, construct, or expand boot camp programs which include coordinated, intensive aftercare services following release. It is anticipated that program guidelines and information outlining the application process for adult and juvenile boot camp fiscal year 1995 grant awards will be available in January 1995.

Statement of the Problem

State and local prison populations continue to grow. Moreover, there are a number of states and local jurisdictions under court order because of overcrowding in their correctional facilities. The majority of jurisdictions operate above the total rated capacity for their correctional facilities. Those facilities under court order for overcrowding which have taken steps to control their burgeoning inmate populations tend to operate at or near capacity in order to remain in compliance with the court orders.

Correctional systems faced with rising prison populations and court-ordered ceilings have responded in various ways. Some have implemented population management task forces to ensure that violent criminals are not released as a result of accommodating nonviolent offenders. Others have simply released offenders when their institutions reach a certain population level, without significant

controls over the security classifications of the inmates. Still other systems under court order have implemented statutory release programs.

The Violent Crime Control and Law Enforcement Act of 1994

Subtitle A provides for immediate assistance to correctional systems to contend with this growing inmate population crisis. Of primary importance is the recognition that there must be adequate conventional confinement space for violent offenders, both adults and juveniles, to serve a substantial portion of their sentences. This program, therefore, provides grants to assist correctional systems in managing a comprehensive approach which will provide for the confinement of violent offenders; help address the problems associated with overcapacity in correctional facilities through the improvement, development, expansion or modification of present facilities and programs; and support comprehensive programs and treatment that will assist in reducing recidivism.

Federal, State and Local Partnerships

Because crime is primarily a state and local issue, the Subtitle A grant program envisions a federal, state, and local collaboration to address the problems associated with the incarceration and punishment of violent offenders. State and local government officials were involved in the congressional hearings that guided this legislation, and will continue to be involved as the Department of Justice moves forward in establishing policy guidance, developing regulations, and implementing program guidelines.

In addition, this grant program provides flexibility to states and local governments in utilizing federal funds to plan, construct, and operate correctional facilities in ways that best meet their needs and in the most cost-effective manner. Built into the program is the recognition that correctional systems can use grant funds in a variety of ways to ensure the greatest and most timely impact.

Under Subtitle A, corrections systems will have the ability to quickly bring on-line additional bed space in facilities which, although construction has been completed, are not being utilized due to funding constraints. States and local agencies can also activate prison and jail expansion and juvenile corrections projects that have been planned, but not launched, due to lack of funds. The grant program further provides for the expansion of alternative correctional options for nonviolent offenders which will free secure bed space for dangerous offenders to serve their sentences.

Moreover, corrections systems will have flexibility in using surplus federal property. Beds for violent offenders can be made available in secure facilities through the conversion of closed military facilities or other appropriate federal facilities to facilities for housing low-security inmates.

Subtitle A also recognizes the benefits of regional prisons, particularly for adjoining localities. The economies of scale resulting from a multi-state compact prison are particularly beneficial for confining specialized groups of offenders, such as medical/psychiatric inmates, inmates requiring protective custody, and high security inmates.

The grant program balances appropriate accountability through various eligibility criteria, the availability of technical assistance, and the evaluation of programs implemented with these funds, with the flexibility states and local governments require and deserve based on their individual needs and expertise. Grant eligibility criteria specifically provide for the involvement of counties and local governments and the sharing of funds with these entities.

Moreover, the federal role provides sufficient structure and definition in the eligibility criteria to meet the program's goals, while allowing for judgment by grant recipients to take into account the states' various unique situations, criminal and juvenile justice practices, and correctional systems. The program accounts for the different needs of the states and local entities, and reflects that there is no "national standard" approach that will suit all jurisdictions. The grant monies are available for

the range of correctional needs such as system planning and facility development, as well as the construction, expansion, modification, improvement, and operation of a variety of correctional facilities.

Violent Juvenile Crime

Concern also continues nationwide over the escalation in violent juvenile crime. According to the FBI's Uniform Crime Reports, juvenile arrests for violent offenses increased dramatically over the five-year period from 1988 to 1992 — 47 percent — while adult violent crime arrests increased 19 percent. The estimated 129,600 Violent Crime Index arrests of juveniles in 1992 was the highest in our history, with 3,300 arrests for murder, 6,300 for forcible rape, 45,700 for robbery and 74,400 for aggravated assault. Moreover, during the past few years, there has been a marked escalation of homicides by juvenile offenders. Teenage homicides have more than doubled since 1984, and juvenile homicides involving firearms have increased 175 percent since 1983. Of particular importance is that the size of the current 14-17 year-old population, which has been responsible for much of the recent youth violence, will increase by about 20 percent in the next decade.

The "Comprehensive Strategy for Serious, Violent and Chronic Juvenile Offenders," developed by the Department's Office of Juvenile Justice and Delinquency Prevention, is the centerpiece of the Department's response to growing juvenile crime. The Subtitle A grant program is an integral part of the comprehensive strategy's intervention component. The program is based on the recognition that an effective model for the treatment and rehabilitation of delinquent offenders must combine accountability and sanctions with increasingly intensive treatment and rehabilitative efforts at every stage of the continuum.

The intervention component calls for establishing a range of graduated sanctions that includes both immediate interventions and intermediate sanctions, including both nonresidential and residential placements and programming. Boot camps offer an

intermediate sanction for nonviolent juvenile offenders. These programs should be short-term and include a formal aftercare phase, actively involving the family and the community in supporting and reintegrating the juvenile into the community.

While the strategy encourages the use of nonresidential community-based programs and intensive supervision programs for many juvenile offenders, it recognizes that the criminal behavior of some serious, violent and chronic offenders requires the use of secure detention and corrections facilities to protect the community and provide a structured treatment environment. This grant program will facilitate jurisdictions in meeting the challenge of placing juvenile offenders in need of confinement in secure facilities.

Grants for Correctional Facilities

The Subtitle A authorization provides for two different grant programs: (1) Violent Offender Incarceration Grants, and (2) Truth in Sentencing Incentive Grants. Of the total federal funding authorized to Subtitle A grant programs each year, 50 percent is allocated for each of these two grant initiatives. With the exception of a limited discretionary grant program, this funding will be distributed to states based on the formula specified in Subtitle A. Although the statute provides for states and multi-state compacts as the only eligible grant recipients, **Subtitle A requires that states involve counties and other units of local government and share funds received under this program with them.**

To be eligible to receive funding under either of the Subtitle A programs, states must comply with a series of assurances involving sentencing policies and practices and other guarantees of sound correctional systems to ensure that violent offenders are sufficiently incapacitated and that the public is protected.

Included in the assurances are requirements that the state: (1) implement sentencing reforms that ensure violent offenders receive sufficiently severe punishments, (2) recognize the rights and needs of crime victims, and (3) develop a comprehensive correc-

tional management plan that includes diversion programs, particularly drug diversion programs, community corrections programs, systems designed to accurately evaluate and classify inmates within the system, and programs and treatment designed to assist in reducing recidivism, including rehabilitation and treatment programs and job skills. Emphasis will be placed on a corrections system's ability to plan for and implement these basic components of a comprehensive and coordinated approach to correctional policy.

Comprehensive Correctional Planning

By definition, a comprehensive system involves state and local governments; thus, the development of a comprehensive plan necessitates a partnership and collaboration among state and local entities. Because the flow of offenders begins at the local level, both local and state governments play key roles in the punishment of offenders through alternative sanctions and incarceration in correctional facilities. The input of county and municipal juvenile and criminal justice officials will be considered essential to creating an effective overall state strategy to meet the goals of this grant program. Both local and state governments also have a strong interest in any change in the capacity of any component of the corrections system. The statutory assurances are clear in their intent that states are expected to share funds with local units of government in support of effective implementation of the comprehensive plan.

Participants in the comprehensive plan development should represent a broad mix of interested and involved organizations and officials from varying perspectives. Every effort should be made by the state to include mayors, city and county officials, police departments, sheriffs, judges, prosecutors, community corrections administrators, representatives from the treatment and education communities and indigent defense, concerned citizens, and victims' advocates, as well as the juvenile justice system. Applicants should also take an active role in involving state and juvenile justice administrative agencies and advisory boards. The manner in which criminal and juvenile justice

functions are structured in various states and their relationships with other justice agencies will affect the roles played in the development of an effective correctional plan.

The comprehensive correctional plan must address how the state has involved local jurisdictions and the plan for sharing funds with local facilities, truth in sentencing and victims' rights issues, and the continuum of correctional options required for adult and juvenile offenders. It must meet the overall goal of incarcerating violent offenders, and must convey the options for nonviolent offenders that will free up traditional bed space to accomplish that goal.

Victims' Rights and Needs

To be eligible to receive grants, states must provide assurances that they have implemented policies that provide for the recognition of the rights and needs of crime victims. No specific requirements for complying with this condition are prescribed by this interim rule in relation to fiscal year 1995 funding because of the need for comprehensive review of the status of victims' rights measures in state systems. State applications for fiscal year 1995 funding should include information on measures which are in effect or under consideration in the state to protect the rights and interests of crime victims.

More definitive guidance will be provided concerning compliance with this condition in a final rule or related guidelines for funding in fiscal year 1996 and thereafter. Areas that have been identified as implicating important rights and needs of crime victims include: (1) providing notice to victims concerning case and offender status, (2) providing an opportunity for victims to be present at public court proceedings, (3) providing victims the opportunity to be heard at sentencing and parole hearings, (4) providing for restitution and other compensation to victims, and (5) establishing administrative mechanisms or other mechanisms to effectuate these rights.

States that expect to seek funding under this program in fiscal year 1996 or thereafter are encour-

aged to review the status of victim rights measures in their systems, particularly with reference to the five areas identified above. Federal law incorporates significant measures in each of these areas for federal cases. The provisions of federal law governing these issues may be useful for states as a possible model for reform, if they have not already adopted similar measures in their own systems. See 42 U.S.C. 10606(b)(3), (7), 10607(c) (notice concerning case and offender status); 42 U.S.C. 10606(b)(4) (right to be present at public court proceedings); Rule 32 of the Federal Rules of Criminal Procedure, as amended effective December 1, 1994 (right of allocution in sentencing for victims); 18 U.S.C. 3663, 3553(c) (general restitution provisions for federal cases); 42 U.S.C. 10607(a) and (b), 10607(c)(5) (assignment of responsibility for victim-related functions).

Truth in Sentencing Incentive Grants

To be eligible to receive funding under the Truth in Sentencing Grant Program, in addition to meeting the assurances listed in Subtitle A, states must also meet certain sentencing requirements. In particular, to qualify for this part of the grant program, states must have in effect sentencing laws that either provide for **violent offenders** to (1) serve not less than 85 percent of their sentences, or (2) meet other requirements that ensure that violent offenders, and especially repeat violent offenders, remain incarcerated for substantially greater percentages of their imposed sentences.

The Office of Justice Programs is aware that the vast majority of states will at present have difficulty in meeting the condition that violent offenders serve at least 85 percent of the sentence imposed. No specific guidance for complying with this assurance is prescribed at this time both because funding for this program is not available in FY '95, and also because of the need for further review of state compliance issues. Moreover, we are particularly interested in comments from the field on compliance issues and on the definition of "violent offender" for purposes of truth in sentencing grant awards.

FY 1995 Correctional Boot Camp Initiative

The availability of funds each year is, of course, limited by the appropriations process. In fiscal year 1995, Congress has allocated \$24.5 million to Subtitle A grant programs and has imposed additional limitations on the uses of these grant funds.

Consistent with congressional intent, grant awards in fiscal year 1995 will be for construction-related costs of correctional boot camps and will be allocated through the discretionary grant component of the Violent Offender Incarceration Grant Program. Construction-related costs are broadly interpreted to include costs associated with both the planning and development of the facility. OJP is expressly precluded, however, from funding operating expenses.

Specifically, grant funds can be used to plan, develop, construct, or expand adult and juvenile boot camp programs which must include coordinated, intensive aftercare services for inmates following release. Pursuant to the requirements specified in Subtitle A, boot camps are correctional programs of no longer than six-months incarceration and must: (1) exclude offenders who have at any time been convicted of a violent felony or similarly adjudicated juveniles, (2) adhere to a regimented schedule, (3) provide for inmate participation in education, job training and substance abuse counseling or treatment, and (4) coordinate intensive aftercare services with the services provided during the period of confinement.

The program emphasis in fiscal year 1995 will be on the construction, renovation and expansion of correctional boot camp facilities that will free conventional prison, jail and juvenile correctional space for the confinement of violent offenders so they can serve a substantial amount of their imposed sentences. To receive funds, correctional systems will have to demonstrate, through a comprehensive correctional plan and prisoner screening and security classification system, that (1) there is a need for additional secure confinement space for violent offenders, and (2) this need will be met

through the construction of a boot camp facility that provides housing otherwise unavailable for nonviolent offenders.

With regard to juvenile facilities, priority will be given to juvenile boot camps that are designed to prevent juvenile offenders at risk from becoming violent offenders. This desired outcome will most likely be accomplished if the jurisdiction engages in efforts that maximize the likelihood that juvenile boot camp participants would otherwise be incarcerated in traditional secure facilities (e.g., participation limited to those youths who have been adjudicated delinquents and who have been sentenced to the juvenile state correctional agency). Among this population, juvenile offenders whose escalating patterns of delinquent behavior indicate that an authoritative boot camp intervention is likely to suppress or abate emerging tendencies towards chronic or violent delinquent behavior should be considered prime candidates for boot camp participation.

To be eligible to receive grants for correctional boot camp construction, states must meet the eligibility criteria outlined for the Violent Offender Incarceration Grant Program, including the assurances specified in Section 20101(b) of Subtitle A.

Detailed program guidelines and application material for the fiscal year 1995 correctional boot camp initiative will be available in January 1995.

Technical Assistance and Training/Evaluation

In keeping with the intent of Congress to assist states in meeting these assurances, the Department proposes to designate up to 10 percent of the funds available in this program to provide technical assistance and training to states that presently do not meet the required general assurances or want to expand and improve on current efforts in these areas. Specifically, the Department will provide training and assistance to states with the comprehensive corrections planning process, the development of truth in sentencing statutes, and in other-

wise moving toward compliance with the required conditions. States which meet the general assurances in fiscal year 1995, or are working toward compliance, will be in a better position to receive grant monies under these programs over the next several years.

Further, it is the intent of the Department that selected federal initiatives under the new anti-crime law be evaluated. To accomplish this goal, a portion of the overall funds authorized under this Subtitle will be set aside for purposes of implementing a national evaluation strategy. Recipients of funds must agree to cooperate with federally-sponsored evaluations of their projects and to conduct evaluations as required by the national evaluation strategy. In addition, recipients of program funds will be required to conduct a local assessment and report on program implementation.

Request for Comments

In submitting comments, please be cognizant of the above-described statutory limitations. In administering the Subtitle A, Correctional Facilities Grant Program, OJP seeks to fulfill congressional intent by ensuring that the statutory limitations are applied appropriately to all recipients.

Comments are particularly encouraged with respect to the following definitions and implementation policy issues:

- 1) Definition of "Violent Offender" [§ 91.2(a), § 91.4(b)] (This interim rule reserves the issue for now, but the Department will issue a final rule based on comments received, in advance of the implementation of Subtitle A in fiscal year 1996);
- 2) Definition of "Serious Drug Offense" [§91.4(b)];
- 3) How a state can demonstrate compliance with the assurance that it **has implemented**, or **will implement**, correctional policies and programs, including "truth in sentencing laws that: (a) "ensure that violent offenders serve a substantial portion of the sentences imposed," (b) "are designed to provide sufficiently severe punishment for violent offend-

ers, including violent juvenile offenders," and (c) "the prison time served is appropriately related to the determination that the inmate is a violent offender and for a period of time deemed necessary to protect the public." [§ 91.2(i), § 91.3(b)(1)];

4) How a state can demonstrate compliance with the condition to "provide for the recognition of the rights and needs of crime victims" [§ 91.3(b)(2)];

5) How a state can demonstrate that, as a result of the funds received under this section, secure space will be made available for the confinement of violent offenders [§ 91.3(b)(3)];

6) How to ensure that states have met the condition to involve and share funds received with counties and other units of local government [§ 91.3(b)(5);

7) How to define the scope of the Comprehensive Correctional Plan [§ 91.3(d)]; and

8) How a state can demonstrate compliance with the condition for receiving Truth in Sentencing Incentive Grants, i.e., "persons convicted of violent crimes serve not less than 85% of the sentence imposed" [§ 91.4(b)].

In soliciting comments on the above definitions and key policy implementation issues, OJP hopes to forge a productive federal/state/local partnership in addressing the challenge of providing an effective criminal justice system response to the increased numbers of violent offenders.

The final rule will address all comments submitted and substantive differences incorporated will be explained.

Administrative Requirements

This regulation has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. This rule is a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

The Assistant Attorney General for the Office of Justice Programs in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)) has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

No information collection requirements are contained in this rule. Any information collection requirements contained in future application notices for programs authorized by this rule will be reviewed by the Office of Management and Budget (OMB), as is required by the provisions of the Paperwork Reduction Act, 91 U.S.C. 3504(h).

This regulation is being published as an interim final rule, without prior publication of notice and comment, and is made effective immediately, for good cause as explained below. Under 5 U.S.C. 553(a)(2), matters relating to grants are exempted from notice and comment requirements. Moreover, in this case, advance notice and comment would be impractical and contrary to the public interest. Title II, Subtitle A of the Violent Crime Control and Law Enforcement Act of 1994 requires the publication of regulations implementing the grant program within 90 days of enactment of the Act.

In order to satisfy congressional requirements and intentions of expeditious implementation, these regulations are effective immediately so that eligible states may apply for the boot camp discretionary program. Publishing a notice of proposed rulemaking and awaiting receipt of comments would significantly delay the implementation of the FY '95 boot camp grant program. Such delay would be contrary to the public interest and would contradict the congressional intent to provide immediate grant assistance.

Although OJP will proceed expeditiously with regard to the promulgation of guidelines for the fiscal year 1995 boot camp program, we are very interested in receiving public comment on the overall program and will consider all comments in preparing the final rule.

List of Subjects

Grant Programs, Judicial Administration.

For the reasons set out in the preamble, Title 28, Chapter 1, of the Code of Federal Regulations is amended by adding a new part 91 as set forth below.

PART 91 — GRANTS FOR CORRECTIONAL FACILITIES

Subpart A — General

Section

- 91.1 Purpose
- 91.2 Definitions
- 91.3 General Eligibility Requirements
- 91.4 Truth in Sentencing Incentive Grants
- 91.5 Violent Offender Incarceration Grants
- 91.6 Matching Requirement

Subpart B — FY 1995 Correctional Boot Camp Initiative

91.10 General

Authority: Section 20105 of Subtitle A, Title II of the Violent Crime Control and Law Enforcement Act of 1994.

Subpart A — General

§ 91.1 Purpose.

The Attorney General, through the Assistant Attorney General for the Office of Justice Programs, will make grants to states and to states organized as multi-state compacts to construct, develop, expand, operate or improve correctional facilities, including boot camp facilities and other alternative correctional facilities that can free conventional space for the confinement of violent offenders, to:

(a) ensure that prison space is available for the confinement of violent offenders; and

(b) implement truth in sentencing laws for sentencing violent offenders.

§ 91.2 Definitions.

(a) “*Violent Offender*” — Reserved.

(b) “*Serious Drug Offense*” means an offense involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance [as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)], for which a maximum term of imprisonment of 10 years or more is prescribed by state law.

(c) “*Part 1 Violent Crimes*” means murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports. If such data is unavailable, Bureau of Justice Statistics (BJS) publications may be utilized. See, e.g., “Census of State and Federal Correctional Facilities, 1990.” [“Part 1 Violent Crimes” are defined here solely as the statutorily prescribed basis for the formula allocation of funding.]

(d) “*Recipient*” means individual states or multi-state compacts awarded funds under this Part.

(e) “*State*” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam and the Northern Mariana Islands.

(f) “*Comprehensive Correctional Plan*” means a plan which represents an integrated approach to the management and operation of adult and juvenile correctional facilities and programs and which includes diversion programs, particularly drug diversion programs, community corrections programs, a prisoner screening and security classification system, appropriate professional training for corrections officers in dealing with violent offenders, prisoner rehabilitation and treatment programs,

prisoner work activities (including to the extent practicable, activities relating to the development, expansion, modification, or improvement of correctional facilities) and job skills programs, educational programs, a pre-release prisoner assessment to provide risk reduction management, post-release assistance and an assessment of recidivism rates.

(g) “*Correctional facilities*” includes boot camps and other alternative correctional facilities for adults or juveniles that can free conventional bed space for the confinement of violent offenders.

(h) “*Boot Camp*” means a corrections program for adult or juvenile offenders of not more than 6-months confinement (not including time in confinement prior to assignment to the boot camp) involving:

(1) assignment for participation in the program, in conformity with state law, by prisoners other than prisoners who have been convicted at any time for a violent felony;

(2) adherence by inmates to a highly regimented schedule that involves strict discipline, physical training, and work;

(3) participation by inmates in appropriate education, job training, and substance abuse counseling or treatment; and

(4) post-incarceration aftercare services for participants that are coordinated with the program carried out during the period of imprisonment.

(i) “*Truth in sentencing laws*” means laws that:

(1) ensure that violent offenders serve a substantial portion of sentences imposed;

(2) are designed to provide sufficiently severe punishment for violent offenders, including violent juvenile offenders; and

(3) the prison time served is appropriately related to the determination that the inmate is a violent offender and for a period of time deemed necessary to protect the public.

§ 91.3 General Eligibility Requirements.

(a) Recipients must be individual states, or states organized as multi-state compacts.

(b) Application Requirements. To be eligible to receive either a formula or a discretionary grant under Subtitle A, an applicant must submit an application which includes:

(1) Assurances that the state(s) have implemented, or will implement, correctional policies and programs, including truth in sentencing laws. No specific requirements for complying with this condition are prescribed by this interim rule for fiscal 1995 funding because of the need for further review of the status of truth in sentencing laws and the impact and needs requirements relating to reform in state systems.

(2) Assurances that the state(s) have implemented or will implement policies that provide for the recognition of the rights and needs of crime victims. States are not required to adopt any specific set of victims rights measures for compliance, but the adoption by a state of measures which are comparable to or exceed those applied in federal proceedings will be deemed sufficient compliance for eligibility for funding. If the state has not adopted victims rights measures which are comparable to or exceed federal law, the adequacy of compliance will be determined on a case-by-case basis. States will be afforded a reasonable amount of time to achieve compliance. States may comply with this condition by providing recognition of the rights and needs of crime victims in the following areas:

- i) providing notice to victims concerning case and offender status;
- ii) providing an opportunity for victims to be present at public court proceedings in their cases;
- iii) providing victims the opportunity to be heard at sentencing and parole hearings;
- iv) providing for restitution to victims; and

v) establishing administrative or other mechanisms to effectuate these rights.

(3) Assurances that funds received under this section will be used to construct, develop, expand, operate or improve correctional facilities to ensure that secure space is available for the confinement of violent offenders.

(4) Assurances that the state(s) has a comprehensive correctional plan in accordance with the definition elements in section 91.2. If the state(s) does not have an adequate comprehensive correctional plan, technical assistance will be available for compliance. States will be afforded a reasonable amount of time to develop their plans.

(5) Assurances that the state(s) has involved counties and other units of local government, when appropriate, in the construction, development, expansion, modification, operation or improvement of correctional facilities designed to ensure the incarceration of violent offenders and that the state(s) will share funds received with counties and other units of local government, taking into account the burden placed on these units of government when they are required to confine sentenced prisoners because of overcrowding in state prison facilities.

(6) Assurances that funds received under this section will be used to supplement, not supplant, other federal, state, and local funds.

(7) Assurances that the state(s) has implemented, or will implement within 18 months after the date of the enactment of the Violent Crime Control and Law Enforcement Act of 1994 (September 13, 1994), policies to determine the veteran status of inmates and to ensure that incarcerated veterans receive the veterans benefits to which they are entitled.

(8) Assurances that correctional facilities will be made accessible to persons conducting investigations under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997.

(9) If applicable, documentation of the multi-state compact agreement that specifies the construction, development, expansion, modification, operation, or improvement of correctional facilities.

(10) If applicable, a description of the eligibility criteria for participation in any boot camp that is to be funded.

(c) States, and states organized as multi-state compacts, which can demonstrate affirmative responses to the assurances outlined above will be eligible to receive funds.

(d) Each state application for such funds must be accompanied by a comprehensive correctional plan. The plan shall be developed in consultation with representatives of appropriate state and local units of government, shall include both the adult and juvenile correctional systems, and shall provide an assessment of the state and local correctional needs, and a long-range implementation strategy for addressing those needs.

(e) Local units of government, i.e., any city, county, town, township, borough, parish, village or other general purpose subdivision of a state, or Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, are in turn eligible to receive subgrants from a participating state(s). Such subgrants shall be made for the purpose(s) of carrying out the implementation strategy, consistent with state(s)' comprehensive correctional plan.

(f) In awarding grants, consideration shall be given to the special burden placed on states which incarcerate a substantial number of inmates who are in the United States illegally. States will not be required to submit additional information on numbers of criminal aliens.

The Bureau of Justice Assistance (BJA) and the Immigration and Naturalization Service (INS) are currently working together to implement the State Criminal Alien Assistance Program (SCAAP) to assist the states with the costs of incarcerating criminal aliens. The Office of Justice Programs will

coordinate with the SCAAP program to obtain the relevant information.

§ 91.4 Truth in Sentencing Incentive Grants.

(a) Half of the total amount of funds appropriated to carry out Subtitle A for each of the fiscal years 1996, 1997, 1998, 1999 and 2000 will be made available for Truth in Sentencing Incentive Grants.

(b) Eligibility. To be eligible to receive such a grant, a state, or states organized as multi-state compacts, must meet the requirements of section 91.3 and must demonstrate that the state(s) —

(1) has in effect laws which require that persons convicted of violent crimes serve not less than 85% of the sentence imposed; or

(2) Since 1993 —

(i) has increased the percentage of convicted violent offenders sentenced to prison;

(ii) has increased the average prison time which will be served in prison by convicted violent offenders sentenced to prison;

(iii) has increased the percentage of sentence which will be served in prison by violent offenders sentenced to prison; and

(iv) has in effect at the time of application laws requiring that a person who is convicted of a violent crime shall serve not less than 85% of the sentence imposed if —

(A) the person has been convicted on 1 or more prior occasions in a court of the United States or of a state of a violent crime or a serious drug offense; and

(B) each violent crime or serious drug offense was committed after the defendant's conviction of the preceding violent crime or serious drug offense.

(c) **Formula Allocation.** The amount available to carry out this section for any fiscal year will be allocated to each eligible state in the ratio that the number of Part 1 violent crimes reported by such state to the Federal Bureau of Investigation for 1993 bears to the number of Part 1 violent crimes reported by all states to the Federal Bureau of Investigation for 1993.

(d) **Transfer of Unused Funds.** On September 30 of each fiscal years 1996, 1998, 1999 and 2000, the Attorney General will transfer to the funds to be allocated under the Violent Offender Incarceration Grant formula allocation (section 91.5) any funds made available to carry out this section that are not allocated to an eligible state under paragraph (b) of this section.

§ 91.5 Violent Offender Incarceration Grants.

(a) Half of the total amount of funds appropriated to carry out this subtitle for each of fiscal years 1996, 1997, 1998, 1999 and 2000 will be made available for Violent Offender Incarceration Grants.

(b) **Eligibility.** To be eligible to receive such a grant, a state, or states organized as multi-state compacts, must meet the requirements of section 91.3(b).

(c) **Allocation of Violent Offender Incarceration Funds —**

(1) **Formula Allocation.** 85% of the sum of the amount available for grants under this section for any fiscal year and any amount transferred as described in section 91.4(c) for that fiscal year will be allocated as follows:

(i) 0.25% will be allocated to each eligible state except that the United States Virgin Islands, American Samoa, Guam and the Northern Mariana Islands shall each be allocated 0.05%.

(ii) The amount remaining after application of paragraph (c)(1)(i) of this section will be allocated to each eligible state in the ratio that the number of Part 1 violent crimes reported by

such state to the Federal Bureau of Investigation for 1993 bears to the number of Part 1 violent crimes reported by all states to the Federal Bureau of Investigation for 1993.

(2) **Discretionary Allocation.** Fifteen percent of the sum of the amount available for Violent Offender Incarceration Grants for any fiscal year under this subsection and any amount transferred as described in section 91.4(c) for that fiscal will be allocated at the discretion of the Assistant Attorney General for OJP to states that have demonstrated:

(i) the greatest need for such grants, and

(ii) the ability to best utilize the funds to meet the objectives of the grant program and ensure that secure cell space is available for the confinement of violent offenders.

(d) **Transfer of Unused Funds.** On September 30 of each fiscal years 1996, 1997, 1998, 1999 and 2000, the Assistant Attorney General will transfer to the discretionary program under paragraph (c)(2) of this section any funds made available under paragraph (c)(1) of this section that are not allocated to an eligible state under paragraph (c)(1) of this section.

§ 91.6 Matching Requirement.

(a) The federal share of a grant received under this subtitle may not exceed 75 percent of the costs of a proposal described in an application approved under this subtitle. The matching requirement can only be met through a hard cash match, and must be satisfied by the end of the project period. A certification to that effect will be required of each recipient of grant funds and must be submitted to the Office of Justice Programs with the application.

Subpart B — FY 1995 Correctional Boot Camp Initiative

§ 91.10 General.

(a) Scope of Boot Camp Program. Funding is appropriated in fiscal year 1995 to provide grants to states and multi-state compacts to plan, develop, construct and expand correctional boot camps for adults and juveniles.

(b) Adult and juvenile boot camps, referred to as "correctional boot camps," are programs that "provide a structured environment for delivering non-traditional corrections programs to criminal offenders."

(c) With respect to this program, the mandates of the Juvenile Justice and Delinquency Prevention Act (42 U.S.C. Sec. 5601 et seq.) shall apply.

(d) Eligibility.

(1) Funding is available for both adult and juvenile boot camps. To be eligible for the funding of boot camps, states must comply with the general assurances in 91.3(b) or demonstrate steps taken toward compliance. While the majority of assurances are applicable to the adult correctional system, those states applying for grants for juvenile boot camps must include the juvenile system in the state comprehensive correctional plan and demonstrate how construction of the boot camp will make secure space available to house violent juvenile offenders.

(2) For purposes of the FY '95 boot camp program, a "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or an act of juvenile delinquency that would be punishable by imprisonment for such term if committed by an adult, that:

(i) involves the use or attempted use of a firearm or other dangerous weapon against another person, or

(ii) results in death or serious bodily injury to another person.

(3) States must document that the boot camp program does not involve more than six-months confinement (not including confinement prior to assignment to the boot camp) and includes:

(i) assignment for participation in the program, in conformity with state law, by prisoners other than prisoners who have been convicted at any time of a violent felony;

(ii) adherence by inmates to a highly regimented schedule that involves strict discipline, physical training and work;

(iii) participation by inmates in appropriate education, job training, and substance abuse counseling or treatment; and

(iv) post-incarceration aftercare services for participants that are coordinated with the program carried out during the period of imprisonment.

(4) States must provide assurances that boot camp construction will free up secure institutional bed space for violent offenders.

(e) Evaluation.

(1) Recipients will be required to cooperate with a national evaluation team throughout the planning and implementation process. Recipients are also strongly encouraged to provide for an independent evaluation of the impact and effectiveness of the funded program.

(2) Jurisdictions are strongly encouraged to engage in systematic planning activities and to develop and evaluate boot camps as part of a comprehensive and integrated correctional plan.

(f) Limitation on funds. Grant funds cannot be used for operating costs. States will be required to show how operating expenses will be provided.

(g) Matching Requirement. The federal share of a grant received may not exceed 75 percent of the costs of the proposed boot camp program described in the approved application. The matching requirement can only be met through a hard cash match, and must be satisfied by the end of the project period; facility operating expenses may not be used to meet the match requirement for the construction project supported. Match may be made

through grantee contribution of construction-related costs. A certification to that effect will be required of each recipient of grant funds.

(h) Innovative Boot Camp Programs. Jurisdictions are encouraged to explore the development of "innovative" boot camp programs which incorporate principles based on the accumulation of research and practical experience, and reflect sound and effective correctional practice.

820417



U.S. Department of Justice

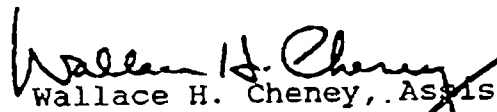
Federal Bureau of Prisons

Washington, DC 20534

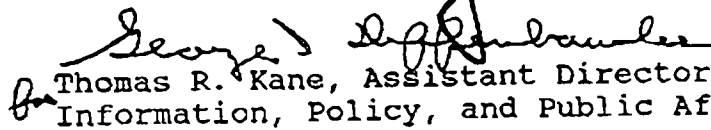
January 11, 1995

MEMORANDUM FOR JOHN DWYER, ASSISTANT ASSOCIATE ATTORNEY GENERAL

FROM:


Wallace H. Cheney, Assistant Director/General Counsel

THRU:


Thomas R. Kane, Assistant Director
Information, Policy, and Public Affairs Division

SUBJECT:

Bureau of Prisons Policy Regarding Notification of
Release of Prisoners, Section 20417 of the VCCLEA

Section 20417 of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) requires the Bureau of Prisons to notify state and local law enforcement officials prior to releasing to supervised release a person who was convicted of a violent or drug trafficking crime. The statutory language is somewhat ambiguous as to whether "was convicted of" refers to the current offense of conviction or whether it refers to offenders' entire criminal history. The statute is also somewhat ambiguous as to what information should be included in the notification, and to whom the notification should be sent (i.e. who are "local" law enforcement officials).

The Bureau of Prisons has resolved the statutory ambiguities in a manner that we believe reflects Congress' intent in enacting the statute and also can be effectively implemented by Bureau of Prisons staff. First, the language of the statute is unclear whether notification is required only for persons who are completing a sentence for a crime of violence or a drug trafficking crime, or whether notification is required for all persons who have ever committed such crimes, whatever their present crime of conviction. The Bureau of Prisons believes that State and local law enforcement officials would be interested in knowing of the release to the community of an offender who has a

history of committing violent or drug trafficking offenses, regardless of the type of crime that gave rise to the most recent term of imprisonment. Accordingly, the Bureau of Prisons will provide notification upon releasing to supervision inmates who have completed a sentence for a violent or drug trafficking crime, and also upon releasing inmates who have ever, as far as we can tell, committed such a crime.

The Administrative Office of the United States Courts is required by Section 20417 to notify state and local law enforcement officials when persons convicted of violent or drug trafficking crimes move to a new jurisdiction while on supervised release. The Administrative Office has instructed United States Probation Officers to not only assess the offender's present crime of conviction for violence and drug trafficking, but also to review the offender's criminal history and provide notification for those offenders whose criminal history suggests the need to do so.

With regard to drug trafficking crimes, the VCCLEA specifies the particular sections of Title 21 and Title 46 of the United States Code that give rise to the notification. With regard to crimes of violence, the process is more complicated. The Bureau of Prisons has devised a means of categorizing all Federal crimes to help case managers determine whether the present conviction was for a crime of violence. However, many Federal inmates have extensive criminal histories that include State offenses, and it would be impossible to devise a formal method for determining which state crimes are violent. Accordingly, case managers will be instructed to use their best professional judgment in determining, from the brief descriptions contained in Presentence Investigation Reports (PSI) and in the Federal Bureau of Investigation (FBI) rap sheet, whether a past conviction falls within the definition of crimes of violence contained in 18 U.S.C. § 924(c)(3). Case managers have experience in this area since they are involved in the process of classifying inmates.

The notifications sent to State and local law enforcement officials must, according to statute, contain the offender's name, criminal history, including "a description of the offense for which the person was convicted," and any restrictions on conduct or other conditions of release imposed by law, the court, or the Bureau of Prisons. The Bureau of Prisons believes that the notifications will be of limited use to law enforcement officials unless they also contain the date of the release, and the address where the offender is expected to reside. This information is not explicitly required by the statute, but we believe it is necessary to give effect to the intent behind the statute. Accordingly, the notification forms will contain these two additional pieces of information. The Administrative Office

of United States Courts believes that the offender's address is a crucial piece of information and has instructed Probation Officers to provide the address in notifying law enforcement officials when the releasee changes jurisdiction.

The language of Section 20417 is somewhat unclear as to which crimes must be described; after all, the offender was "convicted of all crimes contained in his or her criminal history," but the statute suggests not all must be described. The Bureau of Prisons intends to include a description of all violent or drug trafficking convictions contained in the offender's criminal history, to the extent such information may be obtained from the PSI and the FBI rap sheet.

Finally, the Section 20417 of the VCCLEA does not define "chief law enforcement officer of the State or local jurisdiction," the recipients of the notifications. The Bureau of Prisons will determine who, within each particular State has been designated as the chief law enforcement officer of that state, and will notify such person. The Bureau of Prisons will notify the chief of the city police department when the releasee's intended address is within a large city, otherwise the notification will be sent to the chief of the county police or the county sheriff. The Bureau of Prisons will send a copy of all notifications to the appropriate United States Probation Office.

The Bureau of Prisons intends to implement this statutory provision on February 1, 1995. We will review our computerized data bases to identify persons scheduled for release to supervision between September 13, 1994, and February 15, 1995, who should have been the subject of Section 20417 notifications; we will notify State and local law enforcement officials of such releases.

The Bureau of Prisons has begun drafting a "routine use" provision, as required by the Privacy Act, to provide notice to the public that information will be released in accord with the requirements of Section 20417 of the VCCLEA. This "routine use" would be broad enough to permit the Bureau of Prisons to provide notification to law enforcement officials upon the release of persons other than those identified in the statute and to provide additional information not required by the statute. For example, the statute does not require notification prior to releasing prisoners who are not subject to a term of supervised release, nor does it require notification prior to releasing a prisoner to a community corrections center (an halfway house). After we have begun providing the notification required by Section 20417, the Bureau of Prisons will assess whether it would be helpful to notify State and local law enforcement officials prior to releasing all prisoners with a conviction (past or present) for a violent or drug trafficking crime, whether they are being released to supervision, parole, or their own recognizance.

While this approach would go beyond the technical requirements of the statute, it might comport with the spirit of the law, to provide assistance to State and local law enforcement officials.

Enclosed is a draft of our proposed policy implementing Section 20417 of the VCCLEA. Please contact Chris Erlewine if you have any questions or concerns.

THE REPUBLICAN PRISON BILL: IT ISN'T TOUGH ON CRIME ... IT'S TOUGH ON STATES

February 9, 1994

- **H.R. 667 plays a cruel hoax on the States:** It sounds tough, but it establishes standards which currently no state can meet to receive grants to construct new prisons. Changes in State law alone won't enable States to qualify for funds in time to meet their immediate needs.
- **H.R. 667 is an aggravated case of attempting to fix something that is not broken -- and making it worse in the process.** The Republican prison bill is greatly inferior to the prison grants program created last year by the Violent Crime Control and Law Enforcement Act of 1994 because it would result in fewer violent criminals being put behind bars.
- **States would have to wait decades before they see the first federal dollar.** The proposed bill would tie aid to the time actually served by violent criminals. But we can't know how much time they have served until the prisoner is released or dies. This means that some states would have to wait up to 25 years before determining if they qualify for federal aid.
- **H.R. 667 amounts to an "unfunded mandate" on states.** H.R. 667 would only allow grant funds to be used for increased incarceration of a specified category of "serious violent offenders" -- but conditions eligibility for grant funds on increasing incarceration for more broadly defined categories of violent offenders. This approach amounts to an "unfunded mandate" on states, because states would have to incur costs by increasing incarceration of violent offenders generally, to be eligible for funding -- but could only use grant funds to defray the costs of incarceration for a sub-class of these offenders.
- **H.R. 667 only sounds tough.** It would pull the rug out from under the states and leave them with three crucial choices, each worse than the next:
 - cut sentences for violent criminals so they can more easily reach the 85% truth in sentencing hurdle;
 - let some prisoners out of jail early, just to make room for others that will attract federal money; or
 - spend \$20 state dollars for just \$1 federal dollar in aid.
- **H.R. 667 would take prison construction money from states that need it most and give it to states that don't.** The 1994 Crime Act disburses funds for increased violent offender incarceration primarily in proportion to the level of violent crime in each state.

In contrast, H.R. 667 disburses prison construction funds to states primarily in proportion to their populations -- regardless of differences in crime rates. This change would produce gross misallocations of resources in relation to actual need.

- **Unlike the '94 Crime Act, which provides funding for the incarceration of all violent offenders -- H.R. 667 does not.** H.R. 667 provides less protection to the public from violent criminals. The offense for which a criminal is convicted often does not fully reflect what he actually did because of plea bargaining, and an offender with a serious history of criminal violence may pose a grave threat to the public, even if his current conviction is not for a "serious violent offense" in the sense defined in H.R. 667. The current funding program appropriately recognizes this point by encouraging and supporting increased incarceration for all violent offenders; the substitute program proposed in H.R. 667 does not.

ISSUE BRIEFING: PRISON FUNDING IN H.R. 667
AN UNFAIR BURDEN TO STATES

"RESPONSIBILITY WITHOUT OPPORTUNITY"

- **Title I of H.R. 667 is an aggravated case of attempting to fix something that is not broken, and making it worse in the process.** It proposes a new prison expansion grant program to replace the prison grants program created last year by the Violent Crime Control and Law Enforcement Act of 1994. This proposal is greatly inferior to the existing prison grants program, and would result in fewer violent criminals being put behind bars than would implementation of the existing program.
- **H.R. 667 will result in gross misallocations of resources.** Under the 1994 Crime Act, funding for increased violent offender incarceration is disbursed to states primarily in proportion to their levels of violent crime. In contrast, under H.R. 667, funding for violent offender incarceration would be disbursed to states primarily in proportion to their populations -- regardless of differences in crime rates. This change would produce gross misallocations of resources in relation to actual need.
- **H.R. 667 amounts to an "unfunded mandate" on states.** H.R. 667 would only allow grant funds to be used for increased incarceration of a specified category of "serious violent offenders" -- but conditions eligibility for grant funds on increasing incarceration for more broadly defined categories of violent offenders. This approach amounts to an "unfunded mandate" on states, because states would have to incur costs by increasing incarceration of violent offenders generally, to be eligible for funding -- but could only use grant funds to defray the costs of incarceration for a sub-class of these offenders.
- **Unlike the '94 Crime Act, which provides funding for the incarceration of all violent offenders -- H.R. 667 does not.** The funding-use rules proposed in H.R. 667 are less effective than the 1994 Crime Act in protecting the public from violent criminals. The offense for which a criminal is convicted often does not fully reflect what he actually did because of plea bargaining, and an offender with a serious history of criminal violence may pose a grave threat to the public, even if his current conviction is not for a "serious violent offense" in the sense defined in H.R. 667. The current funding program appropriately recognizes this point by encouraging and supporting increased incarceration for all violent offenders; the substitute program proposed in H.R. 667 does not.
- **Victims' Rights get only half of the attention they deserve under H.R. 667.** As a condition of eligibility for only a part of the prison funds authorized under H.R. 667, it requires states to give victims an opportunity to speak at sentencing and parole hearings; to be eligible for the remainder of the funds it authorizes, however, states need not do anything to protect victims' rights. In contrast, under the 1994 Crime

Act, eligibility requirements for all grant funds will be used to encourage states to adopt a broader range of rights for victims, including a right to be informed about the status of the case and release of the offender, providing victims the opportunity to be present at all public court proceedings in their cases, and providing restitution to victims.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 9, 1995
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 667 - Violent Criminal Incarceration Act of 1995 (McCollum (R) FL)

The Administration opposes enactment of H.R. 667, but would support the bill if Title I were deleted and certain other changes were adopted.

Title I would establish an inferior substitute for the prison grants program created by the Violent Crime Control and Law Enforcement Act of 1994. The substitute program would result in fewer criminals being put behind bars. Specifically, Title I would misallocate resources by:

- Distributing funds for prison expansion to eligible States primarily in proportion to population -- without regard to differences in violent crime rates or other measures of need.
- Allowing funds to be used to support incarceration of only a limited sub-class of violent offenders.

The Administration also opposes Title I because:

- States with lower statutory maximum sentences for violent crimes can more easily meet the targets of the proposed "Truth-in-Sentencing" program, compared to States that impose longer sentences. This is a perverse approach that would undermine flexibility and the objective of ensuring adequate penalties for violent offenders.
- It effectively bars strength training for prisoners. Limitations of this type increase disorder and discipline problems by depriving prison authorities of the ability to withhold a privilege from prisoners.

The Administration also opposes the proposed repeal of the Drug Courts program. In light of the limited efficacy of conventional measures, and the promising results of drug court programs that have already been established, it would be a profound mistake to eliminate this program.

The Administration supports Title II, which would build on the 1994 Act through reforms that would help control excessive and abusive litigation by prisoners.

Title III attempts to build on the 1994 Act by strengthening measures that can be taken to limit litigation on prison conditions. The Title does so, however, in an excessively intrusive fashion that raises Constitutional and policy concerns.

* * * * *

PAGE 19

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*** THIS SECTION CURRENT THROUGH THE 1995 SUPPLEMENT ***
*** (1995 REGULAR SESSION) ***

TITLE 77. UTAH CODE OF CRIMINAL PROCEDURE
CHAPTER 27. PARDONS AND PAROLES

Utah Code Ann. @ 77-27-7 (1995)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS
DOCUMENT

<=1> LEXSEE 1996 Ut. HB 95 -- See section 5.

@ 77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of
alienists -- Mental competency

(1) The Board of Pardons and Parole shall determine within six months after the date of an offender's commitment to the custody of the Department of Corrections, for serving a sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and shall promptly notify the offender of the date.

(2) Before reaching a final decision to release any offender under this chapter, the chair shall cause the offender to appear before the board, its panel, or any appointed hearing officer, who shall personally interview the offender to consider his fitness for release and verify as far as possible information furnished from other sources. Any offender may waive a personal appearance before the Board of Pardons and Parole. Any offender outside of the state shall, if ordered by the Board of Pardons and Parole, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in which the offender is housed in lieu of an appearance before the board. Rules to carry out this section shall be made by the board. The offender shall be promptly notified in writing of the board's decision.

(3) In the case of an offender convicted of violating or attempting to violate any of the provisions of Sections 76-5-301.1, 76-5-302, 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1,

and 76-5-405, the chair shall appoint one or more alienists who shall examine the offender within six months prior to a hearing at which an original parole date is granted on any offense listed in this subsection. The alienists shall report in writing the results of the examination to the board prior to the hearing. The report of the appointed alienists shall specifically address the question of the offender's current mental condition and attitudes as they relate to any danger the offender may pose to children or others if the offender is released on parole.

(4) In any case where an offender's mental competency is questioned by the board, the chair shall appoint one or more alienists to examine the offender and report in writing to the board, specifically addressing the issue of competency.

HISTORY: C. 1953, 77-27-7, enacted by L. 1985, ch. 213, @ 3; 1986, ch. 22, @ 4; 1988, ch. 150, @ 1; 1990, ch. 195, @ 5; 1994, ch. 13, @ 36.

NOTES:

REPEALS AND REENACTMENTS. --Laws 1985, ch. 213, @ 3 repealed former @ 77-27-7

(L. 1980, ch. 15, @ 2), relating to rules and regulations of board, and enacted present @ 77-27-7.

AMENDMENT NOTES. --The 1994 amendment, effective May 2, 1994, substituted "Board of Pardons and Parole" for "Board of Pardons" in Subsections (1) and (2) and substituted "chair" for "chairperson" in Subsections (2), (3), and (4).

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

Due process.

Hearings on release date.

Cited.

CONSTITUTIONALITY.

The Utah parole statutes do not create a liberty interest recognizable under the federal constitution. *Houtz v. DeLand*, 718 F. Supp. 1497 (D. Utah 1989).

The Utah parole statute does not create an "expectation of parole" that would subject parole board proceedings to due process protections. *Hatch v. Deland*, 790 P.2d 49 (Utah App. 1990).

DUE PROCESS.

In original parole grant hearings at which predicted terms of incarceration are determined, fundamental principles of due process apply under the Utah Constitution, including the requirement of providing timely notice before hearings and copies of information in the board's file to the defendant. *Labrum*

v. State Board of Pardons, 870 P.2d 902 (Utah 1993).

Due process requirements of the Utah Constitution apply to a post-revocation parole grant hearing. Neel v. Holden, 886 P.2d 1097 (Utah 1994).

Defendant who failed to show how the further participation of counsel at a hearing would have affected the accuracy of the information considered by the Utah Board of Pardons was not denied due process by the Board's refusal to allow his counsel to address the Board. Neel v. Holden, 886 P.2d 1097 (Utah 1994).

HEARINGS ON RELEASE DATE.

An inmate is entitled to access to psychological reports that will be considered by the Utah Board of Pardons in hearings at which the inmate's release date may be fixed or extended. Neel v. Holden, 886 P.2d 1097 (Utah 1994).

CITED in State v. Bishop, 717 P.2d 261 (Utah 1986).

COLLATERAL REFERENCES

C.J.S. --67A C.J.S. Pardon and Parole @ 44.

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TITLE 77. UTAH CODE OF CRIMINAL PROCEDURE

CHAPTER 27. PARDONS AND PAROLES

Utah Code Ann. @ 77-27-6 (1995)

@ 77-27-6. Payment of restitution

(1) When the Board of Pardons and Parole orders the release on parole of an inmate who has been sentenced to make restitution pursuant to Section 76-3-201 or whom the board has ordered to make restitution, and all or a portion of restitution is still owing, the board may establish a schedule, including both complete and court-ordered restitution, by which payment of the restitution shall be made, or order community or other service in lieu of or in

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CHAPTER 27. PARDONS AND PAROLES

Utah Code Ann. @ 77-27-7 (1995)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS DOCUMENT

<=1> LEXSEE 1996 Ut. HB 95 -- See section 5.

@ 77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of
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(1) The Board of Pardons and Parole shall determine within six months after
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TITLE 77. UTAH CODE OF CRIMINAL PROCEDURE
CHAPTER 27. PARDONS AND PAROLES

Utah Code Ann. @ 77-27-9 (1995)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS DOCUMENT

<=1> LEXSEE 1996 Ut. HB 95 -- See section 6.

<=2> LEXSEE 1996 Ut. SB 26 -- See section 14.

FIRST OF TWO VERSIONS OF THIS SECTION THIS SECTION HAS MORE THAN ONE DOCUMENT
WITH VARYING EFFECTIVE DATES.

See next page

@ 77-27-9. Parole proceedings [Effective until April 29, 1996]

(1) The Board of Pardons and Parole may pardon or parole any offender or commute or terminate the sentence of any offender committed to a penal or correctional facility under the jurisdiction of the Department of Corrections for a felony or class A misdemeanor except under Subsection (2). The release of an offender shall be at the initiative of the board, which shall consider each case as the offender becomes eligible. However, a prisoner may submit his own application, subject to the rules of the board.

(2) (a) A person sentenced to prison for a felony of the first degree involving child kidnapping, a violation of Section 76-5-301.1; rape of a child, a violation of Section 76-5-402.1; object rape of a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section 76-5-403.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(3); aggravated sexual assault, a violation of Section 76-5-405; or a prior offense as described in Section 76-3-407, is not eligible for release on parole by the Board of Pardons and Parole until the offender has fully completed serving the minimum mandatory sentence imposed by the court. This subsection supersedes any other provision of law.

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TITLE 77. UTAH CODE OF CRIMINAL PROCEDURE

CHAPTER 27. PARDONS AND PAROLES

Utah Code Ann. @ 77-27-9.7 (1995)

@ 77-27-9.7. Victim right to notification of release -- Notice by board

A victim entitled to notice of the hearings regarding parole under Section 77-27-9.5 shall also be notified by the Board of Pardons and Parole of the right of victims to be advised upon request of other releases of the defendant under Section 64-13-14.7. The board may include this notification in the same notice sent under Section 77-27-9.5. The board shall coordinate with the Department of Corrections to ensure ...

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CHAPTER 27. PARDONS AND PAROLES

Utah Code Ann. @ 77-27-10 (1995)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS DOCUMENT

<=1> LEXSEE 1996 Ut. HB 95 -- See section 7.

@ 77-27-10. Conditions of parole -- Intensive early release parole program

(1) (a) When the Board of Pardons and Parole releases an offender on parole, it shall issue to the parolee a certificate setting forth the conditions of parole which he shall accept and agree to as evidenced by his signature

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TITLE 77. UTAH CODE OF CRIMINAL PROCEDURE

CHAPTER 27. PARDONS AND PAROLES

Utah Code Ann. @ 77-27-13 (1995)

@ 77-27-13. Board of Pardons and Parole -- Duties of the judiciary, the Department of Corrections, and law enforcement -- Removal of material from files

NOTES:

... 1985, ch. 213, @ 9 repealed former @ 77-27-13 (L. 1980, ch. 15, @ 2; 1983, ch. 88, @ 39), relating to duties before release of prisoner, and enacted present @ 77-27-13.

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*** (1995 REGULAR SESSION) ***

TITLE 77. UTAH CODE OF CRIMINAL PROCEDURE

CHAPTER 27. PARDONS AND PAROLES

Utah Code Ann. @ 77-27-21.5 (1995)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS DOCUMENT

<=1> LEXSEE 1996 Ut. HB 15 -- See section 1.

@ 77-27-21.5. Sex offender registration -- Information system -- Law enforcement and courts to report -- Registration -- Penalty -- Temporary releases -- Effect of expungement

afforded a hearing to establish a date of release or a date for a rehearing, and shall promptly notify the offender of the date.

(2) Before reaching a final decision to release any offender under this chapter, the chair shall cause the offender to appear before the board, its panel, or any appointed hearing officer, who shall personally interview the offender to consider his fitness for release and verify as far as possible information furnished from other sources. Any offender may waive a personal appearance before the Board of Pardons and Parole. Any offender outside of the state shall, if ordered by the Board of Pardons and ...

NOTES:

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

Due process.

Hearings on release date.

Cited.

CONSTITUTIONALITY.

The Utah parole statutes do not create a liberty interest recognizable

definitions -

(8) "Pardon" is an act of grace by an appropriate authority exempting a person from punishment for a crime.

(9) "Parole" is a release from imprisonment on prescribed conditions which, if satisfactorily performed by the parolee, entitles him to a termination of his sentence.

(10) "Probation" is an act of grace by the court suspending the imposition or execution of a convicted offender's sentence upon ...

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LEVEL 1 - 22 SECTIONS

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LEVEL 1 - 22 SECTIONS

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LEVEL 1 - 22 SECTIONS

notification of release -- Notice by board, UTAH CODE ANNOTATED Copyright (c) 1953-1994 by The Michie Company Copyright (c) 1995 by Michie Butterworth a division of Reed Elsevier Inc. and Reed Elsevier Properties Inc. All rights reserved.

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TITLE 77. UTAH CODE OF CRIMINAL PROCEDURE

CHAPTER 27. PARDONS AND PAROLES

Utah Code Ann. @ 77-27-5 (1995)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS DOCUMENT

<=1> LEXSEE 1996 Ut. HB 95 -- See section 4.

@ 77-27-5. Board of Pardons and Parole authority

(1) (a) The Board of Pardons and Parole shall determine by majority decision when and under what conditions, subject to this chapter and other laws of the state, persons committed to serve sentences in class A misdemeanor cases at penal or correctional facilities which are under the jurisdiction of the Department of Corrections, and all felony cases except treason or impeachment or as otherwise limited by law, may be released upon parole, pardoned, restitution ordered, or have their fines, forfeitures, or restitution remitted, or their sentences commuted or terminated.

(b) The board may sit together or in panels to conduct hearings. The chair shall appoint members to the panels in any combination and in accordance with rules promulgated by the board, except in hearings involving commutation and pardons. The chair may participate on any panel and when doing so is chair of the panel. The chair of the board may designate the chair for any other panel.

(c) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole, pardon, or commutation granted or sentence terminated, except after a full hearing before the board or the board's appointed examiner in open session. Any action taken under this subsection other than by a majority of the board shall be affirmed by a majority of the board.

(d) A commutation or pardon may be granted only after a full hearing before the board.

(e) The board shall determine restitution in an amount that does not exceed complete restitution if determined by the court in accordance with Section 76-3-201.

(2) (a) In the case of original parole grant hearings, rehearings, and parole revocation hearings, timely prior notice of the time and place of the hearing shall be given to the defendant, the county or district attorney's office responsible for prosecution of the case, the sentencing court, law enforcement officials responsible for the defendant's arrest and conviction, and whenever possible, the victim or the victim's family.

(b) Notice to the victim, his representative, or his family shall include information provided in Section 77-27-9.5, and any related rules made by the board under that section. This information shall be provided in terms that are reasonable for the lay person to understand.

(3) Decisions of the Board of Pardons and Parole in cases involving paroles, pardons, commutations or terminations of sentence, restitution, or remission of fines or forfeitures are final and are not subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a civil judgment, including restitution as provided in Section 77-27-6.

(4) This chapter may not be construed as a denial of or limitation of the governor's power to grant respite or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment. However, respites or reprieves may not extend beyond the next session of the Board of Pardons and Parole and the board, at that session, shall continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the offense as provided. In the case of conviction for treason, the governor may suspend execution of the sentence until the case is reported to the Legislature at its next session. The Legislature shall then either pardon or commute the sentence, or direct its execution.

(5) In determining when, where, and under what conditions offenders serving sentences may be paroled, pardoned, have restitution ordered, or have their fines or forfeitures remitted, or their sentences commuted or terminated, the Board of Pardons and Parole shall consider whether the persons have made or are prepared to make restitution as ascertained in accordance with the standards and procedures of Section 76-3-201, as a condition of any parole, pardon, remission of fines or forfeitures, or commutation or termination of sentence.

HISTORY: C. 1953, 77-27-5, enacted by L. 1985, ch. 213, @ 1; 1986, ch. 22, @ 2; 1988, ch. 172, @ 2; 1990, ch. 195, @ 4; 1993, ch. 38, @ 102; 1994, ch. 13, @ 33; 1995, ch. 301, @ 4.

NOTES:

REPEALS AND REENACTMENTS. --Laws 1983, ch. 53, @ 3 repealed a former @ 77-27-5 (L. 1980, ch. 15, @ 2), relating to per diem and expenses of board members, and enacted a new @ 77-27-5.

Laws 1985, ch. 213, @ 1 repealed former @ 77-27-5 (L. 1983, ch. 53, @ 3), relating to compensation and expenses of board, and enacted the present section.

AMENDMENT NOTES. --The 1993 amendment, effective May 3, 1993, inserted "or district" near the middle of Subsection (2)(a).

The 1994 amendment, effective May 2, 1994, substituted "Board of Pardons and Parole" for "Board of Pardons" throughout the section and substituted "chair" for "chairperson" throughout Subsection (1)(b).

The 1995 amendment, effective May 1, 1995, added Subsection (1)(e) and added "including restitution as provided in Section 77-27-6" at the end of Subsection (3).

NOTES TO DECISIONS

ANALYSIS

Condition for termination of sentence.

Constitutional protections.
Discretion of board.
Due process.
Habeas corpus review.
Hearing by board.
In general.
Power to commute sentences.
Cited.

CONDITION FOR TERMINATION OF SENTENCE.

Condition for termination of sentence imposed by Board of Pardons that prisoner agree to leave the state was not unconstitutional as amounting to banishment. *Mansell v. Turner*, 14 Utah 2d 352, 384 P.2d 394 (1963).

Under Art. VII, @ 12, Utah Const., implemented by former @ 77-62-3, the Board of Pardons was authorized to release prisoners on condition. The section did not prescribe particular conditions, but the authority obviously was plenary. The prisoner could reject the conditions and serve out his term, but could not accept such conditions, obtain his release from confinement and then blithely contend his sentence was terminated and he was free as a bird. *Mansell v. Turner*, 14 Utah 2d 352, 384 P.2d 394 (1963); *Vrieze v. Turner*, 18 Utah 2d 233, 419 P.2d 769 (1966).

CONSTITUTIONAL PROTECTIONS.

The Utah parole statutes do not create a liberty interest recognizable under the federal constitution. *Houtz v. DeLand*, 718 F. Supp. 1497 (D. Utah 1989).

The Utah parole statute does not create an "expectation of parole" that would subject parole board proceedings to due process protections. *Hatch v. Deland*, 790 P.2d 49 (Utah App. 1990).

The Utah parole statutes, this section and @ 77-27-9, grant the parole board complete discretion in making parole decisions, once an offender is eligible; accordingly, the statute does not create a liberty interest entitling a prisoner to due process protection under the Fifth and Fourteenth Amendments of the United States Constitution and thus cannot be used as a basis for relief under 42 U.S.C. @ 1983. *Malek v. Haun*, 26 F.3d 1013 (10th Cir. 1994).

DISCRETION OF BOARD.

It was within power and discretion of Board of Pardons to decline to release convicted check forger with apparent liquor problem, notwithstanding unusual length of time served on charge of issuing check against insufficient funds. *Andrus v. Turner*, 29 Utah 2d 338, 509 P.2d 363 (1973).

It was within the discretion of the Board of Pardons not to grant credit against the defendant's parole period for time served while incarcerated after his original parole date, and habeas corpus was not available as a post-release remedy to modify the release date set by the board. *Northern v. Barnes*, 825 P.2d 696 (Utah Ct. App. 1992), *aff'd*, 870 P.2d 914 (Utah 1993).

DUE PROCESS.

In original parole grant hearings at which predicted terms of incarceration are determined, fundamental principles of due process apply under the Utah Constitution, including the requirement of providing timely notice before hearings and copies of information in the board's file to the defendant. *Labrum v. State Board of Pardons*, 870 P.2d 902 (Utah 1993).

The requirement that an inmate know what information the Board of Pardons will be considering at a parole grant hearing applies to any inmate who has a

claim pending in the district court or on appeal before the Supreme Court or the Court of Appeals challenging the original procedures on due process grounds; thus, an inmate who had been denied due process rights and had a petition for extraordinary relief pending was entitled to a new hearing. *Preece v. House*, 886 P.2d 508 (Utah 1994).

HABEAS CORPUS REVIEW.

Habeas corpus review of the board's actions in conducting a parole hearing is available. *Footte v. Utah Bd. of Pardons*, 808 P.2d 734 (Utah 1991).

Petitioner's case was referred to the district court for appropriate proceedings, where his numerous assertions of fact pertaining to the conduct of his parole hearing were undocumented, and, in the absence of an adequate record, the Supreme Court was unable to conduct a meaningful review of the board's actions or of petitioner's due process claims. *Footte v. Utah Bd. of Pardons*, 808 P.2d 734 (Utah 1991).

While parole decisions are subject to habeas corpus review, the scope of review is limited to a review of procedural due process and does not extend authority for judicial review of the "reasonableness of the parole decision"; the appropriate remedy for a procedural due process violation was to require the Board of Pardons to provide the district court and petitioner with a written explanation of its reasons for the parole decision. *Preece v. House*, 848 P.2d 163 (Utah Ct. App. 1993), cert. granted, 853 P.2d 897 (Utah 1993).

Though courts have limited the protection afforded inmates challenging board decisions to guarantees of procedural due process fairness, a court cannot dismiss a particular petition based upon this limitation without making a threshold determination that the petitioner raised only issues involving substantive matters exclusively within the board's discretion. *Renn v. Utah State Bd. of Pardons*, 860 P.2d 386 (Utah 1993).

This section does not preclude judicial review of decisions of the Board of Pardons by way of extraordinary writ; however, review is limited to the process by which the Board undertakes its sentencing function, not the result. So long as the period of incarceration decided upon is within an inmate's applicable indeterminate range, e.g., five years to life, then that decision, absent unusual circumstances, cannot be arbitrary and capricious. *Preece v. House*, 886 P.2d 508 (Utah 1994).

HEARING BY BOARD.

On appeal from conviction for sale of narcotics, question on constitutionality of indeterminate sentence of five years to life without eligibility for release until after three years was moot where Board of Pardons had exercised its prerogative by setting a date for hearing the question of parole or some other disposition of the case on a date beyond the three-year period. *State v. Fair*, 28 Utah 2d 242, 501 P.2d 107 (1972).

IN GENERAL.

Board of Pardons, not the trial court, had authority to grant defendant credit for the time he served prior to conviction. *State v. Alvillar*, 748 P.2d 207 (Utah Ct. App. 1988).

POWER TO COMMUTE SENTENCES.

Under Utah Const., Art. VII, @ 12, it was only Board of Pardons that had right to commute punishments and grant pardons. *State ex rel. Bishop v. State Bd. of Cors.*, 16 Utah 478, 52 P. 1090 (1898), holding unconstitutional R.S. 1898, @ 2251 which conferred power to commute sentences upon a board of

corrections.

CITED in State v. Richards, 740 P.2d 1314 (Utah 1987); White v. Utah State Bd. of Pardons, 778 P.2d 20 (Utah Ct. App. 1989).

COLLATERAL REFERENCES

C.J.S. --67A C.J.S. Pardon and Parole @@ 6 to 8, 10, 39 to 60.

A.L.R. --Propriety of condition of probation which requires defendant convicted of crime of violence to make reparation to injured victim, 70 A.L.R.3d 976.

Ability to pay as necessary consideration in conditioning probation or suspended sentence upon reparation or restitution, 73 A.L.R.3d 1240.

Propriety of conditioning probation on defendant's remaining childless or having no additional children during probationary period, 94 A.L.R.3d 1218.

Propriety of conditioning probation on defendant's not associating with particular person, 99 A.L.R.3d 967.

Validity of statutes prohibiting or restricting parole, probation, or suspension of sentence in cases of violent crimes, 100 A.L.R.3d 431.

Who may institute proceedings to revoke probation, 21 A.L.R.5th 275.

USER NOTE: For more generally applicable notes, see notes under the first section of this article, part, chapter, subtitle, or title.

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TITLE 77. UTAH CODE OF CRIMINAL PROCEDURE
 CHAPTER 18. THE JUDGMENT

Utah Code Ann. @ 77-18-4 (1995)

@ 77-18-4. Sentence -- Term -- Construction

(1) Whenever a person is convicted of a crime and the judgment provides for a commitment to the state prison, the court shall not fix a definite term of imprisonment unless otherwise provided by law.

(2) The sentence and judgment of imprisonment shall be for an indeterminate term of not less than the minimum and not to exceed the maximum term provided by law for the particular crime.

(3) Except as otherwise expressly provided by law, every sentence, regardless of its form or terms, which purports to be for a shorter or different period of time, shall be construed to be a sentence for the term between the minimum and maximum periods of time provided by law and shall continue until the maximum period has been reached unless sooner terminated or commuted by authority of the Board of Pardons and Parole.

HISTORY: C. 1953, 77-18-4, enacted by L. 1980, ch. 15, @ 2; 1994, ch. 13, @ 26.

NOTES:

AMENDMENT NOTES. --The 1994 amendment, effective May 2, 1994, designated the formerly undesignated paragraphs as Subsections (1) to (3) and substituted "Board of Pardons and Parole" for "Board of Pardons" in Subsection (3).

CROSS-REFERENCES. --Board of Pardons, @ 77-27-1 et seq.

Controlled Substances Act, violations, sentencing, @ 58-37-8.

Punishments, Criminal Code, @ 76-3-101 et seq.

NOTES TO DECISIONS

ANALYSIS

Credit for time served on vacated sentence.

Effect of subsequent statute.

Habitual criminal.

Indeterminate sentence.

Power of Board of Pardons.

Validity of sentence.

CREDIT FOR TIME SERVED ON VACATED SENTENCE.

Defendant who had served thirty months of robbery sentence (five years to life) before it was vacated and who was thereafter committed after jury trial

for same offense was entitled to credit on second sentence for time served on vacated sentence; in view of absurdity of maximum sentence of life imprisonment minus thirty months, credit was to be applied by prison officials and Board of Pardons in determining time for probation and termination of sentence. *State v. Jaramillo*, 25 Utah 2d 328, 481 P.2d 394 (1971).

EFFECT OF SUBSEQUENT STATUTE.

Sentence imposed upon one convicted of crime could not be affected by a statute subsequently passed. In *re Clawson*, 5 Utah 358, 15 P. 328 (1887).

HABITUAL CRIMINAL.

An indeterminate sentence of from one to ten years was not a sentence of not less than three years as that term was used in former habitual criminal statute which defined habitual criminal as one who had been previously twice convicted and sentenced for terms of not less than three years each. *State v. Walsh*, 106 Utah 22, 144 P.2d 757 (1943).

INDETERMINATE SENTENCE.

An indeterminate sentence was in law a sentence for the maximum period prescribed by law for the particular offense committed, subject to provisions that it could be sooner terminated by the Board of Pardons. *Mutart v. Pratt*, 51 Utah 246, 170 P. 67 (1917); *State v. Empey*, 65 Utah 609, 239 P. 25, 44 A.L.R. 558 (1925); *Lee Lim v. Davis*, 75 Utah 245, 284 P. 323, 76 A.L.R. 460 (1929).

Sentence under former indeterminate sentence law was for maximum period or term prescribed for particular offense. *State v. Roberts*, 91 Utah 117, 63 P.2d 584 (1937).

An indeterminate sentence was a definite sentence for the maximum term therein stated, unless it was commuted or terminated or the prisoner was paroled or pardoned by the Board of Pardons. *State v. Nemier*, 106 Utah 307, 148 P.2d 327 (1944).

POWER OF BOARD OF PARDONS.

State Board of Pardons had jurisdiction and authority to fix and determine time a person shall serve when sentenced under former indeterminate sentence law at any period equal to or less than maximum penalty provided by law, and it was not mandatory that it apply "good conduct time" allowance provided in "good behavior" statute. *Cardisco v. Davis*, 91 Utah 323, 64 P.2d 216 (1937).

Under procedure the final determination in all cases was left to the Board of Pardons. Even where the prisoner was convicted and sentenced as an habitual criminal for a term of not less than fifteen years under the statute, the minimum was not binding on that board. *State v. Walsh*, 106 Utah 22, 144 P.2d 757 (1943).

VALIDITY OF SENTENCE.

A sentence in excess of court's power to impose was not totally void, where erroneous and excessive sentence was severable into parts. In such case the sentence was bad as to the excess and good as to that which court had power to impose. *Reese v. Olsen*, 44 Utah 318, 139 P. 941 (1914).

Although sentence to term of not less than twenty years for pandering, when statute provided that crime should carry a sentence of imprisonment for a term of not more than twenty years, was erroneous, it was not void. *State v. Gates*, 118 Utah 182, 221 P.2d 878 (1950).

Sentence was lawful though not commendable where defendant was sentenced for the sale of marijuana "for an indeterminant term as provided by law for the crime of selling a narcotic drug as charged" despite the fact that the

statutory basis for the sentence provided for imprisonment "from five years to life." State v. Cowan, 26 Utah 2d 410, 490 P.2d 890 (1971).

COLLATERAL REFERENCES

AM. JUR. 2D. --21 Am. Jur. 2d 898, Criminal law @ 542.

C.J.S. --24 C.J.S. Criminal Law @ 1468.

KEY NUMBERS. --Criminal Law KEY 991(3), 1208(9).

USER NOTE: For more generally applicable notes, see notes under the first section of this article, part, chapter, subtitle, or title.

PAGE

41ST SECTION of Level 2 printed in FULL format.

UTAH CODE ANNOTATED

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*** THIS SECTION CURRENT THROUGH THE 1995 SUPPLEMENT ***

*** (1995 REGULAR SESSION) ***

TITLE 77. UTAH CODE OF CRIMINAL PROCEDURE

CHAPTER 18. THE JUDGMENT

Utah Code Ann. @ 77-18-1 (1995)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS DOCUMENT

<=1> LEXSEE 1996 Ut. SB 73 -- See section 103.

@ 77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions -- Restitution -- Termination, revocation, modification, or extension -- Hearings -- Electronic monitoring

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

(2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime or offense, the court may suspend the imposition or execution of sentence and place the defendant on probation. The court may place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation with an agency of local government or with a private organization; or

(iii) on bench probation under the jurisdiction of the sentencing court.

(b) (i) The legal custody of all probationers under the supervision of the department is with the department.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court. The court has continuing jurisdiction over all probationers.

(3) (a) The department shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:

(i) the type of offense;

Utah Code Ann. @ 77-18-1 (1995)

- (ii) the demand for services;
- (iii) the availability of agency resources;
- (iv) the public safety; and

(v) other criteria established by the department to determine what level of services shall be provided.

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.

(c) The Judicial Council and the department shall establish procedures to implement the supervision and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.

(4) Notwithstanding other provisions of law, the department is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.

(5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.

(b) The presentence investigation report shall include a victim impact statement describing the effect of the crime on the victim and the victim's family. The victim impact statement shall:

(i) identify the victim of the offense;

(ii) include a specific statement of the recommended amount of complete restitution as defined in Subsection 76-3-201(4), accompanied by a recommendation from the department regarding the payment of court-ordered restitution as defined in Subsection 76-3-201(4) by the defendant;

(iii) identify any physical injury suffered by the victim as a result of the offense along with its seriousness and permanence;

(iv) describe any change in the victim's personal welfare or familial relationships as a result of the offense;

(v) identify any request for psychological services initiated by the victim or the victim's family as a result of the offense; and

Utah Code Ann. @ 77-18-1 (1995)

(vi) contain any other information related to the impact of the offense upon the victim or the victim's family that is relevant to the trial court's sentencing determination.

(c) The presentence investigation report shall include a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Subsection 76-3-201(4).

(d) The contents of the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, are confidential and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6) (a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional ten working days to resolve the alleged inaccuracies of the report with the department. If after ten working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

(b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

(7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(8) While on probation, and as a condition of probation, the defendant may be required to perform any or all of the following:

(a) pay, in one or several sums, any fine imposed at the time of being placed on probation;

(b) pay amounts required under Title 77, Chapter 32a, Defense Costs;

(c) provide for the support of others for whose support he is legally liable;

(d) participate in available treatment programs;

(e) serve a period of time in the county jail not to exceed one year;

(f) serve a term of home confinement, which may include the use of electronic monitoring;

(g) participate in community service restitution programs, including the community service program provided in Section 78-11-20.7;

Utah Code Ann. @ 77-18-1 (1995)

- (h) pay for the costs of investigation, probation, and treatment services;
- (i) make restitution or reparation to the victim or victims with interest in accordance with Subsection 76-3-201(4); and
- (j) comply with other terms and conditions the court considers appropriate.

(9) The department, upon order of the court, shall collect and disburse fines, restitution with interest in accordance with Subsection 76-3-201(4), and any other costs assessed under Section 64-13-21 during:

- (a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and
- (b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection 77-18-1(10).

(10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, or 12 months in cases of class B or C misdemeanors or infractions.

(ii) If the defendant, upon expiration or termination of the probation period, owes outstanding fines, restitution, or other assessed costs, the court may retain jurisdiction of the case and continue the defendant on bench probation or place the defendant on bench probation for the limited purpose of enforcing the payment of fines, restitution, including interest, if any, in accordance with Subsection 76-3-201(4), and other amounts outstanding.

(iii) Upon motion of the prosecutor or victim, or upon its own motion, the court may require the defendant to show cause why his failure to pay should not be treated as contempt of court or why the suspended jail or prison term should not be imposed.

(b) The department shall notify the sentencing court and prosecuting attorney in writing in advance in all cases when termination of supervised probation will occur by law. The notification shall include a probation progress report and complete report of details on outstanding fines, restitution, and other amounts outstanding.

(11) (a) (i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

Utah Code Ann. @ 77-18-1 (1995)

(12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for his arrest or a copy of the affidavit and an order to show cause why his probation should not be revoked, modified, or extended.

(c) (i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.

(ii) The defendant shall show good cause for a continuance.

(iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed for him if he is indigent.

(iv) The order shall also inform the defendant of a right to present evidence.

(d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

(ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.

(iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.

(iv) The defendant may call witnesses, appear and speak in his own behalf, and present evidence.

(e) (i) After the hearing the court shall make findings of fact.

(ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew.

(iii) If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

(13) Restitution imposed under this chapter and interest accruing in accordance with Subsection 76-3-201(4) is considered a debt for willful and

Utah Code Ann. @ 77-18-1 (1995)

malicious injury for purposes of exceptions listed to discharge in bankruptcy as provided in Title 11 U.S.C.A. Sec. 523, 1985.

(14) The court may order the defendant to commit himself to the custody of the Division of Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or his designee has certified to the court that:

(a) the defendant is appropriate for and can benefit from treatment at the state hospital;

(b) treatment space at the hospital is available for the defendant; and

(c) persons described in Subsection 62A-12-209(2)(g) are receiving priority for treatment over the defendants described in this subsection.

(15) Presentence investigation reports, including presentence diagnostic evaluations, are classified protected in accordance with Title 63, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63-2-403 and 63-2-404, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:

(a) ordered by the court pursuant to Subsection 63-2-202(7);

(b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;

(c) requested by the Board of Pardons and Parole;

(d) requested by the subject of the presentence investigation report or the subject's authorized representative; or

(e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

(16) (a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

(b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (17).

(17) (a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.

Utah Code Ann. @ 77-18-1 (1995)

(b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.

(c) The electronic monitoring device shall be used under conditions which require:

(i) the defendant to wear an electronic monitoring device at all times; and

(ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.

(d) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under this section, it shall:

(i) place the defendant on probation under the supervision of the Department of Corrections;

(ii) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and

(iii) order the defendant to pay the costs associated with home confinement to the department or the program provider.

(e) The department shall pay the costs of home confinement through electronic monitoring only for those persons who have been determined to be indigent by the court.

(f) The department may provide the electronic monitoring described in this section either directly or by contract with a private provider.

HISTORY: C. 1953, 77-18-1, enacted by L. 1980, ch. 15, @ 2; 1981, ch. 59, @ 2; 1982, ch. 9, @ 1; 1983, ch. 47, @ 1; 1983, ch. 68, @ 1; 1983, ch. 85, @ 2; 1984, ch. 20, @ 1; 1985, ch. 212, @ 17; 1985, ch. 229, @ 1; 1987, ch. 114, @ 1; 1989, ch. 226, @ 1; 1990, ch. 134, @ 2; 1991, ch. 66, @ 5; 1991, ch. 206, @ 6; 1992, ch. 14, @ 3; 1993, ch. 82, @ 7; 1993, ch. 220, @ 3; 1994, ch. 13, @ 24; 1994, ch. 198, @ 1; 1994, ch. 230, @ 1; 1995, ch. 20, @ 146; 1995, ch. 117, @ 2; 1995, ch. 184, @ 1; 1995, ch. 301, @ 3; 1995, ch. 337, @ 11; 1995, ch. 352, @ 6.

NOTES:

AMENDMENT NOTES. --The 1991 amendment by ch. 66, effective April 29, 1991, in Subsection (2)(a) substituted "guilty, guilty and mentally ill, no contest" for "guilty or no contest" in the first sentence.

The 1991 amendment by ch. 206, effective April 29, 1991, added Subsection (1), redesignating the following subsections accordingly; subdivided Subsections (2)(b), (3), (5)(a), (7), (8)(a), (9)(a), and (10); substituted "appropriations subcommittee" for "appropriations committee" at the end of Subsection (3)(e); substituted the language beginning with "presentence" and ending with "court order" for "report are confidential and not available except" in Subsection (5)(a)(iii); inserted "evidence" in the first and second sentences of Subsection (5)(b); added Subsections (5)(c) and (13); and made several punctuation and stylistic changes throughout the section.

The 1992 amendment, effective April 27, 1992, added "including the

Utah Code Ann. @ 77-18-1 (1995)

community service program provided in Section 78-11-20.7" to the end of Subsection (6)(g).

The 1993 amendment by ch. 82, effective May 3, 1993, added Subsection (2) and redesignated former Subsections (2) through (13) as Subsections (3) through (14).

The 1993 amendment by ch. 220, effective May 3, 1993, added "and any other costs assessed under Section 64-13-21" in Subsection (8), substituted "owes" for "has" and "or other assessed costs" for "owing" and added "and other amounts outstanding" in Subsection (9)(a)(ii), substituted "and other amounts outstanding" for "orders" in Subsection (9)(b), and made stylistic changes.

The 1994 amendment by ch. 13, effective May 2, 1994 substituted "Board of Pardons and Parole" for "Board of Pardons" in Subsections (1)(c) and (4)(b); substituted "Title 77, Chapter 2a, Pleas in Abeyance" for "Sections 77-2a-1 through 77-2a-4" in Subsection (2); substituted "Subsection (4)(a)" for "Subsection (a)" in Subsection (4)(d); and made stylistic changes.

The 1994 amendment by ch. 198, effective May 2, 1994, added Subsection (6)(a)(ii), renumbering former Subsections (6)(a)(ii) and (iii) as (iii) and (iv), and made a stylistic change.

The 1994 amendment by ch. 230, effective May 2, 1994, deleted former Subsection (1) which defined "confidential"; inserted "and Parole" in Subsection (3)(b); added Subsection (6); designated former Subsection (6)(b) as Subsection (7); deleted former Subsection (6)(c) pertaining to the disposition of the presentence investigation report after the sentencing; deleted former Subsection (14), relating to disclosure of presentence diagnostic evaluation and investigation reports; added Subsection (15); and made related and other stylistic changes.

The 1995 amendment by ch. 20, effective May 1, 1995, substituted "Subsections 76-3-201(4) and (5)" for "Subsections 76-3-201(3) and (4)" in Subsection (8)(i) and replaced "Chapter 1" with "Chapter 2" in Subsection (15).

The 1995 amendment by ch. 117, effective May 1, 1995, added references to "interest in accordance with Subsection 76-3-201(4)" in Subsections (5)(c), (8)(i), (9)(a), (10)(a)(ii), and (13), deleted a reference to Subsection 76-3-201(3) in Subsection (8)(i), corrected a reference in Subsection (15), and made stylistic changes throughout the section.

The 1995 amendment by ch. 184, effective May 1, 1995, deleted a requirement of a "recommendation from the Department of Corrections regarding the payment of restitution by the defendant" in Subsection (5)(b)(ii); rewrote Subsection (6), making significant stylistic changes, decreasing the time that the presentence investigation must be available before trial, which had been ten days, and adding the possibility of a ten-day period to correct inaccuracies in the report; and added "and disbursement" after "collection" in Subsection (9)(a).

The 1995 amendment by ch. 301, effective May 1, 1995, substituted "the recommended amount of complete restitution" for "pecuniary damages," inserted "as defined in Subsection 76-3-201(4)" twice and inserted "court-ordered" in Subsection (5)(a) and rewrote Subsection (9).

The 1995 amendment by ch. 337, effective May 1, 1995, added "which may include the use of electronic monitoring" at the end of Subsection (8)(f), added Subsections (16) and (17), and corrected a statutory reference in Subsection (15).

The 1995 amendment by ch. 352, effective May 1, 1995, inserted "if the defendant is not represented by counsel" in the first sentence of Subsection (6), substituted "protected" for "private" and "Chapter (2)" for "Chapter (1)" in the first sentence of Subsection (15), added Subsection (15)(e), and made related stylistic changes.

This section is set out as reconciled by the Office of Legislative Research

Utah Code Ann. @ 77-18-1 (1995)

and General Counsel.

COMPILER'S NOTES. --Laws 1994, S.J.R. 6 proposed amending Utah Const., Art. I, Sec. 12 and proposed adding a new Sec. 28 to that article. These proposals were approved by the voters, the changes to take effect on January 1, 1995. Laws 1994, ch. 198, which amended this section to add the requirement of a victim impact statement, provides in @ 16 that the Legislature intends the act to serve as the implementing legislation of those constitutional amendments.

Laws 1995, ch. 184, @ 5 directs that the amendments in that act to Subsection (6)(a) of this section shall supersede the amendments to the same subsection in L. 1995, ch. 352.

Laws 1995, ch. 301, @ 6 provides that the amendments in that act to Subsections (5)(b)(ii) and (9)(a) supersede the amendments to the same subsections by ch. 184.

SEVERABILITY CLAUSES. --Section 3 of Laws 1983, Chapter 85 provided: "If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall be given effect without the invalid provision or application."

CROSS-REFERENCES. --Indecent public display, incarceration without suspension of sentence, @ 76-10-1228.

Payment of costs of defense as condition of probation or suspension, @ 77-32a-6.

Presentence investigation reports, Rules 4-607, 6-301, Rules of Judicial Administration.

Rules of Evidence inapplicable to sentencing and probation proceedings, Rules of Evidence, Rule 1101.

Voluntary commitment to Division of Mental Health, @ 62A-12-228(3).

NOTES TO DECISIONS

ANALYSIS

Disclosure to defendant.

-- Communications between judge and probation officer.

-- Presentence report.

Discretion of trial court.

Due process.

Extension of probation.

Habeas corpus.

Presentence reports.

Restitution.

-- Death of defendant.

Revocation of probation.

-- Grounds.

-- Nature of proceeding.

-- Nature of violation.

-- Notice of grounds.

-- Right to counsel at hearing.

-- Standard of proof.

-- Time for proceedings.

-- Written findings.

Suspended sentence.

-- Revocation of suspension.

Suspension of probation.

Utah Code Ann. @ 77-18-1 (1995)

Termination of probation period.
Terms of probation.
Cited.

DISCLOSURE TO DEFENDANT.

-- COMMUNICATIONS BETWEEN JUDGE AND PROBATION OFFICER.

An ex parte communication between a probation officer and a sentencing judge, in itself, does not violate constitutional protections; however, when a defendant establishes that the sentencing judge based his sentence upon inaccurate or unreliable information received during an ex parte communication with a probation officer that was not disclosed to the defendant, resentencing may be necessary. *State v. Gomez*, 887 P.2d 853 (Utah 1994).

-- PRESENTENCE REPORT.

Only when disclosure of the presentence report would jeopardize the life or safety of third parties should there be deletions from the report to protect them; in such cases, disclosure to a defendant of as much of the report as possible should be made with identifying indicia of a person who would be threatened excluded from the report, sealed, and included in the record on appeal; in all other cases, full disclosure of the report should be made. *State v. Casarez*, 656 P.2d 1005 (Utah 1982).

Since all of the information upon which the sentencing judge relied was disclosed to defendant in the presentence report and at the sentencing hearings, and defendant was given an opportunity to challenge the accuracy of that information, the defendant's right to effective counsel was not violated. *State v. Gomez*, 887 P.2d 853 (Utah 1994).

DISCRETION OF TRIAL COURT.

When it appeared that a trial judge had exercised discretion in suspending imposition of sentence or in revoking probation and imposing sentence, after a hearing, the judgment of the trial court should not have been molested. *Williams v. Harris*, 106 Utah 387, 149 P.2d 640 (1944).

A temporary stay for the purpose of determining the present disposition and mental attitude of the convicted person, before granting an indefinite one, was within the discretion of the trial court. *Demnick v. Harris*, 107 Utah 471, 155 P.2d 170 (1945).

Whether one convicted of crime, and subject to punishment therefor, should be placed on probation was a matter within discretion of trial court, and if court was doubtful whether granting probation during good behavior was compatible with the public interest, it should make such investigation as its judgment dictates as to the attitudes of the person convicted. *Demnick v. Harris*, 107 Utah 471, 155 P.2d 170 (1945).

Probation was not a matter of right, but if the trial court gave as a sole reason for denial that defendant did not admit his guilt it might have been an injustice under some circumstances. *State v. Sibert*, 6 Utah 2d 198, 310 P.2d 388 (1957).

When, in sentencing defendant, the trial judge indicated that he had no choice but to impose a mandatory five-year-to-life sentence for selling drugs, and, in fact, he had discretion to grant probation, the sentence was vacated and remanded for a new sentence to be imposed without judge's feeling compelled to impose the statutory sentence. *State v. Scott*, 26 Utah 2d 302, 488 P.2d 1046 (1971).

DUE PROCESS.

Utah Code Ann. @ 77-18-1 (1995)

Probationer who presented himself in court to make probation report could not later attack by habeas corpus court's action setting aside stay order and committing him to prison, on ground that no warrant, citation, or summons was issued. *Christiansen v. Harris*, 109 Utah 1, 163 P.2d 314 (1945).

Where a party was convicted and sentenced to a term in the state prison for issuing a fictitious check and was placed under the supervision of the adult probation and parole department, released from custody and was later granted three additional stays of execution, it must be concluded that he was placed on probation in the interest of reformation and that there was an implied agreement that the stay would not be terminated during his good behavior and, therefore, termination without hearing or claim of misconduct was a denial of due process of law. *McPhie v. Turner*, 10 Utah 2d 237, 351 P.2d 91 (1960).

In a habeas corpus proceeding, where the plaintiff had been convicted and placed on probation and later was notified that he had been charged with having committed a second crime while on probation, the plaintiff was not denied due process of law when, at a hearing which was held when he appeared in open court on his regular reporting day, he was committed to prison under his original sentence. *Baine v. Chesnut*, 11 Utah 2d 142, 356 P.2d 36 (1960).

Trial court did not jeopardize defendant's due process rights by refusing to entertain his motion to continue sentencing to obtain a personal examination and evaluation by the treatment facilities that had rejected him, because defendant had full and complete access to the presentence report and a diagnostic evaluation for almost two weeks before the hearing and had the opportunity to contest effectively any perceived factual inaccuracies. *State v. Rhodes*, 818 P.2d 1048 (Utah Ct. App. 1991).

EXTENSION OF PROBATION.

Proceedings for extension of probation commenced prior to termination of the original term gave the court jurisdiction over the defendant until conclusion of those proceedings. *State v. Rawlings*, 829 P.2d 150 (Utah Ct. App. 1992).

HABEAS CORPUS.

Scope of review of revocation order by habeas corpus was jurisdictional only and trial court's compliance with due process would be inquired into insofar as it was jurisdictional question. *Christiansen v. Harris*, 109 Utah 1, 163 P.2d 314 (1945).

PRESENTENCE REPORTS.

Failure to furnish defendant with copy of presentencing report prior to sentencing was not prejudicial error where sentencing court had stated specific information in the report upon which it relied and thus given defendant an opportunity to refute the matter and defendant did not contend that any of the information was inaccurate or false or that he was precluded from presenting any mitigating circumstances. *State v. Roberts*, 612 P.2d 360 (1980).

Trial court did not err in receiving and considering a presentence report when the author of a part of the report did not appear and testify in open court at the presentence hearing; the report had been disclosed to the defendant who made no objection to the inclusion of that part of the report or to its accuracy. *State v. Anderson*, 632 P.2d 877 (Utah 1981).

There was no error in trial court's consideration of a presentence report that contained a reference to defendant's confession to another criminal charge and the proceeding thereon although the defendant had been acquitted of the charge after a finding of guilt by the jury. *State v. Lipsky*, 639 P.2d 174 (Utah 1981).

Fact that record did not substantiate that defendant or his counsel viewed

Utah Code Ann. @ 77-18-1 (1995)

presentence report did not amount to prejudicial error where there was nothing to indicate that their opportunity to view the report was thwarted. *State v. Mitchell*, 671 P.2d 213 (Utah 1983).

Where information as to defendant's sexual misconduct was reliable and he was given adequate notice of the allegations and defendant did not attempt to call the victim and cross-examine her or take the stand himself, the court was justified in relying on evidence of defendant's sexual misconduct in sentencing defendant for burglary. *State v. Sweat*, 722 P.2d 746 (Utah 1986).

RESTITUTION.

Court had authority to order restitution for actual damages of victim as a condition of probation where defendant had pleaded guilty to an attempt to commit the crime charged. *State v. Garnick*, 619 P.2d 1383 (Utah 1980).

The court did not exceed its authority in ordering the defendant, convicted of committing arson upon his house, to reimburse insurance companies for their loss in compensating the bank which acquired the house through foreclosure. *State v. Stayer*, 706 P.2d 611 (Utah 1985).

The state can enforce restitution as both a condition of probation under this section, and as a separate and independent component of the court's judgment and the defendant's original sentence under @@ 76-3-201(3), (5), and 76-3-201.1(1). The expiration of the court's jurisdiction to require payment of restitution as a condition of probation, therefore, does not diminish the enforceability of restitution as an independent component of the sentence decreed in the judgment. *State v. Dickey*, 841 P.2d 1203 (Utah Ct. App. 1992), cert. denied, 853 P.2d 897 (Utah 1993).

Court may maintain bench probation to enforce the payment of restitution, even if the resulting probation period would be longer than the maximum formal probation period for the offenses involved. *State v. Robinson*, 860 P.2d 979 (Utah Ct. App. 1993), cert. denied, 878 P.2d 1154 (Utah 1994).

-- DEATH OF DEFENDANT.

Defendant's death during the pendency of his appeal from a conviction for failure to pay taxes did not abate the conviction and a restitution order was unaffected. *State v. Christensen*, 866 P.2d 533 (Utah 1993).

REVOCATION OF PROBATION.

The power to revoke probation must be exercised within legislatively established limits. *State v. Green*, 757 P.2d 462 (Utah 1988).

-- GROUNDS.

Defendant's failure to make bona fide efforts to maintain full-time verifiable employment and to pay his fine and restitution was a willful violation of his probation agreement and revocation was justified. *State v. Peterson*, 869 P.2d 989 (Utah Ct. App. 1994).

-- NATURE OF PROCEEDING.

Proceeding for the revocation of probation was not a criminal prosecution. *State v. Bonza*, 106 Utah 553, 150 P.2d 970 (1944).

Though the ground for revocation be the commission of another crime, defendant was not convicted thereof so that punishment might be imposed in such proceeding for the subsequent offense. He was not placed in jeopardy as to such offense. The cause of revocation need not have constituted a crime, so that conviction of some subsequent offense was not essential. The question to be determined was whether the defendant's conduct subsequent to sentence was in violation of the conditions imposed by the court for a continuance of his

Utah Code Ann. @ 77-18-1 (1995)

probation. State v. Bonza, 106 Utah 553, 150 P.2d 970 (1944).

Where no criminal prosecution was instituted, the probation court, for the purposes of the proceeding before it, could determine the truth or falsity of the facts alleged as constituting parole violation in the same manner as it might inquire into and determine the fact relative to an alleged violation not involving criminality. State v. Bonza, 106 Utah 553, 150 P.2d 970 (1944).

-- NATURE OF VIOLATION.

To support revocation of probation for the violation of a condition of probation not involving the payment of money, the violation must be willful or, if not willful, must presently threaten the safety of society. State v. Hodges, 798 P.2d 270 (Utah Ct. App. 1990).

Defendant who willfully refused to sign the probation agreement violated probation. State v. Ruesga, 851 P.2d 1229 (Utah Ct. App. 1993).

-- NOTICE OF GROUNDS.

Defendant was denied his due process right to notice of the grounds on which revocation of his probation was sought where the order to show cause served on defendant claimed only one ground for revocation of the probation and the trial court relied solely on another ground, of which the defendant had no notice, in revoking the probation. State v. Cowdell, 626 P.2d 487 (Utah 1981).

Probationer is entitled to written notice of the grounds on which revocation of probation is sought. State v. Cowdell, 626 P.2d 487 (Utah 1981).

Notice of probation revocation proceedings within the probation period is required in order to revoke a defendant's probation. Smith v. Cook, 803 P.2d 788 (Utah 1990).

-- RIGHT TO COUNSEL AT HEARING.

Inasmuch as hearing to revoke probation involved possibility of changing defendant's status from one of being at liberty to one of being in confinement, it was regarded "as an important stage of the proceeding against him" at which he should have the assistance of counsel if he so desired. State v. Eichler, 25 Utah 2d 421, 483 P.2d 887 (1971).

-- STANDARD OF PROOF.

The standard to be used in proving a violation of a condition of probation is a preponderance of the evidence. State v. Hodges, 798 P.2d 270 (Utah Ct. App. 1990).

-- TIME FOR PROCEEDINGS.

This section requires only that revocation proceedings be initiated within the probation period and not that the proceeding also be completed by the end of the probation period. State v. Kahl, 814 P.2d 1151 (Utah Ct. App. 1991), cert. denied, 843 P.2d 516 (Utah 1992) (decided under 1980 version, before addition of Subsection (11)(b)).

State was not responsible for unreasonable delay in completing revocation proceedings when defendant fled the jurisdiction before his probation revocation proceeding could be completed. State v. Kahl, 814 P.2d 1151 (Utah Ct. App. 1991), cert. denied, 843 P.2d 516 (Utah 1992) (decided under 1980 version, before addition of Subsection (11)(b)).

-- WRITTEN FINDINGS.

Written findings of fact are not necessary in every judicial probation revocation. A complete trial court record and transcript can suffice in lieu of written findings. However, the record and transcript must reveal the evidence

Utah Code Ann. @ 77-18-1 (1995)

relied on and the reasons for revoking probation. State v. Hodges, 798 P.2d 270 (Utah Ct. App. 1990).

SUSPENDED SENTENCE.

Right of person to personal liberty on a suspended sentence could not be alternately granted and denied without just cause. State v. Zolantakis, 70 Utah 296, 259 P. 1044, 54 A.L.R. 1463 (1927); McCoy v. Harris, 108 Utah 407, 160 P.2d 721 (1945); Christiansen v. Harris, 109 Utah 1, 163 P.2d 314 (1945).

When a sentence was suspended during good behavior, without reservations, person whose sentence was thus suspended had a vested right to rely thereon so long as that condition was complied with. State v. Zolantakis, 70 Utah 296, 259 P. 1044, 54 A.L.R. 1463 (1927).

Suspension of sentence would excuse timely enforcement of sentence of imprisonment. Mackelprang v. Walker, 74 Utah 121, 277 P. 401 (1929).

-- REVOCATION OF SUSPENSION.

For cases discussing the rights of one granted a suspended sentence, see State v. Zolantakis, 70 Utah 296, 259 P. 1044, 54 A.L.R. 1463 (1927); Thompson v. Harris, 106 Utah 32, 144 P.2d 761 (1943), rehearing denied, 107 Utah 99, 152 P.2d 91 (1944), cert. denied, 324 U.S. 845, 65 S. Ct. 676, 89 L. Ed. 1406 (1945); McCoy v. Harris, 108 Utah 407, 160 P.2d 721 (1945); Christiansen v. Harris, 109 Utah 1, 163 P.2d 314 (1945); Williams v. Harris, 106 Utah 387, 149 P.2d 640 (1944); State v. Bonza, 106 Utah 553, 150 P.2d 970 (1944).

In the absence of proof of fraud, a court could not properly vacate an order setting aside a conviction, merely because of its belief that fraud had been practiced to procure the original order. State v. Schreiber, 121 Utah 653, 245 P.2d 222 (1952).

SUSPENSION OF PROBATION.

Suspension of the period of probation during the time a person is in confinement awaiting a revocation hearing does not place that person in a "state of perpetual limbo," because whether the time spent in confinement will constitute service of probation is contingent on the final determination of the revocation proceedings. State v. Jameson, 800 P.2d 798 (Utah 1990).

TERMINATION OF PROBATION PERIOD.

Former Subsection (10)(a) required that the offender "shall" be terminated from sentence if 18 months' probation was completed without violation. This strong mandate was not consistent with the argument that the 18-month term was "tolled" when any violation occurs within the period and that there was no time limit for initiating a revocation action. State v. Green, 757 P.2d 462 (Utah 1988).

The 1984 amendment, which limited the time a person can be placed on probation to 18 months, pursuant to @ 68-3-3 should not apply retroactively. Smith v. Cook, 803 P.2d 788 (Utah 1990).

Probation may not be retroactively revoked no matter how clear it subsequently appears that probation requirements were not followed, if no enforcement action is taken prior to the elapse of the term of probation. State v. Moya, 815 P.2d 1312 (Utah Ct. App. 1991).

TERMS OF PROBATION.

Trial court, in granting stay of execution, could require compliance with conditions usually imposed on those placed on probation during good behavior, as a condition to keeping in force stay of order until date of its expiration. Demmick v. Harris, 107 Utah 471, 155 P.2d 170 (1945).

Utah Code Ann. @ 77-18-1 (1995)

The terms of the probation need not have been part of the order suspending the sentence. It was sufficient where the judge placed the defendant in the custody of the probation officer. The terms of the probation were clearly set forth in the probation agreement which, although prepared by the probation officer, was a standard form which the court adopted to apprise the accused of what was expected of him. If the defendant considered any of the terms unjust, he had ample opportunity to present his dissatisfaction to the court on the dates set for hearing and report. *State v. Fedder*, 1 Utah 2d 117, 262 P.2d 753 (1953).

Every order granting probation must have been conditioned upon the good behavior of the defendant. *State v. Chesnut*, 11 Utah 2d 142, 356 P.2d 36 (1960).

Where the probation order imposed conditions upon the defendant which were that he remain in custody and supervision of his bondsman, that he remain outside a certain county, that he report to the court on a certain date and that he "make every effort to make entirely good," the order contained terms somewhat at variance with usual orders, but it was not so indefinite and uncertain as to be unenforceable and the trial judge, after a hearing, could terminate the probation. *State v. Chesnut*, 11 Utah 2d 142, 356 P.2d 36 (1960).

Defendant who was found guilty of one count of theft by deception in the amount of \$563.80 could not be required, as a condition of his probation, to repay his employer the total amount of all similar thefts which had occurred over a period of years, but with which alleged thefts defendant had never been charged. *State v. Reedeker*, 534 P.2d 1240 (Utah 1975).

The probationary time period could be longer than the maximum time of imprisonment for the offense. *State v. Allmendinger*, 565 P.2d 1119 (Utah 1977).

CITED in *State v. Denney*, 776 P.2d 91 (Utah Ct. App. 1989); *State v. Thurston*, 781 P.2d 1296 (Utah Ct. App. 1989); *United States v. Peck*, 762 F. Supp. 315 (D. Utah 1991).

COLLATERAL REFERENCES

BRIGHAM YOUNG LAW REVIEW. --Testing the Limits of the Court's Exclusive Jurisdiction in Fraud Cases: *Discharge v. Criminal Restitution*, 1984 B.Y.U. L. Rev. 61.

AM. JUR. 2D. --21 Am. Jur. 2d Criminal Law @@ 557 to 579.

C.J.S. --24 C.J.S. Criminal Law @ 1549 et seq.

A.L.R. --Propriety of conditioning probation or suspended sentence on defendant's refraining from political activity, protest or the like, 45 A.L.R.3d 1022.

State court's power to place defendant on probation without imposition of sentence, 56 A.L.R.3d 932.

What constitutes "good behavior" within statute or judicial order expressly conditioning suspension of sentence thereon, 58 A.L.R.3d 1156.

Ability to pay as necessary consideration in conditioning probation or suspended sentence upon reparation or restitution, 73 A.L.R.3d 1240.

Propriety of condition of probation which requires defendant convicted of crime of violence to make reparation to injured victim, 79 A.L.R.3d 976.

Validity of requirement that, as condition of probation, indigent defendant reimburse defense costs, 79 A.L.R.3d 1025.

Propriety of conditioning probation upon defendant's posting of bond guaranteeing compliance with terms of probation, 79 A.L.R.3d 1068.

Utah Code Ann. @ 77-18-1 (1995)

Validity of requirement that, as condition of probation, defendant submit to warrantless searches, 79 A.L.R.3d 1083.

Validity of state statute imposing mandatory sentence or prohibiting granting of probation or suspension of sentence for narcotic offenses, 81 A.L.R.3d 1192.

Propriety of conditioning probation on defendant's serving part of probationary period in jail or prison, 6 A.L.R.4th 446.

Admissibility of hearsay evidence in probation revocation hearings, 11 A.L.R.4th 999.

Probation officer's liability for negligent supervision of probationer, 44 A.L.R.4th 638.

Admissibility of expert testimony as to appropriate punishment for convicted defendant, 47 A.L.R.4th 1069.

Appealability of order suspending imposition or execution of sentence, 51 A.L.R.4th 939.

Probation revocation: insanity as defense, 56 A.L.R.4th 1178.

Propriety of conditioning probation on defendant's submission to polygraph or other lie detector testing, 86 A.L.R.4th 709.

Propriety of conditioning probation on defendant's submission to drug testing, 87 A.L.R.4th 929.

Determination that state failed to prove charges relied upon for revocation of probation as barring subsequent criminal action based on same underlying charges, 2 A.L.R.5th 262.

Measure and elements of restitution to which victim is entitled under state criminal statute, 15 A.L.R.5th 391.

Who may institute proceedings to revoke probation, 21 A.L.R.5th 275.

Right of convicted defendant or prosecution to receive updated presentence report at sentencing proceedings, 22 A.L.R.5th 660.

Propriety, in criminal case, of federal district court order restricting defendant's right to re-enter or stay in United States, 94 A.L.R. Fed. 619.

What constitutes unusually "vulnerable" victim under Sentencing Guideline @ 3A1.1 permitting increase in offense level, 114 A.L.R. Fed. 355.

KEY NUMBERS. --Criminal Law KEY 982 to 982.8.

NOTES APPLICABLE TO ENTIRE TITLE

REPEALS AND REENACTMENTS. --Title 77, Chapters 1 to 66, the Code of Criminal Procedure, was repealed by Laws 1980, ch. 15, @ 1, effective July 1, 1980, and present Utah Code of Criminal Procedure, Chapters 1 to 34, was enacted in its place by @ 2 of the same act. Section 3 of Laws 1980, ch. 15 provided: "Nothing in this act shall be construed to repeal any particular section of Title 77, if that section is the subject of an amendment or new legislation enacted by this budget session of the 43rd Utah legislature and which becomes law. It is the intent of the legislature that the corresponding sections of this act shall be construed with such amended sections so as to give effect to the amendment as if it were made a part of this act."

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**DRAFT**U.S. Department of Justice
Federal Bureau of PrisonsOperations
Memorandum**NUMBER:****DATE:** January , 1995**SUBJECT:** Notification of Release of
Prisoner Under Public Law 103-322**EFFECTIVE DATE:** February 1, 1995**CANCELLATION DATE:**

1. PURPOSE AND SCOPE. To transmit procedures required by the Violent Crime Control and Law Enforcement Act of 1994 (P.L. No. 103-322) regarding the Notification of Release of Prisoners.

2. BACKGROUND. The above referenced legislation, which was signed by the President on September 13, 1994, requires the Bureau of Prisons to notify State and local law enforcement officials at least 5 days prior to releasing to supervised release, prisoners who have been convicted of a drug trafficking crime or a crime of violence. Inmates released under the protection of Chapter 224 Witness Protection Program are exempt from this provision.

3. DEFINITIONS

a. A "drug trafficking crime" is any offense under 21 U.S.C. § 822 through § 863 (inclusive), 21 U.S.C. § 959 through § 971 (inclusive), or 46 U.S.C. App. § 1903. [see 18 U.S.C. § 924(c)(2)].

b. A "crime of violence" is an offense that is a felony and (1) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (2) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. [see 18 U.S.C. § 924(c)(3)].

Clarifying instructions to define a crime of violence will be provided in a separate Operations Memorandum.

4. APPLICABILITY. Notification pursuant to this Operations Memorandum is required on any Federal prisoner committed to the

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custody of the Bureau of Prisons who meets the following criteria:

a. To be released to supervised release on or after September 13, 1994; and

b. (1) whose current offense of conviction is a drug trafficking crime or a crime of violence as defined in paragraphs 3a or 3b, or

(2) whose criminal history as determined by staff in the exercise of their professional judgment includes a conviction for a drug trafficking or a crime of violence.

Information on current offense of conviction (drug trafficking crime or crime of violence) shall be obtained from the Judgment and Commitment Order and the Presentence Investigation Report. A determination of whether the current offense constitutes a crime of violence shall be made in accordance with the Program Statement defining crimes of violence. Information on criminal history shall be obtained from the Presentence Investigation Report. The Security Designation and Custody Classification Manual shall provide guidance in determining whether any prior crimes were violent crimes. Violent crimes and drug trafficking crimes committed while in the custody of the Bureau of Prisons or other correctional agencies shall be included if the crime resulted in a conviction in a Federal or State court. Violent and drug-related institutional misconduct shall not be used unless there was a conviction in a Federal or State court.

5. NOTIFICATION PROCEDURES - INMATE

a. Effective February 1, 1995, inmates identified by the applicability criteria in Section 4 shall be notified in writing at initial classification and at all subsequent Program Reviews of the notification requirement of the Violent Crime Control and Law Enforcement Act of 1994. The following statement shall be written or typed in the UNIT TEAM COMMENTS/CONSIDERATION section of the PROGRAM REVIEW REPORT form (BPS-571): "Offender is subject to notification of release of prisoners under Public Law 103-322 Violent Crime Control Act and Law Enforcement Act of 1994." The notification statement shall be included on all Program Review Reports.

b. Inmates may use the administrative remedy procedure to contest their identification as an offender subject to this notification requirement.

6. NOTIFICATION PROCEDURES - LAW ENFORCEMENT

a. Unit/case management staff will access SENTRY and regularly monitor the name and projected release date of all upcoming unit releases to supervised release. Determinations on law enforcement notifications shall be made based on the inmate's final projected release address.

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b. (1) Inmates released from an institution directly to supervised release. As part of release paperwork preparation, prior to final release from the institution, unit/case management staff shall prepare three Notification of Prisoner Release Forms (and any accompanying materials): one addressed to the chief State law enforcement official, one to the chief local law enforcement official (In large cities, the city Police Department ordinarily shall be used; otherwise, the county law enforcement agency shall be used); and one to the appropriate U.S. Probation Office. Inmates releasing to a detaining authority do not require completion of a Notification of Prisoner Release Form.

(2) Inmates transferred from an institution to a pre-release community corrections center. For inmates that have a term of supervised release to follow their custodial sentence and who are being released through a community corrections center (CCC), as part of release paperwork preparation, unit/case management staff shall prepare every item on three Notification of Prisoner Release Forms except the signature block (accompanying materials shall be included). One form shall be addressed to the chief State law enforcement official, one to the chief local law enforcement official (In large cities, the city Police Department ordinarily shall be used; otherwise, the county law enforcement agency shall be used); and one to the appropriate U.S. Probation Office. All three sets of the notifications shall be included in the release preparation paperwork that is forwarded to the community corrections manager (CCM) at the time of transfer. CCM's shall be responsible for ensuring the information is accurate, dating and signing the forms, and mailing the Notification of Prisoner Release forms. CCM's should routinely monitor any changes in an inmate's final release plan which may affect the Notification of Prisoner Release Form, particularly the final release date, address, or release conditions/ restrictions.

(3) Release from a community corrections center to supervised release. Community Corrections Managers (CCM's) shall be responsible for mailing the Notification of Prisoner Release Form for all releasing inmates supervised or confined in non-Bureau of Prisons facilities under their jurisdiction. For inmates whose entire term of incarceration was served in a contract facility, community corrections management staff shall prepare three Notification of Prisoner Release Forms (and any accompanying materials): one addressed to the chief State law enforcement official, one to the chief local law enforcement official (In large cities, the city Police Department ordinarily shall be used; otherwise, the county law enforcement agency shall be used); and one to the appropriate U.S. Probation Office. Inmates releasing to a detaining authority do not require completion of a Notification of Prisoner Release Form.

c. The Notification of Prisoner Release Forms to the State and local law enforcement officials and any attached materials shall be mailed via regular first class mail at least 2 weeks prior to the inmate's release to supervised release to ensure

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these are received at least 5 days prior to the inmate's release date. Facsimiles may be used to transmit the Notification of Prisoner Release Form when confirmation of transmission can be ensured and documented. A dated copy of each notification form shall be maintained in the disclosable portion of Section 5 of the inmate's central file.

One source for identifying the name and address of State and local law enforcement officials is the National Directory of Law Enforcement Administrators, Correctional Institutions and Related Agencies, SPAN Publishing, Inc., P.O. Box 365, Stevens Point, Wisconsin 54481-0365 (1-800-647-7579).

d. Inmates released between September 13, 1994, and February 1, 1995 shall be identified and the State and local law enforcement officials shall be notified of these inmates' release.

7. FORM PREPARATION. The Notification of Prisoner Release Form shall contain the following information for all inmates:

- 1) Offender's Name;
- 2) Criminal History. For each conviction for a crime of violence or drug trafficking crime, include a description of that crime to the extent descriptive information is available. In all cases, attach an FBI "rap sheet" to supplement the offender's criminal history information.
- 3) Final Release date to Supervised Release;
- 4) Offender's Projected Address on Supervised Release; and
- 5) Release Conditions or Restrictions (any restrictions on conduct or other conditions to the release of the prisoner other than the Standard Conditions of Supervision that are imposed by law, the sentencing court, the Bureau of Prisons, or any other Federal agency).

If more space is required for any element, the additional information shall be typed on additional sheets and a parenthetical note shall be included in the appropriate element that the information continues on the additional sheets.

8. ACTION. This Operations Memorandum is effective February 1, 1995. Bureau staff may reproduce the Notification of Prisoner Release Form. The information provided shall be used solely for law enforcement purposes.

Peter M. Carlson
Assistant Director
Correctional Programs Division

DRAFT

Date: _____

To: _____

1) Offender's Name: _____

Date of Conviction

Offense and Description

[illegible]

DRAFT

3) Final Release Date to Supervised Release: _____

4) Offender's Projected Address on Supervised Release: _____
_____5) Release Conditions or Restrictions: _____

Standard Conditions of Supervision

1. The offender shall not leave the judicial district without the permission of the court or probation officer.
2. The offender shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
3. The offender shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
4. The offender shall support his or her dependents and meet other family responsibilities.
5. The offender shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reason.
6. The offender shall notify the probation officer within 72 hours of any change in residence or employment.
7. The offender shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
8. The offender shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
9. The offender shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
10. The offender shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
11. The offender shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.
12. The offender shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
13. As directed by the probation officer, the offender shall notify third parties of risks that may be occasioned by the offender's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the offender's compliance with such notification requirements.

Printed Name of Warden or CCM: _____

Signature of Warden or CCM: _____

Address and Phone #: _____

The information provided shall be used solely for law enforcement purposes.

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

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FILE NO: 2003

6/26/96

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advising on its relationship to the program of the President.Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go"
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The following is the response of our agency to your request for views on the above-captioned subject:

☐ Concur
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statement
of
Steve Schwalb, Chief Operating Officer
Federal Prison Industries
Before the
House Committee on Small Business

June 27, 1996

OPTIONAL FORM NO. 10 (7-90)

FAX TRANSMITTAL

4 of 10 pages

To: <i>Steve Schwalb</i>		From: <i>Julia Yuille</i>	
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**Testimony of Steve Schwalb
Chief Operating Officer, Federal Prison Industries**

Nadan Chair and members of the Committee, I appreciate the opportunity to appear before you and discuss Federal Prison Industries, Inc. (FPI) and legislative proposal, H.R. _____, which would have a devastating affect on FPI and hence on the Bureau of Prisons. In my testimony I will review briefly the role that FPI plays in the Bureau of Prisons; the challenges that the astonishing growth in the prison population poses to the BOP and specifically to FPI; how we are striving to meet these challenges while remaining sensitive to the concerns of the private sector; and how the proposed legislation would disrupt the functioning of FPI, BOP and may actually have a negative impact upon small businesses. But first I would like to say a few words about FPI's relationship with the small business community.

FPI's Continuing Commitment to Small Business

There is a commonly shared myth that FPI has a significant negative effect on small business and that therefore we are universally disliked by the small business community. That is simply not true. For one thing, FPI has an outstanding record of purchasing from small businesses, most of which are businesses in the communities where FPI factories are located. FPI has been active in attracting small business to supply FPI's needs for raw materials and services. In 1995 alone, FPI awarded \$159,471,810

Administration regarding strategies for FPI to partner with small businesses who would like to contract with the federal government but who need certain equipment or expertise which FPI possesses.

Overall, FPI has worked diligently to develop a positive relationship with many small businesses across the country and our efforts in that regard continue. Let me now provide some background on FPI and its relationship to the Bureau of Prisons.

Federal Prison Industries and Its Relationship to the Bureau of Prisons

Federal Prison Industries (FPI) is a wholly-owned Government corporation, organizationally within the Bureau of Prisons, whose mission is to employ Federal prisoners by manufacturing products and providing services exclusively for other Federal agencies. FPI provides work programs to approximately 17,000 inmates in 100 factories. Over 1600 staff are employed by the corporation. We provide over 150 different products and services across such product families as furniture, textiles, electronics, metals, and graphics. It should be emphasized that FPI does not receive congressional appropriations for its operations. Instead, FPI's operations are funded solely through the sale of products and services to the federal government. This is particularly significant in these times of fiscal and budgetary constraints.

Since FPI is an essential program of the Federal Bureau of

Prisons (BOP), I want to cite the mission statement of the BOP itself: to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, and appropriately secure, and which provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

In carrying out its mission, the BOP considers FPI to be its most important correctional program. FPI employs, in a production environment, an average of 25% of the sentenced inmate population. All able bodied sentenced inmates are required to work. Those not in FPI are utilized to operate and maintain the prison. FPI's work program reduces idleness, instills a work ethic and provides skills training. Not only is FPI the primary vehicle for meeting the Bureau's statutory mandate to employ and train inmates, but by reducing inmate idleness and boredom, it is essential to the security of Federal correctional institutions and the communities in which they are located, and to the safety of inmates and the correctional staff who work at those facilities.

Today (June 1996) the total BOP inmate population stands at over 100,000. By the year 2000, it is expected to exceed 125,000. As the Bureau's population grows, FPI will need to create an additional 4,000 to 5,000 inmate jobs by the year 2000 to maintain a safe environment. Insofar as possible, employment

needs will be met by both expansion in our current lines of products and services and diversification into new areas.

FPI has made considerable efforts to minimize any adverse impact on the private sector. Over the past few years, it has transferred factories from multiple factory locations to newly activated prisons, thereby creating necessary inmate jobs without increasing FPI's sales. In an effort to continually diversify, we have also established a mattress recycling factory; a computer repair factory; two forklift repair factories; a laundry; two furniture parts factories in order to create inmate jobs without increasing finished goods furniture sales; a digitizing and data services factory; and a mail bag repair factory. The next three factories FPI activates will be a diesel engine repair facility, a laser toner remanufacturing factory and a clothing factory which will produce the work clothing worn by Bureau of Prisons staff.

Inmates earn modest wages through the prison industries work programs. A portion of these wages are used to meet the financial obligations of inmates, including court-ordered fines, restitution, and other monetary judgments. In addition, extensive research has demonstrated that inmates who have worked in FPI are significantly more likely to maintain good conduct while incarcerated, find and retain employment upon release, earn higher wages and to avoid future involvement in crime.

Thus, it is fair to conclude that FPI benefits society in a number of important ways.

Mandatory Source Status: Critical to Continued Success

To many, Federal Prison Industries, by name, sounds like a typical business. It is not, and it distorts FPI's true nature to consider it in that way. FPI is, by statute, a Government program that must be run in a self-sufficient manner. But its mission as a correctional program takes priority over its nature as a business enterprise.

The great majority of FPI's statutory mandates embody public policy obligations rather than traditional business principles. These obligations are inconsistent with the considerations that guide virtually all for-profit, private sector businesses. Private sector businesses seek to reduce, rather than maximize, work force levels. FPI seeks to maximize inmate work opportunities. Virtually all private businesses focus on a limited product line, whereas FPI is involved in a large number of products and services in the interest of minimizing its impact on any one industry. Private businesses seek to streamline manufacturing processes. By contrast FPI provides work programs for a growing inmate population within a security infrastructure that is necessary, but which unavoidably restricts productivity.

In order to overcome the business inefficiencies inherent in meeting FPI's statutory mandates as a correctional program, Congress provided FPI with its designation as a mandatory source of procurement for Federal agencies. FPI's mandatory source status requires that Federal agencies contact FPI before contacting other sources, to determine if FPI can meet their price, quality, and delivery requirements. If FPI offers the product at the current market price and can meet the customer's specifications, including quality and delivery requirements, the customer is required to purchase the item from FPI. Thus, the mandatory source provision is a mechanism that creates sales opportunities for FPI. This enables FPI to generate the level of orders critical to a continuous, steady work flow to its prison factories without engaging in massive sales and marketing activities.

If FPI cannot meet the current market price or the customer's requirements, FPI provides the customer with a waiver to purchase the item from a private sector vendor. Waivers are liberally granted. In 1995, FPI granted 80 - 90 percent of the waivers requested.

In 1993, a National Performance Review (NPR) recommendation was published which suggested that FPI should lose its status as a mandatory source and should compete commercially for federal sales. Since this recommendation was adopted to address concerns

about FPI's late deliveries, the Department of Justice proposed instead that FPI adhere to commercial delivery standards and pay comparable penalties for any delinquent deliveries. That alternative was accepted by NPR, and FPI has since adopted the same delivery standards as commercial companies on the GSA schedules, including the payment of liquidated damages and discounts for late deliveries.

**The "Federal Prison Industries Competition in Contracting
Corrections Act of 1996"**

The proposed legislation would render FPI unable to fulfill its statutory mandates and thus would deprive the Bureau of Prisons of its single most important tool for ensuring order and safety within the Bureau's overcrowded prisons. Current law (18 U.S.C. 4124) provides that Government departments and agencies are to purchase from FPI, provided that FPI can meet the current market price and the customer's quality and delivery standards. This bill eliminates the mandatory preference under which FPI has operated since its inception in 1934 and would require that FPI do business on a competitive basis with private sector companies.

As I mentioned previously, FPI is principally a correctional program, and as such, it has many inherent conflicting mandates and inefficiencies that cannot be eliminated. The only way that FPI could be fully competitive is by eliminating these inefficiencies, which would defeat its nature as a correctional

program and be contrary to the reasons for FPI's original creation.

In addition, FPI does not have the capability to independently produce sophisticated products, such as systems furniture. It relies on the private sector to provide space planning, design, engineering, installation and customer service. By entering into partnerships with private companies, through the use of federal acquisition procedures, FPI vertically integrates the manufacturing of a company's product using inmate labor. In order to attract a private sector partner, there must be some incentive. That incentive is the mandatory source. Without the mandatory source, FPI would be unable to attract the private sector partners necessary for it to diversify its product offerings and to offer products which are contemporary and attractive to its federal customers.

FPI's mandatory source status is a critical element to its effective functioning as a correctional program. Without this procurement preference, FPI would be unable to perform its mission. By eliminating FPI's mandatory source status, the Federal Prison Industries Competition in Contracting Corrections Act of 1996 would dramatically reduce the number of inmates FPI would be able to employ. The inmate idleness this would create would seriously undermine the safety and security of the nation's Federal prisons.

9

**ORAL TESTIMONY OF JOE BRANN
HOUSE CSJ APPROPRIATIONS SUBCOMMITTEE**

Thank you, Mr. Chairman. I appreciate the opportunity to testify before the Subcommittee today to update you on the progress of the COPS Office and explain our FY'96 budget request. I also want to thank you, Mr. Chairman, Congressman Mollohan, and other members of the Subcommittee for establishing the COPS Office in last year's CSJ Appropriations Act. Your support for our program then and in the time since has meant a great deal to us and to police and sheriffs across the country.

I will briefly summarize my written testimony, but ask that it be included in its entirety in the hearing record. [pause]

My name is Joe Brann and I am the Director of the COPS Office. I am a former police chief and police officer, with over 26 years of experience in law enforcement. I was born and raised in Texas, served in the Army during the Vietnam conflict and then moved to California, where I finished my education and became a police officer. I took that first job out of a commitment to public service, but I almost quit a few short years later because of disillusionment. Police work was not fulfilling because we were merely responding to problems, not solving them. Fortunately for me, a new police chief was appointed who embraced a new technique that was just taking off in police departments around the country: community policing.

I have been dedicated to advancing community policing ever since then. That dedication is because I have seen how effective police can be when they work with the community to develop creative, long-term solutions to crime problems. Let me give you just one example of how community policing differs from traditional policing. When I was chief in Hayward, there was a neighborhood with a crack house -- actually a small apartment complex besieged by drugs. The traditional approach is to set up a sting with an undercover agent or try to get a search warrant and arrest anyone found on the premises with drugs. But these don't end the problem: the crack house still operates and keeps the neighborhood in fear and locked in their houses at night. The community policing approach is different: an officer in Hayward worked with neighborhood residents and a church group and used the civil legal process to evict residents of the crack house, got together public and private funding, purchased the apartment complex, the neighborhood people renovated it, and the units are now occupied by law-abiding citizens. I don't need to tell you what a tremendous difference this has made for that neighborhood. So that's what community policing is about: not just responding to incidents, but developing solutions in conjunction with the

community.

Now let me tell you what the COPS Office is all about. We are about customer-service and innovation. Community policing is customer and community focused. I want that mirrored in the COPS Office and it truly has been. There is a grant advisor assigned to each state and calls are from grantees are returned promptly and answered accurately. We have designed two expedited programs, COPS AHEAD and COPS FAST, specifically because of input from law enforcement that they wanted a dual-track system where our review was occurring while they were doing the time-consuming process of recruiting, hiring, and training. We have been flexible in our application of rules and deadlines, but have enforced statutory and other guidelines when needed. And most importantly, we quickly rolled out three programs to fund a total of over 14,000 new community policing officers in the first five months of COPS' existence. The entire Justice Department staff has worked with us to put together a successful program that has responded to law enforcement needs.

And law enforcement has responded well. Wherever I travel across the country visiting police and sheriffs departments I get strong words of support for the COPS programs -- and usually requests for more officers, more money. There is a strong demand out there, the Justice Department has received requests for over 39,000 new officers and so far we have only been able to fund just over 17,000. We need to continue this effort.

To that end, we have submitted a budget request for \$1.882 billion for FY'96. This is an increase of \$532 million over FY'95 and represents the authorized funding for FY'96 plus the unappropriated funds from FY'95. This money would allow us to fund 21,000 new officers in FY'96, bringing our total to approximately 40,000 new officers by the end of the second year of COPS. It would also allow us to expand our grant monitoring staff so that we can ensure that all of our grantees are abiding by their grant awards. This type of accountability is the hallmark of the COPS program.

And I want to talk just a moment about accountability. H.R. 3, which has passed the House, provided for a block grant program, with funding to be used for "public safety purposes." The COPS program, and, in fact, the entire Violent Crime Control Act of 1994, was enacted with the support of the broad spectrum of law enforcement groups, as well as Members of Congress on both sides of the aisle. It is a top priority of President Clinton and Attorney General Reno. This consensus supported an approach that guaranteed certain results. One of those results was 100,000 new community policing officers on the streets, in the neighborhoods, and on rural highways, across this country. The American people support this goal and the law enforcement community supports this goal. Block grant programs do not work, they do not guarantee any measurable results, and they do not provide American taxpayers with any accountability for their money. I respectfully request that the subcommittee to continue the COPS program at a level of \$1.889 billion for FY'96.

Thank you again for the opportunity to testify before you today. I will be happy to answer any questions.

****DRAFT****

STATEMENT OF JOHN R. SCHMIDT
ASSOCIATE ATTORNEY GENERAL OF THE UNITED STATES
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, AND STATE
THE JUDICIARY AND RELATED AGENCIES

March 28, 1994

Thank you, Mr. Chairman, for the opportunity to present the views of the Department of Justice on _____.

Just over six months ago, the Congress overcame more than six years of gridlock and passed the Violent Crime Control and Law Enforcement Act of 1994 with strong bipartisan support. This law, which included much of the President's legislative anti-crime program, was the result of much debate and hard work over many years.

The 1994 Act had the active support of every major law enforcement organization in the country, as well as prosecutors, mayors, county executives and other local officials of both parties. Specifically, I want to acknowledge and thank Chairman Rogers and Congressman Mollohan for their support in providing the Department of Justice with the resources to implement this important legislation.

Support for this legislation is based on the fact that the \$30 billion, six-year Violent Crime Control Act is the largest, smartest and toughest crime bill in our nation's history. It established a comprehensive crime fighting strategy designed to take concrete action to deal with the unacceptable levels of criminal violence in this country.

It combined stronger policing and tough punishment with smart, effective prevention -- a program that law enforcement officials had long been advocating. And it recognized that the best role for the federal government in crime fighting is to develop and maintain an effective partnership with state and local law enforcement which is on the front line of the fight against crime in our communities.

The violent crime control act will put an additional 100,000 police officers -- an almost 20% increase -- into the cities, towns and counties of this country. It made "three strikes and you're out" for repeat violent offenders the law of the land and established a tough, enforceable federal death penalty. It provided almost \$8 billion for prisons to lock away violent offenders and another \$1.8 billion to pay costs of incarcerating

criminal aliens.

And it included over \$6 billion for prevention measures including programs to combat violence against women, to establish drug courts to impose mandatory treatment on non-violent offenders and to give local jurisdictions funds to use for their own community-based programs to combat juvenile crimes and crimes against the elderly. And, unlike crime bills of the past that promised much but delivered little, the 1994 act is paid for. By establishing the Crime Control Trust Fund, the Act ensured that savings achieved through reductions in the size of the federal bureaucracy would be used to fund the anti-crime program.

There is still much work to be done to make America's communities safe. But nothing should be allowed to jeopardize the important achievements of the 1994 Act.

After President Clinton signed the crime bill into law on September 13 of last year, the Attorney General asked me to take responsibility for its implementation. I am proud to say that we have accomplished a great deal in the last six months with the support of state and local officials around the country. Implementation of the new crime act is one of the administration's highest priorities and we have taken steps to ensure that the law is administered as rapidly and efficiently as possible.

We have tried to make the process as simple and non-bureaucratic as possible -- and to make it totally non-political. And we have been especially vigilant to ensure that our resources are used wisely and effectively, and they are used only for proven and effective crime fighting programs.

As I travel around the country to meet and talk with local law enforcement and other officials, I have found overwhelming enthusiasm for the community policing program to put more police officers to work out in our communities where they can be most effective. The Office of Community Oriented Policing Services (C.O.P.S.) has, in these 4 and a half months, authorized funding for over 6,500 communities to put almost 15,000 additional cops on the streets all across this country in urban, rural and suburban areas alike.

This is on top of the \$150 million dollars in grants that will add 2,080 cops through last year's police hiring supplemental -- the C.O.P.S. pilot program. Over the coming months the remainder of the \$1.3 billion available for the C.O.P.S. program in FY 95 will be awarded. It is an unprecedented achievement for a federal agency to distribute grant funds this effectively and this quickly.

Other important crime bill initiatives administered by the Office of Justice Programs are also going forward: the State Criminal Alien Assistance Program (SCAAP) has awarded \$41 million dollars to help offset the costs of criminal alien incarceration to the seven states hardest hit by this problem. States are in the

process of applying for funds to improve state criminal history records, and regulations have been issued to administer the violence against women, drug courts and correctional programs.

I find everywhere that what people want in dealing with crime is concrete action not political rhetoric. The comprehensive approach adopted by the 1994 Act allowed us to get beyond the ideologically-based and often divisive debates of past crime bills and attract widespread support from across the political spectrum and from the majority of the American people. We must now go forward to build on this accomplishment. Nothing would be more offensive to the law enforcement people, state and local officials and ordinary Americans all across this country than a reversion back to partisan and unproductive political bickering on the crime issue. To be sure, there is much additional work that needs to be done. But we should look ahead and go forward together.

Therefore, we strenuously oppose efforts in Congress to alter, weaken, or eliminate the funding for the Public Safety Partnership and Community Policing Act, the C.O.P.S. program, the prison funding program, the drug court program, and the other crime prevention programs established by the 1994 Act. We believe that it would be a terrible mistake to repeal a program to put 100,000 new police officers into our communities -- a program that is in place and already working and working well -- and replace it with a plan to pass out \$10 billion of taxpayer money in a way that does not guarantee even one new officer on the beat and that in fact would not assure any specific or concrete gain in public safety.

It would be similarly ill-advised to slash virtually all of the bipartisan crime prevention programs of the 1994 Act -- these programs account for less than 25% of the funding under the Act. These programs are strongly supported by police, prosecutors and parents of both parties who realize that more prisons are not the sole answer to the crime problem facing this country. Programs to keep schools open after hours and on weekends as safe havens, getting drug offenders off the streets or bringing law enforcement officers into schools to teach children to stay away from drugs are important and needed complements to punishment and prisons.

INSERT ADDITIONAL TEXT.

In sum, _____

Thank you. I will be happy to take any questions you may have.

U.S. Department of Justice
Federal Bureau of Prisons

NUMBER:
DATE:
SUBJECT:

CANCELLATION DATE:

1. PURPOSE AND SCOPE. The purpose of this Operations Memorandum is to provide a means to implement various portions of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) that make reference to "nonviolent offense," and "crime of violence," specifically, Section 20417, Notification of Release of Prisoners, Section 20405, Crediting of "Good Time," and Section 32001, Substance Abuse Treatment in Federal Prisons. This Operations Memorandum defines "crime of violence" as that term is used in these sections of the VCCLEA. The definition includes broad statutory language, as well as a framework for determining which specific criminal offenses fall within the statutory definition.

2. DIRECTIVES REFERENCED.

3. STATUTORY DEFINITIONS.

Title 18 of the United States Code defines "crime of violence" in Section 924(c)(3) as follows:

The term 'crime of violence' means an offense that is a felony and--

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

DRAFT

CRIME OF VIOLENCE DRAFT 12/22/94

4. CRIMINAL PROVISIONS OF THE UNITED STATES CODE

Criminal offenses are defined in many different titles of the United States Code including Titles 7, 16, 18, 21, 26, 29, 30, and 46. The offenses contained within these titles that may be crimes of violence, are listed in the various sections below. If a particular code section in these titles is not listed below, and case management staff believe that the crime might be violent, they should contact Regional Counsel. Additionally, if a Judgment and Commitment Order references a United States Code section that is not found in Titles 7, 16, 18, 21, 26, 30, 42, or 49, please contact the Regional Counsel to determine whether the particular offense should be categorized as a "crime of violence."

Some of the Code sections may be listed in more than one section below; this duplication is indicated by an asterisk. In such cases, staff should check subsequent sections of the Operations Memorandum to determine whether the offense is a "crime of violence."

5. CRIMINAL OFFENSES THAT ARE CRIMES OF VIOLENCE IN ALL CASES.

Any conviction for an offense listed below should be categorized as a "crime of violence."

Title 18, United State Code Sections

32(destruction of aircraft)
 34(penalty when death results)
 35(b)(conveying false information that harms human life)
 36 VCCLEA addition (firing weapons into group of persons)
 37 VCCLEA addition (violence at international airports)
 43(b)(animal enterprise terrorism causing death or injury)
 81(arson w/in maritime jurisdiction)
 111(assaulting officers of the United States)
 112(a)(assaulting foreign officials)
 113(assaults w/in maritime jurisdictions)
 114(maiming w/in maritime jurisdiction)
 115(threatening family member of federal official)
 175(biological weapons)
 231(civil disorders)
 245(federally protected activities)
 247(a)(1)(damage to religious property/obstruction of exercise of religion)
 247(a)(2)(obstruction of persons in free exercise of religion)
 351(assassination of cabinet and congress members)
 373(soliciting to commit violent act)
 753(rescue of inmate to prevent execution)

CRIME OF VIOLENCE DRAFT 12/22/94

871(threats against the President)
875(a)(b)(c)(interstate communications)
878(threats against foreign officials)
879(threats against former presidents)
922(g)(firearms violations)
930(b)&(c)(possession of firearms in federal facilities)
970(a)(damage of property owned by foreign governments)
1091(genocide)
1111(murder)
1112(manslaughter)
1113(attempt to commit murder or manslaughter)
1114(murder of officers)
1116(murder of foreign officials)
1117(conspiracy to murder)
1118 VCCLEA addition (murder in correctional institution)
1119 VCCLEA addition (foreign murder of US national)
1120 VCCLEA (murder by escaped prisoner)
1121 VCCLEA addition (murder of state or local officer)
1201(kidnapping)
1203(hostage taking)
1204(international parental kidnapping)
1364(interference with foreign commerce by violence)
1365(tampering with consumer products) EXCEPT 1365(b), (c)
1512(a)(killing witness or victim)
1513(retaliation against witness or victim)
1581(peonage)
1583(enticement into slavery)
1584(sale into servitude)
1585(slave trading)
1587(possession of slaves aboard vessel)
1588(transporting slaves)
1651(piracy)
1652(citizens as pirates)
1653(alien as pirates)
1655(assault on commander as pirates)
1659(attack to plunder vessel)
1661(robbery ashore)
1751(assassination of president or staff)
1792(mutiny or riot)
1859(surveys interrupted)
1864(hazardous devices on federal lands)
1958(use of interstate commerce in murder for hire)
1959(violent crimes aiding racketeering)
1991(entering train to commit crime)
2101(riots)
2111(special maritime jurisdiction)
2113(d),(e)(bank robbery and incidental crimes)
2114(assault of person carrying mail)
2115(breaking into post office) 2118(a),(c)(robberies and
burglaries involving controlled substances)

CRIME OF VIOLENCE DRAFT 12/22/94

2118(b) (robberies involving controlled substances)
2119 (crimes involving motor vehicles)
2191 (cruelty to seamen)
2231(b) (assault or resistance)
2232(a) (destruction of property to prevent seizure)
2233 (rescue of seized property)
2241 (aggravated sexual abuse)
2261 VCCLEA addition (interstate domestic violence)
2275 (firing or tampering with vessels)
2276 (breaking and entering vessel)
2280 VCCLEA addition (violence against maritime navigation)
2281 (NOT (A)), VCCLEA addition (violence against fixed
platforms)
2332 (penalties for homicide)
2332a VCCLEA addition (use of weapons of mass destruction)
2340A (torture)
2383 (rebellion or insurrection)
2384 (sedition conspiracy)
2385 (advocating overthrow of the government)
2389 (recruiting for service against U.S.)
2390 (enlistment to serve against U.S.)

Title 21 United States Code Sections:

841(e) (selling, manufacturing, distributing controlled
substances)
848(e) (death penalty for criminal offenses)
858 (endangering human life while manufacturing
controlled substances)

Title 42 United States Code Sections:

2283(a) (protection of nuclear inspectors)
2284(a) (sabotage of nuclear facilities)
3631 (interference with housing)

Title 49 United States Code Sections:

46502 (aircraft piracy)
46504 (interference with flight crew members)
46505(c) (carrying a weapon on an aircraft)
46507 (false information and threats)

CRIME OF VIOLENCE DRAFT 12/22/94

6. CRIMINAL OFFENSES THAT MAY BE CRIMES OF VIOLENCE DEPENDING ON THE BASE OFFENSE LEVEL ASSIGNED.

Convictions for an offense listed below may or may not have involved the use, attempted use, or threat of force, or presented the substantial risk that force might be used against the person or property of another. At the time of sentencing, the court makes a finding if an offense listed below involved violence, and this finding is reflected in the Presentence Investigation Report section entitled "Offense Computation," subsection entitled "Base Offense Level." This subsection references a particular United States Sentencing Guideline provision that distinguishes between violations of the particular criminal code section that are committed with and without force.

For example, Title 18 United States Code Section 241, Conspiracy Against Rights provides:

If two or more persons conspire to injure, oppress, threaten or intimidate any inhabitant...in the free exercise or enjoyment of any right or privilege...

This crime could be committed through the use of force or threat of use of force, or not, since one can be oppressed through means other than force. Pursuant to United States Sentencing Guideline Section 2H2.1, if the crime involved obstructing an election or registration and the obstruction occurred using force or threat of force against persons or property, the base offense level is 18. If the obstruction occurred through non-violent means, such as forgery, fraud, theft, deceit, etc., the base offense level is 12. If an offender was convicted of an offense listed below, case management staff must examine the base offense level to determine whether the offense was a crime of violence. If the Presentence Investigation Report does not include an explanation as to the reason for assigning a particular base offense level, case management staff may need to examine the particular Sentencing Guideline referenced.

Some of the offenses listed below may correspond to more than one Sentencing Guideline, only one of which includes a base level adjustment for violence. Accordingly, it is possible that an examination of the Offense Computation section of the Presentence Investigation Report may reveal no mention of violence. In the event that the Presentence Investigation Report fails to explain the reason for assigning a particular base offense level, case management staff must examine the particular Sentencing Guideline referenced to determine whether the court found that the use of force was implicated in the offense.

CRIME OF VIOLENCE DRAFT 12/22/94

A list of offenses for which the Sentencing Guidelines base offense level is affected by the presence of violence follows:

Title 18 United States Code Sections:

- 33 (destruction of motor vehicles or facilities)
- 241 FOR OTHER THAN CONSPIRACY (conspiracy against rights)
- 242 (deprivation of rights under color of law)
- 592 (putting troops at polls)
- 593 (interference by armed forces)
- 1791 (possessing contraband in prison)
- 1952 (transporting items in aid of racketeering)
- 1992 (wrecking trains)
- * 2116 (railway or steamboat post office)
- 2231(a) (assault on persons executing search warrant)
- 2244 (abusive sexual contact)
- 2381 (treason)

7. CRIMINAL OFFENSES THAT MAY BE CRIMES OF VIOLENCE DEPENDING ON THE SPECIFIC OFFENSE CHARACTERISTIC ASSIGNED.

Convictions for an offense listed below, like those listed in Section 6 above, may or may not have involved the use, attempted use, or threat of force, or presented the substantial risk that force might be used against the person or property of another. At the time of sentencing, the court makes a finding if the offense involved violence, and this finding is reflected in the Presentence Investigation Report section entitled "Offense Computation," subsection entitled "Specific Offense Characteristics." This subsection references a particular United States Sentencing Guideline that provides for an increase in the Total Offense Level if the criminal violation was committed with force.

For example, Section 1708 of Title 18, makes it a crime for someone to steal mail, or obtain mail by fraud or deception. Sentencing Guideline 2F1.1 provides that pursuant to the Specific Offense Characteristics the court should increase the offense level by 2 levels if the offense involved the conscious or reckless risk of serious bodily injury.

Some of the offenses listed below may correspond to more than one Sentencing Guideline, only one of which includes a Specific Offense Characteristic for violence. Alternatively, the Presentence Investigation Report may fail to adequately describe the Specific Offense Characteristic that underlies the increase in offense level. In either case, it is possible that an examination of the Offense Computation section of the Presentence

CRIME OF VIOLENCE DRAFT 12/22/94

Investigation Report reveals no mention of violence. If this occurs, case management staff must examine the particular Sentencing Guideline referenced to determine whether the court found that the use of force was implicated in the offense. For example, the Presentence Investigation Report in the above scenario may state "SOC 2F1.1(4) increase 2 levels." If the Report does not further state "since the offense involved the conscious or reckless risk of serious bodily injury increase by two levels pursuant to 2F1.1(4)," the case management staff may have to examine Guideline 2F1.1(4) to determine that the only basis for this particular increase is a finding that the offense included a risk of bodily injury.

Below is a list of offenses for which there could be a Specific Offense Characteristic enhancement for the use of violence:

Title 16 United States Code Sections:

773e(a) (2), (3), (4), (6) (violation of Northern Pacific Halibut Act)
773g(violation of Northern Pacific Halibut Act)
1857(a) (D), (E), (F), (H) (violation of National Fishery Management Program)
1859(violation of National Fishery Management Program)
2435(4), (5), (6), (7) (violation of Antarctic Marine Living Resources Convention)
2438(violation of Antarctic Marine Living Resources Convention)
3606(violation of North Atlantic Salmon Fishing)
3637(a) (2), (3), (4), (6), (c) (violation of Pacific Salmon Fishing)
5009(5), (6), (7), (8) (violation of North Pacific Anadromous Stock Convention)
5010(b) (violation of North Pacific Anadromous Stock Convention)

Title 18 United States Code Sections:

755(officer permitting escape)
757(procures escape for prisoner of war)
874(kickbacks from public works employees)
894(extending credit through extortionate means)
1163(embezzlement/theft from Indian organizations)
1503(influencing or injuring officer or juror)
1505(obstruction of proceedings before departments or agencies)
1511(obstruction of state or local law enforcement)
1516(obstruction of federal audit)
1517(obstructing financial examination)
1951(interference with commerce by threats or violence)

CRIME OF VIOLENCE DRAFT 12/22/94

2112(robbery of personal property of United States)
2113(a)(bank robbery)
2116(breaking into mail car)
2242(sexual abuse in maritime territory)
2421(transportation for illegal sexual activity)

2422(coercion into interstate travel for illegal sexual
activity)
2423(transportation of minors for illegal sexual activity)

Title 21 United States Code Sections:

841(controlled substance violation)

Title 26 United States Code Sections:

7212(attempt to interfere with revenue laws)
7214(unlawful acts by employees of IRS)

Title 30 United States Code Sections:

1461(a)(3),(4),(5),(7)(resisting officers for violations
under Deep Seabed Mineral Resources
Act)
1463(violations of Deep Seabed Mineral Resources Act)

Title 33 United States Code Section:

1232(b)(2)(ports and waterways safety enforcement
provisions)

Title 40 United States Code Section:

193f(a)(security of capitol grounds and buildings)

Title 42 United States Code Sections:

1973aa(application of prohibition to other States)
1973aa-1(residence requirements for voting)
1973aa-1a(bilingual election requirements)
1973aa-3(penalty)
1973bb(enforcement of twenty-sixth amendment)
1973gg-10(criminal penalties)
2283(b)(protection of nuclear inspector)
9151(2),(3),(4),(5)(violation of Ocean Thermal Energy
Conversion Act)
9152(d)(violation of Ocean Thermal Energy Conversion Act)

CRIME OF VIOLENCE DRAFT 12/22/94

Title 49 United States Code Section:

46505(b) (carrying a weapon on an aircraft)

8. CRIMINAL OFFENSES THAT MAY BE CRIMES OF VIOLENCE DEPENDING ON A VARIETY OF FACTORS.

In addition to the two lists in sections 6 & 7 above, there are several more code sections that can be violated with or without the use of force. For the crimes listed below, the Sentencing Guidelines provide little insight into the court's findings on this issue. Accordingly, rather than simply examining the base offense level or the specific offense characteristics, case managers must carefully examine the entire Offense Computation section of the Presentence Investigation Report, and, if necessary, the Offense Conduct section, to determine whether the offense was violent. For these sections, staff should look carefully to see if the offense itself, or the underlying offense was committed through the use, attempted use or threatened use of force against a person or property, or whether commission of the offense involved a substantial risk that force would be used against a person or property:

Title 7 United States Code Section:

473c-1 (offenses in relation to sampling of cotton)

Title 16 United States Code Sections:

5106(e) (5), (6), (7), (9), (f) (2) (violation of Atlantic Coast Fisheries Cooperative Management)

Title 18 United States Code Sections:

241 IF CONSPIRACY (conspiracy to deprive of civil rights)
371 (conspiracy to commit offense or fraud against United States)
372 (conspiracy to impede or inure officer)
700 (desecration of the flag of the United States)
751 (escape from federal prison)
752 (instigating or assisting escape from federal prison)
831 (prohibited acts involving nuclear materials)
876 (mailing threatening communications)
877 (mailing threatening communications from foreign country)
924 (penalties for firearms violations)
1153 (offenses within Indian Country)
1512(b) (tampering with a witness/victim/informant)
1708 (theft or receipt of stolen mail)
1792 (mutiny and riot in prison)
1956 (money laundering)

CRIME OF VIOLENCE DRAFT 12/22/94

1962 (racketeering)
2117 (breaking into carrier facilities)
2118 (d) (robberies involving controlled substances)
2152 (destruction of submarine and torpedo works)
2153 (destruction of war materials)
2154 (production of defective war material)
2155 (destruction of national defense materials)
2156 (production of defective national defense material)
2192 (incitation of seamen to revolt)
2193 (mutiny)
2387 (activities involving armed forces)

Title 21 United States Code Sections:

848 (controlled substances violations as criminal enterprise)
963 (conspiracy or attempt to violate controlled substance laws)

Title 40 United States Code Sections:

193f(a), (b) (security of capitol grounds and buildings)

Title 42 United States Code Section:

2000(e)13 (killing of officer while enforcing Equal Employment Act)

9. OFFENSES COMMITTED BEFORE NOVEMBER 1, 1987.

The Sentencing Guidelines were not applicable for offenses committed before November 1, 1987. Accordingly, for offenses identified in sections 6-8 above that were committed before this date, case managers must make their own determination, based on the narrative description of the crime contained in the Presentence Investigation Report, whether the crime was involved the use of force, threat of force, or a substantial risk that force would be used (see definition in Section 924(c)(3) quoted above).

CRIME OF VIOLENCE DRAFT 12/22/94

10. CRIMES CODIFIED PURSUANT TO THE VIOLENT CRIME CONTROL AND
LAW ENFORCEMENT ACT OF 1994.

The VCCLEA created a number of new Federal criminal offenses and enhanced penalties for several existing offenses. Some of the new offenses are included in the above lists, but the lists will be revised as needed after the United States Sentencing Commission drafts new guidelines. The above lists will be updated periodically to reflect legislative changes.

Peter M. Carlson
Assistant Director for
Correctional Programs

Wallace H. Cheney
General Counsel/Assistant
Director



U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

January 17, 1995

MEMORANDUM

To: See Attached Distribution List

From: John R. Schmidt
Associate Attorney General 

Subject: VCCA §20417/Notification of Release of Prisoners

Attached are three documents prepared by the Bureau of Prisons. The first document is a memorandum to John Dwyer describing the Bureau's approach to implementing VCCA §20417 which requires the Bureau to notify state and local law enforcement officials prior to releasing to supervised release a person who was convicted of a violent or drug trafficking crime. The second is a draft of a BOP Operations Memorandum which sets forth the procedures Bureau employees are to follow in implementing the provision. Operations Memoranda are internal Bureau documents used to communicate policies and procedures from Washington to the field.

The third document is an Operations Memorandum describing the manner in which the Bureau will determine which federal crimes are violent offenses for the purpose of implementing certain sections of the VCCA that are primarily the Bureau's responsibility. In addition to its use in conjunction with the violent offender notification provisions, this Operations Memorandum will also be used in implementing §20405 (crediting of good time) and §32001 (substance abuse treatment in federal prisons).

The Bureau has already begun training on the notification procedures and intends to begin notifying appropriate law enforcement officials of prisoner releases on February 1, 1995.

I am sending these materials to you primarily for informational purposes and for general policy review. In addition, I would appreciate a more intense review by Marlene Beckman to ensure that these policies do not create any problems or conflicts with the prison construction grant program.

Please contact John Dwyer (4-4969) with any comments you have no later than Tuesday, January 24.

cc: Ron Klain
Chief of Staff
Office of the Attorney General

Laurie Robinson
Assistant Attorney General
Office of Justice Programs

Andy Fois
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Special Counsel to the Assistant Attorney General
Office of Justice Programs

Noel Brennan
Deputy Assistant Attorney General
Office of Justice Programs

FILE COPY
LEGISLATIVE AFFAIRS

VIOLENT CRIMINAL INCARCERATION ACT OF 1995

FEBRUARY 6, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCCOLLUM, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 667]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 667) to control crime by incarcerating violent criminals, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

TABLE OF CONTENTS

	Page
The amendment	2
Purpose and summary	7
Background and need for the legislation	8
Hearings	9
Committee consideration	10
Vote of the committee	10
Committee oversight findings	17
Committee on Government Reform and Oversight	17
New budget authority and tax expenditures	17
Congressional Budget Office estimate	17
Inflationary impact statement	20
Section-by-section analysis and discussion	20
Agency views	29
Changes in existing law made by the bill, as reported	35
Dissenting views	55

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Violent Criminal Incarceration Act of 1995".

TITLE I—TRUTH IN SENTENCING

SEC. 101. TRUTH IN SENTENCING GRANT PROGRAM.

Title V of the Violent Crime Control and Law Enforcement Act of 1994 is amended to read as follows:

"TITLE V—TRUTH IN SENTENCING GRANTS

"SEC. 501. AUTHORIZATION OF GRANTS.

"(a) IN GENERAL.—The Attorney General is authorized to provide grants to eligible States and to eligible States organized as a regional compact to build, expand, and operate space in correctional facilities in order to increase the prison bed capacity in such facilities for the confinement of persons convicted of a serious violent felony and to build, expand, and operate temporary or permanent correctional facilities, including facilities on military bases and boot camp facilities, for the confinement of convicted nonviolent offenders and criminal aliens for the purpose of freeing suitable existing prison space for the confinement of persons convicted of a serious violent felony.

"(b) LIMITATION.—An eligible State or eligible States organized as a regional compact may receive either a general grant under section 502 or a truth-in-sentencing incentive grant under section 503.

"SEC. 502. GENERAL GRANTS.

"(a) DISTRIBUTION OF GENERAL GRANTS.—50 percent of the total amount of funds made available under this title for each of the fiscal years 1995 through 2000 shall be made available for general eligibility grants for each State or States organized as a regional compact that meets the requirements of subsection (b).

"(b) GENERAL GRANTS.—In order to be eligible to receive funds under subsection (a), a State or States organized as a regional compact shall submit an application to the Attorney General that provides assurances that such State since 1993 has—

- "(1) increased the percentage of convicted violent offenders sentenced to prison;
- "(2) increased the average prison time actually to be served in prison by convicted violent offenders sentenced to prison; and
- "(3) increased the percentage of sentence to be actually served in prison by violent offenders sentenced to prison.

"SEC. 503. TRUTH-IN-SENTENCING GRANTS.

"(a) TRUTH-IN-SENTENCING INCENTIVE GRANTS.—50 percent of the total amount of funds made available under this title for each of the fiscal years 1995 through 2000 shall be made available for truth-in-sentencing incentive grants to each State or States organized as a regional compact that meet the requirements of subsection (b).

"(b) ELIGIBILITY FOR TRUTH-IN-SENTENCING INCENTIVE GRANTS.—In order to be eligible to receive funds under subsection (a), a State or States organized as a regional compact shall submit an application to the Attorney General that provides assurances that each State applying has enacted laws and regulations which include—

- "(1)(A) truth-in-sentencing laws which require persons convicted of a serious violent felony serve not less than 85 percent of the sentence imposed or 85 percent of the court-ordered maximum sentence for States that practice indeterminate sentencing; or
- "(B) truth-in-sentencing laws which have been enacted, but not yet implemented, that require such State, not later than three years after such State submits an application to the Attorney General, to provide that persons convicted of a serious violent felony serve not less than 85 percent of the sentence imposed or 85 percent of the court-ordered maximum sentence for States that practice indeterminate sentencing, and

"(2) laws requiring that the sentencing or releasing authorities notify and allow the victims of the defendant or the family of such victims the opportunity to be heard regarding the issue of sentencing and any postconviction release.

"SEC. 504. SPECIAL RULES.

"(a) ADDITIONAL REQUIREMENTS.—To be eligible to receive a grant under section 502 or 503, a State or States organized as a regional compact shall provide an assurance to the Attorney General that—

- "(1) to the extent practicable, inmate labor will be used to build and expand correctional facilities;
- "(2) each State will involve counties and other units of local government, when appropriate, in the construction, development, expansion, modification, operation, or improvement of correctional facilities designed to ensure the incarceration of offenders, and that each State will share funds received under this title with any county or other unit of local government that is housing State prisoners, taking into account the burden placed on such county or unit of local government in confining prisoners due to overcrowding in State prison facilities in furtherance of the purposes of this Act; and

"(3) the State has implemented or will implement, not later than 18 months after the date of the enactment of the Violent Criminal Incarceration Act of 1995, policies to determine the veteran status of inmates and to ensure that incarcerated veterans receive the veterans benefits to which they are entitled.

"(b) INDETERMINANT SENTENCING EXCEPTION.—Notwithstanding the provisions of paragraphs (1) through (3) of section 502(b), a State shall be eligible for grants under this title, if the State, not later than the date of the enactment of this title—

- "(1) practices indeterminate sentencing; and
- "(2) the average times served in such State for the offenses of murder, rape, robbery, and assault exceed, by 10 percent or greater, the national average of times served for such offenses.

"(c) EXCEPTION.—The requirements under section 503(b) shall apply, except that a State may provide that the Governor of the State may allow for earlier release of a geriatric prisoner or a prisoner whose medical condition precludes the prisoner from posing a threat to the public after a public hearing in which representatives of the public and the prisoner's victims have an opportunity to be heard regarding a proposed release.

"SEC. 505. FORMULA FOR GRANTS.

"To determine the amount of funds that each eligible State or eligible States organized as a regional compact may receive to carry out programs under section 502 or 503, the Attorney General shall apply the following formula:

- "(1) \$500,000 or 0.40 percent, whichever is greater, shall be allocated to each participating State or compact, as the case may be; and
- "(2) of the total amount of funds remaining after the allocation under paragraph (1), there shall be allocated to each State or compact, as the case may be, an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State or compact, as the case may be, bears to the population of all the States.

"SEC. 506. ACCOUNTABILITY.

"(a) FISCAL REQUIREMENTS.—A State or States organized as a regional compact that receives funds under this title shall use accounting, audit, and fiscal procedures that conform to guidelines which shall be prescribed by the Attorney General.

"(b) REPORTING.—Each State that receives funds under this title shall submit an annual report, beginning on January 1, 1996, and each January 1 thereafter, to the Congress regarding compliance with the requirements of this title.

"(c) ADMINISTRATIVE PROVISIONS.—The administrative provisions of sections 801 and 802 of the Omnibus Crime Control and Safe Streets Act of 1968 shall apply to the Attorney General in the same manner as such provisions apply to the officials listed in such sections.

"SEC. 507. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this title—

- "(1) \$997,500,000 for fiscal year 1996;
- "(2) \$1,330,000,000 for fiscal year 1997;
- "(3) \$2,527,000,000 for fiscal year 1998;
- "(4) \$2,660,000,000 for fiscal year 1999; and
- "(5) \$2,753,100,000 for fiscal year 2000.

"(b) LIMITATIONS ON FUNDS.—

"(1) USES OF FUNDS.—Funds made available under this title may be used to carry out the purposes described in section 501(a).

"(2) NONSUPPLANTING REQUIREMENT.—Funds made available under this section shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State sources.

"(3) ADMINISTRATIVE COSTS.—Not more than three percent of the funds available under this section may be used for administrative costs.

"(4) MATCHING FUNDS.—The Federal share of a grant received under this title may not exceed 75 percent of the costs of a proposal as described in an application approved under this title.

"(5) CARRY OVER OF APPROPRIATIONS.—Any funds appropriated but not expended as provided by this section during any fiscal year shall remain available until expended.

"SEC. 508. DEFINITIONS.

"As used in this title—

"(1) the term 'indeterminate sentencing' means a system by which—

"(A) the court has discretion on imposing the actual length of the sentence imposed, up to the statutory maximum; and

"(B) an administrative agency, generally the parole board, controls release between court-ordered minimum and maximum sentence;

"(2) the term 'serious violent felony' means—

"(A) an offense that is a felony and has as an element the use, attempted use, or threatened use of physical force against the person or property of another and has a maximum term of imprisonment of 10 years or more,

"(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense and has a maximum term of imprisonment of 10 years or more, or

"(C) such crimes including murder, assault with intent to commit murder, arson, armed burglary, rape, assault with intent to commit rape, kidnapping, and armed robbery; and

"(3) the term 'State' means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States."

SEC. 102. CONFORMING AMENDMENTS.

(a) OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968.—

(1) PART V.—Part V of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is repealed.

(2) FUNDING.—(A) Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking paragraph (20).

(B) Notwithstanding the provisions of subparagraph (A), any funds that remain available to an applicant under paragraph (20) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 shall be used in accordance with part V of such Act as such Act was in effect on the day preceding the date of enactment of this Act.

(b) VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994.—

(1) REPEAL.—(A) Subtitle A of title II of the Violent Crime Control and Law Enforcement Act of 1994 is repealed.

(B) The table of contents of the Violent Crime Control and Law Enforcement Act of 1994 is amended by striking the matter relating to subtitle A of title II.

(2) COMPLIANCE.—Notwithstanding the provisions of paragraph (1), any funds that remain available to an applicant under subtitle A of title II of the Violent Crime Control and Law Enforcement Act of 1994 shall be used in accordance with such subtitle as such subtitle was in effect on the day preceding the date of enactment of this Act.

(3) TRUTH-IN-SENTENCING.—The table of contents of the Violent Crime Control and Law Enforcement Act of 1994 is amended by striking the matter relating to title V and inserting the following:

"TITLE V—TRUTH-IN-SENTENCING GRANTS

"Sec. 501. Authorization of grants.

"Sec. 502. General grants.

"Sec. 503. Truth-in-sentencing grants.

"Sec. 504. Special rules.

"Sec. 505. Formula for grants.

"Sec. 506. Accountability.

"Sec. 507. Authorization of appropriations.

"Sec. 508. Definitions."

TITLE II—STOPPING ABUSIVE PRISONER LAWSUITS

SEC. 201. EXHAUSTION REQUIREMENT.

Section 7(a)(1) of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e) is amended—

(1) by striking "in any action brought" and inserting "no action shall be brought";

(2) by striking "the court shall" and all that follows through "require exhaustion of" and insert "until"; and

(3) by inserting "are exhausted" after "available".

SEC. 202. FRIVOLOUS ACTIONS.

Section 7(a) of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e(a)) is amended by adding at the end the following:

"(3) The court shall on its own motion or on motion of a party dismiss any action brought pursuant to section 1979 of the Revised Statutes of the United States by an adult convicted of a crime and confined in any jail, prison, or other correctional facility if the court is satisfied that the action fails to state a claim upon which relief can be granted or is frivolous or malicious."

SEC. 203. MODIFICATION OF REQUIRED MINIMUM STANDARDS.

Section 7(b)(2) of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e(b)(2)) is amended by striking subparagraph (A) and redesignating subparagraphs (B) through (E) as subparagraphs (A) through (D), respectively.

SEC. 204. PROCEEDINGS IN FORMA PAUPERIS.

(a) DISMISSAL.—Section 1915(d) of title 28, United States Code, is amended—

(1) by inserting "at any time" after "counsel and may";

(2) by striking "and may" and inserting "and shall";

(3) by inserting "fails to state a claim upon which relief may be granted or" after "that the action"; and

(4) by inserting "even if partial filing fees have been imposed by the court" before the period.

(b) PRISONER'S STATEMENT OF ASSETS.—Section 1915 of title 28, United States Code, is amended by adding at the end the following:

"(f) If a prisoner in a correctional institution files an affidavit in accordance with subsection (a) of this section, such prisoner shall include in that affidavit a statement of all assets such prisoner possesses. The court shall 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. The court shall require full or partial payment of filing fees according to the prisoner's ability to pay."

TITLE III—STOP TURNING OUT PRISONERS

SEC. 301. APPROPRIATE REMEDIES FOR PRISON CONDITIONS.

(a) IN GENERAL.—Section 3626 of title 18, United States Code, is amended to read as follows:

"§ 3626. Appropriate remedies with respect to prison conditions

"(a) REQUIREMENTS FOR RELIEF.—

"(1) LIMITATIONS ON PROSPECTIVE RELIEF.—Prospective relief in a civil action with respect to prison conditions shall extend no further than necessary to remove the conditions that are causing the deprivation of the Federal rights of individual plaintiffs in that civil action. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn and the least intrusive means to remedy the violation of the Federal right. In determining the intrusiveness of the relief, the court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

"(2) PRISON POPULATION REDUCTION RELIEF.—In any civil action with respect to prison conditions, the court shall not grant or approve any relief whose purpose or effect is to reduce or limit the prison population, unless the plaintiff proves that crowding is the primary cause of the deprivation of the Federal right and no other relief will remedy that deprivation.

"(b) TERMINATION OF RELIEF.—

"(1) AUTOMATIC TERMINATION OF PROSPECTIVE RELIEF AFTER 2-YEAR PERIOD.—In any civil action with respect to prison conditions, any prospective relief shall automatically terminate 2 years after the later of—

"(A) the date the court found the violation of a Federal right that was the basis for the relief; or

"(B) the date of the enactment of the Stop Turning Out Prisoners Act.

"(2) IMMEDIATE TERMINATION OF PROSPECTIVE RELIEF.—In any civil action with respect to prison conditions, a defendant or intervenor shall be entitled to the immediate termination of any prospective relief, if that relief was approved or granted in the absence of a finding by the court that prison conditions violated a Federal right.

"(c) PROCEDURE FOR MOTIONS AFFECTING PROSPECTIVE RELIEF.—

"(1) GENERALLY.—The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions.

"(2) AUTOMATIC STAY.—Any prospective relief subject to a pending motion shall be automatically stayed during the period—

"(A) beginning on the 30th day after such motion is filed, in the case of a motion made under subsection (b); and

"(B) beginning on the 180th day after such motion is filed, in the case of a motion made under any other law;

and ending on the date the court enters a final order ruling on that motion.

"(d) STANDING.—Any Federal, State, or local official or unit of government—

"(1) whose jurisdiction or function includes the prosecution or custody of persons in a prison subject to; or

"(2) who otherwise is or may be affected by;

any relief whose purpose or effect is to reduce or limit the prison population shall have standing to oppose the imposition or continuation in effect of that relief and may intervene in any proceeding relating to that relief. Standing shall be liberally conferred under this subsection so as to effectuate the remedial purposes of this section.

"(e) SPECIAL MASTERS.—In any civil action in a Federal court with respect to prison conditions, any special master or monitor shall be a United States magistrate and shall make proposed findings on the record on complicated factual issues submitted to that special master or monitor by the court, but shall have no other function. The parties may not by consent extend the function of a special master beyond that permitted under this subsection.

"(f) ATTORNEY'S FEES.—No attorney's fee under section 722 of the Revised Statutes of the United States (42 U.S.C. 1988) may be granted to a plaintiff in a civil action with respect to prison conditions except to the extent such fee is—

"(1) directly and reasonably incurred in proving an actual violation of the plaintiff's Federal rights; and

"(2) proportionally related to the extent the plaintiff obtains court ordered relief for that violation.

"(g) DEFINITIONS.—As used in this section—

"(1) the term 'prison' means any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law;

"(2) the term 'relief' means all relief in any form which may be granted or approved by the court, and includes consent decrees and settlement agreements; and

"(3) the term 'prospective relief' means all relief other than compensatory monetary damages."

(b) APPLICATION OF AMENDMENT.—Section 3626 of title 18, United States Code, as amended by this section, shall apply with respect to all relief (as defined in such section) whether such relief was originally granted or approved before, on, or after the date of the enactment of this Act.

(c) CLERICAL AMENDMENT.—The item relating to section 3626 in the table of sections at the beginning of subchapter C of chapter 223 of title 18, United States Code, is amended by striking "crowding" and inserting "conditions".

TITLE IV—ENHANCING PROTECTION AGAINST INCARCERATED CRIMINALS

SEC. 401. PRISON SECURITY.

(a) IN GENERAL.—Chapter 303 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 4048. Strength-training of prisoners prohibited

"The Bureau of Prisons shall ensure that—

"(1) prisoners under its jurisdiction do not engage in any physical activities designed to increase their fighting ability; and

"(2) all equipment designed for increasing the strength or fighting ability of prisoners promptly be removed from Federal correctional facilities and not be introduced into such facilities thereafter except as needed for a medically required program of physical rehabilitation approved by the Director of the Bureau of Prisons."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 303 of title 18, United States Code, is amended by adding at the end the following new item:

"4048. Strength-training of prisoners prohibited."

PURPOSE AND SUMMARY

The purpose of H.R. 667 is to enable states to deal more effectively with violent crime. To that end, the bill provides more resources to states to expand their prison capacity for incarcerating violent criminals. Furthermore, it limits prisoner lawsuits by requiring the exhaustion of administrative remedies prior to a civil action, and restricts the ability of Federal judges to affect the capacity and conditions of prisons and jails beyond what is required by the Constitution and Federal law.

The bill includes four titles. Titles I and II are nearly identical to titles V and VII respectively of H.R. 3, the "Taking Back Our Streets Act of 1995." Title III incorporates the provisions of H.R. 554, the "Stop Turning Out Prisoners Act," and Title IV addresses the problem of prison violence associated with weight-lifting equipment.

Title I provides nearly \$10.3 billion dollars to assist states expand their prison capacity for violent criminals, an increase of more than \$2 billion over last year's crime bill. It rewards states that are trying to get serious with violent criminals. If states are giving violent criminals longer sentences and requiring them to serve longer portions of their sentences, then these states will receive substantial grants for six years to help defray the costs of incarcerating more dangerous criminals. Moreover, if states go as far as enacting truth-in-sentencing and require violent criminals to serve at least 85 percent of their sentences, then they will qualify for more substantial grant funds.

Title II—Stopping Abusive Prisoner Lawsuits—places sensible limits on the ability of detained persons to challenge the legality of their confinement. Too many frivolous lawsuits are clogging the courts, seriously undermining the administration of justice. The title addresses the problem of frivolous lawsuits in three significant ways. First, it requires that all administrative remedies be exhausted prior to a prisoner initiating a civil rights action in court. Second, it requires the court to dismiss any prisoner suit if it fails to state a legitimate claim of a violation for which relief can be granted, or if the suit is frivolous or malicious. And third, it eliminates the requirement that minimum standards of acceptable prison conditions be developed with the input of prisoners. Under section 203, convicted criminals will no longer be helping to define what the terms of their imprisonment should be.

Title III provides much needed relief by providing reasonable limits on the remedies available in prison crowding suits. The title

limits court-ordered relief to those specific conditions affecting the individual plaintiff, and requires the court to consider the potential impact of such relief on public safety. Title III includes provisions that will guard against court-ordered caps dragging on and on, with nothing but the whims of federal judges sustaining them. It allows law enforcement officials who arrest, prosecute, or incarcerate criminals to challenge any relief that would affect their localities if that relief was granted in the absence of an actual finding by the court that the conditions violated a Federal right. And it places reasonable restrictions on attorney's fees.

Title IV prohibits weight-lifting by federal prisoners, and requires the removal of weight-lifting equipment from federal correctional facilities.

BACKGROUND AND NEED FOR THE LEGISLATION

Every year in America thousands of people are killed, raped or assaulted by dangerous criminals who are known by the criminal justice system to be severe threats to public safety. The reason such criminals are in the communities and not behind bars is often because there is simply not enough prison space to hold them.

Most people, but especially police and prosecutors, know that a relatively small group of dangerous criminals keep cycling through the system. They get arrested, sometimes convicted, occasionally sent to prison, and then they are almost always released early after serving only a small fraction of their sentences. This "revolving door of justice" has plagued the nation for too long.

The statistics have become familiar to many. Violent criminals in state prisons only serve an average of 38 percent of their actual sentences. In state criminal justice systems, convicted murderers are given average prison sentences of 20 years in length, but they only serve about 8.5 years. For rape, the sentence is 13 years, but the time served is only 5 years. It's no surprise that more than thirty percent of all murders are committed by criminals on bail, probation or parole at the time of their attacks.

Title I of H.R. 667 rewards states that are bearing high fiscal costs for taking the necessary step of getting and keeping violent criminals off the streets.

The Violent Crime Control and Law Enforcement Act of 1994 failed to address this problem. Its reverter clause allowed funds to be awarded even if states made no move toward truth-in-sentencing. Title I provides the opportunity to right those wrongs, and to support sensible reforms that are long overdue.

Title II—Stopping Abusive Prisoner Lawsuits—addresses the problem of frivolous lawsuits. Too often prisoners initiate suits which are frivolous, malicious, or fail to state a claim for which relief can be granted. Such suits clog the courts, waste law enforcement resources, and hinder localities in their efforts to fight crime.

Title III—Stop Turning Out Prisoners—addresses the problem of federal court-imposed prison population caps by limiting the remedies that can be granted or enforced by a court in a prison conditions suit alleging a violation of a federal right. Courts hearing such suits have often approved and enforced consent decrees giving expansive relief to the complaining inmates. While both state courts and federal courts have in some instances entered these un-

necessarily broad consent decrees, it is the federal courts that, often with seemingly good intentions, used these consent decrees to intrude into a state criminal justice system and seriously undermine the ability of the local justice system to dispense any true justice.

Population caps are a primary cause of "revolving door justice." The statistics alone do not reflect the incalculable losses to local communities caused by criminals confident in their belief that the criminal justice system is powerless to stop them. In Philadelphia, over 100 persons have been murdered by criminals set free by the prison population cap. The Subcommittee on Crime heard compelling testimony from Detective Patrick Boyle, a twenty-eight-year veteran of the Philadelphia Police Department. He spoke of the day-to-day problems faced by police officers on the streets when lawbreakers know that the Philadelphia criminal justice system is powerless to incarcerate them because of a federal court-ordered prison cap. Detective Boyle also spoke as a victim of crime. Detective Doyle's son, a rookie Philadelphia Police Officer, was murdered when he stopped a car stolen by a criminal defendant who had been repeatedly released because of the federal prison cap order.

Title IV—Enhancing Protection Against Incarcerated Criminals—requires that the Bureau of Prisons ensure that federal prisoners do not engage in any activities designed to increase their fighting abilities, and that all weight-lifting equipment be removed from federal prisons. The title addressed the problem of prisoners devoting their period of incarceration to becoming more physically threatening through intensive weight-lifting, as well as the problem of prison violence in which weight-lifting equipment is used as weapons.

Taken together, the four titles of H.R. 667 represent a long overdue effort by the federal government to assist states in their efforts to deal with violent crime.

HEARINGS

The Committee's Subcommittee on Crime held two days of hearings on H.R. 3 on January 19 and 20, 1995. Titles I and II of H.R. 667 are nearly identical to titles V and VII respectively in H.R. 3.

On the issue of truth in sentencing the subcommittee received testimony from the Honorable Daniel Lungren, Attorney General for the State of California, and the Honorable James Gilmore, Attorney General for the Commonwealth of Virginia.

On the issue of federal court control of state prisons and local jails, testimony were received from three witnesses: the Honorable Lynne Abraham, District Attorney of Philadelphia, on behalf of the Philadelphia District Attorney's Office; Detective Patrick Boyle, with the Philadelphia Police Department, on behalf of himself and the Philadelphia Police Department; and Mr. Alvin Bronstein, Esq., Director of the American Civil Liberties Union Prison Project, representing the American Civil Liberties Union.

COMMITTEE CONSIDERATION

On February 1, 1995, the Committee met in open session and ordered reported the bill H.R. 667, as amended, by a vote of 23 to 11, a quorum being present.

VOTE OF THE COMMITTEE

The committee then considered the following amendments with recorded votes:

Mr. Schumer offered an amendment to eliminate the bill's \$10 billion truth-in-sentencing grant program and replace it with a \$7.7 billion block grant program. The Schumer amendment was defeated by a 12-17 roll call vote.

ROLL CALL 1

AYES	NAYS
Mr. Sensenbrenner	Mr. Hyde
Mr. Inglis	Mr. Moorhead
Mr. Conyers	Mr. McCollum
Mrs. Schroeder	Mr. Gekas
Mr. Schumer	Mr. Coble
Mr. Boucher	Mr. Smith (TX)
Mr. Reed	Mr. Canady
Mr. Nadler	Mr. Goodlatte
Mr. Scott	Mr. Buyer
Mr. Serrano	Mr. Hoke
Ms. Lofgren	Mr. Bono
Ms. Jackson Lee	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Watt

Mr. Schumer offered an amendment that prohibits H.R. 667 from taking effect until 50 percent or more of the states qualify for truth-in-sentencing grants. The Schumer amendment was defeated 11-16.

ROLL CALL 2

AYES	NAYS
Mrs. Schroeder	Mr. Hyde
Mr. Schumer	Mr. Sensenbrenner
Mr. Berman	Mr. McCollum
Mr. Boucher	Mr. Coble
Mr. Reed	Mr. Smith (TX)
Mr. Nadler	Mr. Canady
Mr. Scott	Mr. Inglis
Mr. Watt	Mr. Goodlatte
Mr. Serrano	Mr. Buyer
Ms. Lofgren	Mr. Hoke
Ms. Jackson Lee	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

Mr. Scott introduced a substitute amendment that strikes the 85 percent served requirement and reduces funding by \$2.5 billion. The amendment was defeated 13-16.

ROLL CALL 3

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Sensenbrenner
Mr. Schumer	Mr. McCollum
Mr. Berman	Mr. Coble
Mr. Boucher	Mr. Smith (TX)
Mr. Reed	Mr. Canady
Mr. Nadler	Mr. Inglis
Mr. Scott	Mr. Goodlatte
Mr. Watt	Mr. Buyer
Mr. Becerra	Mr. Hoke
Mr. Serrano	Mr. Bono
Mr. Lofgren	Mr. Heineman
Ms. Jackson Lee	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

Mr. Chabot offered an amendment that requires the Bureau of Prisons to prohibit prisoners from engaging in physical activities designed to increase fighting ability and to remove equipment designed for such purpose. The amendment was adopted 18-9.

ROLL CALL 4

AYES	NAYS
Mr. Hyde	Mr. Moorhead
Mr. Sensenbrenner	Mr. Coble
Mr. McCollum	Mr. Inglis
Mr. Smith (TX)	Mr. Bono
Mr. Canady	Mr. Conyers
Mr. Goodlatte	Mrs. Schroeder
Mr. Buyer	Mr. Berman
Mr. Hoke	Mr. Scott
Mr. Heineman	Mr. Watt
Mr. Bryant (TN)	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	
Mr. Schumer	
Mr. Boucher	
Mr. Reed	
Ms. Lofgren	
Ms. Jackson Lee	

Mr. Watt offered three amendments en bloc requiring actual reductions in crime as a condition for prison grants. The Watt amendment was defeated 8-20.

ROLL CALL 5

AYES	NAYS
Mrs. Schroeder	Mr. Hyde
Mr. Berman	Mr. Sensenbrenner
Mr. Boucher	Mr. Moorhead
Mr. Scott	Mr. McCollum
Mr. Watt	Mr. Coble
Mr. Becerra	Mr. Smith (TX)
Ms. Lofgren	Mr. Canady
Mr. Jackson Lee	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Schumer
	Mr. Bryant (TX)
	Mr. Reed

Mr. Watt offered two amendments en bloc which sought to expand prospective relief available to any plaintiff by eliminating the automatic termination of prospective relief requirement and by eliminating the "substantial weight" requirement. The amendment was defeated 9-21.

ROLL CALL 6

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Sensenbrenner
Mr. Reed	Mr. Moorhead
Mr. Nadler	Mr. McCollum
Mr. Scott	Mr. Coble
Mr. Watt	Mr. Schiff
Mr. Becerra	Mr. Canady
Mr. Serrano	Mr. Inglis
Ms. Jackson Lee	Mr. Goodlatte
	Mr. Hoke
	Mr. Buyer
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Schumer
	Mr. Boucher
	Mr. Bryant (TX)
	Ms. Lofgren

Mr. Watt offered an amendment to strike the automatic stay requirement. The amendment was defeated 10-18.

ROLL CALL 7

AYES	NAYS
Mrs. Schroeder	Mr. Hyde
Mr. Schumer	Mr. Moorhead
Mr. Berman	Mr. Sensenbrenner
Mr. Boucher	Mr. McCollum
Mr. Nadler	Mr. Gekas
Mr. Scott	Mr. Coble
Mr. Watt	Mr. Schiff
Mr. Serrano	Mr. Canady
Ms. Lofgren	Mr. Inglis
Ms. Jackson Lee	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

Mr. Watt offered an amendment to strike limits on attorney's fees. The Watt amendment was defeated 10-21.

ROLL CALL 8

AYES	NAYS
Mr. Schiff	Mr. Hyde
Mr. Conyers	Mr. Moorhead
Mrs. Schroeder	Mr. Sensenbrenner
Mr. Bryant (TX)	Mr. McCollum
Mr. Nadler	Mr. Gekas
Mr. Scott	Mr. Coble
Mr. Watt	Mr. Gallegly
Mr. Serrano	Mr. Canady
Ms. Lofgren	Mr. Inglis
Ms. Jackson Lee	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Schumer
	Mr. Boucher
	Mr. Reed

Mr. Scott offered an amendment to strike title three of the bill. The amendment was defeated 5-25.

ROLL CALL 9

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Nadler	Mr. Moorhead
Mr. Scott	Mr. Sensenbrenner
Mr. Watt	Mr. McCollum
Mr. Serrano	Mr. Gekas
	Mr. Coble
	Mr. Smith (TX)
	Mr. Gallegly
	Mr. Schiff
	Mr. Canady
	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Schumer
	Mr. Berman
	Mr. Bryant (TX)
	Mr. Reed
	Ms. Lofgren
	Ms. Jackson Lee

Mr. Schumer offered an amendment to shift unused truth-in-sentencing grant funds to general grants. The amendment was defeated 12-21.

ROLL CALL 10

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Schumer	Mr. Sensenbrenner
Mr. Berman	Mr. McCollum
Mr. Frank	Mr. Coble
Mr. Bryant (TX)	Mr. Gekas
Mr. Reed	Mr. Smith (TX)
Mr. Nadler	Mr. Schiff
Mr. Scott	Mr. Gallegly
Mr. Serrano	Mr. Canady
Ms. Lofgren	Mr. Inglis
Ms. Jackson Lee	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

Final Passage. Motion to report H.R. 667 favorably, as amended. The motion passed 23-11.

ROLL CALL 11

AYES	NAYS
Mr. Hyde	Mr. Conyers
Mr. Moorhead	Mrs. Schroeder
Mr. Sensenbrenner	Mr. Frank
Mr. McCollum	Mr. Schumer
Mr. Gekas	Mr. Berman
Mr. Coble	Mr. Nadler
Mr. Smith (TX)	Mr. Scott
Mr. Schiff	Mr. Watt
Mr. Gallegly	Mr. Serrano
Mr. Canady	Ms. Lofgren
Mr. Inglis	Ms. Jackson Lee
Mr. Goodlatte	
Mr. Buyer	
Mr. Hoke	
Mr. Bono	
Mr. Heineman	
Mr. Bryant (TN)	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	
Mr. Boucher	
Mr. Bryant (TX)	
Mr. Reed	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 667, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974;

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 6, 1995.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 667, the Violent Criminal Incarceration Act of 1995.

Enactment of H.R. 667 could affect direct spending or receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 667.
2. Bill title: Violent Criminal Incarceration Act of 1995.
3. Bill status: As ordered by the House Committee on the Judiciary on February 1, 1995.
4. Bill purpose: H.R. 667 would repeal the truth-in-sentencing incarceration grant program enacted in Title II of the Violent Crime Control and Law Enforcement Act of 1994 and replace it with two new incarceration grant programs. H.R. 667 also would repeal the

drug court grant program under Title V of the 1994 crime bill. To be eligible for the first type of grant (general grants), states must increase the incarceration rate, average time served, and percentage of sentence served for violent offenders. To be eligible for the second type of grant (truth-in-sentencing grants), states must enact truth-in-sentencing laws and laws requiring that the victims of the defendant or the family of such victims be given the opportunity to be heard on the issue of sentencing and any post-conviction release.

Title II of H.R. 667 would address prisoner litigation through various reforms. One provision would require the exhaustion of administrative remedies before a complaint would be referred to federal court. Another provision would provide federal courts with the authority to dismiss a case if they determined that an action was frivolous or malicious or lacking a valid claim under which relief could be granted. In addition, the bill would allow the federal courts to review a prisoner's statement of assets obtained from the prisoner's place of incarceration when determining whether or not to waive part or all of a civil filing fee. Title II would permit federal courts to limit the relief awarded prisoners in certain civil actions, including attorney's fees. Title IV would ban weight lifting and other strength training for federal inmates.

5. Estimated cost to the Federal Government: H.R. 667 would increase the authorization for appropriations for incarceration grants in the 1994 crime bill from \$7.7 billion to \$10.5 billion dollars over the 1995–2000 period. At the same time, H.R. 667 would repeal existing authorizations of \$0.9 billion for drug court grants. Thus, H.R. 667 would result in a net increase in authorizations of appropriations of \$1.9 billion dollars over the 1995–2000 period. The following table provides year-by-year estimates of the federal costs for H.R. 667.

(By fiscal year, in millions of dollars)

	1995	1996	1997	1998	1999	2000
Authorizations of appropriations:						
New authorization level	232	998	1,330	2,527	2,660	2,753
Repeal of existing authorization		-900	-1,150	-2,100	-2,200	-2,270
Less: Existing appropriation	-53					
Net increase in authorization level	179	98	180	427	460	483
Estimated outlays	40	90	140	206	331	440

The costs of this bill fall within budget function 750.

For purposes of this estimate, CBO assumes that the amount authorized by the bill would be appropriated for each fiscal year and that outlays would reflect the historical spending patterns of similar grant programs. The additional authorization for 1995 is assumed to be provided in a supplemental appropriation following enactment of this bill.

To the extent that the provisions affecting prisoner litigation would deter cases from being filed or from moving forward, the federal court system could realize some savings. However, based on information from the Administrative Office of the United States Courts (AOUSC), CBO does not expect that the number of civil cases filed by federal prisoners would be reduced significantly by enactment of these provisions. In addition, to the extent that the

requirement for the statement of assets would serve as an economic disincentive for filing claims, the federal government also could realize some savings in court costs. However, according to the AOUSC any such savings would be insignificant and possibly offset by increased administrative costs incurred for processing the statement of assets.

6. Comparison with spending under current law: Appropriations for drug court and incarceration grants authorized in the 1994 crime bill total \$53 million for fiscal year 1995. H.R. 667 would authorize additional grants of \$179 million for 1995, and much larger amounts in subsequent years. The following table provides a comparison of the current-year appropriation with the gross authorizations contained in H.R. 667.

(By fiscal year, in millions of dollars)

	1995	1996	1997	1998	1999	2000
H.R. 667 authorization level	232	998	1,330	2,527	2,660	2,753
Current-year appropriation	53	53	53	53	53	53
Difference	179	945	1,277	2,474	2,607	2,700

7. Pay-as-you-go considerations: CBO estimates that by restricting the circumstances under which attorney's fees would be awarded to prevailing prisoners for certain cases, the federal government could realize some savings in direct spending because these fees are paid out of the Claims, Judgments and Relief Acts account. However, CBO cannot estimate either the likelihood or the magnitude of savings from this account because there is no basis for predicting either the outcome of possible litigation or the amount of potential compensation.

8. Estimated cost to State and local governments: The amounts authorized for appropriation would be used to make grants to states. Grant recipients would be required to fund at least 25 percent of the cost of the projects for which the grants are intended. To qualify for these grants, states must provide assurance that they have enacted stricter laws and regulations relating to sentencing, implemented policies to ensure that incarcerated veterans receive veterans' benefits, and will share funds with local governments for the construction or expansion of correctional facilities when appropriate. The funds for the grants would be allocated according to a grant formula specified in the bill, and any remaining funds would be allocated to each state according to population. Thus, while many states may not currently qualify for these grants because of the strict sentencing guidelines, those states could receive some funding after the incarceration grants are distributed. Assuming states meet the qualification requirements for receiving grants as authorized by H.R. 667, CBO estimates that the resulting state shares would total at least \$415 million over the 1995–2000 period. Some of this funding would, in turn, assist states in completing the construction or expansion of correctional facilities necessary to meet the sentencing requirements of H.R. 667.

The state courts under this bill also could realize some savings to the extent that prison litigation is reduced. In particular, CBO expects that the states would benefit by the provision that would enable federal courts to dismiss frivolous cases without first hear-

ing a motion for dismissal from the states; this would reduce the workload significantly for state attorneys who under current law must respond to every claim filed. At this time, CBO cannot estimate the amount of such savings to the states.

9. Cost comparison: None.
10. Previous CBO estimate: None.
11. Estimate prepared by: Susanne S. Mehlman.
12. Estimate approved by Robert A. Sunshine for Paul N. Van de Water, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 667 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 of the bill states the short title as the "Violent Criminal Incarceration Act of 1995."

TITLE I—TRUTH IN SENTENCING

Section 101. Truth in Sentencing Grant Program

This section would amend Title V of the Violent Crime Control and Law Enforcement Act of 1994, "Drug Courts," by substituting in its place "Title V—Truth in Sentencing Grants."

Sec. 501. Authorization of grants

This section authorizes the Attorney General to provide grants to eligible states and to states organized as regional compacts to build, expand and operate correctional facilities for the purpose of incapacitating serious violent criminals. Grants may also be used to build, expand and operate facilities, including facilities on military bases, for nonviolent offenders if such efforts are designed to free up existing prison space for violent criminals.

Subsection (b) limits an eligible state or eligible compact of states to receive a grant from either section 502, the "General Grants," or section 503, the "Truth in Sentencing Grants."

Sec. 502. General grants

This section establishes the first of two grant categories for state prison grants. Under subsection (a), half of the total funds available each year under this title are to be available during fiscal years 1996 through 2000 for general grants to states that are making progress in incarcerating violent criminals, as delineated in subsection (b) below. Subsection (b) provides three specific conditions that states must meet in order to qualify for general grants. Since 1993, states must have: (1) Increased the percentage of convicted violent offenders sentenced to prison; (2) increased the average time served by violent offenders in prison; and (3) increased the percentage of the sentences that violent offenders actually serve.

Sec. 503. Truth-in-sentencing grants

Section 503 establishes the second of the two grant categories. Under subsection (a), half of the total funds available under this title each fiscal year from 1996 through 2000 are reserved for truth-in-sentencing grants. In order to qualify for such grants, under subsection (b) states must submit an application to the Attorney General which provides assurances that each state applying has already enacted truth-in-sentencing laws requiring serious violent felons to serve not less than 85% of the sentence imposed; or, under subsection (1)(B) the application must provide assurances that where such laws have been enacted but not yet implemented, that they will be implemented within three years of a state's application for funding. Under subsection (2) all states applying for truth-in-sentencing grants must have already enacted laws requiring notification of victims or families of victims concerning the release of offenders and afford such victims an opportunity to be heard.

Sec. 504. Special rules

This section establishes certain special rules. Under subsection (a)(1), a state must assure the Attorney General that, to the extent practicable, inmate labor will be used to build and expand correctional facilities.

Under subsection (a)(2), a state must assure that, when appropriate, it will involve counties and other units of local government to build and expand correctional facilities. Furthermore, a state must assure that it will share grant funds under this title with other units of local government that house state prisoners, taking into account the degree to which such units are confining state prisoners due to crowding resulting from activities undertaken in furtherance of this title. Thus, if states, as a result of increased incarceration of violent criminals pursuant to the funding conditions of this Act, place an added burden on local jails, states should assist local governments to meet this burden.

Under subsection (a)(3), a state must assure the Attorney General that it has implemented, or will implement within 18 months of this title's enactment, a policy to ensure that incarcerated veterans receive the veterans benefits to which they are entitled.

Subsection (b) provides that even if a state has not met the truth-in-sentencing requirements of paragraphs (1) through (3) of Section 502(b) above, it can still qualify for funds if it meets the following two requirements: First, under paragraph (1), it must practice indeterminate sentencing; and second, under paragraph (2), the average time served for the crimes of murder, rape, robbery, and assault in such state must exceed by 10 percent or more the national average of time served for such offenses.

Under subsection (c), an exception is made to the truth-in-sentencing grant requirements in section 503(b), which allows the Governor of a state which complies with the truth-in-sentencing requirements to permit the release of a geriatric prisoner, or a prisoner with a medical condition which prevents the prisoner from posing a threat to the public. Prior to such a release, however, there must be a public hearing where the public and the prisoner's

victims have had an opportunity to be heard regarding the proposed release.

The committee expects that the public hearing requirement will discourage the early release of offenders who should not be released as a matter of sound policy, even though they may technically qualify for such release.

Sec. 505. Formula for grants.

This section establishes the formula for disbursing the funds to eligible states. Under paragraph (1), no eligible state is to receive less than \$500,000 or .40 percent of the total annual funding, whichever is greater. And under paragraph (2), eligible states receive an additional amount based on population from the funds remaining after the allocation in paragraph (1) is made. Specifically, the additional amount is the amount which bears the same ratio to the remaining funds as the ratio that the population of the state of compact bears to the population of all states.

Sec. 506. Accountability

This section seeks to ensure accountability over the grant funds, and requires recipient states to use accounting, audit and fiscal procedures that conform to the guidelines to be prescribed by the Attorney General, and to submit annual reports.

Sec. 507. Authorization of appropriations

Subsection (a) authorizes nearly \$10.3 billion for fiscal years 1996 through 2000 to carry out this title. Subsection (b) requires that no funds received under this title supplant state funds, and that the federal share of any proposal funded under this title not exceed 75 percent.

TITLE II—STOPPING ABUSIVE PRISONER LAWSUITS

Sec. 201. Exhaustion requirement

Currently, the Civil Rights of Institutionalized Persons Act authorizes federal courts to suspend civil rights suits brought by prisoners pursuant to 42 U.S.C. sec. 1983 for 180 days while the prisoner exhausts available administrative remedies. This section requires prisoners to exhaust all available administrative remedies before filing a civil rights action in a federal court.

Sec. 202. Frivolous actions

An enormous burden is currently placed on state officials to respond to prisoner suits which lack merit and are often brought for the purpose of harassment or recreation. This section requires a federal court, on its own motion or another's motion, to dismiss a civil rights action brought by a prisoner if the action fails to state a claim upon which relief can be granted or is frivolous or malicious, thereby eliminating the need for defendants to use resources responding to meritless claims.

Sec. 203. Modification of required minimum standards.

The Civil Rights of Institutionalized Persons act requires the promulgation of minimum standards of acceptable prison conditions to

be used in the administrative procedures for resolving grievances. It further requires that such standards be developed with the advice of inmates. Section 203 eliminates the requirement that prisoners contribute to the development of those standards.

Sec. 204. Proceedings in forma pauperis

The present standard for sua sponte dismissal of complaints filed by prisoners seeking in forma pauperis status allows dismissal only if the complaint is frivolous or malicious, or if the allegation of poverty is untrue.

This section requires dismissal of a complaint brought in forma pauperis if the complaint fails to state claim upon which relief may be granted, or is frivolous or malicious, or untrue.

Section 204 adds subsection (f) to 28 U.S.C. 1915. Subsection (f) requires a prison inmate to include a statement of his or her assets in any affidavit filed in forma pauperis. It also requires the court to verify the statement of assets by making inquiry of the correctional institution in which the prisoner is incarcerated and impose full or partial payment of filing fees according to the prisoner's ability to pay.

TITLE III—STOP TURNING OUT PRISONERS

Sec. 301. Appropriation remedies for prison conditions

This section would amend Section 3626 of title 18, United States Code.

Subsection (a)(1): Limitations of prospective relief

This subsection permits a court to grant or approve relief for a prisoner who is a plaintiff in a prison conditions suit only if that prisoner can prove a violation of his own federal rights. Such a requirement is not novel, but is in complete harmony with federal standing requirements. Through this requirement, Congress is reminding courts that standing must be the threshold inquiry in prison cases, just as it is in any other case. The reference to "individual plaintiffs" is a reminder to the courts that the principles of standing mandated by the Constitution's case or controversy requirement in Article III must be applied in prison conditions cases as in all other cases.¹

¹ Article III's "irreducible constitutional minimum of standing"; requires that the "the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized * * * and (b) 'actual or imminent, not 'conjectural' or 'hypothetical' * * *". *Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130, 2136 (1992) (cites omitted); *Whitmore v. Arkansas*, 495 U.S. 149, 155, 110 S. Ct. 1717, 1722–23 (1990); *Warth v. Seldin*, 422 U.S. 490, 508, 95 S. Ct. 2197, 2210 (1975). "But the 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured." *Lujan v. Defenders of Wildlife*, 112 S. Ct. at 2137, quoting *Sierra Club v. Morton*, 405 U.S. at 734, 92 S. Ct. at 1366.

This principle, that a plaintiff must demonstrate that he himself has suffered the complained of injury, has been recognized and applied by the Supreme Court specifically in the context of an inmate's claimed violation of the Eighth Amendment. In *Helling v. McKinney*, 113 S. Ct. 2475 (1993), the Court agreed with the inmate that the condition about which he complained, exposure to environmental tobacco smoke (ETS), could possibly constitute cruel and unusual punishment. But, the Court also concluded that, to prove an Eighth Amendment violation, the inmate "must show that he himself is being exposed to unreasonably high levels of ETS." *Helling*, 113 S. Ct. at 2482 (emphasis added). Thus, the inmate would suffer no constitutional violation if he were not exposed to ETS even though other inmates in the same prison system were exposed to ETS. Id; see also *Farmer v. Brennan*, 114 S. Ct. 1979, 1977 (for an Eighth

Subsection (a)(1) limits the remedial scheme a court may order or approve to the least intrusive remedy² and requires the court to give appropriate consideration, in selecting or approving a remedy, to any potential impact on public safety or the criminal justice system.³ The subsection reasonably and permissibly limits the use of court-enforced consent decrees to resolve prison conditions suits,

Amendment claim an "inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm" (emphasis added); *Wilson v. Seiter*, 111 S. Ct. 2321, 2323 (1991) ("a prisoner advancing [an Eighth Amendment] claim must, at a minimum, allege 'deliberate indifference' to his medical needs" (emphasis added)). Similarly, as the instant status reminds lower courts, an individual inmate who has not been subjected to constitutionally excessive crowding cannot allege a constitutional violation based on the allegedly excessive crowding imposed on other inmates in the same prison system.

An inmate who has not suffered in the least is not entitled to any damages or other relief merely because some other inmate in the same or a related facility may have suffered cruel and unusual punishment or violation of some other federal right. See, e.g., *Buttle v. Dowd*, 979 F.2d 661, 674 (8th Cir. 1992) (court rejected inmates claim for injunctive relief from allegedly cruel and unusual practices because the relief from allegedly cruel and unusual practices because the relief he requested would "only benefit other inmates, particularly new inmates"); *Whitnack v. Douglas County*, 16 F.3d 954 (8th Cir. 1994) (notwithstanding the exceedingly unsanitary condition of portions of the prison, the plaintiff inmates failed to prove an Eighth Amendment violation because they were held in that portion of the prison for a very brief period of time; other inmates held in those same areas for a prolonged period of time could suffer constitutionally significant harm). In order to alleviate the suffering of an inmate actually subjected to cruel and unusual punishment, it is possible that a court might find it necessary to order relief which had the incidental effect of granting a windfall benefit to inmates who have never suffered. This practical consequence of certain remedies, however, does not endow the inmate who has never had his rights violated with any right to bring a lawsuit in the first place in order to obtain that windfall benefit.

By relying on the Supreme Court's law interpreting the Constitution's standing requirements, Congress had done nothing more in this provision with regard to standing than codify the existing Supreme Court law that is being trampled by some courts. There has been no intrusion upon the Supreme Court's role in interpreting the Constitution. "Congress may codify or clarify existing law without performing a meaningless act." *In re Intern. Harvester's Disp. of Wis. Steel Lit.*, 681 F. Supp. 512, 521 (N.D. Ill. 1988); see also *United States v. Yancy*, 827 F.2d 83, 88 (7th Cir. 1987). In particular, Congress is fully entitled "to codify existing law concerning a defendant's constitutional" rights. *United States v. Alessandrello*, 637 F.2d 131, 138 (3d Cir. 1980) (in Federal Rule of Criminal Procedure 43, which concerns a defendant's right to be present at every stage of his trial, Congress explicitly codified that protections of the Sixth Amendment Confrontation Clause and the Due Process Clause of the Fifth Amendment), cert. denied, 451 U.S. 949, 101 S. Ct. 2031 (1981); see *United States v. Reiter*, 897 F.2d 639, 642 (2d Cir. 1990) (same); *S.E.C. v. Kimmes*, 759 F. Supp. 430, 437 (N.D. Ill. 1991) (same) see also *Commonwealth v. Departmental Grant Appeals Bd.*, 815 F.2d 778, 784 (1st Cir. 1987) (Congress intended provisions in Administrative Procedure Act on district court jurisdiction "to codify the existing law concerning ripeness and exhaustion of remedies").

Congress can enact a statute of codify existing law or clarify current law that is uncertain and confusing, see *Vaz Borracho v. Keydril Co.*, 710 F.2d 207, 212 (5th Cir. 1983), or as here, Congress may choose to codify existing law when at least some lower courts are failing to properly apply the law. See *In re Kroy (Europe) Ltd.*, 27 F.3d 367, 370 (9th Cir. 1994) (in finding that Congress intended to codify and clarify existing law that certain expenses were not deductible, the court noted that one court had found the expenses were deductible). Codification of existing law serves to reign in lower courts whose wayward actions cannot all be reviewed by the Supreme Court but which are causing enormous harm to the public.

²By requiring courts to grant or approve relief constituting the least intrusive means of curing an actual violation of a federal right, the provision stops judges from imposing remedies intended to effect an overall modernization of local prison systems or provide an overall improvement in prison conditions. The provision limits remedies to those necessary to remedy the proven violation of federal rights.

The dictates of the provision are not a departure from current jurisprudence concerning injunctive relief. "In granting injunctive relief, the court's remedy should be no broader than necessary to provide full relief to the aggrieved plaintiff." *McLendon v. Continental Can Co.*, 908 F.2d 1171, 1182 (3d Cir. 1990) (citations omitted). This rule also applies to constitutional violations. See *Milliken v. Bradley*, 433 U.S. 267, 97 S. Ct. 2749, 2757 (1977) (remedy must be related to the condition that offends the Constitution); *Toussaint v. McCarthy*, 801 F.2d 1080, 1086 (9th Cir. 1986) (injunctive relief must be "no broader than necessary to remedy the constitutional violation"), cert. denied, 481 U.S. 1069 (1987).

³Use of the word "shall" in this provision creates a mandatory, not a discretionary duty on the part of the federal judge to limit relief in prison conditions suits as directed by Congress. See, e.g., *United States v. Monsanto*, 491 U.S. 600, 109 S. Ct. 2657, 2662 (1989) (The Comprehensive Forfeiture Act states that a sentencing court "shall order" forfeiture of certain property. The Court stated, "Congress could not have chosen stronger words to express its intent * * *"). *Anderson v. Yungkau*, 329 U.S. 482, 67 S. Ct. 428, 430 (1947) ("The word 'shall' is ordinarily 'The Language of command.'" (cite omitted)).

while freely allowing the use of private settlement agreements. Parties may continue to enter such agreements to avoid lengthy and burdensome litigation, but they cannot expect to rely on the court to enforce the agreement.

Subsection (a)(1) is further intended to prohibit state courts as well as federal courts from granting or enforcing unnecessary and burdensome remedies in prison conditions suits. Inmates often bring their suits in federal court, rather than in state court, because they have found that federal judges are at times more willing than are local judges to impose requirements on local officials. But inmates are legally entitled to bring suits in state courts asking the state courts to provide remedies for purported violations of federal rights. Some inmates have already brought such suits in state courts. By limiting the remedies that state courts, as well as federal courts, may provide, this provision insures that inmates will not simply run from the federal courthouse to the state courthouse to bring the same suits and to demand the same burdensome and unnecessary relief that the federal courts have irresponsibly imposed on local judicial systems. This provision would not, however, preclude state legislators from granting additional remedies as a matter of state law.

Subsection (a)(2): Prison population reduction relief

This subsection makes prison caps the remedy of last resort, permitting a cap to be imposed only if the prisoner proves: (1) that crowding is the "primary" cause of the federal violation; and (2) that no other remedy will cure the violation. These requirements are imposed in recognition of the severe, adverse effects of prison caps and the accompanying prisoner releases relied on to meet the caps.

While prison caps must be the remedy of last resort, a court still retains the power to order this remedy despite its intrusive nature and harmful consequences to the public if, but only if, it is truly necessary to prevent an actual violation of a prisoner's federal rights.

By requiring that a plaintiff inmate prove an actual violation of his constitutional rights based on the alleged overcrowding, this subsection will end the current practice of imposing prison caps when inmates in local prisons have complained about the prison conditions but the presiding judge has made absolutely no finding of unconstitutionality or even held any trial on the allegations. In ordering or approving these caps, some judges now oversee huge programs of releases to keep the prison population down to whatever that judge considers an appropriate level.

Subsection (b): Termination of relief

Paragraph (b)(1)—Automatic Termination of Prospective Relief After a 2-Year Period—provides that in order to continue to receive relief beyond a two-year period, the need for continued remedies to alleviate actual violations of federal rights must be proven.⁴ While

⁴Congress is acting well within its authority in permitting a remedy to be provided for the alleged violation of a federal right but in placing a time limit on the remedy. For example, the Voting Rights Act of 1965 provides that, where a court has issued a declaratory judgment deter-

this provision mandates automatic termination every two years, either party may seek a modification of a consent decree at any time earlier based on the existing standard for modification contained in Federal Rule of Civil Procedure 60(b).

Paragraph (b)(2)—Immediate termination of prospective relief—allows a jurisdiction that is already subject to an existing federal consent decree that was entered with no finding of any constitutional violation, to move to terminate that decree. The provision appropriately prohibits courts from enforcing decrees that do not remedy proven violations of federal law.

Subsection (c): Procedure for motions affecting prospective relief

Paragraph (c)(1) requires judges to rule promptly on motions to modify or terminate ongoing orders and consent decrees. Under current law, law enforcement and other local officials are often handcuffed in their efforts to modify or terminate unnecessary and burdensome consent decrees of other orders by judge who stonewall and simply refuse, for many months or even years, to issue a ruling on a request for modification or termination. Moreover, under current law, there is little that the parties can do to require or even encourage the judge to rule on their request.⁵ By providing that the prospective relief that is subject to the motion will be stayed if the motion is not decided promptly, judges will be motivated to decide the motions and avoid having the stay automatically take effect.

Paragraph (c)(2) provides that where any motion is not ruled upon in a timely fashion, the ongoing relief in a consent decree is stayed pending a final ruling on the merits of the motion. Specifically, a motion under subsection (b)—relating to consent decrees entered in the absence of an actual finding of a federal violation—must be decided within thirty days. Such a motion will raise only one question: whether the court has made an on-the-record finding of a federal violation. Such a potential violation should be resolved on the basis of the official court record and not be subject to any factual dispute.

All other motions, such as a motion to modify pursuant to Federal Rule of Civil Procedure 60(b), must be decided in 180 days or the consent decree relief is stayed.

This provision requiring that all relief be stayed if a motion is not promptly decided cannot be waived by the consent of the parties.

mining the legality of a voting procedure, "[t]he court shall retain jurisdiction of any action pursuant to this subsection for ten years after judgment and shall reopen the action upon motion of the Attorney General or any aggrieved person * * *." (emphasis added). Section 4(a) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973b(a)(5). The reopening provision of § 4(a) of the Voting Rights Act has remained unchallenged for over thirty years, despite several constitutional attacks on the Act's other provisions and amendments, see e.g., *South Carolina v. Katzenbach*, 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). More recently, in *City of Rome v. United States*, 100 S.Ct. 1548 (1980), the Supreme Court had occasion to examine closely the language of § 4(a), and recited without comment the section's "reopening" provision. Like the provision in the Voting Rights Act of 1965, the two-year time limit in this amendment insures that the court can address the propriety of the decree at regular intervals.

⁵ Under the All Writs Act, 28 U.S.C. § 1651(a), the parties may ask the federal court of appeals to issue a writ of mandamus ordering the federal district court judge to rule on the motion. As an extraordinary writ, mandamus is disfavored, see *In re School Asbestos Litigation*, 977 F.2d 764, 772 (3d Cir. 1992), and "must be invoked sparingly," *In re Asbestos School Litigation*, No. 94-1494, slip op. at 9 (3d Cir., December 28, 1994), and rarely, if ever, will an appellate court grant a writ of mandamus to force a lower court to rule more quickly on a motion.

Subsection (d): Standing

This subsection allows Federal, state, and local government officials, including prosecutors, to intervene pursuant to Federal rule of Civil Procedure 24(a)(1) by granting them the right to intervene in prison conditions cases so that they can challenge court-ordered prison population caps.

Law enforcement officials who arrest, prosecute, or incarcerate criminals are permitted, under this new provision, to challenge any relief that would affect their localities, asserting the significant public safety concerns arising from such relief. The provisions of this subsection should be construed liberally so as to grant standing to a member of Congress, a governor, a member of a state legislature, or a member of a local unit of government, whose representative constituency is affected by such court-ordered relief.

Courts, particularly federal courts, have excluded some state officials, such as district attorneys,⁶ from having any say about the disposition of such cases by concluding that these officials have no right to intervene as parties under the current law embodied in Federal Rule of Civil Procedure 24(a)(2), which requires that the intervenor have an "interest" in the case. But completely apart from the "interest" rationale, Federal Rule of Civil Procedure 24(a)(1) requires that a party be allowed to intervene if he has been granted such a right by statute. Subsection (d) establishes such an explicit right to intervene for affected law enforcement officials.

As with all motions in prison conditions suits, courts must rule on motions to intervene promptly.

Subsection (e): Special masters

This subsection only allows United States magistrates to serve as special masters in prison conditions cases. Consequently, this provision ensures that only judicial officers, who have undergone the appropriate appointment and screening process, will be acting for the court.⁷ This helps ensure the appointment of appropriate individuals to perform the sensitive fact-finding functions in institutional prison litigation, which often has substantial public interest implications.⁸ Federal Rule of Civil Procedure 53 authorizes federal judges to appoint United States magistrates to serve as special masters.

⁶ See *Harris v. Parnley*, 820 F.2d 592 (3d Cir. 1987) (district attorney had no right to intervene to challenge prison cap order requiring the release of pretrial detainees as he lacked a substantial legal interest pursuant to rule 24(a)(2)).

⁷ Congress has acted well within its authority in specifying procedure in this provision. "[T]he Constitutional provision for a federal court system (augmented by the Necessary and Proper Clause) carries with it congressional power to make rules governing the practice and pleading in those courts * * *." *Hanna v. Plumer*, 380 U.S. 471, 472, 85 S. Ct. 1136, 1144 (1965); see also *Mistretta v. United States*, 488 U.S. 361, 109 S. Ct. 647, 663 (1989) ("Congress has undoubtedly power to regulate the practice and procedure of federal courts * * *") (quoting *Sibbach v. Wilson & Co.*, 312 U.S. 1, 9, 61 S. Ct. 422, 424 (1941)). Article III grants Congress the power "from time to time" to "ordain and establish" "inferior courts." U.S. Const. Art. III, § 2. Article I grants Congress the power to "constitute Tribunals inferior to the supreme Court" and to "make all Laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States. * * *." U.S. Const., Art. I, § 9, cls. 9 & 18.

⁸ In Philadelphia, the former executive director of the Pennsylvania Prison Society, a prisoner rights advocacy group, was appointed as the special master. The Committee has serious reservations about whether such an appointment, where the master's impartiality might reasonably be questioned, promotes public confidence in federal judicial officers.

This subsection continues to give the court the discretion to use a special master to assist in resolving complicated factual issues by on-the-record fact-finding, based upon record evidence.

In limiting the appointment of special masters to magistrates and in limiting the use of special masters to the purpose only of aiding the court in fact-finding, this provision applies even if the agent of the court is titled or described by the court not as a special master but as a receiver, master, master hearing officer, monitor, human rights committee, ombudsman, or consultant. The limitation in this provision on the selection and use of masters is intended to apply to anyone relied on by the court to make factual findings or to monitor or review compliance with, enforcement of, or implementation of a consent decree or of court-ordered relief in a prison conditions suit.

Subsection (f): Attorney's fees

This subsection permits prisoners challenging prison conditions under 42 U.S.C. § 1983 to receive attorney fees but reasonably limits the circumstances under which fees may be granted as well as the amount of the fees.

This subsection limits awards of attorney fees in two ways. First, it narrows the judicially-created view of a "prevailing party" so that a prisoner's attorney will be reimbursed only for those fees reasonably and directly incurred in proving an actual violation of a federal right. Narrowing the definition of "prevailing party" will eliminate both attorney fees that penalize voluntary improvements in prison conditions and attorney fees incurred in litigating unsuccessful claims, regardless of whether they are related to meritorious claims. While this provision eliminates the financial incentive for prisoners to include numerous non-meritorious claims in sweeping institutional litigation, it retains the financial incentive to bring lawsuits properly focused on prison conditions that actually violate federal law.

Second, this provision has the effect of reducing attorney fee awards by eliminating fees for litigation other than that necessary to prove a violation of a federal right. This eliminates the financial incentive for attorneys to litigate ancillary matters, such as attorney fee petitions, and to seek extensive hearings on remedial schemes.

Finally, this provision establishes a proportionality requirement for attorney fee awards. Under current law, the courts retain the discretion to award attorney fees that greatly exceed the extent of the relief obtained by the plaintiff prisoners. This proportionality requirement will discourage burdensome litigation of insubstantial claims where the prisoner can establish a technical violation of a federal right but he suffered no real harm from the violation. The proportionality requirement appropriately reminds courts that the size of the attorney fee award must not unreasonably exceed the damages awarded for the proven violation.

TITLE IV. ENHANCING PROTECTION

Against Incarcerated Criminals

Sec. 401. Prison security

This section amends Chapter 303 of title 18, United States Code, by adding section 4048.

Sec. 4048. Strength-training of prisoners prohibited

This section requires the Bureau of Prisons to ensure that: (1) federal prisoners do not engage in any physical activities designed to increase their fighting abilities; and (2) that all weight-lifting equipment and all equipment designed to increase the fighting abilities of prisoners be immediately removed from federal correctional facilities. This section only allows such equipment to be present in federal correctional facilities if approved by the Director of the Bureau of Prisons as part of a medically-required program of physical rehabilitation.

AGENCY VIEWS

The committee received a letter from the U.S. Department of Justice providing Administration views on H.R. 3, the "Taking Back Our Streets Act of 1995." This letter addressed the issues presented in H.R. 667 in pertinent part as follows:

V. TRUTH IN SENTENCING GRANTS

Title V of H.R. 3, in conjunction with § 901 of the bill, would repeal the prison funding program enacted by title II of the Violent Crime Control and Law Enforcement Act of 1994, and replace it with a new program involving different standards.¹ Under the new prison grants program, funding could only be used to increase, directly or indirectly, prison space for persons convicted of "serious violent felonies," which are essentially defined as violent crimes carrying a maximum prison term of 10 years or more.²

Fifth percent of the funds ("general grants") would be reserved for states that, since 1993, have increased the incarceration rate, average time served, and percentage of sentence served for convicted violent offenders, or that have average times served for murder, rape, robbery, and assault which exceed the national average by at least ten percent. The other fifty percent of grant funds ("truth in sentencing grants") would be reserved for states that have enacted truth in sentencing laws requiring persons convicted of serious violent felonies to serve at least 85% of their sentences, and that give victims an opportunity to be heard regarding the sentence and any post-conviction release. For eligible states in either category, funds would be

¹ Title V of H.R. 3 also repeals the drug courts program in title V of the 1994 Act.

² In addition to including violent crimes with maxima of ten years or more, the bill's definition appears to stipulate that certain offenses—murder, assault with intent to commit murder, arson, armed burglary, rape, assault with intent to commit rape, kidnapping, and armed robbery—are automatically included.

disbursed primarily in proportion to their general populations. The aggregate authorization for the program would be \$10,499,600,000 over six years.

Before addressing the substantive provisions of the Title, a bizarre funding limitation contained in it merits comment. Under this provision, no funds may be spent for *any* other Crime Bill purpose unless Congress appropriates the full \$10.5 billion for the prison grants.

This means that not a dollar can be spent to hire new police, add new FBI agents, fund Byrne Grants, fight rape or domestic violence, strengthen the border patrol, or keep schools open after-hours, unless the Congress commits the entire \$10.5 billion sum proposed for the prison grants.

Thus, even if there are only a few qualifying applications for prison grant funds in a given year; even if no state or locality asks for funding to build new prisons; even if billions of dollars for prison construction remains unspent, year-after-year—Congress must continue to appropriate an average of \$2 billion a year for *more* prison grants, every year, for the next five years, if it wants to have funding for even a single new police officer or federal law enforcement officer released.

Why Congress would want to hold thousands of police departments, prosecutors' officers, victims groups, and school districts hostage to its own future decisions about the level of appropriations for prison grants seems unclear. Why 100% of funding for new police should be cut-off if 1% of the funding for prison grants is reduced is a mystery. Why funding for a well-established program like the Byrne Grants should be slashed—as it would be under Title V of H.R. 3—if Congress chooses only to slow down the growth of a brand new program is unclear.

In addition to this strange funding rule, we oppose the substantive changes in this Title because we believe, in the end, they will result in fewer violent criminals being put behind bars than would implementation of the program enacted by the 1994 Crime Act.

First, in contrast to the enacted program's objective of increasing prison space and ensuring appropriate incarceration for all violent offenders, the proposed new program only authorizes funding to increase prison space for persons convicted of "serious violent felonies." It also only conditions eligibility for "truth in sentencing" grants (under proposed §503) on the state's requiring that persons convicted of "serious violent felonies" serve at least 85% of the sentence. This approach effectively rewards states with lower statutory maxima for violent crimes, since in these states the category of offenders convicted of violent crimes with maxima of ten years or more ("serious violent felonies") is smaller, and hence they need to do less to satisfy the funding eligibility condition. In relation to the objective of ensuring adequate penalties for violent offenders, this approach of favoring states with lower maximum sentences is perverse.

This approach also places undue emphasis on the current conviction offense. The conviction offense often does not fully reflect the actual offense conduct because of plea bargaining, and an offender with a serious history of criminal violence may pose a grave threat to the public, even if his current conviction offense carries a statutory maximum of less than ten years. These points are appropriately recognized in the enacted legislation, which conditions eligibility for truth in sentencing grants on laws which requires that at least 85% of the sentence be served for all violent offenders, or laws requiring that at least 85% of the sentence be served for all violent recidivists, together with actual increases in incarceration rate, time served, and percentage of sentence served for the full class of violent offenders. In contrast, the proposed new program requires nothing with respect to the incarceration of violent offenders as a condition of eligibility for truth in sentencing grants, other than those whose current conviction is for a "serious violent felony" in the defined sense.

The eligibility criteria for general grants under proposed §502 are also problematic in relation to the proposed limitations on the use of grant funds, because grant funds could only be used to increase prison space for persons convicted of "serious violent felonies," but eligibility for the general grants would depend on increasing incarceration or having relatively high average time served for more broadly defined categories of violent offenders. However, the authorized use of grant funds should be commensurate with the class of offenders for whom increased incarceration is required.

Second, the proposed new program is inferior to the existing program in its conditions regarding recognition of victims' rights. Under the existing program, eligibility for both general grants and truth in sentencing grants is conditioned on "policies that provide for the recognition of the rights and needs of crime victims." The Department of Justice has identified the following areas as implicating important rights and needs of crime victims: (1) notice to victims concerning case and offender status; (2) providing victims the opportunity to be present at all public court proceedings in their cases; (3) providing victims the opportunity to be heard at sentencing and parole hearings; (4) providing for restitution to victims; and (5) establishing administrative or other mechanisms to effectuate these rights. The need to provide appropriate recognition for victims' rights in these areas is being emphasized and elaborated in regulations and guidelines under the existing program.

In contrast, the proposed new program does not include any victims rights condition for general grants, and only requires an opportunity to be heard regarding sentencing and release as a condition for truth in sentencing grants. Under this formulation, the Department of Justice would have no authority to impose the more far-reaching victims

rights requirements that are being implemented under the existing program.

Third, the existing program provides for the disbursement of funds to eligible states primarily in proportion to part I violent crimes. In contrast, the proposed new program provides for the disbursement of such funds primarily in proportion to general population. This approach of disbursing funds for violent offender incarceration in proportion to general population, without regard to the incidence of violent crimes in the affected areas, will produce gross misallocations of resources in relation to actual need.

Hence, the proposed rewriting of the prison grants program in this title is an aggravated case of attempting to fix something that is not broken, and making it worse in the process. * * *

* * * * *

VII. STOPPING ABUSIVE PRISONER LAWSUITS

This title contains a set of reforms to help control abusive prisoner litigation. We support enactment of these provisions.

The Civil Rights of Institutionalized Persons Act (42 U.S.C. section 1997e) currently authorizes federal courts to suspend section 1983 suits by prisoners for up to 180 days in order to require exhaustion of administrative remedies. Section 701 of this bill strengthens the administrative exhaustion rule in this context—and brings it more into with administrative exhaustion rules that apply in other contexts—by generally prohibiting prisoners section 1983 lawsuits until administrative remedies are exhausted. The amendments in section 701 do not change the existing provisions that administrative remedies need be exhausted only if they are “plain, speedy, and effective,” and satisfy minimum standards set out in the statute or are otherwise fair and effective. Hence, these amendments do not raise concerns that prisoners will be shut off from access to a federal forum by ineffectual or unreasonably slow administrative review processes.

Section 702 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, which typically lack merit and are often brought for purposes of harassment or recreation.

Section 703 deletes from the minimum standards for prison grievance system 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 griev-

ance systems. It should be noted that this change will not necessarily require exhaustion of administrative remedies in prisoner § 1983 suits where exhaustion would not be required under existing law, since exhaustion can be required where the administrative remedies are “otherwise fair and effective”—even if the statutory minimum standards are not satisfied—and an advisory role for employees and inmates as provided in 42 U.S.C. 1997e(b)(2)(A) is not essential for fair and effective grievance systems.

Section 704 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 704(a) of the bill 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 704(b) of the bill 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, because candor by prisoners on this subject cannot reliably be expected. 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. * * *

* * * * *

IX. AMENDMENTS TO VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT

Section 901 in this title repeals the prison grants program in title II.A of the Violent Crime Control and Law Enforcement Act of 1994. As noted earlier, title V of H.R. 3 proposes a defective substitute for that program, and also covertly repeals the drug courts funding program enacted by title V of the 1994 Act. * * *

* * * * *

Repeal of Drug Courts Program

Drug abuse is inherently criminogenic, and a large proportion of all crime is drug-related. For too many drug abusing offenders, a normal probationary sentence or bout of confinement is likely to be just another shove through the revolving door. Conventional approaches to punishment have largely proven to be neither certain nor effective in this context.

In response to these realities, there has been a dramatic growth of interest in the past few years—by judges, prosecutors, and others on the front lines of the criminal drug abuse problem—in the development of special programs which combine criminal sanctions with coerced abstinence for drug abusing offenders. These programs collective known as “Drug Courts” typically include: (1) close continuing supervision of participating offenders with the threat and reality of more onerous conditions and criminal sanctions (“graduated punishment”) for participants who do not comply with program requirements or fail to show satisfactory progress; (2) mandatory periodic drug testing which provides participants with the certain knowledge that they cannot escape the consequences of their actions, and affords an objective measurements of progress; (3) mandatory participation in drug treatment; and (4) follow-up measures which help to prevent relapses after the conclusion of the main part of the program, and facilitate the transition to a law-abiding, productive existence.

These programs offer a critical alternative to the criminal justice system’s failure to subject drug abusing offenders to measures that are necessary to alter their behavior. The results suggest that these initiatives have enhanced the likelihood that the cycle of substance abuse and crime will be broken. Indeed, long-term research and evaluation of these approaches have demonstrated that they can be effective in reducing both drug abuse and drug-related crime. Programs involving these elements of intervention, close supervision, and coerced abstinence through mandatory drug testing and graduated punishment are the approaches that the drug court grant program of title V of the 1994 Crime Act will support.

Considering the seriousness of the criminal drug abuse problem, the limited efficacy of conventional measures in this area, and the promising results under drug court programs that have already been established, it is nonsensical to propose that the support that Congress has recently approved for these programs should be totally eliminated, and replaced with nothing. Hence, we oppose the proposal to repeal title V of the enacted legislation.

We believe, however, that the formulation of drug courts program might legitimately be revised to permit the use of funds for more effective conventional prosecution in drug cases, rather than exclusively for programs that focus on controlling and altering the behavior of drug abusers. Effective enforcement requires not only efforts to reform drug

abusers, but also aggressive measures to arrest, prosecute, and incapacitate the traffickers who prey on their addictions and weaknesses, and who account for so much of the criminal violence that mars the life of our nation. In furtherance of this objective, some jurisdictions have established or experimented with differentiated case management techniques or specialized courts that expedite drug case dispositions and otherwise enhance the effectiveness of prosecution.

These innovated methods also merit support and encouragement, and we would be amenable to amending the drug courts program to permit support for prosecution-oriented “drug courts” of this type as well. We would be pleased to work with interested members of Congress in so amending the drug courts funding program.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

* * * * *

SEC. 2. TABLE OF CONTENTS.

The following is the table of contents for this Act:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—PUBLIC SAFETY AND POLICING

Sec. 10001. Short title.

Sec. 10002. Purposes.

Sec. 10003. Community policing; “Cops on the Beat”.

TITLE II—PRISONS

[Subtitle A—Violent Offender Incarceration and Truth in Sentencing Incentive Grants]

[Sec. 20101. Grants for correctional facilities.

[Sec. 20102. Truth in sentencing incentive grants.

[Sec. 20103. Violent offender incarceration grants.

[Sec. 20104. Matching requirement.

[Sec. 20105. Rules and regulations.

[Sec. 20106. Technical assistance and training.

[Sec. 20107. Evaluation.

[Sec. 20108. Definitions.

[Sec. 20109. Authorization of appropriations.]

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[TITLE V—DRUG COURTS]

[Sec. 50001. Drug courts.

[Sec. 50002. Study by the General Accounting Office.]

TITLE V—TRUTH-IN-SENTENCING GRANTS

Sec. 501. Authorization of grants.

Sec. 502. General grants.
 Sec. 503. Truth-in-sentencing grants.
 Sec. 504. Special rules.
 Sec. 505. Formula for grants.
 Sec. 506. Accountability.
 Sec. 507. Authorization of appropriations.
 Sec. 508. Definitions.

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TITLE II—PRISONS

[Subtitle A—Violent Offender Incarceration and Truth in Sentencing Incentive Grants

[SEC. 20101. GRANTS FOR CORRECTIONAL FACILITIES.

[(a) GRANT AUTHORIZATION.—The Attorney General may make grants to individual States and to States organized as multi-State compacts to construct, develop, expand, modify, operate, or improve correctional facilities, including boot camp facilities and other alternative correctional facilities that can free conventional prison space for the confinement of violent offenders, to ensure that prison cell space is available for the confinement of violent offenders and to implement truth in sentencing laws for sentencing violent offenders.

[(b) ELIGIBILITY.—To be eligible to receive a grant under this subtitle, a State or States organized as multi-State compacts shall submit an application to the Attorney General which includes—

[(1) assurances that the State or States have implemented, or will implement, correctional policies and programs, including truth in sentencing laws that ensure that violent offenders serve a substantial portion of the sentences imposed, that are designed to provide sufficiently severe punishment for violent offenders, including violent juvenile offenders, and that the prison time served is appropriately related to the determination that the inmate is a violent offender and for a period of time deemed necessary to protect the public;

[(2) assurances that the State or States have implemented policies that provide for the recognition of the rights and needs of crime victims;

[(3) assurances that funds received under this section will be used to construct, develop, expand, modify, operate, or improve correctional facilities to ensure that prison cell space is available for the confinement of violent offenders;

[(4) assurances that the State or States have a comprehensive correctional plan which represents an integrated approach to the management and operation of correctional facilities and programs and which includes diversion programs, particularly drug diversion programs, community corrections programs, a prisoner screening and security classification system, appropriate professional training for corrections officers in dealing with violent offenders, prisoner rehabilitation and treatment programs, prisoner work activities (including, to the extent

practicable, activities relating to the development, expansion, modification, or improvement of correctional facilities) and job skills programs, educational programs, a pre-release prisoner assessment to provide risk reduction management, post-release assistance, and an assessment of recidivism rates;

[(5) assurances that the State or States have involved counties and other units of local government, when appropriate, in the construction, development, expansion, modification, operation or improvement of correctional facilities designed to ensure the incarceration of violent offenders, and that the State or States will share funds received under this section with counties and other units of local government, taking into account the burden placed on these units of government when they are required to confine sentenced prisoners because of overcrowding in State prison facilities;

[(6) assurances that funds received under this section will be used to supplement, not supplant, other Federal, State, and local funds;

[(7) assurances that the State or States have implemented, or will implement within 18 months after the date of the enactment of this Act, policies to determine the veteran status of inmates and to ensure that incarcerated veterans receive the veterans benefits to which they are entitled;

[(8) if applicable, documentation of the multi-State compact agreement that specifies the construction, development, expansion, modification, operation, or improvement of correctional facilities; and

[(9) if applicable, a description of the eligibility criteria for prisoner participation in any boot camp that is to be funded.

[(c) CONSIDERATION.—The Attorney General, in making such grants, shall give consideration to the special burden placed on States which incarcerate a substantial number of inmates who are in the United States illegally.

[SEC. 20102. TRUTH IN SENTENCING INCENTIVE GRANTS.

[(a) TRUTH IN SENTENCING GRANT PROGRAM.—Fifty percent of the total amount of funds appropriated to carry out this subtitle for each of fiscal years 1995, 1996, 1997, 1998, 1999, and 2000 shall be made available for Truth in Sentencing Incentive Grants. To be eligible to receive such a grant, a State must meet the requirements of section 20101(b) and shall demonstrate that the State—

[(1) has in effect laws which require that persons convicted of violent crimes serve not less than 85 percent of the sentence imposed; or

[(2) since 1993—

[(A) has increased the percentage of convicted violent offenders sentenced to prison;

[(B) has increased the average prison time which will be served in prison by convicted violent offenders sentenced to prison;

[(C) has increased the percentage of sentence which will be served in prison by violent offenders sentenced to prison; and

[(D) has in effect at the time of application laws requiring that a person who is convicted of a violent crime shall serve not less than 85 percent of the sentence imposed if—

[(i) the person has been convicted on 1 or more prior occasions in a court of the United States or of a State of a violent crime or a serious drug offense; and

[(ii) each violent crime or serious drug offense was committed after the defendant's conviction of the preceding violent crime or serious drug offense.

[(b) ALLOCATION OF TRUTH IN SENTENCING INCENTIVE FUNDS.—

[(1) FORMULA ALLOCATION.—The amount available to carry out this section for any fiscal year under subsection (a) shall be allocated to each eligible State in the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for 1993 bears to the number of part 1 violent crimes reported by all States to the Federal Bureau of Investigation for 1993.

[(2) TRANSFER OF UNUSED FUNDS.—On September 30 of each of fiscal years 1996, 1998, 1999, and 2000, the Attorney General shall transfer to the funds to be allocated under section 20103(b)(1) any funds made available to carry out this section that are not allocated to an eligible State under paragraph (1).

[SEC. 20103. VIOLENT OFFENDER INCARCERATION GRANTS.]

[(a) VIOLENT OFFENDER INCARCERATION GRANT PROGRAM.—Fifty percent of the total amount of funds appropriated to carry out this subtitle for each of fiscal years 1995, 1996, 1997, 1998, 1999, and 2000 shall be made available for Violent Offender Incarceration Grants. To be eligible to receive such a grant, a State or States must meet the requirements of section 20101(b).

[(b) ALLOCATION OF VIOLENT OFFENDER INCARCERATION FUNDS.—

[(1) FORMULA ALLOCATION.—Eighty-five percent of the sum of the amount available for Violent Offender Incarceration Grants for any fiscal year under subsection (a) and any amount transferred under section 20102(b)(2) for that fiscal year shall be allocated as follows:

[(A)] 0.25 percent shall be allocated to each eligible State except that the United States Virgin Islands, American Samoa, Guam and the Northern Mariana Islands each shall be allocated 0.05 percent.

[(B)] The amount remaining after application of subparagraph (A) shall be allocated to each eligible State in the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for 1993 bears to the number of part 1 violent crimes reported by all States to the Federal Bureau of Investigation for 1993.

[(2) DISCRETIONARY ALLOCATION.—Fifteen percent of the sum of the amount available for Violent Offender Incarceration Grants for any fiscal year under subsection (a) and any amount transferred under section 20103(b)(3) for that fiscal year shall be allocated at the discretion of the Attorney General to States that have demonstrated the greatest need for such grants and the ability to best utilize the funds to meet the objectives of the

grant program and ensure that prison cell space is available for the confinement of violent offenders.

[(3) TRANSFER OF UNUSED FORMULA FUNDS.—On September 30 of each of fiscal years 1996, 1997, 1998, 1999, and 2000, the Attorney General shall transfer to the discretionary program under paragraph (2) any funds made available for allocation under paragraph (1) that are not allocated to an eligible State under paragraph (1).

[SEC. 20104. MATCHING REQUIREMENT.]

[The Federal share of a grant received under this subtitle may not exceed 75 percent of the costs of a proposal described in an application approved under this subtitle.]

[SEC. 20105. RULES AND REGULATIONS.]

[(a)] The Attorney General shall issue rules and regulations regarding the uses of grant funds received under this subtitle not later than 90 days after the date of enactment of this Act.

[(b)] If data regarding part 1 violent crimes in any State for 1993 is unavailable or substantially inaccurate, the Attorney General shall utilize the best available comparable data regarding the number of violent crimes for 1993 for that State for the purposes of allocation of any funds under this subtitle.

[SEC. 20106. TECHNICAL ASSISTANCE AND TRAINING.]

[The Attorney General may request that the Director of the National Institute of Corrections and the Director of the Federal Bureau of Prisons provide technical assistance and training to a State or States that receive a grant under this subtitle to achieve the purposes of this subtitle.]

[SEC. 20107. EVALUATION.]

[The Attorney General may request the Director of the National Institute of Corrections to assist with an evaluation of programs established with funds under this subtitle.]

[SEC. 20108. DEFINITIONS.]

[In this subtitle—

["boot camp" means a correctional program of not more than 6 months' incarceration involving—

[(A) assignment for participation in the program, in conformity with State law, by prisoners other than prisoners who have been convicted at any time of a violent felony;

[(B) adherence by inmates to a highly regimented schedule that involves strict discipline, physical training, and work;

[(C) participation by inmates in appropriate education, job training, and substance abuse counseling or treatment; and

[(D) post-incarceration aftercare services for participants that are coordinated with the program carried out during the period of imprisonment.]

["part 1 violent crimes" means murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports.]

["State" or "States" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

[SEC. 20109. AUTHORIZATION OF APPROPRIATIONS.]

There are authorized to be appropriated to carry out this subtitle—

- [(1) \$175,000,000 for fiscal year 1995;
- [(2) \$750,000,000 for fiscal year 1996;
- [(3) \$1,000,000,000 for fiscal year 1997;
- [(4) \$1,900,000,000 for fiscal year 1998;
- [(5) \$2,000,000,000 for fiscal year 1999; and
- [(6) \$2,070,000,000 for fiscal year 2000.]

* * * * *

[TITLE V—DRUG COURTS]

[SEC. 50001. DRUG COURTS.]

[(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 40231(a), is amended—

- [(1) by redesignating part V as part W;
- [(2) by redesignating section 2201 as section 2301; and
- [(3) by inserting after part U the following new part:

[“PART V—DRUG COURTS]

[“SEC. 2201. GRANT AUTHORITY.]

["The Attorney General may make grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, for programs that involve—

["(1) continuing judicial supervision over offenders with substance abuse problems who are not violent offenders; and

["(2) the integrated administration of other sanctions and services, which shall include—

["(A) mandatory periodic testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant;

["(B) substance abuse treatment for each participant;

["(C) diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress; and

["(D) programmatic, offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services for each participant who requires such services.

[“SEC. 2202. PROHIBITION OF PARTICIPATION BY VIOLENT OFFENDERS.]

["The Attorney General shall—

["(1) issue regulations and guidelines to ensure that the programs authorized in this part do not permit participation by violent offenders; and

["(2) immediately suspend funding for any grant under this part, pending compliance, if the Attorney General finds that violent offenders are participating in any program funded under this part.

[“SEC. 2203. DEFINITION.]

["In this part, 'violent offender' means a person who—

["(1) is charged with or convicted of an offense, during the course of which offense or conduct—

["(A) the person carried, possessed, or used a firearm or dangerous weapon;

["(B) there occurred the death of or serious bodily injury to any person; or

["(C) there occurred the use of force against the person of another,

without regard to whether any of the circumstances described in subparagraph (A), (B), or (C) is an element of the offense or conduct of which or for which the person is charged or convicted; or

["(2) has one or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.

[“SEC. 2204. ADMINISTRATION.]

["(a) CONSULTATION.—The Attorney General shall consult with the Secretary of Health and Human Services and any other appropriate officials in carrying out this part.

["(b) USE OF COMPONENTS.—The Attorney General may utilize any component or components of the Department of Justice in carrying out this part.

["(c) REGULATORY AUTHORITY.—The Attorney General may issue regulations and guidelines necessary to carry out this part.

["(d) APPLICATIONS.—In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this part shall—

["(1) include a long-term strategy and detailed implementation plan;

["(2) explain the applicant's inability to fund the program adequately without Federal assistance;

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

["(4) identify related governmental or community initiatives which complement or will be coordinated with the proposal;

["(5) certify that there has been appropriate consultation with all affected agencies and that there will be appropriate coordination with all affected agencies in the implementation of the program;

["(6) certify that participating offenders will be supervised by one or more designated judges with responsibility for the drug court program;

[(7) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support; and

[(8) describe the methodology that will be used in evaluating the program.

["SEC. 2205. APPLICATIONS.

["To request funds under this part, the chief executive or the chief justice of a State or the chief executive or chief judge of a unit of local government or Indian tribal government shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

["SEC. 2206. FEDERAL SHARE.

["The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the program described in the application submitted under section 2205 for the fiscal year for which the program receives assistance under this part, unless the Attorney General waives, wholly or in part, the requirement of a matching contribution under this section. In-kind contributions may constitute a portion of the non-Federal share of a grant.

["SEC. 2207. GEOGRAPHIC DISTRIBUTION.

["The Attorney General shall ensure that, to the extent practicable, an equitable geographic distribution of grant awards is made.

["SEC. 2208. REPORT.

["A State, Indian tribal government, or unit of local government that receives funds under this part during a fiscal year shall submit to the Attorney General a report in March of the following year regarding the effectiveness of this part.

["SEC. 2209. TECHNICAL ASSISTANCE, TRAINING, AND EVALUATION.

["(a) TECHNICAL ASSISTANCE AND TRAINING.—The Attorney General may provide technical assistance and training in furtherance of the purposes of this part.

["(b) EVALUATIONS.—In addition to any evaluation requirements that may be prescribed for grantees, the Attorney General may carry out or make arrangements for evaluations of programs that receive support under this part.

["(c) ADMINISTRATION.—The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, in collaboration with the Secretary of Health and Human Services, or through grants, contracts, or other cooperative arrangements with other entities."

[(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 40231(b), is amended by striking the matter relating to part V and inserting the following:

["PART V—DRUG COURTS

["Sec. 2201. Grant authority.

["Sec. 2202. Prohibition of participation by violent offenders.

["Sec. 2203. Definition.

["Sec. 2204. Administration.

["Sec. 2205. Applications.

["Sec. 2206. Federal share.

["Sec. 2207. Geographic distribution.

["Sec. 2208. Report.

["Sec. 2209. Technical assistance, training, and evaluation.

["PART W—TRANSITION-EFFECTIVE DATE-REPEALER

["Sec. 2301. Continuation of rules, authorities, and proceedings."]

[(c) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793), as amended by section 40231(c), is amended—

[(1) in paragraph (3) by striking "and U" and inserting "U, and V"; and

[(2) by adding at the end the following new paragraph:

["(20) There are authorized to be appropriated to carry out part V—

["(A) \$100,000,000 for fiscal year 1995;

["(B) \$150,000,000 for fiscal year 1996;

["(C) \$150,000,000 for fiscal year 1997;

["(D) \$200,000,000 for fiscal year 1998;

["(E) \$200,000,000 for fiscal year 1999; and

["(F) \$200,000,000 for fiscal year 2000."]

["SEC. 50002. STUDY BY THE GENERAL ACCOUNTING OFFICE.

[(a) IN GENERAL.—The Comptroller General of the United States shall study and assess the effectiveness and impact of grants authorized by part V of title I of the Omnibus Crime Control and Safe Streets Act of 1968 as added by section 50001(a) and report to Congress the results of the study on or before January 1, 1997.

[(b) DOCUMENTS AND INFORMATION.—The Attorney General and grant recipients shall provide the Comptroller General with all relevant documents and information that the Comptroller General deems necessary to conduct the study under subsection (a), including the identities and criminal records of program participants.

[(c) CRITERIA.—In assessing the effectiveness of the grants made under programs authorized by part V of the Omnibus Crime Control and Safe Streets Act of 1968, the Comptroller General shall consider, among other things—

[(1) recidivism rates of program participants;

[(2) completion rates among program participants;

[(3) drug use by program participants; and

[(4) the costs of the program to the criminal justice system.]

TITLE V—TRUTH IN SENTENCING GRANTS

SEC. 501. AUTHORIZATION OF GRANTS.

(a) IN GENERAL.—The Attorney General is authorized to provide grants to eligible States and to eligible States organized as a regional compact to build, expand, and operate space in correctional facilities in order to increase the prison bed capacity in such facilities for the confinement of persons convicted of a serious violent felony and to build, expand, and operate temporary or permanent correctional facilities, including facilities on military bases and boot camp facilities, for the confinement of convicted nonviolent offenders

and criminal aliens for the purpose of freeing suitable existing prison space for the confinement of persons convicted of a serious violent felony.

(b) **LIMITATION.**—An eligible State or eligible States organized as a regional compact may receive either a general grant under section 502 or a truth-in-sentencing incentive grant under section 503.

SEC. 502. GENERAL GRANTS.

(a) **DISTRIBUTION OF GENERAL GRANTS.**—50 percent of the total amount of funds made available under this title for each of the fiscal years 1995 through 2000 shall be made available for general eligibility grants for each State or States organized as a regional compact that meets the requirements of subsection (b).

(b) **GENERAL GRANTS.**—In order to be eligible to receive funds under subsection (a), a State or States organized as a regional compact shall submit an application to the Attorney General that provides assurances that such State since 1993 has—

- (1) increased the percentage of convicted violent offenders sentenced to prison;
- (2) increased the average prison time actually to be served in prison by convicted violent offenders sentenced to prison; and
- (3) increased the percentage of sentence to be actually served in prison by violent offenders sentenced to prison.

SEC. 503. TRUTH-IN-SENTENCING GRANTS.

(a) **TRUTH-IN-SENTENCING INCENTIVE GRANTS.**—50 percent of the total amount of funds made available under this title for each of the fiscal years 1995 through 2000 shall be made available for truth-in-sentencing incentive grants to each State or States organized as a regional compact that meet the requirements of subsection (c).

(b) **ELIGIBILITY FOR TRUTH-IN-SENTENCING INCENTIVE GRANTS.**—In order to be eligible to receive funds under subsection (a), a State or States organized as a regional compact shall submit an application to the Attorney General that provides assurances that each State applying has enacted laws and regulations which include—

(1)(A) truth-in-sentencing laws which require persons convicted of a serious violent felony serve not less than 85 percent of the sentence imposed or 85 percent of the court-ordered maximum sentence for States that practice indeterminate sentencing; or

(B) truth-in-sentencing laws which have been enacted, but not yet implemented, that require such State, not later than three years after such State submits an application to the Attorney General, to provide that persons convicted of a serious violent felony serve not less than 85 percent of the sentence imposed or 85 percent of the court-ordered maximum sentence for States that practice indeterminate sentencing, and

(2) laws requiring that the sentencing or releasing authorities notify and allow the victims of the defendant or the family of such victims the opportunity to be heard regarding the issue of sentencing and any postconviction release.

SEC. 504. SPECIAL RULES.

(a) **INMATE CONTRIBUTION REQUIREMENT.**—To be eligible to receive a grant under section 502 or 503, a State or States organized as a regional compact shall provide an assurance to the Attorney

General that, to the extent practicable, inmate labor will be used to build and expand correctional facilities.

(b) **ADDITIONAL ELIGIBILITY REQUIREMENT.**—To be eligible to receive a grant under this title, each State shall provide an assurance to the Attorney General that such State will involve counties and other units of local government, when appropriate, in the construction, development, expansion, modification, operation, or improvement of correctional facilities designed to ensure the incarceration of offenders, and that each State will share funds received under this title with any county or other unit of local government that is housing State prisoners, taking into account the burden placed on such county or unit of local government in confining prisoners due to overcrowding in State prison facilities in furtherance of the purposes of this Act.

(c) **INDETERMINANT SENTENCING EXCEPTION.**—Notwithstanding the provisions of paragraphs (1) through (3) of section 502(b), a State shall be eligible for grants under this title, if the State, not later than the date of the enactment of this title—

(1) practices indeterminate sentencing; and

(2) the average times served in such State for the offenses of murder, rape, robbery, and assault exceed, by 10 percent or greater, the national average of times served for such offenses.

(d) **EXCEPTION.**—The requirements under section 503(b) shall apply, except that a State may provide that the Governor of the State may allow for earlier release of a geriatric prisoner or whose medical condition precludes the prisoner from posing a threat to the public after a public hearing in which representatives of the public and the prisoner's victims have an opportunity to be heard regarding a proposed release.

(e) **REQUIREMENT FOR INCARCERATED VETERANS.**—To be eligible to receive a grant under section 502 or 503, each State shall provide an assurance to the Attorney General that the State has implemented or will implement, not later than 18 months after the date of the enactment of the Violent Criminal Incarceration Act of 1995, policies to determine the veteran status of inmates and to ensure that incarcerated veterans receive the veterans benefits to which they are entitled.

SEC. 505. FORMULA FOR GRANTS.

To determine the amount of funds that each eligible State or eligible States organized as a regional compact may receive to carry out programs under section 502 or 503, the Attorney General shall apply the following formula:

(1) \$500,000 or 0.40 percent, whichever is greater shall be allocated to each participating State or compact, as the case may be; and

(2) of the total amount of funds remaining after the allocation under paragraph (1), there shall be allocated to each State or compact, as the case may be, an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State or compact, as the case may be, bears to the population of all the States.

SEC. 506. ACCOUNTABILITY.

(a) **FISCAL REQUIREMENTS.**—A State or States organized as a regional compact that receives funds under this title shall use accounting, audit, and fiscal procedures that conform to guidelines which shall be prescribed by the Attorney General.

(b) **REPORTING.**—Each State that receives funds under this title shall submit an annual report, beginning on January 1, 1996, and each January 1 thereafter, to the Congress regarding compliance with the requirements of this title.

(c) **ADMINISTRATIVE PROVISIONS.**—The administrative provisions of sections 801 and 802 of the Omnibus Crime Control and Safe Streets Act of 1968 shall apply to the Attorney General in the same manner as such provisions apply to the officials listed in such sections.

SEC. 507. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There are authorized to be appropriated to carry out this title—

- (1) \$997,500,000 for fiscal year 1996;
- (2) \$1,330,000,000 for fiscal year 1997;
- (3) \$2,527,000,000 for fiscal year 1998;
- (4) \$2,660,000,000 for fiscal year 1999; and
- (5) \$2,753,100,000 for fiscal year 2000.

(b) **LIMITATIONS ON FUNDS.**—

(1) **USES OF FUNDS.**—Funds made available under this title may be used to carry out the purposes described in section 501(a).

(2) **NONSUPPLANTING REQUIREMENT.**—Funds made available under this section shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State sources.

(3) **ADMINISTRATIVE COSTS.**—Not more than three percent of the funds available under this section may be used for administrative costs.

(4) **MATCHING FUNDS.**—The Federal share of a grant received under this title may not exceed 75 percent of the costs of a proposal as described in an application approved under this title.

(5) **CARRY OVER OF APPROPRIATIONS.**—Any funds appropriated but not expended as provided by this section during any fiscal year shall remain available until expended.

SEC. 508. DEFINITIONS.

As used in this title—

(1) the term “indeterminate sentencing” means a system by which—

(A) the court has discretion on imposing the actual length of the sentence imposed, up to the statutory maximum; and

(B) an administrative agency, generally the parole board, controls release between court-ordered minimum and maximum sentence;

(2) the term “serious violent felony” means—

(A) an offense that is a felony and has as an element the use, attempted use, or threatened use of physical force

against the person or property of another and has a maximum term of imprisonment of 10 years or more,

(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense and has a maximum term of imprisonment of 10 years or more, or

(C) such crimes include murder, assault with intent to commit murder, arson, armed burglary, rape, assault with intent to commit rape, kidnapping, and armed robbery; and

(3) the term “State” means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

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OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

TITLE I—JUSTICE SYSTEM IMPROVEMENT

* * * * *

PART J—FUNDING

AUTHORIZATION OF APPROPRIATIONS

SEC. 1001. (a)(1) * * *

* * * * *

[(20) There are authorized to be appropriated to carry out part V—

- [(A) \$100,000,000 for fiscal year 1995;
- [(B) \$150,000,000 for fiscal year 1996;
- [(C) \$150,000,000 for fiscal year 1997;
- [(D) \$200,000,000 for fiscal year 1998;
- [(E) \$200,000,000 for fiscal year 1999; and
- [(F) \$200,000,000 for fiscal year 2000.]

* * * * *

[PART V—DRUG COURTS

[SEC. 2201. GRANT AUTHORITY.

[The Attorney General may make grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, for programs that involve—

[(1) continuing judicial supervision over offenders with substance abuse problems who are not violent offenders; and

[(2) the integrated administration of other sanctions and services, which shall include—

[(A) mandatory periodic testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant;

[(B) substance abuse treatment for each participant;

[(C) diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress; and

[(D) programmatic, offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services for each participant who requires such services.

[SEC. 2202. PROHIBITION OF PARTICIPATION BY VIOLENT OFFENDERS.

[The Attorney General shall—

[(1) issue regulations and guidelines to ensure that the programs authorized in this part do not permit participation by violent offenders; and

[(2) immediately suspend funding for any grant under this part, pending compliance, if the Attorney General finds that violent offenders are participating in any program funded under this part.

[SEC. 2203. DEFINITION.

[In this part, “violent offender” means a person who—

[(1) is charged with or convicted of an offense, during the course of which offense or conduct—

[(A) the person carried, possessed, or used a firearm or dangerous weapon;

[(B) there occurred the death of or serious bodily injury to any person; or

[(C) there occurred the use of force against the person of another, without regard to whether any of the circumstances described in subparagraph (A), (B), or (C) is an element of the offense or conduct of which or for which the person is charged or convicted; or

[(2) has one or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.

[SEC. 2204. ADMINISTRATION.

[(a) CONSULTATION.—The Attorney General shall consult with the Secretary of Health and Human Services and any other appropriate officials in carrying out this part.

[(b) USE OF COMPONENTS.—The Attorney General may utilize any component or components of the Department of Justice in carrying out this part.

[(c) REGULATORY AUTHORITY.—The Attorney General may issue regulations and guidelines necessary to carry out this part.

[(d) APPLICATIONS.—In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this part shall—

[(1) include a long-term strategy and detailed implementation plan;

[(2) explain the applicant’s inability to fund the program adequately without Federal assistance;

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

[(4) identify related governmental or community initiatives which complement or will be coordinated with the proposal;

[(5) certify that there has been appropriate consultation with all affected agencies and that there will be appropriate coordination with all affected agencies in the implementation of the program;

[(6) certify that participating offenders will be supervised by one or more designated judges with responsibility for the drug court program;

[(7) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support; and

[(8) describe the methodology that will be used in evaluating the program.

[SEC. 2205. APPLICATIONS.

[To request funds under this part, the chief executive or the chief justice of a State or the chief executive or chief judge of a unit of local government or Indian tribal government shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

[SEC. 2206. FEDERAL SHARE.

[The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the program described in the application submitted under section 2205 for the fiscal year for which the program receives assistance under this part, unless the Attorney General waives, wholly or in part, the requirement of a matching contribution under this section. In-kind contributions may constitute a portion of the non-Federal share of a grant.

[SEC. 2207. GEOGRAPHIC DISTRIBUTION.

[The Attorney General shall ensure that, to the extent practicable, an equitable geographic distribution of grant awards is made.

[SEC. 2208. REPORT.

[A State, Indian tribal government, or unit of local government that receives funds under this part during a fiscal year shall submit to the Attorney General a report in March of the following year regarding the effectiveness of this part.

[SEC. 2209. TECHNICAL ASSISTANCE, TRAINING, AND EVALUATION.

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

[(b) EVALUATIONS.—In addition to any evaluation requirements that may be prescribed for grantees, the Attorney General may carry out or make arrangements for evaluations of programs that receive support under this part.

[(c) ADMINISTRATION.—The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, in collaboration with the Secretary of

Health and Human Services, or through grants, contracts, or other cooperative arrangements with other entities.]

CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT

SEC. 7. EXHAUSTION OF REMEDIES.

(a)(1) Subject to the provisions of paragraph (2), [in any action brought] *no action shall be brought* pursuant to section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) by an adult convicted of a crime confined in any jail, prison, or other correctional facility, [the court shall, if the court believes that such a requirement would be appropriate and in the interests of justice, continue such case for a period of not to exceed 180 days in order to require exhaustion of] *until such plain, speedy, and effective administrative remedies as are available are exhausted.*

(3) *The court shall on its own motion or on motion of a party dismiss any action brought pursuant to section 1979 of the Revised Statutes of the United States by an adult convicted of a crime and confined in any jail, prison, or other correctional facility if the court is satisfied that the action fails to state a claim upon which relief can be granted or is frivolous or malicious.*

(b)(1) * * *

(2) The minimum standards shall provide—

[(A) for an advisory role for employees and inmates of any jail, prison, or other correctional institution (at the most decentralized level as is reasonably possible), in the formulation, implementation, and operation of the system;]

[(B)] (A) specific maximum time limits for written replies to grievances with reasons thereto at each decision level within the system;

[(C)] (B) for priority processing of grievances which are of an emergency nature, including matters in which delay would subject the grievant to substantial risk of personal injury or other damages;

[(D)] (C) for safeguards to avoid reprisals against any grievant or participant in the resolution of a grievance; and

[(E)] (D) for independent review of the disposition of grievances, including alleged reprisals, by a person or other entity not under the direct supervision or direct control of the institution.

SECTION 1915 OF TITLE 28, UNITED STATES CODE

§ 1915. Proceedings in forma pauperis

(a) * * *

(d) The court may request an attorney to represent any such person unable to employ counsel and [may] *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.*

(f) *If a prisoner in a correctional institution files an affidavit in accordance with subsection (a) of this section, such prisoner shall include in that affidavit a statement of all assets such prisoner possesses. The court shall 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. The court shall require full or partial payment of filing fees according to the prisoner's ability to pay.*

TITLE 18, UNITED STATES CODE

PART II—CRIMINAL PROCEDURE

CHAPTER 229—POSTSENTENCE ADMINISTRATION

SUBCHAPTER C—IMPRISONMENT

SUBCHAPTER C—IMPRISONMENT

- Sec.
3621. Imprisonment of a convicted person.
3622. Temporary release of a prisoner.
3623. Transfer of a prisoner to State authority.

3626. Appropriate remedies with respect to prison [crowding] conditions.

[§ 3626. Appropriate remedies with respect to prison crowding]

[(a) REQUIREMENT OF SHOWING WITH RESPECT TO THE PLAINTIFF IN PARTICULAR.—

[(1) HOLDING.—A Federal court shall not hold prison or jail crowding unconstitutional under the eighth amendment except to the extent that an individual plaintiff inmate proves that the crowding causes the infliction of cruel and unusual punishment of that inmate.

[(2) RELIEF.—The relief in a case described in paragraph (1) shall extend no further than necessary to remove the conditions that are causing the cruel and unusual punishment of the plaintiff inmate.

[(b) INMATE POPULATION CEILINGS.—

[(1) REQUIREMENT OF SHOWING WITH RESPECT TO PARTICULAR PRISONERS.—A Federal court shall not place a ceiling on the inmate population of any Federal, State, or local detention facility as an equitable remedial measure for conditions that violate the eighth amendment unless crowding is inflicting cruel and unusual punishment on particular identified prisoners.]

[(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed to have any effect on Federal judicial power to issue equitable relief other than that described in paragraph (1), including the requirement of improved medical or health care and the imposition of civil contempt fines or damages, where such relief is appropriate.]

[(c) PERIODIC REOPENING.—Each Federal court order or consent decree seeking to remedy an eighth amendment violation shall be reopened at the behest of a defendant for recommended modification at a minimum of 2-year intervals.]

§3626. Appropriate remedies with respect to prison conditions

(a) REQUIREMENTS FOR RELIEF.—

(1) LIMITATIONS ON PROSPECTIVE RELIEF.—Prospective relief in a civil action with respect to prison conditions shall extend no further than necessary to remove the conditions that are causing the deprivation of the Federal rights of individual plaintiffs in that civil action. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn and the least intrusive means to remedy the violation of the Federal right. In determining the intrusiveness of the relief, the court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

(2) PRISON POPULATION REDUCTION RELIEF.—In any civil action with respect to prison conditions, the court shall not grant or approve any relief whose purpose or effect is to reduce or limit the prison population, unless the plaintiff proves that crowding is the primary cause of the deprivation of the Federal right and no other relief will remedy that deprivation.

(b) TERMINATION OF RELIEF.—

(1) AUTOMATIC TERMINATION OF PROSPECTIVE RELIEF AFTER 2-YEAR PERIOD.—In any civil action with respect to prison conditions, any prospective relief shall automatically terminate 2 years after the later of—

(A) the date the court found the violation of a Federal right that was the basis for the relief; or

(B) the date of the enactment of the Stop Turning Out Prisoners Act.

(2) IMMEDIATE TERMINATION OF PROSPECTIVE RELIEF.—In any civil action with respect to prison conditions, a defendant or intervenor shall be entitled to the immediate termination of any prospective relief, if that relief was approved or granted in the absence of a finding by the court that prison conditions violated a Federal right.

(c) PROCEDURE FOR MOTIONS AFFECTING PROSPECTIVE RELIEF.—

(1) GENERALLY.—The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions.

(2) AUTOMATIC STAY.—Any prospective relief subject to a pending motion shall be automatically stayed during the period—

(A) beginning on the 30th day after such motion is filed, in the case of a motion made under subsection (b); and

(B) beginning on the 180th day after such motion is filed, in the case of a motion made under any other law; and ending on the date the court enters a final order ruling on that motion.

(d) STANDING.—Any Federal, State, or local official or unit of government—

(1) whose jurisdiction or function includes the prosecution or custody of persons in a prison subject to; or

(2) who otherwise is or may be affected by;

any relief whose purpose or effect is to reduce or limit the prison population shall have standing to oppose the imposition or continuation in effect of that relief and may intervene in any proceeding relating to that relief. Standing shall be liberally conferred under this subsection so as to effectuate the remedial purposes of this section.

(e) SPECIAL MASTERS.—In any civil action in a Federal court with respect to prison conditions, any special master or monitor shall be a United States magistrate and shall make proposed findings on the record on complicated factual issues submitted to that special master or monitor by the court, but shall have no other function. The parties may not by consent extend the function of a special master beyond that permitted under this subsection.

(f) ATTORNEY'S FEES.—No attorney's fee under section 722 of the Revised Statutes of the United States (42 U.S.C. 1988) may be granted to a plaintiff in a civil action with respect to prison conditions except to the extent such fee is—

(1) directly and reasonably incurred in proving an actual violation of the plaintiff's Federal rights; and

(2) proportionally related to the extent the plaintiff obtains court ordered relief for that violation.

(g) DEFINITIONS.—As used in this section—

(1) the term "prison" means any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law;

(2) the term "relief" means all relief in any form which may be granted or approved by the court, and includes consent decrees and settlement agreements; and

(3) the term "prospective relief" means all relief other than compensatory monetary damages.

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PART III—PRISONS AND PRISONERS

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CHAPTER 303—BUREAU OF PRISONS

- Sec.
 4041. Bureau of Prisons; director and employees.
 4042. Duties of Bureau of Prisons.
 4043. Acceptance of gifts and bequests to the Commissary Funds, Federal Prisons.
 4048. *Strength-training of prisoners prohibited.*

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§4048. *Strength-training of prisoners prohibited*

The Bureau of Prisons shall ensure that—

- (1) *prisoners under its jurisdiction do not engage in any physical activities designed to increase their fighting ability; and*
 (2) *all equipment designed for increasing the strength or fighting ability of prisoners promptly be removed from Federal correctional facilities and not be introduced into such facilities thereafter except as needed for a medically required program of physical rehabilitation approved by the Director of the Bureau of Prisons.*

* * * * *

DISSENTING VIEWS

We support the stated purpose of this bill, which is “to control crime by incarcerating violent criminals.” We want more prisons cells built to put more violent felons in prison for longer periods of time.

However, we take strong exception to this bill, because we believe it will do just the opposite of what it pretends to do. Because of serious flaws in concept and drafting, H.R. 667 would actually result in significantly less prison cells for violent felons than the prison grant program in the bi-partisan crime bill we passed last year, the Violent Crime Control and Law Enforcement Act of 1994.

A balanced and effective program for reducing violent crime must devote substantial resources to prison cells for violent felons. One appropriate role for the federal government is to help the States with funds to build and operate correctional facilities.

A proper comity allows the States flexibility in how to use such Federal prison grant funds. In some cases, those funds might most efficiently be used for new space directly to house violent felons. In other cases, it makes more sense to build alternative correctional facilities in order to free up existing appropriate space for housing violent felons.

In either case, the end result is the same—sufficient appropriate cell space in all of the States to ensure that violent felons are locked up for longer periods of time.

The law we enacted last year embodies this comity. It created two pools of grant funds. One pool is for States that have enacted tough “Truth-in-Sentencing” laws. The other is for States willing to make a series of carefully drafted assurances designed to ensure that the State is moving expeditiously toward the goal of longer prison time for violent felons.

Recognizing that the process of enacting and implementing “Truth-in-Sentencing” laws in the States is a lengthy affair at best, and difficult if not impossible at worst, the 1994 law allows funds not used in the tougher “Truth-in-Sentencing” pool to flow over into the more readily available general pool.

The bill before us resembles the 1994 Crime Bill in outer form. It, too, creates two pools of funds.

There the resemblance ends, however.

Correctional system experts in the Department of Justice and elsewhere say that as few as three States can qualify for funding under either pool in this bill. Even if one *doubles* that number in an excess of generous caution, it is clear beyond doubt that these funds will go to only a tiny minority of the States in the foreseeable future.

In short, this grant program is a mirage. It will not build the prison cells for violent felons we want to see built at any time in the foreseeable future.

This results from four serious defects in the bill.¹

First, the terms of the so-called "Truth-in-Sentencing" pool are so severe that States will be required to commit themselves to investing enormous sums up front in order even to qualify for this pool.

Second, the literal words of the so-called "General Grant" pool of funds requires States to make assurances about matters which, by definition, cannot be known until some years hence. This section requires a State to make assurances that, since 1993, it has increased (i) the percentage of convicted violent felons sentenced to prison, (ii) the "average prison time actually to be served" by those felons, and (iii) the "percentage of sentence to be actually served" by those felons.

States can know and make assurances about the first of these assuming they have an adequate data base. However, the other two are problematic at best. How can a State make assurances about how long felons will actually serve, or what percentage of their sentences they will actually serve, until the date has passed upon which the felons have been actually released? Since most violent felons are sentenced to terms significantly longer than the two years that have passed since 1993, it would seem impossible for most States, if not all, to meet the literal terms of this language.

It may be that the intent of the drafters is otherwise, as was represented in the markup of this bill. Unfortunately, that intent is poorly and inadequately conveyed in this bill, which has not incidentally been rushed through committee with neither adequate hearing nor deliberate evaluation.

Third, the language of the special rules for States with indeterminant sentencing is impossibly vague. Those rules ostensibly permit such a State to qualify for grant funds if "the average time served" for "murder, rape, robbery, and assault" exceed by 10 percent or greater "the national average of time served for such offenses."

This raises a number of apparently insoluble questions.

First, no such "national average" is known to exist, according to the experts our staff has consulted.

Second, it will be impossible to construct such a national average until several fundamental questions of definition are resolved. The several States define the listed offenses in different ways. That being so, which offenses from each State should be included in the national average? Over what period of time is the average to be based? How often is it to be computed? Who or what agency is supposed to compute it?

Third, each individual State will be vexed by the same unanswered questions. Which of its offense that arguably fall into the grossly general terms in the bill should it include in computing its "average?" Since, by definition, the average in an indeterminant sentencing State will constantly fluctuate, when and over what period of time should it compute its average?

¹ Mr. Schumer offered an amendment that would have cured every one of these defects, and would have been completely in consonance with the often stated goal of the majority to give maximum due to states rights. His amendment would simply have converted this program to a block grant program for the states, under which each would get a share proportionate to its rate of violent crime. This idea is in concept indistinguishable from the Local Law Enforcement Block Grant program the majority offers in another bill, H.R. 668.

Finally, this bill lacks a "pour over" clause so that funds not expended in the "Truth-in-Sentencing" pool will be put to useful purpose. Instead, it allows either the few States that may qualify to split up an enormous windfall (the pot remaining after allocating a reserve for all States), or the funds to sit idle until sufficient States have been strong-armed into complying with this bill's terms.

These flaws are more evidence that this bill has been rammed through committee without adequate deliberation. If the majority truly wanted to build more prison cells for violent offenders as quickly and efficiently as possible, it would have enthusiastically embraced our block grant amendment. Given the trickle of funds that will actually emerge from the ponderous language in H.R. 667, we are forced to wonder this bill is actually intended to cut significant prison spending out of our national crime program.

The flaws in this bill will inflict a bad policy on America. It will set back the ambitious prison program we passed in the last Congress, not move it forward.

CHARLES E. SCHUMER.
JERROLD NADLER.
HOWARD L. BERMAN.

DISSENTING VIEWS

H.R. 667 provides \$12.5 billion in grant funds for prisons, \$2.5 billion more than the 1994 Crime Bill. One-half of the funds are for grants to states that show increases in the percent of offenders sent to prison generally and in the percent of sentences served by violent offenders; the other half goes to states that enact laws requiring violent offenders to serve at least 85% of their sentence (so-called "truth-in-sentencing").

Ironically, the \$2.5 billion was taken from funding we approved a few months ago for programs that have been proven to prevent crimes and save much more money in law enforcement and prison costs than they cost (e.g., Head Start, Job Corps, Boys and Girls Clubs, "Midnight Basketball"). An excellent example of such a prevention program is drug courts. During the hearings on H.R. 3 and at full committee consideration, both panelists and members, Republican and Democrat alike, testified to the success of drug courts. Testimony revealed that the cost for a drug court participant is about \$800 while the cost for a year in prison is about \$25,000. Offenders who participated in the drug court program had a recidivism rate of about 11% while those who did not participate had a recidivism rate of about 60%. Given this level of proven success, the cut in funding for drug courts will result in substantially higher costs and incredibly five times more crime victims.

Furthermore, the \$2.5 billion added to promote the prison construction will be an insignificant portion of the hundreds of billions of dollars states are already spending on prison construction. Virginia's plan to adopt the 85% truth-in-sentencing provision requires at least \$7 billion to be spent in the next 10 years. Virginia's share of the \$2.5 billion will be approximately 1% of that amount.

Given the difference between its import and its likely impact, a more appropriate title for the "truth-in-sentencing" provision would be the "Half-Truth-in-Sentencing" Act. The half-truth is that parole boards will no longer have the discretion to release low-risk prisoners early. The whole truth is that: (1) the parole board will not have the discretion to hold high-risk prisoners longer; (2) prisoners will be more likely to commit future crimes because the major incentives for participation in education and job training have been removed; and (3) states will waste billions of dollars on a plan that studies show has no effect on crime.

The thirty-billion* dollar crime bill as enacted into law last year designated over 75% of the money for law enforcement and prisons, despite the overwhelming evidence that vastly more crime and costs are averted through proven prevention programs. H.R. 666 compounds the problem by deleting funding for those programs which actually reduce crime, while funding prisons in such a way that the most heinous criminals will actually get out earlier than they do now.

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JOSE E. SERRANO.
ZOE LOFGREN.
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JERROLD NADLER.

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