104th CONGRESS
1st Session

H. R. 667

AN ACT

To control crime by incarcerating violent criminals.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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.

(a) In General.--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. Such grants may also be used to build, expand, and operate secure youth correctional facilities.

``(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;

°°(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; and

°°(3) laws requiring that the releasing authority notify the victims of serious violent felons or the family of such victims and the convicting court regarding the release of a defendant.

°°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;

°°(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; and

°°(4) the State has adopted procedures for the collection of reliable statistical data which compiles the rate of serious violent felonies after the receipt of grant funds under section

502 or section 503 in comparison to the rate of serious violent felonies before receipt of such funds and will report such statistical data to the Attorney General if such data is not already provided.

°°(b) Juvenile Justice Incentive.--Beginning in fiscal year 1998, 15 percent of the funds that would otherwise be available to a State under section 502 or 503 shall be withheld from any State which does not have an eligible system of consequential sanctions for juvenile offenders.

°°(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 indeterminant 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) Availability of Funds for Jail Construction.--A State may use up to 15 percent of the funds provided under this title for jail construction, if the Attorney General determines that the State has enacted--

°°(1) legislation that provides for pretrial release requirements at least as restrictive as those found in section 3142 of title 18, United States Code; or

°°(2) legislation that requires an individual charged with an offense for which a sentence of more than one year may be imposed, or charged with an offense involving violence against another person, may not be released before trial without a financial guarantee to ensure appearance before trial.''.

°°(e) 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.

°°(f) Funds for Juvenile Offenders.--Notwithstanding any other provision of this title, if a State or unit of local government located in a State which otherwise meets the requirements of section 502 or 503 certifies to the Attorney General that exigent circumstances exist which require that the State expend funds to confine juvenile offenders, the State may use funds received under this title to build, expand, and operate juvenile correctional facilities or pretrial detention facilities for such offenders.

°°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 equal to the ratio that the number of part 1 violent crimes reported by such State or States to the Federal Bureau of Investigation for the most recent calendar year for which the data is available.

°°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, including a requirement that any funds used to carry out the programs under section 501(a) shall represent the best value for the State governments at the lowest possible cost and employ the best available technology.

°°(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.--(1) 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.

°°(2)(A) A State that receives funds under this title shall, in such form and manner as the Attorney General determines, and under such regulations as the Attorney General shall prescribe, require that the appropriate public authorities report promptly to the Attorney General the death of each individual who dies in custody while in a municipal or county jail, State prison, or other similar place of confinement. Each such report shall include the cause of death and all other facts relevant to the death reported, which the person so reporting shall have the duty to make a good faith effort to ascertain.

°°(B) The Attorney General shall annually publish a report containing--

°°(i) the number of deaths in each institution for which a report was filed during the relevant reporting period;

°°(ii) the cause of death and time of death for each death so reported; and

°°(iii) such other information about the death as the Attorney General deems relevant.

°°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.

°°(6) Transfer of unallocated funds.--After making the distribution to all eligible States required under section 503, the Attorney General may transfer as provided in this paragraph, in such amounts as may be provided in appropriations Acts, any remaining unallocated funds which have been available for more than two fiscal years, but all such funds shall be available for the purposes of this paragraph after fiscal year 2000. Funds transferred under this paragraph may be made available for expenses of the Immigration and Naturalization Service for investigators and for expenses of the Bureau of Prisons, the Federal Bureau of Investigations and the United States Attorneys for activities and operations related to the investigation, prosecution and conviction of persons accused of a serious violent felony, and the incarceration of persons convicted of such offenses, including the National Institute of Justice for law enforcement technology programs.

°°SEC. 508. PAYMENTS TO STATES FOR INCARCERATION OF CRIMINAL ALIENS.

°°(a) Reservation of Funds.--Notwithstanding any other provision of this title, for each of the fiscal years 1996, 1997, 1998, 1999, and 2000 from amounts appropriated under section 507, the Attorney General shall first reserve an amount which when added to amounts appropriated to carry out section 242(j) of the Immigration and Nationality Act for such fiscal year equals $650,000,000.

°°(b) Payments to Eligible States.--

°°(1) Notwithstanding any other provision of this title, for each of the fiscal years 1996, 1997, 1998, 1999, and 2000 from amounts reserved under subsection (a), the Attorney General shall make a payment to each State which is eligible under section 242(j) of the Immigration and Nationality Act and which meets the eligibility requirements of section 503(b), in such amount as is determined under section 242(j) and for which payment is not made to such State for such fiscal year under such section.

°°(2) For any fiscal year, payments made to States under paragraph (1) may not exceed the amount reserved for such fiscal year under subsection (a).

°°(c) Use of Unobligated Funds.--For any fiscal year, amounts reserved under subsection (a) which are not obligated by the end of that fiscal year under subsection (b) shall not be available for payments under this section for any subsequent fiscal year, but shall be available, in equal amounts, to the Attorney General only for grants under sections 502 and 503.

°°(d) Report to Congress.--Not later than May 15, 1999, the Attorney General shall submit a report to the Congress which contains the recommendation of the Attorney General concerning the extension of the program under this section.''.

°°SEC. 509. 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;

°°(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; and

°°(4) the term °an eligible system of consequential sanctions for juvenile offenders' means that the State or States organized as a regional compact, as the case may be--

°°(A)(i) have established or are in the process of establishing a system of sanctions for the State's juvenile justice system in which the State bases dispositions for juveniles on a scale of increasingly severe sanctions for the commission of a repeat delinquent act, particularly if the subsequent delinquent act committed by such juvenile is of similar or greater seriousness or if a court dispositional order for a delinquent act is violated; and

°°(ii) such dispositions should, to the extent practicable, require the juvenile delinquent to compensate victims for losses and compensate the juvenile justice authorities for supervision costs;

°°(B) impose a sanction on each juvenile adjudicated delinquent;

°°(C) require that a State court concur in allowing a juvenile to be sent to a diversionary program in lieu of juvenile court proceedings;

°°(D) have established and maintained an effective system that requires the prosecution of at least those juveniles who are 14 years of age and older as adults, rather than in juvenile proceedings, for conduct constituting--

°°(i) murder or attempted murder;

°°(ii) robbery while armed with a deadly weapon;

°°(iii) battery while armed with a deadly weapon;

°°(iv) forcible rape;

°°(v) any other crime the State determines appropriate; and

°°(vi) the fourth or subsequent occasion on which such juveniles engage in an activity for which adults could be imprisoned for a term exceeding 1 year;

unless, on a case-by-case basis, the transfer of such juveniles for disposition in the juvenile justice system is determined under State law to be in the interest of justice;

°°(E) require that whenever a juvenile is adjudicated in a juvenile proceeding to have engaged in the conduct constituting an offense described in subparagraph (D) that--

°°(i) a record is kept relating to that adjudication which is--

°°(I) equivalent to the record that would be kept of an adult conviction for that offense;

°°(II) retained for a period of time that is equal to the period of time records are kept for adult convictions; and

°°(III) made available to law enforcement officials to the same extent that a record of an adult conviction would be made available;

°°(ii) the juvenile is fingerprinted and photographed, and the fingerprints and photograph are sent to the Federal Bureau of Investigation; and

°°(iii) the court in which the adjudication takes place transmits to the Federal Bureau of Investigation the information concerning the adjudication, including the name and birth date of the juvenile, date of adjudication, and disposition;

°°(F) where practicable and appropriate, require parents to participate in meeting the dispositional requirements imposed on the juvenile by the court;

°°(G) have consulted with any units of local government responsible for secure youth correctional facilities in setting priorities for construction, development, expansion and modification, operation or improvement of juvenile facilities, and to the extent practicable, ensure that the needs of entities currently administering juvenile facilities are addressed; and

°°(H) have in place or are putting in place systems to provide objective evaluations of State and local juvenile justice systems to determine such systems' effectiveness in protecting the community, reducing recidivism, and ensuring compliance with dispositions.''.

(b) Preference in Payments Under Section 242(J) of Immigration and Nationality Act.--Section 242(j)(4) of the Immigration and Nationality Act (8 U.S.C. 1252(j)(4)) is amended by adding at the end the following:

°°(C) In carrying out paragraph (1)(A), the Attorney General shall give preference in making payments to States and political subdivisions of States which are ineligible for payments under section 508 of the Violent Crime Control and Law Enforcement Act of 1994.''.

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:

°°Sec. 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 (except a settlement agreement the breach of which is not subject to any court enforcement other than reinstatement of the civil proceeding which such agreement settled); 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 229 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:

°°Sec. 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.''.

TITLE V--PRISON CONDITIONS

SEC. 501. PRISON CONDITIONS.

(a) In General.--The Attorney General shall by rule establish standards regarding conditions in the Federal prison system that provide prisoners the least amount of amenities and personal comforts consistent with Constitutional requirements and good order and discipline in the Federal prison system.

(b) Rule of Construction.--Nothing in this section shall be construed to establish or recognize any minimum rights or standards for prisoners.

SEC. 502. ANNUAL REPORT.

The director of the Bureau of Prisons shall submit to Congress on or before December 31 of each year, beginning on December 31, 1995, a report setting forth the amount spent at each Federal correctional facility under the jurisdiction of the Bureau of Prisons for each of the following items:

(1) The minimal requirements necessary to maintain custody and security of prisoners.

(2) Basic nutritional needs.

(3) Essential medical services.

(4) Amenities and programs beyond the scope of the items referred to in paragraphs (1) through (3), including but not limited to--

(A) recreational programs and facilities;

(B) vocational and educational programs; and

(C) counseling services, together with the rationale for spending on each category and empirical data, if any, supporting such rationale.

TITLE VI--COMMUNITY SERVICE PROJECTS

SEC. 601. BUREAU OF PRISONS COMMUNITY SERVICE PROJECTS.

(a) In General.--Chapter 303 of title 18, United States Code, is amended by adding at the end the following:

°°Sec. 4047. Community service projects

°°(a) Subject to the limitations of subsection (b), the Chief Executive Officer of a Federal penal or correctional facility may, as part of an inmate work program, provide services to private, nonprofit organizations, as defined in section 501(c)(3) of the Internal Revenue Code of 1986, or to a component of any State government or political subdivision thereof. Such services shall be provided pursuant to rules prescribed by the Attorney General.

°°(b) Services provided under subsection (a)--

°°(1) shall be used only for the benefit of the recipient entity and not for the benefit of any individual or organization other than the recipient; and

°°(2) shall not displace an employee of the recipient or result in a reduction in hours, wages, or employment benefits of any employee of the recipient.''.

(b) Clerical Amendment.--The table of chapters at the beginning of chapter 303, title 18, United States Code, is amended by adding at the end the following new item:

°°4047. Community service projects.''.

TITLE VII--PRISON COMMISSARY ADMINISTRATION

SEC. 701. ADMINISTRATION OF FEDERAL PRISON COMMISSARIES.

Section 4043 of title 18, United States Code, is amended by striking the current language and inserting the following:

°°(a) The Director of the Bureau of Prisons may establish, operate, and maintain commissaries in Federal penal or correctional facilities, from and through which articles and services may be procured, sold, rendered, or otherwise provided or made available for the benefit of inmates confined within those facilities. Only those articles or services authorized by the Director of the Bureau of Prisons may be procured from or through prison commissaries for the use of inmates.

°°(b) There is established in the Treasury of the United States a revolving fund to be called the Prison Commissary Fund which shall be available to the Federal Bureau of Prisons without fiscal-year limitation to carry out the purposes, functions and powers authorized by this section. Funds currently on deposit in the °Commissary Funds, Federal Prisons' account of the Treasury shall be transferred to the Prison Commissary Fund.

°°(c) The Director of the Federal Bureau of Prisons may accept gifts or bequests of money for credit to the Fund. The Director may also accept gifts or bequests of other property, real or personal, for use or other disposition by the Bureau of Prisons. A gift or bequest under this section is a gift or bequest to or for the use of the United States under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

°°(d) Amounts in the Prison Commissary Fund which are not currently needed for operations shall be kept on deposit or invested in obligations of, or guaranteed by, the United States and all earnings on such investments shall be deposited in the Prison Commissary Fund.

°°(e) There shall be deposited in the Fund, subject to withdrawal by the Federal Bureau of Prisons--

°°(1) revenues received from the sale of articles through prison commissaries;

°°(2) revenues received from services rendered by prison commissaries;

°°(3) a gift or bequest of money for credit to the Fund;

°°(4) proceeds from the sale or disposal of donated property, real or personal, for credit to the Fund; and

°°(5) earnings or interest which may be derived from investments of the Fund.

°°(f) The fund shall be available for the payment of any expenses incurred by the Federal Bureau of Prisons in establishing, operating, and maintaining prison commissaries and the Prison Commissary Fund, including the employment of personnel, the purchase of equipment, security-related or otherwise, and those expenses incurred in the provision of articles or services procured, sold, rendered, or otherwise provided or made available to inmates.

°°(g) The Director of the Bureau of Prisons is authorized to use monies from the Prison Commissary Fund for the general welfare of inmates. No inmate shall be entitled to any portion of the Fund.

°°(h) Employees compensated by or through the Prison Commissary Fund may be assigned additional duties other than those directly related to commissary activities.

°°(i) The provisions of sections 554 and 555 and 701 through 706 of title 5, United States Code, do not apply to the making of any determination, decision, or order under this section.''.

SEC. 702. TECHNICAL AMENDMENT.

Section 1321(b) of title 31, United States Code, is amended by striking °°Commissary Funds, Federal Prisons''.

Passed the House of Representatives February 10, 1995.

Attest:

Clerk.

U.S. Department of Justice
Office of the Associate Attorney General

January 18, 1995

TO: Dennis Burke

FROM: John Dwyer JD

Attached is the document we discussed yesterday.

Attachment

U.S. Department of Justice
Office of the Associate Attorney General

January 12, 1995

TO: Dennis Burke

FROM: John Dwyer JD

Attached is BOP's proposed compliance report as required by VCCA § 32001. It was due January 1, 1995. Please review and let me know what you think and what steps might be taken at this point.

Attachment

cc: Kent Marcus

Federal Bureau of Prisons

Office of Congressional Affairs
Room 630 HOLC
320 First Street NW.
Washington, D.C. 20534

Phone: (202) 514-9663
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From: Matthew J. Bronick
Assistant Chief

To: John Dwyer

Comments: 4-1724
Compliance report per Section 32001
on Residential Substance Abuse Treatment

Number of Pages (Including Cover Sheet) 16

SUBSTANCE ABUSE TREATMENT PROGRAMS IN THE FEDERAL BUREAU OF PRISONS

REPORT TO CONGRESS

FEDERAL BUREAU OF PRISONS

INTRODUCTION

The Federal Bureau of Prisons has provided drug treatment in various forms for decades. Since the passage of the Anti-Drug Abuse Acts of 1986 and 1988, with an increased emphasis on and resources for drug treatment, the Bureau has redesigned its treatment programs. With the help of the National Institute on Drug Abuse (NIDA) and through a careful review of drug treatment programs around the country to determine what works in corrections, the Bureau has developed a treatment strategy that addresses inmate drug abuse by attempting to identify, confront, and alter the attitudes, values, and thinking patterns that lead to criminal and drug-using behavior. The current program includes an essential transitional component that keeps inmates engaged in treatment as they return to their home communities.

This report defines how the Bureau of Prisons projects the number of inmates who experience substance use disorders. It describes drug abuse treatment opportunities for inmates in the Bureau, including the criteria an inmate must meet prior to acceptance and entry into each program component. The report also provides the numbers of Bureau inmates who have participated in drug abuse programs since 1990.

Finally, this report discusses the progress the Bureau of Prisons has made in implementing the requirements of Title T, Substance Abuse Treatment in Federal Prisons, in the Violent Crime Control and Law Enforcement Act of 1994.

IDENTIFYING OFFENDER TREATMENT NEEDS

Consistent with the research literature on drugs and crime, the Bureau of Prisons has found two types of incarcerated drug offenders, who have different treatment needs:

(1) Some drug offenders violate laws that prohibit the possession, distribution, or manufacture of illegal drugs. Generally, these individuals are involved with drugs as a business venture, motivated solely by financial gain. They are generally termed "drug-defined" offenders, and may not need drug treatment, although they may benefit from other treatment, such as values development or anger management.

(2) Other drug offenders violate laws as a direct result of their drug use. These offenders may experience a drug's pharmacological effects in a way that contributes to illegal activities, or they may be involved in illegal activities (such as robbery) motivated by the need for money to support continued drug use. This type of offender is generally termed a "drug-related" offender, and is more likely to need drug treatment.

Sorting out the drug offender population in the Bureau of Prisons and providing treatment to those in need has been a primary emphasis in the development of drug abuse treatment programs. In an effort to identify the population with drug abuse treatment needs, the Bureau initiated a Substance Abuse Needs Assessment in the summer of 1991. All Bureau institutions participated in this project, which involved administering the Inventory of Substance Use Patterns to every inmate entering the Bureau during this 3-month period, to determine the existence and extent of substance use disorders among the offender population. Of the inmates completing this inventory, 30.5 percent met the criteria for drug dependence as listed in the American Psychiatric Association's Diagnostic and Statistical Manual, Third Edition, Revised.

As a result, the Bureau has developed and expanded its drug abuse treatment programs based on this 30.5 percent figure. Applied to the current inmate population, this percentage translates to slightly more than 26,000 inmates.

DRUG ABUSE PROGRAM DESCRIPTIONS: ELIGIBILITY AND CONTENT

DRUG ABUSE EDUCATION

Program Screening. Upon entry into a Bureau facility, an inmate's records are assessed to determine whether he or she has a history of drug use, a drug-related offense, or a judicial recommendation to participate in a drug treatment program.

If an inmate's record reveals any of these elements, the inmate is required to participate in a 40-hour Drug Abuse Education course, available in every Bureau institution.

In addition, as part of the standard psychological screening upon entry, inmates are interviewed about their past drug use to determine their need for drug treatment.

Program Content. Participants in drug education receive information on alcohol and drugs and the physical impact of these substances. Participants must complete an assessment of their lives, including the costs their drug use has had on their health, on the lives of their family, and on the community.

Inmates in drug abuse education are introduced to the other components of the Bureau's drug abuse treatment program. Those inmates who are identified as having a further treatment need are strongly encouraged to volunteer for the Bureau's residential drug abuse treatment program.

In Fiscal Year 1994, 11,592 inmates participated in drug abuse education courses. (See Table I for a breakdown of participants by program and fiscal year.)

RESIDENTIAL DRUG ABUSE TREATMENT PROGRAMS

Program Overview. Currently, 34 Bureau of Prisons institutions operate residential treatment programs, with a total of 3,186 beds available (see Attachment I for program locations). The programs are 6, 9, or 12 months long and provide a minimum of 500 hours of drug abuse treatment. The Bureau has a three-phase treatment curriculum that is followed in every residential drug abuse treatment program.

The 6-month programs provide intensive treatment, 8 hours a day, 5 days a week. In the 9- and 12-month programs, treatment is provided no less than 4 hours a day, 5 days a week. The remainder of the day is spent in education, work skills training, recreation, and similar programs. Each residential drug abuse treatment program is staffed by a doctoral level psychologist who supervises treatment staff, each of whom carries a caseload of no more than 24 inmates.

Program Eligibility. Prior to acceptance into a residential treatment program, inmates are interviewed to determine whether they meet the diagnostic criteria for an alcohol or illegal/illicit drug use disorder as defined by the American Psychiatric Association, Diagnostic and Statistical Manual, Fourth Edition, (revised in 1994). An inmate is eligible for a residential drug abuse treatment program if he or she:

(1) has a DSM IV diagnosis for alcohol or illegal/illicit drug abuse or dependence disorder;

(2) has no serious mental impairment that would substantially interfere with or preclude full program participation; and

(3) signs the Agreement to Participate in the Bureau's Drug Abuse Programs;

(4) is, ordinarily within thirty-six months of release; and

(5) the security level of the residential program institution must be appropriate for the inmate.

Program Content. The strategies used in the Bureau of Prisons drug abuse treatment program place responsibility for change on the individual by demanding compliance with the rules and regulations of treatment, encouraging the inmate to accept "ownership" of the norms of treatment, and motivating the inmate to make a firm commitment to positive change.

The Bureau has found that these objectives mesh well with traditional individual and group therapy as well as with positive

skill-building techniques. Treatment strategies are based on two premises:

(1) the inmate is responsible for his or her behavior, and

(2) the inmate can change his or her behavior.

The treatment regimen encourages the acceptance of personal responsibility by addressing inmates' thoughts and feelings, allowing them to review their past behavior and learn new ways to replace self-defeating patterns with honesty, responsibility, tolerance, and respect. The following skill-building approaches are employed to help accomplish these goals:

- Rational-Emotive/Rational-Behavioral Therapy, in which inmates learn about the impact of beliefs on behavior and learn to distinguish rational from irrational beliefs.

- Errors in Thinking, which focuses on correcting "criminal thinking patterns."

- Communication and Interpersonal Relationship Skill-Building.

- Relapse Prevention, where each inmate develops an individual relapse-prevention plan that follows him or her through the institution to the community.

- Release Planning, which teaches concrete community-living skills such as job seeking, house hunting, finding medical treatment in the community, dealing with rejection, and distinguishing between realistic and unrealistic expectations upon return to the community.

In fiscal year 1994, 3,755 inmates participated in residential drug abuse treatment programs.

NON-RESIDENTIAL DRUG ABUSE TREATMENT

Program Eligibility. In addition to the 34 residential programs, non-residential drug counseling is available in every Bureau of Prisons institution. Inmates with diagnosed drug use disorders, who have minimal time remaining on their sentences, have serious mental health problems, or are unable or unwilling to participate in one of the Bureau's residential units, can seek treatment through an institution's Psychology Services staff.

Program Content. In non-residential programs, a licensed psychologist develops an individualized treatment plan based on a thorough assessment of the inmate. Treatment often includes individual and group therapy. Twelve-Step and Rational Recovery Groups are also available to provide support for recovering substance-dependent inmates.

The Bureau's non-residential treatment component also accommodates the need for a prison-based aftercare program for inmates who successfully complete the residential program and return to the institution's general population prior to their release. It is required of all residential graduates and includes a minimum of one group session each month for a year. Group activities consist of relapse prevention planning, a review of rational behaviors, and confronting thinking errors.

In fiscal year 1994, 1,974 inmates participated in non-residential drug abuse treatment programs.

TRANSITIONAL SERVICES

When an inmate is transferred from an institution to a Community Corrections Center (halfway house), or released from custody to the supervision of the U.S. Probation Service, the final treatment plan/relapse-prevention plan is forwarded to the community supervising authority to ensure continuity in treatment. Once in the community, graduates of the residential program (and other inmates in Community Corrections Centers who are identified as needing community treatment) are required to participate in treatment.

Treatment is provided through community-based providers whose treatment regimen is similar to the Bureau of Prisons, ensuring consistency in treatment and supervision. Bureau transitional services managers ensure that the inmate complies with the treatment plan and remains drug-free by monitoring the inmate's progress and ensuring regular urinalysis.

In addition, inmates leaving Bureau custody for supervision with the U.S. Probation Office remain in treatment while under supervision. This ensures continuity of treatment for the inmate while he or she re-enters the community.

In fiscal year 1994, transitional services programs had an average daily population of 800 inmates.

IMPLEMENTING THE PROVISION IN THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994 ON SUBSTANCE ABUSE TREATMENT IN FEDERAL PRISONS

Immediately after passage of the new law, the Bureau of Prisons began working to implement Subtitle T, Substance Abuse Treatment in Federal Prisons. Essentially, Subtitle T mandates the Bureau to meet three specific requirements in the provision of treatment to the drug-dependent inmate:

1. Meeting the Demand for Treatment

Requirement: Provide appropriate substance abuse treatment for not less than 50 percent of all "eligible" inmates by the end of fiscal year 1995, not less than 75 percent by the end of fiscal year 1996, and not less than 100 percent by the end of fiscal year 1997. Priority for treatment is to be based on an eligible prisoner's proximity to release. The statute allows inmates convicted of a nonviolent offense up to 1 year off their sentence. In the interest of protecting the public against the early release of violent offenders, the Bureau intends to limit the year-off provision to those inmates whose current conviction is for a nonviolent offense and whose criminal history does not include a serious violent offense (defined as one of the FBI's Part I crimes against a person).

As a result of the passage of the Violent Crime Control and Law Enforcement Act of 1994, there has been a significant increase in the number of inmates volunteering for the residential drug abuse treatment program. Today, the waiting list for admission exceeds 2,300 inmates. It is clear that this provision, and the allowance for up to 1 year off an inmate's sentence, is a strong incentive to motivate inmates to seek access to treatment.

Clearly, an expansion of the Bureau's drug abuse treatment programs is required. Using population projections through fiscal year 1997 it is estimated 26,000 Bureau of Prison inmates have a drug use disorder, of which, 16,000 are "nonviolent" offenders with no history of serious violent offenses and eligible for an early release. It is important to note, when policy implementing this provision is circulated to the field, inmates not eligible for an early release may no longer be interested in the residential drug abuse treatment program. Therefore, at a minimum, 16,000 inmates will require treatment.

When these inmates receive treatment is a critical issue. The Bureau is required by statute to give treatment priority to inmates toward the end of their sentence. The Bureau has some latitude, however, in defining eligibility and will rely on the language regarding treatment priority according to the inmate's proximity to release date in order to ensure that inmates are receiving residential substance abuse treatment in the most effective manner possible.

The Bureau currently provides extended residential drug abuse treatment to inmates within the last 18 months before their release. Residential programs close to inmates' release from custody maximize the impact of treatment and allow for the required continuity with transitional services, aftercare, and successful reintegration into the community. Once Federal inmates complete in-prison residential drug treatment, they usually enter a halfway house with a strong transitional service component.

Inmates nearing release require residential treatment priority. Residential treatment for inmates at the beginning of their sentence results in a long period between treatment and return to the community -- a time when temptations and old habits pose the greatest threats. As a result of relapse or pre-release anxiety and a perceived need for residential treatment just prior to release, inmates might enter a residential drug treatment program a second time. In addition, inmates who completed residential substance abuse treatment toward the beginning of their sentence and demonstrate a need for "refresher" treatment just prior to release may refuse treatment this second time. They will have received the benefit and, absent other incentives, could refuse the much-needed, pre-release treatment.

On October 1, 1994 the Bureau expanded the number of residential treatment units from 32 to 34, expanding the yearly treatment capacity to nearly 4,000. In June of 1994 the Bureau requested additional positions to expand to 40 institution programs by fiscal year 1997, providing treatment to nearly 5,000 inmates annually. This planned expansion was formulated using our projected population growth, and applying the figure of 30.5 percent as inmates in need of treatment. The Bureau believes this will allow it to meet the requirements of treatment for all eligible inmates by the end of fiscal year 1997.

2. Providing an Early Release For Program Graduates

<u>Requirement</u>: Allow up to 1 year off a nonviolent inmate's period of custody for successful completion of a residential drug abuse treatment program.

It is incumbent upon the Bureau of Prisons to ensure that its policy clearly defines the program intent and each program element, so that inmates admitted into the program and those who receive an early release are inmates who have committed nonviolent offenses and have drug use disorders. The Bureau is creating policy to ensure that the intent and integrity of the law are upheld.

Currently, the Bureau's Office of General Counsel has submitted a recommended definition of violence to the Department of Justice that will enable the Bureau to clearly define "nonviolent offenses" as it relates to the possibility of an early release. Rules were drafted and forwarded to the Department of Justice on December 23, 1994, for clearance prior to publication in the <u>Federal Register</u>.

New policy is being drafted and will define:

(1) inmates who are eligible for residential drug abuse treatment programs;

(2) inmates who are eligible for early release consideration;

(3) the priority order of inmates placed in a residential treatment program;

(4) residential treatment program success criteria; and

(5) residential treatment program expulsion criteria.

Rules related to this policy were also forwarded to the Department of Justice for clearance on December 23, 1994. Upon receiving clearance they will be published in the <u>Federal Register</u> for comment.

The Bureau projects full implementation of Subtitle T will occur in March 1995.

3. Coordinating with Health and Human Services

<u>Requirement</u>: Consult with the Department of Health and Human Services concerning substance abuse treatment and related services and the incorporation of applicable components of existing comprehensive approaches, including relapse prevention and aftercare services.

The Bureau designed its current drug abuse treatment regimen to include treatment regimens considered to be state-of-the-art. The Bureau has always coordinated activities with the National Institute on Drug Abuse (NIDA) and the Center for Substance Abuse Treatment (CSAT).

The Bureau will continue this coordination of activities. Currently, there is a treatment outcome evaluation funded by NIDA and being performed by the Bureau's Office of Research and Evaluation. In addition, representatives from the Bureau meet with NIDA on a monthly basis to exchange information on drug abuse programs for offender populations, including special need populations such as female offenders and HIV-positive offenders. In addition, the Bureau contacted the Director of CSAT to invite him and his staff to visit one or more of the residential programs to further coordination and consultation with CSAT.

TABLE I

DRUG ABUSE TREATMENT PARTICIPANTS IN FEDERAL PRISONS

	1990	1991	1992	1993	1994
Inmates Needing Treatment	21,000	22,000	24,000	25,000	26,000
Drug Education	5,446	7,644	12,500	12,646	11,592*
Non-Residential			654	1,320	1,974
Residential	441	1,236	1,135	3,650	3,755
Community Transition			123	480	800**

* The criteria for drug education programming changed in fiscal year 1994. If an inmate immediately applies for and enters a residential treatment program, he or she is no longer required to take drug education.

** The numbers reported for the community transition program are the average daily population in community treatment programs.

Attachment I

RESIDENTIAL DRUG ABUSE TREATMENT PROGRAM LOCATIONS

NORTHEAST REGION

FPC ALLENWOOD (PA)
FCI DANBURY (CT)
FCI FAIRTON (NJ)
FCI FORT DIX (NJ)
FCI MCKEAN (PA)

SOUTHEAST REGION

USP ATLANTA (GA)
FCI MARIANNA (FL)
FCI TALLADEGA (AL)
FPC TALLADEGA (AL)
FCI TALLAHASSEE (FL)

SOUTH CENTRAL REGION

FCI BASTROP (TX)
FPC BRYAN (TX)
FCI EL RENO (OK)
FMC FORT WORTH (TX)
FCI LA TUNA (TX)
FCI SEAGOVILLE (TX)
FCI THREE RIVERS (TX)

MID-ATLANTIC REGION

FCI ALDERSON (WV)
FCI BUTNER (NC)
FMC LEXINGTON (KY)
FCI MORGANTOWN (WV)
USP TERRE HAUTE (IN)

NORTH CENTRAL REGION

FCI ENGLEWOOD (CO)
USP LEAVENWORTH (KS)
FCI OXFORD (WI)
FMC ROCHESTER (MN)
FPC YANKTON (SD)

WESTERN REGION

FCI DUBLIN (CA)
USP LOMPOC (CA)
FCI LOMPOC (CA)
FCI PHOENIX (AZ)
FPC SHERIDAN (OR)
FCI SHERIDAN (OR)
FCI TERMINAL ISLAND (CA)

FCI = Federal Correctional Institution
FMC = Federal Medical Center
FPC = Federal Prison Camp
USP = United States Penitentiary

U.S. Department of Justice
Office of the Associate Attorney General

January 12, 1995

TO: Dennis Burke

FROM: John Dwyer

Attached is BOP's proposed compliance report as required by VCCA § 32001. It was due January 1, 1995. Please review and let me know what you think and what steps might be taken at this point.

Attachment

cc: Kent Marcus

Federal Bureau of Prisons

Office of Congressional Affairs
Room 630 HOLC
320 First Street NW.
Washington, D.C. 20534

Phone: (202) 514-9663
Fax: (202) 514-5935

From: Matthew J. Bronick
Assistant Chief

To: John Dwyer

Comments: 4-1724
Compliance report per Section 32001
on Residential Substance Abuse Treatment

Number of Pages (Including Cover Sheet) 16

SUBSTANCE ABUSE TREATMENT PROGRAMS IN THE FEDERAL BUREAU OF PRISONS

REPORT TO CONGRESS

FEDERAL BUREAU OF PRISONS

INTRODUCTION

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Finally, this report discusses the progress the Bureau of Prisons has made in implementing the requirements of Title T, Substance Abuse Treatment in Federal Prisons, in the Violent Crime Control and Law Enforcement Act of 1994.

IDENTIFYING OFFENDER TREATMENT NEEDS

Consistent with the research literature on drugs and crime, the Bureau of Prisons has found two types of incarcerated drug offenders, who have different treatment needs:

(1) Some drug offenders violate laws that prohibit the possession, distribution, or manufacture of illegal drugs. Generally, these individuals are involved with drugs as a business venture, motivated solely by financial gain. They are generally termed "drug-defined" offenders, and may not need drug treatment, although they may benefit from other treatment, such as values development or anger management.

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Sorting out the drug offender population in the Bureau of Prisons and providing treatment to those in need has been a primary emphasis in the development of drug abuse treatment programs. In an effort to identify the population with drug abuse treatment needs, the Bureau initiated a Substance Abuse Needs Assessment in the summer of 1991. All Bureau institutions participated in this project, which involved administering the Inventory of Substance Use Patterns to every inmate entering the Bureau during this 3-month period, to determine the existence and extent of substance use disorders among the offender population. Of the inmates completing this inventory, 30.5 percent met the criteria for drug dependence as listed in the American Psychiatric Association's Diagnostic and Statistical Manual, Third Edition, Revised.

As a result, the Bureau has developed and expanded its drug abuse treatment programs based on this 30.5 percent figure. Applied to the current inmate population, this percentage translates to slightly more than 26,000 inmates.

DRUG ABUSE PROGRAM DESCRIPTIONS: ELIGIBILITY AND CONTENT

DRUG ABUSE EDUCATION

Program Screening. Upon entry into a Bureau facility, an inmate's records are assessed to determine whether he or she has a history of drug use, a drug-related offense, or a judicial recommendation to participate in a drug treatment program.

If an inmate's record reveals any of these elements, the inmate is required to participate in a 40-hour Drug Abuse Education course, available in every Bureau institution.

In addition, as part of the standard psychological screening upon entry, inmates are interviewed about their past drug use to determine their need for drug treatment.

Program Content. Participants in drug education receive information on alcohol and drugs and the physical impact of these substances. Participants must complete an assessment of their lives, including the costs their drug use has had on their health, on the lives of their family, and on the community.

Inmates in drug abuse education are introduced to the other components of the Bureau's drug abuse treatment program. Those inmates who are identified as having a further treatment need are strongly encouraged to volunteer for the Bureau's residential drug abuse treatment program.

In Fiscal Year 1994, 11,592 inmates participated in drug abuse education courses. (See Table I for a breakdown of participants by program and fiscal year.)

RESIDENTIAL DRUG ABUSE TREATMENT PROGRAMS

Program Overview. Currently, 34 Bureau of Prisons institutions operate residential treatment programs, with a total of 3,186 beds available (see Attachment I for program locations). The programs are 6, 9, or 12 months long and provide a minimum of 500 hours of drug abuse treatment. The Bureau has a three-phase treatment curriculum that is followed in every residential drug abuse treatment program.

The 6-month programs provide intensive treatment, 8 hours a day, 5 days a week. In the 9- and 12-month programs, treatment is provided no less than 4 hours a day, 5 days a week. The remainder of the day is spent in education, work skills training, recreation, and similar programs. Each residential drug abuse treatment program is staffed by a doctoral level psychologist who supervises treatment staff, each of whom carries a caseload of no more than 24 inmates.

Program Eligibility. Prior to acceptance into a residential treatment program, inmates are interviewed to determine whether they meet the diagnostic criteria for an alcohol or illegal/illicit drug use disorder as defined by the American Psychiatric Association, Diagnostic and Statistical Manual, Fourth Edition, (revised in 1994). An inmate is eligible for a residential drug abuse treatment program if he or she:

(1) has a DSM IV diagnosis for alcohol or illegal/illicit drug abuse or dependence disorder;

(2) has no serious mental impairment that would substantially interfere with or preclude full program participation; and

(3) signs the Agreement to Participate in the Bureau's Drug Abuse Programs;

(4) is, ordinarily within thirty-six months of release; and

(5) the security level of the residential program institution must be appropriate for the inmate.

Program Content. The strategies used in the Bureau of Prisons drug abuse treatment program place responsibility for change on the individual by demanding compliance with the rules and regulations of treatment, encouraging the inmate to accept "ownership" of the norms of treatment, and motivating the inmate to make a firm commitment to positive change.

The Bureau has found that these objectives mesh well with traditional individual and group therapy as well as with positive

skill-building techniques. Treatment strategies are based on two premises:

(1) the inmate is responsible for his or her behavior, and

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- Release Planning, which teaches concrete community-living skills such as job seeking, house hunting, finding medical treatment in the community, dealing with rejection, and distinguishing between realistic and unrealistic expectations upon return to the community.

In fiscal year 1994, 3,755 inmates participated in residential drug abuse treatment programs.

NON-RESIDENTIAL DRUG ABUSE TREATMENT

Program Eligibility. In addition to the 34 residential programs, non-residential drug counseling is available in every Bureau of Prisons institution. Inmates with diagnosed drug use disorders, who have minimal time remaining on their sentences, have serious mental health problems, or are unable or unwilling to participate in one of the Bureau's residential units, can seek treatment through an institution's Psychology Services staff.

Program Content. In non-residential programs, a licensed psychologist develops an individualized treatment plan based on a thorough assessment of the inmate. Treatment often includes individual and group therapy. Twelve-Step and Rational Recovery Groups are also available to provide support for recovering substance-dependent inmates.

The Bureau's non-residential treatment component also accommodates the need for a prison-based aftercare program for inmates who successfully complete the residential program and return to the institution's general population prior to their release. It is required of all residential graduates and includes a minimum of one group session each month for a year. Group activities consist of relapse prevention planning, a review of rational behaviors, and confronting thinking errors.

In fiscal year 1994, 1,974 inmates participated in non-residential drug abuse treatment programs.

TRANSITIONAL SERVICES

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Treatment is provided through community-based providers whose treatment regimen is similar to the Bureau of Prisons, ensuring consistency in treatment and supervision. Bureau transitional services managers ensure that the inmate complies with the treatment plan and remains drug-free by monitoring the inmate's progress and ensuring regular urinalysis.

In addition, inmates leaving Bureau custody for supervision with the U.S. Probation Office remain in treatment while under supervision. This ensures continuity of treatment for the inmate while he or she re-enters the community.

In fiscal year 1994, transitional services programs had an average daily population of 800 inmates.

IMPLEMENTING THE PROVISION IN THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994 ON SUBSTANCE ABUSE TREATMENT IN FEDERAL PRISONS

Immediately after passage of the new law, the Bureau of Prisons began working to implement Subtitle T, Substance Abuse Treatment in Federal Prisons. Essentially, Subtitle T mandates the Bureau to meet three specific requirements in the provision of treatment to the drug-dependent inmate:

1. Meeting the Demand for Treatment

Requirement: Provide appropriate substance abuse treatment for not less than 50 percent of all "eligible" inmates by the end of fiscal year 1995, not less than 75 percent by the end of fiscal year 1996, and not less than 100 percent by the end of fiscal year 1997. Priority for treatment is to be based on an eligible prisoner's proximity to release. The statute allows inmates convicted of a nonviolent offense up to 1 year off their sentence. In the interest of protecting the public against the early release of violent offenders, the Bureau intends to limit the year-off provision to those inmates whose current conviction is for a nonviolent offense and whose criminal history does not include a serious violent offense (defined as one of the FBI's Part I crimes against a person).

As a result of the passage of the Violent Crime Control and Law Enforcement Act of 1994, there has been a significant increase in the number of inmates volunteering for the residential drug abuse treatment program. Today, the waiting list for admission exceeds 2,300 inmates. It is clear that this provision, and the allowance for up to 1 year off an inmate's sentence, is a strong incentive to motivate inmates to seek access to treatment.

Clearly, an expansion of the Bureau's drug abuse treatment programs is required. Using population projections through fiscal year 1997 it is estimated 26,000 Bureau of Prison inmates have a drug use disorder, of which, 16,000 are "nonviolent" offenders with no history of serious violent offenses and eligible for an early release. It is important to note, when policy implementing this provision is circulated to the field, inmates not eligible for an early release may no longer be interested in the residential drug abuse treatment program. Therefore, at a minimum, 16,000 inmates will require treatment.

When these inmates receive treatment is a critical issue. The Bureau is required by statute to give treatment priority to inmates toward the end of their sentence. The Bureau has some latitude, however, in defining eligibility and will rely on the language regarding treatment priority according to the inmate's proximity to release date in order to ensure that inmates are receiving residential substance abuse treatment in the most effective manner possible.

The Bureau currently provides extended residential drug abuse treatment to inmates within the last 18 months before their release. Residential programs close to inmates' release from custody maximize the impact of treatment and allow for the required continuity with transitional services, aftercare, and successful reintegration into the community. Once Federal inmates complete in-prison residential drug treatment, they usually enter a halfway house with a strong transitional service component.

Inmates nearing release require residential treatment priority. Residential treatment for inmates at the beginning of their sentence results in a long period between treatment and return to the community -- a time when temptations and old habits pose the greatest threats. As a result of relapse or pre-release anxiety and a perceived need for residential treatment just prior to release, inmates might enter a residential drug treatment program a second time. In addition, inmates who completed residential substance abuse treatment toward the beginning of their sentence and demonstrate a need for "refresher" treatment just prior to release may refuse treatment this second time. They will have received the benefit and, absent other incentives, could refuse the much-needed, pre-release treatment.

On October 1, 1994 the Bureau expanded the number of residential treatment units from 32 to 34, expanding the yearly treatment capacity to nearly 4,000. In June of 1994 the Bureau requested additional positions to expand to 40 institution programs by fiscal year 1997, providing treatment to nearly 5,000 inmates annually. This planned expansion was formulated using our projected population growth, and applying the figure of 30.5 percent as inmates in need of treatment. The Bureau believes this will allow it to meet the requirements of treatment for all eligible inmates by the end of fiscal year 1997.

2. Providing an Early Release For Program Graduates

Requirement: Allow up to 1 year off a nonviolent inmate's period of custody for successful completion of a residential drug abuse treatment program.

It is incumbent upon the Bureau of Prisons to ensure that its policy clearly defines the program intent and each program element, so that inmates admitted into the program and those who receive an early release are inmates who have committed nonviolent offenses and have drug use disorders. The Bureau is creating policy to ensure that the intent and integrity of the law are upheld.

Currently, the Bureau's Office of General Counsel has submitted a recommended definition of violence to the Department of Justice that will enable the Bureau to clearly define "nonviolent offenses" as it relates to the possibility of an early release. Rules were drafted and forwarded to the Department of Justice on December 23, 1994, for clearance prior to publication in the Federal Register.

New policy is being drafted and will define:

(1) inmates who are eligible for residential drug abuse treatment programs;

(2) inmates who are eligible for early release consideration;

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(4) residential treatment program success criteria; and

(5) residential treatment program expulsion criteria.

Rules related to this policy were also forwarded to the Department of Justice for clearance on December 23, 1994. Upon receiving clearance they will be published in the Federal Register for comment.

The Bureau projects full implementation of Subtitle T will occur in March 1995.

3. Coordinating with Health and Human Services

Requirement: Consult with the Department of Health and Human Services concerning substance abuse treatment and related services and the incorporation of applicable components of existing comprehensive approaches, including relapse prevention and aftercare services.

The Bureau designed its current drug abuse treatment regimen to include treatment regimens considered to be state-of-the-art. The Bureau has always coordinated activities with the National Institute on Drug Abuse (NIDA) and the Center for Substance Abuse Treatment (CSAT).

The Bureau will continue this coordination of activities. Currently, there is a treatment outcome evaluation funded by NIDA and being performed by the Bureau's Office of Research and Evaluation. In addition, representatives from the Bureau meet with NIDA on a monthly basis to exchange information on drug abuse programs for offender populations, including special need populations such as female offenders and HIV-positive offenders. In addition, the Bureau contacted the Director of CSAT to invite him and his staff to visit one or more of the residential programs to further coordination and consultation with CSAT.

TABLE I

DRUG ABUSE TREATMENT PARTICIPANTS IN FEDERAL PRISONS

	1990	1991	1992	1993	1994
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Drug Education	5,446	7,644	12,500	12,646	11,592*
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Attachment I

RESIDENTIAL DRUG ABUSE TREATMENT PROGRAM LOCATIONS

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FCI DANBURY (CT)
FCI FAIRTON (NJ)
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FCI = Federal Correctional Institution
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Date

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2. Dennis Burke		
3.		
4.		
5.		

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	As Requested		For Correction		Prepare Reply
	Circulate	✓	For Your Information		See Me
	Comment		Investigate		Signature
	Coordination		Justify		

REMARKS

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John Dwyer	Phone No.

5041-102

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32001

U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

February 2, 1995

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Section 32001 of the Violent Crime Control and Law Enforcement Act of 1994 titled "Substance Abuse Treatment in Federal Prisons" establishes a schedule by which all eligible inmates must receive residential substance abuse treatment. Residential treatment programs will be enhanced over a 3-year period and all eligible inmates will have received or will be receiving treatment by 1997. The provision allows inmates convicted of a nonviolent offense up to one year off their sentence for successful completion of residential treatment.

The Section requires the Bureau of Prisons, in January of every year, to transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report containing a description of substance abuse treatment programs operated by the Bureau, an explanation of how eligibility for such programs is determined, information regarding the proportion of inmates with substance abuse problems that are eligible, and a statement regarding the extent to which the Bureau of Prisons has achieved compliance with the establishment of the residential programs outlined in Section 32001.

A copy of the report is attached. Please let me know if I may be of further assistance.

Sincerely,

Kathleen M. Hawk

Kathleen M. Hawk
Director

Attachment

bc: John Dwyer, Assistant Associate Attorney General

U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

February 2, 1995

The Honorable Joseph R. Biden, Jr.
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Biden:

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U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

February 2, 1995

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

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U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

February 2, 1995

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20515

Dear Congressman Conyers:

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Kathleen M. Hawk
Director

Attachment

bc: John Dwyer, Assistant Associate Attorney General

SUBSTANCE ABUSE TREATMENT PROGRAMS

IN THE

FEDERAL BUREAU OF PRISONS

REPORT TO CONGRESS

As required by the Violent Crime Control and
Law Enforcement Act of 1994

January 1995

SUBSTANCE ABUSE TREATMENT PROGRAMS
IN THE
FEDERAL BUREAU OF PRISONS

REPORT TO CONGRESS

FEDERAL BUREAU OF PRISONS

INTRODUCTION

The Federal Bureau of Prisons has provided drug treatment in various forms for decades. Since the passage of the Anti-Drug Abuse Acts of 1986 and 1988, with an increased emphasis on and resources for drug treatment, the Bureau has redesigned its treatment programs. With the help of the National Institute of Drug Abuse and through a careful review of drug treatment programs around the country to determine what works in corrections, the Bureau has developed a treatment strategy that addresses inmate drug abuse by attempting to identify, confront, and alter the attitudes, values, and thinking patterns that lead to criminal and drug-using behavior. The current program includes an essential transitional component that keeps inmates engaged in treatment as they return to their home communities.

This report defines how the Bureau of Prisons projects the number of inmates who experience substance use disorders. It describes drug abuse treatment opportunities for inmates in the Bureau, including the criteria an inmate must meet prior to acceptance and entry into each program component. The report also provides the numbers of Bureau inmates who have participated in drug abuse programs since 1990.

Finally, this report discusses the progress the Bureau of Prisons has made in implementing the requirements of Title T, Substance Abuse Treatment in Federal Prisons, in the Violent Crime Control and Law Enforcement Act of 1994.

IDENTIFYING OFFENDER TREATMENT NEEDS

Consistent with the research literature on drugs and crime, the Bureau of Prisons has found two types of incarcerated drug offenders, who have different treatment needs:

(1) Some drug offenders violate laws that prohibit the possession, distribution, or manufacture of illegal drugs. Generally, these individuals are involved with drugs as a business venture, motivated solely by financial gain. They are generally termed "drug-defined" offenders, and may not need drug treatment, although they may benefit from other treatment, such as values development or anger management.

(2) Other drug offenders violate laws as a direct result of their drug use. These offenders may experience a drug's pharmacological effects in a way that contributes to illegal activities, or they may be involved in illegal activities (such as robbery) motivated by the need for money to support continued drug use. This type of offender is generally termed a "drug-related" offender, and is more likely to need drug treatment.

Sorting out the drug offender population in the Bureau of Prisons and providing treatment to those in need has been a primary emphasis in the development of drug abuse treatment programs. In an effort to identify the population with drug abuse treatment needs, the Bureau initiated a Substance Abuse Needs Assessment in the summer of 1991. All Bureau institutions participated in this project, which involved administering the Inventory of Substance Use Patterns to every inmate entering the Bureau during this 3-month period, to determine the existence and extent of substance use disorders among the offender population. Of the inmates completing this inventory, 30.5 percent met the criteria for drug dependence as listed in the American Psychiatric Association's Diagnostic and Statistical Manual, Third Edition, Revised.[1]

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[1] Meeting the DSM-III-R criteria for drug dependence requires an inmate to meet at least three of the following nine criteria: (1) The inmate has tried one or more times to cease or reduce drug use; (2) The inmate relates time spent either seeking drugs, using drugs, or recovering from drug use; (3) The inmate acknowledges that symptoms of withdrawal, medical problems, and/or legal problems have occurred because of drug use; (4) The inmate relates important social, occupational, familial, and recreational activities given up because of drug use; (5) The inmate acknowledges that substance use has created a persistent problems for him or her; (6) The inmate relates that he or she has experienced withdrawal; (7) The inmate relates that he or she has used drugs to stop feelings of withdrawal; (8) The inmate

As a result, the Bureau has developed and expanded its drug abuse treatment programs based on this 30.5 percent figure. Applied to the current inmate population, this percentage translates to slightly more than 26,000 inmates.

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relates that his or her drug use has led to increased tolerance; and (9) The inmate acknowledges that he or she never meant for alcohol or drug use to get out of hand.

DRUG ABUSE PROGRAM DESCRIPTIONS: ELIGIBILITY AND CONTENT

DRUG ABUSE EDUCATION

Program Screening. Upon entry into a Bureau facility, an inmate's records are assessed to determine whether he or she has a history of drug use, a drug-related offense, or a judicial recommendation to participate in a drug treatment program.

If an inmate's record reveals any of these elements, the inmate is required to participate in a 40-hour Drug Abuse Education course, available in every Bureau institution.

In addition, as part of the standard psychological screening upon entry, inmates are interviewed about their past drug use to determine their need for drug treatment. If such screening evidences a need, the inmate is required to participate in drug abuse education.

Program Content. Participants in drug education receive information on alcohol and drugs and the physical impact of these substances. Participants must complete an assessment of their lives, including the costs their drug use has had on their health, on the lives of their family, and on the community.

Inmates in drug abuse education are introduced to the other components of the Bureau's drug abuse treatment program. Those inmates who are identified as having a further treatment need are strongly encouraged to volunteer for the Bureau's residential drug abuse treatment program.

In Fiscal Year 1994, 11,592 inmates participated in drug abuse education courses. (See Table I for a breakdown of participants by program and fiscal year.)

RESIDENTIAL DRUG ABUSE TREATMENT PROGRAMS

Program Overview. Currently, 34 Bureau of Prisons institutions operate residential treatment programs, with a total of 3,186 beds available (see Attachment I for program locations). The programs are 6, 9, or 12 months long and provide a minimum of 500 hours of drug abuse treatment. The Bureau has a three-phase treatment curriculum that is followed in every residential drug abuse treatment program.

The 6-month programs provide intensive treatment, 8 hours a day, 5 days a week. In the 9- and 12-month programs, treatment is provided no less than 4 hours a day, 5 days a week. The remainder of the day is spent in education, work skills training, recreation, and similar programs. Each residential drug abuse treatment program is staffed by a doctoral level psychologist who supervises treatment staff, each of whom carries a caseload of no more than 24 inmates.

Program Eligibility. Prior to acceptance into a residential treatment program, inmates are interviewed to determine whether they meet the diagnostic criteria for an alcohol or illegal/illicit drug use disorder as defined by the American Psychiatric Association, Diagnostic and Statistical Manual, Fourth Edition, (revised in 1994). An inmate is eligible for a residential drug abuse treatment program if he or she:

(1) has a DSM IV diagnosis for alcohol or illegal/illicit drug abuse or dependence disorder;

(2) has no serious mental impairment that would substantially interfere with or preclude full program participation; and

(3) signs the Agreement to Participate in the Bureau's Drug Abuse Programs;

(4) is, ordinarily within 36 months of release; and

(5) the security level of the residential program institution must be appropriate for the inmate.

Program Content. The strategies used in the Bureau of Prisons drug abuse treatment program place responsibility for change on the individual by demanding compliance with the rules and regulations of treatment, encouraging the inmate to accept "ownership" of the norms of treatment, and motivating the inmate to make a firm commitment to positive change.

The Bureau has found that these objectives mesh well with traditional individual and group therapy as well as with positive

skill-building techniques. Treatment strategies are based on two premises:

(1) the inmate is responsible for his or her behavior, and

(2) the inmate can change his or her behavior.

The treatment regimen encourages the acceptance of personal responsibility by addressing inmates' thoughts and feelings, allowing them to review their past behavior and learn new ways to replace self-defeating patterns with honesty, responsibility, tolerance, and respect. The following skill-building approaches are employed to help accomplish these goals:

- <u>Rational-Emotive/Rational-Behavioral Therapy</u>, in which inmates learn about the impact of beliefs on behavior and learn to distinguish rational from irrational beliefs.

- <u>Errors in Thinking</u>, which focuses on correcting "criminal thinking patterns."

- <u>Communication and Interpersonal Relationship Skill-Building</u>.

- <u>Relapse Prevention</u>, where each inmate develops an individual relapse-prevention plan that follows him or her through the institution to the community.

- <u>Release Planning</u>, which teaches concrete community-living skills such as job seeking, house hunting, finding medical treatment in the community, dealing with rejection, and distinguishing between realistic and unrealistic expectations upon return to the community.

In fiscal year 1994, 3,755 inmates participated in residential drug abuse treatment programs.

NON-RESIDENTIAL DRUG ABUSE TREATMENT

Program Eligibility. In addition to the 34 residential programs, non-residential drug counseling is available in every Bureau of Prisons institution. Inmates with diagnosed drug use disorders, who have minimal time remaining on their sentences, have serious mental health problems, or are unable or unwilling to participate in one of the Bureau's residential units, can seek treatment through an institution's Psychology Services staff.

Program Content. In non-residential programs, a licensed psychologist develops an individualized treatment plan based on a thorough assessment of the inmate. Treatment often includes individual and group therapy. Twelve-Step and Rational Recovery Groups are also available to provide support for recovering substance-dependent inmates.

The Bureau's non-residential treatment component also accommodates the need for a prison-based aftercare program for inmates who successfully complete the residential program and return to the institution's general population prior to their release. It is required of all residential graduates and includes a minimum of one group session each month for a year. Group activities consist of relapse prevention planning, a review of rational behaviors, and confronting thinking errors.

In fiscal year 1994, 1,974 inmates participated in non-residential drug abuse treatment programs.

TRANSITIONAL SERVICES

When an inmate is transferred from an institution to a Community Corrections Center (halfway house), or released from custody to the supervision of the U.S. Probation Service, the final treatment plan/relapse-prevention plan is forwarded to the community supervising authority to ensure continuity in treatment. Once in the community, graduates of the residential program (and other inmates in Community Corrections Centers who are identified as needing community treatment) are required to participate in treatment.

During the time in a Community Corrections Center, treatment is provided through community-based providers whose treatment regimen is similar to the Bureau of Prisons, ensuring consistency in treatment and supervision. Bureau transitional services managers ensure that the inmate complies with the treatment plan and remains drug-free by monitoring the inmate's progress and ensuring regular urinalysis.

In addition, inmates leaving Bureau custody for supervision with the U.S. Probation Office remain in treatment while under supervision. This ensures continuity of treatment for the inmate while he or she re-enters the community.

In fiscal year 1994, transitional services programs had an average daily population of 800 inmates.

IMPLEMENTING THE PROVISION IN THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994 ON SUBSTANCE ABUSE TREATMENT IN FEDERAL PRISONS

Immediately after passage of the new law, the Bureau of Prisons began working to implement Subtitle T, Substance Abuse Treatment in Federal Prisons. This provision requires the Bureau of Prisons to provide appropriate substance abuse treatment for not less than 50 percent of all "eligible" inmates by the end of fiscal year 1995, not less than 75 percent by the end of fiscal year 1996, and not less than 100 percent by the end of fiscal year 1997. To be "eligible" the inmate must be determined by the Bureau of Prisons to have a substance abuse problem, and must be willing to participate in a residential substance abuse treatment program. Priority for treatment is to be based on an eligible prisoner's proximity to release. The statute allows inmates convicted of a nonviolent offense up to 1 year off their sentence. In the interest of protecting the public against the early release of violent offenders, the Bureau intends to limit the year-off provision to those inmates whose current conviction is for a nonviolent offense and whose criminal history does not include a serious violent offense (defined as one of the FBI's Part I crimes against a person).

Subtitle T also requires the Bureau of Prisons to prepare a report to Congress each year that includes: (1) a description of all substance abuse programs; (2) a description of inmate eligibility criteria; and (3) progress made in order to comply with the statute. This third requirement is being met by this report. Subtitle T further requires the Bureau of Prisons to consult with the Department of Health and Human Services concerning substance abuse treatment and related services and the incorporation of applicable components of existing treatment approaches, including relapse prevention and aftercare services.

Essentially, Subtitle T mandates the Bureau to meet three specific requirements in the provision of treatment to the drug-dependent inmate: (1) to meet the demand for treatment; (2) to provide an early release for program graduates; and (3) to coordinate with the Department of Health and Human Services.

1. Meeting the Demand for Treatment

As a result of the passage of the Violent Crime Control and Law Enforcement Act of 1994, there has been a significant increase in the number of inmates volunteering for the residential drug abuse treatment program. Today, the waiting list for admission exceeds 2,300 inmates. It is clear that the additional benefit of allowing up to 1 year off an inmate's sentence is a strong incentive to motivate inmates to seek access to treatment.

Clearly, an expansion of the Bureau's drug abuse treatment programs is required. Using population projections through fiscal year 1997, it is estimated 26,000 Bureau of Prison inmates have a drug use disorder, of which, 16,000 are "non-violent" offenders and eligible for an early release. It is important to note that when policy implementing this provision is circulated to the field, inmates not eligible for an early release may no longer be interested in the residential drug abuse treatment program. Therefore, at a minimum, 16,000 inmates will require treatment.

On October 1, 1994, the Bureau expanded the number of residential treatment units from 32 to 34, expanding the yearly treatment capacity by nearly 4,000. In June of 1994, the Bureau requested additional positions to expand to 40 institution programs by fiscal year 1997, providing treatment to nearly 5,000 inmates annually. This planned expansion was formulated using our projected population growth, and applying the figure of 30.5 percent as inmates in need of treatment. The Bureau believes this will allow it to meet the requirements of treatment for all eligible inmates by the end of fiscal year 1997.

There is still one area that may require further legislative attention which concerns the point in time during their incarceration when these inmates receive treatment. While the statutory language clearly requires the Bureau to give treatment priority according to the inmate's proximity to release, it also requires that treatment be provided to 100 percent of all eligible inmates by FY 1997.

Residential programs close to inmates' release from custody maximize the impact of treatment and allow for the required continuity with transitional services, aftercare, and successful reintegration into the community. However, by 1997 we will have many inmates beginning lengthy sentences who will meet the current eligibility requirements, but for whom immediate residential treatment would be counterproductive. Such inmates could demand immediate treatment and then serve another 10 years or longer before release -- a lengthy period of time before release when temptations and old habits pose the greatest threats.

Even if it was clear that these inmates needed a second session of residential treatment based on relapse, pre-release anxiety, or a need for "refresher" residential treatment, they could not be required to do so, having already met the statutory requirement. Accordingly, consideration should be given to amending the eligibility requirements to require that the inmate is within 24 months of release.

2. Providing an Early Release For Program Graduates

It is incumbent upon the Bureau of Prisons to ensure that its policy clearly defines the program intent and each program component affecting an inmates success or failure in treatment, so that inmates admitted into the program and those who receive an early release are inmates who have committed nonviolent offenses and have drug use disorders. The Bureau is creating policy to ensure that the intent and integrity of the law are upheld.

Currently, the Bureau's Office of General Counsel has submitted a recommended definition of violence to the Department of Justice that will enable the Bureau to clearly define "nonviolent offenses" as it relates to the possibility of an early release. Rules were drafted and forwarded to the Department of Justice on December 23, 1994, for clearance prior to publication in the Federal Register.

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The Bureau projects full implementation of Subtitle T will occur in March 1995.

3. Coordinating with Health and Human Services

The Bureau designed its current drug abuse treatment regimen to include treatment regimens considered to be state-of-the-art. The Bureau has always coordinated activities with different components of the Department of Health and Human Services, such as the National Institute of Drug Abuse and the Center for Substance Abuse Treatment. The National Institute of Drug Abuse (NIDA) is within the National Institutes of Health in the

Department of Health and Human Services. The Center for Substance Abuse Treatment (CSAT) is within the Substance Abuse and Mental Health Services Administration in the Department of Health and Human Services.

The Bureau will continue this coordination of activities. Currently, representatives from the Bureau meet with NIDA on a monthly basis to exchange information on drug abuse programs for offender populations, including special need populations such as female offenders and HIV-positive offenders. In addition, the Bureau contacted the Director of CSAT to invite him and his staff to visit one or more of the residential programs to further coordination and consultation with CSAT.

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U.S. Department of Justice
Office of Justice Programs

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

As published in the *Federal Register*, December 7, 1994

DEPARTMENT OF JUSTICE
Office of Justice Programs

28 C.F.R. Part 91
[OJP No. 1011]
RIN 1121-AA25

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: (l) 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 correctional 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 encouraged 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 otherwise 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 offenders, 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

<u>Section</u>

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 multistate 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 multistate 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 stated 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.

 *U.S. G.P.O.:1994-387-167:44

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Office of Justice Programs

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

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Bureau of Justice Statistics
Selected Findings

July 1995, NCJ-154632

State inmates, 1992-94

Violent Offenders in State Prison: Sentences and Time Served

By
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BJS Statisticians

In partnership with State departments of corrections, the Bureau of Justice Statistics (BJS) collected information on sentences and time served by violent offenders in State prison. For 1992, 1993, and 1994, 49 States and the District of Columbia provided information on violent offenders who were admitted to or released from prison.

In April 1995, BJS published *Prison Sentences and Time Served for Violence*, which discussed truth in sentencing and the hypothetical impact of increasing the percentage of sentence served. Data sources in this report differ from those in the previous report —

- State-by-State tabulations appear for the first time in this report
- BJS received totals and averages, not individual records, from States
- State definitions of *violent offenses*, rather than standard BJS definitions, were used in this report.

Correctional authorities provided the number of violent offenders admitted or released, the average total maximum sentence, the average minimum time to be served by incoming prisoners, and the average time served in prison and jail by released prisoners. (See the questionnaire on page 9.)

This information allows the calculation of percent of sentence served or to be served — measures of the correspondence between sentence length and time served.

From a previous BJS report —
Prison Sentences and Time Served for Violence

Since the mid-1970's, legislatures around the Nation have sought to reduce discretion in both the sentencing process and the determination of when the conditions of a sentence have been satisfied. Determinate sentencing, use of mandatory minimums, and guidelines-based sentencing are illustrations of approaches that limit discretion and increase the predictability of penalties.

A majority of State prisoners today serve presumptive sentences — 90% of State inmates can estimate their probable release date, and their discharge from prison is less likely than in the past to be determined by a parole board decision. In 1977, 72% of those released from State prisons had served an indeterminate sentence, and a parole board decided their release. In 1992, by contrast, less than 40% of prison releases were determined by a parole board.

Interest in truth-in-sentencing reflects continued attention to discretion and to the relation between sentences and time served. Truth-in-sentencing is generally meant to describe a close correspondence between the sentence imposed upon those sent to prison and the time actually served prior to prison release.

———

The report was based on BJS definitions of violent offenders and individual level records or interviews. Data drawn from the annual National Corrections Reporting Program revealed that released violent offenders had served about half their sentence in confinement and admitted violent offenders were expected to serve about 60% of their sentence before release. Data from a national survey of State inmates indicated that violent prisoners believed that they would serve nearly 50% of their sentence.

Though nearly all States (and the District of Columbia) participated in this special data collection, for many jurisdictions the requisite information was unavailable. Just over half the participating jurisdictions provided sufficient data in each year to calculate the percentage of sentence to be served by violent offenders entering prison.

Nearly 8 in 10 participating jurisdictions reported data on average sentence length and time served for violent offenders released from prison. In these jurisdictions the percentage of sentence served could be calculated.

	Number of jurisdictions		
		With sufficient data to calculate percent of sentence served	
Year	Total participating	Admissions	Releases
1992	46	27	39
1993	48	27	40
1994	49	28	40

Percent of sentence to be served, as estimated from prison admissions

Data collected from the States for 1992 to 1994 total over a quarter million violent offenders admitted to prison from sentencing courts (table 1).[1] The number of violent offenders admitted in 1994 ranged from more than 10,300 in California to less than 100 in Wyoming and Vermont.

The States with the largest prison populations in 1994 — California, Texas, New York, Florida, and Ohio — all reported average sentences for violent offenders entering prison. But only New York and Ohio could provide sufficient data to estimate an expected length of stay prior to release (table 2). Furthermore, half of the 10 largest State prison systems did not provide information needed to calculate the percent of sentence to be served.[2]

Based on admissions data for 1992 to 1994, violent State prisoners had an average sentence of about 10 years and were expected to serve slightly less than 5 years on average. Overall, the percentage of sentence to be served rose from 44% to 48% between 1992 and 1994. In each year the percentage varied substantially across the States.

Percent of sentence served, as estimated from prison releases

A total of 40 jurisdictions reported in all 3 years both the average sentence and the time served for released violent offenders (table 3). Most States also included in the average time served any credit for time spent in a local jail before trial or after conviction.

Among released prisoners the average sentence for a violent crime was about 8 years and the average time served, about 3½ years, or just under half of their total maximum sentence.

The percent of sentence served by released violent offenders varied widely among reporting jurisdictions and within some jurisdictions over the 3 -year period. These variations may reflect a differing mix of the type of violent offenders being released, unique jurisdictional sentencing practices, and evolving release policies. Without an accounting of these factors, State-to-State comparisons are likely to be misleading.

[1]Violent crimes are those offenses under State law which involve force or the threat of force. See *Methodology*.

[2]The 10 largest prison systems in 1994, accounting for about 60% of State prisoners, were California, Texas, New York, Florida, Ohio, Michigan, Illinois, Georgia, Pennsylvania, and Virginia.

Prisoners expect to serve about half their sentence

A 1991 BJS survey of inmates in State prisons indicated that prisoners also believe that they are likely to serve just under half of the sentence they received. For each of the violent offenses, prisoners reported:

Type of offense	Average sentence	Expected time to serve	Percent of sentence
All violent	216 months	100 months	46%
Murder	381	178	47
Manslaughter	185	81	44
Sexual assault	211	95	45
Robbery	200	82	41
Assault	158	68	43

7 in 10 prisoners with a life sentence expect to be released

For calculation of average sentence length and percent of sentence served, prisoners sentenced to life in prison or to death were excluded. Such offenders account for about 6% of violent offenders admitted to State prisons each year. In 1992 an estimated 5,700 violent offenders were admitted with a life or death sentence.

In the 1991 survey, about 1 in 6 State prisoners serving time for a violent offense had received a sentence to life in prison or to death. About 74% of had been convicted of homicide; 9% convicted of rape or sexual assault; 9%, of robbery; 4%, kidnaping; and 4%, assault.

Among prisoners with a life sentence —

- 69% reported that they expected to be released
- 18% reported that they did not know if or when they would be released
- 13% reported that they would never be released.

Based on this survey information, an estimated 2% to 5% of violent offenders would never be released from prison and contribute to the calculation of time served.

Table 1. New court commitments and first releases of violent State offenders, 1992-94

Region and jurisdiction	Number of violent new court commitments to State prison			Percent change, 1992-94[a]	Number of violent first releases from State prison			Percent change, 1992-94[a]
	1992	1993	1994		1992	1993	1994	
All participating States	84,598	84,559	81,535	-4.9%	60,753	61,347	61,282	-6.9
Northeast	14,822	15,999	15,420	-6.5%	11,281	11,843	11,583	-12.3%
Connecticut	1,090	993	965	-11.5	707	376	343	-51.5
Maine	282	252	197	-30.1	251	241	188	-25.1
Massachusetts	–	1,267	1,268	–	–	1,617	1,684	–
New Hampshire	203	244	253	24.6	130	188	138	6.2
New Jersey	2,401	2,287	2,406	.2	2,566	2,138	2,380	-7.2
New York	8,650	8,654	7,715	-10.8	6,174	5,833	5,533	-10.4
Pennsylvania	2,112	1,999	2,250	6.5	1,384	1,359	1,247	-9.9
Rhode Island	–	232	300	–	–	–	–	–
Vermont	84	71	66	-21.4	69	91	70	1.4
Midwest	17,916	18,986	19,087	-1.3%	7,570	10,598	12,522	6.6%
Illinois	5,494	5,429	5,581	1.6	4,224	4,448	4,674	10.7
Indiana	–	974	1,008	–	–	–	–	–
Iowa	495	495	532	7.5	512	522	558	9.0
Kansas[b]	–	–	395	–	–	–	38	–
Michigan	3,481	3,306	3,241	-6.9	–	–	1,828	–
Minnesota	355	358	356	.3	181	186	177	-2.2
Missouri	1,964	2,047	2,116	7.7	1,136	1,269	1,167	2.7
Nebraska	370	309	377	1.9	335	375	337	.6
North Dakota	61	81	112	83.6	64	65	66	3.1
Ohio	4,155	4,320	3,879	-6.6	–	2,508	2,585	–
South Dakota	244	231	236	-3.3	174	180	160	-8.0
Wisconsin	1,297	1,436	1,254	-3.3	944	1,045	932	-1.3
South	34,739	31,747	30,036	-8.4%	28,774	25,148	23,047	-15.5%
Alabama[c]	2,340	2,329	2,058	-12.1	–	–	–	–
Arkansas	1,014	873	1,031	1.7	765	817	978	27.8
Delaware	380	402	351	-7.6	430	378	388	-9.8
District of Columbia	540	427	354	-34.4	390	468	344	-11.8
Florida	8,781	7,701	6,931	-21.1	7,144	6,343	6,486	-9.2
Georgia	2,695	2,748	2,621	-2.7	2,397	2,248	1,420	-40.8
Kentucky	857	843	945	10.3	658	771	780	18.5
Louisiana	1,225	1,235	1,248	1.9	1,363	1,333	1,190	-12.7
Maryland	2,220	2,218	2,233	.6	2,393	2,451	2,421	1.2
Mississippi	1,103	1,037	1,112	.8	996	807	746	-25.1
North Carolina	2,455	2,568	2,521	2.7	2,366	2,871	1,882	-20.5
Oklahoma	1,577	1,610	1,634	3.6	727	830	867	19.3
South Carolina	1,407	1,418	1,450	3.1	1,239	1,217	1,205	-2.7
Tennessee	1,204	1,068	905	-24.8	1,421	1,267	992	-30.2
Texas	4,798	5,078	4,440	-7.5	4,851	3,204	3,201	-34.0
Virginia	1,956	–	–	–	1,495	–	–	–
West Virginia	187	192	202	8.0	139	143	147	5.8
West	17,121	17,827	16,992	-.8%	13,128	13,758	14,130	7.6%
Alaska	456	417	464	1.8	222	229	228	2.7
Arizona	1,417	1,597	1,383	-2.4	926	1,012	917	-1.0
California	10,683	11,182	10,308	-3.5	8,958	9,238	9,939	11.0
Colorado	835	870	1,052	26.0	549	611	600	9.3
Hawaii	180	219	251	39.4	135	188	170	25.9
Idaho	189	174	115	-39.2	97	104	75	-22.7
Montana	239	250	256	7.1	192	188	189	-1.6
Nevada	–	–	–	–	–	–	–	–
New Mexico	497	541	666	34.0	–	–	–	–
Oregon	719	691	682	-5.1	644	708	608	-5.6
Utah	224	240	209	-6.7	171	180	172	.6
Washington	1,555	1,562	1,507	-3.1	1,171	1,246	1,219	4.1
Wyoming	127	84	99	-22.0	63	56	13	-79.4

Note. See *Methodology* for definitions of new court commitments and first releases.
–Not reported.
[a]State total and regional totals based on States reporting data in 1992 and 1994.
[b]Includes only admissions and releases governed solely by determinate sentences under the Sentencing Guidelines Act.
[c]Includes data on all admissions and releases.

Table 2. New court commitments of violent State prisoners: Sentence length, minimum time to be served, and percent of sentence to be served before release, 1992-94

Regions and jurisdictions	Mean total maximum sentence length[a]			Mean minimum time to be served before release			Percent of maximum sentence to be served before release[b]		
	1992	1993	1994	1992	1993	1994	1992	1993	1994
All participating States	123 mo	121 mo	126 mo	54 mo	57 mo	59 mo	44%	47%	48%
Northeast	110 mo	112 mo	116 mo	55 mo	61 mo	61 mo	49%	53%	53%
Connecticut	69	70	70	–	–	–	–	–	–
Maine	210	189	147	161	144	112	77	76	76
Massachusetts	–	115	110	–	85	78	–	74	71
New Hampshire	100	116	117	44	54	52	44	47	44
New Jersey	128	134	134	44	46	45	34	34	34
New York[c]	98	101	103	54	59	60	55	58	58
Pennsylvania	149	146	167	61	60	71	41	41	43
Rhode Island	–	63	56	–	–	–	–	–	–
Vermont	133	146	118	–	–	–	–	–	–
Midwest	151 mo	154 mo	149 mo	52 mo	53 mo	55 mo	36%	36%	37%
Illinois	107	115	112	48	53	51	45	46	46
Indiana	–	–	–	–	–	–	–	–	–
Iowa	141	130	134	–	–	–	–	–	–
Kansas[d]	–	–	53	–	–	42	–	–	80
Michigan	204	199	203	77	74	76	38	37	37
Minnesota	111	113	125	80	82	88	72	72	70
Missouri	116	122	127	–	–	–	–	–	–
Nebraska	136	144	141	60	60	70	44	42	50
North Dakota	75	71	62	39	40	40	52	56	65
Ohio	201	208	198	42	43	42	21	21	21
South Dakota	–	–	–	–	–	–	–	–	–
Wisconsin	117	111	116	30	26	26	26	23	22
South	138 mo	134 mo	141 mo	56 mo	67 mo	68 mo	39%	51%	51%
Alabama	170	186	153	–	–	–	–	–	–
Arkansas	189	176	182	–	–	–	–	–	–
Delaware	72	60	74	64	54	65	89	90	89
District of Columbia	174	190	180	110	138	141	63	73	78
Florida	99	103	102	–	–	–	–	–	–
Georgia	123	129	132	–	–	–	–	–	–
Kentucky	139	137	143	–	–	–	–	–	–
Louisiana	148	141	144	80	83	86	54	59	60
Maryland	110	115	119	–	–	–	–	–	–
Mississippi	129	137	144	–	–	–	–	–	–
North Carolina	168	169	173	–	–	–	–	–	–
Oklahoma	177	160	150	–	–	–	–	–	–
South Carolina	125	127	126	36	37	37	29	29	29
Tennessee	141	148	134	–	–	–	–	–	–
Texas	–	–	190	–	–	–	–	–	–
Virginia	198	–	–	39	–	–	20	–	–
West Virginia	142	146	153	45	46	49	32	32	32
West	78 mo	81 mo	83 mo	50 mo	53 mo	57 mo	59%	59%	64%
Alaska	89	90	79	59	60	52	66	67	66
Arizona	90	87	84	54	52	66	60	60	78
California	70	72	74	–	–	–	–	–	–
Colorado	116	131	127	43	49	48	37	37	38
Hawaii	114	107	122	–	–	–	–	–	–
Idaho	129	122	130	43	44	48	33	36	37
Montana	175	215	163	44	54	41	25	25	25
Nevada	–	–	–	–	–	–	–	–	–
New Mexico	65	70	73	33	35	37	51	50	51
Oregon	67	73	75	51	56	58	76	77	77
Utah	118	108	114	/	/	/	/	/	/
Washington	76	85	91	53	61	70	70	72	77
Wyoming	72	69	70	42	40	40	58	58	57

Note: See *Methodology* for definition of total maximum sentence length and minimum time to be served before release.
–Not reported.
/Not applicable. Sentencing statutes do not require any minimum time to be served before release.
[a]Excludes inmates with sentences of life or death.
[b]Based on jurisdictions that reported data on minimum time to be served and total maximum sentence length.
[c]Minimum time to be served includes inmates with sentences of life or death.
[d]Data pertain only to offenders sentenced under the Sentencing Guidelines Act for offenses committed on or after July 1, 1993.

Table 3. First releases of violent State prisoners: Maximum sentence, time served, and percent of sentence served, 1992-94

Region and jurisdiction	1992 Mean maximum sentence	1992 Mean time served in prison/jail	1992 Percent of sentence served	1993 Mean maximum sentence	1993 Mean time served in prison/jail	1993 Percent of sentence served	1994 Mean maximum sentence	1994 Mean time served in prison/jail	1994 Percent of sentence served
All participating States	96 mo	40 mo	42%	97 mo	43 mo	44%	94 mo	43 mo	46%
Northeast	98 mo	45 mo	45%	101 mo	52 mo	51%	102 mo	54 mo	53%
Connecticut	61	–	–	68	–	–	84	–	–
Maine	–	–	–	–	–	–	–	–	–
Massachusetts	–	–	–	117	91	78	116	90	77
New Hampshire[a]	90	34	38	93	33	35	90	37	41
New Jersey	129	45	35	123	43	35	119	44	37
New York	83	43	51	86	45	53	87	47	54
Pennsylvania	127	52	41	122	57	47	121	59	49
Rhode Island	–	–	–	–	–	–	–	–	–
Vermont	90	46	51	89	44	49	97	54	56
Midwest	88 mo	38 mo	43%	123 mo	37 mo	30%	120 mo	37 mo	31%
Illinois	84	35	41	88	35	41	79	34	43
Indiana	–	–	–	–	–	–	–	–	–
Iowa[a,b]	126	34	27	132	32	24	107	34	32
Kansas[c]	–	–	–	–	–	–	–	–	–
Michigan	–	–	–	–	–	–	–	57	–
Minnesota	62	45	73	66	46	70	71	52	73
Missouri	107	56	52	106	55	52	96	49	51
Nebraska[a]	89	39	44	85	38	45	94	42	45
North Dakota[d]	62	27	44	52	22	42	54	25	46
Ohio	–	–	–	230	37	16	239	40	17
South Dakota	–	–	–	–	–	–	–	–	–
Wisconsin	68	29	43	67	28	42	66	25	38
South	115 mo	41 mo	36%	107 mo	44 mo	42%	105 mo	46 mo	43%
Alabama	–	–	–	–	–	–	–	–	–
Arkansas	140	51	36	152	55	36	168	61	36
Delaware[d]	66	36	55	57	36	62	56	33	59
District of Columbia	160	92	58	176	108	61	172	116	67
Florida	83	25	31	71	31	43	73	35	47
Georgia	112	47	42	117	50	43	102	49	48
Kentucky	106	34	32	128	37	29	96	36	38
Louisiana[d]	96	67	70	103	67	65	108	62	57
Maryland	118	62	53	118	63	53	110	59	54
Mississippi	100	40	40	93	34	37	93	37	40
North Carolina	124	35	28	129	32	25	106	32	30
Oklahoma	100	34	34	100	33	33	107	38	36
South Carolina[d]	113	41	36	109	40	37	117	43	37
Tennessee	144	44	31	142	48	34	108	38	35
Texas[d]	139	41	29	147	51	35	145	56	39
Virginia[d]	176	51	29	–	–	–	–	–	–
West Virginia	106	39	37	109	49	45	114	61	54
West	55 mo	36 mo	65%	56 mo	37 mo	65%	51 mo	36 mo	71%
Alaska	106	70	66	107	70	65	107	70	65
Arizona	75	44	59	75	45	59	74	46	62
California	42	33	78	42	33	77	39	33	85
Colorado	78	39	50	73	39	53	67	35	52
Hawaii	132	55	42	142	55	39	125	52	42
Idaho[d]	81	57	70	104	59	57	83	56	67
Montana	130	48	37	166	55	33	124	46	37
Nevada	–	–	–	–	–	–	–	–	–
New Mexico	–	–	–	–	–	–	–	–	–
Oregon[d]	123	40	33	109	42	39	103	43	42
Utah[d]	108	50	46	113	47	42	103	46	45
Washington[d]	50	35	70	57	38	67	58	39	67
Wyoming	59	36	61	66	41	63	96	45	47

Note: Maximum sentence length excludes sentences of life or death. Time served includes time served in jail and prison before release, unless otherwise noted. See *Methodology* for definitions.
–Not reported.
[a]Includes jail time for 1992 only.
[b]1992 data were estimated from data supplied to the National Corrections Reporting Program.
[c]Data that were reported pertained only to offenders sentenced under the Sentencing Guidelines Act for offenses committed on or after July 1, 1993, and are excluded for reasons of comparability.
[d]Excludes jail time for 1992, 1993, and 1994.

Methodology

The National Corrections Reporting Program (NCRP) was initiated in 1983 and annually collects individual-level data on all persons admitted to and released from State and Federal prisons. In 1992, 38 States and the District of Columbia reported 431,279 admissions to the program, representing an estimated 93% of all admissions to State prisons nationwide that year. Release data for 1992 were provided by 36 States, totalling 347,854 releases or an estimated 86% of all releases from State prisons.

For this report, to update the estimates of both sentence length and time served for violent offenses and to provide jurisdiction-level estimates, BJS contacted each State corrections agency. NCRP participants were asked to verify estimates made from 1992 data and to provide similar estimates for 1993 and 1994. States not participating in the NCRP were asked to generate estimates of average sentences and time served for all 3 years.

Forty-nine States and the District of Columbia provided data. BJS provided all tables presenting State-level information to each State corrections agency for verification.

Limitations

For violent offenders admitted to prison, the minimum time to be served before becoming eligible for release is projected, not actual, time. These estimates, taken from prison records, account for good-time provisions, early release practices, parole policies, and other factors that affect time served. These estimates may turn out to be higher or lower than the actual time served when these prisoners are eventually released.

For violent offenders released from prison, the average sentence and time served reflect the experience of persons actually released for the first time on the current sentence.

These figures exclude offenders who —

- had violated the conditions of their release and who had been returned to prison
- were given a sentence that cannot be included in an average, such as life, life without parole, or death.
- would never get out of prison (those who die in prison).

The sentences and time served statistics based on release data reflect sentences and correctional practices in the past. Because less serious offenders typically receive shorter sentences and serve less time, they will comprise a larger percentage of prisoners released than prisoners admitted during a year. For example, those convicted of homicide accounted for 4.2% of admissions in 1992 but 2.6% of those released from prison that year.

Definitions and coverage

Jurisdictions were provided with the following definitions and instructions for coverage:

Sentenced prisoners — Report data for prisoners with a total maximum sentence of more than 1 year.

New court commitments — Persons entering prison directly from court and not from any unsuccessful period of community supervision.

First releases — Persons released for the first time on the current sentence. Excludes persons who had previously been released for the same offense, returned to prison and then released again.

Violent offenses — Crimes involving personal injury, and threat of injury, and theft of property or attempted theft by force or threat of force. Includes murder, manslaughter, rape, other sexual assault, robbery, assault, extortion, intimidation, criminal endangerment, child abuse, and other offenses involving confrontational force or threat of force.

Total maximum sentence length — The total maximum term of incarceration including all consecutive sentences.

Minimum time to be served — The shortest time that each admitted prisoner is expected to serve prior to the first release.

Explanatory notes by jurisdiction

Jurisdictions were instructed to provide estimates when exact numbers were not available. Jurisdictions were also asked to provide an explanation when their definitions or coverage differed from those used in the NCRP.

The following jurisdiction notes summarize these differences. Most States used their own definition of violent offenses. The list below presents only the exceptions to the NCRP definition of violent offenses. If not noted, the State definition of violent offenses matched the NCRP categories. (See *Definitions and coverage.*)

Alabama

New court commitments and first releases: Include all admissions and releases.

Alaska

All data were estimated.

Connecticut

Minimum time to be served and time served in prison and jail: Offenders serve 50% or more of the maximum sentence if the sentence is greater than 24 months.

Colorado

All data were estimated.

Violent offenses: Exclude simple robbery.

Florida

Violent offenses: Include murder, manslaughter, sexual battery, lewd acts on children, robbery, aggravated assault, and aggravated battery.

Minimum time to be served: Cannot be accurately calculated, due to Florida's early release process and various gain-time. Recent changes in gain-time laws and the elimination of early release will make this evaluation possible for future prison admissions.

Hawaii

All data are estimates. Excludes inmates with missing charge information.

Maximum sentence: Should be considered as estimates since between a third and a half of admissions and release records had missing or incorrect data.

Time served in prison and jail: Includes jail time only for releases who were continuously incarcerated from the date of admission as pretrial felons until their date of release from prison.

Illinois

Minimum time to be served: All data were estimated.

Indiana

Violent offenses: Include arson (class A), customer product tampering (class B), obstructing traffic (class D), and resisting law enforcement (class C and D).

New court commitments: Number of admissions was estimated for 1993 and 1994.

Iowa

1992 data were based on a BJS analysis of State data in NCRP.

First releases: Data for 1993 and 1994 were estimated based on release samples.

Maximum sentence length: Data are for the "lead" offense only.

Kansas

All figures pertain to offenders whose admission or release was governed solely by determinate sentences (that is, sentenced only for offenses committed on or after July 1, 1993, the effective date of the Sentencing Guidelines Act). All offenders with active "old law" sentences, as well as those with both "new" and "old" law sentences, have been excluded.

Minimum time to be served: The current law provides for a maximum of 20% good time, leaving a minimum of 80% of the sentence to be served.

First releases: Relatively few violent offenders with only determinate sentences have been released since the enactment of the Sentencing Guidelines Act.

Kentucky

Violent offenses: Exclude sex offenses.

Louisiana

Violent offenses: Include aggravated arson, aggravated criminal damage to property, intentional exposure of AIDS, and mingling of harmful substances. Exclude attempts and conspiracies to commit violent offenses.

Maryland

First releases: Include only parolees, mandatory releases to supervision, expirations of sentence, and commutations. Releases do not necessarily represent first releases. Logic was used to exclude offenders whose stay time was greater than or equal to their total sentence length.

Massachusetts

All data were estimated.

Michigan

Violent offenses: Include arson.

First releases: 1994 data were based on a sample of prisoners with first release or discharge in the 4th quarter, 1994, and extrapolated to the full year.

Minnesota

All data were estimated.

Good time was eliminated for inmates sentenced for crimes committed after August 1, 1993. The sentencing court now is required to pronounce a term of imprisonment, 100 percent of which must be served by the inmate. The term of imprisonment cannot be shortened but may be increased as a result of disciplinary infractions during incarceration.

Missouri

Violent offenses: Include family offenses and weapons offenses.

New court commitments and first releases: Exclude shock cases release to probation after 120 days.

Montana

Data are for fiscal years.

New Mexico

Data are for fiscal years.

Violent offenses: Include bringing contraband into prison, escape, dangerous use of explosives, weapons possession, and sexual exploitation.

New York

Violent offenses: All data pertain to violent felony offenders as defined by New York State Penal Law. Include first and second degree arson and weapons offenses. Exclude manslaughter (2nd), other homicide, robbery (3rd), attempted assault (2nd), and coercive sex offenses other than rape (1st), sodomy (1st) and sexual abuse (1st).

Minimum time to be served and time served in prison and jail: Include inmates with sentences of life or death.

North Carolina

Data on admissions and releases were estimated.

Violent offenses: Include felonies only — misdemeanors are excluded. Violent offenses include arson, burning of property, incest, possession of weapon by inmate, riot and civil disorder, failure to disperse, looting, violation of emergency ordinance, and repeat felon with a deadly weapon.

First releases: General statutes impose a "cap" on the prison population. If a population emergency is declared, the Parole Commission must accelerate paroles to reduce population. During 1994 the Parole Commission slowed down the release of violent offenders as additional space became available.

Minimum time to be served and time served in prison and jail: For inmates with crimes prior to October 1994, North Carolina law grants day-for-day good-time credit; therefore, inmates usually serve 50% or less of their sentence. Inmates with crimes after October 1994 will serve 100% of their minimum sentences. They may also serve an additional 20% of their minimum sentence, if they violate prison rules.

North Dakota

Minimum time to be served: All data were estimated.

Oregon

Sentencing guidelines apply to convicted offenders who committed their crimes after November 1, 1989. These offenders must serve at least 80 percent of their sentence. Prior to the adoption of guidelines, the date of release was determined by a parole board.

During the 1992-94 period most new commitments of violent offenders were guideline cases and most releases were pre-guideline cases. As the size of the guidelines portion of the first release group increases, the effect will be a rising length of time actually served and a declining maximum sentence length.

Pennsylvania

Violent offenses: Include arson of occupied structure.

Rhode Island

Violent offenses: Exclude sex offenses.

New court commitments: 1993 and 1994 data represented total commitments with sentences of more than 6 months. Information based on the March 1995 monthly report and projected for each year.

South Carolina

Violent offenses: Include exposing other to HIV and felony DUI resulting in death.

Minimum time to be served: All data were estimated.

South Dakota

Violent offenses: Include rioting, burglary in the first or second degree, and other felonies in which a dangerous weapon or any explosive or destructive device was used.

Tennessee

Data are for prisoners with a total maximum sentence of 1 year or more.

Texas

Data are for fiscal years.

New court commitments: Exclude parole or mandatory release violators.

First releases: Include all violent parole, mandatory supervision releases, and discharges including violators (not just first releases).

Utah

Minimum time to be served: No statutory minimum time to be served before release exists under Utah's indeterminate sentencing system. All release decisions are made on an individual basis by Utah's Board of Pardons and Parole.

Vermont

Violent offenses: Include arson resulting in death, elderly abuse, habitual offender, hate crime, and lewd and lascivious conduct.

First releases: All data were estimated.

Virginia

Violent offenses: Include arson resulting in death, sex offenses against children, incest with child, bigamy, threats to bomb or burn, and firing into a dwelling, building, or occupied vehicle.

Washington

Minimum time to be served, maximum sentences of first releases, and time served: All data were estimated.

West Virginia

All data were estimated.

Wyoming

First releases: All 1994 data were estimated.

1. New Court Commitments of Violent Sentenced Prisoners During the Calendar Year —

	1992 •BJS analysis of State data	1992 •Your State's statistics	1993 •Your State's statistics	1994 •Your State's statistics
A. Number admitted	______	______ ☐ Est.	______ ☐ Est.	______ ☐ Est.
B. Average total maximum sentence length (in months) •Exclude sentences of life or death.	______	______ ☐ Est.	______ ☐ Est.	______ ☐ Est.
C. Average minimum time to be served (in months)	______	______ ☐ Est.	______ ☐ Est.	______ ☐ Est.

2. First Releases of Violent Sentenced Prisoners During the Calendar Year —

	1992 •BJS analysis of State data	1992 •Your State's statistics	1993 •Your State's statistics	1994 •Your State's statistics
A. Number released	______	______ ☐ Est.	______ ☐ Est.	______ ☐ Est.
B. Average total maximum sentence length (in months) •Exclude sentences of life or death.	______	______ ☐ Est.	______ ☐ Est.	______ ☐ Est.
C. Average time served in prison and jail (in months)	______	______ ☐ Est.	______ ☐ Est.	______ ☐ Est.
Is jail time included?	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

Notes. *(Please provide an explanation, if possible, where your State numbers differ from those defined by BJS. For example, if your State's definition of violent offenses differs, indicate here.)*

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jan M. Chaiken, Ph.D., is the director.

Selected Findings usually present data from both Bureau of Justice Statistics programs and other sources.

Allen J. Beck and Lawrence A. Greenfeld wrote this report. Tom Bonczar, Peter Brien, and Darrell Gilliard collected the data and provided a statistical review. Jodi Brown and Coliece Rice verified the tables. Tom Hester produced the report. Marilyn Marbrook supervised final production, assisted by Jayne Robinson and Yvonne Boston.

The authors acknowledge the contributions of departments of corrections throughout the Nation. Without their efforts and assistance, this report would not have been possible.

July 1995, NCJ-154632

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REMARKS

Attached are the materials to review for Friday's meeting with John Schmidt.

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DEPARTMENT OF JUSTICE

DRAFT

Office of Justice Programs

28 C.F.R. Part 44 [New]

OJP No. 1011;

RIN 1121-AA25

Violent Offender Incarceration and Truth in Sentencing Incentive Grant Program

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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.

EFFECTIVE DATE: Interim rule effective on (insert date of publication in the FEDERAL REGISTER); comments must be received (insert date 90 days after date of publication in the FEDERAL REGISTER).

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

FOR FURTHER INFORMATION CONTACT: Marlene Beckman, Special Counsel, Office of Justice Programs at (202) 307-5933 or Thomas F. Albrecht, Chief, Corrections Branch, Bureau of Justice Assistance at (202) 514-5947.

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 <u>$24.5 million for Subtitle A programs for fiscal year 1995.</u> 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 by December 1994.

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 non-residential 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 correctional 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 criminal and juvenile justice 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 the state's involvement of local jurisdictions, 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 encouraged 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 <u>violent offenders</u> 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 are 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 late December 1994.

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 otherwise 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" [§ 44.2(a), 44.4(b)];

2) Definition of "Serious Drug Offense" [§ 44.4(b)];

3) How a state can demonstrate compliance with the assurance that it <u>has implemented,</u> or <u>will implement</u>, correctional policies and programs, including "truth in sentencing laws" that ensure that: (a) "violent offenders serve a substantial portion of the sentences imposed," (b) "are designed to provide sufficiently severe punishment for violent offenders, 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." [§ 44.2(i), § 44.3(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" [§ 44.3(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 [44.3(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 [44.3(b)(5);

7) How to define the scope of the Comprehensive Correctional Plan [§ 44.3(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." [§ 44.4(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 of 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, 44 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 44 as set forth below.

PART 44 -- GRANTS FOR CORRECTIONAL FACILITIES

Subpart A -- General

Sec.

44.1 Purpose.

44.2. Definitions.

44.3. Assurances.

44.4. Truth in Sentencing Incentive Grants.

- **a) Eligibility Requirements**
- **b) Formula Allocation**
- **c) Transfer of Unused Funds**

44.5. Violent Offender Incarceration Grants

- **a) Eligibility Requirements**
- **b) Allocation of Funds**
- **c) Transfer of Unused Funds**

44.6. Matching Requirement

Subpart B -- FY Year 95 Correctional Boot Camp Initiative Applications

44.10 General.

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

Subpart A -- General

§ 44.1 Purpose.

(a) 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:

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

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

§ 44.2. 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 six-months incarceration (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.

§ 44.3. General Eligibility Requirements.

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

(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 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.

States are not required to adopt any specific set of victims rights measures in these areas 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 in these areas, 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.

(3) Assurances that funds received under this section will be used to construct, develop, expand, operate or improve correctional facilities to

ensure that prison 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 44.2. If the state 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.

§ 44.4. 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 44.3 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.

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(d) Transfer of Unused Funds. On September 30 of each fiscal years 1996, <u>[Statutory drafting oversight in that 1997 is missing; the Department will seek a technical amendment to remedy]</u> 1998, 1999 and 2000, the Attorney General will transfer to the funds to be allocated under the Violent Offender Incarceration Grant formula allocation (section 44.5) any funds made available to carry out this section that are not allocated to an eligible state under paragraph (b).

§ 44.5. 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 44.3(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 44.4(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 subparagraph (i) 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 stated 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 44.4(c) for that fiscal will be allocated at the discretion of the Assistant Attorney General of 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) any funds made available under paragraph (c)(1) that are not allocated to an eligible state under paragraph (c)(1).

§ 44.6. 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 Boot Camp Initiative

§ 44.10 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 44.3(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: (1) involves the use or attempted use of a firearm or other dangerous weapon against another person, or (2) results in death or serious bodily injury to another person.

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

   (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.

(ii) Provide assurances that boot camp construction will free up secure institutional bed space for violent offenders.

(e) Planning and Evaluation.

(1) A modest portion of grant award monies (e.g., up to fifteen percent) may be used by recipients for purposes of planning and development of boot camps.

(2) 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.

(3) 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. <u>States will be required to show how operating expenses will be provided.</u>

(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 appoved 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.

Laurie Robinson, Assistant Attorney General
Office of Justice Programs