Judicial Impact Statement

Violent Criminal Incarceration Act of 1995

H.R. 667

Prepared by:

The Judicial Impact Office

The Administrative Office of the U.S. Courts

June 21, 1995

JUDICIAL IMPACT STATEMENT
Violent Criminal Incarceration Act of 1995
H.R. 667

OVERVIEW

The Violent Criminal Incarceration Act of 1995 (H.R. 667) addresses federal court jurisdictional and administrative issues covering prisoners. These include: (1) requirements that prisoners must fully exhaust state administrative remedies prior to filing a federal lawsuit; (2) significant restrictions on federal court relief related to conditions in prisons, jails, and juvenile detention facilities; (3) expanded ability for certain individuals to oppose the imposition or continuation of remedial relief through new provisions on standing and intervention; (4) automatic time limits for specific forms of prospective relief; (5) mandated requirements and significant new roles for magistrate judges regarding oversight of prison condition cases; and (6) restrictions on attorneys' fees in such cases.

The total impact of the bill could not be quantified. For many provisions, this impact statement provides only an initial assessment or examples of the resource consequences to the judiciary if this bill were enacted. **However, the related costs could be extremely high. For example, the potential annual resource costs of title III, which covers court-ordered relief in prison condition cases, could be more than $239 million and 2,096 positions, of which at least 280 would be judicial officers (Article III judges and/or magistrate judges).** At least $95 million could be incurred if just 50 percent of the nearly 4,000 existing prison conditions consent decrees and court orders were refiled in federal court subsequent to their termination under this bill. More than $144 million in resource costs could be incurred by the judiciary if just 2,000 prisoners in each of the 100 prison condition cases with the largest numbers of named plaintiffs were required to testify individually as to how the alleged prison conditions affected them specifically.

Given the total nationwide prison population and all of the existing consent decrees and court orders that could be subject to court review and termination every two years, the actual and recurring costs could be much greater. Title III's requirements that only federal magistrate judges could perform fact-finding in such cases would also radically alter the role and workload of both magistrate judges and Article III judges, affecting allocation of costs and resources.

The impact of **title I** of the bill, which would give prison construction grants to states that enact "truth-in-sentencing" laws, could not be assessed, given the uncertainty of which states would qualify for these grants and their potential construction timetables. Additional prison facilities could result in additional prisoner litigation at the federal level. It could also have some effect on prisoner release and recidivism rates if more prisoners are incarcerated for longer periods and cannot commit federal crimes. **Title II** of the bill requires prisoners to fully exhaust state

administrative remedies before filing a section 1983 civil rights action in federal court. This requirement could affect the number of such filings. However, based on the conflicting experiences of several states, where similar requirements both increased and decreased filings, the impact of this provision was unclear.

As mentioned in the example above, **title III** could be enormously expensive. In addition, the title would impose strict limitations on the ability of federal courts to fashion, approve or impose remedies in prisoner civil rights cases.

No direct federal court impact would be expected from **title IV** (restrictions on federal prisoner use of strength training and related equipment), **title V** (potential restrictions relating to federal prison amenities), **title VI** (community service projects), or **title VII** (prison commissary administration). This statement provides an in-depth analysis of only **titles II and III**, because those titles would have the most significantly effect on the federal judiciary.

ANALYSIS OF TITLES II AND III

If the entire bill were enacted, several of the provisions within titles II and III would have significant interacting effects. The interrelated effects of these titles and other provisions prevent the development of precise estimates of the total resource impacts associated with this bill. The potential workload and resource projections presented herein generally assume full implementation of the legislation.

In order to develop better estimates of the potential caseload and resource effects of this bill, the Federal-State Jurisdiction Committee of the Judicial Conference of the United States requested that this office conduct an empirical survey of 15 federal court districts identified as processing considerable levels of prisoner civil rights litigation (Prisoner Litigation Survey). This survey requested specific data on various related issues, such as: the total number of major, systemic prison condition cases and the specific condition issues involved; estimates of the number of witnesses and total trial time in such cases; classification of how many cases were resolved by court order or consent decree; identification of background of individuals appointed as special masters or monitors; breakouts of how many consent orders included judicial findings of constitutional violations; and other appropriate questions. The data received was incorporated into the impact analysis of specific provisions of the bill or otherwise correlated with other available sources of information.

"Stopping Abusive Prisoner Lawsuits"
(Title II, Sections 201, 202, 204)

Title II of this bill contains several modifications and restrictions on the prisoner petition process. Section 201 would prohibit a section 1983 civil rights action (42 U.S.C. § 1983) if the petitioning prisoner had not completely exhausted all available administrative remedies, where the remedies had been approved or certified as provided for under current law.

In accordance with current law (42 U.S.C. § 1997e), several states have recently implemented institutional grievance procedures that would allow a district court to continue a prisoner civil rights case to allow for the exhaustion of such remedies. These programs, which are similar to those proposed in section 201, have had mixed results. Some states reported that by extending the administrative remedy process, some additional grievances were resolved at the state level or by the time the administrative process was over, some prisoners believed it was no longer necessary to file petitions in the federal courts. Other states contend that extending the administrative process had little effect on the number of prisoner petitions ultimately filed in the federal courts. As a result of this conflicting data, the change in the number of section 1983 prisoner petitions which would be filed in federal court under proposed section 201 could not be estimated.

Section 202 would direct federal courts to dismiss any frivolous or malicious section 1983 action, or such actions that fail to state a claim upon which relief may be granted, brought by an adult convicted of a crime and confined in any jail, prison or other correctional facility. Section 204 would require that any prisoner filing such a suit include a statement of all assets in his or her possession so the court can require a full or partial payment of filing fees based on the prisoner's ability to pay.

These provisions would not prevent the actions from being filed in federal court. They would only allow the court to dismiss the action at an earlier point in the process. A substantial portion of the judiciary's costs related to these types of cases is incurred in the initial filing and review stage prior to any dismissal (e.g., filing and noticing activities, docket preparation). Possibly, the requirement to pay a filing fee may affect a prisoner's decision to file the action.

During FY 1994, almost 39,100 federal and state prisoner petition civil rights cases[1] were filed in federal court at an estimated resource cost of $49.7 million and 508 judiciary positions. Although title II could reduce the number of petitions filed or reduce court review before the petition could be dismissed, any savings would be at

---

[1] "Judicial Business of the U.S. Courts, 1994 Report of the Director," Table C-2.

least partially diminished by the increase in resources necessary to review the prisoner statements of assets and to process separate partial payments of filing fees. For this reason, the total resource savings could not be developed.

"Stop Turning Out Prisoners" Act (Title III, Section 301)

This title would impose strict limitations on the ability of federal courts to fashion, approve or impose remedies in prisoner civil rights cases. There could also be dramatic and continuing increases in the number of proceedings related to requests for termination of court ordered relief in such cases. The judiciary costs and resources associated with these provisions could be enormous.

Section 301(a) of this title contains substantial amendments to section 3626 of title 18, United States Code,[2] relating to court remedies in prison conditions litigation. Section 301(b) would make these amendments retroactive to all orders, consent decrees and other relief, regardless of whether the relief was originally granted or approved before, on, or after the date of the enactment of this bill. A detailed summary of each significant proposed amendment or group of related amendments contained in this section and the related potential effect on the federal courts follows:

Subsection 3626(a)(1) - Limitations on Court-Ordered Relief in Prison Condition Cases - This subsection states that a court's ability to issue "[p]rospective 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." (emphasis added) Furthermore, the court would not be able to 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 overall intrusiveness of any such relief, the court must give "substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief."

Subsection 3626(a)(2) - Restrictions on Court-Ordered Relief in Prison Overcrowding Cases - This subsection states that 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

---

[2] Section 3626, enacted as part of last year's major crime legislation (Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322 (108 Stat. 1796, Sept. 13, 1994), concerned appropriate remedies with respect only to prison crowding litigation.

plaintiff proves that crowding is the primary cause of the deprivation of the Federal right and no other relief will remedy that deprivation." (emphasis added)

The overall effect of both of these provisions would be to restrict severely the ability of federal courts to fashion, approve or impose remedies in many prisoner civil rights class action cases. The potential impact on the federal courts could be substantial, incurring millions of dollars in annually recurring resource costs, depending on how the intent of Congress and these provisions are interpreted and implemented.

The most recent census of state and federal prisoner population indicated there are about 1.2 million inmates[3] located in approximately 3,270 jails,[4] 1,210 state prisons and 80 federal prisons.[5] As of January 1, 1994, thirty-nine states, the District of Columbia, Puerto Rico, and the Virgin Islands had one or more prisons operating under at least one consent decree or court order for an approximate total of 323 state prisons (at this time, no federal prisons are under a court order or consent decree).[6] Of the 3,270 jails nationwide, about 320 are operating under a court order or consent decree. Other data suggests that 131 of the country's largest 503 jails are also operating under at least one consent decree or court order.[7] Precise estimates are not available as to the overall number of court orders and consent decrees that have been issued. Best interpolation of available data suggests there

---

[3] Correlation of information contained in two documents: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Bulletin, Jail Inmates 1992, Aug. 1993, p.2. (Jail Inmates Bulletin); and U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Census of State and Federal Correctional Facilities 1990, May 1992, NCJ-137003, p.1 (Correctional Facilities Census). This analysis uses the Bureau of Justice Statistics' definition of a "jail": a locally operated correctional facility that confines persons before or after adjudication. Inmates sentenced to jail usually have a sentence of a year or less, but jails also incarcerate persons in a variety of other categories (e.g., transfers to prisons, probation and parole violators, temporary detention of juveniles). Jail Inmates Bulletin, p.2.

[4] Estimate provided by representative of the American Jail Association.

[5] Correctional Facilities Census, p. 1, Table 1.

[6] Data contained in report provided by the American Bar Association, Section of Criminal Justice, "An Analysis of the 'Stop Turning Out Prisoners Act'[sic]" (Feb. 17, 1995), p.3.

[7] Jail Inmates Bulletin, p.5.

are about 1,470 court orders[8] and approximately 2,500 consent decrees[9] covering prison and jail facilities. The best available information indicates that the majority of these court orders and consent decrees were imposed or approved by federal courts.[10] About 1,030 of these nearly 4,000 court orders and consent decrees specifically address crowding conditions in prisons and jails as the sole or primary issue.[11]

As discussed in further detail in the following section, it is likely that substantial numbers, if not the majority, of existing orders and consent decrees will be subject to termination, either soon after enactment (upon motion of a defendant or intervenor under subsection 3626(b)(2)) or over the two-year period following enactment of this Act (under subsection 3626(b)(1)). Most motions for termination will require at least an initial hearing and many will require substantial evidentiary hearings if the court is to determine whether the previously-ordered relief continues to be necessary. It is also likely that given the restrictions on availability of attorneys' fees set forth in section 3626(e), very few of the potentially many cases that would be filed following automatic termination will be settled out-of-court.

According to various judiciary studies on caseweight factors and current workload measurement formulas, major prison condition class action civil rights cases are most likely to involve appointed counsel, are often extremely time-consuming and require extensive use of judicial resources, even when taking into account that usually only a small percentage of the individual petitioners or members of the named class of prisoners actually testify.[12] Based on these caseweights and

---

[8] Correlation of data obtained from Bureau of Justice Statistics, "Sourcebook of Criminal Statistics - 1991," Table 1.98 (BJS Sourcebook 1991) and from Jail Inmates Bulletin, p.5.

[9] Correctional Facilities Census, Table 10, applying ratios consistent with data received from footnote 7.

[10] See e.g., U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Challenging the Conditions of Prisons and Jails: A Report on Section 1983 Litigation, January 1995, NCJ-151652, p. 1, fn. 1 (Section 1983 Litigation Report). This information was also supported by discussions with representatives of the ACLU National Prisoner Project, the National Center for State Courts, the American Jail Association, and the Bureau of Prisons, as well as by data received in response to the Prisoner Litigation Survey.

[11] Correctional Facilities Census, p.7; and BJS Sourcebook 1991, Table 1.98.

[12] See e.g, Section 1983 Litigation Report, pp. 22-27 and accompanying reference list, pp. 45-46. Many of the findings of these studies were supported by the data received in response to the Prisoner Litigation Survey.

work formulas, the cost of just reopening, producing required findings and deciding whether to continue previously-ordered relief or issue new decrees in 100 such cases would be about $4.77 million and 45.3 positions.

However, the judiciary's costs would be significantly higher if the court must make individual findings and hear testimony from each affected plaintiff, as may be intended under this section. For example, if 2,000 members of a prisoner class action were required to individually testify, the total resource cost to the judiciary would be at least $1.44 million and 11.9 positions for just one case. Even if the court were able to hear from six witnesses per day (taking into account time for testimony and cross-examination), **it could take more than 330 days or more than 1.6 court years for a judge (district and/or magistrate judge, depending on the allocation of workload) to hear evidence from each member of the class action.**[13]

It is not known exactly how many such cases would be filed in federal court each year. Assuming, however, that such prisoner class actions (whether refiled after termination under subsection 3626 or newly initiated) were filed against just 100 of the largest correctional facilities or systems and 2,000 prisoners in each of these cases were required to testify individually as to how the alleged prison conditions affected them specifically (200,000 potential plaintiffs), **the total annual resource costs to the judiciary would be about $144 million and 1,190 positions. More than 160 of these positions would be judicial officers, working full-time on these cases each year.** These costs can be several times greater, considering the total nationwide prison population and the thousands of existing prison and jail consent decrees and court orders that could be subject to court review and termination within the first two years after enactment, as discussed herein.

As mentioned previously, the group of individuals covered by any court-ordered relief may be limited to the named prisoner litigants. Other prisoners not specifically part of the initial class action as well as new inmates might not receive any remedies or benefits from the resolution of these cases. This situation alone could generate thousands of additional suits seeking the same relief or outcome.

---

[13] Based on current workload measurement formulas and confirmed by data received from the Prisoner Litigation Survey. These numbers assume that only one judge works full-time on each of these cases; the length of the trial could be reduced significantly if more than one judge is assigned to the case on more than a part-time basis.

Subsection 3626(b)(1) - Automatic Termination of Prospective Relief - This subsection provides that in any civil action on prison conditions, any prospective relief shall automatically terminate two years after the later of either: (1) the date the court found the violation of a federal right that was the basis for the relief; or (2) the date of enactment of this legislation.

Subsection 3626(b)(2) - Immediate Termination of Prospective Relief - This subsection provides that in any civil action on prison conditions, a defendant or intervenor shall be entitled to 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." (emphasis added)

Subsection 3626(c) - Procedure for Motions Affecting Prospective Relief - Part 1 of this subsection requires courts to rule promptly on any motion to modify or terminate prospective relief with respect to prison conditions. Part 2 provides that any prospective relief subject to a pending motion would be automatically stayed during the period beginning either 30 to 180 days after the motion is filed (depending on the nature of the motion), ending when the court enters a final order ruling on the motion.

Subsection 3626(d) - Expansion of Provisions on Standing and Intervention - This subsection grants standing for the purpose of opposing any relief whose purpose or effect is to reduce or limit prison population to the following persons: any federal, state, or local official or unit of government, whose jurisdiction or function includes the prosecution or custody of persons in the prison at issue, or who may otherwise be affected by the population-limiting relief. Such persons are also authorized to intervene in any proceeding relating to such relief. Standing is to be "liberally conferred under this subsection so as to effectuate the remedial purposes of this section."

The net effect of these four provisions would be to increase dramatically the number of proceedings related to requests for termination of court ordered relief, whether immediately or within the first two years after enactment of this Act, regardless of whether remedies related to such orders were implemented.

This would especially be the case with respect to consent decrees. Such decrees are typically used as a means of settling prison litigation without an explicit finding by the court of a federal violation. The parties typically include in the

consent decree a statement to the effect that the defendants, by agreeing to settle the case, are not admitting that the conditions of confinement in the correctional facility are unconstitutional. This statement is included in the consent decree so that the decree is not used against correctional officials in other lawsuits contesting the conditions of confinement. Best available information indicates that the majority of such consent decrees do not contain a finding of a constitutional violation.[14] In several ways, this legislation creates various disincentives for the parties to enter into consent decrees.

Under these provisions, court orders and consent decrees covering conditions in correctional facilities that may or may not have been rectified are likely to be the target of motions seeking immediate termination. If termination occurs, the inmates at those facilities would probably bring additional lawsuits (either class actions or individual petitions) to resolve issues and conditions that have previously been the subject of remedial relief but have never been rectified, in the opinion of the affected prisoners.

As stated earlier, Bureau of Justice Statistics data indicate that there are at least 1,030 court orders and consent decrees affecting prisons and jails that are primarily related to crowding conditions. **Motions to stay prospective relief in a majority of these crowded condition cases could be filed very shortly after enactment of these provisions. Even if there were no immediate and specific motions, subsection 3626(b)(1) would automatically terminate all of the nearly 4,000 existing court orders and consent decrees within two years after enactment.**

Best available information indicates that the majority of existing court orders and consent decrees were imposed or approved by federal courts, but the actual percentage could not be determined. It is also unknown how many of these cases would be refiled and what percentage in state or federal court. In many instances, the main issues or problems may already be near full compliance or resolution and the only continuing oversight of the facility is minimal. For these situations, there might not be any apparent or urgent need for a new lawsuit to be filed. As mentioned previously, current caseweights and work measurement formulas indicate that the cost of reopening just 100 such cases, producing the required findings and issuing new court decrees would be about $4.77 million and 45.3 positions.

---

[14] This supposition is based on background information received from representatives of various national correctional associations and summary reports issued by the ACLU's National Prison Project. The Prisoner Litigation Survey conducted by this office supported this supposition, indicating that fewer than 17% of all consent decrees contained findings of a constitutional violation.

In order to illustrate the potential effect of these provisions, if only 50 percent of the nearly 4,000 total number of consent decrees and court orders affecting prisons and jails were the subject of new litigation and filed in federal courts, **the cost to the judiciary would be more than $95.4 million and 906 positions. More than 126 of these positions would be judicial officers (district judges and/or magistrate judges).** If the judiciary were to re-adjudicate just 50 percent of the existing 1,030 orders and decrees related specifically to prison population conditions, **the cost would approach $24.6 million and 233.3 positions.** Given the available data, these may be conservative estimates of the total impact on the federal courts.

As mentioned previously, these costs are based on current caseweights and work measurement formulas. **The costs would be significantly higher if the court must make individual findings and hear testimony from each affected prisoner,** as set forth in the previous discussion of subsections 3626(a)(1) and (2). The costs also do not take into account the effects from the mandated role of magistrate judges set forth in subsection 3626(e), below.

> **Subsection 3626(e) - Mandated Use of Magistrate Judges As Special Master or Monitor** - This subsection requires that in any civil action in federal court with respect to prison conditions, if a special master or monitor is to be appointed, such individual must be a United States magistrate judge. In addition, the magistrate judge would be limited to making proposed findings on the record on complicated factual issues submitted by the court, and would be prohibited from any other function, even if the parties consented.

This provision would place great demands on magistrate judges in particular and by extension, the rest of the federal judicial system.[15] Magistrate judges would be responsible for these functions rather than the wardens, correctional superintendents, and other correctional experts who generally serve as court monitors at the present time. In time, especially given the likelihood that most existing court orders and consent decrees will be reopened (as discussed above),

---

[15] This section also appears to contravene certain fundamental jurisdiction provisions of the Federal Magistrates Act (28 U.S.C. § 636). One interpretation of the section contends that magistrate judges would be prohibited from handling non-case-dispositive and case-dispositive motions, as well as pretrial conferences in prisoner cases. In addition, many magistrate judges currently handle prisoner cases with the consent of the parties and may act with full dispositive authority equal to a district court judge; this practice may be prohibited or restricted under this proposed section. This impact statement does not provide cost analyses of these potential effects of the legislation.

magistrate judges might be appointed as special masters or monitors in hundreds of prison condition cases, at a minimum.[16]

Under certain circumstances, magistrate judges could find that overseeing just one major correctional facility or a few prisons and jails could become a full-time occupation, leaving little or no time to devote to other duties.[17] This scenario is highly probable considering the approximately 660 largest state and local correctional facilities currently operating under court orders or consent decrees and the many thousands of prisoners in those institutions. Magistrate judges are an integral part of the judiciary, handling a significant part of the civil and criminal caseload. In response to the overall effects of this provision and the rest of **title III**, the judiciary would either be required to seek funding for substantially more magistrate judge positions, or else request additional district judgeships to assume the additional workload. The absence of additional resources may substantially delay other criminal and civil proceedings within the federal courts.

A precise estimate cannot be developed on the number of existing and future court orders and consent decrees that may use magistrate judges exclusively for fact-finding activities and monitoring of prison and jail conditions. Best available information indicates that a special master or monitor is appointed in at least 20% of all prison condition cases settled by a court order or consent decree.[18] For

---

[16] Available statistical and other agency workload data indicates that very few magistrate judges are currently appointed as special masters or monitors in these cases. The Prisoner Litigation Survey indicated that magistrate judges comprised fewer than 10% of the total number of special master or monitor appointments in major prison condition cases.

[17] In one recently concluded major prison condition court action, for example, it is estimated that the court-appointed special master (an expert in prison management) and three assistants will have to spend approximately 3-6 months full-time on a plan to implement the court-ordered remedies. If instead, this work had to be done by one magistrate judge (without staff or assistants), it could take 2-4 years of his or her time working exclusively on this one case.

Relatedly, fees for the cost of special masters can be paid by the parties to the litigation, specifically the state or local government party to the case. Under this bill, however, if only magistrate judges can be special masters, the federal courts are in effect the sole entity paying for this function.

[18] This 20% estimate is based on responses to the Prisoner Litigation Survey. Additional research is being conducted to further substantiate and correlate this percentage estimate with similar information previously collected by the American Correctional Association (a summary of this information is presented as Table 1.92 of the Bureau of

illustrative purposes, approximately four magistrate judges (plus about 15.6 immediate support positions and about an additional five indirect administrative support positions), at an annual cost of about $2.47 million would be required to perform 100 such monitoring activities. **If magistrate judges were used to monitor about 20 percent (800) of the nearly 4,000 existing court orders and consent decrees on a full-time basis, as many as 32 magistrate judges, and about 125 immediate support staff positions and 40 indirect support positions would be required, at an annual cost of approximately $19.4 million.** If additional magistrate judges are not available to perform duties in criminal and other civil cases, additional district judges will be needed to take on this increased workload. The equivalent resource cost of 32 Article III judges (including about 173 immediate and indirect support staff positions) would be $22.3 million.

> **Subsection 3626(f) - Limitations on Attorneys' Fees -** This subsection would limit the availability of attorneys' fees under 42 U.S.C. § 1988 in prison condition cases, by allowing attorneys' fee awards only to the extent that the fees are directly and reasonably incurred in proving an actual violation of the plaintiff's federal rights and are proportionally related to the extent the plaintiff obtains court ordered relief for that violation. (emphasis added)

This provision could have several effects on the judiciary, none of which can be precisely quantified at this time. For example:

> 1) Fewer attorneys may agree to initially take on these cases. More prison condition cases may be filed without the assistance of counsel. Such pro se cases are usually more difficult and time consuming for the courts to process.
>
> 2) By limiting attorneys' fees to those costs incurred in "proving an actual violation," enforcement of remedies may become more difficult and time consuming for the courts. Obtaining a court order is often only the beginning phase of a prison condition suit, while monitoring and enforcement of the remedies may take several years. If plaintiffs are prohibited from collecting attorneys' fees for the often drawn-out enforcement phase of the lawsuits, attorneys may not remain with a case once relief is granted. This situation could also increase the workload of both Article III and magistrate judges, since oversight of

---

Justice Statistics' "Sourcebook of Criminal Statistics - 1993").

the implementation of the order may become a court function under subsection (e).

3) If attorneys' fees are restricted for these specific cases, attorneys may attempt to recoup their time investments by bringing additional personal contingency fee lawsuits, on behalf of their clients, against the individuals (e.g., prison guards, wardens, doctors, etc.) who were responsible for the specific conditions found to be unconstitutional. The cost of 100 such lawsuits in federal court would be about $567,000 and 5.6 positions.

In any event, it is anticipated that these restrictions on the availability of attorneys' fees will reduce the incidence of settlement agreements being reached in most prison conditions cases. The effect of this provision as it interrelates with **sections 3626(a) and (b)** has already been discussed.

Analytical Assumptions

The cost estimates presented above reflect the full or partial resource costs to the judiciary of implementing specific provisions. These estimates include the resource cost of existing judicial officers, their direct staff and associated support activities that would contribute to handling the projected caseload (e.g., court security, automation and administrative support).[18] The bill does not consider creating new federal judgeships; therefore, the costs associated with appointing new judicial officers and hiring staff related to this new workload are not included.

[18] Some of these specific support costs could increase substantially due to the types of cases that may be generated under this bill, especially court security costs; these increases could not be quantified and were not included in the cost totals.