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**\*S3703 CONTROL OF PRISONS**

Mr. ABRAHAM.

Mr. President, I should like to pick up on some of the topics which the Senator from Texas was discussing and particularly focus on one aspect of the Republican agenda on crime, prison reform. I would like today to discuss the proposals we Senate Republicans have developed under the leadership of the majority leader, Senator DOLE, to end frivolous lawsuits brought by prisoners, to remove our prisons from the control of Federal judges, and return control over them to our State and local officials.

Mr. President, let me begin by outlining the problem. In 1995, 65,000 prisoner lawsuits were filed in Federal courts alone. To put that in context, 65,000 lawsuits is more than the total number of Federal prosecutions initiated in 1995. In other words, prisoners incarcerated in various prisons brought more cases in the Federal courts than all Federal prosecutions last year combined.

The vast majority of these lawsuits are nonmeritorious. The National Association of Attorneys General estimated that 95 percent of them are dismissed without the inmate receiving anything.

Let me just list a few examples.

First, an inmate claimed \$1 million in damages for civil rights violations because his ice cream had melted. The judge ruled that the right to eat ice cream was clearly not within the contemplation of our Nation's forefathers.

Second, an inmate alleged that being forced to listen to his unit manager's country and western music constituted cruel and unusual punishment.

Third, an inmate sued because when his dinner tray arrived, the piece of cake on it was "hacked up."

Fourth, an inmate sued because he was served chunky instead of smooth peanut butter.

Fifth, two prisoners sued to force taxpayers to pay for sex change surgery while they were in prison.

On and on the list goes, Mr. President, with more and more ridiculous lawsuits brought by inmates in penitentiaries. A prisoner who sued demanding LA Gear or Reebok "Pumps" instead of Converse tennis shoes.

These kinds of lawsuits are an enormous drain on the resources of our States and localities, resources that would be better spent incarcerating more dangerous offenders instead of being consumed in court battles without merit.

Thirty-three States have estimated that they spend at least \$54.5 million annually combined on these lawsuits. The National Association of Attorneys General has extrapolated that number to conclude that the annual costs for all of these States are approximately \$81 million a year to battle cases of the sort that I have just described.

In addition to the problems created by the lawsuits the courts have dismissed, we have

what is, if anything, a more serious problem-lawsuits the courts have not dismissed that have resulted in turning over the running of our prisons to the courts.

In many jurisdictions, including my own State of Michigan, judicial orders entered under Federal law have effectively turned control of the prison system away from elected officials accountable to the taxpayers and over to the courts. The courts, in turn, raise the costs of running prisons far beyond what is necessary and undermine the very legitimacy and deterrent effect of prison sentences. Judicial orders entered under Federal law have even resulted in the release of dangerous criminals from prison. Thus, right now, our existing Federal laws are actually wasting the taxpayers' money and creating risk to public safety.

**\*S3704** Let me explain a little bit about how this works. Under a series of judicial decrees resulting from Justice Department lawsuits against the Michigan Department of Corrections back in the 1960's, the Federal courts now monitor our State prisons to determine: first, how warm the food is; second, how bright the lights are; third, whether there are electrical outlets in each cell; fourth, whether windows are inspected and up to code; fifth, whether a prisoner's hair is cut only by licensed barbers; and sixth, whether air and water temperatures in the prison are comfortable.

Complying with these court orders, litigating over what they mean, and producing the reports necessary to keep the courts happy has cost the Michigan taxpayers hundreds of millions of dollars since 1984.

This would be bad enough if a court had ever found that Michigan's prison system was at some point in violation of the Constitution or if the conditions there had been declared inhumane, but that is not the case. To the contrary, nearly all of Michigan's facilities are fully accredited by the American Corrections Association.

We have what may be the most extensive training program in the Nation for corrections officers. Our rate of prison violence is among the lowest of any State. And we have spent an average of \$4,000 a year per prisoner for health care, including nearly \$1,700 for mental health services.

Rather, the judicial intervention is the result of a consent decree that Michigan entered into in 1982, 13 years ago, that was supposed to end a lawsuit filed at the same time. Instead, the decree has been a source of continuous litigation and intervention by the court into the minutia of prison operations.

The Michigan story is a bad one, Mr. President, but let me tell you a story that causes me even more concern, and that is on the public safety side, the example that is going on even today in the city of Philadelphia. There a Federal judge has been overseeing what has become a program of wholesale releases of up to 600 criminal defendants per week to keep the prison population down to what the judge considers an appropriate level.

As a result, a large number of defendants have been released back onto the streets. Following their release, thousands of these defendants have been rearrested for new crimes every year including 79 murders, 90 rapes, 959 robberies, 2,215 drug dealing charges, 701 burglaries, 2,748 thefts, and 1,113 assaults.

Under this order, there are no individualized bail hearings based on a defendant's criminal history before deciding whether to release the defendant pretrial. Instead, the only consideration is what the defendant is charged with the day of his or her arrest.

No matter what the defendant has done before, even, for example, if he or she was previously convicted of murder, if the charge giving rise to the specific arrest on the

specific date is a nonviolent crime, the defendant may not be held pretrial.

Moreover, the so-called nonviolent crimes include stalking, carjacking, robbery with a baseball bat, burglary, drug dealing, vehicular homicide, manslaughter, terroristic threats, and gun charges. Those are charged as nonviolent and consequently those arrested are not detained.

Failure to appear rates, needless to say, for crimes covered by the cap are up around 70 percent as opposed to noncovered crimes for aggravated assault where the rate is just 3 percent.

The Philadelphia fugitive rate for defendants charged with drug dealing is 76 percent, three times the national average. Over 100 persons in Philadelphia have been killed by criminals set free under this prison cap.

Mr. President, I think this is all wrong. People deserve to keep their tax dollars or to have them spent on progress they approve. They deserve better than to have their money spent on keeping prisoners and prisons in conditions a particular Federal judge feels are desirable but not required by the Constitution or any law.

They certainly do not need it spent on endless litigation over these matters.

Meanwhile, criminals, while they must be accorded their constitutional rights, deserve to be punished. Obviously, they should not be tortured or treated cruelly. At the same time, they also should not have all the rights and privileges the rest of us enjoy. Rather, their lives should, on the whole, be describable by the old concept known as "hard time." By interfering with the fulfillment of this punitive function, the courts are effectively seriously undermining the entire criminal justice system.

Our distinguished majority leader, Senator DOLE, working with Senator HATCH, Senator KYL, Senator HUTCHISON, and myself, has developed legislation to address these problems. Our proposals will return sanity and State control to our prison systems.

To begin with, we would institute several measures to reduce frivolous inmate litigation. We would require judicial screening, before docketing, of any civil complaint filed by a prisoner seeking relief from the Government.

This provision would allow a Federal judge to immediately dismiss a complaint if either the complaint does not state a claim upon which relief may be granted, or the defendant is immune from suit. In addition, State prisoners would have to exhaust all administrative remedies before filing a lawsuit in Federal court.

We would also create disincentives for prisoners to file frivolous suits. Under current law, there is no cost to prisoners for filing an infinite number of such suits. First, we would require inmates who file lawsuits to pay the full amount of their court fees and other costs. We also would make that requirement enforceable by allowing their trust accounts to be garnished to pay these fees. If a prisoner is unable to fully pay court fees and other costs at the time of filing a lawsuit, 20 percent of the funds in his trust account would be garnished for this purpose. Every month thereafter 20 percent of the income credited to the prisoner's account would be garnished until the full amount is paid off.

We would also allow Federal courts to revoke any good-time credits accumulated by a prisoner who files a frivolous suit. Finally, we would prohibit prisoners who have filed three frivolous or obviously nonmeritorious in forma pauperis civil actions from filing any more unless they are in imminent danger of severe bodily harm, and we would cap and

limit the attorney's fees that can be obtained from the defendant in such suits.

As to the powers of judges to overrule our legislatures, we would forbid courts from entering orders for prospective relief-such as regulating food temperatures-unless the order is necessary to correct violations of individual plaintiffs' Federal rights. We also would require that the relief be narrowly drawn and be the least intrusive means of protecting the Federal rights. We would direct courts to give substantial weight to any adverse impact on public safety or the operation of the criminal justice system caused by the relief. And we would impose important new requirements before a court can enter an order that requires the release of prisoners, including that such orders may be entered in the Federal system only by a three-judge court.

We also would provide that any party can seek to have a court decree ended after 2 years, and that the court will order it ended unless there is still a constitutional violation that needs to be corrected. As a result, no longer will prison administration be turned over to Federal judges for the indefinite future for the slightest reason. No longer will public safety be jeopardized by capricious judicial prison caps. And no longer will the taxpayers be socked for enormous, unnecessary bills to pay for all this.

Instead, the States will be able to run prisons as they see fit unless there is a constitutional violation. If there is, a narrowly tailored order to correct the violation may be entered.

This is a balanced set of proposals, allowing the courts to step in where they are needed, but puts an end to unnecessary judicial intervention and micromanagement of our prison system we see too often.

These proposals were included as part of the Commerce, State, Justice appropriation bill. Unfortunately, President Clinton vetoed this legislation. As a result, we continue to have more frivolous prisoner lawsuits and we continue to have some courts running prisons.

President Clinton said his veto was based on other parts of the legislation. \*S3705 Accordingly, we will shortly be sending him a new version of an omnibus appropriations bill that again includes these proposals. This is one measure we can take that will plainly advance our fight against crime. We hope this time, President Clinton will help.

Mr. President, at this time, I yield the floor to the Senator from Tennessee for up to 10 minutes.

The PRESIDING OFFICER.

The Chair recognizes the Senator from Tennessee.

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