



AMERICAN BAR ASSOCIATION

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February 17, 1995

Dear Senator:

I am writing on behalf of the American Bar Association to urge you to oppose including in S.3 the provisions of the "Stop Turning Out Prisoners Act" ("STOP") as approved on February 10 by the House of Representatives in H.R. 667. This legislation lacks constitutional sufficiency, is unwise, and a gross infringement on the prerogative of states, violating the principles of the Tenth Amendment, which reserves certain powers to the states.

The "Stop Turning Out Prisoners Act" impedes the ability of adult and juvenile inmates to obtain redress for the violation of their constitutional and other legal rights in a number of different ways. The Act, for example, limits the prospective relief that courts can order in lawsuits challenging conditions of confinement, automatically terminates prospective relief after a two-year period, and places substantial limits on the attorneys' fees which can be awarded inmates' attorneys -- an action which could have a serious "chilling effect" on inmates' efforts to secure the vindication of their rights.

STOP will lead to a number of different problems, just a few of which are briefly capsulized below.

1. Much of the "Stop Turning Out Prisoners Act" is Unconstitutional. The United States Supreme Court has held that inmates have the constitutional right to have "meaningful access" to the courts. *Bounds v. Smith*, 430 U. S. 817 (1977). Much of the "Stop Turning Out Prisoners Act," however, flies in the face of this constitutional command. To give an example of but one of the constitutional defects in the Act, a section provides that prospective relief ordered by courts in lawsuits contesting the conditions of confinement in prisons, jails, and other adult and juvenile correctional facilities must automatically terminate after two years. Even if the conditions of confinement to which inmates and juveniles are subject are still flagrantly unconstitutional two years later, the inmates and juveniles are, by legislative fiat, denied relief. Exercise of the right of inmates and juveniles to have

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access to the courts can be rendered an empty ritual if the resources are simply not available to rectify the violations within two years. The right not to be subjected to cruel and unusual punishment can be stripped of all meaning if recalcitrant or dilatory compliance delays implementation beyond twenty-four months.

2. The "Stop Turning Out Prisoners Act" will Place Undue Burdens on Federal Courts. Although STOP's intent may be to relieve the burdens of state corrections and other officials, it will have the side effect of placing additional burdens on an already overburdened federal judiciary. Much of STOP is designed to strictly limit what courts can do to remedy unconstitutional or other illegal conditions of confinement. But in order to ensure that those limits have not been exceeded - that, for example, the relief provided goes "no further than necessary to remove the conditions that are causing the deprivation" of federal rights, courts will have to hold extensive and time-consuming hearings.

A very large percentage of the major lawsuits challenging conditions of confinement in adult and juvenile correctional facilities are ultimately resolved through a settlement, sparing the parties and the courts the time and expense of a trial. These benefits of settlement will, however, be lost if a federal court must then in effect hold a trial to determine whether the strict, and as is discussed below, unrealistic limits placed by STOP on the authority of courts to grant remedial relief are met.

3. The "Stop Turning Out Prisoners Act" Betrays a Lack of Understanding of Court Procedures and Legal Remedies and Encroaches on States' Rights. STOP ignores the limitations which already exist on the power of federal courts to grant equitable relief. For example, as the Supreme Court has recognized, when a court has found, after a trial, that the conditions of confinement at a juvenile or adult correctional facility are unconstitutional, the court's remedial order must be tailored to cure the constitutional violation. *Rufo v. Inmates of the Suffolk County Jail*, 112 S. Ct. 748 (1992). When the state and aggrieved parties agree, however, that remedial steps should be taken, they have the prerogative, and should have the prerogative, to devise a remedial package which most effectively redresses the illegal conditions of confinement, even if the agreed-upon relief goes somewhat beyond the specific requirements of the Constitution.

To give but one example of the flexibility which courts and parties need to effectively remedy illegal conditions of confinement, assume that juveniles in a juvenile detention facility bring a class-action §1983 suit because juveniles are being severely beaten by correctional officers. The parties agree that the juveniles' constitutional rights are being violated and enter into a consent decree. Part of that decree provides for more training of correctional officers in the handling of juveniles to avert the unconstitutionally excessive use of force.

The Constitution itself, however, does not mandate such training, and such court-ordered training might technically exceed the limitations placed by STOP on court-ordered relief. Yet such training, whether or not "necessary" to cure the constitutional violation, is a reasonable means of doing so. States should not be deprived by Congress of the leeway they need to settle these and other lawsuits in a way which best serves the interests of the people of the states.

4. The "Stop Turning Out Prisoners Act" will Fuel the Already High Tensions in This Nation's Correctional Facilities.

One of the values of prisoners' civil-rights suits is that they provide an outlet through which juvenile and adult inmates whose legal rights have been violated can express their grievances through nonviolent means and obtain redress for the violation of their rights. STOP places a number of unreasonable and insurmountable obstacles in the path of inmates seeking the vindication of their constitutional and other legal rights. The practical effect of STOP and some of the related provisions concerning inmate litigation in H.R. 667 is to eliminate litigation as an effective means of redressing violations of inmates' rights. Some inmates, unfortunately but undoubtedly, will then, at some point, turn to violent means to protest the sordid conditions of their confinement. In short, the end results of this legislation will, in the long run, prove to be not only short-sighted, but tragic.

The foregoing problems arise because STOP violates fundamental principles. These principles are incorporated into Standards of the American Bar Association. The *ABA Standards for Criminal Justice: Legal Status of Prisoners* provide that inmates are to have "free and meaningful access to the judicial process" and to have the same rights that members of the general public have to obtain redress for the violation of their rights. See Standards 23-2.1 and 23-8.5. The *IJA/ABA Juvenile Justice Standards* also reflect a concern about juveniles' right of access to the courts. The curbs on attorneys' fees in STOP would, for example, undermine juveniles' ability to contest the conditions of their confinement, in contravention of Standard 7.2(N).

For all of the reasons outlined above, the American Bar Association urges you to vote against STOP. Should this legislation proceed any further in Congress, we would request that hearings be held on STOP and that the American Bar Association be afforded the opportunity to further explain the grave problems in this Act and related provisions in H.R. 667.

At the same time, however, we would like to offer our assistance to Congress, or perhaps a Commission established by Congress, in studying civil-rights litigation involving prisoners and juveniles and the steps that could be taken both to ensure that legitimate grievances are effectively and expeditiously redressed and that frivolous claims do not burden the court system. The Corrections and Sentencing Committee of the ABA's Criminal Justice Section

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is already studying these matters and will be reporting its recommendations to the American Bar Association.

If the American Bar Association can provide you with further information about H.R. 667, please contact me or Tom Smith, the Director of the Criminal Justice Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Michael McCann".

E. Michael McCann
Chairperson of the ABA Criminal Justice Section

/EMM