House Reports

Nos. 1–39

United States Congressional Serial Set

Serial Number 14309

United States Government Printing Office
Washington : 1997

104TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
104–21

VIOLENT CRIMINAL INCARCERATION ACT OF 1995

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

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

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 667]

[Including cost estimate of the Congressional Budget Office]

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

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99-006

The amendment is as follows:

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

SECTION 1. SHORT TITLE.

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

TITLE I—TRUTH IN SENTENCING

SEC. 101. TRUTH IN SENTENCING GRANT PROGRAM.

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

"TITLE V—TRUTH IN SENTENCING GRANTS

"SEC. 501. AUTHORIZATION OF GRANTS.

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

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

"SEC. 502. GENERAL GRANTS.

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

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

"(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 ensure—

"(1)(A) truth-in-sentencing laws which require persons convicted of a serious violent felony serve not less than 85 percent of the sentence imposed or 85 percent of the court-ordered maximum sentence for States that practice indeterminate sentencing; or

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

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

SEC. 504. SPECIAL RULES.

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

"(1) to the extent practicable, inmate labor will be used to build and expand correctional facilities;

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

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

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

"(1) practices 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.

(c) EXCEPTION.—The requirements under section 503(b) shall apply, except that they 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 proposed release.

SEC. 505. FORMULA FOR GRANTS.

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

(1) \$500,000 or 0.40 percent, whichever is greater, shall be allocated to each participating State or compact, as the case may be; and

(2) of the total amount of funds remaining after the allocation under paragraph (1), there shall be allocated to each State or compact, as the case may be, an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State or compact, as the case may be, bears to the population of all the States.

SEC. 506. ACCOUNTABILITY.

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

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

(c) ADMINISTRATIVE PROVISIONS.—The administrative provisions of sections 801 and 804 of the Omnibus Crime Control and Safe Streets Act of 1968 shall apply to the Attorney General in the same manner as such provisions apply to the officials listed in such sections.

SEC. 507. AUTHORIZATION OF APPROPRIATIONS.

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

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

"(b) LIMITATIONS ON FUNDS.—

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

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

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

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

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

"SEC. 508. DEFINITIONS.

"As used in this title—

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

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

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

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

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

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

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

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

SEC. 102. CONFORMING AMENDMENTS.

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

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

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

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

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

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

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

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

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

"TITLE V—TRUTH-IN-SENTENCING GRANTS

"Sec. 501. Authorization of grants.
"Sec. 502. General grants.
"Sec. 503. Truth-in-sentencing grants.
"Sec. 504. Special rules.
"Sec. 505. Formula for grants.
"Sec. 506. Accountability.
"Sec. 507. Authorization of appropriations.
"Sec. 508. Definitions.".

TITLE II—STOPPING ABUSIVE PRISONER LAWSUITS

SEC. 201. EXHAUSTION REQUIREMENT.

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

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

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

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

SEC. 202. FRIVOLOUS ACTIONS.

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

"(3) The court shall on its own motion or on motion of a party dismiss any action brought pursuant to section 1979 of the Revised Statutes of the United States by a prisoner 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) IN GENERAL.—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" after 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:

"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 assets such prisoner possesses. The court shall make inquiry of the correctional institution in which the prisoner is incarcerated for information available to the institution relating to the extent of the prisoner's assets. The court shall require partial payment of filing fees according to the prisoner's ability to pay.".

TITLE III—STOP TURNING OUT PRISONERS

SEC. 301. APPROPRIATE REMEDIES FOR PRISON CONDITIONS.

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

"§ 3626. Appropriate remedies with respect to prison conditions

"(a) REQUIREMENTS FOR RELIEF.—

"(1) LIMITATIONS ON PROSPECTIVE RELIEF.—Prospective relief in a civil action with respect to prison conditions shall extend no further than necessary to remedy the conditions that are causing the deprivation of the Federal rights of the 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 overcrowding is the primary cause of the deprivation of the Federal right and other relief will remedy that deprivation.

"(b) TERMINATION OF RELIEF.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) CLERICAL AMENDMENT.—The item relating to section 3626 in the table of sections at the beginning of subchapter C of chapter 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:

"4048. Strength-training of prisoners prohibited

"The Bureau of Prisons shall ensure that—

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

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

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

"4048. Strength-training of prisoners prohibited.".

PURPOSE AND SUMMARY

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

The bill includes four titles. Titles I and II are nearly identical to Titles V and VII respectively of H.R. 3, the "Taking Back Our Streets Act of 1995." Title III incorporates the provisions of H.R. 728, the "Stop Turning Out Prisoners Act," and Title IV addresses the problem of prison violence associated with weight-lifting equipment.

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

Title II—Stopping Abusive Prisoner Lawsuits—places sensible limits on the ability of detained persons to challenge the legality of their confinement. Too many frivolous lawsuits are clogging the courts and seriously undermining the administration of justice. The bill addresses the problem of frivolous lawsuits in three significant ways. First, it requires that all administrative remedies be exhausted prior to a prisoner initiating a civil rights action in court. Second, it requires the court to dismiss any prisoner suit if it fails to state a legitimate claim of a violation for which relief can be granted or if the suit is frivolous or malicious. And third, it eliminates the requirement that minimum standards of acceptable prison conditions be developed with the input of prisoners. Under section 2, convicted criminals will no longer be helping to define the conditions of their imprisonment should be.

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

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

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

BACKGROUND AND NEED FOR THE LEGISLATION

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

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

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

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

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

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

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

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

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

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

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

HEARINGS

The Committee's Subcommittee on Crime held two days of hearings on H.R. 3 on January 19 and 20, 1995. Titles I and II of H.R. 667 are nearly identical to titles V and VII respectively in H.R. 3. On the issue of truth in sentencing the subcommittee received testimony from the Honorable Daniel Lungren, Attorney General of the State of California, and the Honorable James Gilmore, Attorney General for the Commonwealth of Virginia.

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

COMMITTEE CONSIDERATION

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

VOTE OF THE COMMITTEE

The committee then considered the following amendments with recorded votes:

Mr. Schumer offered an amendment to eliminate the bill's $10 billion truth-in-sentencing grant program and replace it with a $7 billion block grant program. The Schumer amendment was defeated by a 12–17 roll call vote.

ROLL CALL 1

AYES	NAYS
Mr. Sensenbrenner	Mr. Hyde
Mr. Inglis	Mr. Moorhead
Mr. Conyers	Mr. McCollum
Mrs. Schroeder	Mr. Gekas
Mr. Schumer	Mr. Coble
Mr. Boucher	Mr. Smith (TX)
Mr. Reed	Mr. Canady
Mr. Nadler	Mr. Goodlatte
Mr. Scott	Mr. Buyer
Mr. Serrano	Mr. Hoke
Ms. Lofgren	Mr. Bono
Ms. Jackson Lee	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Watt

Mr. Schumer offered an amendment that prohibits H.R. 667 from taking effect until 50 percent or more of the states qualify for truth-in-sentencing grants. The Schumer amendment was defeated 13–16.

ROLL CALL 2

AYES	NAYS
Mrs. Schroeder	Mr. Hyde
Mr. Schumer	Mr. Sensenbrenner
Mr. Berman	Mr. McCollum
Mr. Boucher	Mr. Coble
Mr. Reed	Mr. Smith (TX)
Mr. Nadler	Mr. Canady
Mr. Scott	Mr. Inglis
Mr. Watt	Mr. Goodlatte
Mr. Serrano	Mr. Buyer
Mr. Lofgren	Mr. Hoke
Ms. Jackson Lee	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

Mr. Scott introduced a substitute amendment that strikes the 85 percent served requirement and reduces funding by $2.5 billion. This amendment was defeated 13–16.

ROLL CALL 3

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Sensenbrenner
Mr. Schumer	Mr. McCollum
Mr. Berman	Mr. Coble
Mr. Boucher	Mr. Smith (TX)
Mr. Reed	Mr. Canady
Mr. Nadler	Mr. Inglis
Mr. Scott	Mr. Goodlatte
Mr. Watt	Mr. Buyer
Mr. Becerra	Mr. Hoke
Mr. Serrano	Mr. Bono
Mr. Lofgren	Mr. Heineman
Ms. Jackson Lee	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

Mr. Chabot offered an amendment that requires the Bureau of Prisons to prohibit prisoners from engaging in physical activities designed to increase fighting ability and to remove equipment designed for such purpose. The amendment was adopted 18–9.

ROLL CALL 4

AYES	NAYS
Mr. Hyde	Mr. Moorhead
Mr. Sensenbrenner	Mr. Coble
Mr. McCollum	Mr. Inglis
Mr. Smith (TX)	Mr. Bono
Mr. Canady	Mr. Conyers
Mr. Goodlatte	Mrs. Schroeder
Mr. Buyer	Mr. Berman
Mr. Hoke	Mr. Scott
Mr. Heineman	Mr. Watt
Mr. Bryant (TN)	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	
Mr. Schumer	
Mr. Boucher	
Mr. Reed	
Ms. Lofgren	
Ms. Jackson Lee	

Mr. Watt offered three amendments en bloc requiring actual reductions in crime as a condition for prison grants. The Watt amendment was defeated 8–20.

ROLL CALL 5

AYES	NAYS
Mrs. Schroeder	Mr. Hyde
Mr. Berman	Mr. Sensenbrenner
Mr. Boucher	Mr. Moorhead
Mr. Scott	Mr. McCollum
Mr. Watt	Mr. Coble
Mr. Becerra	Mr. Smith (TX)
Ms. Lofgren	Mr. Canady
Mr. Jackson Lee	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Schumer
	Mr. Bryant (TX)
	Mr. Reed

Mr. Watt offered two amendments en bloc which sought to expand prospective relief available to any plaintiff by eliminating the automatic termination of prospective relief requirement and by eliminating the "substantial weight" requirement. The amendment was defeated 9–21.

ROLL CALL 6

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Sensenbrenner
Mr. Reed	Mr. Moorhead
Mr. Nadler	Mr. McCollum
Mr. Scott	Mr. Coble
Mr. Watt	Mr. Schiff
Mr. Becerra	Mr. Canady
Mr. Serrano	Mr. Inglis
Ms. Jackson Lee	Mr. Goodlatte
	Mr. Hoke
	Mr. Buyer
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Schumer
	Mr. Boucher
	Mr. Bryant (TX)
	Ms. Lofgren

Mr. Watt offered an amendment to strike the automatic stay requirement. The amendment was defeated 10–18.

ROLL CALL 7

AYES	NAYS
Mrs. Schroeder	Mr. Hyde
Mr. Schumer	Mr. Moorhead
Mr. Berman	Mr. Sensenbrenner
Mr. Boucher	Mr. McCollum
Mr. Nadler	Mr. Gekas
Mr. Scott	Mr. Coble
Mr. Watt	Mr. Schiff
Mr. Serrano	Mr. Canady
Ms. Lofgren	Mr. Inglis
Ms. Jackson Lee	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

Mr. Watt offered an amendment to strike limits on attor fees. The Watt amendment was defeated 10–21.

ROLL CALL 8

AYES	NAYS
Mr. Schiff	Mr. Hyde
Mr. Conyers	Mr. Moorhead
Mrs. Schroeder	Mr. Sensenbrenner
Mr. Bryant (TX)	Mr. McCollum
Mr. Nadler	Mr. Gekas
Mr. Scott	Mr. Coble
Mr. Watt	Mr. Gallegly
Mr. Serrano	Mr. Canady
Ms. Lofgren	Mr. Inglis
Ms. Jackson Lee	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Schumer
	Mr. Boucher
	Mr. Reed

Mr. Scott offered an amendment to strike title three of the bill. The amendment was defeated 5–25.

ROLL CALL 9

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Nadler	Mr. Moorhead
Mr. Scott	Mr. Sensenbrenner
Mr. Watt	Mr. McCollum
Mr. Serrano	Mr. Gekas
	Mr. Coble
	Mr. Smith (TX)
	Mr. Gallegly
	Mr. Schiff
	Mr. Canady
	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Schumer
	Mr. Berman
	Mr. Bryant (TX)
	Mr. Reed
	Ms. Lofgren
	Ms. Jackson Lee

Mr. Schumer offered an amendment to shift unused truth-in-sentencing grant funds to general grants. The amendment was defeated 12–21.

ROLL CALL 10

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Schumer	Mr. Sensenbrenner
Mr. Berman	Mr. McCollum
Mr. Frank	Mr. Coble
Mr. Bryant (TX)	Mr. Gekas
Mr. Reed	Mr. Smith (TX)
Mr. Nadler	Mr. Schiff
Mr. Scott	Mr. Gallegly
Mr. Serrano	Mr. Canady
Ms. Lofgren	Mr. Inglis
Ms. Jackson Lee	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

Final Passage. Motion to report H.R. 667 favorably, as amended. The motion passed 23–11.

ROLL CALL 11

AYES	NAYS
Mr. Hyde	Mr. Conyers
Mr. Moorhead	Mrs. Schroeder
Mr. Sensenbrenner	Mr. Frank
Mr. McCollum	Mr. Schumer
Mr. Gekas	Mr. Berman
Mr. Coble	Mr. Nadler
Mr. Smith (TX)	Mr. Scott
Mr. Schiff	Mr. Watt
Mr. Gallegly	Mr. Serrano
Mr. Canady	Ms. Lofgren
Mr. Inglis	Ms. Jackson Lee
Mr. Goodlatte	
Mr. Buyer	
Mr. Hoke	
Mr. Bono	
Mr. Heineman	
Mr. Bryant (TN)	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	
Mr. Boucher	
Mr. Bryant (TX)	

Mr. Schumer offered an amendment to shift unused truth-in-sentencing grant funds to general grants. The amendment was defeated 12–21.

ROLL CALL 10

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Schumer	Mr. Sensenbrenner
Mr. Berman	Mr. McCollum
Mr. Frank	Mr. Coble
Mr. Bryant (TX)	Mr. Gekas
Mr. Reed	Mr. Smith (TX)
Mr. Nadler	Mr. Schiff
Mr. Scott	Mr. Gallegly
Mr. Serrano	Mr. Canady
Ms. Lofgren	Mr. Inglis
Ms. Jackson Lee	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

Final Passage. Motion to report H.R. 667 favorably, as amended. The motion passed 23–11.

ROLL CALL 11

AYES	NAYS
Mr. Hyde	Mr. Conyers
Mr. Moorhead	Mrs. Schroeder
Mr. Sensenbrenner	Mr. Frank
Mr. McCollum	Mr. Schumer
Mr. Gekas	Mr. Berman
Mr. Coble	Mr. Nadler
Mr. Smith (TX)	Mr. Scott
Mr. Schiff	Mr. Watt
Mr. Gallegly	Mr. Serrano
Mr. Canady	Ms. Lofgren
Mr. Inglis	Ms. Jackson Lee
Mr. Goodlatte	
Mr. Buyer	
Mr. Hoke	
Mr. Bono	
Mr. Heineman	
Mr. Bryant (TN)	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	
Mr. Boucher	
Mr. Bryant (TX)	
Mr. Reed	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 667, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974;

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 6, 1995.

HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 667, the Violent Criminal Incarceration Act of 1995.

Enactment of H.R. 667 could affect direct spending or receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Bill number: H.R. 667.

Bill title: Violent Criminal Incarceration Act of 1995.

Bill status: As ordered by the House Committee on the Judiciary, February 1, 1995.

Bill purpose: H.R. 667 would repeal the truth-in-sentencing incentive grant program enacted in Title II of the Violent Crime Control and Law Enforcement Act of 1994 and replace it with two incarceration grant programs. H.R. 667 also would repeal the

drug court grant program under Title V of the 1994 crime bill. To be eligible for the first type of grant (general grants), states must increase the incarceration rate, average time served, and percentage of sentence served for violent offenders. To be eligible for the second type of grant (truth-in-sentencing grants), states must have truth-in-sentencing laws and laws requiring that the victims of the defendant or the family of such victims be given the opportunity to be heard on the issue of sentencing and any post-conviction release.

Title II of H.R. 667 would address prisoner litigation through various reforms. One provision would require the exhaustion of administrative remedies before a complaint would be referred to a federal court. Another provision would provide federal courts with authority to dismiss a case if they determined that an action was frivolous or malicious or lacking a valid claim under which relief could be granted. In addition, the bill would allow the federal courts to review a prisoner's statement of assets obtained from the prisoner's place of incarceration when determining whether to grant to waive part or all of a civil filing fee. Title II would permit federal courts to limit the relief awarded prisoners in certain civil actions, including attorney's fees. Title IV would ban weight lifting and other strength training for federal inmates.

5. Estimated cost to the Federal Government: H.R. 667 would increase the authorization for appropriations for incarceration grants in the 1994 crime bill from $7.7 billion to $10.5 billion dollars over the 1995–2000 period. At the same time, H.R. 667 would repeal existing authorizations of $0.9 billion for drug court grants. Thus, H.R. 667 would result in a net increase in authorizations of appropriations of $1.9 billion dollars over the 1995–2000 period. The following table provides year-by-year estimates of the federal costs of H.R. 667.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999
Authorizations of appropriations:					
New authorization level	232	998	1,330	2,527	2,660
Repeal of existing authorization	.....	−900	−1,150	−2,100	−2,200
Less: Existing appropriation	−53	.....	.....	.....	.....
Net increase in authorization level	179	98	180	427	460
Estimated outlays	40	90	140	206	331

The costs of this bill fall within budget function 750.

For purposes of this estimate, CBO assumes that the amount authorized by the bill would be appropriated for each fiscal year and that outlays would reflect the historical spending patterns of similar grant programs. The additional authorization for 1995 is assumed to be provided in a supplemental appropriation following enactment of this bill.

To the extent that the provisions affecting prisoner litigation would deter cases from being filed or from moving forward, the federal court system could realize some savings. However, based on information from the Administrative Office of the United States Courts (AOUSC), CBO does not expect that the number of civil cases filed by federal prisoners would be reduced significantly by enactment of these provisions. In addition, to the extent that the

requirement for the statement of assets would serve as an economic disincentive for filing claims, the federal government also could realize some savings in court costs. However, according to the AOUSC any such savings would be insignificant and possibly offset by increased administrative costs incurred for processing the statement of assets.

Comparison with spending under current law: Appropriations for drug court and incarceration grants authorized in the 1994 crime bill total $53 million for fiscal year 1995. H.R. 667 would authorize additional grants of $179 million for 1995, and much larger amounts in subsequent years. The following table provides a comparison of the current-year appropriation with the gross authorizations contained in H.R. 667.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
authorization level	232	998	1,330	2,527	2,660	2,753
year appropriation	53	53	53	53	53	53
difference	179	945	1,277	2,474	2,607	2,700

Pay-as-you-go considerations: CBO estimates that by restricting the circumstances under which attorney's fees would be awarded to prevailing prisoners for certain cases, the federal government could realize some savings in direct spending because these fees are paid out of the Claims, Judgments and Relief Acts account. However, CBO cannot estimate either the likelihood or the magnitude of savings from this account because there is no basis for predicting either the outcome of possible litigation or the amount of potential compensation.

Estimated cost to State and local governments: The amounts authorized for appropriation would be used to make grants to states. Grant recipients would be required to fund at least 25 percent of the cost of the projects for which the grants are intended. To qualify for these grants, states must provide assurance that they have enacted stricter laws and regulations relating to sentencing, implemented policies to ensure that incarcerated veterans receive veterans' benefits, and will share funds with local governments for the construction or expansion of correctional facilities as appropriate. The funds for the grants would be allocated according to a grant formula specified in the bill, and any remaining funds would be allocated to each state according to population. Although while many states may not currently qualify for these grants because of the strict sentencing guidelines, those states could receive funding after the incarceration grants are distributed. Assuming states meet the qualification requirements for receiving grants as authorized by H.R. 667, CBO estimates that the resulting grants would total at least $415 million over the 1995–2000 period. Some of this funding would, in turn, assist states in completing the construction or expansion of correctional facilities necessary to meet the sentencing requirements of H.R. 667.

State courts under this bill also could realize some savings to the extent that prison litigation is reduced. In particular, CBO expects that the states would benefit by the provision that would allow federal courts to dismiss frivolous cases without first hear-

victims have had an opportunity to be heard regarding the proposed release.

The committee expects that the public hearing requirement will discourage the early release of offenders who should not be released as a matter of sound policy, even though they may technically qualify for such release.

Sec. 505. Formula for grants.

This section establishes the formula for disbursing the funds to eligible states. Under paragraph (1), no eligible state is to receive less than $500,000 or .40 percent of the total annual funding, whichever is greater. And under paragraph (2), eligible states receive an additional amount based on population from the funds remaining after the allocation in paragraph (1) is made. Specifically, the additional amount is the amount which bears the same ratio to the remaining funds as the ratio that the population of the state of compact bears to the population of all states.

Sec. 506. Accountability

This section seeks to ensure accountability over the grant funds and requires recipient states to use accounting, audit and fiscal procedures that conform to the guidelines to be prescribed by the Attorney General, and to submit annual reports.

Sec. 507. Authorization of appropriations

Subsection (a) authorizes nearly $10.3 billion for fiscal years 1996 through 2000 to carry out this title. Subsection (b) requires that no funds received under this title supplant state funds, and that the federal share of any proposal funded under this title not exceed 75 percent.

TITLE II—STOPPING ABUSIVE PRISONER LAWSUITS

Sec. 201. Exhaustion requirement

Currently, the Civil Rights of Institutionalized Persons Act authorizes federal courts to suspend civil rights suits brought by prisoners pursuant to 42 U.S.C. sec. 1983 for 180 days while the prisoner exhausts available administrative remedies. This section requires prisoners to exhaust all available administrative remedies before filing a civil rights action in a federal court.

Sec. 202. Frivolous actions

An enormous burden is currently placed on state officials to respond to prisoner suits which lack merit and are often brought for the purpose of harassment or recreation. This section requires a federal court, on its own motion or another's motion, to dismiss a civil rights action brought by a prisoner if the action fails to state a claim upon which relief can be granted or is frivolous or malicious, thereby eliminating the need for defendants to use resources responding to meritless claims.

Sec. 203. Modification of required minimum standards.

The Civil Rights of Institutionalized Persons act requires the promulgation of minimum standards of acceptable prison conditions to

be used in the administrative procedures for resolving grievances. It further requires that such standards be developed with the advice of inmates. Section 203 eliminates the requirement that prisoners contribute to the development of those standards.

Sec. 204. Proceedings in forma pauperis

The present standard for sua sponte dismissal of complaints filed by prisoners seeking in forma pauperis status allows dismissal only if the complaint if frivolous or malicious, or if the allegation of poverty is untrue.

This section requires dismissal of a complaint brought in forma pauperis if the complaint fails to state claim upon which relief may be granted, or is frivolous or malicious, or untrue.

Section 204 adds subsection (f) to 28 U.S.C. 1915. Subsection (f) requires a prison inmate to include a statement of his or her assets in any affidavit filed in forma pauperis. It also requires the court to verify the statement of assets by making inquiry of the correctional institution in which the prisoner is incarcerated and impose initial or partial payment of filing fees according to the prisoner's ability to pay.

TITLE III—STOP TURNING OUT PRISONERS

Sec. 301. Appropriation remedies for prison conditions

This section would amend Section 3626 of title 18, United States

Subsection (a)(1): Limitations of prospective relief

Subsection permits a court to grant or approve relief for a prisoner who is a plaintiff in a prison conditions suit only if that prisoner can prove a violation of his own federal rights. Such a requirement is not novel, but is in complete harmony with federal standing requirements. Through this requirement, Congress is reminding courts that standing must be the threshold inquiry in prison cases, just as it is in any other case. The reference to "individual rights" is a reminder to the courts that the principles of standing mandated by the Constitution's case or controversy requirement in Article III must be applied in prison conditions cases as in other cases.[1]

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[1] ...'s "irreducible constitutional minimum of standing"; requires that the "the plaintiff ...suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) ...particularized * * * and (b) 'actual or imminent, not 'conjectural' or 'hypothetical' ...v. *Defenders of Wildlife,* 112 S. Ct. 2130, 2136 (1992) (cites omitted); *Whitmore* ...495 U.S. 149, 155, 110 S. Ct. 1717, 1722–23 (1990); *Warth* v. *Seldin,* 422 U.S. 490, ...Ct. 2197, 2210 (1975). "But the 'injury in fact' test requires more than an injury to ...interest. It requires that the party seeking review be himself among the injured." ...*nders of Wildlife,* 112 S. Ct. at 2137, quoting *Sierra Club* v. *Morton,* 405 U.S. at ...at 1366.

...ple, that a plaintiff must demonstrate that he himself has suffered the complained ...been recognized and applied by the Supreme Court specifically in the context of ...claimed violation of the Eighth Amendment. In *Helling* v. *McKinney,* 113 S. Ct. ..., the Court agreed with the inmate that the condition about which he complained, ...environmental tobacco smoke (ETS), could possible constitute cruel and unusual ...But, the Court also concluded that, to prove an Eighth Amendment violation, the ...show that *he himself* is being exposed to unreasonably high levels of ETS." ...S. Ct. at 2482 (emphasis added). Thus, the inmate would suffer no constitutional ...were not exposed to ETC even though other inmates in the same prison system ...to ETS. Id; see also *Farmer* v. *Brennan,* 114 S. Ct. 1979, 1977 (for an Eighth

Continued

Subsection (a)(1) limits the remedial scheme a court may order or approve to the least intrusive remedy[2] and requires the court to give appropriate consideration, in selecting or approving a remedy, to any potential impact on public safety or the criminal justice system.[3] The subsection reasonably and permissibly limits the use of court-enforced consent decrees to resolve prison conditions suits,

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Amendment claim an "inmate must show that *he* is incarcerated under conditions posing a substantial risk of serious harm") (emphasis added); *Wilson* v. *Seiter*, 111 S. Ct. 2321, 2323 (1991) ("a prisoner advancing [an Eighth Amendment] claim must, at a minimum, allege 'deliberate indifference' to *his*" medical needs) (emphasis added). Similarly, as the instant status reminds lower courts, an individual inmate who has not been subjected to constitutionally excessive crowding cannot allege a constitutional violation based on the allegedly excessive crowding imposed on other inmates in the same prison system.

An inmate who has not suffered in the least is not entitled to any damages or other relief merely because some other inmate in the same or a related facility may have suffered cruel and unusual punishment or violation of some other federal right. See, e.g., *Butler* v. *Dowd*, 979 F. 2d 661, 674 (8th Cir. 1992) (court rejected inmates claim for injunctive relief from allegedly cruel and unusual practices because the relief from allegedly cruel and unusual practices because the relief he requested would "only benefit other inmates, particularly new inmates"); *Whitnack* v. *Douglas County*, 16 F. 3d 954 (8th Cir. 1994) (notwithstanding the exceedingly unsanitary condition of portions of the prison, the plaintiff inmates failed to prove an Eighth Amendment violation because they were held in that portion of the prison for a very brief period of time; other inmates held in those same areas for a prolonged period of time could suffer constitutionally significant harm). In order to alleviate the suffering of an inmate actually subjected to cruel and unusual punishment, it is possible that a court might find it necessary to order relief which had the incidental effect of granting a windfall benefit to inmates who have never suffered. This practical consequence of certain remedies, however, does not endow the inmate who has never had his rights violated with any right to bring a lawsuit in the first place in order to obtain that windfall benefit.

By relying on the Supreme Court's law interpreting the Constitution's standing requirements, Congress had done nothing more in this provision with regard to standing than codify the existing Supreme Court law that is being trampled by some courts. There has been no intrusion upon the Supreme Court's role in interpreting the Constitution. "Congress may codify or clarify existing law without performing a meaningless act." *In re Intern. Harvester's Disp. of Wis. Steel Lit.*, 681 F. Supp. 512, 521 (N.D. Ill. 1988); see also *United States* v. *Yancy*, 827 F.2d 83, 88 (7th Cir. 1987). In particular, Congress is fully entitled "to codify existing law concerning a defendant's constitutional" rights. *United States* v. *Alessandrello*, 637 F.2d 131, 138 (3d Cir. 1980) (in Federal Rule of Criminal Procedure 43, which concerns a defendant's right to be present at every stage of his trail, Congress explicitly codified that protections of the Sixth Amendment Confrontation Clause and the Due Process Clause of the Fifth Amendment), cert. denied, 451 U.S. 949, 101 S. Ct. 2031 (1981); see *United States* v. *Reiter*, 897 F.2d 639, 642 (2d Cir. 1990) (same); *S.E.C.* v. *Kimmes*, 759 F. Supp. 430, 437 (N.D. Ill. 1991) (same) see also *Commonwealth* v. *Departmental Grant Appeals Bd.*, 815 F.2d 778, 784 (lst Cir. 1987) (Congress intended provisions in Administrative Procedure Act on district court jurisdiction "to codify the existing law concerning ripeness and exhaustion of remedies").

Congress can enact a statute of codify existing law or clarify current law that is uncertain and confusing, see *Vaz Borralho* v. *Keydril Co.*, 710 F.2d 207, 212 (5th Cir. 1983), or as here. Congress may chose to codify existing law when at least some lower courts are failing to properly apply the law. See *In re Kroy (Europe) Ltd.*, 27 F.3d 367, 370 (9th Cir. 1994) (in finding that Congress intended to codify and clarify existing law that certain expenses were not deductible, the court noted that one court had found the expenses were deductible). Codification of existing law serves to reign in lower courts whose wayward actions cannot all be reviewed by the Supreme Court but which are causing enormous harm to the public.

[2] By requiring courts to grant or approve relief constituting the least intrusive means of curing an actual violation of a federal right, the provision stops judges from imposing remedies intended to effect an overall modernization of local prison systems or provide an overall improvement in prison conditions. The provision limits remedies to those necessary to remedy the proven violation of federal rights.

The dictates of the provision are not a departure from current jurisprudence concerning injunctive relief. "In granting injunctive relief, the court's remedy should be no broader than necessary to provide full relief to the aggrieved plaintiff." *McLendon* v. *Continental Can Co.*, 908 F.2d 1171, 1182 (3d Cir. 1990) (citations omitted). This rule also applies to constitutional violations. See *Milliken* v. *Bradley*, 433 U.S. 267, 97 S. Ct. 2749, 2757 (1977) (remedy must be related to the condition that offends the Constitution); *Toussaint* v. *McCarthy*, 801 F.2d 1080, 1086 (9th Cir. 1986) (injunctive relief must be "no broader than necessary to remedy the constitutional violation"), cert. denied, 481 U.S. 1069 (1987).

[3] Use of the word "shall" in this provision creates a mandatory, not a discretionary duty on the part of the federal judge to limit relief in prison conditions suits as directed by Congress. See, e.g., *United States* v. *Monsanto*, 491 U.S. 600, 109 S. Ct. 2657, 2662 (1989) (The Comprehensive Forfeiture act states that a sentencing court "shall order" forfeiture of certain property. The Court stated, "Congress could not have chosen stronger words to express its intent * * *."), *Anderson* v. *Yungkau*, 329 U.S. 482, 67 S. Ct. 428, 430 (1947) ("The word 'shall' is ordinarily 'The Language of command.'" (cite omitted)).

while freely allowing the use of private settlement agreements. Parties may continue to enter such agreements to avoid lengthy and burdensome litigation, but they cannot expect to rely on the court to enforce the agreement.

Subsection (a)(1) is further intended to prohibit state courts as well as federal courts from granting or enforcing unnecessary and burdensome remedies in prison conditions suits. Inmates often bring their suits in federal court, rather than in state court, because they have found that federal judges are at times more willing than are local judges to impose requirements on local officials. But inmates are legally entitled to bring suits in state courts asking the state courts to provide remedies for purported violations of federal rights. Some inmates have already brought such suits in state courts. By limiting the remedies that state courts, as well as federal courts, may provide, this provision insures that inmates will not simply run from the federal courthouse to the state courthouse to bring the same suits and to demand the same burdensome and unnecessary relief that the federal courts have irresponsibly imposed on local judicial systems. This provision would not, however, preclude state legislators from granting additional remedies as a matter of state law.

Subsection (a)(2): Prison population reduction relief

This subsection makes prison caps the remedy of last resort, permitting a cap to be imposed only if the prisoner proves: (1) that crowding is the "primary" cause of the federal violation; and (2) that no other remedy will cure the violation. These requirements are imposed in recognition of the severe, adverse effects of prison caps and the accompanying prisoner releases relied on to meet the caps.

While prison caps must be the remedy of last resort, a court still retains the power to order this remedy despite its intrusive nature and harmful consequences to the public if, but only if, it is truly necessary to prevent an actual violation of a prisoner's federal rights.

By requiring that a plaintiff inmate prove an actual violation of his constitutional rights based on the alleged overcrowding, this subsection will end the current practice of imposing prison caps where inmates in local prisons have complained about the prison conditions but the presiding judge has made absolutely no finding of unconstitutionality or even held any trial on the allegations. In ordering or approving these caps, some judges now oversee huge programs of releases to keep the prison population down to what-ever that judge considers an appropriate level.

Subsection (b): Termination of relief

Paragraph (b)(1)—Automatic Termination of Prospective Relief After 2-Year Period—provides that in order to continue to receive relief beyond a two-year period, the need for continued remedies to correct actual violations of federal rights must be proven.[4] While

[4] is acting well within its authority in permitting a remedy to be provided for the violation of a federal right but in placing a time limit on the remedy. For example, the Act of 1965 provides that, where a court has issued a declaratory judgment deter-

Continued

this provision mandates automatic termination every two ye
ther party may seek a modification of a consent decree at an
earlier based on the existing standard for modification conta
Federal Rule of Civil Procedure 60(b).

Paragraph (b)(2)—Immediate termination of prospective
allows a jurisdiction that is already subject to an existing
consent decree that was entered with no finding of any co
tional violation, to move to terminate that decree. The provi
propriately prohibits courts from enforcing decrees that do no
edy proven violations of federal law.

*Subsection (c): Procedure for motions affecting prospec
lief*

Paragraph (c)(1) requires judges to rule promptly on mo
modify or terminate ongoing orders and consent decrees.
current law, law enforcement and other local officials are
handcuffed in their efforts to modify or terminate unnecessa
burdensome consent decrees of other orders by judge who fa
and simply refuse, for many months or even years, to issue
on a request for modification or termination. Moreover, un
rent law, there is little that the parties can do to require a
encourage the judge to rule on their request.[5] By providing th
prospective relief that is subject to the motion will be stayed
motion is not decided promptly, judges will be motivated to
the motions and avoid having the stay automatically take eff

Paragraph (c)(2) provides that where any motion is not
upon in a timely fashion, the ongoing relief in a consent de
stayed pending a final ruling on the merits of the motion.
cally, a motion under subsection (b)—relating to consent
entered in the absence of an actual finding of a federal viol
must be decided within thirty days. Such a motion will rai
one question: whether the court has made an on-the-record
of a federal violation. Such a potential violation should be re
on the basis of the official court record and not be subject
factual dispute.

All other motions, such as a motion to modify pursuant to
eral Rule of Civil Procedure 60(b), must be decided in 180 d
the consent decree relief is stayed.

This provision requiring that all relief be stayed if a mot
not promptly decided cannot be waived by the consent of the
ties.

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mining the legality of a voting procedure, "[t]he court shall *retain jurisdiction* of any ac
suant to this subsection for ten years *after judgment and shall reopen the action* upo
of the Attorney General or any aggrieved person * * *." (emphasis added). Section 4(
Voting Rights Act or 1965, as amended, 42 U.S.C. § 1973b(a)(5). The reopening provision
of the Voting Rights Act has remained unchallenged for over thirty years, despite seve
stitutional attacks on the Act's other provisions and amendments, see e.g., *South Car
Katzenbach*, 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). More resently, in *City of
v. United States*, 100 S.Ct. 1548 (1980), the Supreme Court had occasion to examine
language of § 4(a), and recited without comment the section's "reopening" provision.
provision in the Voting Rights Act of 1965, the two-year time limit in this amendment
that the court can address the propriety of the decree at regular intervals.

[5] Under the All Writs Act, 28 U.S.C. § 1651(a), the parties may ask the federal court of
to issue a writ of mandamus ordering the federal district court judge to rule on the m
an extraordinary writ, mandamus is disfavored, see *In re School Asbestos Litigation*, 97
764, 772 (3d Cir. 1992), and "must be invoked sparingly," *In re Asbestos School Litigation*
94–1494, slip op. at 9 (3d Cir., December 28, 1994), and rarely, if ever, will an appellate
grant a writ of mandamus to force a lower court to rule more quickly on a motion.

Subsection (d): Standing

This subsection allows Federal, state, and local government officials, including prosecutors, to intervene pursuant to Federal rule of Civil Procedure 24(a)(1) by granting them the right to intervene in prison conditions cases so that they can challenge court-ordered prison population caps.

Law enforcement officials who arrest, prosecute, or incarcerate criminals are permitted, under this new provision, to challenge any relief that would affect their localities, asserting the significant public safety concerns arising from such relief. The provisions of this subsection should be construed liberally so as to grant standing to a member of Congress, a governor, a member of a state legislature, or a member of a local unit of government, whose representative constituency is affected by such court-ordered relief.

Courts, particularly federal courts, have excluded some state officials, such as district attorneys,[6] from having any say about the disposition of such cases by concluding that these officials have no right to intervene as parties under the current law embodied in Federal Rule of Civil Procedure 24(a)(2), which requires that the intervenor have an "interest" in the case. But completely apart from the "interest" rationale, Federal Rule of Civil Procedure 24(a)(1) requires that a party be allowed to intervene if he has been granted such a right by statute. Subsection (d) establishes such an explicit right to intervene for affected law enforcement officials.

As with all motions in prison conditions suits, courts must rule on motions to intervene promptly.

Subsection (e): Special masters

This subsection only allows United States magistrates to serve as special masters in prison conditions cases. Consequently, this provision ensures that only judicial officers, who have undergone the appropriate appointment and screening process, will be acting for the court.[7] This helps ensure the appointment of appropriate individuals to perform the sensitive fact-finding functions in institutional prison litigation, which often has substantial public interest implications.[8] Federal Rule of Civil Procedure 53 authorizes federal courts to appoint United States magistrates to serve as special masters.

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[6] *Harris* v. *Pernsley*, 820 F.2d 592 (3d Cir. 1987) (district attorney had no right to intervene to challenge prison cap order requiring the release of pretrial detainees as he lacked a sufficient legal interest pursuant to rule 24(a)(2)).

[7] The Committee has acted well within its authority in specifying procedure in this provision. "[T]he constitutional provision for a federal court system (augmented by the Necessary and Proper Clause) carries with it congressional power to make rules governing the practice and pleading in those courts * * *." *Hanna* v. *Plumer*, 380 U.S. 471, 472, 85 S. Ct. 1136, 1144 (1965); see *Mistretta* v. *United States*, 488 U.S. 361, 109 S. Ct. 647, 663 (1989) ("Congress has undoubted power to regulate the practice and procedure of federal courts * * *") (quoting *Sibbach* v. *Wilson*, 312 U.S. 1, 9, 61 S. Ct. 422, 424 (1941)). Article III grants Congress the power "from time" to "ordain and establish" "inferior courts." U.S. Const. Art. III, § 2. Article I grants Congress the power to "constitute Tribunal inferior to the supreme Court" and to "make all Laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States. * * *" U.S. Const. Art. I, § 9, cls. 9 & 18.

[8] The Eastern District of Pennsylvania, the former executive director of the Pennsylvania Prison Society, a prisoner advocacy group, was appointed as the special master. The Committee has serious reservations whether such an appointment, where the master's impartiality might reasonably be questioned, promotes public confidence in federal judicial officers.

This subsection continues to give the court the discretion to use a special master to assist in resolving complicated factual issues by on-the-record fact-finding, based upon record evidence.

In limiting the appointment of special masters to magistrates and in limiting the use of special masters to the purpose only of aiding the court in fact-finding, this provision applies even if the agent of the court is titled or described by the court not as a special master but as a receiver, master, master hearing officer, monitor, human rights committee, ombudsman, or consultant. The limitation in this provision on the selection and use of masters is intended to apply to anyone relied on by the court to make factual findings or to monitor or review compliance with, enforcement of, or implementation of a consent decree or of court-ordered relief in a prison conditions suit.

Subsection (f): Attorney's fees

This subsection permits prisoners challenging prison conditions under 42 U.S.C. § 1983 to receive attorney fees but reasonably limits its the circumstances under which fees may be granted as well as the amount of the fees.

This subsection limits awards of attorney fees in two ways. First, it narrows the judicially-created view of a "prevailing party" so that a prisoner's attorney will be reimbursed only for those fees reasonably and directly incurred in proving an actual violation of a federal right. Narrowing the definition of "prevailing party" will eliminate both attorney fees that penalize voluntary improvements in prison conditions and attorney fees incurred in litigating unsuccessful claims, regardless of whether they are related to meritorious claims. While this provision eliminates the financial incentive for prisoners to include numerous non-meritorious claims in sweeping institutional litigation, it retains the financial incentive to bring lawsuits properly focused on prison conditions that actually violate federal law.

Second, this provision has the effect of reducing attorney fee awards by eliminating fees for litigation other than that necessary to prove a violation of a federal right. This eliminates the financial incentive for attorneys to litigate ancillary matters, such as attorney fee petitions, and to seek extensive hearings on remedial schemes.

Finally, this provision establishes a proportionality requirement for attorney fee awards. Under current law, the courts retain the discretion to award attorney fees that greatly exceed the extent of the relief obtained by the plaintiff prisoners. This proportionality requirement will discourage burdensome litigation of insubstantial claims where the prisoner can establish a technical violation of a federal right but he suffered no real harm from the violation. The proportionality requirement appropriately reminds courts that the size of the attorney fee award must not unreasonably exceed the damages awarded for the proven violation.

TITLE IV. ENHANCING PROTECTION

Against Incarcerated Criminals

Sec. 401. Prison security

This section amends Chapter 303 of title 18, United States Code, by adding section 4048.

Sec. 4048. Strength-training of prisoners prohibited

This section requires the Bureau of Prisons to ensure that: (1) federal prisoners do not engage in any physical activities designed to increase their fighting abilities; and (2) that all weight-lifting equipment and all equipment designed to increase the fighting abilities of prisoners be immediately removed from federal correctional facilities. This section only allows such equipment to be present in federal correctional facilities if approved by the Director of the Bureau of Prisons as part of a medically-required program of physical rehabilitation.

AGENCY VIEWS

The committee received a letter from the U.S. Department of Justice providing Administration views on H.R. 3, the "Taking Back Our Streets Act of 1995." This letter addressed the issues presented in H.R. 667 in pertinent part as follows:

V. TRUTH IN SENTENCING GRANTS

Title V of H.R. 3, in conjunction with § 901 of the bill, would repeal the prison funding program enacted by title II of the Violent Crime Control and Law Enforcement Act of 1994, and replace it with a new program involving different standards.[1] Under the new prison grants program, funding could only be used to increase, directly or indirectly, prison space for persons convicted of "serious violent felonies," which are essentially defined as violent crimes carrying a maximum prison term of 10 years or more.[2]

Fifth percent of the funds ("general grants") would be reserved for states that, since 1993, have increased the incarceration rate, average time served, and percentage of sentence served for convicted violent offenders, or that have average times served for murder, rape, robbery, and assault which exceed the national average by at least ten percent. The other fifty percent of grant funds ("truth in sentencing grants") would be reserved for states that have adopted truth in sentencing laws requiring persons convicted of serious violent felonies to serve at least 85% of their sentences, and that give victims an opportunity to be heard regarding the sentence and any post-conviction release. For eligible states in either category, funds would be

[1] H.R. 3 also repeals the drug courts program in title V of the 1994 Act.

[2] In addition to including violent crimes with maxima of ten years or more, the bill's definition would stipulate that certain offenses—murder, assault with intent to commit murder, arson, robbery, rape, assault with intent to commit rape, kidnapping, and armed robbery—are automatically included.

disbursed primarily in proportion to their general populations. The aggregate authorization for the program would be $10,499,600,000 over six years.

Before addressing the substantive provisions of the Title, a bizarre funding limitation contained in it merits comment. Under this provision, no funds may be spent for *any* other Crime Bill purpose unless Congress appropriates the full $10.5 billion for the prison grants.

This means that not a dollar can be spent to hire new police, add new FBI agents, fund Byrne Grants, fight rape or domestic violence, strengthen the border patrol, or keep schools open after-hours, unless the Congress commits the entire $10.5 billion sum proposed for the prison grants.

Thus, even if there are only a few qualifying applications for prison grant funds in a given year; even if no state or locality asks for funding to build new prisons; even if billions of dollars for prison construction remains unspent, year-after-year—Congress must continue to appropriate an average of $2 billion a year for *more* prison grants, every year, for the next five years, if it wants to have funding for even a single new police officer or federal law enforcement officer released.

Why Congress would want to hold thousands of police departments, prosecutors' officers, victims groups, and school districts hostage to its own future decisions about the level of appropriations for prison grants seems unclear. Why 100% of funding for new police should be cut-off if 1% of the funding for prison grants is reduced is a mystery. Why funding for a well-established program like the Byrne Grants should be slashed—as it would be under Title V of H.R. 3—if Congress chooses only to slow down the growth of a brand new program is unclear.

In addition to this strange funding rule, we oppose the substantive changes in this Title because we believe, in the end, they will result in fewer violent criminals being put behind bars than would implementation of the program enacted by the 1994 Crime Act.

First, in contrast to the enacted program's objective of increasing prison space and ensuring appropriate incarceration for all violent offenders, the proposed new program only authorizes funding to increase prison space for persons convicted of "serious violent felonies." It also only conditions eligibility for "truth in sentencing" grants (under proposed § 503) on the state's requiring that persons convicted of "serious violent felonies" serve at least 85% of the sentence. This approach effectively rewards states with lower statutory maxima for violent crimes, since in these states the category of offenders convicted of violent crimes with maxima of ten years or more ("serious violent felonies") is smaller, and hence they need to do less to satisfy the funding eligibility condition. In relation to the objective of ensuring adequate penalties for violent offenders, this approach of favoring states with lower maximum sentences is perverse.

This approach also places undue emphasis on the current conviction offense. The conviction offense often does not fully reflect the actual offense conduct because of plea bargaining, and an offender with a serious history of criminal violence may pose a grave threat to the public, even if his current conviction offense carries a statutory maximum of less than ten years. These points are appropriately recognized in the enacted legislation, which conditions eligibility for truth in sentencing grants on laws which requires that at least 85% of the sentence be served for all violent offenders, or laws requiring that at least 85% of the sentence be served for all violent recidivists, together with actual increases in incarceration rate, time served, and percentage of sentence served for the full class of violent offenders. In contrast, the proposed new program requires nothing with respect to the incarceration of violent offenders as a condition of eligibility for truth in sentencing grants, other than those whose current conviction is for a "serious violent felony" in the defined sense.

The eligibility criteria for general grants under proposed §502 are also problematic in relation to the proposed limitations on the use of grant funds, because grant funds could only be used to increase prison space for persons convicted of "serious violent felonies," but eligibility for the general grants would depend on increasing incarceration or having relatively high average time served for more broadly defined categories of violent offenders. However, the authorized use of grant funds should be commensurate with the class of offenders for whom increased incarceration is required.

Second, the proposed new program is inferior to the existing program in its conditions regarding recognition of victims' rights. Under the existing program, eligibility for both general grants and truth in sentencing grants is conditioned on "policies that provide for the recognition of the rights and needs of crime victims." The Department of Justice has identified the following areas as implicating important rights and needs of crime victims: (1) notice to victims concerning case and offender status; (2) providing victims the opportunity to be present at all public court proceedings in their cases; (3) providing victims the opportunity to be heard at sentencing and parole hearings; (4) providing for restitution to victims; and (5) establishing administrative or other mechanisms to effectuate these rights. The need to provide appropriate recognition for victims' rights in these areas is being emphasized and elaborated in regulations and guidelines under the existing program.

In contrast, the proposed new program does not include any victims rights condition for general grants, and only requires an opportunity to be heard regarding sentencing and release as a condition for truth in sentencing grants. Under this formulation, the Department of Justice would have no authority to impose the more far-reaching victims

rights requirements that are being implemented under the existing program.

Third, the existing program provides for the disbursement of funds to eligible states primarily in proportion to part I violent crimes. In contrast, the proposed new program provides for the disbursement of such funds primarily in proportion to general population. This approach of disbursing funds for violent offender incarceration in proportion to general population, without regard to the incidence of violent crimes in the affected areas, will produce gross misallocations of resources in relation to actual need.

Hence, the proposed rewriting of the prison grants program in this title is an aggravated case of attempting to fix something that is not broken, and making it worse in the process. * * *

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VII. STOPPING ABUSIVE PRISONER LAWSUITS

This title contains as set of reforms to help control abusive prisoner litigation. We support enactment of these provisions.

The Civil Rights of Institutionalized Persons Act (42 U.S.C. section 1997e) currently authorizes federal courts to suspend section 1983 suits by prisoners for up to 180 days in order to require exhaustion of administrative remedies. Section 701 of this bill strengthens the administrative exhaustion rule in this context—and brings it more into with administrative exhaustion rules that apply in other contexts—by generally prohibiting prisoners section 1983 lawsuits until administrative remedies are exhausted. The amendments in section 701 do not change the existing provisions that administrative remedies need be exhausted only if they are "plain, speedy, and effective," and satisfy minimum standards set out in the statute or are otherwise fair and effective. Hence, these amendments do not raise concerns that prisoners will be shut off from access to a federal forum by ineffectual or unreasonably slow administrative review processes.

Section 702 directs a court to dismiss a prisoner § 1983 suit if the court is satisfied that the action fails to state a claim upon which relief can be granted or is frivolous or malicious. A rule of this type is desirable to minimize the burden on states of responding unnecessarily to prisoner suits, which typically lack merit and are often brought for purposes of harassment or recreation.

Section 703 deletes from the minimum standards for prison grievance system in 42 U.S.C. 1997e(b)(2) the requirement of an advisory role for employees and inmates (at the most decentralized level as is reasonably possible) in the formulation, implementation, and operation of the system. This removes the condition that has been the greatest impediment in the past to the willingness of state and local jurisdictions to seek certification for their griev-

ance systems. It should be noted that this change will not necessarily require exhaustion of administrative remedies in prisoner § 1983 suits where exhaustion would not be required under existing law, since exhaustion can be required where the administrative remedies are "otherwise fair and effective"—even if the statutory minimum standards are not satisfied—and an advisory role for employees and inmates as provided in 42 U.S.C. 1997e(b)(2)(A) is not essential for fair and effective grievance systems.

Section 704 strengthens safeguards against and sanctions for false allegations of poverty by prisoners who seek to proceed in forma pauperis. Subsection (d) of 28 U.S.C. 1915 currently reads as follows: " The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." Section 704(a) of the bill amends that subsection to read as follows: "The court may request an attorney to represent any such person unable to employ counsel and shall at any time dismiss the case if the allegation of poverty is untrue, or if satisfied that the action fails to state a claim upon which relief may be granted or is frivolous or malicious even if partial filing fees have been imposed by the court."

Section 704(b) of the bill adds a new subsection (f) to 28 U.S.C. 1915 which states that an affidavit of indigency by a prisoner shall include a statement of all assets the prisoner possesses. The new subsection further directs the court to make inquiry of the correctional institution in which the prisoner is incarcerated for information available to that institution relating to the extent of the prisoner's assets. This is a reaonsble precaution, because candor by prisoners on this subject cannot reliably be expected. The new subsection concludes by stating that the court shall require full or partial payment of filing fees according to the prisoner's ability to pay." We would not understand this language as limiting the court's authority to require payment by the prisoner in installments, up to the amount of filing fees and other applicable costs, where the prisoner lacks the means to make full payment * * *

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AMENDMENTS TO VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT

Section 901 in this title repeals the prison grants program in title II.A of the Violent Crime Control and Law Enforcement Act of 1994. As noted earlier, title V of H.R. 3 is a defective substitute for that program, and expressly repeals the drug courts funding program enacted in title V of the 1994 Act. * * *

* * * * *

Repeal of Drug Courts Program

Drug abuse is inherently criminogenic, and a large portion of all crime is drug-related. For too many drug abusing offenders, a normal probationary sentence or term of confinement is likely to be just another shove through the revolving door. Conventional approaches to punishment have largely proven to be neither certain nor effective in this context.

In response to these realities, there has been a dramatic growth of interest in the past few years—by judges, prosecutors, and others on the front lines of the criminal drug abuse problem—in the development of special programs which combine criminal sanctions with coerced abstinence for drug abusing offenders. These programs collectively known as "Drug Courts" typically include: (1) close and continuing supervision of participating offenders with the threat and reality of more onerous conditions and criminal sanctions ("graduated punishment") for participants who do not comply with program requirements or fail to make satisfactory progress; (2) mandatory periodic drug testing which provides participants with the certain knowledge that they cannot escape the consequences of their actions and affords an objective measurements of progress; (3) mandatory participation in drug treatment; and (4) follow-up measures which help to prevent relapses after the conclusion of the main part of the program, and facilitate the transition to a law-abiding, productive existence.

These programs offer a critical alternative to the criminal justice system's failure to subject drug abusing offenders to measures that are necessary to alter their behavior. The results suggest that these initiatives have enhanced the likelihood that the cycle of substance abuse and crime will be broken. Indeed, long-term research and evaluation of these approaches have demonstrated that they can be effective in reducing both drug abuse and drug-related crime. Programs involving these elements of intervention, close supervision, and coerced abstinence through mandatory drug testing and graduated punishment are the approaches that the drug court grant program of title V of the 1994 Crime Act will support.

Considering the seriousness of the criminal drug abuse problem, the limited efficacy of conventional measures in this area, and the promising results under drug court programs that have already been established, it is nonsensical to propose that the support that Congress has recently approved for these programs should be totally eliminated, and replaced with nothing. Hence, we oppose the proposal to repeal title V of the enacted legislation.

We believe, however, that the formulation of drug courts program might legitimately be revised to permit the use of funds for more effective conventional prosecution in drug cases, rather than exclusively for programs that focus on controlling and altering the behavior of drug abusers. Effective enforcement requires not only efforts to reform drug

abusers, but also aggressive measures to arrest, prosecute, and incapacitate the traffickers who prey on their addictions and weaknesses, and who account for so much of the criminal violence that mars the life of our nation. In furtherance of this objective, some jurisdictions have established or experimented with differentiated case management techniques or specialized courts that expedite drug case dispositions and otherwise enhance the effectiveness of prosecution.

These innovated methods also merit support and encouragement, and we would be amenable to amending the drug courts program to permit support for prosecution-oriented "drug courts" of this type as well. We would be pleased to work with interested members of Congress in so amending the drug courts funding program.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

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SEC. 2. TABLE OF CONTENTS.

The following is the table of contents for this Act:

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TITLE II—PRISONS

[Subtitle A—Violent Offender Incarceration and Truth in Sentencing Incentive Grants

[SEC. 20101. GRANTS FOR CORRECTIONAL FACILITIES.

[(a) GRANT AUTHORIZATION.—The Attorney General may make grants to individual States and to States organized as multi-State compacts to construct, develop, expand, modify, operate, or improve correctional facilities, including boot camp facilities and other alternative correctional facilities that can free conventional prison space for the confinement of violent offenders, to ensure that prison cell space is available for the confinement of violent offenders and to implement truth in sentencing laws for sentencing violent offenders.

[(b) ELIGIBILITY.—To be eligible to receive a grant under this subtitle, a State or States organized as multi-State compacts shall submit an application to the Attorney General which includes—

[(1) assurances that the State or States have implemented, or will implement, correctional policies and programs, including truth in sentencing laws that ensure that violent offenders serve a substantial portion of the sentences imposed, that are designed to provide sufficiently severe punishment for violent offenders, including violent juvenile offenders, and that the prison time served is appropriately related to the determination that the inmate is a violent offender and for a period of time deemed necessary to protect the public;

[(2) assurances that the State or States have implemented policies that provide for the recognition of the rights and needs of crime victims;

[(3) assurances that funds received under this section will be used to construct, develop, expand, modify, operate, or improve correctional facilities to ensure that prison cell space is available for the confinement of violent offenders;

[(4) assurances that the State or States have a comprehensive correctional plan which represents an integrated approach to the management and operation of correctional facilities and programs and which includes diversion programs, particularly drug diversion programs, community corrections programs, a prisoner screening and security classification system, appropriate professional training for corrections officers in dealing with violent offenders, prisoner rehabilitation and treatment programs, prisoner work activities (including, to the extent

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

[(5) assurances that the State or States have involved counties and other units of local government, when appropriate, in the construction, development, expansion, modification, operation or improvement of correctional facilities designed to ensure the incarceration of violent offenders, and that the State or States will share funds received under this section with counties and other units of local government, taking into account the burden placed on these units of government when they are required to confine sentenced prisoners because of overcrowding in State prison facilities;

[(6) assurances that funds received under this section will be used to supplement, not supplant, other Federal, State, and local funds;

[(7) assurances that the State or States have implemented, or will implement within 18 months after the date of the enactment of this Act, policies to determine the veteran status of inmates and to ensure that incarcerated veterans receive the veterans benefits to which they are entitled;

[(8) if applicable, documentation of the multi-State compact agreement that specifies the construction, development, expansion, modification, operation, or improvement of correctional facilities; and

[(9) if applicable, a description of the eligibility criteria for prisoner participation in any boot camp that is to be funded.

[(c) CONSIDERATION.—The Attorney General, in making such grants, shall give consideration to the special burden placed on States which incarcerate a substantial number of inmates who are in the United States illegally.

[SEC. 20102. TRUTH IN SENTENCING INCENTIVE GRANTS.

[(a) TRUTH IN SENTENCING GRANT PROGRAM.—Fifty percent of the total amount of funds appropriated to carry out this subtitle for each of fiscal years 1995, 1996, 1997, 1998, 1999, and 2000 shall be made available for Truth in Sentencing Incentive Grants. To be eligible to receive such a grant, a State must meet the requirements of section 20101(b) and shall demonstrate that the State—

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

[(2) since 1993—

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

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

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

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

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

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

[(b) ALLOCATION OF TRUTH IN SENTENCING INCENTIVE FUNDS.—

[(1) FORMULA ALLOCATION.—The amount available to carry out this section for any fiscal year under subsection (a) shall be allocated to each eligible State in the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for 1993 bears to the number of part 1 violent crimes reported by all States to the Federal Bureau of Investigation for 1993.

[(2) TRANSFER OF UNUSED FUNDS.—On September 30 of each of fiscal years 1996, 1998, 1999, and 2000, the Attorney General shall transfer to the funds to be allocated under section 20103(b)(1) any funds made available to carry out this section that are not allocated to an eligible State under paragraph (1

[SEC. 20103. VIOLENT OFFENDER INCARCERATION GRANTS.

[(a) VIOLENT OFFENDER INCARCERATION GRANT PROGRAM.—Fifty percent of the total amount of funds appropriated to carry out this subtitle for each of fiscal years 1995, 1996, 1997, 1998, 1999, and 2000 shall be made available for Violent Offender Incarceration Grants. To be eligible to receive such a grant, a State or States must meet the requirements of section 20101(b).

[(b) ALLOCATION OF VIOLENT OFFENDER INCARCERATION FUNDS.—

[(1) FORMULA ALLOCATION.—Eighty-five percent of the sum of the amount available for Violent Offender Incarceration Grants for any fiscal year under subsection (a) and any amount transferred under section 20102(b)(2) for that fiscal year shall be allocated as follows:

[(A) 0.25 percent shall be allocated to each eligible State except that the United States Virgin Islands, American Samoa, Guam and the Northern Mariana Islands each shall be allocated 0.05 percent.

[(B) The amount remaining after application of subparagraph (A) shall be allocated to each eligible State in the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for 199[illegible] bears to the number of part 1 violent crimes reported by all States to the Federal Bureau of Investigation for 199[illegible]

[(2) DISCRETIONARY ALLOCATION.—Fifteen percent of the sum of the amount available for Violent Offender Incarceration Grants for any fiscal year under subsection (a) and any amount transferred under section 20103(b)(3) for that fiscal year shall be allocated at the discretion of the Attorney General to States that have demonstrated the greatest need for such grants and the ability to best utilize the funds to meet the objectives of the

grant program and ensure that prison cell space is available for the confinement of violent offenders.

[(3) TRANSFER OF UNUSED FORMULA FUNDS.—On September 30 of each of fiscal years 1996, 1997, 1998, 1999, and 2000, the Attorney General shall transfer to the discretionary program under paragraph (2) any funds made available for allocation under paragraph (1) that are not allocated to an eligible State under paragraph (1).

[SEC. 20104. MATCHING REQUIREMENT.

[The Federal share of a grant received under this subtitle may not exceed 75 percent of the costs of a proposal described in an application approved under this subtitle.

[SEC. 20105. RULES AND REGULATIONS.

[(a) The Attorney General shall issue rules and regulations regarding the uses of grant funds received under this subtitle not later than 90 days after the date of enactment of this Act.

[(b) If data regarding part 1 violent crimes in any State for 1993 is unavailable or substantially inaccurate, the Attorney General shall utilize the best available comparable data regarding the number of violent crimes for 1993 for that State for the purposes of allocation of any funds under this subtitle.

[SEC. 20106. TECHNICAL ASSISTANCE AND TRAINING.

[The Attorney General may request that the Director of the National Institute of Corrections and the Director of the Federal Bureau of Prisons provide technical assistance and training to a State or States that receive a grant under this subtitle to achieve the purposes of this subtitle.

[SEC. 20107. EVALUATION.

[The Attorney General may request the Director of the National Institute of Corrections to assist with an evaluation of programs established with funds under this subtitle.

[SEC. 20108. DEFINITIONS.

[In this subtitle—

["boot camp" means a correctional program of not more than 6 months' incarceration involving—

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

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

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

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

["part 1 violent crimes" means murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports.

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

[SEC. 20109. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated to carry out this subtitle—

[(1) $175,000,000 for fiscal year 1995;
[(2) $750,000,000 for fiscal year 1996;
[(3) $1,000,000,000 for fiscal year 1997;
[(4) $1,900,000,000 for fiscal year 1998;
[(5) $2,000,000,000 for fiscal year 1999; and
[(6) $2,070,000,000 for fiscal year 2000.]

* * * * * * *

[TITLE V—DRUG COURTS

[SEC. 50001. DRUG COURTS.

[(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 40231(a), is amended—

[(1) by redesignating part V as part W;
[(2) by redesignating section 2201 as section 2301; and
[(3) by inserting after part U the following new part:

[“PART V—DRUG COURTS

[“SEC. 2201. GRANT AUTHORITY.

[“The Attorney General may make grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, for programs that involve—

[“(1) continuing judicial supervision over offenders with substance abuse problems who are not violent offenders; and

[“(2) the integrated administration of other sanctions and services, which shall include—

[“(A) mandatory periodic testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant;

[“(B) substance abuse treatment for each participant;

[“(C) diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress; and

[“(D) programmatic, offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services for each participant who requires such services.

[“SEC. 2202. PROHIBITION OF PARTICIPATION BY VIOLENT OFFENDERS.

[“The Attorney General shall—

["(1) issue regulations and guidelines to ensure that the pr
grams authorized in this part do not permit participation
violent offenders; and

["(2) immediately suspend funding for any grant under th
part, pending compliance, if the Attorney General finds th
violent offenders are participating in any program fund
under this part.

["SEC. 2203. DEFINITION.

["In this part, 'violent offender' means a person who—

["(1) is charged with or convicted of an offense, during t
course of which offense or conduct—

["(A) the person carried, possessed, or used a firearm
dangerous weapon;

["(B) there occurred the death of or serious bodily inju
to any person; or

["(C) there occurred the use of force against the pers
of another,

without regard to whether any of the circumstances describ
in subparagraph (A), (B), or (C) is an element of the offense
conduct of which or for which the person is charged or co
victed; or

["(2) has one or more prior convictions for a felony crime
violence involving the use or attempted use of force against
person with the intent to cause death or serious bodily har

["SEC. 2204. ADMINISTRATION.

["(a) CONSULTATION.—The Attorney General shall consult wi
the Secretary of Health and Human Services and any other appr
priate officials in carrying out this part.

["(b) USE OF COMPONENTS.—The Attorney General may utili
any component or components of the Department of Justice in ca
rying out this part.

["(c) REGULATORY AUTHORITY.—The Attorney General may iss
regulations and guidelines necessary to carry out this part.

["(d) APPLICATIONS.—In addition to any other requirements th
may be specified by the Attorney General, an application for
grant under this part shall—

["(1) include a long-term strategy and detailed implement
tion plan;

["(2) explain the applicant's inability to fund the progra
adequately without Federal assistance;

["(3) certify that the Federal support provided will be us
to supplement, and not supplant, State, Indian tribal, and loc
sources of funding that would otherwise be available;

["(4) identify related governmental or community initiativ
which complement or will be coordinated with the proposal;

["(5) certify that there has been appropriate consultatic
with all affected agencies and that there will be appropriate c
ordination with all affected agencies in the implementation
the program;

["(6) certify that participating offenders will be supervise
by one or more designated judges with responsibility for th
drug court program;

["(7) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support; and

["(8) describe the methodology that will be used in evaluating the program.

["SEC. 2205. APPLICATIONS.

["To request funds under this part, the chief executive or the chief justice of a State or the chief executive or chief judge of a unit of local government or Indian tribal government shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

["SEC. 2206. FEDERAL SHARE.

["The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the program described in the application submitted under section 2205 for the fiscal year for which the program receives assistance under this part, unless the Attorney General waives, wholly or in part, the requirement of a matching contribution under this section. In-kind contributions may constitute a portion of the non-Federal share of a grant.

["SEC. 2207. GEOGRAPHIC DISTRIBUTION.

["The Attorney General shall ensure that, to the extent practicable, an equitable geographic distribution of grant awards is made.

["SEC. 2208. REPORT.

["A State, Indian tribal government, or unit of local government that receives funds under this part during a fiscal year shall submit to the Attorney General a report in March of the following year regarding the effectiveness of this part.

["SEC. 2209. TECHNICAL ASSISTANCE, TRAINING, AND EVALUATION.

["(a) TECHNICAL ASSISTANCE AND TRAINING.—The Attorney General may provide technical assistance and training in furtherance of the purposes of this part.

["(b) EVALUATIONS.—In addition to any evaluation requirements that may be prescribed for grantees, the Attorney General may carry out or make arrangements for evaluations of programs that receive support under this part.

["(c) ADMINISTRATION.—The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, in collaboration with the Secretary of Health and Human Services, or through grants, contracts, or other cooperative arrangements with other entities.".

[(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 40231(b), is amended by striking the matter relating to part V and inserting the following:

["PART V—DRUG COURTS

["Sec. 2201. Grant authority.
["Sec. 2202. Prohibition of participation by violent offenders.
["Sec. 2203. Definition.
["Sec. 2204. Administration.
["Sec. 2205. Applications.

[Sec. 2206. Federal share.
[Sec. 2207. Geographic distribution.
[Sec. 2208. Report.
[Sec. 2209. Technical assistance, training, and evaluation.

["PART W—TRANSITION-EFFECTIVE DATE-REPEALER

[Sec. 2301. Continuation of rules, authorities, and proceedings.".

[(c) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793), as amended by section 40231(c), is amended—

[(1) in paragraph (3) by striking "and U" and inserting "U, and V"; and

[(2) by adding at the end the following new paragraph:

["(20) There are authorized to be appropriated to carry out part V—

["(A) $100,000,000 for fiscal year 1995;
["(B) $150,000,000 for fiscal year 1996;
["(C) $150,000,000 for fiscal year 1997;
["(D) $200,000,000 for fiscal year 1998;
["(E) $200,000,000 for fiscal year 1999; and
["(F) $200,000,000 for fiscal year 2000.".

[SEC. 50002. STUDY BY THE GENERAL ACCOUNTING OFFICE.

[(a) IN GENERAL.—The Comptroller General of the United States shall study and assess the effectiveness and impact of grants authorized by part V of title I of the Omnibus Crime Control and Safe Streets Act of 1968 as added by section 50001(a) and report to Congress the results of the study on or before January 1, 1997.

[(b) DOCUMENTS AND INFORMATION.—The Attorney General and grant recipients shall provide the Comptroller General with all relevant documents and information that the Comptroller General deems necessary to conduct the study under subsection (a), including the identities and criminal records of program participants.

[(c) CRITERIA.—In assessing the effectiveness of the grants made under programs authorized by part V of the Omnibus Crime Control and Safe Streets Act of 1968, the Comptroller General shall consider, among other things—

[(1) recidivism rates of program participants;
[(2) completion rates among program participants;
[(3) drug use by program participants; and
[(4) the costs of the program to the criminal justice system.]

TITLE V—TRUTH IN SENTENCING GRANTS

SEC. 501. AUTHORIZATION OF GRANTS.

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

and criminal aliens for the purpose of freeing suitable existing prison space for the confinement of persons convicted of a serious violent felony.

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

SEC. 502. GENERAL GRANTS.

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

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

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

(2) increased the average prison time actually to be served in prison by convicted violent offenders sentenced to prison; and

(3) increased the percentage of sentence to be actually served in prison by violent offenders sentenced to prison.

SEC. 503. TRUTH-IN-SENTENCING GRANTS.

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

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

(1)(A) truth-in-sentencing laws which require persons convicted of a serious violent felony serve not less than 85 percent of the sentence imposed or 85 percent of the court-ordered maximum sentence for States that practice indeterminate sentencing; or

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

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

SEC. 504. SPECIAL RULES.

(a) INMATE CONTRIBUTION REQUIREMENT.—To be eligible to receive a grant under section 502 or 503, a State or States organized as a regional compact shall provide an assurance to the Attorney

General that, to the extent practicable, inmate labor will be used to build and expand correctional facilities.

(b) ADDITIONAL ELIGIBILITY REQUIREMENT.—To be eligible to receive a grant under this title, each State shall provide an assurance to the Attorney General that such State will involve counties and other units of local government, when appropriate, in the construction, development, expansion, modification, operation, or improvement of correctional facilities designed to ensure the incarceration of offenders, and that each State will share funds received under this title with any county or other unit of local government that is housing State prisoners, taking into account the burden placed on such county or unit of local government in confining prisoners due to overcrowding in State prison facilities in furtherance of the purposes of this Act.

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

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

(e) REQUIREMENT FOR INCARCERATED VETERANS.—To be eligible to receive a grant under section 502 or 503, each State shall provide an assurance to the Attorney General that the State has implemented or will implement, not later than 18 months after the date of the enactment of the Violent Criminal Incarceration Act of 1995, policies to determine the veteran status of inmates and to ensure that incarcerated veterans receive the veterans benefits to which they are entitled.

SEC. 505. FORMULA FOR GRANTS.

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

(1) $500,000 or 0.40 percent, whichever is greater shall be allocated to each participating State or compact, as the case may be; and

(2) of the total amount of funds remaining after the allocation under paragraph (1), there shall be allocated to each State or compact, as the case may be, an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State or compact, as the case may be, bears to the population of all the States.

SEC. 506. ACCOUNTABILITY.

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

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

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

SEC. 507. AUTHORIZATION OF APPROPRIATIONS.

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

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

(b) LIMITATIONS ON FUNDS.—

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

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

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

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

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

SEC. 508. DEFINITIONS.

As used in this title—

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

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

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

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

(A) an offense that is a felony and has as an element the use, attempted use, or threatened use of physical force

against the person or property of another and has a maximum term of imprisonment of 10 years or more,

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

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

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

* * * * * * *

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

TITLE I—JUSTICE SYSTEM IMPROVEMENT

* * * * * * *

PART J—FUNDING

AUTHORIZATION OF APPROPRIATIONS

SEC. 1001. (a)(1) * * *

* * * * * * *

[(3)] There are authorized to be appropriated to carry out part

[(A)] $100,000,000 for fiscal year 1995;
[(B)] $150,000,000 for fiscal year 1996;
[(C)] $150,000,000 for fiscal year 1997;
[(D)] $200,000,000 for fiscal year 1998;
[(E)] $200,000,000 for fiscal year 1999; and
[(F)] $200,000,000 for fiscal year 2000.]

* * * * * * *

[PART V—DRUG COURTS

[SEC. GRANT AUTHORITY.

[(a) ATTORNEY GENERAL.—The Attorney General may make grants to States, State courts, [illegible] units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, for programs that involve—

[(1) continuing judicial supervision over offenders with substance abuse problems who are not violent offenders; and

[(2) the integrated administration of other sanctions and services, which shall include—

[(A) mandatory periodic testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant;

[(B) substance abuse treatment for each participant;

[(C) diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress; and

[(D) programmatic, offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services for each participant who requires such services.

[SEC. 2202. PROHIBITION OF PARTICIPATION BY VIOLENT OFFENDERS.

[The Attorney General shall—

[(1) issue regulations and guidelines to ensure that the programs authorized in this part do not permit participation by violent offenders; and

[(2) immediately suspend funding for any grant under this part, pending compliance, if the Attorney General finds that violent offenders are participating in any program funded under this part.

[SEC. 2203. DEFINITION.

[In this part, "violent offender" means a person who—

[(1) is charged with or convicted of an offense, during the course of which offense or conduct—

[(A) the person carried, possessed, or used a firearm or dangerous weapon;

[(B) there occurred the death of or serious bodily injury to any person; or

[(C) there occurred the use of force against the person of another,

without regard to whether any of the circumstances described in subparagraph (A), (B), or (C) is an element of the offense or conduct of which or for which the person is charged or convicted; or

[(2) has one or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.

[SEC. 2204. ADMINISTRATION.

[(a) CONSULTATION.—The Attorney General shall consult with the Secretary of Health and Human Services and any other appropriate officials in carrying out this part.

[(b) USE OF COMPONENTS.—The Attorney General may utilize any component or components of the Department of Justice in carrying out this part.

[(c) REGULATORY AUTHORITY.—The Attorney General may issue regulations and guidelines necessary to carry out this part.

[(d) APPLICATIONS.—In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this part shall—

[(1) include a long-term strategy and detailed implementation plan;

[(2) explain the applicant's inability to fund the program adequately without Federal assistance;

[(3) certify that the Federal support provided will be used to supplement, and not supplant, State, Indian tribal, and local sources of funding that would otherwise be available;

[(4) identify related governmental or community initiatives which complement or will be coordinated with the proposal;

[(5) certify that there has been appropriate consultation with all affected agencies and that there will be appropriate coordination with all affected agencies in the implementation of the program;

[(6) certify that participating offenders will be supervised by one or more designated judges with responsibility for the drug court program;

[(7) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support; and

[(8) describe the methodology that will be used in evaluating the program.

[SEC. 2205. APPLICATIONS.

[To request funds under this part, the chief executive or the chief justice of a State or the chief executive or chief judge of a unit of local government or Indian tribal government shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

[SEC. 2206. FEDERAL SHARE.

[The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the program described in the application submitted under section 2205 for the fiscal year for which the program receives assistance under this part, unless the Attorney General waives, wholly or in part, the requirement of a matching contribution under this section. In-kind contributions may constitute a portion of the non-Federal share of a grant.

[SEC. 2207. GEOGRAPHIC DISTRIBUTION.

[The Attorney General shall ensure that, to the extent practicable, an equitable geographic distribution of grant awards is made.

[SEC. 2208. REPORT.

[A State, Indian tribal government, or unit of local government that receives funds under this part during a fiscal year shall submit to the Attorney General a report in March of the following year regarding the effectiveness of this part.

[SEC. 2209. TECHNICAL ASSISTANCE, TRAINING, AND EVALUATION.

[(a) TECHNICAL ASSISTANCE AND TRAINING.—The Attorney General may provide technical assistance and training in furtherance of the purposes of this part.

[(b) EVALUATIONS.—In addition to any evaluation requirements that may be prescribed for grantees, the Attorney General may carry out or make arrangements for evaluations of programs that receive support under this part.

[(c) ADMINISTRATION.—The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, in collaboration with the Secretary of

Health and Human Services, or through grants, contracts, or other cooperative arrangements with other entities.]

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CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT

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SEC. 7. EXHAUSTION OF REMEDIES.

(a)(1) Subject to the provisions of paragraph (2), [in any action brought] *no action shall be brought* pursuant to section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) by an adult convicted or a crime confined in any jail, prison, or other correctional facility, [the court shall, if the court believes that such a requirement would be appropriate and in the interests of justice, continue such case for a period of not to exceed 180 days in order to require exhaustion of] *until* such plain, speedy, and effective administrative remedies as are available *are exhausted.*

* * * * * * *

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

(b)(1) * * *

(2) The minimum standards shall provide—

[(A) for an advisory role for employees and inmates of any jail, prison, or other correctional institution (at the most decentralized level as is reasonably possible), in the formulation, implementation, and operation of the system;]

[(B)] *(A)* specific maximum time limits for written replies to grievances with reasons thereto at each decision level within the system;

[(C)] *(B)* for priority processing of grievances which are of an emergency nature, including matters in which delay would subject the grievant to substantial risk of personal injury or other damages;

[(D)] *(C)* for safeguards to avoid reprisals against any grievant or participant in the resolution of a grievance; and

[(E)] *(D)* for independent review of the disposition of grievances, including alleged reprisals, by a person or other entity not under the direct supervision or direct control of the institution.

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SECTION 1915 OF TITLE 28, UNITED STATES CODE

§ 1915. Proceedings in forma pauperis

(a) * * *

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(d) The court may request an attorney to represent any such person unable to employ counsel and [may] *shall at any time* dismiss the case if the allegation of poverty is untrue, or if satisfied that the action *fails to state a claim upon which relief may be granted* or is frivolous or malicious *even if partial filing fees have been imposed by the court.*

* * * * * * *

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

TITLE 18, UNITED STATES CODE

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PART II—CRIMINAL PROCEDURE

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CHAPTER 229—POSTSENTENCE ADMINISTRATION

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SUBCHAPTER C—IMPRISONMENT

SUBCHAPTER C—IMPRISONMENT

[3626. Appropriate remedies with respect to prison crowding

[(a) REQUIREMENT OF SHOWING WITH RESPECT TO THE PLAINTIFF IN PARTICULAR.—

[(1) HOLDING.—A Federal court shall not hold prison or jail crowding unconstitutional under the eighth amendment except to the extent that an individual plaintiff inmate proves that the crowding causes the infliction of cruel and unusual punishment of that inmate.

[(2) RELIEF.—The relief in a case described in paragraph (1) shall extend no further than necessary to remove the conditions that are causing the cruel and unusual punishment of the plaintiff inmate.

[(b) INMATE POPULATION CEILINGS.—

[(1) REQUIREMENT OF SHOWING WITH RESPECT TO PARTICULAR PRISONERS.—A Federal court shall not place a ceiling on the inmate population of any Federal, State, or local detention facility as an equitable remedial measure for conditions that violate the eighth amendment unless crowding is inflicting cruel and unusual punishment on particular identified prisoners.

[(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed to have any effect on Federal judicial power to issue equitable relief other than that described in paragraph (1), including the requirement of improved medical or health care and the imposition of civil contempt fines or damages, when such relief is appropriate.

[(c) PERIODIC REOPENING.—Each Federal court order or consent decree seeking to remedy an eighth amendment violation shall be reopened at the behest of a defendant for recommended modification at a minimum of 2-year intervals.]

§3626. Appropriate remedies with respect to prison conditions

(a) REQUIREMENTS FOR RELIEF.—

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

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

(b) TERMINATION OF RELIEF.—

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

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

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

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

(c) PROCEDURE FOR MOTIONS AFFECTING PROSPECTIVE RELIEF.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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PART III—PRISONS AND PRISONERS

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CHAPTER 303—BUREAU OF PRISONS

* * * * * * *

§4048. Strength-training of prisoners prohibited

The Bureau of Prisons shall ensure that—

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

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

* * * * * * *

DISSENTING VIEWS

We support the stated purpose of this bill, which is "to control crime by incarcerating violent criminals." We want more prisons cells built to put more violent felons in prison for longer periods of time.

However, we take strong exception to this bill, because we believe it will do just the opposite of what it pretends to do. Because of serious flaws in concept and drafting, H.R. 667 would actually result in significantly less prison cells for violent felons than the prison grant program in the bi-partisan crime bill we passed last year, the Violent Crime Control and Law Enforcement Act of 1994.

A balanced and effective program for reducing violent crime must devote substantial resources to prison cells for violent felons. One appropriate role for the federal government is to help the States with funds to build and operate correctional facilities.

A proper comity allows the States flexibility in how to use such Federal prison grant funds. In some cases, those funds might most efficiently be used for new space directly to house violent felons. In other cases, it makes more sense to build alternative correctional facilities in order to free up existing appropriate space for housing violent felons.

In either case, the end result is the same—sufficient appropriate cell space in all of the States to ensure that violent felons are locked up for longer periods of time.

The law we enacted last year embodies this comity. It created two pools of grant funds. One pool is for States that have enacted tough "Truth-in-Sentencing" laws. The other is for States willing to make a series of carefully drafted assurances designed to ensure that the State is moving expeditiously toward the goal of longer prison time for violent felons.

Recognizing that the process of enacting and implementing "Truth-in-Sentencing" laws in the States is a lengthy affair at best, and difficult if not impossible at worst, the 1994 law allows funds not used in the tougher "Truth-in-Sentencing" pool to flow over into the more readily available general pool.

The bill before us resembles the 1994 Crime Bill in outer form. It, too, creates two pools of funds.

There the resemblance ends, however.

Correctional system experts in the Department of Justice and elsewhere say that as few as three States can qualify for funding under either pool in this bill. Even if one *doubles* that number in an excess of generous caution, it is clear beyond doubt that these funds will go to only a tiny minority of the States in the foreseeable future.

In short, this grant program is a mirage. It will not build the prison cells for violent felons we want to see built at any time in the foreseeable future.

This results from four serious defects in the bill.[1]

First, the terms of the so-called "Truth-in-Sentencing" pool are so severe that States will be required to commit themselves to investing enormous sums up front in order even to qualify for this pool.

Second, the literal words of the so-called "General Grant" pool of funds requires States to make assurances about matters which, by definition, cannot be known until some years hence. This section requires a State to make assurances that, since 1993, it has increased (i) the percentage of convicted violent felons sentenced to prison, (ii) the "average prison time actually to be served" by those felons, and (iii) the "percentage of sentence to be actually served" by those felons.

States can know and make assurances about the first of these assuming they have an adequate data base. However, the other two are problematic at best. How can a State make assurances about how long felons will actually serve, or what percentage of their sentences they will actually serve, until the date has passed upon which the felons have been actually released? Since most violent felons are sentenced to terms significantly longer than the two years that have passed since 1993, it would seem impossible for most States, if not all, to meet the literal terms of this language.

It may be that the intent of the drafters is otherwise, as was represented in the markup of this bill. Unfortunately, that intent is poorly and inadequately conveyed in this bill, which has not incidentally been rushed through committee with neither adequate hearing nor deliberate evaluation.

Third, the language of the special rules for States with indeterminant sentencing is impossibly vague. Those rules ostensibly permit such a State to qualify for grant funds if "the average time served" for "murder, rape, robbery, and assault" exceed by 10 percent or greater "the national average of time served for such offenses."

This raises a number of apparently insoluble questions.

First, no such "national average" is known to exist, according to the experts our staff has consulted.

Second, it will be impossible to construct such a national average until several fundamental questions of definition are resolved. The several States define the listed offenses in different ways. That being so, which offenses from each State should be included in the national average? Over what period of time is the average to be based? How often is it to be computed? Who or what agency is supposed to compute it?

Third, each individual State will be vexed by the same unanswered questions. Which of its offense that arguably fall into the grossly general terms in the bill should it include in computing its "average?" Since, by definition, the average in an indeterminant sentencing State will constantly fluctuate, when and over what period of time should it compute its average?

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[1] Mr. Schumer offered an amendment that would have cured every one of these defects, and would have been completely in consonance with the often stated goal of the majority to give maximum due to states rights. His amendment would simply have converted this program to a block grant program for the states, under which each would get a share proportionate to its rate of violent crime. This idea is in concept indistinguishable from the Local Law Enforcement Block Grant program the majority offers in another bill, H.R. 668.

Finally, this bill lacks a "pour over" clause so that funds not expended in the "Truth-in-Sentencing" pool will be put to useful purpose. Instead, it allows either the few States that may qualify to split up an enormous windfall (the pot remaining after allocating a reserve for all States), or the funds to sit idle until sufficient States have been strong-armed into complying with this bill's terms.

These flaws are more evidence that this bill has been rammed through committee without adequate deliberation. If the majority truly wanted to build more prison cells for violet offenders as quickly and efficiently as possible, it would have enthusiastically embraced our block grant amendment. Given the trickle of funds that will actually emerge from the ponderous language in H.R. 667, we are forced to wonder this bill is actually intended to cut significant prison spending out of our national crime program.

These flaws in this bill will inflict a bad policy on America. It will attack the ambitious prison program we passed in the last Congress, not move it forward.

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