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REINING IN FEDERAL JUDGES: THE CRIME BILL'S UNEXPECTED GIFT TO THE STATES

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Although criticism of the Violent Crime Control and Law Enforcement Act of 1994 concentrated on its wasteful social spending, equally disturbing is the Act's expansion of federal government intrusion into areas of clear state and local responsibility. However, largely unnoticed in the Act, which President Clinton signed into law last month, is an amendment sponsored by Representatives Charles Canady (R-FL) and Preston Geren (D-TX) that places the first, long-overdue limits on the power of federal courts to interfere arbitrarily in the administration of state and local prisons. By prohibiting prisoners from using class action suits against state prisons to remedy alleged overcrowding, the amendment requires that individual plaintiffs demonstrate that they have suffered actual harm from overcrowding before the courts can use that rationale as a basis for their decisions. And by limiting the power of federal judges to place arbitrary population caps on state prisons, the legislation will help stop the courts from releasing felons onto the streets.

Federal judicial encroachment into all aspects of state prison administration has grown rapidly since the mid-1960s. Much of this has been prompted by alleged shortcomings in the states' treatment of prisoners, but federal judges have gone far beyond simple remedial measures. Federal courts regularly issue detailed instructions covering every aspect of prison life, forcing states to provide prisoners with state-of-the-art law libraries, the full inventory of recreational equipment, including pool tables and specific board games, air conditioning, and even color televisions. These federal decisions and consent decrees, which are supposedly voluntary agreements with the courts that in reality often are coerced by the threat of more severe judicial action, have cost the states millions of dollars in legal fees and compliance costs.

While these impositions are costly, there is a more direct threat to the safety of law-abiding citizens: the use by federal judges of "population caps" and prisoner releases from state prisons and jails to relieve the "overcrowding" that these federal judges say violates the Eighth Amendment's ban on cruel and unusual punishment. These releases, begun in earnest in the early 1980s, have resulted in the early parole, pre-trial release, and probation of hundreds of thousands of violent criminals across the nation. And even in those prison systems not under direct federal court supervision, there has been a chilling influence as many states have opted for early release of prisoners in an effort to avert federal court action against them.

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Section 20409 of the Crime bill (the Canady-Geren amendment) has the potential to change this situation by prohibiting federal judges from using population caps or forced releases “unless crowding is inflicting cruel and unusual punishment on particular identified prisoners.” Previously, no harmful impact on any individual prisoner needed to be demonstrated; any judge, pursuant to unwritten standards, could determine that such harm was being inflicted on the prison population in general. Now, actual harm to specific individuals must be demonstrated. Similarly, the bill limits the ability of courts to accept class action suits on overcrowding, stating that such crowding can be deemed unconstitutional only if “an individual plaintiff inmate proves that the crowding causes the infliction of cruel and unusual punishment of that inmate.”

Previously, federal judges have forced cities and states into consent decrees without ever investigating whether alleged abuses were in fact occurring or whether a population cap or forced release would actually remedy the problem—or even considering the effect of early releases on society. For example, after a population cap was imposed on Texas prisons by federal judge William Wayne Justice in 1981, the state parole board increased early prisoner releases by over 400 percent; by the late 1980s, inmates served an average of only two months for every year sentenced. The same consent decree required the state to keep its prison population at 95 percent of prison capacity. As a result, over the last several years, violent felons continued to be regularly released before completing their terms even though the state had over 6,000 empty beds in its prisons.

Philadelphia has been suffering from the same type of arbitrary federal intervention, mostly due to two consent decrees entered into in 1986 and 1991 between then-mayor Wilson Goode and federal judge Norma Shapiro. In order to reduce perceived overcrowding, these decrees prohibit pre-trial detention except for the most violent criminals. As a result, Philadelphia authorities are effectively prevented from detaining large numbers of robbers, carjackers, stalkers—and even terrorists—because the decrees do not classify them as “violent” criminals. According to Mayor Ed Rendell, this has made the city a more dangerous place. Despite the sweeping nature and negative effects of these consent decrees, however, in neither case was Judge Shapiro required to determine that the Constitution had in fact been violated through any specific overcrowding or that any general overcrowding had resulted in cruel and unusual punishment being inflicted on any individual prisoners.

Today, 39 states and 300 of the nation’s largest jails operate under some form of federal court direction. Court orders cover the entire prison systems of nine states; Essex County in New Jersey, Cook County in Illinois, and Philadelphia are but a few of the local jurisdictions that still operate prison systems under the direction of federal courts.

The effects of these policies have been dramatic: early releases have been a major factor in high levels of violent crime. Nationally, almost one-third of all violent crimes are committed by people on pre-trial release, probation, or parole. In Florida, 20,350 criminals were released early last year to comply with a statewide prison population cap imposed by a federal court. In Cook County, approximately 30,000 prisoners each year are released from pre-trial detention under a similar cap and commit an additional 7,500 violent crimes annually. By the mid-1980s, violent criminals on average were spending less than a third of their sentences behind bars. Although those numbers have improved slightly, in 1993, criminals in state prisons served on average only 37 percent of their sentences behind bars.

Canady-Geren removes many of the pretexts heretofore used by the federal courts to maximize their interference into state and local prison administration. For example, in the past, many federal judges have used the “totality of circumstances” in state prisons as an excuse to throw a wide net over all aspects of state prison administration, prescribing detailed instructions for everything from magazine subscriptions to the permitted wattage of lightbulbs. By requiring federal judges to deal in demonstrable specifics, rather than broad generalities, Canady-Geren makes it more difficult for

these judges to abuse their authority. Federal judges also are barred from issuing population caps unless the cap is the least intrusive means available to remedy the situation.

In addition to the limits on arbitrary actions by federal judges, the Canady-Geren amendment also provides state and local governments with tools to reopen burdensome judicial decrees and findings and to seek redress through appellate review. Some of the most onerous federal consent decrees are over a decade old. In Texas, for example, Judge Justice established an ongoing consent decree that, until last year, bound the state to requirements set in the early 1980s.

To address this problem, a provision of the Canady-Geren amendment requires federal judges to reopen and review any court order or consent decree at least every two years if requested by the affected city or state. Until the amendment became law, decisions were reviewed only at the whim of the federal judge, regardless of any changes in circumstances or pleas from the affected jurisdictions. And even now, these can only request a reexamination, but cannot force a revision of the decree. However, the legislation does provide the possibility of additional relief through broadened provisions for appellate review of the decrees, which previously was rarely possible.

For all of its potential benefit, the Canady-Geren amendment addresses only one aspect of federal judicial encroachment into state prison administration. A companion amendment that would have prohibited frivolous inmate suits in federal courts was defeated in committee. Congressman Newt Gingrich (R-GA) is proposing to reintroduce it in the next Congress as part of a broader strategy to return power to communities on issues of crime.

However, the Canady-Geren amendment is an unexpected ray of hope for states and local governments. By itself, this amendment will not eliminate the early release of violent prisoners. But state officials who are determined to stop the revolving door in America's prisons now have a tool to prevent federal judges from running roughshod over state and local governments.

