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## IT'S TIME TO THROW THE SWITCH ON THE FEDERAL CRIME BILL

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### INTRODUCTION

Over the last three decades violent crime in America has increased by more than 500 percent. The United States leads the industrialized world in rates of murder, rape, and violent crime. Nearly three out of every four convicted criminals are not incarcerated. And fewer than one in ten serious crimes results in imprisonment. Behind these statistics is, of course, human carnage. In our inner cities in particular, the body count continues to mount. This is the inevitable, tragic result of a breakdown of the moral order and of our criminal justice system.

The American public will not accept widespread lawlessness indefinitely. If violent crime continues to rise, then people will at some point look for a police state to restore order. Our free democratic institutions cannot withstand much more crime without a terrible counterreaction. Social anarchy often triggers an authoritarian backlash.

We must regain control of our streets. The first responsibility of government, after all, is the security of its citizens. The relevant public policy question is: How do we once again provide basic security? And here a caution is in order: Passage of the current crime bill is *not* synonymous with achieving safe streets. Flawed legislation wrapped in good rhetoric is still flawed legislation. A close analysis of the crime bill demonstrates where it falls short.<sup>1</sup>

Regardless of their rhetoric, Members of Congress are not going to cure America's epidemic of violent street crime with the enactment of a federal crime bill. Street crime is largely a matter of state and local law enforcement; indeed, more

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1 See Paul J. McNulty, "Rhetoric Versus Reality: A Closer Look at The Congressional Crime Bill," Heritage Foundation *Issue Bulletin* No. 189, May 16, 1994.

than 98 percent of all such violent crimes falls under the jurisdiction of state and local law enforcement authorities. But more important, Members of Congress are using the crime issue as a pretext for doing what they do best: increasing federal spending on social programs. In this instance, they are increasing social spending on everything from midnight basketball leagues to arts and crafts programs. And while legislators are using ruthless rhetoric against violent criminals, they are seriously considering the establishment of a racially based, death penalty quota system ensuring that the imposition of the death sentence is effectively ended at both the state and the federal level. Indeed, the measure now before Congress would likely further emasculate the independence and the authority of state and local law enforcement officials in fighting violent street crime.

Instead of a fundamentally flawed crime bill, which pointlessly federalizes local street crime, state and local officials should be empowered and given the resources to combat violent criminals, locking up felons for their full sentence and ending “revolving door justice.” Instead of establishing a new federal “anti-crime” regime, Congress should aim at maximizing state and local flexibility, while stopping the intrusion of the federal judiciary in the administration of state prison systems. Instead of hamstringing state and local law enforcement with new federal regulations, Members of Congress should make changes in federal law to stop the endless appeals of convicted violent felons and encourage state and local officials to adopt the 24 effective anti-crime measures recommended by former Attorney General William Barr.<sup>2</sup>

And finally, Members of Congress can really help in a tangible way by giving state residents a federal tax rebate proportional to increased state spending to fight violent street crime at the state and local level.

## SOME GOOD PROVISIONS

Given Americans’ growing fear of violent crime, it is understandable that Members of Congress would want to support another federal crime bill, even if it falls far short of effective legislation. The House and Senate versions of the bill have “truth in sentencing provisions” which would require violent criminals to serve at least 85 percent of their time.<sup>3</sup> If actually funded, these provisions would incapacitate large numbers of violent criminals. But in the inevitable congressional horsetrading on Capitol Hill, new social programs are likely to be more politically potent than new prison space.

On key issues, the House and Senate are far apart on the details. Proposed federal money for state prisons amounts to \$13 billion in the House bill and \$3 billion in the Senate version. And there is also federal money for hiring community police (\$9 billion in the Senate version, and \$3.5 billion in the House bill). But

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- 2 For more information on these recommendations, see Mary Kate Cary, “How States Can Fight Violent Crime: Two Dozen Steps to a Safer America,” Heritage Foundation *State Backgrounder* No. 944/S, June 7, 1993.
  - 3 James Wootton, “Truth in Sentencing: Why States Should Make Violent Criminals Do Their Time,” Heritage Foundation *State Backgrounder* No. 972/S, December 30, 1993.

even if Members of Congress agree on the right funding formulas, there is yet no adequate funding mechanism in the crime package. Currently, Members of Congress are considering a special trust fund created by the elimination of 252,000 federal jobs over the next five years. This funding provision appears in the Senate bill; the House bill has no funding mechanism at all. Thus, Congress can promise funding for anti-crime measures, but without an explicit and effective funding mechanism, the entire congressional anti-crime enterprise could become another rhetorical exercise.

## A BATCH OF BAD IDEAS

While American taxpayers are promised more police on the streets and more prison space for violent criminals, the major effect of the federal crime bill is to federalize violent street crime, burdening state and local authorities with even more federal rules and regulations while making them increasingly dependent on Washington's largesse. For example:

**More Social Spending.** In spite of the fact that Washington has racked up a record of failure in social programs, the House version of the crime bill contains roughly \$9.2 billion in Sixties-style social programs to "prevent crime." This includes \$40 million for business partnerships administered by the U.S. Department of Health and Human Services, midnight basketball with federal rules even detailing the composition of neighborhood teams, "self-esteem" classes, arts and crafts, dance classes and physical training programs, and "conflict resolution" training.

**Outcome-Based Executions.** In the House version of the bill, a provision called the "Racial Justice Act" would enable a person convicted of a capital crime to invoke statistical evidence that his execution would reinforce a pattern of racial discrimination. Moreover, the burden is on the state to prove it was not discriminating in imposing the death penalty. And because the provision is retroactive to all those now on death row—a total of 3,800—it could tie up the courts for years. Indeed, a California case where the convict used such a defense took over three years—at a cost of \$1 million—before the state could execute the sentence. But the worst feature of this provision is the message that it sends: race, not the crime, would be the most important factor in the imposition of the death sentence. The result: a death sentence could be invalidated by irrelevant data.

**More Federal Intrusion Into State Law Enforcement.** Virtually all violent street crime is under the jurisdiction of state and local government. State legislators, not Members of Congress, have primary responsibility for combatting violent street crime. Yet in the Senate version of the bill, more crimes are added to the federal crime code. For example, trafficking in stolen credit cards, defrauding a person of more than \$1,000 in credit card stealing, telemarketing fraud, and increased street gang activity are to be put under federal jurisdiction. In the meantime, the House version of the bill has added 66 new federal death penalties, coupled, of course, with the House adoption of the "Racial Justice Act" to make sure they are never actually carried out. And while Members of the House of Representatives have been posturing on the

death penalty, the Clinton Administration has been cutting back on federal law enforcement agent strength, both at the Federal Bureau of Investigation (FBI) and at the Drug Enforcement Administration (DEA). This is, of course, a recipe for bitter cynicism on the part of America's taxpayers.

**More Federal Control Over Local Police.** Both the White House and Capitol Hill are committed to increasing the number of police. While the Clinton Administration has asked for 100,000 more police officers, the House version contains 50,000 additional slots. While no personnel decision is more important than the hiring of a cop—a job where individual merit is paramount—the House bill calls for state and local authorities to adopt racial, ethnic, and gender guidelines in police hiring. While these are not explicit quotas, in practice they are likely to become so, especially given the heavy dependence on centralized federal financing. Over 88 percent of the funding is controlled not by states and localities, but by the Executive Branch. And because the funding for these police slots will end in five years, localities will either have to cut their police force, a politically unattractive option, or lobby Washington for even more federal funding and concomitant federal control.

## A BETTER IDEA

American taxpayers are not going to feel safer because Congress talks tough on crime, while it increases spending on arts and crafts for juvenile delinquents. While there are good provisions in the Senate and House package, the heavy mixture of bad proposals or a variation of them are certain to survive in the congressional logrolling that normally characterizes House and Senate conference business.

Instead, Members of Congress should do it right. They should recognize that combatting violent street crime is a state and local responsibility. They should target their efforts to helping the state and local police upgrade the detection and apprehension of criminals, and assist state and local authorities in prosecuting and incarcerating violent criminals.

Toward this end, Members of Congress should:

✓ **Establish a special trust fund for the states to fight crime.**

Under a proposal by Representative James Sensenbrenner (R-WI), H.R. 4592, Congress would set aside an amount equal to 2 percent of the personal income tax revenues, and rebate it to the states to cover increased state expenditures to combat violent crime. State expenditures would include spending on police, construction of the operation of prisons, and other aspects of the state criminal justice system, including truth in sentencing. The Sensenbrenner proposal would rebate between \$45 billion to \$55 billion to the states to fight crime over the next five years.



✓ **Eliminate federal judicial micromanagement of state prison systems.**

Congress can restrain federal judges from arrogating wide-ranging administrative powers to themselves, overriding state executive and legislative authorities, and imposing “prison caps” that result in the early release of criminals.

✓ **Reform key federal rules governing the criminal justice system.**

This would include *habeas corpus* reform, to prevent convicted felons from tying up the court systems with endless appeals. Such reform would also include establishing a “good faith” exception to the exclusionary rule, meaning criminals would not be able to beat the rap because the police secured otherwise solid evidence in a technically imperfect search and seizure operation.

While Members of Congress could assist state and local authorities in very tangible ways, there is no reason why the Justice Department could not publish a “Wall Chart,” comparing states and localities with each other, with a rank ordering of their performance in combatting violent crime, including arrests, convictions, imprisonment, and adherence to truth-in-sentencing standards. With a way to compare performance, taxpayers could bring pressure to bear on lax state and local officials far more effectively than through the ministrations of federal officials.

In the meantime, Members of Congress should refrain from talking tough about violent street crime while they promote policies that would only further erode their already damaged credibility. Instead, they should salvage the few sound policy options left in the crime bill, and make a fresh start on a tough problem.

Of course, we should not allow the discussion of legislation to obscure the most obvious points. The best approach to crime control is to keep young people from ever falling into the criminal justice system in the first place. We now ask prisons to do what fathers once did and ask the entire criminal justice system to do what parents, schools, and neighborhoods once did. More broadly, as a society we simply need to become more civilized. I say “simply” because there is a tendency to over-intellectualize our task or to throw up our hands in despair. Intelligent, tough-minded public policies can help achieve greater domestic tranquillity. But in the end, regeneration in a free society must come from within. We need to revivify old republican virtues like self-control, prudence, honor, and fidelity to commitments. They have been, and remain, the cornerstones of civil society.