

HOW SENATOR SHELBY WOULD REQUIRE PRISONERS TO WORK AND STUDY

Senator Richard C. Shelby (R-AL) has introduced a bill to reform the operation of America's prisons. S. 930 requires inmates in federal prisons, and in the prisons of states receiving federal monies under the 1994 crime bill for building new prisons, to work 48 hours and study 16 hours per week. The legislation also repeals the social work requirements of last year's crime bill.

Though many complain of overcrowding in prisons, Americans are far more concerned about the early release of prisoners—many inmates are released after serving only a small fraction of their sentences. Despite the widespread feeling that a sentence imposed should be a sentence served, a large portion of the nation's felonies are committed by those out on parole or on probation. Thus, the overriding need is not relief from overcrowding, but more prisons to protect society from those who harm other citizens and their property.

Serious prison overcrowding urgently needs to be tackled. That means new facilities must be built. But it is also important for taxpayers and lawmakers to realize that many prisons spend an enormous amount of money on an extensive array of sports and recreational facilities for prisoners. The use of these facilities is treated in Senator Shelby's bill as a privilege to be earned by completing work and study, not as a right to accompany incarceration. These privileges—some that many taxpayers do not have for themselves—include the use of weightlifting and bodybuilding equipment; access to sports (basketball, football, baseball), recreation, and television; unmonitored phone calls; instruction and training in martial arts (boxing, wrestling, judo, karate); the use of musical equipment; in-cell cooking privileges (coffee pots and hot plates); permission to dress and groom in a manner different from uniform prison standards; and access to equipment for publishing and broadcasting.

Rarely are these facilities provided because the prison system wishes to do so. Judges interpreting civil rights law impose these changes on officials through court order. John DiIulio, professor of politics and public affairs at Princeton University, writes: "What prosecutors and other law enforcement officials understand is that the federal courts have gone overboard in protecting prisoners' rights. They have done so at the expense of making a mockery out of democratically enacted laws. Some federal judges have made themselves the sovereigns of the cell blocks, forcing changes in operations that have resulted in inmate-on-inmate murders, inmate-on-staff assaults, a dramatic increase in spending on amenities and services for inmates, and the early release each year of literally hundreds of thousands of violent or repeat criminals."¹

1 John J. DiIulio Jr., "How to Stop Federal Judges from Releasing Violent Criminals and Gutting Truth-In-Sentencing Laws," Heritage Foundation *Background* No. 1020, February 22, 1995.

Senator Shelby's bill would require prisoners to work and study for 64 hours per week, thus significantly reducing the "free time" prisoners currently have to enjoy a host of amenities. The bill also requires that the food prisoners are given not be superior in quality or quantity to the food made available to enlisted personnel in the United States Army.

A debate on the relative effectiveness of rehabilitation and punishment has swung back and forth in the penology literature for over a century. The appeal of the Shelby proposal is that it has rehabilitation, education, work, and punishment all in one package. Furthermore, the reform bill requires a prisoner's life to be similar to that of a hardworking young taxpayer who holds a job and goes to college at night.

The literature on the effectiveness of rehabilitation efforts alone is weak at best. The literature on the effectiveness of work and study is somewhat stronger. Some of the research difficulty comes from definitions and understandings of rehabilitation. There are two dimensions to rehabilitation: deep interior dispositions and developed capacities. It is difficult even for friends to know, still less to change, the deep interior dispositions of others. It is especially so for prison staff (even counselors and therapists) when they try to reach the prisoner. However the second dimension of developing capacities is less dependent on changed interior dispositions. The person who works long and hard acquires the capacity to work long and hard. The person who learns to work harder for more privileges acquires an even greater capacity. And the person who studies develops his intellectual and operational capacities. All of these will be of use to the prisoner when he regains his freedom.

Sustained work for most people involves some form of suffering. At a minimum, a prisoner ought to experience the normal suffering of the work week which the average citizen has to undergo.

Many hardworking citizens do not have either the time or the money needed to join fitness clubs, take part in sports, or receive training in the martial arts. They do not have easy access to many of the facilities made available to prisoners. America's working poor have a life that is harder than that of many of federal and state prisoners. This violates fundamental notions of justice and common sense.

Many of the more luxurious facilities and privileges available to prisoners are beyond the reach of most low-income, law-abiding taxpayers and middle-income taxpaying parents with growing children. These privileges are in place because of federal judges who dictate these facilities in the prisons. As DiIulio explains, the actions of these judges undermine law enforcement. But by making work and study requirements part of federal law, the Shelby bill makes it more difficult for judges to require prisons to provide such extensive facilities and privileges.

Federalism. The Shelby bill could be improved, and the principles of federalism better defended, if the bill addressed only future prisons that states want to build with federal money. To require that *all* prisons in states receiving construction grants be run as Senator Shelby proposes would improve their method of operation, but that requirement violates the central tenet of federalism—leaving to the states what is not prohibited by the Constitution. With this modification, states which do not like the strings attached would not have to take the federal monies for future prisons and could provide unlimited television and karate training if they wished. Those which agree with Senator Shelby's approach to running prisons could apply for the money and build and manage their prisons along these lines. Senator Shelby expects many states to use these federal monies and the federal requirements in the law as a way to break the hold of micromanaging federal judges. If judges wanted to challenge this way of running prisons, they would have to deal with Congress and the U.S. Supreme Court. They could not simply impose court orders on prison officials.

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