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WHAT THE 104TH CONGRESS DID TO COMBAT CRIME

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The 104th Congress has delivered on its promise to enact specific measures to improve federal crime-fighting efforts and help state and local officials combat violent crime. Most of these anti-crime measures were initiated by conservative Members of the House of Representatives, based on promises made to the taxpayers in the Contract With America, and later incorporated into bills passed by the Senate. They include a solid program of truth in sentencing for violent criminals, effective death penalty provisions, restrictions on the power of federal judges to put criminals back on the streets, a reordering of federal funding from social programs to law enforcement efforts (including prison construction and police funding), and victim restitution.

The two major vehicles for enactment of most of these measures were the comprehensive Antiterrorism and Effective Death Penalty Act (S. 735), sponsored by former Senate Majority Leader Robert Dole (R-KS), and the FY 1996 Omnibus Appropriations Act (H.R. 3019). While more can be done at the federal level, more also needs to be done by state and local officials who bear the primary responsibility for fighting violent street crime.² Nonetheless, the legislative record of the 104th Congress in combating crime is impressive and far-reaching.

KEEPING THE BAD GUYS OFF THE STREETS

The first duty of government is to protect the people. As a short-term measure, the most effective way to do this is to put more violent criminals in prison and keep them there. In fulfilling this duty, Congress enacted the following measures into law:

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- 1 Heritage Foundation research intern Julie Johnson scoured the legislative record for this study.
 - 2 For a series of recommendations on how state and local officials can combat crime effectively, 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.

- ✓ **Violent Criminal Incarceration Act of 1995 (H.R. 667).** A major failure of the criminal justice system has been the inability or unwillingness to identify, target, and incarcerate violent criminals for long periods of time. Violent criminals typically serve only one-third of their sentences.

Under this new law, states will receive Truth in Sentencing Incentive Grants for the construction of prisons on condition that they keep violent criminals locked up for at least 85 percent of their sentences. Already, more than 20 states have adopted such truth-in-sentencing laws,³ and it is likely that many more will adopt such measures to keep violent criminals behind bars and off the streets.

The bill passed the House of Representatives on February 10, 1995; was incorporated into the FY 1996 Omnibus Appropriations Act (H.R. 3019); and was signed into law by President Clinton as Public Law 104-134.

- ✓ **Prison Litigation Reform Act of 1995.** During the past three decades, federal judges have seized control of state and even local prisons, dictating conditions of confinement, promoting more comfortable living conditions for convicts, and releasing inmates as a way to ease overcrowding. Federal judges have been releasing inmates without finding a violation of a specific federal or constitutional right. Over 500 municipalities and 1,200 state prisons have been operating under judicial orders or consent decrees. Under Section 3626 of the 1994 federal crime bill, Congress attempted to stop lenient federal judges from imposing caps on the number of prisoners that can be incarcerated at a particular prison,⁴ a judicial practice that has resulted in the release of violent criminals before their terms have been served.⁵ Liberal lawyers and judges quickly found ways to get around this provision.

The Prison Litigation Reform Act, originally sponsored by Representative Bill McCollum (R-FL), closes existing loopholes by imposing tighter restrictions on federal court-ordered prison population caps. It requires a three-judge panel to find that prison crowding is the primary cause of the violation of a prisoner's legal or constitutional rights. Moreover, it requires judges to find that there is no other remedy available before they impose a prison cap. State or local officials responsible for the prosecution or custody of criminals who could be released because of judicially imposed prison caps are granted standing to sue. The Prison Litigation Reform Act also specifies that court-ordered relief from incarceration is to be based on specific violations of a prisoner's constitutional rights and that federal judges must give substantial weight in their decisions to any adverse impact of such relief on public safety or on the operation of the criminal justice system.

This measure also reduces the burden of frivolous prisoner lawsuits, which include a wide range of often strange and bizarre complaints. Inmate lawsuits are estimated to comprise 25 percent of all civil suits filed in federal courts, and state officials are burdened with responding to them. Missouri Attorney General Jay Nixon has compiled a "top ten" list of the most frivolous of these lawsuits, including complaints against officials who do not provide salad bars and

3 See James Wootton, "Why States Should Make Violent Criminals Do Their Time," *Heritage Foundation State Backgrounder* No. 972/S, December 30, 1993.

4 To illustrate how congressional efforts to keep felons behind bars were greeted by the liberal legal community, the National Prison Project of the American Civil Liberties Union issued a September 15, 1994, memorandum ridiculing Congress for "taking a stand in favor of God, motherhood, and locking up criminals."

5 For an excellent discussion of this problem, see John DiIulio, "How to Stop Federal Judges from Releasing Violent Criminals and Gutting Truth in Sentencing laws," *Heritage Foundation Backgrounder* No. 1020, February 22, 1995. See also Patrick F. Fagan and Robert E. Moffit, "Crime," in *Issues '96: The Candidate's Briefing Book*, ed. Stuart M. Butler and Kim R. Holmes (Washington, D.C.: The Heritage Foundation, 1996), p. 251.

brunches on weekends and holidays, officials who do not pay food allowances of \$26 a day to inmates traveling from prison to the courthouse, and officials who do not permit male inmates to wear such female apparel as bras, panties, lipstick, and artificial fingernails.⁶

Under the new law, federal courts are authorized to dismiss frivolous or malicious suits “without hearing.” Moreover, all administrative solutions within the corrections system must be exhausted before a lawsuit can be filed in federal court. The measure also limits the lawyers’ fees awarded to successful inmate plaintiffs. In the past, trial lawyers have received as much as \$300 per hour for representing prisoners.⁷ Under this Act, fees will be based on an hourly rate no higher than that for other court-appointed counsel, and any monetary damages awarded to a prisoner in a successful suit against state prison authorities must be applied to outstanding restitution owed to the victims of his crimes.

The Prison Litigation Reform Act was incorporated into the FY 1996 Omnibus Appropriations Act (H.R. 3019) and signed into law as Public Law 104-134.

- ✓ **To disapprove certain sentencing guideline amendments (H.R. 2259/S. 1254).** This law, originally sponsored by Senator Spencer Abraham (R-MI), requires the U.S. Sentencing Commission to submit new guidelines imposing higher penalties for crack cocaine than powder cocaine, and higher sentences for “high level” as opposed to “low level” drug trafficking. It rejects previous guidelines that would have lowered penalties for crack cocaine to those for powder cocaine. The law stipulates that new guidelines also should include stiffer penalties for drug traffickers who use a dangerous weapon, possess a firearm, or involve or injure children or other vulnerable individuals when committing an offense.

This bill passed the Senate on September 29, 1995; passed the House of Representatives on October 18, 1995; and was signed into law by President Clinton as Public Law 104-38.

MAKING PUNISHMENT SWIFT AND SURE

- ✓ **The Alien Deportation Improvement Act of 1995 (H.R. 668).** Originally sponsored by Representative McCollum, this law would expedite deportation procedures for non-resident aliens convicted of serious felonies, as well as bribery, counterfeiting, trafficking in stolen vehicles, perjury or subornation of perjury. It also would permit deportation of a permanent resident alien who has been sentenced to five or more years for an aggravated felony.

This measure, originally titled the Criminal Alien Deportation Improvements Act of 1995, was passed by the House of Representatives on February 10, 1995, and later incorporated into the Antiterrorism and Effective Death Penalty Act of 1996 (P.L. 104-132).

- ✓ **Effective Death Penalty Act of 1995 (H.R. 779).** While there is considerable debate over the ethics or wisdom of imposing the death penalty, the empirical evidence indicates that the death penalty in the United States is used sparingly. In 1995, there were 2,976 criminals on death row, but the states have executed 263 criminals since 1973. The abuse of *habeas corpus*, enabling those on death row to file petition after petition seeking to overturn their sentences or convictions, has been a major weakness of the American criminal justice system.

6 Cited in *Hotline*, April 5, 1996.

7 In a notorious New York City case, a law firm secured a fee of \$100,000 for representing a convict who was awarded \$200 after contesting his four-day confinement to his cell for grabbing an extra piece of cake from the food line in the prison cafeteria. See Amy Stevens, “Fee for All,” *The Wall Street Journal*, November 29, 1995, p. 1.

This measure reduces delays in carrying out capital sentences while preserving the right of those convicted of capital crimes to present valid claims in federal court. It also imposes time limits for the filing and judicial consideration of petitions; ends the practice of filing multiple petitions except in the rarest instances; requires that state prisoners seeking *habeas corpus* relief must exhaust all state remedies before bringing action in federal court; and specifies that if a state gives reasonable consideration to the petitioner's claim, the federal judge must deny that claim.

The Effective Death Penalty Act of 1995 was passed by the House of Representatives on February 8, 1995; incorporated into the Antiterrorism and Effective Death Penalty Act of 1996 by the Senate; and signed into law by President Clinton as part of Public Law 104-132.

HELPING LOCAL LAW ENFORCEMENT

The central congressional approach to law enforcement assistance is the block grant, which allows local law enforcement officials to secure more funds, hire more police personnel, and have even more flexibility in using these monies to combat crime at the local level.

- ✓ **Local Government Law Enforcement Block Grants Act of 1995 (H.R. 728).** This measure authorizes federal grants for local law enforcement officers while giving them the flexibility they need to fight crime in ways they deem most appropriate for their communities. Unlike the police funding in the 1994 crime bill, these funds are targeted to communities with high crime rates. \$503 million has been appropriated for FY 1996.

This bill was passed by the House of Representatives on February 14, 1995; incorporated into the FY 1996 Omnibus Appropriations Act by the Senate; and signed into law by President Clinton as Public Law 104-134.

- ✓ **Anti-Car Theft Improvements Act (H.R. 2803).** This law, originally sponsored by Representative McCollum, advances the investigation of car theft by setting up the National Motor Vehicle Title Information System (NMVTIS). This system, to be managed by the Department of Justice and maintained by the states, is intended to serve as a reliable and accessible body of information on motor vehicle titling for law enforcement officials.

This law was passed by the House of Representatives on June 18, 1996; passed by the Senate on June 20, 1996; and signed into law by President Clinton as Public law 104-152.

JUSTICE FOR VICTIMS

- ✓ **Victim Restitution Act of 1995 (H.R. 665).** This law, originally sponsored by Representative McCollum, requires judges in federal felony cases to order restitution to victims in cases involving violent crimes, offenses against property, or tampering with consumer products, as well as crimes in which an identifiable victim has suffered a physical injury or pecuniary loss. The law also authorizes the federal courts to make restitution a condition of probation or parole.

This Act was passed by the House of Representatives on February 7, 1995; passed by the Senate on December 22, 1995, and incorporated into the Antiterrorism and Effective Death Penalty Act of 1996; and signed into law by President Clinton as Public Law 104-132.

- ✓ **Sexual Crimes Against Children Prevention Act of 1995 (H.R. 1240).** Sponsored by Representative McCollum, this law imposes strong sentencing guidelines for criminals convicted of creating or trafficking in child pornography and the interstate transportation of children with the intent to use them in such criminal activity.

H.R. 1240 was passed by the House on April 4, 1995; passed by the Senate on April 6, 1995; and signed into law by President Clinton as Public Law 104-71.

- ✓ **Megan's Law (H.R. 2137).** Sexually violent criminals often are repeat offenders, and their presence in local communities is an obvious concern for families with children. Under this law, sponsored by Representative Richard Zimmer (R-NJ), criminals convicted of these crimes must register their addresses with state law enforcement officials, and communities will be informed when these offenders move into their neighborhoods.

The bill was passed by the House of Representatives on May 7, 1996; passed by the Senate on May 9, 1996; and signed into law by President Clinton as Public Law 104-145.

- ✓ **Church Arson Prevention Act of 1996 (H.R. 3525).** This new law, sponsored by Representative Henry Hyde (R-IL), makes it a federal crime to damage religious property or obstruct any person's free exercise of religion where the offense is in, or affects, interstate commerce.

H.R. 3525 was passed by the House of Representatives on June 18, 1996; passed by the Senate on June 26, 1996; and signed into law by President Clinton as Public Law 104-155.

PENDING ANTI-CRIME LEGISLATION

- ✓ **Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997 (H.R. 3814).** This bill provides \$680 million for prisons and \$571 million for block grants to local law enforcement. It passed the House on July 24, 1996, and currently is before a conference of the House and Senate.
- ✓ **Interstate Stalking Punishment and Prevention Act of 1996 (H.R. 2980/S. 1729).** H.R. 2980 makes it a felony to cross a state line to stalk someone or to cross a state line in violation of a restraining order. The House of Representatives passed this bill on May 7, 1996. S. 1729, an identical bill sponsored by Senator Kay Bailey Hutchison (R-TX), was passed by the Senate.
- ✓ **Exclusionary Rule Reform Act of 1995 (H.R. 666).** This bill, sponsored by Representative McCollum, would establish an exception to the exclusionary rule, which bars the use at trial of any evidence gathered by police officers in violation of the Fourth Amendment prohibition against unreasonable search and seizure. The narrow qualification created by this legislation would allow the admission of evidence obtained by police officers who, while they technically violated proper procedure, acted in the "reasonably objective belief" that their actions under the circumstances complied with Fourth Amendment protections. The bill classifies any information obtained pursuant to, or within the scope of, a warrant as evidence obtained in good faith.

The House of Representatives passed this bill on February 8, 1995. It has been referred to the Senate Judiciary Committee.

- ✓ **Violent Youth Predator Act of 1996 (H.R. 3565).** This bill, also sponsored by Representative McCollum, would allow federal prosecutors to try violent juvenile offenders as adults. It also includes tough, mandatory sentences for juvenile criminals who use firearms in the commission of a federal violent crime or drug trafficking offense, and authorizes additional funding for juvenile justice programs and grants to states, allowing them greater flexibility in combating the growth of violent juvenile crime. The bill was marked up by the House Judiciary Committee on July 16 and 17, 1996, and referred to the House Economic and Educational Opportunities Subcommittee on Early Childhood, Youth, and Families, which approved sections under its jurisdiction.

In the United States Senate, John Ashcroft (R-MO) introduced S. 1245, a similar bill. The Subcommittee on Youth Violence of the Senate Judiciary Committee has held hearings on the Ashcroft bill.

- ✓ **Sexual Offender Tracking and Identification Act of 1996 (S. 1675/H.R. 3456).** This bill would enhance the federal effort to track convicted sex offenders. Cosponsored by Senators Phil Gramm (R-TX) and Joseph Biden (D-DE), the legislation would establish a federal tracking system, accessible to the public, to document the location of sex offenders, making it more difficult for these criminals to hide their records when applying for jobs, housing, or youth service programs. A version of the bill has been introduced in the House of Representatives by Representative Zimmer. Hearings on the bill have been held before the Subcommittee on Crime of the House Judiciary Committee.

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