

Union Calendar No. 8

104TH CONGRESS
1ST SESSION

H. R. 667

[Report No. 104-21]

To control crime by incarcerating violent criminals.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 1995

Mr. McCOLLUM introduced the following bill; which was referred to the Committee on the Judiciary

FEBRUARY 6, 1995

Additional sponsors: Mr. BRYANT of Tennessee, Mr. BLILEY, and Mr. ENGLISH of Pennsylvania

FEBRUARY 6, 1995

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 25, 1995]

A BILL

To control crime by incarcerating violent criminals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Violent Criminal Incar-*
3 *ceration Act of 1995”.*

4 **TITLE I—TRUTH IN SENTENCING**

5 **SEC. 101. TRUTH IN SENTENCING GRANT PROGRAM.**

6 *Title V of the Violent Crime Control and Law Enforce-*
7 *ment Act of 1994 is amended to read as follows:*

8 **“TITLE V—TRUTH IN**
9 **SENTENCING GRANTS**

10 **“SEC. 501. AUTHORIZATION OF GRANTS.**

11 *“(a) IN GENERAL.—The Attorney General is author-*
12 *ized to provide grants to eligible States and to eligible*
13 *States organized as a regional compact to build, expand,*
14 *and operate space in correctional facilities in order to in-*
15 *crease the prison bed capacity in such facilities for the con-*
16 *finement of persons convicted of a serious violent felony and*
17 *to build, expand, and operate temporary or permanent cor-*
18 *rectional facilities, including facilities on military bases*
19 *and boot camp facilities, for the confinement of convicted*
20 *nonviolent offenders and criminal aliens for the purpose of*
21 *freeing suitable existing prison space for the confinement*
22 *of persons convicted of a serious violent felony.*

23 *“(b) LIMITATION.—An eligible State or eligible States*
24 *organized as a regional compact may receive either a gen-*
25 *eral grant under section 502 or a truth-in-sentencing incen-*
26 *tive grant under section 503.*

1 **“SEC. 502. GENERAL GRANTS.**

2 “(a) *DISTRIBUTION OF GENERAL GRANTS.*—50 per-
3 cent of the total amount of funds made available under this
4 title for each of the fiscal years 1995 through 2000 shall
5 be made available for general eligibility grants for each
6 State or States organized as a regional compact that meets
7 the requirements of subsection (b).

8 “(b) *GENERAL GRANTS.*—In order to be eligible to re-
9 ceive funds under subsection (a), a State or States orga-
10 nized as a regional compact shall submit an application
11 to the Attorney General that provides assurances that such
12 State since 1993 has—

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

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

18 “(3) increased the percentage of sentence to be
19 actually served in prison by violent offenders sen-
20 tenced to prison.

21 **“SEC. 503. TRUTH-IN-SENTENCING GRANTS.**

22 “(a) *TRUTH-IN-SENTENCING INCENTIVE GRANTS.*—50
23 percent of the total amount of funds made available under
24 this title for each of the fiscal years 1995 through 2000 shall
25 be made available for truth-in-sentencing incentive grants

1 *to each State or States organized as a regional compact*
2 *that meet the requirements of subsection (b).*

3 “(b) *ELIGIBILITY FOR TRUTH-IN-SENTENCING INCEN-*
4 *TIVE GRANTS.—In order to be eligible to receive funds*
5 *under subsection (a), a State or States organized as a re-*
6 *gional compact shall submit an application to the Attorney*
7 *General that provides assurances that each State applying*
8 *has enacted laws and regulations which include—*

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

14 “(B) *truth-in-sentencing laws which have been*
15 *enacted, but not yet implemented, that require such*
16 *State, not later than three years after such State sub-*
17 *mits an application to the Attorney General, to pro-*
18 *vide that persons convicted of a serious violent felony*
19 *serve not less than 85 percent of the sentence imposed*
20 *or 85 percent of the court-ordered maximum sentence*
21 *for States that practice indeterminate sentencing, and*

22 “(2) *laws requiring that the sentencing or releas-*
23 *ing authorities notify and allow the victims of the de-*
24 *fendant or the family of such victims the opportunity*

1 *to be heard regarding the issue of sentencing and any*
2 *postconviction release.*

3 **“SEC. 504. SPECIAL RULES.**

4 *“(a) ADDITIONAL REQUIREMENTS.—To be eligible to*
5 *receive a grant under section 502 or 503, a State or States*
6 *organized as a regional compact shall provide an assurance*
7 *to the Attorney General that—*

8 *“(1) to the extent practicable, inmate labor will*
9 *be used to build and expand correctional facilities;*

10 *“(2) each State will involve counties and other*
11 *units of local government, when appropriate, in the*
12 *construction, development, expansion, modification,*
13 *operation, or improvement of correctional facilities*
14 *designed to ensure the incarceration of offenders, and*
15 *that each State will share funds received under this*
16 *title with any county or other unit of local govern-*
17 *ment that is housing State prisoners, taking into ac-*
18 *count the burden placed on such county or unit of*
19 *local government in confining prisoners due to over-*
20 *crowding in State prison facilities in furtherance of*
21 *the purposes of this Act; and*

22 *“(3) the State has implemented or will imple-*
23 *ment, not later than 18 months after the date of the*
24 *enactment of the Violent Criminal Incarceration Act*
25 *of 1995, policies to determine the veteran status of in-*

1 *mates and to ensure that incarcerated veterans receive*
2 *the veterans benefits to which they are entitled.*

3 *“(b) INDETERMINANT SENTENCING EXCEPTION.—Not-*
4 *withstanding the provisions of paragraphs (1) through (3)*
5 *of section 502(b), a State shall be eligible for grants under*
6 *this title, if the State, not later than the date of the enact-*
7 *ment of this title—*

8 *“(1) practices indeterminate sentencing; and*

9 *“(2) the average times served in such State for*
10 *the offenses of murder, rape, robbery, and assault ex-*
11 *ceed, by 10 percent or greater, the national average*
12 *of times served for such offenses.*

13 *“(c) EXCEPTION.—The requirements under section*
14 *503(b) shall apply, except that a State may provide that*
15 *the Governor of the State may allow for earlier release of*
16 *a geriatric prisoner or a prisoner whose medical condition*
17 *precludes the prisoner from posing a threat to the public*
18 *after a public hearing in which representatives of the public*
19 *and the prisoner’s victims have an opportunity to be heard*
20 *regarding a proposed release.*

21 **“SEC. 505. FORMULA FOR GRANTS.**

22 *“To determine the amount of funds that each eligible*
23 *State or eligible States organized as a regional compact*
24 *may receive to carry out programs under section 502 or*

1 503, the Attorney General shall apply the following
2 formula:

3 “(1) \$500,000 or 0.40 percent, whichever is
4 greater, shall be allocated to each participating State
5 or compact, as the case may be; and

6 “(2) of the total amount of funds remaining after
7 the allocation under paragraph (1), there shall be al-
8 located to each State or compact, as the case may be,
9 an amount which bears the same ratio to the amount
10 of remaining funds described in this paragraph as the
11 population of such State or compact, as the case may
12 be, bears to the population of all the States.

13 **“SEC. 506. ACCOUNTABILITY.**

14 “(a) *FISCAL REQUIREMENTS.*—A State or States orga-
15 nized as a regional compact that receives funds under this
16 title shall use accounting, audit, and fiscal procedures that
17 conform to guidelines which shall be prescribed by the Attor-
18 ney General.

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

24 “(c) *ADMINISTRATIVE PROVISIONS.*—The administra-
25 tive provisions of sections 801 and 802 of the Omnibus

1 *Crime Control and Safe Streets Act of 1968 shall apply to*
2 *the Attorney General in the same manner as such provi-*
3 *sions apply to the officials listed in such sections.*

4 ***“SEC. 507. AUTHORIZATION OF APPROPRIATIONS.***

5 *“(a) IN GENERAL.—There are authorized to be appro-*
6 *priated to carry out this title—*

7 *“(1) \$997,500,000 for fiscal year 1996;*

8 *“(2) \$1,330,000,000 for fiscal year 1997;*

9 *“(3) \$2,527,000,000 for fiscal year 1998;*

10 *“(4) \$2,660,000,000 for fiscal year 1999; and*

11 *“(5) \$2,753,100,000 for fiscal year 2000.*

12 *“(b) LIMITATIONS ON FUNDS.—*

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

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

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

24 *“(4) MATCHING FUNDS.—The Federal share of a*
25 *grant received under this title may not exceed 75 per-*

1 *cent of the costs of a proposal as described in an ap-*
2 *plication approved under this title.*

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

7 **“SEC. 508. DEFINITIONS.**

8 *“As used in this title—*

9 “(1) *the term ‘indeterminate sentencing’ means a*
10 *system by which—*

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

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

17 “(2) *the term ‘serious violent felony’ means—*

18 “(A) *an offense that is a felony and has as*
19 *an element the use, attempted use, or threatened*
20 *use of physical force against the person or prop-*
21 *erty of another and has a maximum term of im-*
22 *prisonment of 10 years or more,*

23 “(B) *any other offense that is a felony and*
24 *that, by its nature, involves a substantial risk*
25 *that physical force against the person or prop-*

1 erty of another may be used in the course of com-
2 mitting the offense and has a maximum term of
3 imprisonment of 10 years or more, or

4 “(C) such crimes including murder, assault
5 with intent to commit murder, arson, armed
6 burglary, rape, assault with intent to commit
7 rape, kidnapping, and armed robbery; and

8 “(3) the term ‘State’ means a State of the United
9 States, the District of Columbia, or any common-
10 wealth, territory, or possession of the United States.”.

11 **SEC. 102. CONFORMING AMENDMENTS.**

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

14 (1) *PART V.*—Part V of title I of the Omnibus
15 *Crime Control and Safe Streets Act of 1968* is re-
16 *pealed.*

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

20 (B) *Notwithstanding the provisions of subpara-*
21 *graph (A), any funds that remain available to an ap-*
22 *plicant under paragraph (20) of title I of the Omnibus*
23 *Crime Control and Safe Streets Act of 1968 shall*
24 *be used in accordance with part V of such Act as such*

1 *Act was in effect on the day preceding the date of*
2 *enactment of this Act.*

3 **(b) VIOLENT CRIME CONTROL AND LAW ENFORCE-**
4 **MENT ACT OF 1994.—**

5 **(1) REPEAL.—***(A) Subtitle A of title II of the*
6 *Violent Crime Control and Law Enforcement Act of*
7 *1994 is repealed.*

8 **(B)** *The table of contents of the Violent Crime*
9 *Control and Law Enforcement Act of 1994 is amend-*
10 *ed by striking the matter relating to subtitle A of title*
11 *II.*

12 **(2) COMPLIANCE.—***Notwithstanding the provi-*
13 *sions of paragraph (1), any funds that remain avail-*
14 *able to an applicant under subtitle A of title II of the*
15 *Violent Crime Control and Law Enforcement Act of*
16 *1994 shall be used in accordance with such subtitle as*
17 *such subtitle was in effect on the day preceding the*
18 *date of enactment of this Act.*

19 **(3) TRUTH-IN-SENTENCING.—***The table of con-*
20 *tents of the Violent Crime Control and Law Enforce-*
21 *ment Act of 1994 is amended by striking the matter*
22 *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.”

1 **TITLE II—STOPPING ABUSIVE**
2 **PRISONER LAWSUITS**

3 **SEC. 201. EXHAUSTION REQUIREMENT.**

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

6 (1) *by striking “in any action brought” and in-*
7 *serting “no action shall be brought”;*

8 (2) *by striking “the court shall” and all that fol-*
9 *lows through “require exhaustion of” and insert*
10 *“until”; and*

11 (3) *by inserting “are exhausted” after “avail-*
12 *able”.*

13 **SEC. 202. FRIVOLOUS ACTIONS.**

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

17 *“(3) The court shall on its own motion or on motion*
18 *of a party dismiss any action brought pursuant to section*
19 *1979 of the Revised Statutes of the United States by an*
20 *adult convicted of a crime and confined in any jail, prison,*
21 *or other correctional facility if the court is satisfied that*
22 *the action fails to state a claim upon which relief can be*
23 *granted or is frivolous or malicious.”*

1 **SEC. 203. MODIFICATION OF REQUIRED MINIMUM STAND-**
2 **ARDS.**

3 *Section 7(b)(2) of the Civil Rights of Institutionalized*
4 *Persons Act (42 U.S.C. 1997e(b)(2)) is amended by striking*
5 *subparagraph (A) and redesignating subparagraphs (B)*
6 *through (E) as subparagraphs (A) through (D), respec-*
7 *tively.*

8 **SEC. 204. PROCEEDINGS IN FORMA PAUPERIS.**

9 *(a) DISMISSAL.—Section 1915(d) of title 28, United*
10 *States Code, is amended—*

11 *(1) by inserting “at any time” after “counsel*
12 *and may”;*

13 *(2) by striking “and may” and inserting “and*
14 *shall”;*

15 *(3) by inserting “fails to state a claim upon*
16 *which relief may be granted or” after “that the ac-*
17 *tion”;* and

18 *(4) by inserting “even if partial filing fees have*
19 *been imposed by the court” before the period.*

20 *(b) PRISONER’S STATEMENT OF ASSETS.—Section*
21 *1915 of title 28, United States Code, is amended by adding*
22 *at the end the following:*

23 *“(f) If a prisoner in a correctional institution files an*
24 *affidavit in accordance with subsection (a) of this section,*
25 *such prisoner shall include in that affidavit a statement*
26 *of all assets such prisoner possesses. The court shall make*

1 *inquiry of the correctional institution in which the prisoner*
2 *is incarcerated for information available to that institution*
3 *relating to the extent of the prisoner's assets. The court shall*
4 *require full or partial payment of filing fees according to*
5 *the prisoner's ability to pay."*

6 ***TITLE III—STOP TURNING OUT***
7 ***PRISONERS***

8 ***SEC. 301. APPROPRIATE REMEDIES FOR PRISON CONDI-***
9 ***TIONS.***

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

12 ***“§ 3626. Appropriate remedies with respect to prison***
13 ***conditions***

14 *“(a) REQUIREMENTS FOR RELIEF.—*

15 *“(1) LIMITATIONS ON PROSPECTIVE RELIEF.—*

16 *Prospective relief in a civil action with respect to*
17 *prison conditions shall extend no further than nec-*
18 *essary to remove the conditions that are causing the*
19 *deprivation of the Federal rights of individual plain-*
20 *tiffs in that civil action. The court shall not grant or*
21 *approve any prospective relief unless the court finds*
22 *that such relief is narrowly drawn and the least in-*
23 *trusive means to remedy the violation of the Federal*
24 *right. In determining the intrusiveness of the relief,*
25 *the court shall give substantial weight to any adverse*

1 *impact on public safety or the operation of a crimi-*
2 *nal justice system caused by the relief.*

3 “(2) *PRISON POPULATION REDUCTION RELIEF.*—
4 *In any civil action with respect to prison conditions,*
5 *the court shall not grant or approve any relief whose*
6 *purpose or effect is to reduce or limit the prison pop-*
7 *ulation, unless the plaintiff proves that crowding is*
8 *the primary cause of the deprivation of the Federal*
9 *right and no other relief will remedy that depriva-*
10 *tion.*

11 “(b) *TERMINATION OF RELIEF.*—

12 “(1) *AUTOMATIC TERMINATION OF PROSPECTIVE*
13 *RELIEF AFTER 2-YEAR PERIOD.*—*In any civil action*
14 *with respect to prison conditions, any prospective re-*
15 *lief shall automatically terminate 2 years after the*
16 *later of—*

17 “(A) *the date the court found the violation*
18 *of a Federal right that was the basis for the re-*
19 *lief; or*

20 “(B) *the date of the enactment of the Stop*
21 *Turning Out Prisoners Act.*

22 “(2) *IMMEDIATE TERMINATION OF PROSPECTIVE*
23 *RELIEF.*—*In any civil action with respect to prison*
24 *conditions, a defendant or intervenor shall be entitled*
25 *to the immediate termination of any prospective re-*

1 *lief, if that relief was approved or granted in the ab-*
2 *sence of a finding by the court that prison conditions*
3 *violated a Federal right.*

4 “(c) *PROCEDURE FOR MOTIONS AFFECTING PROSPEC-*
5 *TIVE RELIEF.—*

6 “(1) *GENERALLY.—The court shall promptly*
7 *rule on any motion to modify or terminate prospec-*
8 *tive relief in a civil action with respect to prison con-*
9 *ditions.*

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

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

16 “(B) *beginning on the 180th day after such*
17 *motion is filed, in the case of a motion made*
18 *under any other law;*
19 *and ending on the date the court enters a final order*
20 *ruling on that motion.*

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

23 “(1) *whose jurisdiction or function includes the*
24 *prosecution or custody of persons in a prison subject*
25 *to; or*

1 “(2) who otherwise is or may be affected by;
2 any relief whose purpose or effect is to reduce or limit the
3 prison population shall have standing to oppose the imposi-
4 tion or continuation in effect of that relief and may inter-
5 vene in any proceeding relating to that relief. Standing
6 shall be liberally conferred under this subsection so as to
7 effectuate the remedial purposes of this section.

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

16 “(f) *ATTORNEY’S FEES.*—No attorney’s fee under sec-
17 tion 722 of the Revised Statutes of the United States (42
18 U.S.C. 1988) may be granted to a plaintiff in a civil action
19 with respect to prison conditions except to the extent such
20 fee is—

21 “(1) directly and reasonably incurred in proving
22 an actual violation of the plaintiff’s Federal rights;
23 and

1 “(2) *proportionally related to the extent the*
2 *plaintiff obtains court ordered relief for that viola-*
3 *tion.*

4 “(g) *DEFINITIONS.—As used in this section—*

5 “(1) *the term ‘prison’ means any Federal, State,*
6 *or local facility that incarcerates or detains juveniles*
7 *or adults accused of, convicted of, sentenced for, or ad-*
8 *judicated delinquent for, violations of criminal law;*

9 “(2) *the term ‘relief’ means all relief in any form*
10 *which may be granted or approved by the court, and*
11 *includes consent decrees and settlement agreements;*
12 *and*

13 “(3) *the term ‘prospective relief’ means all relief*
14 *other than compensatory monetary damages.”.*

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

21 “(c) *CLERICAL AMENDMENT.—The item relating to sec-*
22 *tion 3626 in the table of sections at the beginning of sub-*
23 *chapter C of chapter 229 of title 18, United States Code,*
24 *is amended by striking “crowding” and inserting “condi-*
25 *tions”.*

1 **TITLE IV—ENHANCING PROTEC-**
2 **TION AGAINST INCARCER-**
3 **ATED CRIMINALS**

4 **SEC. 401. PRISON SECURITY.**

5 (a) *IN GENERAL.*—Chapter 303 of title 18, United
6 States Code, is amended by adding at the end the following
7 new section:

8 **“§ 4048. Strength-training of prisoners prohibited**

9 “The Bureau of Prisons shall ensure that—

10 “(1) prisoners under its jurisdiction do not en-
11 gage in any physical activities designed to increase
12 their fighting ability; and

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

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

“4048. Strength-training of prisoners prohibited.”.

HR 667 RH—2

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