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*S14316 . . .

By Mr. ABRAHAM (for himself, Mr. HATCH, Mr. SPECTER, Mr. KYL, and Mrs. HUTCHISON):

S. 1275. A bill to provide for appropriate remedies for prison condition lawsuits, to discourage frivolous and abusive prison lawsuits, and for other purposes; to the Committee on the Judiciary.

THE PRISON CONDITIONS LITIGATION REFORM ACT

Mr. ABRAHAM.

Mr. President, I introduce legislation that I believe is essential if we are to restore public confidence in government's ability to protect the public safety. Moreover, it will accomplish this purpose not by spending more taxpayer money but by saving it.

This legislation removes enormous obstacles the Federal Government has placed in the path of States' and localities' ability to protect their residents. I would like to highlight three of these obstacles and explain what we are going to do to remove them.

First, in many jurisdictions including my own State of Michigan, judicial orders entered under Federal law raise the costs of running prisons far beyond what is necessary. These orders also thereby undermine the legitimacy and punitive and deterrent effect of prison sentences.

Second, in other jurisdictions, judicial orders entered under Federal law actually result in the release of dangerous criminals from prisons.

Third, these orders are complemented by a veritable torrent of prisoner lawsuits. Although these suits are found non-meritorious the vast majority of the time (over 99 percent, for example, in the ninth circuit), they occupy an enormous amount of State and local time and resources; time and resources that would be better spent incarcerating more dangerous offenders.

Let me start with the problems in my own State of Michigan.

Under a series of judicial decrees resulting from Justice Department suits against the Michigan Department of Corrections, the Federal courts now monitor our State prisons to determine:

1. How warm the food is.
2. How bright the lights are.
3. Whether there are electrical outlets in each cell.
4. Whether windows are inspected and up to code.
5. Whether prisoners' hair is cut only by licensed barbers.
6. And whether air and water temperatures are comfortable.

Elsewhere, American citizens are put at risk every day by court decrees. I have in mind particularly decrees that cure prison crowding by declaring that we must free dangerous criminals before they have served their time, or not incarcerate certain criminals at all because prisons are too crowded.

The most egregious example is the city of Philadelphia. For the past 8 years, a Federal judge has been overseeing what has become a program of wholesale releases of up to 600 criminal defendants per week to keep the prison population down to what she considers an appropriate level.

Under this order, there are no individualized bail hearings on a defendant's criminal history before deciding whether to release the defendant before trial. Instead, the only consideration is what the defendant is charged with the day of his or her arrest.

No matter what the defendant has done before, even, for example, if he or she was previously convicted of murder, if the charge giving rise to the arrest is a non-violent crime, the defendant may not be held pretrial. Moreover, the so-called non-violent crimes include stalking, carjacking, robbery with a baseball bat, burglary, drug dealing, vehicular homicide, manslaughter, terroristic threats, and gun charges.

As a result Philadelphia, which before the cap had about 18,000 outstanding bench warrants, now has almost 50,000. In reality, though, no one is out looking for these fugitives. Why look? If they were found, they would just be released back onto the streets under the prison cap.

In the meantime thousands of defendants who were out on the streets because of the cap have been rearrested for new crimes, including 79 murders, 959 robberies, 2,215 drug dealing charges, 701 burglaries, 2,748 thefts, 90 rapes, and 1113 assaults.

Looking at the same material from another vantage point: In 1993 and 1994, over 27,000 new bench warrants for misdemeanor and felony charges were issued for defendants released under the cap. That's 63 percent of all new bench warrants in 1993 and 74 percent of all new bench warrants for the first 6 months of 1994.

Failure to appear rates for crimes covered by the cap are all around 70 percent, as opposed to, for example, non-covered crimes like aggravated assault, where the rate is just 3 percent. The Philadelphia fugitive rate for defendants charged with drug dealing is 76 percent, three times the national rate.

Over 100 persons in Philadelphia have been killed by criminals set free under the prison cap. Moreover, the citizenry has understandably lost confidence in the criminal justice system's ability to protect them. And the criminals, on the other hand, have every reason to believe that the system can't do anything about them.

All of this would be bad enough if it were the result of a court order to correct serious constitutional violations committed by the Philadelphia corrections system. But it is not.

Indeed, a different Federal judge recently found that conditions in Philadelphia's oldest and most decrepit facility-Holmesburg Prison-met constitutional standards.

These murderous early releases are the result of a consent decree entered into by the prior mayoral administration from which the current administration has been unable to extricate itself.

Finally, in addition to massive judicial interventions in State prison systems, we also have frivolous inmate litigation brought under Federal law; this litigation also ties up enormous resources. Thirty-three States have estimated that Federal inmate suits cost them at least \$54.5 million annually. The National Association of Attorneys General have extrapolated that number to conclude that nationwide the costs are at least \$81.3 million. Since, according to their information, more than 95 percent of these suits are dismissed without the inmate receiving anything, the vast majority of the \$81.3 million being spent is attributable to non-meritorious cases.

Mr. President, in my opinion this is all wrong. People deserve to keep their tax dollars or have them spent on projects they approve. They deserve better than to have their money spent, on keeping prisoners in conditions some Federal judge feels are desirable (although not required by any provision of the Constitution or any law). And they certainly don't need it spent on

defending against frivolous prisoner lawsuits.

And convicted criminals, while they must be accorded their constitution rights, deserve to be punished. I think virtually everybody believes that while these people are in jail they should not be tortured, but they also should not have all the rights and privileges the rest of us enjoy, and that their lives should, on the whole, be describable by the old concept known as hard time.

The legislation I am introducing today will return sanity and State control to our prison systems. It will do so by limiting judicial remedies in prison cases and by limiting frivolous prisoner litigation.

First, we must curtail interference by the Federal courts themselves in the orderly administration of our prisons. This is not to say that we will have no court relief available for prisoner suits, only that we will try to retain it for cases where it is needed while curtailing its destructive use.

***S14317** Most fundamentally, the proposed bill forbids courts from entering orders for prospective relief (such as regulating food temperatures) unless the order is necessary to correct violations of individual plaintiffs' Federal rights.

It also requires that the relief be narrowly drawn and be the least intrusive means of protecting the federal rights. And it directs courts to give substantial weight to any adverse impact on public safety or the operation of the criminal justice system caused by the relief.

No longer will prison administration be turned over to Federal judges for the slightest reason. Instead, the States will be able to run prisons as they see fit unless there is a constitutional violation, in which case a narrowly tailored order to correct the violation may be entered.

The bill also will make it more difficult for judges to release dangerous criminals back into the population, or to prevent the authorities from incarcerating them in the first place.

To accomplish this, the legislation forbids courts from entering release orders except under very limited circumstances. The court first must have entered an order for less intrusive relief, which must be shown to have failed to cure the violation of Federal rights. If a Federal court reaches this conclusion, it must refer the question of whether or not to issue a release order to a three judge district court.

This court must find by clear and convincing evidence that crowding is the primary cause of the violation of a Federal right and that no other relief will remedy the violation of the Federal right. Then the court must find, by a preponderance of the evidence, that the crowding had deprived particular plaintiffs of at least one essential, identifiable human need, and that prison officials have either deliberately subjected the plaintiffs to this deprivation or have been deliberately indifferent to it.

As important, this legislation provides that any prospective relief order may be terminated on the motion of either party 2 years after the later of the grant of relief or the enactment of the bill. The court shall grant the termination unless it finds that the original prerequisites for granting it are present at that time.

No longer, then, will we have consent decrees, such as those in Michigan under which judges control the prisons literally for decades.

Finally, the bill contains several measures to reduce frivolous inmate litigation. The bill limits attorney's fee awards. In addition, prisoners no longer will be reimbursed for attorney's fees unless they prove an actual statutory violation.

No longer will courts award attorney's fees simply because the prison has changed pre-existing conditions. Only if those conditions violated a prisoner's rights will fees be awarded.

Prisoners who succeed in proving a statutory violation will be reimbursed only for fees directly and reasonably incurred in proving that violation.

In addition, attorney's fees must be proportionally related to the court ordered relief. No longer will attorneys be allowed to

charge massive amounts to the State for the service of correcting minimal violations.

And no longer will attorneys be allowed to charge very high fees for their time. The fee must be calculated at an hourly rate no higher than that set for court appointed counsel. And up to 25 percent of any monetary award the court orders the plaintiff wins will go toward payment of the prisoner's attorney's fees.

The bill also prohibits prisoners who have filed three frivolous or obviously nonmeritorious in forma pauperis civil actions from filing any more unless they are in imminent danger of severe bodily harm.

Also, to keep prisoners from using lawsuits as an excuse to get out of jail for a time, pretrial hearings generally will be conducted by telephone, so that the prisoner stays in prison.

Mr. President, these reforms will decrease the number of frivolous claims filed by prisoners. They will decrease prisoners' incentives to file suits over how bright their lights are. At the same time, they will discourage judges from seeking to take control over our prison systems, and to micromanage them, right down to the brightness of their lights.

This is a far-reaching bill, Mr. President. One aimed at solving a complex, costly, and dangerous problem. Its several provisions will discourage frivolous lawsuits and promote State control over State prison systems. At the same time, this legislation will help protect convicted criminals' constitutional rights without releasing them to prey on an innocent public or keeping them in conditions so comfortable that they lose their deterrent effect.

I urge my colleagues to support this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1275

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Prison Conditions Litigation Reform Act".

SEC. 2. APPROPRIATE REMEDIES FOR PRISON CONDITIONS.

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

"s3626. Appropriate remedies with respect to prison conditions

"(a) REQUIREMENTS FOR RELIEF.-

"(1) PROSPECTIVE RELIEF.-Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation. In determining the intrusiveness of the relief, the court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

"(2) PRELIMINARY INJUNCTIVE RELIEF.-In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the order final before the expiration of the 90-day period.

”(3) PRISONER RELEASE ORDER.-(A) In any civil action with respect to prison conditions, no prisoner release order shall be entered unless-

”(i) a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order; and

”(ii) the defendant has had a reasonable amount of time to comply with the previous court orders.

”(B) In any civil action in Federal court with respect to prison conditions, a prisoner release order shall be entered only by a three-judge court in accordance with section 2284 of title 28, if the requirements of subparagraph (E) have been met.

”(C) A party seeking a prisoner release order in Federal court shall file with any request for such relief, a request for a three-judge court and materials sufficient to demonstrate that the requirements of subparagraph (A) have been met.

”(D) If the requirements under subparagraph (A) have been met, a Federal judge before whom a civil action with respect to prison conditions is pending who believes that a prison release order should be considered may sua sponte request the convening of a three-judge court to determine whether a prisoner release order should be entered.

”(E) The court shall enter a prisoner release order only if the court finds-

”(i) by clear and convincing evidence-

”(I) that crowding is the primary cause of the violation of a Federal right; and

”(II) that no other relief will remedy the violation of the Federal right; and

”(ii) by a preponderance of the evidence-

”(I) that crowding has deprived a particular plaintiff or plaintiffs of at least one essential, identifiable human need; and

”(II) that prison officials have acted with obduracy and wantonness in depriving a particular plaintiff or plaintiffs of at least one essential, identifiable human need.

”(F) Any State or local official or unit of government whose jurisdiction or function includes the prosecution or custody of persons who may be released from, or not admitted to, a prison as a result of a prisoner release order shall have standing to oppose the imposition or continuation in effect of such relief, and shall have the right to intervene in any proceeding relating to such relief.

”(b) TERMINATION OF RELIEF.-

”(1) TERMINATION OF PROSPECTIVE RELIEF.-(A) In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party-

”(i) 2 years after the date the court granted or approved the prospective relief;

”(ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph; or

***S14318** ”(iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

”(B) Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).

”(2) IMMEDIATE TERMINATION OF PROSPECTIVE RELIEF.-In any civil action with respect to prison conditions, a

defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation.

”(3) LIMITATION.-Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct the violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is the least intrusive means to correct the violation.

”(4) TERMINATION OR MODIFICATION.-Nothing in this section shall prevent any party from seeking modification or termination before the relief is terminable under paragraph (1) or (2), to the extent that modification or termination would otherwise be legally permissible.

”(c) SETTLEMENTS.-

”(1) CONSENT DECREES.-In any civil action with respect to prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in subsection (a).

”(2) PRIVATE SETTLEMENT AGREEMENTS.- (A) Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with the limitations on relief set forth in subsection (a), if the terms of that agreement are not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled.

”(B) Nothing in this section shall preclude any party claiming that a private settlement agreement has been breached from seeking in State court any remedy for breach of contract available under State law.

”(d) STATE LAW REMEDIES.-The limitations on remedies in this section shall not apply to relief entered by a State court based solely upon claims arising under State law.

”(e) PROCEDURE FOR MOTIONS AFFECTING PROSPECTIVE RELIEF.-

”(1) GENERALLY.-The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions.

”(2) AUTOMATIC STAY.-Any prospective relief subject to a pending motion shall be automatically stayed during the period-

”(A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); or

”(ii) beginning on the 180th day after such motion is filed, in the case of a motion made under subsection (b)(3); and

”(B) ending on the date the court enters a final order ruling on the motion.

”(f) DEFINITIONS.-As used in this section-

”(1) the term ‘consent decree’ means any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties;

”(2) the term ‘civil action with respect to prison conditions’ means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison;

”(3) the term ‘prisoner’ means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program;

”(4) the term ‘prisoner release order’ includes any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison;

”(5) the term ‘prison’ means any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law;

”(6) the term ‘prospective relief’ means all relief other than monetary damages; and

”(7) the term ‘relief’ means all relief in any form that may be granted or approved by the court, and includes consent decrees and settlement agreements (except a settlement agreement the breach of which is not subject to any court enforcement other than reinstatement of the civil proceeding that such agreement settled).”.

(b) APPLICATION OF AMENDMENT.-

(1) IN GENERAL.-Section 3626 of title 18, United States Code, as amended by this section, shall apply with respect to all relief (as defined in such section) whether such relief was originally granted or approved before, on, or after the date of the enactment of this Act.

(2) TECHNICAL AMENDMENT.-Subsections (b) and (d) of section 20409 of the Violent Crime Control and Law Enforcement Act of 1994 are repealed.

(c) CLERICAL AMENDMENT.-The table of sections at the beginning of subchapter C of chapter 229 of title 18, United States Code, is amended to read as follows:

”3626. Appropriate remedies with respect to prison conditions.”.

SEC. 3. AMENDMENTS TO CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT.

Section 7 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e) is amended by adding at the end the following new subsections:

”(f) ATTORNEY’S FEES.- (1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney’s fees are authorized under section 2 of the Revised Statutes of the United States (42 U.S.C. 1988), such fees shall be awarded only if-

”(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff’s rights protected by a statute pursuant to which a fee may be awarded under section 2 of the Revised Statutes; and

”(B) the amount of the fee is proportionately related to the court ordered relief for the violation.

”(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney’s fees awarded against the defendant. If the award of attorney’s fees is greater than 25 percent of the judgment, the excess shall be paid by the defendant.

”(3) No award of attorney’s fees in an action described in paragraph (1) shall be based on an hourly rate greater than the hourly rate established under section 3006A of title 18, United States Code, for payment of court-appointed counsel.

”(4) Nothing in this subsection shall prohibit a prisoner from entering into an agreement to pay an attorney’s fee in an amount greater than the amount authorized under this subsection, if the fee is paid by the individual rather than by the defendant pursuant to section 2 of the Revised Statutes of the United States (42 U.S.C. 1988).

”(g) TELEPHONE HEARINGS.-To the extent practicable, in any action brought in Federal court pursuant to section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) by a prisoner crime confined in any jail, prison, or other correctional facility, pretrial proceedings in which the prisoner’s participation is required or permitted shall be conducted by

telephone without removing the prisoner from the facility in which the prisoner is confined. Any State may adopt a similar requirement regarding hearings in such actions in that State's courts.

”(h) DEFINITION.-As used in this section, the term ‘prisoner’ means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.”.

SEC. 4. SUCCESSIVE CLAIMS IN PROCEEDINGS IN FORMA PAUPERIS.

Section 1915 of title 28, United States Code, is amended by adding at the end the following new subsection:

”(f)(1) In no event shall a prisoner in any prison bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious bodily harm.

”(2) As used in this subsection, the term ‘prisoner’ means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.”.<>