

BRIEF ANALYSIS

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Me Too Crime Reform

The "Taking Back Our Streets Act" — the crime-fighting plan in the Contract With America — was cobbled together from old Republican proposals intended to marginally improve bad legislation in the old Democratic Congress. It tinkers with the problem and piles conservative activism on top of the existing mess.

A truly new Republican bill would terminate needless and destructive federal activism by devolving power to "the States respectively, or to the people," in the words of the 10th Amendment to the Constitution.

Here's an example of the problem. Subsidized by federal dollars, lawyers in so-called Capital Resource Centers clog the federal courts with death penalty appeals. Instead of repealing the subsidies, the Republican bill doubles the spending by sending an equal amount to prosecutors. If the federal government butted out instead, the 10-year delays in executions would plunge, a deterrent effect would begin to assert itself, thousands of appeals would vanish and meritorious cases would still find voluntary support.

Problems With the Republican Bill. The Republicans should destroy the fiction that crime is a national problem with a national solution. Yet the frightening prospect of a gradual nationalization of police, courts and corrections lurks behind nearly every provision of "Taking Back Our Streets." Consider some of the particulars.

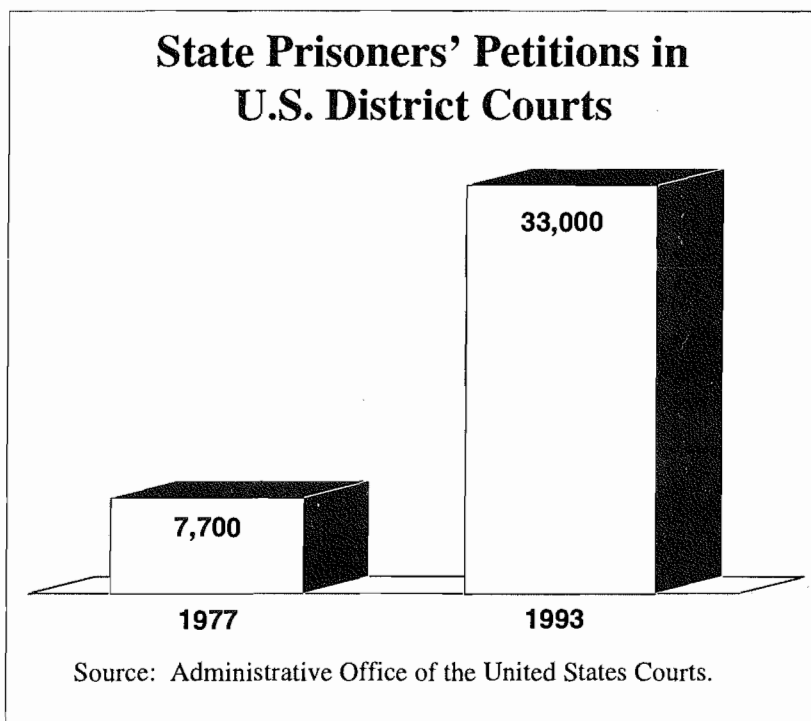
Title I tinkers with the federal habeas corpus, the procedure that allows a state prisoner to attack his conviction in federal court. This system has resulted in endless post-conviction litigation — about 11,600 federal appeals of state convictions in 1993 alone. The procedures were established by post-Civil War statute, not by the Constitution. A good bill would abolish the entire option and return inmate appeals to the states. Every state has an independent judiciary competent to hear these pleas. Prisoner appeals allowable in state courts should not be allowed in federal courts, with the

possible exception of U.S. Supreme Court review of the ruling of the highest court in a state.

Title II federalizes every crime of violence or drug trafficking in which the perpetrator possesses or discharges a firearm. This is a breathtaking and foolish federal power grab. The Feds lack law enforcement resources to police, prosecute and try these cases, so the provision makes little difference on the street. It just allows media-

hungry federal prosecutors to intervene in high-profile cases, despite the bill's flaccid assurance that the Attorney General will show "due deference" to state and local prosecutors.

Title III proposes mandatory restitution for victims of federal crimes. This has merit. Yet it's inadequate as drafted because it does not allow the victim to sue the criminal. It also does not require the convict to pay the court until he falls 90 days behind in payments to the victim. This should be shortened to 30 days.



Title IV allows the Director of the Bureau of Justice Assistance to make law enforcement grants to units of local government. This is wrong-headed on at least three counts. First, it bypasses the states, the original constitutional entities that deal with the federal government; second, it feeds bureaucracy; and third, citizens and states should decide how much of their money they will spend on police prosecution, courts and corrections. Federal politicians and bureaucrats should not make these choices.

Title V amends the Clinton crime bill, passed last year, to require that federal money designated for prisons in fact be used for prison construction. It also mandates that violent felons serve at least 85 percent of the sentence imposed. But there is no such thing as “stringless federal money.” Most states do need more prisons and so-called truth-in-sentencing laws, but some do not — and those that do have already received the message from the voters.

Title VI extends the “good faith” exception from warranted police searches and seizures to those without warrants. Under this liberalization, presumably the constable could “blunder” but pertinent evidence obtained could be admitted in criminal proceedings on a discretionary basis. While this has some merit, it does not go far enough to repeal the costly Warren Court “due process revolution” of the 1960s. For example, the rule excluding all “illegally” obtained evidence from the courtroom has had costs but virtually no benefits in disciplining police misconduct. At a minimum, the states should be allowed to repeal the so-called exclusionary rule, allowing trial judges to decide admissibility case by case and to discipline police misconduct through tort law and independent administrative remedies.

Title VII proposes weak or redundant measures to reduce the abusive use of lawsuits by prisoners. For example, it directs judges to throw out frivolous or malicious lawsuits. The Civil Rights of Institutionalized Persons Act has allowed a tyrannical federal judiciary to dictate prison policies across the nation. In 1977, state

prisoners filed 7,700 civil rights petitions in U.S. District Courts. By 1993, the number had risen to 33,000, and federal courts were controlling the prison systems — and budgets — of dozens of states. [See the figure.]

Since every state has an independent judiciary competent to protect prisoners’ rights, Congress should amend or repeal this law so that no prisoner lawsuit that can be raised in state courts is permitted in federal courts. The Supreme Court can hear prisoner appeals from the highest state court.

Title VIII broadens the definition of an “aggravated felony” and proposes new procedures to speed up the deportation of criminal aliens. At least these reforms clearly fall within federal authority.

Title IX amends the Clinton crime bill by eliminating pork barrel money from “drug courts” and “social prevention” programs. This is a start. But why not repeal the whole Clinton bill and start over with the proper objectives? The unfortunate answer is that there was never more than a dime’s worth of difference between Republicans and Democrats on crime anyway.

The Conference Committee report on the Clinton crime bill argued that “individual states and localities find it impossible to handle the problem by themselves” and that “Congress finds that it is necessary and proper to assist the states in controlling crime.” This is the sort of imperial baloney voters rejected in November, but the Republican bill seems to be based on the same premise.

The new Congress should decentralize decisions on crime. It can do so by repealing both the entire Clinton Crime Control Act of 1994 and the Brady Gun Control Law. Then it should repeal the federal habeas corpus procedure, subsidies for death penalty appeal centers and the legal authority for state prisoners to pursue law suits willy nilly in federal courts.

After that, Congress should get more revolutionary.

This Brief Analysis was prepared by Morgan O. Reynolds, Director, NCPA Criminal Justice Center.