

**BRIEF ANALYSIS**

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The Crime Bill Much Ado About Nothing

Responding to polls that show crime to be the number one concern of Americans, Congress is about to act. What is certain to emerge is a bill providing for spending between \$15 billion and \$22 billion over the next five years.

Some provisions are positive: money to put from 50,000 to 100,000 more police officers on duty and to build more prisons, for example. Other provisions are fraudulent: the enactment of tough new penalties for crimes that are almost never committed. And some provisions are negative: new barriers that make it more difficult to carry out state death penalties, even as the number of federal crimes subject to the death penalty is increased.

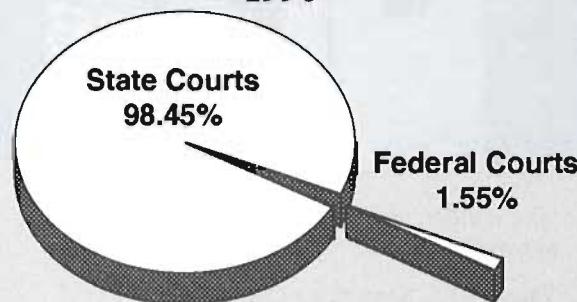
Pretending to Get Tough on (Federal) Crime. On the surface, the crime bill seems to represent a new "get tough" attitude toward crime on the part of Congress. For example, the bill will:

- Make as many as 60 additional federal crimes subject to the death penalty, up from two at present — airline hijacking that results in death and certain drug-related murders.
- Impose "three strikes and you're out," requiring mandatory life imprisonment for conviction of a federal violent crime after two prior violent crime convictions, whether state or federal.

Yet these measures are largely symbolic, because almost all violent crimes are prosecuted by the states. For example:

- In 1992, there were only 235 rape, murder, manslaughter, attempted murder and aggravated assault convictions in federal courts — and 136 of them involved Indians living on reservations.
- In 1990, there were 2,331 convictions for violent crimes (over half of them for bank robberies) in all federal courts — just 1.55 percent of the 150,097 convictions in state and federal courts combined. [See Figure I.]

FIGURE I
Violent Crime Convictions
1990



Source: U.S. Bureau of Justice Statistics.

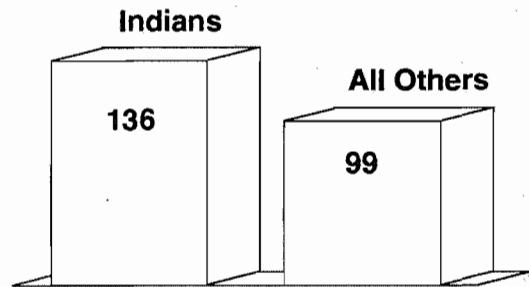
Why "Three Strikes and You're Out" May Be a Mistake. Even if "three strikes and you're out" were a good idea, it makes almost no sense at the federal level. Federal law *already* requires substantial sentences without parole for violent offenses. Indeed, many federal judges complain that the existing rules do not allow them to take the nature of the offense or the character of the offender into account. In addition, arbitrary variations in state laws would affect the proposed rule. For example, only offenses with a potential sentence of 10 years would count, so an involuntary manslaughter conviction from Georgia (10 years) would count, but one from California (four years) would not.

Even at the state level, "three strikes and you're out" is a bad solution to a real problem. It gives violent criminals an incentive to kill their victims in order to dispose of potential witnesses.

Another problem is that the rule would clog our prisons with people who eventually would be unlikely to commit additional crimes, thus preventing the imprisonment of others who commit serious offenses. The recidivism rate for prisoners over age 45 is only 2.1 percent, and the average maintenance cost of inmates over age 55 is about \$69,000 — three times the cost of a younger prisoner.

Is the Crime Bill Anti-Indian? Since the majority of violent federal crimes are committed by Indians on

FIGURE II
Federal Convictions in 1992¹



¹For murder, manslaughter, attempted murder and aggravated assault.

Source: U.S. Sentencing Commission.

reservations [see Figure II], expanding the number of crimes subject to the death penalty would mainly affect Indians. Under the House bill, the "three strikes and you're out" provision would not apply to crimes on Indian lands unless an Indian tribe elected that it apply. But if Indians are exempted, adoption of the rule is almost pointless.

Pretending to Get Tough on Guns. The Senate bill bans 19 types of assault weapons, and the House bill would make it a federal crime for anyone under age 18 to possess a handgun except for farming, ranching, target shooting and safety instruction. Neither measure would do much to combat crime, since assault weapons are rarely used to commit crimes and since it is already against the laws of virtually every state for minors to carry handguns.

More Prisons, More Police. Both the House and Senate bills provide \$3 billion in federal grants for prison construction and operation, and they authorize grants to hire between 50,000 (House) and 100,000 (Senate) more officers for community policing. However, they do not make available any funds to expand the court system so it can handle more cases if the new officers make more arrests. The courts are already so clogged that most misdemeanors go unpunished. And state and local governments will be required to contribute 25 percent in matching funds, regardless of whether that is the best use of money in a particular locality.

More Pork. The largest single expense in the House bill — \$6.9 billion over five years — will fund community crime prevention programs with ample opportunity for pork barrel spending. The House measure also calls for micromanaging the programs. A grant for midnight sports leagues, for example, requires:

- That at least half of the players in each league live in federally assisted low-income housing.
- That each basketball league consist of exactly 10 teams and each team of exactly 10 players.

Pro-Criminal Provisions. Provisions in the House bill will make it more difficult for states to carry out death sentences. One provision reverses the effect of several key Supreme Court rulings, making it easier for prisoners to appeal. The bill also requires two lawyers at every stage of the proceedings and gives the activist criminal defense bar the power to write the rules for selecting and paying them.

Under another provision, if a death row inmate presents statistical evidence that his death sentence is racially discriminatory, the state must prove that racism was not involved. This provision will apply retroactively, and might force the courts to reexamine the sentence of any nonwhite inmate now on death row.

Public Policy Implications. State and local governments spend only 2.5 percent of total revenue on prisons and corrections and only 7.5 percent on their entire criminal justice system. The most significant things that Congress could do are acknowledge that combating violent crime is almost completely a state responsibility and reduce federal regulations and unfunded mandates, enabling the states to devote more resources to the effort.

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