

BRIEF ANALYSIS

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The Phony War on Crime

The new crime bill is now in the hands of a congressional conference committee, which is resolving differences in the House and Senate versions. Despite some beneficial provisions, many are convinced we would be better off without any bill.

Pretending to Get Tough on Crime. As explained in an earlier NCPA Brief Analysis [*The Crime Bill: Much Ado About Nothing*, April 15, 1994], the crime bill about to be passed by Congress is largely fraudulent. It pretends to be something it is not. For example:

- The three-strikes-and-you're-out provision (three felonies and you get life in prison) applies only if the third strike is a federal violent crime — and those are already severely punished under existing law.
- The bill creates a death penalty for as many as 60 different federal crimes, but most are crimes that are rarely committed.
- The Senate version outlaws 19 types of so-called assault weapons, even though these weapons are rarely used in any crime.
- The bill puts more police on the streets, but requires that most of them be employed in areas which have the lowest crime rates.
- Under the guise of fighting crime, the bill diverts billions of dollars to pork barrel activities that the Clinton administration has been unable to pass otherwise.

Why the Bill Might Do More Harm Than Good. Major provisions of the House and Senate bills would actually harm the fight against crime by weakening the threat of punishment (and, therefore, deterrence) for the most serious crimes and by diverting state and local crime dollars from more effective uses. Among the worst provisions are those that will:

- Effectively abolish the death penalty under the guise of guarding against racial bias in sentencing (House bill).
- Make federal crimes of almost all crimes involving a gun and most illegal gang activity, without increasing the capacity of already overburdened federal courts to handle the cases (Senate bill).
- Add uniformed police officers to local forces in a highly inefficient way.
- Encourage state and local governments to take part in expensive new matching programs for which they will have to bear the full cost in future years.

Abolishing the Death Penalty. Even as both houses make dozens of rare federal crimes subject to the death penalty, the bill passed by the House would make *it next to impossible to carry out any death sentence anywhere, including those already handed out*. This would be a bonanza not just for future rapists and serial killers, but also for everyone currently on death row. The reason: the act would allow death-row inmates to use sentencing statistics to challenge a death sentence as racially biased. And because arguments about statistics almost never end, this provision is a backdoor approach to outlawing the death penalty.

Almost every crime involving a gun would become a federal crime.

Currently, blacks make up a higher percentage of death-row inmates than of the general population. However, this is not due to racial discrimination, according to a wide body of research (including studies by the respected Rand Corporation). When all factors — the severity of the crime, the number of crimes committed, the circumstances, etc. — are considered, factors other than racial bias account for the disparity between the

percentages of whites and blacks arrested, imprisoned and sentenced to death. Nonetheless, some studies have concluded that racial discrimination does exist in sentencing and opponents of capital punishment will doubtless commission others.

In every case that is challenged on grounds of statistical evidence of racial discrimination, the state would have to prove that there was none. And this rule would not only benefit black criminals. Whites, who make up about 58 percent of death-row inmates, could also challenge their sentences. And because the act would cover the more than 2,500 inmates now awaiting execution, appeals would tie up the courts for years.

Wasting Money on Prosecutions the Federal Courts Can't Handle. The Senate bill makes it a federal crime to use a gun that has crossed state lines (which is true of almost all guns) in any violent crime or drug trafficking crime. It also creates new federal penalties for gang violence and even makes association with violent gangs a federal crime. Although the bill funds more federal attorneys to prosecute members of violent youth gangs, there are no provisions for adding prosecutors for gun crimes or adding more judges to hear any of the new cases.

Although federal statutes already enumerate more than 3,000 crimes, state courts are handling most criminal cases — especially those involving violent crime. The primary reason is that state courts, always regarded as the courts of primary criminal jurisdiction, are more numerous and have more resources.

- In 1991 state courts dealt with almost 4 million criminal cases compared to 45,000 in the federal courts.
- There are more Superior Court judges in California than federal district court judges in the entire country.

Misusing More Police. The crime bill calls for helping communities hire between 50,000 (House) and 100,000 (Senate) police officers over five years. Many law enforcement experts favor concentrating additional officers in the few cities that have the most violent crime. But because of politics, both versions of the bill have allocation formulas that will direct a majority of the new officers to cities of under 150,000 population.

Even if the new officers make more arrests, it's not clear what difference that will make. In most places,

there is usually no punishment of misdemeanors because the courts are already clogged. Neither bill makes any more money available to expand state courts. Moreover, state and local governments will be required to contribute 25 percent in matching funds, potentially diverting funds from crime-fighting programs that really work.

Pork Barrel Spending. The two versions of the bill include billions of dollars for programs justified on the grounds that they attack the root causes of crime. However, the programs offer an opportunity to spread taxpayer dollars around for such things as arts and crafts programs, Olympic training, self-esteem classes, conflict resolution training for violent youths and midnight basketball leagues. Both bills include new job programs despite the fact that there are already a host of such programs.

Where Will the Money Come From in the Future? State and local governments will be obliged to spend a lot of money initially and a lot more eventually. For example:

- After paying at least 25 percent of the initial cost of the added police officers, state and local governments will bear the full cost after five years.
- Although the federal government will contribute 75 percent of the cost of building prisons, state governments will eventually bear the full cost of operations.
- Other programs in the bills also will shift the cost to state and local governments, either abruptly or over time.

Public Policy Implications. In 1990, the nation spent \$75 billion on the criminal justice system, and only 13 percent of it was spent by the federal government. The vast increase in federal spending called for in the bills under consideration, much of it unnecessary and even questionable, will not change the fact that fighting violent crime is almost entirely a state and local responsibility. More likely it will make that responsibility harder to fulfill.

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