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Prisons: Policy Options for Congress

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Prisons: Policy Options for Congress

SUMMARY

About 1.8 million offenders are incarcerated in the nation's prisons and jails. As of July 2000, 143,468 offenders were incarcerated in approximately 100 federal facilities. There are 124,354 inmates housed in federal facilities rated to hold 89,696 inmates. At the end of 1999, state prison systems held 1,231,041 inmates. In December 1999, 605,943 offenders were held in local jails. Projections indicate that the inmate population will keep growing.

The Bureau of Prisons of the U.S. Department of Justice administers the federal prison system. The Bureau is expanding the capacity of the federal system in anticipation of accommodating an inmate population exceeding 178,000 by the year 2006. The FY2000 budget totals \$3.1 billion and is estimated at \$3.5 billion for FY2001. The Bureau has also converted certain federal facilities (such as closed or realigned military bases) into prisons.

Most state systems are under court orders to limit the number of inmates and to meet other conditions. According to the Bureau of Justice Statistics, in 1999, 63,635 inmates were held in local jails to ease overcrowding in state facilities. The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-134) amended the Crime Control Act of 1994 (P.L. 103-322), authorizing, from FY1996-2000, \$10 billion for prison construction (including boot camps). The Department of Justice Appropriations Act, 1997 (P.L. 104-208) required states to have a drug testing, intervention, and sanctions program in order to receive funds, beginning in FY1999. Also beginning in FY1997, states were required to report deaths in correctional facilities.

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The role of the private sector in prison administration and operations is an issue for many. Some states have contracted with private corporations for prison operations. In the FY1997 appropriations, the Federal Bureau of Prisons expanded the involvement of the private sector in federal corrections. Rather than spending more funds on expansion of the nation's prisons and jails, some argue that many offenders currently incarcerated should be sentenced to other sanctions such as probation, parole, community service, or house arrest. At present, however, federal and state probation and parole systems, like the prison systems, are overwhelmed. Whether other alternatives, considered by some to be less punitive than prisons, are appropriate sanctions for offenders remains a topic of debate. The focus on special group offenders in state and federal prisons is also a recurring issue. The growing population of special group offenders (e.g., elderly, disabled, female offenders) are managed differently in most correctional institutions. In addition to considering how or where offenders should be punished, Congress is debating how resources might be most effectively used to rehabilitate and to care for offenders. One issue concerns the activities of Federal Prison Industries, Inc. (UNICOR). Current law requires, under specified circumstances, that federal agencies purchase UNICOR products and services. Small businesses, however, argue that the statutory preferences given to UNICOR unfairly limit their access to the federal market. The issue of whether prison inmates should be paid minimum wages is also under debate.

MOST RECENT DEVELOPMENTS

On September 19, 2000, the House passed, under suspension of the rules, H.R. 1349, as amended in committee, a bill to combat the over-utilization of prison health care services through inmate copayments. The House then struck the text of S. 704, the companion bill passed last year by the Senate, inserted the language of H.R. 1349 and passed it unanimously.

BACKGROUND AND ANALYSIS

There is little dispute that most prisons in the United States need improvements. The population of many prisons is at record levels, and most correctional systems are seriously overcrowded. In December 1999, there were over 1.3 million federal and state prison inmates. Thirty seven states, and the federal government, operate prison systems that are overcrowded. As of July 2000, federal prisons held 124,354 inmates, with another 15,349 in federal community corrections centers, detention facilities, and other non-prison facilities operated by the Bureau of Prisons. The Bureau projects that by the year 2006, the federal prison population will rise to 178,000.

A prison is defined as an institution of varying degrees of security, housing offenders sentenced to at least a year and a day for a criminal conviction. Approximately 100 facilities under the jurisdiction of the federal government are used primarily to confine persons convicted of federal crimes; about 600 institutions under the jurisdiction of state and territorial governments principally house violators of state or territorial laws.

Not all incarcerated convicted offenders are in prisons. Prisons are distinct from the nation's 3,300 jails, most of which are operated by local governments and traditionally are used to detain persons awaiting trial or offenders sentenced to short confinement terms (one year or less). These facilities housed 687,973 persons (average daily population) in June 1999.

Prison Capacity

Overcrowding

At present, the greatest and most immediate concern regarding U.S. prisons is overcrowding. As of April 2000, the federal prison system had 34% more inmates than the institutions should hold based on standards adopted by the Bureau of Prisons (BoP). Most state prison systems are also overcrowded. According to a Bureau of Justice Statistics study, measured in terms of lowest capacity (smallest measurement), as of year-end 1996, 20 states (Alaska, California, Colorado, Delaware, Hawaii, Illinois, Iowa, Idaho, Kentucky, Massachusetts, Montana, New Jersey, Nevada, Ohio, Oklahoma, Pennsylvania, and South Carolina, Virginia, Wisconsin, Wyoming) operated systems with capacity levels higher than the federal government. The California systems are the most overcrowded, holding 203% at the highest capacity measure. Not all state prisons and prison systems, however, are overcrowded. At least 15 states reported that they operate systems that are at or below 99% of the highest capacity (Alabama, Florida, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, New Mexico, Rhode Island, Tennessee, Texas, Utah, Vermont, West Virginia).

Some of these systems, it should be noted, may have avoided overcrowding because of court-ordered ceilings on the number of inmates that may be incarcerated.

To cope temporarily with prison overcrowding, some states have housed inmates in tents or prefabricated buildings, or have converted multi-use space such as conference rooms into bedspace. Some states are releasing inmates early or housing them in local jails. The response of the BoP has been to “doublebunk” inmates in cells intended to be occupied by one inmate. Also, the Bureau tries to provide ample space around inmate service areas (e.g., food, medical, recreation areas) to reduce the appearance of being overcrowded.

Facilities are overcrowded, in part, because construction has not kept pace with demand. In response to the urgent need for more prison bedspace, states have increased their funding for prison construction and maintenance at a faster rate than for any other program area, according to the National Conference of State Legislatures (NCSL). Some analysts contend, however, that prisons are overcrowded because non-violent offenders are incarcerated rather than sentenced to what they see as more appropriate sanctions such as supervision in the community or community service. Data published by the Bureau of Justice Statistics (*Felony Sentences in State Courts, 1992*) in May 1996 revealed that 44% of the 893,600 adults convicted of a felony in 1992 were sentenced to a state prison and 26% were sentenced to a local jail. The remaining 30% were sentenced to probation.

Standards

Although most agree that prisons have suffered from years of neglect, there have been some improvements in prison conditions in some states. Not only have a number of prisons been built or renovated, but there have been improvements in such areas as environmental conditions, health care, and correctional programs aimed at equipping inmates with basic educational and vocational skills.

Congress has not legislated standards for either federal or non-federal prisons. In 1980 the Department of Justice issued standards “intended to promote practices that protect the basic constitutional rights of inmates.” They are regarded as advisory guidelines, not mandates, and were based on recommendations of professional associations. For example, the American Correctional Association (ACA) has developed general standards that cover all aspects of prison life including the physical plant, health care, inmates’ rights, staffing, educational, vocational, and social services. Since 1976, the Commission on Accreditation for Corrections has operated a voluntary accreditation program for correctional institutions. According to ACA, as of 1998 more than 1,500 correctional facilities and programs were involved in ACA’s accreditation process including approximately 80% of all state departments of corrections and youth services, as well as the federal prison system. In January 1999, 65 federal facilities had been accredited, representing 71% of all federal institutions.

At the other end of the spectrum from accredited facilities are those institutions that have been found to be in violation of constitutional guarantees, notably Eighth Amendment provisions regarding “cruel and unusual punishments.” If conditions in prisons (or jails) are found by the courts to be in violation, the prisons (or entire prison systems) may be placed under court order or may be the subject of consent decrees. Such facilities or systems often are required to meet standards established by the courts such as maximum population caps, sanitary conditions, inmate classification procedures, or inmate access to legal information. Consent decrees are court-sanctioned agreements between government officials and inmates or their representatives that specify how and when certain problems will be resolved.

Prisons in the majority of the states (and territories) face court orders or operate under consent decrees. According to the National Prison Project, as of January 1, 1995, 39 states, the District of Columbia, Puerto Rico, and the Virgin Islands were under court orders or were the subject of consent decrees. Thirty-three jurisdictions were under court order for overcrowding or conditions in at least one of their major prison facilities, while nine jurisdictions were under court order covering their entire systems (Alaska, Delaware, Mississippi, New Mexico, Puerto Rico, Rhode Island, South Carolina, Texas, and the Virgin Islands). Three states (Minnesota, New Jersey, and North Dakota) as well as the federal system are not subject to either orders or decrees, nor are they facing challenges.

The Supreme Court, in its January 15, 1992 decision in *Rufo v. Inmates of Suffolk County Jail*, held that consent decrees in institutional reform litigation may be modified if a party seeking modification establishes “that a significant change in facts or law warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstance.” In evaluating a proposed modification, the Court emphasized three points. (1) “A modification must not create or perpetuate a constitutional violation.” (2) A modification “should not strive to rewrite a consent decree so that it conforms to the constitutional floor.” Rather, once the court “has determined that circumstances warrant a modification of a consent decree, the focus should be on whether the proposed modification is tailored to resolve the problems created by the change in circumstances.” (3) Within these constraints, because of the public interest and interests of comity, the court must defer to local governments and administrators to “resolve the intricacies of implementing a decree modification.” State and local officials in charge of institutional litigation may agree to do more than is constitutionally required to settle a case, but the courts should keep the public interest in mind in ruling on a request for modification based on changed conditions that make it “substantially more onerous to abide by the decree.” Although fiscal constraints cannot support creation or perpetuation of constitutional violations, such financial factors may be considered in tailoring a consent decree modification.

Overcrowded conditions do not always result in findings that unconstitutional conditions exist. The Supreme Court identified limits to claims of unconstitutional prison conditions in 1981. In the case of *Rhodes v. Chapman*, the Supreme Court found that housing two prisoners in a cell intended for one is not in itself unconstitutional. The Court held that the Eighth Amendment does place limits on the conditions under which prisoners may be confined. However, according to the Court, double celling, unlike “deliberate indifference to an inmate’s medical needs,” does not constitute *per se* cruel and unusual punishment. In a similar line of reasoning, the Court ruled on June 17, 1991 (*Wilson v. Seiter, et al.*) that overcrowded, noisy, and unsanitary prison conditions are not necessarily unconstitutional. Instead, it must be proven that prison officials show “deliberate indifference” to prison conditions, not negligence associated with factors such as fiscal constraints.

Expansion of Facilities

Because of the overpopulation problem and deficient prison conditions, some believe that prison construction and renovation should be a part of any prison reform program. Advocates of this view believe that more punitive policies adopted in recent years require that sufficient room be created in prisons. They argue that the prison population will continue to grow because of continued criminal activity, the increasing rate of incarceration, more effective prosecution of offenders, and public demands for longer sentences.

Those opposing increases in prison capacity through new construction point to the extremely high cost, among other factors. A 1998 *Corrections Yearbook* study indicated that the average costs, per bedspace, have been calculated to be \$70,909 for maximum security; \$49,853 for medium security; and \$29,311 for minimum security. Opponents also argue that non-violent offenders, including drug offenders, might better be sentenced to alternatives such as probation, fines, community service, or home arrest.

Throughout the 1980s and 1990s, many states accelerated construction and renovation efforts. Eighteen agencies (state and federal systems) opened 70 new institutions in 1995, with a total of 69,421 new bedspaces. The largest number of new institutions opened in the 1990's. In 1998, 36 agencies opened new institutions with a total of 21,363 new bedspaces. The American Correctional Association reports that in FY1995, states allocated \$2.2 billion for new prison buildings, \$850 million on renovation, and \$49 million on prison maintenance and repairs, roughly the same amounts allocated in FY1994. By comparison, total capital expenditures reported by the ACA for adult and juvenile facilities in July 1980 were approximately \$690 million.

In light of the overcrowded conditions in state prisons and the public concern with crime, the 103rd and 104th Congresses passed legislation to provide assistance to the states. P.L. 104-134, the FY1996 appropriations act signed by the President on April 26, 1996, authorized \$10.2 billion for FY1996-FY2000 for grants to states and localities for prison construction and expansion. These provisions replaced the program authorized by the 1994 omnibus crime control act (P.L. 103-322). The FY1996 request from the Clinton Administration included \$617.5 million for state prison construction and expansion projects, \$327 million for state costs associated with the incarceration of illegal aliens, and funds for treatment programs. The Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208) appropriated \$670 million for state prison grants and \$360 million for the state costs of illegal alien incarceration and treatment program costs. In both FY1998 and FY1999, \$720.5 million was appropriated for these prison grant programs. A reduced amount of \$686.5 million was appropriated for FY2000.

The FY1999 budget included \$2.8 billion for the federal prison system, a decrease from the FY1998 budget of \$3.2 billion. The federal system expanded with the addition of approximately 36,000 bedspaces from FY1989-1994. From a record appropriation in FY1990 of \$1.4 billion, construction and modernization funds ranged from \$340 to \$450 million each year from FY1991-1993. For FY1994, \$269.5 million was appropriated for construction and expansion of federal prisons; \$276.3 million was appropriated for FY1995. Congress approved a slightly higher amount than requested for buildings and facilities, \$334.7 million, in P.L. 104-134. In FY1997, there was a decrease in the funding estimated (\$295.7 million) for buildings and facilities compared to FY1996.

Use of Military Installations. In addition to funding the construction of new facilities and the expansion of existing ones, some seek to expedite the conversion of closed military facilities into correctional facilities. As of April 1995, the Bureau of Prisons had 27 facilities located on former or current military/federal properties. Two types of deactivated or closed Department of Defense (DOD) property are considered suitable for use as correctional facilities: (1) *excess* property no longer needed by the Department but not yet declared surplus to federal needs; and (2) *surplus* property no longer needed by any agency of the federal government.

Under the Federal Property and Administrative Services Act of 1949 (P.L. 81- 152) *excess* property is available for transfer to another federal agency. Excess and other “underutilized” DOD property is identified biannually by the Commission on Alternative Utilization of Military Facilities, established in the National Defense Authorization Act as amended (P.L. 100-456) for possible use as federal and non-federal correctional facilities. (Additionally, prior to a decision to designate DOD property as excess, that property may be evaluated by the Department of Justice for use as a “boot camp” or other facility under the correctional option program established in the Crime Control Act of 1990, P.L. 101-647.)

Surplus property, including facilities closed or realigned under the Base Closure and Realignment Acts of 1988 and 1990, may be transferred free of charge to state and local governments for correctional use. This program is administered by the Department of Justice. The Base Closure and Realignment Act of 1990 (P.L. 101-510), however, requires that, before action is taken on closed or realigned installations, the Secretary of Defense must consult with the Governor and local government officials “for the purpose of considering any plan for the use of such property by the local community.” The Crime Control Act of 1994 (P.L. 103-322) requires that the Attorney General and the Secretary of Defense consider the suitability of using closed military bases as prisons.

Involvement of the Private Sector

For many years, private corporations have provided, under contract, health, food delivery, or other services to inmates. Proposals for the private sector administration of entire facilities, however, are controversial. Proponents argue that several states (Kentucky, Texas, Florida, Louisiana, and Tennessee) have successfully contracted for the operation of prisons or jails. While cost comparisons are not conclusive, studies indicate that “private prisons” are slightly less costly than those operated by units of government. It is also argued that private corporations have greater flexibility to administer and construct prisons. Opponents argue that private corporations will reduce costs at the expense of inmate habilitation and welfare and that legal questions (such as the liability of the corporation with regard to the use of force against inmates) remain untested.

The FY1996 budget submitted by the BoP Director called for increased involvement of the private sector in the federal prison system. According to the BoP budget request, privatizing future federal facilities will contribute to the Administration’s ability to reduce the number of executive branch employees as required by the Federal Workforce Restructuring Act, while still ensuring additional bedspace is available for confining offenders. In FY1997 appropriations, Congress directed the BoP to undertake a 5-year privatization demonstration project in Taft, California. The BoP Taft facility opened on December 18, 1997, to receive inmates. As of June 1999, the privately managed prisons in Taft, CA had an inmate population of 1,738 offenders. Under provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997 require that D.C. prisoners transfer to the federal prison system by 2001. The Act also requires the transfer of 2,000 D.C. inmates to private facilities contracted by the BoP.

Alternatives to Incarceration

Some argue that non-violent offenders, including those convicted of drug offenses, should be sentenced to non-prison sanctions and referred to treatment. The Crime Control Act of 1994 authorizes \$150 million from FY1995-2000 to help states and localities establish alternatives such as restitution programs, job training projects, and weekend imprisonment. At the end of FY1997, approximately 68% of minimum secured federal prisoners were those convicted of drug offenses; many of them have no history of criminal violence. Between 1986 and 1991, statistics show that drug offenses counted for a 44% increase in the state prison population.

Some federal offenders serve their sentences outside prison walls. Offenders may be restricted to their own homes (often using electronic monitoring devices or frequent telephone contacts), placed under intensive community supervision, sentenced to community service, or required to pay fines or provide restitution through a victims' fund instead of serving time in prison. The Bureau of Prisons uses three types of home confinement for federal offenders: (1) electronic monitoring of inmates on probation or parole; (2) electronic monitoring of a small number of inmates through contacts with local governments; and (3) daily telephone and scheduled visits with Community Corrections Center staff. As of May 1999, approximately 5,448 federal offenders were placed in community-based correctional programs such as the traditional halfway houses, urban work camps, and supervised home confinement.

According to Bureau of Justice Statistics, 71,020 federal offenders were on parole on December 31, 1999. (The parole population in the states was 641,693.) Also on that date, 33,254 federal offenders were on probation, compared to 3.7 million state offenders. Finally, BoP operates two Intensive Confinement Center ("prison boot camp") for males and one for females. In 1998, 453 male and female inmates completed this program.

Special Group Offenders

State and federal prisons have different types of inmates to manage. While trying to control various groups, prison administrators must determine the legitimate needs of inmates. Most prison administrators provide facilities suitable for special groups like female, elderly, and disabled inmates. Prisoners are excluded, however, from some benefits that law abiding citizens are entitled to. For example, prison officials must report any SSI/OASDI benefits received by prisoners, as provided in P.L. 104-193, Section 4203.

Female Offenders. The number of women in prison has escalated in the last decade. The Bureau of Justice Statistics reported that at the end of 1994 the number of female inmates was 60,069, a threefold increase since 1984, when approximately 19,205 females were incarcerated. In December 1999, 90,668 women were held in state and federal correctional facilities. Women in state and federal prisons in June 1999 made up 6.5% of all prisoners.

There are 42 states with institutions for women only. One study indicated that "the best method of managing [female] offenders is with programming and counseling to identify self-destructive behaviors, learning cognitive thinking skills, parenting classes [and] building practical work and educational skills." A Bureau of Justice Statistics survey reported that in 1991, about 6% of women incarcerated had entered prison pregnant. The study showed that 25,714 mothers had 56,000 children under 18 years of age. Also, female inmates were more likely than male inmates to have abused drugs (65% versus 62%) prior to their conviction.

Aging Offenders. In 1999, there were 93,362 inmates over 50 years of age in U.S. prisons. In that same year, there were 15,216 inmates (over 50) housed in federal prisons. BoP projections indicate that by the year 2005, federal inmates 50 years and older will comprise 16% of the prison population. The cost of caring for the aging prison population in terms of chronic care and terminal care is of grave concern to prison administrators. An October 1995 *Corrections Compendium* study indicated that 26 prison systems have laws that would allow early release of elderly/terminally ill inmates.

Disabled Offenders. The Americans with Disabilities Act (ADA), P.L. 101-336, affects not only mainstream society but also prisons and jails. The significance of this Act in regard to the inclusion of prisons and jails is drawn from the term “public entity,” where state and local governments must provide civil rights protections to individuals with disabilities (inmates, applicants, and employees of correctional institutions). Section 201 of the ADA, “public entity” is defined as (a) any state and local government; and (b) any department, agency, special purpose district or other instrumentality of state or states or local government.

The ADA gives the Department of Justice authority to issue regulations for Title II and Title III. Title II pertains to prohibiting discrimination on the basis of disability in services, programs, and activities; Title III establishes guidelines for new construction and alterations in public and commercial facilities. To be in compliance with ADA rules for newly constructed facilities, such as prisons and jails, two guidelines that can be used are the Uniform Federal Accessibility Standards (UFAS) or the Americans With Disabilities Act Accessibility Guidelines (ADAAG), 28 CFR Parts 35 and 36.

Health Care

The Health Services Division in the Bureau of Prisons provides essential medical, dental, and mental health services to federal prison inmates. Each correctional facility contains, at a minimum, a primary-care ambulatory clinic staffed by licensed, certified, or credentialed physicians, nurses, physician assistants, and dentists. Larger facilities provide infirmarium-type services; inmates requiring more extensive assistance could be transferred to one of the Bureau’s seven medical referral centers. In 1998, BoP spent \$355 million for health care services, which amounted to an annual average of approximately \$3,363 per inmate for health care.

The rising cost of health care in state prisons is causing some administrators to turn to health care co-payment programs for inmates. This program requires inmates to pay a portion of doctor visits in prisons. At a correctional health care conference sponsored by the National Commission on Correctional Health Care in June 1996, a panel discussed health care co-payment plans that have already been implemented in the prison systems of 12 states (Nevada, Colorado, Arizona, California, Oklahoma, Kansas, Florida, Maryland, Virginia, Utah, Wisconsin, and Mississippi).

Congress is addressing the issue of health care co-payment through S. 704 and H.R. 1349, introduced in the first session of the 106th Congress. Both measures would end overutilization of prison health care services and control rising prisoner health care costs in the federal prison system. On July 19, 2000, a markup session was held by the Judiciary Committee on H.R. 1349. The measure was reported by the Committee with an amendment (H.Rept. 106-851) and placed on the Union Calendar on September 14, 2000. The House passed H.R. 1349 under suspension of the rules on September 19, 2000. The House then

struck the text of S. 704, the companion bill passed last year by the Senate, inserted the language of H.R. 1349 and passed it unanimously. The Senate was notified of the House action.

Infectious Diseases. The Bureau's Health Services Division has noted that tuberculosis, hepatitis, and HIV cases are the focus of "particular concern." In 1998, 8 cases of tuberculosis were identified in the federal inmate population. A National Institute of Justice report issued in 1994 reported that as of early 1993, a total of 11,500 "AIDS cases" had been confirmed in state and federal prison systems and in 31 large city and county jail systems across the nation. The Crime Control Act of 1994 (P.L. 103-322) authorized \$5 million for tuberculosis prevention and treatment.

Substance Abuse. Treatment services, notably for drug abuse, are considered an essential management tool in federal and state prisons because of increased drug-related offenses. The BoP has established a five-part drug abuse treatment strategy for inmates, four of which involve the voluntary participation of inmates. The strategy includes education (the only mandatory program for certain inmates), counseling services, the Comprehensive Residential Program, a pilot program, and transitional services for released offenders.

A new funding source for alcohol and drug abuse programs in federal prisons was established by the 102nd Congress. Section 111 of the FY1993 appropriation for the Department of Justice (P.L. 102-395) authorized the Attorney General to collect a fee (equal to the cost of one year's incarceration) from federal offenders committed to his or her custody. The fee may be waived depending upon the inmate's financial obligations and the needs of the prisoner's dependents. During FY1994 and in subsequent years these fees will be used to enhance federal prison substance abuse programs; currently those funds are placed in the Treasury. Roughly \$1.3 billion was authorized in the Crime Control Act of 1994 for drug testing and treatment of inmates. Under the Justice Assistance Program in FY1999 and in FY2000, state prison drug treatment programs were appropriated \$63 million.

Education and Training Programs

The "correcting" or rehabilitation mission of prisons is addressed through educational, job training, and substance abuse programs. Little controversy surrounds the provision of education and substance abuse programs. The federal role in prison industries that produce goods and services as well as training for inmates, however, has been controversial.

Education Programs. The federal prison system operates a multi-faceted education program. Each federal prison operates education programs for literacy, high school equivalency or general education development (GED), adult continuing education, and other areas. Legal studies appear to be the most popular subject; numerous lawsuits regarding prisoners has prompted the enactment of prison litigation reform legislation (P.L. 104-134).

According to the Bureau of Prisons, in FY1997 approximately 70% of federal inmates within six or seven months of projected release date had a high diploma or GED equivalent. Most, if not all, of the states provide some education programs to state inmates. A study published in *Corrections Compendium*, March 1994, however, noted that educational programs in many state systems had been reduced in recent years for budgetary reasons.

Higher Education (Pell) Grants. The last count of incarcerated Pell grant recipients was taken in 1994-95. This total indicated that 1,227 incarcerated recipients received \$1,623,519 in payments. Similar data are not available for previous years because prior to the Higher Education Amendments of 1992, the category of incarcerated recipients was not included on the Pell grant application. The Crime Control Act of 1994 (P.L. 103-322) prohibits prisoners from receiving Pell grants. On April 4, 1994, the Department of Education reported that there were 25,168 incarcerated Pell grant recipients, who received a total of \$34,587,554 in payments.

Prison Industries. Also known as UNICOR, Federal Prison Industries, Inc. (FPI) was established in 1934 to provide job training opportunities for federal inmates in industries such as the construction of furniture, textile production, signage and graphics, and electronics and cable products. In general, the demand for FPI work slots exceeds the number of openings available to inmates. As the inmate population has increased, UNICOR has expanded production opportunities in order to provide enough jobs. (UNICOR products are sold only to the federal government.) UNICOR was authorized under the Anti-Drug Abuse Act of 1988 to expand operations and to issue debt obligations equaling up to 25% of the net worth of the corporation. FPI is self-supporting; no funds are appropriated for salaries or operations.

Although there is little debate over UNICOR's goal of providing job training for inmates, controversy has been generated over the impact of UNICOR upon the private sector. Business advocates, particularly small businesses representatives, argue that current law unfairly favors UNICOR and restricts access of private sector firms to the federal procurement market. Labor representatives and their advocates claim that job opportunities, particularly manufacturing jobs needed by low-income families, are lost because UNICOR receives federal contracts. Current law prohibits UNICOR from dominating the federal market, but determining the appropriate share of the federal market remains contentious. As UNICOR expands to provide job opportunities for a greater number of inmates, the debate will likely intensify. The Crime Control Act of 1990 (P.L. 101-647) required that greater amounts of information on UNICOR activities be collected and made available. Congress most recently addressed FPI reform through H.R. 2558 and H.R. 2551, introduced in the first session of the 106th Congress. Both measures would gradually eliminate the FPI sole source mandatory requirement. [For additional information on UNICOR see, CRS Report 96-892 GOV, *Federal Prison Industries: UNICOR.*]

Also, in 1992, the Court of Appeals for the Ninth Federal Circuit ruled that prison inmates are covered by the Fair Labor Standards Act. That decision was reversed, and on February 8, 1995, legislation (H.R. 868) was introduced to specifically exempt prisoners from the Act.

LEGISLATION

H.R. 12 (Delay)

Limits the jurisdiction of the federal courts with respect to prison release orders. Introduced January 6, 1999; referred to Committee on Judiciary.

H.R. 215 (Norton)

District of Columbia Prison Safety Act. Provides discretion to the Director of the Bureau of Prisons in the transfer of District of Columbia inmates to private contract facilities. Introduced January 6, 1999; referred to Committee on Judiciary.

H.R. 282 (Sweeney)

Correctional Officer Protection Act. Amends the Omnibus Crime Control and Safe Streets Act of 1968 to reduce funding if states do not enact legislation that requires the death penalty in certain cases. Introduced January 6, 1999; referred to Committee on Judiciary.

H.R. 370 (Franks)

No Frills Prison Act. Amends the Violent Crime Control and Law Enforcement Act of 1994 to prevent luxurious conditions in prisons. Introduced January 19, 1999; referred to Committee on Judiciary.

H.R. 461 (Gallegly)

Amends rule 11 of the federal rules and civil procedure regarding representations made to courts by or on behalf of, and court sanctions applicable with respect to, prisoners. Introduced February 2, 1999; referred to Committee on Judiciary.

H.R. 1114 (Burton)

Amends part S of title I of the Omnibus Crime Control and Safe Streets Act of 1968 to permit the use of certain amounts for assistance to jail-based substance treatment programs, and for other purposes. Introduced March 16, 1999; referred to Committee on Judiciary.

H.R. 1349 (Salmon)

Amends title 18, United States Code, to combat the overutilization of prison health care services and control rising prisoner health care costs. Introduced March 25, 1999; referred to Committee on Judiciary. Markup held July 19, 2000. Reported September 14, 2000 (H.Rept. 106-851). The House passed H.R. 1349 under suspension of the rules on September 19, 2000. The House then struck the text of S. 704, the companion bill passed last year by the Senate, inserted the language of H.R. 1349 and passed it unanimously. The Senate was notified of the House action.

H.R. 1632 (Green)

Provides that certain attribution rules be applied with respect to the counting of certain prisoners in a decennial census of population. Introduced April 29, 1999; referred to Committee on Government Reform.

H.R. 1800 (Hutchinson)

Amends the Violent Crime Control and Law Enforcement Act of 1994 to ensure that certain information regarding prisoners is reported to the Attorney General. Introduced May 13, 1999; referred to Committee on Judiciary.

H.R. 1888 (Goodling)

Amends title 18, United States Code, to provide a mandatory minimum prison sentence for certain wiretapping or electronic surveillance offenses by federal officers or employees. Introduced May 20, 1999; referred to Committee on Judiciary.

H.R. 1930 (Lobiondo)

Amends the Communications Act of 1934 to require the operator of a World Wide Web site that offers to provide communication with any prisoner to disclose on the site the crime for which the prisoner is incarcerated and the release date for the prisoner. Introduced May 25, 1999; referred to Committee on Commerce.

H.R. 1957 (Davis)

Constitutional Protection of the Right to Vote Act. Provides fairness in voter participation regarding the right of a citizen of the United States to vote shall not be denied or abridged because that citizen has been convicted of a criminal offense, unless such citizen is, at the time of the vote, serving a felony sentence in a correctional institution or facility or is otherwise under the supervision or actual or constructive custody of a governmental authority pursuant to that conviction.

H.R. 1989 (Green)

Amends title 18, United States Code, to provide life imprisonment for repeat offenders who commit sex offenses against children. Introduced May 27, 1999; referred to Committee on Judiciary.

H.R. 2080 (Traficant)

Amends title 18, United States Code, to transport maximum security prisoners across state lines to prisons that are not classified to handle maximum security prisoners. Introduced June 8, 1999; referred to Committee on Judiciary.

H.R. 2551 (Hoekstra)

Amends title 18, United States code, to require Federal Prison Industries to compete for its federal contracts to minimize unfair competition with private firms (depriving law-abiding workers of job opportunities), to save taxpayer dollars by empowering federal contracting officers to be able to acquire commercial products that better meet agencies' needs, more quickly and at less cost without having to obtain permission from Federal Prison Industries, to further empower contracting officers to compel Federal Prison Industries to fully perform its contract obligations to the same extent as all other contractors, and for other purposes. Introduced July 19, 1999; referred to Committee on Judiciary.

H.R. 2558 (McCollum)

Amends title 18, United States Code to reform Federal Prison Industries, and for other purposes. Introduced July 20, 1999; referred to Committee on Judiciary.

H.R. 2810 (Kennedy)

Violent Offender DNA Identification Act of 1999. Facilitates the exchange by law enforcement agencies of DNA identification information relating to violent offenders, and other purposes. Introduced September 8, 1999; referred to Committee on the Judiciary.

H.R. 3014 (Biggert)

Amends title 18, United States Code with regard to prison commissaries, and for other purposes. Introduced October 5, 1999; referred to Committee on Judiciary.

H.R. 3129 (Pryce)

Amends title 18, United States Code, to prohibit strength increasing equipment in federal prisons and to prevent federal prisoners from engaging in activities designed to increase

fighting ability while in prison. Introduced October 21, 1999; referred to Committee on the Judiciary.

H.R. 3158 (Norton)

Establishes federal safeguards for the prevention of sexual misconduct of women inmates at state correctional institutions. Introduced October 27, 1999; referred to Committee on Judiciary.

H.R. 3375 (Gilman)

Facilitates the exchange by law enforcement agencies of DNA identification information relating to violent offenders and for other purposes. Introduced November 16, 1999; referred to Committees on Judiciary and Armed Services.

H.R. 3920 (Waters)

Protection of Women in Prisons Act of 1999. Contains provisions to improve the conditions for women inmates in jails and correctional facilities. Introduced March 14, 2000, referred to Committee on Judiciary.

H.R. 4493 (Mica)

Establishes grants for drug treatment alternative to prison programs administered by state and local prosecutors. Introduced May 18, 2000; referred to Committee on Judiciary.

S. 9 (Daschle)

Safe Schools, Safe Streets, and Secure Borders Act of 1999. Combats violent and gang-related crime in schools and on the streets, reforms the juvenile justice system, targets international crime, promotes effective drug and other crime prevention programs, assists crime victims, and for other purposes. Title I, Part 2, refers to incarceration of juveniles in the federal system. Title III, Subtitle B, refers to violent offender incarceration and truth-in-sentencing grants. Introduced January 19, 1999; referred to Committee on Judiciary.

S. 33 (Thurmond)

Amends Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973 to exclude prisoners from the requirements of that title and section. Introduced January 19, 1999; referred to Committee on Health, Education, Labor and Pensions.

S. 248 (Hatch)

Judicial Improvement Act of 1999. Modifies the procedures of the federal courts in certain matters reforms prisoner litigation, and for other purposes. Introduced January 19, 1999; referred to Committee on Judiciary.

S. 295 (Lugar)

Amends part S of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 to permit the use of certain amounts for assistance to jail-based substance treatment programs, and or other purposes. Introduced January 22, 1999; referred to Committee on Judiciary.

S. 420 (Snowe)

Provides a mandatory minimum sentence for state crimes involving the use of a firearm, impose work requirements for prisoners, and prohibit the provision of luxury items to prisoners. Introduced February 11, 1999; referred to Committee on Judiciary.

S. 668 (Santorum)

Aimee's Law. Encourages states to incarcerate individuals convicted of murder, rape, or child molestation. Introduced March 19, 1999; referred to Committee on Judiciary.

S. 704 (Kyl)

Amends title 18, United States Code, to combat the overutilization of prison health care services and control rising prisoner health care costs. Introduced March 24, 1999; referred to Committee on Judiciary.

S. 766 (Levin)

Amends title 18, United States Code, to revise the requirements for procurement of products of Federal Prison Industries to meet needs of federal agencies, and for other purposes. Introduced April 12, 1999; referred to Committee on Judiciary.

S. 903 (Kohl)

Facilitates the exchange by law enforcement agencies of DNA identification information relating to violent offenders, and for other purposes. Introduced April 28, 1999; referred to Committee on Judiciary.

S. 2008 (Ashcroft)

Requires the pre-release drug testing of federal prisoners. Introduced January 26, 2000; referred to Committee on Judiciary.

S. 2317 (Dorgan)

Stop Allowing Felon Early Release (SAFER) Act. Provide incentives to encourage stronger truth in sentencing of violent offenders, and for other purposes. Introduced March 29, 2000; referred to Committee on Judiciary.

S. 2318 (Dorgan)

Amends title 18, United States Code, to eliminate good time credits for prisoners serving a sentence for a crime of violence, and for other purposes. Introduced March 29, 2000; referred to Committee on Judiciary.

S. 2619 (Leahy)

Drug-Free Prisons Act of 2000. Provides that the Attorney General may make grants to States and units of local government, State courts, local courts and Indian tribal governments acting directly or through agreement with other public or private entities for programs that support drug testing policies and appropriate drug intervention programs for offender populations. Introduced May 24, 2000; referred to Committee on Judiciary.

S. 2908 (Biden)

Offender Reentry and Community Safety Act of 2000. Authorizes funding for successful reentry of criminal offenders into local communities. Introduced July 24, 2000; referred to Committee on Judiciary.