

Bob Dole



NEWS

U.S. SENATOR FOR KANSAS

FROM:

SENATE MAJORITY LEADER

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Contact: Clarkson Hine
(202) 224-5358

PRISON LITIGATION REFORM ACT

DOLE INTRODUCES BIPARTISAN BILL TO CURB ALARMING EXPLOSION OF PRISONER LAWSUITS & TO STOP REVOLVING PRISON DOOR

I am pleased to join today with my distinguished colleagues, Senators Hatch, Kyl, Abraham, Hutchison, Reid, Specter, Santorum, Thurmond and Bond, in introducing the Prison Litigation Reform Act of 1995.

This legislation is a "new and improved version" of S. 866, which I introduced earlier this year to address the alarming explosion in the number of frivolous lawsuits filed by state and federal prisoners. It also builds on the "stop-turning-out-prisoners" legislation, championed by Senators Kay Bailey Hutchison and Spencer Abraham, by making it much more difficult for federal judges to issue orders directing the release of convicted criminals from prison custody.

Address Frivolous Prisoner Lawsuits

Unfortunately, the litigation explosion now plaguing our country does not stop at the prison gate. According to Enterprise Institute scholar Walter Berns, the number of "due-process and cruel and unusual punishment" complaints filed by prisoners has grown astronomically--from 6,600 in 1975 to more than 39,000 in 1994. These suits can involve such "grievances" as insufficient storage locker space, a "defective" haircut by a prison barber, the failure of prison officials to invite a prisoner to a pizza party for a departing prison employee, and yes, being served chunky peanut butter instead of the creamy variety. The list goes on and on.

These legal claims may sound far-fetched...almost funny...but unfortunately, prisoner litigation does not operate in a vacuum. Frivolous lawsuits filed by prisoners tie up the courts, waste valuable legal resources, and affect the quality of justice enjoyed by law-abiding citizens. The time and money spent defending these cases are clearly time and money better spent prosecuting violent criminals, fighting illegal drugs, or cracking down on consumer fraud.

The National Association of Attorneys General estimates that inmate "civil rights" litigation costs the states more than \$81 million each year. Of course, most of these costs are incurred defending lawsuits that have no merit whatsoever.

Let me more specific. According to Arizona Attorney General Grant Woods, a staggering 45% of the civil cases filed in Arizona's federal courts last year were filed by state prisoners. That means that 20,000 prisoners in Arizona filed almost as many cases as Arizona's 3.5 million law-abiding citizens. And most of these

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prisoner lawsuits were filed free of charge. No court costs. No filing fees. This is outrageous and it must stop.

I happen to believe that prisons should be just that--prisons, not law firms. That's why the Prison Litigation Reform Act proposes several important reforms that would dramatically reduce the number of meritless prisoner lawsuits.

Require Prisoners to Pay Lawsuit Costs

For starters, the Act would require inmates who file lawsuits to pay the full amount of their court fees and other costs.

Many prisoners filing lawsuits today in federal court claim indigent status. As indigents, prisoners are generally not required to pay the fees that normally accompany the filing of a lawsuit. In other words, there is no economic disincentive to going to court.

The Prison Litigation Reform Act would change this by establishing a garnishment procedure: if a prisoner is unable to fully pay court fees and other costs at the time of filing a lawsuit, 20% of the funds in his trust account would be garnished for this purpose. Every month thereafter, an additional 20% of the income credited to the prisoner's account would be garnished, until the full amount of the court fees and costs are paid-off.

When average law-abiding citizens file a lawsuit, they recognize that there could be an economic downside to going to court. Convicted criminals shouldn't get preferential treatment: if a law-abiding citizen has to pay the costs associated with a lawsuit, so too should a convicted criminal.

In addition, when prisoners know that they will have to pay these costs--perhaps not at the time of filing, but eventually--they will be less inclined to file a lawsuit in the first place.

Other Reforms

Another provision of the Prison Litigation Reform Act would require judicial screening, before docketing, of any civil complaint filed by a prisoner seeking relief from the government. This provision would allow a federal judge to immediately dismiss a complaint if either of two conditions is met: 1) the complaint does not state a claim upon which relief may be granted, or 2) the defendant is immune from suit.

The Prison Litigation Reform Act would also allow federal courts to revoke any good-time credits accumulated by a prisoner who files a frivolous suit. It requires state prisoners to exhaust all administrative remedies before filing a lawsuit in federal court. And it prohibits prisoners from suing the government for mental or emotional injury, absent a prior showing of physical injury.

If enacted, all of these provisions would go a long way to take the frivolity out of frivolous inmate litigation.

Tough, New Guidelines for Prisoner Release Orders

The second major section of the Prison Litigation Reform Act establishes some tough new guidelines for federal courts when evaluating legal challenges to prison conditions. These guidelines will work to restrain liberal federal judges who see violations of constitutional rights in every prisoner complaint and who have used these complaints to micromanage state and local prison systems.

Perhaps the most pernicious form of judicial micromanagement is the so-called "prison population cap."

In 1993, for example, the state of Florida put 20,000 prisoners on early release because of a prison cap order issued by a federal judge who thought the Florida system was overcrowded and thereby inflicted "cruel and unusual" punishment on the state's prisoners.

And, then, there's the case of Philadelphia, where a court-ordered prison cap has put thousands of violent criminals back on the city's streets, often with disastrous consequences.

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As Professor John DiIulio has pointed out: "[Federal] Judge [Norma] Shapiro has single-handedly decriminalized property and drug crimes in the City of Brotherly Love...Judge Shapiro has done what the city's organized crime bosses never could, namely, turn the town into a major drug smuggling port."

By establishing tough new conditions that a federal court must meet before issuing a prison cap order, this bill will help slam-shut the revolving prison door.

Finally, I want to express my special thanks to Arizona Attorney General Grant Woods and to the National Association of Attorneys General. Their input these past several months has been invaluable as we have attempted to draft a better, more effective piece of legislation.

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