

Crime -
Truth-in-Sentencing

Truth in Sentencing in the Appropriations Bill

A Special Exemption for Utah

One of the main components of the Violent Crime Control and Law Enforcement Act of 1994 was the Violent Offender Incarceration and Truth in Sentencing Incentive Grant Program (Crime Bill prisons grant program). Under this provision, fifty percent of the total amount of funds appropriated each year will be allocated for Truth-in-Sentencing Incentive grants.

Truth-in-sentencing is a requirement that offenders serve 85 percent of their sentence. States that do not have truth in sentencing have indeterminate sentencing -- in which the sentence imposed by the court might involve a range of imprisonment.

H.R. 3019, the Omnibus Appropriations bill, that passed in Congress on Thursday April 25, contained changes to the Crime Bill prison grants program especially with regards to truth-in-sentencing.

Under the new scheme, States would be eligible for general grant money and could receive additional money if it adopts a truth-in-sentencing law. The law however allows a state with indeterminate sentencing to still be eligible for the additional funding that would otherwise only be available to a truth-in-sentencing state if the meets a special criterion that is provided in the Conference Report.

This special criterion is very specifically drafted to apply to a particular sentencing scheme -- where the judge and the parole commission use the same guidelines in a particular manner. Under the language, a "State practicing indeterminate sentencing" can be eligible for truth in sentencing funding if "(1) the state has 'sentencing and release guidelines' (which refers to guidelines that by law are utilized both by courts for guidance in imposing a sentence and by parole release authorities in establishing a presumptive release date prescribed by these guidelines...)"

According to Justice Department officials, the State of Utah is the only State that would be eligible under this unique criterion. In other words, under this Appropriations bill, Utah has been provided an individual exemption to the truth-in-sentencing requirements of this statute so that they can receive funding for a program that they would otherwise not be eligible for.

hire more police, and should not use these funds for non-hiring projects. Funding for these purposes, such as equipment, training and overtime, is available to localities through the Local Law Enforcement Block Grant and need not be duplicated under this program. The conferees have also included language that limits the amount spent on program management and administration to 130 positions and \$14,602,000.

GENERAL PROVISIONS—DEPARTMENT OF JUSTICE

The conference agreement includes the following General Provisions for the Department of Justice that were not enacted into law under Public Law 104-99. The conferees have also included language under section 616 to reinforce that the General Provisions for the Department of Justice enacted under section 211 of Public Law 104-99 shall continue to remain in effect. A Department of Justice legal opinion dated February 27, 1996, states that all the General Provisions for the Department of Justice included in the conference report on H.R. 2076, with the exception of section 114, were enacted into law under Public Law 104-99 on January 26, 1996. The Senate bill repeated all general provisions, except for sections 116 through 119 which were permanent changes to law, and the House bill did not include any of the general provisions with the exception of section 114.

The conferees note that under section 106, which is currently enacted in law, the Department of Justice was provided the authority to spend up to \$10,000,000 for rewards for information regarding acts of terrorism against the United States. The conferees agree that the Attorney General, before making any international reward, should continue to consult and coordinate with the Secretary of State.

Sec. 114. The conferees have agreed to include section 114 and have revised the language proposed in the House and Senate bills which authorizes a new Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants program to replace the program currently authorized in Title II of the Violent Crime Control and Law Enforcement Act of 1994. The House bill included the revised Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants program as passed in the conference report on H.R. 2076. The Senate bill included a revision to the language included in the conference report on H.R. 2076.

As provided in both the House and Senate bills, the conference agreement includes \$617,500,000 under the Violent Crime Reduction Programs for State and Local Law Enforcement Assistance for this provision. Of the funds provided, and after amounts allocated for incarceration for criminal aliens, the Cooperative Agreement Program and incarceration of Indians on Tribal lands, \$38,000,000 is available for State Prison Grants and the administration of this program. The conferees agree that the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants program should reward States that provide an incentive to States that are taking the necessary steps to keep violent criminals off the streets. The conferees further agree that the program currently authorized in the Violent Crime Control and Law Enforcement Act of 1994 fails to provide adequate incentive for States to adopt truth-in-sentencing policies. The conferees are also concerned that sufficient seed money to States is needed to encourage them to adopt truth-in-sentencing. Thus, of the amount available, the conferees have determined that 50 percent would be set aside for Truth-in-Sentencing Grants and the remain-

ing 50 percent would be distributed as General Grants to all States that qualify. Under the revised language, States would no longer be forced to choose between mutually exclusive grant programs. States qualifying for Truth-in-Sentencing Grants would receive those funds in addition to any General Grant funds they are eligible to receive. The conferees further intend that in the future the percentage of prison grant funds dedicated to General Grants should decline in order to provide a greater incentive for States to adopt truth-in-sentencing policies.

The conferees have therefore adopted language that provides that all States that provide assurances to the Attorney General that the State has implemented, or will implement, correctional policies and programs that (a) ensure that violent offenders serve a substantial portion of the sentences imposed; (b) are designed to provide sufficiently severe punishment for violent offenders, including violent juvenile offenders; and (c) ensure that the prison time served is appropriately related to the determination that the inmate is a violent offender and for a period of time deemed necessary to protect the public, will receive "seed" funding to increase their capacity of prison space. A State will receive additional funding from General Grants if the State can demonstrate that, in addition to the above assurances, the State has (a) increased the number of persons sentenced to prison who have been arrested for violent crimes; or (b) increased the sentences of persons convicted of violent crimes or the average prison time actually served; or (c) increased, by over 10 percent over the last three years, the number of persons sent to prison for committing violent crimes.

A State will be eligible to receive a Truth-in-Sentencing Grant in addition to General Grant funding if it is eligible for, if the State has adopted truth-in-sentencing laws which require persons sentenced to prisons for violent crimes to serve at least 85 percent of their sentences. In addition, if a State practices indeterminate sentencing, that is, a State in which the sentence imposed by the court may involve a range of imprisonment, it may be eligible to receive a Truth-in-Sentencing Grant if (1) the State has "sentencing and release guidelines" (which refers to guidelines that, by law are utilized both by courts for guidance in imposing a sentence and by parole release authorities in establishing a presumptive release date when the offender has entered prison) and violent offenders serve on average not less than 85 percent of the period to the presumptive release date prescribed by these guidelines, or (2) the State demonstrates that violent offenders serve on average not less than 85 percent of the maximum prison term allowed under the sentence imposed by the court.

The revised language included in this section authorizes \$10,267,600,000 for fiscal years 1996 through 2000 for States to build or expand correctional facilities for the purpose of incapacitating criminals convicted of part I violent crimes, or persons adjudicated delinquent for an act which is committed by an adult, would be a part I violent crime. It does not allow funds to be used to operate prisons as provided in the current program and it requires a ten percent match by the State instead of a 25 percent match as included in the current program. The conferees agree that in developing criteria for determining the eligibility for funding to build or expand bedspace, the Department of Justice should include a requirement that States demonstrate the ability to fully support, operate and maintain the prison for which the State is seeking construction funds.

Other provisions of the new authorization require that States share up to 15 percent of the funds received with counties and other

units of local government for the construction and expansion of correctional facilities, including jails, to the extent that such units of local government, house state prisoners due to States carrying out the policies of the Act. In addition, under exigent circumstances, States may also use funds to expand juvenile correctional facilities, including pretrial detention facilities and juvenile boot camps. In order to be eligible for grants, States are also required to implement policies that provide for the recognition of the rights and needs of crime victims.

In addition, of the total amount provided, \$200,000,000 is available for payments to States for the incarceration of criminal aliens. The conferees intend that this funding should be merged with and administered under the State Criminal Alien Assistance Program (SCAAP), including the normal authority to utilize up to one percent of the funds for administrative purposes. The conferees expect the Department of Justice to provide these funds to eligible States in a timely manner.

Sec. 120.—The conference agreement includes a new general provision, as proposed by the Senate as section 116, which extends the Department of Justice's pilot debt collection project through September 30, 1997. The House bill did not include this provision.

Sec. 121.—The conference agreement includes a new general provision, proposed by the Senate as section 117, which amends the 1994 Crime Bill to define "educational expenses" to be funded under the Police Corps program. The conference agreement modifies the language proposed by the Senate to assure that the course of education being pursued under this program is related to law enforcement purposes. The House bill did not include this provision.

Sec. 122.—The conference agreement includes a technical correction, similar to section 109 as proposed by the Senate, to the U.S. Code citation regarding the Assets Forfeiture Fund to conform to changes enacted into law under Public Law 104-66 and Public Law 104-99 and to ensure the intended effect of these changes. The House bill did not include this technical correction.

DEPARTMENT OF COMMERCE AND RELATED AGENCIES

DEPARTMENT OF COMMERCE
TRADE AND INFRASTRUCTURE DEVELOPMENT
U.S. TRAVEL AND TOURISM ADMINISTRATION
The conference agreement, like the House and Senate bills, does not include funding for the U.S. Travel and Tourism Administration. Its functions are in the process of being transferred to the International Trade Administration, and no further funding is required.

ECONOMIC AND INFORMATION INFRASTRUCTURE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

SALARIES AND EXPENSES
The conference agreement includes language proposed by the Senate clarifying the authority of the Secretary of Commerce to charge federal agencies for spectrum management, analysis, operations and related services, which was not addressed in the House bill, and making technical changes to language included in the House bill regarding the retention and use of all funds so collected.

SCIENCE AND TECHNOLOGY
NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
INDUSTRIAL TECHNOLOGY SERVICES

The conference agreement includes \$301,000,000 for Industrial Technology Services, of which \$80,000,000 is for the Manufacturing Extension Partnership (MEP) program, and of which \$221,000,000 is for the Advanced Technology Program (ATP). The

→ Utah specific

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*** THIS SECTION CURRENT THROUGH THE 1995 SUPPLEMENT ***
*** (1995 REGULAR SESSION) ***

TITLE 77. UTAH CODE OF CRIMINAL PROCEDURE
CHAPTER 27. PARDONS AND PAROLES

Utah Code Ann. @ 77-27-7 (1995)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS DOCUMENT

<=1> LEXSEE 1996 Ut. HB 95 -- See section 5.

@ 77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of alienists -- Mental competency

(1) The Board of Pardons and Parole shall determine within six months after the date of an offender's commitment to the custody of the Department of Corrections, for serving a sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and shall promptly notify the offender of the date.

(2) Before reaching a final decision to release any offender under this chapter, the chair shall cause the offender to appear before the board, its panel, or any appointed hearing officer, who shall personally interview the offender to consider his fitness for release and verify as far as possible information furnished from other sources. Any offender may waive a personal appearance before the Board of Pardons and Parole. Any offender outside of the state shall, if ordered by the Board of Pardons and Parole, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in which the offender is housed in lieu of an appearance before the board. Rules to carry out this section shall be made by the board. The offender shall be promptly notified in writing of the board's decision.

(3) In the case of an offender convicted of violating or attempting to violate any of the provisions of Sections 76-5-301.1, 76-5-302, 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1,

and 76-5-405, the chair shall appoint one or more alienists who shall examine the offender within six months prior to a hearing at which an original parole date is granted on any offense listed in this subsection. The alienists shall report in writing the results of the examination to the board prior to the hearing. The report of the appointed alienists shall specifically address the question of the offender's current mental condition and attitudes as they relate to any danger the offender may pose to children or others if the offender is released on parole.

(4) In any case where an offender's mental competency is questioned by the board, the chair shall appoint one or more alienists to examine the offender and report in writing to the board, specifically addressing the issue of competency.

HISTORY: C. 1953, 77-27-7, enacted by L. 1985, ch. 213, @ 3; 1986, ch. 22, @ 4; 1988, ch. 150, @ 1; 1990, ch. 195, @ 5; 1994, ch. 13, @ 36.

NOTES:

REPEALS AND REENACTMENTS. --Laws 1985, ch. 213, @ 3 repealed former @ 77-27-7

(L. 1980, ch. 15, @ 2), relating to rules and regulations of board, and enacted present @ 77-27-7.

AMENDMENT NOTES. --The 1994 amendment, effective May 2, 1994, substituted "Board of Pardons and Parole" for "Board of Pardons" in Subsections (1) and (2) and substituted "chair" for "chairperson" in Subsections (2), (3), and (4).

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

Due process.

Hearings on release date.

Cited.

CONSTITUTIONALITY

The Utah parole statutes do not create a liberty interest recognizable under the federal constitution. *Houtz v. DeLand*, 718 F. Supp. 1497 (D. Utah 1989).

The Utah parole statute does not create an "expectation of parole" that would subject parole board proceedings to due process protections. *Hatch v. DeLand*, 790 P.2d 49 (Utah App. 1990).

DUE PROCESS

In original parole grant hearings at which predicted terms of incarceration are determined, fundamental principles of due process apply under the Utah Constitution, including the requirement of providing timely notice before hearings and copies of information in the board's file to the defendant. *Labrum*

v. State Board of Pardons, 870 P.2d 902 (Utah 1993).

Due process requirements of the Utah Constitution apply to a post-revocation parole grant hearing. Neel v. Holden, 886 P.2d 1097 (Utah 1994).

Defendant who failed to show how the further participation of counsel at a hearing would have affected the accuracy of the information considered by the Utah Board of Pardons was not denied due process by the Board's refusal to allow his counsel to address the Board. Neel v. Holden, 886 P.2d 1097 (Utah 1994).

HEARINGS ON RELEASE DATE.

An inmate is entitled to access to psychological reports that will be considered by the Utah Board of Pardons in hearings at which the inmate's release date may be fixed or extended. Neel v. Holden, 886 P.2d 1097 (Utah 1994).

CITED in State v. Bishop, 717 P.2d 261 (Utah 1986).

COLLATERAL REFERENCES

C.J.S. --67A C.J.S. Pardon and Parole @ 44.