

INCREASED PENALTIES FOR ESCAPES FROM FEDERAL PRISONS

DECEMBER 11, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCCOLLUM, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1533]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1533) to amend title 18, United States Code, to increase the penalty for escaping from a Federal prison and other forms of Federal custody, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 1533 will increase the maximum penalty for the crime of escaping from a federal prison and other forms of federal custody from five to ten years. As sentences for serious violent offenders and major drug traffickers have increased substantially over the last decade, the penalty for escaping from prison has not been pro-

portionately increased in order to provide sufficient deterrence. H.R. 1533 remedies this problem.

BACKGROUND AND NEED FOR LEGISLATION

Section 751(a) of title 18, United States Code establishes the crime of escaping from a federal correctional facility or the custody of a federal officer and sets the maximum punishment for that crime at five years imprisonment. The maximum punishment for this crime has remained unchanged while, over the past decade the maximum sentences for offenses generally, and especially for violent offenses and serious drug crimes, have substantially increased.

The Committee is of the opinion that the maximum punishment for the crime of escaping from federal custody or confinement now no longer provides sufficient deterrence to those who may consider committing this crime. This is especially true when one takes into account the fact that, as a result of the United States Sentencing Commission guidelines, the maximum punishment for this crime is seldom imposed. Offenders often face only a sentence of two to three years for committing this crime. This result is inappropriate given the seriousness of this crime, the risks such escapes pose for law enforcement officers, and that those who generally commit this crime are persons who society has already judged to present such a risk that they should be removed from the community and incarcerated.

H.R. 1533 remedies this problem by increasing the maximum punishment for this crime from five to ten years. The Committee expects that the United States Sentencing Commission will note this change and will make appropriate conforming adjustments in the sentencing guidelines to similarly raise the sentences recommended therein.

HEARINGS

The Committee's Subcommittee on Crime held one day of hearings on H.R. 1533. Testimony was received from two witnesses, Rep. Ed Bryant of Tennessee, the sponsor of H.R. 1533, and Kevin Di Gregory, Deputy Assistant Attorney General, Department of Justice, with no additional material submitted.

COMMITTEE CONSIDERATION

On October 19, 1995, the Subcommittee on Crime met in open session and ordered reported the bill H.R. 1533, by a voice vote, a quorum being present. On October 31, 1995, the Committee met in open session and ordered reported the bill H.R. 1533 without amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rules XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1533, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 8, 1995.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1533, a bill to amend title 18, United States Code, to increase the penalty for escaping from a federal prison, as ordered reported by the House Committee on the Judiciary on October 31, 1995. CBO estimates that enacting H.R. 1533 would not result in any significant cost to the federal government. Because enactment of H.R. 1533 would not affect direct spending or receipts, pay-as-you-go procedures would not apply to the bill.

This bill would increase the maximum penalty for the crime of escaping or attempting to escape from a federal prison from five years to ten years of incarceration. However, this bill would not mandate that the U.S. Sentencing Commission change its sentencing guidelines for this offense. The U.S. Sentencing Commission expects that the current sentencing guidelines, which on average add an additional two years to a sentence for this crime, would remain the same under this bill. That is, an increase in the maximum penalty is not likely to significantly increase the average prison sentence for escaping or attempting to escape from a federal prison. The change in the maximum penalty would affect only those rare cases when the sentencing judge might depart from current guidelines. Thus, CBO estimates that enacting H.R. 1533 would result in no significant cost to the federal government.

H.R. 1533 would not affect state law, and thus would have no budgetary impact on state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 1533 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

H.R. 1533 contains one section. This section amends section 751(a) of title 18, United States Code. That section establishes the crime of escaping from federal custody or confinement and the maximum punishment for committing that crime. H.R. 1533 amends this section to increase the maximum penalty for this crime from five years imprisonment to ten years imprisonment.

AGENCY VIEWS

The Committee received a letter from the U.S. Department of Justice providing Administration views on H.R. 1533, and other bills. The letter addressed the issues presented in H.R. 1533, in pertinent part, as follows:

We support H.R. 1533, a bill that would raise from five years to ten years the maximum statutory penalty prescribed in 18 U.S.C. 751(a) for escape from federal custody after conviction or while awaiting trial on a felony charge. The Department considers any criminal offense committed during the period of an inmate's incarceration to be egregious. In particular, prison escapes and attempted escapes represent a serious correctional security concern for the Bureau of Prisons, as well as a general public safety concern. We agree that the current five year penalty (actually a much shorter period of imprisonment under the sentencing guidelines) seems inadequate to discourage escape attempts by federal prisoners, pending trial or convicted, who are facing lengthy sentence.

The current maximum penalty was set very long ago when federal sentences of life imprisonment or death were not realistic possibilities. Currently, the base offense level guideline range for escapes is only at offense level 13, and an escape involving threat or use of force only enhances that base offense level up to level 18 which allows a 30 to 37 month imprisonment term for a criminal history category II defendant. The sentencing guideline for this offense level does not allow a 60 month (5 year) punishment unless criminal history category V is involved. In Application Note 4 to the escape guideline (§2P1.1), the Sentencing Commission suggests the appropriateness of an upward departure if bodily injury or death results. Many federal offenders now face long prison terms due to longer prison terms and elimination of parole. Those offenders are not likely to find the prospect of an additional three year prison term much deterrence if they are considering an escape. In addition, the small increment currently provided

for violence during an escape will have little practical significance to an offender facing a much longer prison term.

Consequently, we find this method of accounting for bodily injury during commission of the crime of escape, by an exception to the normal sentencing procedure, unsatisfactory. Therefore, we also recommend that the legislation direct the Sentencing Commission to significantly increase its guidelines to deter both offenders facing severe federal sentences and violent escapes.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 751 OF TITLE 18, UNITED STATES CODE

§ 751. Prisoners in custody of institution or officer

(a) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or commissioner, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined under this title or imprisoned not more than [five] 10 years, or both; or if the custody or confinement is for extradition, or for exclusion or expulsion proceedings under the immigration laws, or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined under this title or imprisoned not more than one year, or both.

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