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S. 10

To authorize actions for redress in cases involving deprivations of rights of institutionalized persons secured or protected by the Constitution or laws of the United States.

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 1979

Mr. BAYH (for himself, Mr. HATCH, Mr. BAUCUS, Mr. BENTSON, Mr. CHAFEE, Mr. CRANSTON, Mr. DOLE, Mr. GRAVEL, Mr. HATFIELD, Mr. INOUE, Mr. KENNEDY, Mr. LUGAR, Mr. MATHIAS, Mr. MATSUNAGA, Mr. MCGOVERN, Mr. METZENBAUM, Mr. PROXMIRE, Mr. RANDOLPH, Mr. RIBICOFF, Mr. RIEGLE, Mr. STONE, and Mr. WILLIAMS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To authorize actions for redress in cases involving deprivations of rights of institutionalized persons secured or protected by the Constitution or laws of the United States.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 SECTION 1. Whenever the Attorney General has reason-
4 able cause to believe that any State or political subdivision,
5 official, employee, or agent thereof, or other person acting on
6 behalf of a State or political subdivision of a State is subject-
7 ing persons residing in an institution, as defined in section 6,

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1 to egregious or flagrant conditions (conditions which are will-
2 ful or wanton or conditions of gross neglect) which deprive
3 such persons of any rights, privileges, or immunities secured
4 or protected by the Constitution or laws of the United States
5 causing such persons to suffer grievous harm, and that such
6 deprivation is pursuant to a pattern or practice of resistance
7 to the full enjoyment of such rights, privileges, or immunities,
8 the Attorney General, for or in the name of the United States
9 may institute a civil action in any appropriate United States
10 district court against such party for such equitable relief as
11 may be appropriate to insure the full enjoyment of such
12 rights, privileges, or immunities, except that such equitable
13 relief shall be available under this act to persons residing in
14 an institution as defined in section 6(a)(3) only insofar as such
15 persons are subjected to conditions which deprive them of
16 rights, privileges, or immunities secured or protected by the
17 Constitution of the United States. The Attorney General
18 shall sign the complaint in such action.

19 SEC. 2. (a) At the time of the commencement of an
20 action under section 1, the Attorney General shall certify to
21 the court—

22 (1) that at least thirty days previously he has no-
23 tified in writing the Governor or chief executive officer
24 and attorney general or chief legal officer of the appro-

1 appropriate State or political subdivision and the director of
2 the institution of—

3 (A) the alleged conditions which deprive
4 rights, privileges, or immunities secured or pro-
5 tected by the Constitution or laws of the United
6 States;

7 (B) the supporting facts giving rise to the al-
8 leged conditions, including the dates or time
9 period during which such conditions are alleged to
10 have existed;

11 (C) the measures which he believes may
12 remedy the alleged conditions;

13 (2) that he or his designee has made a reasonable
14 effort to consult with the Governor or chief executive
15 officer and attorney general or chief legal officer of the
16 appropriate State or political subdivision and the direc-
17 tor of the institution, or their designees, regarding fi-
18 nancial, technical, or other assistance which may be
19 available from the United States to assist in the cor-
20 rection of such conditions;

21 (3) that he has endeavored to eliminate the al-
22 leged conditions and pattern or practice of resistance
23 by informal methods;

24 (4) that he is satisfied that the appropriate offi-
25 cials have had a reasonable time to take appropriate

1 action to correct such conditions, taking into considera-
2 tion the time required to remodel or make necessary
3 changes in physical facilities or relocate residents, rea-
4 sonable legal or procedural requirements, and any
5 other extenuating circumstances involved in correcting
6 such conditions; and

7 (5) that he believes that such an action by the
8 United States is of general public importance and will
9 materially further the vindication of rights, privileges,
10 or immunities secured or protected by the Constitution
11 or laws of the United States.

12 (b) Any certification made by the Attorney General pur-
13 suant to this section shall be signed by him.

14 SEC. 3. (a) Whenever an action has been commenced in
15 any court of the United States seeking relief from conditions
16 which deprive persons residing in institutions of any rights,
17 privileges, or immunities secured or protected by the Consti-
18 tution or laws of the United States causing them to suffer
19 grievous harm and the Attorney General has reasonable
20 cause to believe that such deprivation is pursuant to a pat-
21 tern or practice of resistance to the full enjoyment of such
22 rights, privileges, or immunities, the Attorney General, for or
23 in the name of the United States, may intervene in such
24 action upon motion by the Attorney General in accordance
25 with the Federal Rules of Civil Procedures.

1 (b) Any motion to intervene made by the Attorney Gen-
2 eral pursuant to this section shall be signed by him.

3 SEC. 4. No person reporting conditions which may con-
4 stitute a violation under this Act shall be subjected to retali-
5 ation in any manner for so reporting.

6 SEC. 5. The Attorney General shall include in his report
7 to Congress on the business of the Department of Justice
8 prepared pursuant to section 522 of title 28, United States
9 Code, a statement of the number, variety, and outcome of all
10 actions instituted or in which the Attorney General has inter-
11 vened pursuant to this Act.

12 SEC. 3. As used in this Act—

13 (a) "Institution" means—

14 (1) any facility for mentally ill, disabled, or
15 retarded persons;

16 (2) any facility for chronically ill or handi-
17 capped persons, including any State-supported in-
18 termediate or long-term care or custodial care fa-
19 cility;

20 (3) any jail, prison, or other correctional fa-
21 cility, or any pretrial detention facility; or

22 (4) any facility in which juveniles are placed
23 awaiting trial or in which juveniles reside for pur-
24 poses of receiving care or treatment, or for any
25 other State purpose.

1 (b) Privately owned and operated facilities shall
2 not be deemed "institutions" under this Act unless per-
3 sons reside in such facilities as a result of State action.

4 (c) "State" means any of the several States, the
5 District of Columbia, the Commonwealth of Puerto
6 Rico, or any of the territories and possessions of the
7 United States.

8 SEC. 7. Provisions of this Act shall not authorize pro-
9 mulgation of regulations defining standards of care.



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