

**FEDERAL SURPLUS PROPERTY TO BE USED BY  
STATE AND LOCAL GOVERNMENTS FOR  
CORRECTIONAL FACILITIES**

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**HEARING  
BEFORE A  
SUBCOMMITTEE OF THE  
COMMITTEE ON  
GOVERNMENT OPERATIONS  
HOUSE OF REPRESENTATIVES**

**NINETY-SEVENTH CONGRESS**

**SECOND SESSION**

**ON**

**H.R. 4450**

**TO AUTHORIZE THE DONATION OF SURPLUS PROPERTY TO ANY STATE  
FOR THE CONSTRUCTION AND MODERNIZATION OF CRIMINAL JUS-  
TICE FACILITIES**

**AND**

**H.R. 6028**

**TO AMEND THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES  
ACT OF 1949 TO PERMIT THE DISPOSAL OF SURPLUS PROPERTY TO  
STATE AND LOCAL GOVERNMENTS FOR CORRECTIONAL FACILITIES**

**APRIL 21, 1982**

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## FEDERAL SURPLUS PROPERTY TO BE USED BY STATE AND LOCAL GOVERNMENTS FOR COR- RECTIONAL FACILITIES

WEDNESDAY, APRIL 21, 1982

HOUSE OF REPRESENTATIVES,  
GOVERNMENT ACTIVITIES AND  
TRANSPORTATION SUBCOMMITTEE  
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:07 a.m., in room 2247, Rayburn House Office Building, Hon. John L. Burton (chairman of the subcommittee) presiding.

Present: Representatives John L. Burton, Ted Weiss, Robert S. Walker, Raymond J. McGrath, and Hal Daub.

Also present: David A. Caney, staff director; Miles Q. Romney, counsel; Cecelia Morton, clerk; and Rachel Halterman, minority professional staff, Committee on Government Operations.

Mr. BURTON. The subcommittee will come to order.

The hearing this morning is to consider two bills which would permit Federal surplus real property and related personal property to be transferred without cost to State and local governments which would then develop and use the property for correctional facility purposes.

The Federal Property and Administrative Services Act of 1949 already provides authority to give local public organizations surplus real estate to be used for schools, hospitals, parks, or historic monuments.

The two bills before us would amend the Federal Property Act by adding the further purpose of correctional facility use.

Last year the Attorney General's task force on violent crime noted that many States were under court order or threat of court order to alleviate prison overcrowding. It recommended available Federal property be transferred, even if on a temporary basis, to relieve urgent needs.

After noting that the Federal Property Act provided for no-cost transfers for schools, hospitals, parks, and historic monuments, the report recommended that the act be amended to permit a similar arrangement to make property available for correctional purposes.

The pending legislation stems from that recommendation. The Senate's version of H.R. 4450 was recently reported by the Senate Governmental Affairs Committee with amendments supported by the present administration.

H.R. 6028 adopts essentially the Senate committee's amendments but sets the language into the format used for other cost-free transfer programs in section 203(k) of the act.

[The bills, H.R. 4450 and H.R. 6028, follow:]

97TH CONGRESS  
1ST SESSION

# H. R. 4450

To authorize the donation of surplus property to any State for the construction and modernization of criminal justice facilities.

## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 1981

Mr. ZEPERETTI introduced the following bill; which was referred to the Committee on Government Operations

## A BILL

To authorize the donation of surplus property to any State for the construction and modernization of criminal justice facilities.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 203 of the Federal Property and Administrative
- 4 Services Act of 1949 (40 U.S.C. 484) is amended by adding
- 5 at the end thereof the following new subsection:
- 6 “(p)(1) The Administrator shall, upon the recommenda-
- 7 tion of the Attorney General, donate surplus property to any
- 8 State or municipality for the construction and modernization

1 of criminal justice facilities. Such donation shall be without  
2 cost to the State except for the costs of care and handling of  
3 such property.

4 "(2) Surplus property recommended for donation by the  
5 Attorney General under paragraph (1) of this subsection may  
6 be disposed of only in accordance with the provisions of this  
7 subsection.

8 "(3) For purposes of this subsection:

9 "(A) The term 'construction' includes the prepara-  
10 tion of drawings and specifications for criminal justice  
11 facilities; erecting, building, acquiring, altering, remod-  
12 eling, improving, or extending such facilities; and the  
13 inspection and supervision of the construction of such  
14 facilities. Such term does not include interest in land or  
15 off-site improvements.

16 "(B) The term 'criminal justice facilities' means—

17 "(i) court facilities;

18 "(ii) law enforcement facilities including facil-  
19 ities used for police training;

20 "(iii) facilities used for the prosecution of  
21 criminal offenses and for public legal defender ac-  
22 tivities;

23 "(iv) facilities used for probation or parole  
24 authorities or for preadjudication and postadjudi-

1 cation of offenders or for the supervision of parol-  
2 ees;

3 "(v) facilities used for juveniles who have  
4 been adjudicated delinquent or who are neglected  
5 juveniles awaiting trial or for juveniles receiving  
6 care or treatment;

7 "(vi) facilities used for the treatment, preven-  
8 tion, control, or reduction of narcotic addiction;

9 "(vii) correctional facilities; and

10 "(viii) any other facility used for any criminal  
11 justice purpose in the State.

12 "(C) The term 'facilities' means any buildings and  
13 related facilities, initial equipment, machinery, and util-  
14 ities necessary or appropriate for the criminal justice  
15 purpose for which the particular building was con-  
16 structed.

17 "(D) The term 'modernization' means any pro-  
18 gram or project designed to improve the operation of  
19 criminal justice facilities in any State, including proj-  
20 ects designed to improve the care of and the rehabilita-  
21 tion of individuals subject to the criminal justice  
22 system.

23 "(E) The term 'State' means each of the several  
24 States, the District of Columbia, the Commonwealth of  
25 Puerto Rico, Guam, American Samoa, the Virgin Is-

1 lands, the Trust Territory of the Pacific Islands, and  
 2 the Commonwealth of the Northern Mariana Islands.”.

97TH CONGRESS  
 2D SESSION

# H. R. 6028

To amend the Federal Property and Administrative Services Act of 1949 to permit the disposal of surplus property to States and local governments for correctional facility use.

## IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 1982

Mr. ZEPHERETTI (for himself and JOHN L. BURTON) introduced the following bill;  
 which was referred to the Committee on Government Operations

## A BILL

To amend the Federal Property and Administrative Services Act of 1949 to permit the disposal of surplus property to States and local governments for correctional facility use.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*  
 3 That section 203(k) of the Federal Property and Administra-  
 4 tive Services Act of 1949 is amended by redesignating sub-  
 5 section (4) as subsection (5) and by inserting before such sub-  
 6 section the following new subsection:

7 “(4) Under such regulations as he may prescribe, the  
 8 Administrator is authorized, in his discretion, to assign to the  
 9 Attorney General for disposal such surplus real and related

1 personal property as is recommended by the Attorney Gener-  
2 al as needed for correctional facility use.

3       “(A) Subject to the disapproval of the Administrator  
4 within thirty days after notice to him by the Attorney Gener-  
5 al of a proposed transfer of property for correctional facility  
6 use, the Attorney General, through such officers or employ-  
7 ees of the Department of Justice as he may designate, may  
8 sell or lease to any State, political subdivision or instrumen-  
9 tality thereof, or municipality such real and related personal  
10 property for such correctional facility use as the Attorney  
11 General has determined to be suitable or desirable for an ap-  
12 propriate program or project for the care or rehabilitation of  
13 criminal offenders.

14       “(B) In fixing the sale or lease value of property to be  
15 disposed of under paragraph (A) of this subsection, the Attor-  
16 ney General shall take into consideration any benefit which  
17 has accrued or may accrue to the United States from the use  
18 of such property by any such State, political subdivision, in-  
19 strumentality, or municipality.

20       “(C) The deed of conveyance of any surplus real proper-  
21 ty disposed of under the provisions of this subsection—

22               “(i) shall provide that all such property shall be  
23 used and maintained for the purpose for which it was  
24 conveyed in perpetuity, and that in the event that such  
25 property ceases to be used or maintained for such pur-

1       pose during such period, all or any portion of such  
2 property shall in its then existing condition, at the  
3 option of the United States, revert to the United  
4 States; and

5               “(ii) may contain such additional terms, reserva-  
6 tion, restrictions, and conditions as may be determined  
7 by the Attorney General to be necessary to safeguard  
8 the interests of the United States.

9       “(D) With respect to any property transferred to any  
10 State, political subdivision or instrumentality thereof, or mu-  
11 nicipality under this subsection, the Administrator, in consul-  
12 tation with the Attorney General, is authorized and directed  
13 to exercise the authority and carry out the functions de-  
14 scribed in clauses (i), (ii), and (iii) of subsection (5).

15       “(E) The term ‘State’ as used in this subsection includes  
16 the District of Columbia, the Commonwealth of Puerto Rico,  
17 and the territories and possessions of the United States.”.

Mr. BURTON. We will receive testimony today on several aspects of the proposed legislation:

One, the background, need, and justification of the proposed new authority;

Two, the agency organization, procedures, and criteria to implement and monitor such a program;

Three, estimated size and cost of such a program; and

Four, what existing authority has been or could be used for correctional facilities.

To help us with our study of this legislation, we have with us the principal sponsors of the House and Senate bills, Representative Leo C. Zeferetti of New York and Senator Charles E. Grassley of Iowa.

We will hear next from witnesses from the U.S. Department of Justice and from the General Services Administration. Following that, we are pleased to have both legislative officials from the State of California and a representative of the New York State Department of Corrections. We will conclude with testimony from public witnesses.

Our first witness today is our distinguished colleague from New York, Hon. Leo C. Zeferetti. He is the sponsor of this legislation.

It is nice to have you with us today.

You may proceed.

**STATEMENT OF HON. LEO C. ZEFERETTI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, ACCOMPANIED BY KAREN ERICA JOHNSON, LEGISLATIVE ASSISTANT**

Mr. ZEFERETTI. Thank you, Mr. Chairman.

Chairman Burton and distinguished members of the subcommittee, I am very pleased to testify in favor of legislation, H.R. 4450 and H.R. 6028, to facilitate the donation of surplus Federal property to any State or unit of local government for the construction and modernization of criminal justice facilities.

I want to take this opportunity to thank you personally, Mr. Chairman, for your commitment to this hearing on such timely legislation.

Prison overcrowding is a problem rapidly reaching crisis proportions and is pervasive throughout the Nation. Higher rates of violent crime have caused increased prosecutions and convictions, and longer sentences.

Thirty-nine States are currently under court order to relieve overcrowded conditions. Many State and local correctional systems are unprepared to meet these new pressures and fail to finance and construct new facilities fast enough to accommodate increasing prison populations.

According to the Bureau of Justice Statistics, State officials have had to resort to housing prisoners in tents and prefabricated buildings and to double-bunking and early release. Some State institutions now house about twice their rated capacities. Other States have had to rely heavily on space in local jails.

The purpose of this legislation is to provide some relief of the financial burden States face as they respond to increases in crime by expanding their correctional systems.

As introduced, H.R. 4450 and H.R. 6028 amend section 203 of the Federal Property and Administrative Services Act of 1949, to authorize the donation of surplus property to any State for the construction and modernization of criminal justice facilities.

Under present law, States may obtain surplus property for criminal justice use only through leasing agreements or negotiated sales.

Passage of this legislation would permit criminal justice purposes to join the small number of activities now eligible to receive surplus real property free or at a discounted rate. These are health and education, parks and recreation, public airports, historic purposes, and fish and wildlife.

The legislation, Mr. Chairman, as you are aware, embodies one of the recommendations of the President's Task Force on Violent Crime.

President Reagan, in his speech before the International Association of Chiefs of Police Conference in New Orleans last September, indicated his support for such transfer of Federal property.

As a result, the Attorney General has established a national clearinghouse on surplus Federal property suitable for use by corrections. The clearinghouse is established within the Federal Bureau of Prisons.

The transfer of surplus Federal property for use by corrections is not entirely new, Mr. Chairman. The State of Washington currently has a lease arrangement with the Federal Government for McNeil Island, a former Federal prison, and is currently reimbursing the Federal Government \$36,000 a month to use McNeil Island as a State prison.

Under the provisions of H.R. 4450 and H.R. 6028, such transfer of unused Federal facilities could be conveyed at no cost to States for such correctional use.

In fairness to State and localities which may choose to acquire surplus Federal property for correctional use, it should be pointed out that such transfers are not in themselves giveaways.

The Federal radar facility in Watertown, N.Y.—my home State—was recently leased to the State of New York as a medium security facility for 200 persons. New York State officials estimated that it will take 6 months and cost \$4.5 million to convert the property for correctional use. That is no small investment for a State under the pressure of fiscal austerity.

The State's prison system now has approximately 2,000 more inmates than it was built to accommodate. Of total U.S. expenditures for fiscal year 1979, approximately \$6 billion was spent on corrections activities. Fifty-nine percent was expended by local authorities. State governments spent approximately \$3.4 billion on corrections activities.

Mr. Chairman and members of this subcommittee, I urge you to act favorably upon the merits of this legislation. While it will not solve the prison crisis over the long term, it does promise to broaden the alternatives currently available to States and localities as they seek to find ways to constitutionally and humanely confine the increasing numbers of offenders being sentenced.

I might add, Mr. Chairman, that we have 55 cosponsors in the House. The legislation has been endorsed by the National Governors Association, the American Correctional Association, and this

bill was unanimously reported out by the Senate Committee on Governmental Affairs.

I would like to add one other comment. Prior to becoming a Member of Congress, I spent over 24 years in law enforcement and a major portion of that was in the New York City Department of Correction Services.

I can tell you as one that has witnessed insurrection and the holding of hostages, and as one that has witnessed that overcrowding and unsafe conditions bring mayhem inside institutions, I can say to you that a form of help is desperately needed. Every one of these institutions, whether they be in New York City, or in New York State or out as far west as California, they are all overcrowded, way over capacity to the point that they all become pressure pots.

Unless we find some solutions to these kinds of pressures, we are going to find ourselves in some dire straits as we go on and as crime increases in our Nation.

I thank you for the opportunity to testify this morning.

[Mr. Zeferetti's prepared statement follows:]

## STATEMENT

OF

HONORABLE LEO C. ZEFERETTI

Chairman Burton and distinguished members of the Subcommittee, I am very pleased to testify in favor of legislation (H.R. 4450 and H.R. 6028) to facilitate the donation of surplus federal property to any state or unit of local government for the construction and modernization of criminal justice facilities. I want to take this opportunity to thank you personally, Mr. Chairman, for your commitment to this hearing on such timely legislation.

Prison overcrowding is a problem rapidly reaching crisis proportions and is pervasive throughout the Nation. Higher rates of violent crime have caused increased prosecutions and convictions, and longer sentences. Thirty-nine (39) states are currently under court order to relieve overcrowded conditions. Many state and local correctional systems are unprepared to meet these new pressures and fail to finance and construct new facilities fast enough to accommodate increasing prison populations. According to the Bureau of Justice Statistics, state officials have had to resort to housing prisoners in tents and prefabricated buildings and to double-bunking and early release. Some state institutions now house about twice their rated capacities. Other states have had to rely heavily on space in local jails. The purpose of this legislation is to provide some relief of the financial burden states face as they respond to increases in crime by expanding their correctional systems.

As introduced, H.R. 4450 and H.R. 6028 amend Section 203 of the Federal Property and Administrative Services Act of 1949, to authorize the donation of surplus property to any state for the construction and modernization of criminal justice facilities. Under present law, states may obtain surplus property for criminal justice use only through leasing agreements or negotiated sales. Passage of this legislation would permit criminal justice purposes to join the small number of activities now eligible to receive surplus real property free or at a discounted rate. These are: health and education; parks and recreation; public airports; historic purposes; and fish and wildlife.

The legislation, Mr. Chairman, as you are aware embodies one of the recommendations of the President's Task Force on Violent Crime. President Reagan, in his speech before the International Association of Chiefs of Police Conference in New Orleans last September, indicated his support for such transfer of federal property. As a result, the Attorney General has established a national clearinghouse on surplus federal property suitable for use by corrections. This clearinghouse is established within the Federal Bureau of Prisons.

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Mr. Chairman and members of this subcommittee, I urge you to act favorably upon the merits of this legislation. While it will not solve the prison crisis over the long term, it does promise to broaden the alternatives currently available to states and localities as they seek to find ways to constitutionally and humanely confine the increasing numbers of offenders being sentenced.

Thank you very much.

Mr. BURTON. Thank you very much, Mr. Zeferetti. I have three very quick questions.

As prime sponsor of the legislation, do you see any significant differences between the two measures? The first bill was introduced by you and the second is reintroduced.

Mr. ZEFERETTI. Mr. Chairman, H.R. 4450 lends itself to give a more clear cut priority to correctional services alone. I think H.R. 6028 was drafted to conform more with the existing law.

Mr. BURTON. Yes; thank you.

H.R. 6028 tracks existing law and pretty much puts correctional institutions onto the laundry list of qualifying organizations. Do you feel that this could help the implementation of it, given the workings of the bureaucracy?

They do not have to treat it as something new. They can just do it the way they do the others.

Mr. ZEFERETTI. I think it allows the subcommittee some flexibility so that we can mark up a bill which will work and meets an urgent need.

I am concerned with getting a bill going. I think the need is that great. I understand the need to incorporate the two bills so that we will get the support we are looking for along the way.

Mr. BURTON. Thank you. Mr. Walker?

Mr. WALKER. Thank you, Mr. Chairman.

Do I understand correctly that your point is that you think prison construction should be included on the list that presently is available for surplus property—health, education, parks and recreation, public airports—that you are endorsing the bills as a way of accomplishing this—that you are not particularly endorsing the mechanism?

If I understood your response a moment ago, it is that you think the present mechanism is probably better simply because everybody knows how to do that; is that right?

Mr. ZEFERETTI. I think that, but more importantly I think that corrections at this point should get some priority.

I think the language can be defined in such a way that if we have Federal surplus property which had already been used for correctional services, for example if we have a stockade in place that is part of an Army facility—I think that should be given priority to the correctional services immediately so that they can be transferred as an immediate item for use.

I think again the language can reflect this price use priority.

Mr. WALKER. Is that a priority over the things we have previously designated?

Mr. ZEFERETTI. Yes; I would personally favor that myself. I feel that only in that way can we draw attention to the need for the correctional services.

If you have to look at a building which is already a correctional facility within a structure of a Federal building, to start looking at that so far as a library is concerned or some other use I think would be a waste of that particular property.

I think that property at least should be given some priority for the correctional services to have access to it.

Mr. WALKER. Would the same philosophy necessarily extend to a piece of open land which is being considered for a variety of purposes, including building a jail on it if it were donated?

Mr. ZEFERETTI. I think if it meets the needs of that particular area for the construction of a prison; yes.

Mr. WALKER. Thank you, Mr. Chairman.

Mr. BURTON. So, what you are saying is that if they have what is a Federal correctional institution or an Armed Forces stockade—the cage as we used to call them—do you see a difference between that and a piece of surplus land which might go to a State to build upon?

Mr. ZEFERETTI. For argument's sake, in New Jersey in the Fort Dix area they had a stockade inside the Fort Dix facility.

It is already built. It already has the equipment for correctional services to take over, to modernize, renovate in such a way that it would be a lower cost to make it into whatever kind of institution they want.

What I am saying is this. That particular piece of property that has that facility on it should be given that priority to the correctional services because it is there.

The money spent would be a lot cheaper to refurbish it into an institution.

Mr. BURTON. What sort of input should a local community have on something like this? If it is a school or park they all welcome it. If it is a prison, at least in our State, most of them are located out on the edge of nowhere.

Let us take Fort Dix as an example. That is in New Jersey; correct?

Mr. ZEFERETTI. That is right.

Mr. BURTON. Let us say the people in the communities around Fort Dix may not look too happily upon a prison being there.

What kind of input should local communities have, in your judgment?

Mr. ZEFERETTI. If it is Federal property that already had a facility, an Army installation or some prior use for military service as opposed to an empty lot I would suggest that everybody would be involved anyway. Every local planning board, every mayor, every local official would have some input.

I think if you are talking one facility that is already there, I think you would not have any problem with it. But I think if you were talking, as Mr. Walker has suggested, a piece of vacant property, I think you are going to have to bring everybody on the local level into those discussions and when it comes to those kinds of requests.

You must remember, too, that local government must request that to be available to them. It is not a question that we are just going to say: "Hey, fellows, here it is."

Mr. BURTON. The State could do it.

Mr. ZEFERETTI. Yes; but local government still will have to play a role in whatever the request is. If you go through the process of GSA turning it down, it goes to the State, but local government still has some say as to where it is going to end up.

I think as long as we follow those procedures, then there are safeguards for the citizens of these areas. It allows them to comment either for or against.

Mr. BURTON. Thank you very much.

Mr. ZEFERETTI. Thank you.

Mr. BURTON. Before calling our next witness, I would like to place into the record testimony by Gov. Robert List, chairman of the Committee on Criminal Justice and Public Protection of the National Governors' Association.

Without objection, so ordered.

[The statement follows:]

PREPARED STATEMENT OF GOV. ROBERT LIST, CHAIRMAN, COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC PROTECTION, NATIONAL GOVERNORS' ASSOCIATION

TESTIMONY

IN

SUPPORT OF THE SURPLUS PROPERTY BILL

The most immediate problem facing the criminal justice systems in the different states is the lack of prison bed space. At the present time, some 41 states and territories are facing court orders due basically to conditions of overcrowding. A recent survey of Governors conducted by the National Governors' Association revealed that their top criminal justice priority is prison overcrowding and the cost of prison construction and remodeling.

The problem in corrections has been developing over the last decade. It is a function of the "get-tough" policies promoted by other parts of the criminal justice and legal system. For example, the violent crime rate increased annually from 1971 through 1980 by an average of 5 percent. The rate rose from 396 per 100,000 persons in 1971 to 581 per 100,000 in 1980. A national opinion poll showed that by 1975, 70 percent of the respondents saw crime increasing in their area and 55 percent felt more uneasy about their personal safety. Another 1975 national crime survey in thirteen major cities found 63 percent of the respondents reporting that their chances of being attacked or robbed had gone up in the past few years. Forty-nine percent of these same respondents said they had limited or changed their activities because of crime and thought that 87 percent of people in general had done so (Ohlin, 1982).

Public attitudes also shifted toward a more punitive stance toward criminals. Moreover, they blamed the performance of the courts for being "soft" on criminals. In a survey, the percentage of citizens who thought that the courts did not deal harshly enough with criminals increased steadily from 66 percent in 1972 to 83 percent in 1977. The message

reflects a public demand for increasingly severe and rigorous sentencing policies that would result in more incarceration of convicted offenders than has been true in the past.

Public policy began to reflect public opinion in a re-examination of correctional policy. There was an eroding faith in rehabilitation programs as a way of controlling the crime problem. Also, questions were raised about the goals of punishment, and the effectiveness of our sentencing, penal and parole system.

All of this added to the pressures on the corrections system, which in many cases was saddled with inadequate facilities. In the state of Utah for example, the total number of inmates in prison increased from 1978 to 1981 by 38 percent, but there was no increase in bed space. Inmates were housed in available space at a facility built in 1952 when the state's population was about half of what it is today. The state is in the process of constructing a new prison.

In Illinois, the prison situation is reassessed almost daily. Since 1977, the state has spent \$87 million in capital funds to add prison beds to the adult corrections system. Some 3,500 beds were added, which brought the total to 13,500 bed spaces in the adult corrections system.

From 1975 to 1980, New York State added almost 5,000 beds to the correctional system at a cost of \$54.4 million. The inmate population increased by 87 percent from 1972 to 1981. The expansion plan for the state, based on prison inmate population projections, anticipates an inmate population as high as 25,600 by 1986. The cost of renovation and construction over this period has been estimated to be over \$331 million.

These are a few examples that show the magnitude of overcrowding and prison bed space shortage. In 1978, there existed a shortage of over 68,000 prison bed spaces. That number has almost doubled since then (Table I gives a state comparison of the space shortage problem.)

Furthermore, as overcrowding becomes unmanageable, state correctional authorities are frequently forced to house state prisoners in local jails. In 1979, this occurred in fifteen states. A total of 64,000 such prisoners represented more than 2 percent of the state prisoner population. This backup of state-sentenced prisoners in local jails has not only strained those facilities beyond capacity, but has created difficult control and budgetary problems for jail administrators.

Facing this problem, the nation's Governors conducted a work session at their recent winter meeting about the crisis in corrections. Several Governors pointed out the steps that they are taking to deal with the problems of prison bed space shortage. Some are using available space in neighboring states. Some are able to temporarily use federal facilities. However, all Governors at the work session were searching for some permanent solution to the prison overcrowding problem.

We appreciate what this Administration has done in helping Governors deal with the prison problem. The Attorney General's Task Force on Violent Crime gave top priority to the problem of prison bed space shortage and the general problems of corrections. It recommended that the National Corrections Academy provide training to state and local correctional managers. The Task Force also recommended that federal prisons should be allowed to house more state inmates.

Finally, and most important for this hearing, the Task Force recommended that federal surplus property be made available to states for use as corrections facilities. The National Governors' Association offers strong support for this recommendation. Given the fact that many

states are experiencing serious financial problems, the donation of surplus federal property would assist in dealing with the prison bed space shortage problem, because states could use available state resources to renovate and make the property habitable.

Furthermore, the donation of federal surplus property (depending on the condition and the type of property) makes available immediately a method of dealing with the bed space shortage problem. It would take several years to purchase and construct new facilities. However, according to the condition of the property, it could be made habitable for inmates in several months.

In closing, the policy adopted at our winter meeting gives an overall summary of our position on corrections. It states:

"The lack of adequate custodial space in the nation's prisons and jails is clearly detrimental to the administration of justice. It affects the criminal justice system's response to those criminals who have been apprehended, prosecuted and convicted. It also affects the environment and programs within correctional institutions and is a major contributing factor to the inadequate physical conditions and tensions which characterize our prisons and jails."

The public must be better informed about this problem so that it will support needed responses, including the provision of adequate prison space. States and localities must have adequate prison and jail space to confine offenders who are deemed to be a serious risk to the public. Priority use of available space should be given to the confinement of such offenders, and inmate classification systems should be used to this end. Where offenders pose no serious danger to the community and incarceration is not the indicated sanction, states and localities should alleviate prison and jail overcrowding through the development and use of alternatives to pretrial detention, jail and prison.

Where necessary and appropriate, capital construction, renovation and conversion of facilities for prisons and jails should be supported.

The National Governors' Association commends the Attorney General's Task Force on Violent Crime for its recognition of the magnitude of this problem. We support proposals to make available surplus federal property for use as corrections facilities, open the national corrections academy for training state and local correctional managers, and allow federal prisons to house state inmates.

Finally, the National Governors' Association stands ready to work with this Committee and the Administration in implementing this legislation. We believe that it is necessary and needed at the present time. Our prisons are becoming more crowded each day, and we must do something about this situation.

Thank you for allowing the National Governors' Association the opportunity to testify on this important issue.

**TABLE I**  
**PRISONERS UNDER JURISDICTION OF SELECT STATE CORRECTIONAL AUTHORITIES**  
**YEAR END 1978 AND 1980**

State	State Population (1)	Incarcera- tion Rate per 100,000	State Prison Population 1980 (2)	State Prison Population 1978 (3)	% Change	Confinement Units 1978 (4) (7)	Court Order or Individual Litigation (5)	1. Space Shortage 2. Conditions (6)
United States	226,504,825	135	304,759	268,189	+13.64	200,100		
Texas	14,228,383	210	29,886	23,850	+25.31	9,015	yes	1 & 2
California	23,668,562	104	24,579	18,670	+24.78	13,631	yes	1 & 2
New York	17,557,288	124	21,819	11,830	+84.44	10,856	no	-
Florida	9,739,992	213	20,742	16,912	+22.65	5,447	yes	1
North Carolina	5,874,429	262	15,382	10,559	+45.68	1,876	yes	1 & 2
Michigan	9,258,344	164	15,158	13,271	+14.22	9,728	yes	1
Ohio	10,797,419	123	13,256	12,159	+9.02	7,350	yes	1 & 2
Illinois	11,418,461	115	13,104	10,515	+24.62	7,141	yes	1 & 2
Georgia	5,464,265	218	11,932	8,751	+36.35	2,647	yes	1 & 2
Virginia	5,346,279	167	8,920	5,563	+60.35	3,274	yes	1 & 2
Vermont	511,456	93	476	118	+303.90	101	prison closed	-
Colorado	2,888,834	96	2,784	1,709	+63.08	1,709	yes	1 & 2
Idaho	943,935	87	817	697	+17.31	473	no	-
Iowa	2,913,387	86	2,512	1,772	+41.76	1,760	yes	1 & 2
Kansas	2,363,208	106	2,494	2,138	+16.67	1,918	no	-
Maine	1,124,660	74	829	665	+31.10	621	yes	1 & 2
Arizona	2,717,866	170	4,607	1,809	+154.51	989	yes	1 & 2
Nevada	799,184	230	1,839	1,248	+47.48	730	yes	1 & 2
New Mexico	1,299,968	114	1,478	1,483	-.31	482	yes	1 & 2
Tennessee	4,590,750	153	7,023	4,366	+60.86	1,908	yes	1 & 2

(1) 1980 Census of Population and Housing Advance Report, Bureau of the Census, April 1981.

(2) Prisoners in 1980, Bulletin, Bureau of Justice Statistics. May 1981. These represent preliminary figures and are subject to change.

(3) American Prisons and Jails, Volume II, Conditions and Costs of Confinement, National Institute of Justice, October 1980.

(4) Ibid.

(5) NGA Staff Paper.

(6) Ibid.

(7) Confinement units are defined as single cells with less than 120 sq. ft. and all other areas utilized for confinement purposes (dormitories, dayrooms, etc.) utilizing 60 sq. ft. as one confinement unit.

STATE RANKING FOR PRISON POPULATIONS IN 1980

Population Rank		State	Individual State's 1980 Prison Population (1)	Individual State's % of 1980 National State Prison Population	Individual State's 1980 General Population (2)	Individual State's % of 1980 National General Population
Prison	General					
1	3	*Texas	29,886	9.806	14,228,383	6.282
2	1	*California	24,579	8.065	23,668,562	10.449
3	2	New York	21,819	7.159	17,557,288	7.751
4	7	*Florida	20,742	6.806	9,739,992	4.300
5	10	*North Carolina	15,382	5.047	5,874,429	2.594
6	8	*Michigan	15,158	4.974	9,258,344	4.087
7	6	*Ohio	13,256	4.350	10,797,419	4.767
8	5	*Illinois	13,104	4.300	11,418,461	5.041
9	13	*Georgia	11,932	3.915	5,464,265	2.412
10	14	*Virginia	8,920	2.927	5,346,279	2.360
SUBTOTAL			174,778	57.349	113,353,422	50.043
11	19	*Louisiana	8,661	2.842	4,203,972	1.856
12	4	Pennsylvania	8,153	2.675	11,866,728	5.239
13	24	*South Carolina	7,862	2.580	3,119,208	1.377
14	18	*Maryland	7,731	2.537	4,216,446	1.862
15	17	*Tennessee	7,023	2.304	4,590,750	2.027
16	12	*Indiana	6,683	2.193	5,490,179	2.424
17	9	New Jersey	6,087	1.997	7,364,158	3.251
18	22	*Alabama	5,961	1.956	3,890,061	1.717
19	15	*Missouri	5,524	1.813	4,917,444	2.171
20	26	*Oklahoma	4,648	1.525	3,025,266	1.366
SUBTOTAL			243,111	79.771	166,037,634	73.333
21	29	*Arizona	4,607	1.512	2,717,866	1.200
22	20	*Washington	4,333	1.422	4,130,163	1.823
23	25	Connecticut	4,308	1.414	3,107,576	1.372
24	16	*Wisconsin	3,854	1.266	4,705,335	2.077
25	23	*Kentucky	3,608	1.184	3,661,433	1.616
26	31	*Mississippi	3,374	1.107	2,520,638	1.113
27	11	*Massachusetts	3,251	1.067	5,737,037	2.533
28	47	*District of Columbia	3,145	1.032	637,651	.282
29	30	*Oregon	3,125	1.025	2,632,663	1.162
30	33	*Arkansas	2,909	.955	2,285,513	1.009

Population Rank		State	Individual State's 1980 Prison Population	Individual State's % of 1980 National State Prison Population	Individual State's 1980 General Population	Individual State's % of 1980 National General Population
Prison	General					
31	28	*Colorado	2,784	.914	2,888,834	1.275
32	27	*Iowa	2,512	.824	2,913,387	1.286
33	32	Kansas	2,494	.818	2,363,208	1.043
34	21	Minnesota	2,001	.657	4,077,148	1.800
35	43	*Nevada	1,839	.603	799,184	.353
SUBTOTAL			291,258	95.571	211,215,270	93.277
36	37	*New Mexico	1,478	.485	1,299,968	.574
37	48	*Delaware	1,339	.439	595,225	.263
38	34	West Virginia	1,248	.410	1,949,644	.861
39	35	Nebraska	1,239	.407	1,570,006	.693
40	39	Hawaii	990	.325	965,000	.426
41	36	*Utah	932	.306	1,461,037	.645
42	51	Alaska	832	.273	400,481	.177
43	38	*Maine	829	.272	1,124,660	.497
44	40	*Rhode Island	823	.270	947,154	.418
45	41	Idaho	817	.268	943,935	.417
46	44	Montana	746	.245	786,690	.347
47	45	South Dakota	635	.208	690,178	.305
48	50	*Wyoming	490	.161	470,816	.208
49	49	*Vermont	476	.156	511,456	.226
50	42	*New Hampshire	325	.107	920,610	.406
51	46	North Dakota	302	.099	652,695	.288
TOTAL			304,759	100.000	226,504,825	100.000

- (1) Prisoners in 1980, Bureau of Justice Statistics Bulletin, May 1981. Preliminary figures subject to change.  
(2) 1980 Census of Population and Housing, Advance Report, Bureau of the Census, April 1981.

\*Indicates jurisdiction is either under direct court order or involved in litigation concerning the condition of the entire state prison system or of a specific institution within a jurisdiction's correctional system. In addition to the 37 jurisdictions presented on this report, the territories of Puerto Rico and the Virgin Islands are also under court order.

Mr. BURTON. Our next witness is our former colleague, the Senator from Iowa, Charles Grassley.

Senator, it is nice to have you before the committee.  
You may proceed.

**STATEMENT OF HON. CHARLES E. GRASSLEY, A SENATOR IN  
CONGRESS FROM THE STATE OF IOWA**

Mr. GRASSLEY. Thank you, Mr. Chairman.

It is refreshing to come back over here and still see people that I served with. Often I see many new faces and I have to get acquainted with the people I am testifying before.

I certainly appreciate having the opportunity to testify before the distinguished chairman from California as to the matter of H.R. 6028, a bill which has an identical aim to that of S. 1422, a bill which I introduced in the Senate on June 24, 1981.

I commend you on your timely scheduling of this hearing, timely in the sense that it is only in the last 8 months that the administration has endorsed the donation of surplus Federal property to States for the construction of criminal justice facilities and specifically for the construction of prisons.

It is only in the last 2 months that S. 1422 was unanimously reported by the full Senate Governmental Affairs Committee.

Cosponsors of the bill include Senators Glenn, Gorton, Cochran, Domenici, Moynihan, Thurmond, Jackson, Durenberger, Danforth, Schmitt, Hollings, Hayakawa, and Hawkins.

It has been argued that this additional exception will deplete Federal property resources. This may be a plausible argument, but nevertheless the need for this legislation is critical and I think overriding to that argument.

Between 1978 and 1981, the number of State prisoners increased from 268,189 to 329,122, according to the Bureau of Justice statistics. Thus, State systems have over the past few years had to accommodate an increase of 60,000 beds.

The problem of overcrowding goes beyond corrections. Potentially it leads to a circumvention of the overall public and criminal justice system's intent to deal with the violent offender in a manner consistent with the gravity of the offense.

Probation is sometimes meted out instead of incarceration simply because the judges are aware that there is currently no prison space available for the offenders in prison.

I want to strongly endorse the goals which H.R. 6028 seeks to achieve. These goals are identical to the aims of S. 1422, as I said previously.

In my opinion, we will certainly want to utilize any already existing apparatus in order to save costs and time, given the problem of prison overcrowding which is now before us.

Under the provisions of my bill, I believe that a more streamlined process will minimize response times between the Federal, State, and local governments, utilize existing real property expertise in GSA as well as the correctional expertise in the Department of Justice, and minimize compliance restrictions on State and local governments.

Let me assure you that in the continued spirit of bipartisan and bicameral cooperation we have experienced with this proposal so far, we in the Senate remain anxious to work with you in developing the best possible mechanism to use for the distribution of this property.

It is no secret that States are currently faced with the question of how to eliminate overcrowding in prisons so as to fashion programs that rise to constitutionally acceptable levels of legality and humanity.

Society cannot permit crime to go unpunished for want of prison space, and for the present, prison is the only sanction available for violent crime. A revolutionary breakthrough in the range of available rehabilitative sanctions is not on the horizon at this time.

Mr. Chairman, I recognize that you always have more witnesses than you can accommodate. I want to thank you for the opportunity to testify. If you have any questions I would be happy to respond as best I can. Although I am not a member of the Senate Governmental Affairs Committee where the debate on this took place, I have been following the debate. Right now I am trying to negotiate it to consideration in the Senate.

[Mr. Grassley's prepared statement follows:]

STATEMENT OF SENATOR CHARLES E. GRASSLEY  
BEFORE THE SUBCOMMITTEE ON GOVERNMENT ACTIVITIES AND TRANSPORTATION  
HEARING ON H.R. 6028, APRIL 21, 1982

Mr. Chairman:

I certainly appreciate having the opportunity to testify before the distinguished Chairman from California as to the merits of H.R. 6028, a bill which has an identical aim as S. 1422, a bill which I introduced in the Senate on June 24, 1981. I commend you on your timely scheduling of this hearing -- timely in the sense that it is only in the last eight months that the Administration has endorsed the donation of surplus federal property to states for the construction of criminal justice facilities and specifically for the construction of prisons. It is only in the last two months that S. 1422 was unanimously reported by the full Senate Governmental Affairs Committee. Cosponsors of the bill include Senators Glenn, Gorton, Cochran, Domenici, Moynihan, Thurmond, Jackson, Durenberger, Danforth, Schmitt, Hollings, Hayakawa, and Hawkins.

It has been argued that this additional exception will deplete federal property resources. That may be true, nevertheless, it is critically needed.

Between 1978 and 1981, the number of state prisoners increased from 268,189 to 329,122, according to the Bureau of Justice Statistics. Thus, state systems have over the past few years had to accommodate an increase of 60,000 beds. The problem of overcrowding goes beyond corrections. Potentially it leads to a circumvention of the overall public and criminal justice system's intent to deal with the violent offender in a manner consistent with the gravity of the offense. Probation is meted out instead of incarceration simply because the judges are aware that there is currently no prison space available for the offenders in prison.

I want to strongly endorse the goals which H.R. 6028 seeks to achieve. These goals are identical to the aims of S. 1422. In my opinion, we will certainly want to utilize any already existing apparatus in order to save costs and time.

Under the provisions of my bill, I believe that a more streamlined process will minimize response times between the federal, state, and local governments, utilize existing real property expertise in GSA as well as the correctional expertise in the Department of Justice, and minimize compliance restrictions on state and local governments.

Let me assure you that in the continued spirit of bipartisan and bicameral cooperation we have experienced with this proposal so far, we in the Senate remain anxious to work with you in developing the best possible mechanism to use for the distribution of this property.

It is no secret that states are currently faced with the question of how to eliminate overcrowding in prisons so as to fashion programs that rise to constitutionally acceptable levels of legality and humanity. Society cannot permit crime to go unpunished for want of prison space, and for the present, prison is the only sanction available for violent crime. A revolutionary breakthrough in the range of available rehabilitative sanctions is not on the horizon.

Mr. Chairman, I recognize that you are operating under time constraints, and want to again thank you for the opportunity to testify.

Mr. BURTON. Senator, given the way this bill moved out of that committee in the Senate, when do you think the full Senate will act on it?

Is it just a matter of their acting after the budget compromise for 1986 has been reached? [Laughter.]

Mr. GRASSLEY. There are only two things holding it up. Do you want my analysis?

Mr. BURTON. Is it just a scheduling matter?

Mr. GRASSLEY. Basically there are two holds on it; one by Senator Percy because he is interested in putting on his bill that would mandate the disposal of more surplus property.

I believe you are aware of that bill which is pretty all-encompassing.

Mr. BURTON. Is that the sell-off bill?

Mr. GRASSLEY. Yes.

I have talked with him about that. I think we can get him to withdraw his hold.

More importantly are the problems in Florida with the refugees there. Senator Chiles has a hold on with regard to making the legislation more binding.

He would like to give a higher priority to this property and also bind the Federal Government to some more expense in the conversion of such property for facilities that Florida needs.

I have not had an opportunity to speak with Senator Chiles on an in-depth basis. Our conversations have gone on at the staff level.

There again, I think if I can tell Senator Chiles this and convince him that this legislation has been worked out in considerable detail between GSA, the Department of Justice, and competing interests within the Senate, that he would not want to jeopardize the entire bill with his amendment which, frankly I think would slow it down.

I think he would back off from it, but we have not had a chance to have that conversation yet.

Mr. BURTON. I would think, as you report, that what the Senator from Florida would like to do with the bill is to slow it down. Speaking just for myself and for some other members in the subcommittee, I think the bill as reintroduced by Congressman Zeffereetti would get very favorable consideration.

I do not think we are interested in saying: "Whatever it is, take it, make it a big prison, put some more Federal money in it."

Mr. GRASSLEY. If it is all right with you, then, I could communicate that to the gentleman.

Mr. BURTON. That is my own personal opinion. I hope I will have something to do with the legislation. Is not Senator Chiles on the Committee on Governmental Affairs?

Mr. GRASSLEY. I do not know.

Mr. BURTON. If he is still on the committee, he voted for it when it passed. Maybe he is trying to get some bargaining leverage. That is what I am saying.

Mr. GRASSLEY. I have not had a chance to review his participation on it.

Mr. BURTON. I think he was chairman of the subcommittee when the good guys were in the majority over there. [Laughter.]

I would think if you talked to the Senator there might be something you could do. Maybe he is just looking for some leverage on it.

Thank you for your comments. Mr. Walker?

Mr. WALKER. Thank you, Mr. Chairman.

We are looking for the good guys to get on the majority here. [Laughter.]

You obviously are aware of the negotiations that have gone on. Have you been bothered at all by the fact that the administration seems to be going in two different directions as exemplified in Senator Percy's approach that on the one hand we are talking about selling off surplus property, while at the same time we propose giving away correctional facilities?

We have surplus property receipts as a major budget item, and yet we are talking about increasing the amount of property that we dispose of and adding more purposes to it.

I am somewhat bothered by that. Has it been a bother or a frustration to you?

Mr. GRASSLEY. I think you have to divide it into two different levels of concern and interest in the administration. One is on the general premise of getting rid of it which I think involves things other than just how much Federal land the Federal Government ought to manage.

It also deals with the budgetary and fiscal problems that the Federal Government is confronted with at this point as opposed to what we are trying to accomplish, a specific purpose.

I think that a realistic view now obviously has to put our view on the lower level because it is less controversial. It meets an immediate need and one in which we can accomplish in this legislative session.

I do not see the two necessarily in conflict, frankly, as I viewed it, because there are different goals to be accomplished.

Mr. WALKER. Are you convinced that most of the property that would be turned over for purposes of correctional facilities would not be of significant value?

We are talking about selling off \$4 billion worth of land if you take a look at the fiscal year 1984 budget. That is a good bit of land. There is going to have to be some awfully prime property sold.

Obviously you have to convince yourself that the kind of property that would be used for correctional facilities would not be the kind of prime property that we are going to be selling off.

Is that a fair assessment?

Mr. GRASSLEY. I would say basically in the consideration of our legislation as we give priority to the States for those facilities that are already directed toward correctional uses that you probably would not have that sort of property meeting the goal which is revenue producing to the extent that the Federal Government wants the goal to be used for balancing the budget or reducing the deficit.

Mr. WALKER. Thank you.

I also want to thank you for your leadership in this area. I think you have helped to raise the issue to the point where there is some chance for action in this session.

I think you should be congratulated for having moved it along on the Senate side. Hopefully we can move something along on this side.

Thank you very much.

Mr. GRASSLEY. Thank you, gentlemen. I appreciate your hospitality.

Mr. BURTON. Thank you. It is good to see you.

We will next hear from the Honorable Dante Fascell speaking for Senator Chiles. [Laughter.]

You may proceed.

#### STATEMENT OF HON. DANTE B. FASCELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. FASCELL. Thank you, Mr. Chairman.

Mr. Chairman, I have a prepared statement which I would request be inserted in the record.

Mr. BURTON. Without objection, so ordered.

Mr. FASCELL. I would first of all like to thank the subcommittee for holding the hearings on this subject and the related subject on the overall disposal question. Both are very important at this point.

I would like to address myself to the overall bill at another time. I think that is a very vital issue.

Mr. BURTON. Is that the selloff bill?

Mr. FASCELL. Yes, the so-called big selloff.

I would like to address H.R. 4450 today. The question, it seems to me, is this. Do you want to add another category of priorities for the purpose of disposal?

It seems to me that the evidence would be sufficient by the time you get through with this record that the question of prison facilities is of extremely high priority in our society today both at the Federal and local level.

This merits and warrants the consideration of adding that as another category for disposal purposes. All of you are familiar with the problem in Florida, probably all too well.

I would submit that as bad as it is there that the problem exists all over the country in one degree or another. We just unfortunately have not put the emphasis on our facilities that we need.

At the Federal level I must say that a valiant effort has been made to do that. But we have the anomaly in Florida, for example, where in trying to help out with Federal prisoners we have an arrangement whereby they could be put in local jails until such time as the Federals could pick them up and find a spot for them.

That was a nice cooperative arrangement until the Federal court decided that we were overcrowding our local jails and now we are under a court order to receive the overcrowding.

We are not very excited about putting people in the street that we have gone to the trouble of convicting. The whole process of catching up with that is massive, I might say.

The problem is massive and I am sure that other States and other communities are facing this same problem. So where the Federal Government has already acquired the property and if taxpayers paid for it all, it does not make any difference how you juggle this thing around. It is just taking money out of one pocket and putting it in the other for all practical purposes.

It seems to me, therefore, Mr. Chairman, that it is a high priority and a logical public purpose at this time. It may not be forever, but at this time.

Therefore, it warrants the consideration which this bill seeks to give it.

Thank you very much.

[Mr. Fascell's prepared statement follows:]

STATEMENT OF CONGRESSMAN DANTE FASCELL BEFORE THE GOVERNMENT ACTIVITIES  
SUBCOMMITTEE OF THE HOUSE GOVERNMENT OPERATIONS COMMITTEE IN SUPPORT OF  
H.R. 4450.

April 21, 1982

Mr. Chairman, as a cosponsor of H.R. 4450, to authorize the disposal of surplus real property to State and local governments at no cost for use as correctional facilities, I appreciate having this opportunity to appear before you.

The Congress enacted the Federal Property and Administrative Services Act in 1949. This legislation, along with subsequent amendments, takes note of the belief that federal property which is no longer required by the federal government should be donated to State and local governments for certain, specific public benefit uses. These include health, education, recreation and airport purposes. The theory then and now has been that the American people paid for this property with their taxes and should be entitled to continue to benefit from it and not pay for it twice through a requirement that States and local governments should have to purchase it.

Unfortunately, our State and local prison facilities are literally bursting at the seams. In my own district, Dade County, Florida, is under a federal court order to relieve overcrowding in its jails and the State of Florida is presently undertaking a prison expansion program.

I am pleased that our law enforcement agencies have been successful in their efforts to apprehend criminals and keep them off the streets. However, they are under extreme pressure to try to find the funds and suitable facilities for housing them. It seems to me to be a logical solution to amend the Federal Property Act to extend its provisions for donation to States and local governments for correctional facility purposes.

The nation has been made keenly aware of the problems South Florida

Florida has had with increased crime through extensive national media coverage. However, I do not believe that we have a monopoly on this situation. Crime is unfortunately endemic throughout the country and, particularly, in large urban areas. There is considerable public clamor for reformed judicial procedures, bond reform and other measures which will ensure that dangerous criminals will be kept off the streets for the safety of the community. I support these efforts. However, they will also result in the need for additional space to house prisoners.

The recession and the sharp reduction of federal spending for many programs have placed states and localities under ever-increasing financial strains. It will be all they can do to construct and maintain new prison facilities, much less have to purchase the land on which to build them. Providing surplus federal land under the discounted conveyance principle will be a tremendous help to the States in protecting law-abiding citizens of our communities. I urge your support and approval of this legislation.

Mr. BURTON. Thank you.

My feeling, and speaking for myself and some of the other members of the subcommittee is that it is consistent and logical to place this into the list of permissive activities where the Federal Government can make land available at no cost to a State and local government.

I do not feel that it has to be prioritized. I think the GSA, in their wisdom, if they have a correctional facility that they are not going to do anything with, rather than have it stand around and get rats and vandalism or whatever, that could then be utilized by the locals for correctional institutions.

Mr. FASCELL. Mr. Chairman, I agree with you. I think the processes which have evolved as a result of the law being in effect are sufficient for whatever protection is necessary.

I have had considerable experience in the years I have been here with that process. I must say that GSA has been extremely responsive and very careful in these determinations in assuring that the public purpose is satisfactorily fulfilled and that the Federal Government is duly protected.

You have oversight. There are other committees which have oversight over that process. I do not have any concern about that at all.

It is simply to put it in the categories and then let the normal process take over. Let everybody make their case; if they can make a case, fine. If they cannot, then that is it.

Mr. BURTON. They will not have the excuse: "Well, it is going to take us 100 years because this is something new."

Mr. FASCELL. Right.

Mr. BURTON. Do you know what Senator Chiles is thinking about this bill?

Mr. FASCELL. I have not had a chance to talk with him. If this committee is involved in some way and would like to do it—

Mr. BURTON. I think Senator Grassley will take care of that. I know he is on the committee. I am sure he is still on the subcommittee.

Mr. FASCELL. I have not talked with the Senator even about this specific process or even the overall bill. I have worked with him on a lot of other matters, obviously. I know that he is the kind of person that wants to tackle the problem. We have one in Florida and he would like to get it solved.

Besides that, we are all running for office.

Mr. BURTON. Not all of us are. [Laughter.]

Mr. Walker?

Mr. WALKER. I have no questions.

Mr. FASCELL. I detected a big smile on your face. Thank you very much.

Mr. BURTON. Thank you.

Our next witness is Jeffrey Harris, Deputy Associate Attorney General, Department of Justice.

He was formerly the Executive Director of the Task Force on Violent Crime.

Welcome; you may proceed.

#### STATEMENT OF JEFFREY HARRIS, DEPUTY ASSOCIATE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. HARRIS. Thank you, Mr. Chairman.

Thank you for the opportunity to present the views of the Department of Justice on H.R. 4450 and H.R. 6028, both of which would facilitate the disposal of surplus Federal property to States and localities for correctional use.

The Department strongly endorses in principle the facilitation of such dispositions. In addition, we greatly prefer the framework for such dispositions contained in H.R. 4450 and support that bill with certain drafting changes.

We cannot support H.R. 6028 in its present form.

Mr. BURTON. Why?

Mr. HARRIS. I will touch on that in a moment. If you would prefer, I will answer it now.

Mr. BURTON. I would prefer that you answer it now.

Mr. HARRIS. The reason is that H.R. 6028 provides that the surplus property would be transferred to the Attorney General who would then enter into the sale or lease of such property.

We feel, based upon the number of contemplated transfers, that this is an inefficient way of doing it and that the GSA ought to dispose of the property by lease, sale, or donation, whatever it would be, as they have done, for example, in the wildlife area.

Mr. BURTON. That is a good example. Thank you.

Mr. HARRIS. Let me begin by supplying some essential background. The severe overcrowding of State and local correctional facilities is well known and well documented.

The U.S. prison population expanded in the first 6 months of 1981 at more than double the rate of 1980. Since 1976 the population has increased by 50 percent.

This overcrowding is perhaps the major problem confronting the Nation's criminal justice system. To deal with this problem, the Attorney General's Task Force on Violent Crime, on which I served as Executive Director, recommended the establishment of a program to facilitate the donation of suitable surplus Federal properties to States and localities for correctional use.

The Attorney General has endorsed this recommendation and the Department has begun to implement it.

The first step in the implementation process was the establishment of a surplus properties clearinghouse in the Bureau of Prisons.

Mr. BURTON. Is that under the Attorney General? Is the Bureau of Prisons somewhere under Justice and the Attorney General?

Mr. HARRIS. Yes.

Mr. BURTON. He has established a clearinghouse?

Mr. HARRIS. That is right.

Mr. BURTON. We would like to use the clearinghouse concept for correctional facilities, also. That is the way we give the property to HHS and to other organizations. The Bureau of Prisons could use the clearinghouse to do it.

Mr. HARRIS. The clearinghouse merely is a so-called marriage counselor in this arrangement. They basically receive requests from States and they attempt to survey property available.

Mr. BURTON. And then they go back to the GSA?

Mr. HARRIS. They put the State together with the GSA.

Mr. BURTON. We want to eliminate the middle man.

Mr. HARRIS. The middle man, unfortunately, has the expertise in leasing and managing property and also based on the number of transfers, the middle man can more efficiently do it, that is, cost-efficiently.

Mr. BURTON. How many transfers do you think there will be for correctional facilities.

Mr. HARRIS. It is hard to say exactly. My guess is somewhere between 6 and 12 per year.

Mr. BURTON. That will really tax the Attorney General's office.

Mr. HARRIS. It will not tax it, but to have a separate entity set up to begin to lease, sell, or donate property when the Federal Government already has an agency which is tasked with doing precisely that, does not make sense to our way of thinking.

Mr. BURTON. What we are trying to do is to correlate this with the existing law.

Mr. HARRIS. We prefer to track it with existing law in the wildlife area.

Mr. BURTON. You do not pass legislation.

Mr. HARRIS. No, but you asked our opinion. That is why we are testifying.

We would prefer the scheme that has been used for 30 years in the wildlife area; namely, that after the properties are identified, GSA does the lease or the sale of the property.

Mr. BURTON. I think communities view protecting fish and birds differently than they view prisons in their backyard.

You may proceed.

Mr. HARRIS. The clearinghouse was established in July of last year. Its function is to assist State and local correctional agencies in learning about and acquiring suitable surplus properties.

In this effort, the clearinghouse works closely with the GSA, the agency responsible for processing and determining applications for surplus Federal property.

To date, the clearinghouse has had over 100 inquiries from interested States and localities and is helping to expedite many requests for particular parcels of property.

Thanks to the clearinghouse and outstanding cooperation from GSA at all levels, there have been a number of transfers of surplus properties for conversion to correctional use. Several others are pending.

Under present law, transfers for correctional use can be made only for fair market value in most cases. Because of the critical nature of the need for additional prison and jail space, the task force on violent crime recommended legislation which would permit donation or discounted sale of surplus property to States and localities for correctional use.

The Attorney General has endorsed this recommendation. Both bills under consideration would accomplish this goal. The Department supports H.R. 4450, with the changes suggested below. For the reasons stated below, the Department cannot support H.R. 6028 in its present form.

H.R. 4450 authorizes the Administrator of GSA, upon recommendation of the Attorney General, to donate surplus property to any State for the construction and modification of criminal justice facilities, including courts, offices, and training facilities as well as correctional facilities.

The most pressing need at the State and local level is for correctional facilities. We, therefore, strongly recommend that the bill's coverage be limited accordingly to focus its benefits where they are most needed; namely, for correctional facilities.

Second, the legislation as now written authorizes donation of surplus property to States and municipalities. In order to clarify the definition of eligible recipients and to make the proposed bill consistent with existing property donation laws, we suggest permitting transfers to States and any political subdivisions or instrumentalities thereof.

Third, there is a need to provide for monitoring by GSA to insure continued appropriate use of the properties conveyed and to provide for reversion to GSA in the event of use inconsistent with the purpose for which the property was originally furnished.

The Senate Committee on Governmental Affairs adopted all these suggestions in reporting a bill, S. 1422, which is virtually identical to H.R. 4450.

I have attached a copy of S. 1422 as reported by the committee as well as the committee's report on the bill to my prepared statement and would ask that these be placed in the record at this time.

Mr. BURTON. Without objection, so ordered.

[See pp. 42-64.]

Mr. HARRIS. If similar changes are made to H.R. 4450, the Department would support its enactment.

The Department of Justice recommends one different amendment, however. Specifically, we suggest that the bill be amended to authorize and not require the conveyance of property for use as correctional facilities at no cost.

We also recommend that the Administrator be authorized to convey property for use as correctional properties at less than fair market value.

Although the administration's policy with respect to transfer of property for use as correctional facilities has not changed, we believe the changes we are suggesting will give the Government the flexibility it needs to operate the program efficiently and successfully.

This goes to something that Congressman Fascell mentioned that the day may come when we work our way out of this critical situation for corrections. At that time the Government may not feel it is essential to donate the property.

#### H.R. 6028

Under H.R. 6028, GSA would assign to the Attorney General surplus real property recommended by the Attorney General as needed for correctional use.

The Attorney General would then fix the sale or lease value of the property and sell or lease it to the requesting State or political subdivision.

In fixing the property's value, the Attorney General is permitted to take into consideration any benefit which may accrue to the United States from use of the property by the transferee.

This provision would presumably allow a sale or lease at a discounted value or at no cost. Other provisions of the proposed legislation would allow GSA and the Department to monitor the use of the property by the transferee.

Existing provisions of the law governing disposal of surplus Federal property—the Federal Property and Administrative Services Act of 1949, as amended—authorize disposal of such property at no cost to the recipient for a number of specified purposes, such as educational and recreational use.

H.R. 6028 parallels these existing provisions. In spite of this consistency, the Department prefers H.R. 4450 with the suggested changes.

H.R. 6028 would require the Department to establish a real property unit to administer the correctional disposal program.

Under the scheme envisioned by the bill, the Department would have to solicit and review formal applications for surplus sites submitted by correctional agencies, determine a discount value for the property, prepare and deliver the deed and monitor compliance with the conditions of transfer.

Current departmental budget constraints would not permit adequate performance of this function without additional resources.

Moreover, the establishment of a real property disposal bureaucracy within the Department would be a wasteful duplication of a capability already existing in GSA. It is far preferable for GSA to act as the disposal agency for correctional transfers, with the Department playing an advisory role.

As I noted earlier, the proposed bill parallels existing provisions of the Federal Property and Administrative Services Act of 1949, as amended.

Under these existing provisions, we understand that the Department of Education and the Department of the Interior have established in-house real property disposal services to administer the statutory programs providing for disposal of surplus real property for educational and recreational purposes, respectively.

While this may be appropriate for these large-scale disposal programs, the more modest rate of disposal expected under the correctional disposal program would be much more effectively administered by GSA.

Accordingly, the Department cannot support H.R. 6028 in its present form. Instead, we strongly recommend an amendment in the nature of a substitute to conform with the provisions of S. 1422, as reported by the Senate Committee on Governmental Affairs.

I would be pleased to answer any questions you may have.

Thank you.

[Mr. Harris' prepared statement, with attachments, follows:]

## STATEMENT

OF.

JEFFREY HARRIS  
DEPUTY ASSOCIATE ATTORNEY GENERAL

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to present the views of the Department of Justice on H.R. 4450 and H.R. 6028, both of which would facilitate the disposal of surplus federal property to states and localities for correctional use. The Department strongly endorses in principle the facilitation of such dispositions. In addition, we greatly prefer the framework for such dispositions contained in H.R. 4450 and support that bill with certain drafting changes. We cannot support H.R. 6028 in its present form.

Let me begin by supplying some essential background. The severe overcrowding of state and local correctional facilities is well-known and well-documented. The United States prison population expanded in the first six months of 1981 at more than double the rate of 1980. Since 1976 the population has increased by 50 percent. This overcrowding is perhaps the major problem confronting the nation's criminal justice system. To deal with this problem, the Attorney General's Task Force on Violent Crime, which I served as Executive Director, recommended the establishment of a program to facilitate the donation of suitable surplus federal properties to states and localities for correctional use. The Attorney General has endorsed this recommendation and the Department has begun to implement it.

The first step in the implementation process was the establishment of a surplus properties clearinghouse in the Bureau of

Prisons. The clearinghouse was established in July of last year. Its function is to assist state and local correctional agencies in learning about and acquiring suitable surplus properties. In this effort, the clearinghouse works closely with the General Services Administration (GSA), the agency responsible for processing and determining applications for surplus federal property. To date, the clearinghouse has had over 100 inquiries from interested states and localities and is helping to expedite many requests for particular parcels of property. Thanks to the clearinghouse and outstanding cooperation from GSA at all levels, there have been a number of transfers of surplus properties for conversion to correctional use. Several others are pending.

Under present law, transfers for correctional use can be made only for fair market value in most cases. Because of the critical nature of the need for additional prison and jail space, the Task Force on Violent Crime recommended legislation which would permit donation or discounted sale of surplus property to states and localities for correctional use. The Attorney General has endorsed this recommendation. Both bills under consideration would accomplish this goal. The Department supports H.R. 4450, with the changes suggested below. For the reasons stated below, the Department cannot support H.R. 6028 in its present form.

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H.R. 4450 authorizes the Administrator of GSA, upon recommendation of the Attorney General, to donate surplus property to any

state for the construction and modification of criminal justice facilities, including courts, offices and training facilities as well as correctional facilities. The most pressing need at the state and local level is for correctional facilities. We, therefore, strongly recommend that the bill's coverage be limited accordingly to focus its benefits where they are most needed.

Second, the legislation as now written authorizes donation of surplus property to states and municipalities. In order to clarify the definition of eligible recipients and to make the proposed bill consistent with existing property donation laws, we suggest permitting transfers to states and any political subdivisions or instrumentalities thereof.

Third, there is a need to provide for monitoring by GSA to ensure continued appropriate use of the properties conveyed and to provide for reversion to GSA in the event of use inconsistent with the purpose for which the property was originally furnished.

The Senate Committee on Governmental Affairs adopted all these suggestions in reporting a bill, S. 1422, virtually identical to H.R. 4450. I have attached a copy of S. 1422 as reported by the Committee as well as the Committee's report on the bill. If similar changes are made to H.R. 4450, the Department would support its enactment. The Department of Justice recommends one different amendment, however. Specifically, we suggest that the bill be amended to authorize and not require the conveyance of property for use as correctional facilities at no cost. We also

recommend that the Administrator be authorized to convey property for use as correctional properties at less than fair market value. Although the Administration's policy with respect to transfer of property for use as correctional facilities has not changed, we believe the changes we are suggesting will give the government the flexibility it needs to operate the program efficiently and successfully.

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Existing provisions of the law governing disposal of surplus federal property (the Federal Property and Administrative Services Act of 1949, as amended) authorize disposal of such property at no cost to the recipient for a number of specified purposes, such as educational and recreational use. H.R. 6028 parallels these

existing provisions. In spite of this consistency, the Department prefers H.R. 4450 with the suggested changes.

H.R. 6028 would require the Department to establish a real property unit to administer the correctional disposal program. Under the scheme envisioned by the bill, the Department would have to solicit and review formal applications for surplus sites submitted by correctional agencies, determine a discount value for the property, prepare and deliver the deed and monitor compliance with the conditions of transfer. Current Departmental budget constraints would not permit adequate performance of this function without additional resources. Moreover, the establishment of a real property disposal bureaucracy within the Department would be a wasteful duplication of a capability already existing in GSA. It is far preferable for GSA to act as the disposal agency for correctional transfers, with the Department playing an advisory role.

As I noted earlier, the proposed bill parallels existing provisions of the Federal Property and Administrative Services Act of 1949, as amended. Under these existing provisions, we understand that the Department of Education and the Department of Interior have established in-house real property disposal services to administer the statutory programs providing for disposal of surplus real property for educational and recreational purposes, respectively. While this may be appropriate for these large-scale disposal programs, the more modest rate of disposal expected under the correctional disposal program would be much more effectively administered by GSA.

Accordingly, the Department cannot support H.R. 6028 in its present form. Instead, we strongly recommend an amendment in the nature of a substitute to conform with the provisions of S. 1422, as reported by the Senate Committee on Governmental Affairs.

I would be pleased to answer any questions you may have.

Calendar No. 458

97TH CONGRESS  
2D SESSION

**S. 1422**

[Report No. 97-322]

To authorize the donation of surplus property to any State for the construction and modernization of criminal justice facilities.

## IN THE SENATE OF THE UNITED STATES

JUNE 24 (legislative day, JUNE 1), 1981

Mr. GRASSLEY (for himself, Mr. COCHRAN, Mr. DOMENICI, Mr. MOYNIHAN, Mr. JACKSON, Mr. GORTON, Mr. DANFORTH, Mr. SCHMITT, Mr. HOLLINGS, Mr. DURENBERGER, Mrs. HAWKINS, Mr. HAYAKAWA, and Mr. GLENN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

MARCH 16 (legislative day, FEBRUARY 22), 1982

Reported by Mr. STEVENS, with an amendment in the nature of a substitute

[Strike out all after the enacting clause and insert the part printed in italic]

## A BILL

To authorize the donation of surplus property to any State for the construction and modernization of criminal justice facilities.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 That section 202 of the Federal Property and Administrative  
2 Services Act of 1949 (41 U.S.C. 484) is amended by adding  
3 at the end thereof the following new subsection:

4     “(p)(1) The Administrator is authorized, upon the rec-  
5 ommendation of the Attorney General, to donate surplus  
6 property to any State for the construction and modernization  
7 of criminal justice facilities. Such donation shall be without  
8 cost to the State except for the costs of care and handling of  
9 such property.

10     “(2) For purposes of this subsection:

11         “(A) The term ‘construction’ includes the prepara-  
12 tion of drawings and specifications for criminal justice  
13 facilities; erecting, building, acquiring, altering, remodel-  
14 ing, improving, or extending such facilities; and the  
15 inspection and supervision of the construction of such  
16 facilities. Such term does not include interest in land or  
17 offsite improvements.

18         “(B) The term ‘criminal justice facilities’ means—

19             “(i) court facilities;

20             “(ii) law enforcement facilities including facil-  
21 ities used for police training;

22             “(iii) facilities used for the prosecution of  
23 criminal offenses and for public legal defender ac-  
24 tivities;

1             “(iv) facilities used for probation or parole  
2 authorities or for preadjudication and postadjudi-  
3 cation of offenders or for the supervision of pa-  
4 rolees;

5             “(v) facilities used for juveniles who have  
6 been adjudicated delinquent or who are neglected  
7 juveniles awaiting trial or for juveniles receiving  
8 care or treatment;

9             “(vi) facilities used for the treatment, preven-  
10 tion, control, or reduction of narcotic addiction;

11             “(vii) correctional facilities; and

12             “(viii) any other facility used for any criminal  
13 justice purpose in the State.

14         “(C) The term ‘facilities’ means any buildings and  
15 related facilities, initial equipment, machinery, and util-  
16 ities necessary or appropriate for the criminal justice  
17 purpose for which the particular building was con-  
18 structed.

19         “(D) The term ‘modernization’ means any pro-  
20 gram or project designed to improve the operation of  
21 criminal justice facilities in any State, including proj-  
22 ects designed to improve the care of and the rehabilita-  
23 tion of individuals subject to the criminal justice  
24 system.

1       “(E) The term ‘State’ means each of the several  
2       States, the District of Columbia, the Commonwealth of  
3       Puerto Rico, Guam, American Samoa, the Virgin Is-  
4       lands, the Trust Territory of the Pacific Islands, and  
5       the Commonwealth of the Northern Mariana Islands.”

6       That section 203 of the Federal Property and Administrative  
7       Services Act of 1949 as amended (40 U.S.C. 484), is further  
8       amended by adding at the end thereof the following new sub-  
9       section:

10       “(p)(1) Under such regulations as he may prescribe, the  
11       Administrator is authorized in his discretion to transfer or  
12       convey to the several States, the District of Columbia, the  
13       Commonwealth of Puerto Rico, Guam, American Samoa,  
14       the Virgin Islands, the Trust Territory of the Pacific Is-  
15       lands, the Commonwealth of the Northern Mariana Islands,  
16       or any political subdivision or instrumentality thereof, sur-  
17       plus property determined by the Attorney General to be re-  
18       quired for correctional facility use by the authorized transfer-  
19       ee or grantee under an appropriate program or project for the  
20       care or rehabilitation of criminal offenders as approved by  
21       the Attorney General. Transfers or conveyance under this  
22       authority shall be made by the Administrator without mone-  
23       tary consideration to the United States.

24       “(2) The deed of conveyance of any surplus real proper-  
25       ty disposed of under the provisions of this subsection—

1       “(A) shall provide that all such property shall be  
2       used and maintained for the purpose for which it was  
3       conveyed in perpetuity, and that in the event the prop-  
4       erty ceases to be used or maintained for that purpose,  
5       all or any portion of the property shall, in its then ex-  
6       isting condition, at the option of the United States,  
7       revert to the United States; and

8       “(B) may contain such additional terms, reserva-  
9       tions, restrictions, and conditions as may be deter-  
10       mined by the Administrator to be necessary to safe-  
11       guard the interests of the United States.

12       “(3) With respect to surplus real property conveyed pur-  
13       suant to this subsection, the Administrator is authorized and  
14       directed—

15       “(A) to determine and enforce compliance with the  
16       terms, conditions, reservations, and restrictions con-  
17       tained in any instrument by which such transfer was  
18       made;

19       “(B) to reform, correct, or amend any such in-  
20       strument by the execution of a corrective reformatory or  
21       amendatory instrument where necessary to correct such  
22       instrument or to conform such transfer to the require-  
23       ments of applicable law; and

24       “(C) to (i) grant releases from any of the terms,  
25       conditions, reservations, and restrictions contained in,

1 and (ii) convey, quitclaim, or release to the transferee  
 2 or other eligible user any right or interest reserved to  
 3 the United States by any instrument by which such  
 4 transfer was made, if he determines that the property  
 5 so transferred no longer serves the purpose for which it  
 6 was transferred, or that such release, conveyance, or  
 7 quitclaim deed will not prevent accomplishment of the  
 8 purpose for which such property was so transferred:  
 9 Provided, That any such release, conveyance, or quit-  
 10 claim deed may be granted on, or made subject to, such  
 11 terms and conditions as he or she shall deem necessary  
 12 to protect or advance the interests of the United  
 13 States.”.

14 SEC. 2. The first sentence of subsection (o) of section  
 15 203 of the Federal Property and Administrative Services Act  
 16 of 1949, as amended (40 U.S.C. 484(o)), is further amended  
 17 by revising the first sentence of such subsection to read as  
 18 follows:

19 “(o) The Administrator with respect to personal proper-  
 20 ty donated under subsection (j) of this section and with re-  
 21 spect to personal or real property transferred or conveyanced  
 22 under subsection (p) of this section, and the head of each  
 23 executive agency disposing of real property under subsection  
 24 (k) of this section, shall submit during the calendar quarter  
 25 following the close of each fiscal year a report to the Senate

1 (or to the Secretary of the Senate if the Senate is not in  
 2 session) and to the House of Representatives (or to the Clerk  
 3 of the House if the House is not in session) showing the ac-  
 4 quisition cost of all personal property so donated and of all  
 5 real property so disposed of during the preceding fiscal  
 6 year.”.

## Calendar No. 458

97TH CONGRESS }  
2d Session }

SENATE

REPORT  
No. 97-322

AUTHORIZING THE DONATION OF SURPLUS PROP-  
ERTY TO ANY STATE FOR THE CONSTRUCTION AND  
MODERNIZATION OF CRIMINAL JUSTICE FACILITIES

## REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 1422

TO AUTHORIZE THE DONATION OF SURPLUS PROPERTY TO  
ANY STATE FOR THE CONSTRUCTION AND MODERNIZATION  
OF CRIMINAL JUSTICE FACILITIES



MARCH 16 (legislative day, FEBRUARY 22), 1982.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON: 1982

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## Calendar No. 458

97TH CONGRESS }  
2d Session }

SENATE

REPORT  
No. 97-322

### AUTHORIZING THE DONATION OF SURPLUS PROPERTY TO ANY STATE FOR THE CONSTRUCTION AND MOD- ERNIZATION OF CRIMINAL JUSTICE FACILITIES

MARCH 16 (legislative day, FEBRUARY 22), 1982.—Ordered to be printed

Mr. STEVENS, from the Committee on Governmental Affairs,  
submitted the following

### REPORT

[To accompany S. 1422]

The Committee on Governmental Affairs, to which was referred the bill (S. 1422) to authorize the donation of surplus property to any State for the construction and modernization of criminal justice facilities, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

#### I. BACKGROUND AND SUMMARY

Prison overcrowding is a problem rapidly reaching crisis proportions. The United States prison population expanded in the first six months of 1981 at more than double the rate of 1980. Since 1976, the population has increased by 50 percent.

One of the forces driving the higher incarceration rate is the increase in violent crime, and the public reaction to such crimes. The number of inmates who committed crimes against persons was between 40 and 60 percent in 1980, an increase of more than 100 percent in ten years. Many states have responded to increasing violence by passing mandatory sentencing laws, many of which disallow parole. These longer sentences and a higher rate of prosecutions and convictions have severely strained prison capacity. Since 1975, the prison population has grown by 55 percent, while cell space has lagged behind at about 25 percent growth over the same period.

Another factor behind the growth in prisoners has been the rise in the general population between the ages of 18 and 25, where criminal activity is historically most common. Between 1975 and 1980, the 18-25 year old population increased by 9.1 percent compared to a 5.4 per-

cent increase overall. Crime statisticians forecast that the baby boom following the Korean War will keep the number of offenders high through the 1980's.

Prison construction has not kept pace. State and local correctional systems have failed to finance and construct new facilities fast enough to accommodate increasing prison populations. Part of the reason for the lag are high construction and operating costs. Maximum security prisons cost between \$75,000 and \$95,000 per cell. Medium security construction averages between \$50,000 and \$60,000 per cell. Annual operation costs vary around \$10,000 per offender.

Over half of the states are under court order to reduce overcrowding, yet are faced with a 5-7 year delay from time of prison financing to time of activation. Many states have had to resort to a variety of short-term arrangements to meet their needs. These include double celling and housing inmates in tents or prefabricated buildings or in space previously allocated to other uses. In addition to having space shortages, many prisons are antiquated: too large to operate efficiently, unsafe and understaffed. The Justice Department estimates that 43 percent of all prisoners are being housed in facilities built before 1925.

While mounting public concern has produced stiffer parole policies and less frequent use of incarceration alternatives such as probation, judges recently have begun to respond to the severity of prison overcrowding by a greater willingness to use such options. This has increased the possibility that some defendants who should be incarcerated remain at large.

While under the Constitution crime control is principally the responsibility of state and local governments, the federal government is in a position to give important assistance in coping with crime. The purpose of S. 1422 is to provide, at low cost to the federal government, assistance to the financially burdened states and local governments as they expand and improve their correctional systems. This measure, which embodies one of the recommendations of the President's Task Force on Violent Crime, amends the Federal Property and Administrative Services Act of 1949 to authorize donations of surplus federal real property to states and localities for correctional use.

The Act provides the statutory means for the disposal of most federal real property which federal agencies find is no longer required for their needs and the discharge of their responsibilities. Under the Act, this property is reported to the General Services Administration, whereupon it is deemed "excess" and is subject to utilization by other executive agencies. When the Administrator of GSA determines that the property is not required by any other federal agency, it is deemed "surplus" and disposed of in accordance with specific authorities provided in the Act.

A number of these authorities (referred to as public benefit disposals) provide for conveyances to state and local governmental units and eligible non-profit organizations for such purposes as airports, hospitals, schools and recreational areas at no cost or at a substantial monetary discount. Under these authorities, the Administrator is authorized at his discretion to donate surplus real property for one of these purposes to the eligible recipients, upon receiving a favorable recommendation from the federal agency (such as the Department of

Education, the Department of Health and Human Resources, etc.) which determines the eligibility of the proposed recipient and evaluates the program of use. The effect of S. 1422 would be to add correctional facilities to this list of public benefit disposals for surplus federal property and to authorize the Administrator of GSA to donate such property to states and localities for correctional uses upon the recommendation of the Attorney General.

## II. MAJOR PROVISIONS

The bill as amended by the Committee amends section 203 of the Federal Property and Administrative Services Act of 1949 to provide for the donation of surplus real and related personal property for correctional use. States and their instrumentalities and subdivisions, Commonwealths and Trust Territories would be eligible to receive such property. In keeping with safeguards contained in other public benefit conveyance authorities, property donated under this measure will revert to GSA at the discretion of the Administrator in the event of inappropriate use.

The Federal Property and Administrative Services Act of 1949 charges the Administrator of GSA with the responsibility for disposing of surplus federal property in the most efficient and economic manner in keeping with the best interests of the United States Government.

This bill adds correctional facilities to the small group of activities which enjoy public benefit disposal preference and thus dilutes the pool of property available for other non-federal recipients. However, the Committee believes that the problems raised by prison overcrowding are of a seriousness and urgency clearly justifying exceptional measures.

In consideration of the federal government's priority to assist states and local jurisdictions in their efforts to improve correctional programs and practices, alleviate stress on their correctional systems, or comply with judicial decrees, it is important to emphasize that the federal government has a responsibility to provide adequate assistance in fighting violent crime. In order to be responsive to the immediate needs of the correctional problem, it is important that the federal government deploy its resources to carry out that responsibility in a manner that is both equitable and expeditious.

In implementing this bill, the Department of Justice and the General Services Administration should fully appreciate the sensitivities involved in national law enforcement needs vis-a-vis other local land use interests with respect to surplus federal real property. Accordingly, administrative procedures should be adopted and designed to make sure that (1) federal real property is appropriately used consistent with its existing physical characteristics, thereby providing states and localities the full benefit of the federal government's investment in the property; and (2) decisions between correctional use proposals and competing proposals will be reserved to the Administrator of General Services so that the merits of each will be fully and promptly considered on the basis of the overall national interests involved.

### III. SECTION-BY-SECTION ANALYSIS

The first section amends section 484 of title 40, United States Code, by adding a new subsection (p) immediately at the end thereof.

Section 484(p)(1) authorizes the Administrator to transfer to the states, the District of Columbia, the Trust Territories and the Commonwealths, or to any political subdivision or instrumentality thereof, surplus property determined by the Attorney General to be required for correctional facility use by the recipient. Property shall be used only under a program or project for the care or rehabilitation of criminal offenders as approved by the Attorney General. Transfers or conveyances shall be made without payments to the United States.

An appropriate program or project may be any state correctional agency, county jail, halfway house, work-release facility, training facility, prison support service or any activity directly contributing to the care or rehabilitation of criminal offenders.

Surplus real property substantially comprised of facilities formerly used by the federal government for correctional purposes should be reviewed by the General Services Administration, with the Department of Justice prison needs clearinghouse, in consultation with affected states and local governments, for the purpose of correctional facility use only. The prison needs clearinghouse is located in the Federal Bureau of Prisons and was created in August 1981 to assist states in their efforts to obtain surplus federal property for correctional use. Under this legislation, the clearinghouse will be the agency through which the Attorney General screens proposed conveyances and makes his recommendations to the Administrator of GSA. Prior to making his recommendation, the Attorney General shall determine that the applicant has provided for the consideration of local views with regard to the request for conveyance of this property.

If upon completion of his review, the GSA Administrator determines that no proposal is properly justified in light of the nature or value of the property, or if no application is received, the property should then be made available for other purposes authorized by the Federal Property Act and related legislation.

Second, with respect to surplus real property not previously used for correctional purposes, such property should be screened among all authorized recipients for uses generally provided by the Federal Property Act and related legislation, in accordance with normal surplus property procedures. These properties should be screened with the clearinghouse. Should any application for correctional use be received together with applications for other purposes, the selection of the grantee will be reserved to the Administrator of General Services on the basis of the justification submitted with the application. The merits of each should be considered in light of all factors affecting use, including adaptability of the property for correctional purposes, its importance for these purposes, the benefits to be derived from other uses, and the character and value of the real property.

Sections 484(p)(2) and (3) are technical amendments authorizing GSA to place such conditions and reservations upon the deed of conveyance as are necessary to protect the interests of the United States and the transferee.

Section (2) provides for reversion of the property to the United States at the option of the government in the event of use inconsistent with the purpose for which originally furnished. While the Administrator of GSA shall make the final determination, this provision is not intended to preclude use of the property for some complementary purpose so long as that purpose is clearly secondary and is consistent with the correctional objective for which the property was transferred.

Section (3)(a) authorizes the Administrator to determine and enforce compliance with the terms of any transfer agreement.

Section (3)(b) empowers the Administrator to reform, correct or amend any transfer agreement in order to satisfy legal requirements in existence at the time of the transfer. This provision does not authorize GSA to attach additional terms or restrictions to any transfer agreement as a result of a law, regulation, or policy determination not in existence at the time of the transfer.

Section (3)(c) further authorizes the Administrator to grant releases from a transfer agreement or any of its terms, or to yield any right or interest previously reserved to the United States, if he determines that the property no longer serves the purpose for which it was transferred or that such release or quitclaim will not prevent accomplishment of that purpose. The Committee is aware that, subsequent to the transfer, occasions may arise upon which the recipient will have a legitimate need to change the terms of a deed.

For example, property located on Blyth Island, Georgia, conveyed to the State of Georgia for park and recreational purposes was reconveyed to Glynn County for similar use. The restrictions requiring park use by the state were released so that the property could be conveyed to the county allowing an approved recreational program while imposing the original park use restrictions on the county.

One of the purposes of this section is to provide GSA with flexibility to accommodate these needs while protecting the interests of the federal government as originally intended. This section also gives the Administrator of GSA discretion to release recipients from all obligations to the government concerning transferred property when the Administrator determines that such property can no longer be economically used for the original purpose, and when it is not economically feasible or practical for the government to exercise its right of reversion.

The second section amends section 484 of title 40, United States Code, as amended (40 USC 484) (0) by revising the first sentence. The revision is a technical amendment requiring the Administrator to make an annual report to Congress on the total acquisition value of all personal and real property transferred pursuant to subsection (p) of this section. This provision extends to public benefit conveyances for correctional purposes the Congressional monitoring requirement now in effect for all other categories of public benefit conveyance.

### IV. EVALUATION OF REGULATORY IMPACT

Paragraph 11(b)(1) of Rule XXVI requires each report accompanying a bill to evaluate "the regulatory impact which would be incurred in carrying out the bill."

The only regulatory impact associated with S. 1422 will result from the provision for GSA monitoring to ensure that property conveyed under this new authority continues to be used for the purpose for which it was originally transferred. This is not a new regulatory authority. It extends to conveyances for correctional purposes the same safeguards and paperwork requirements which are required for all public benefit conveyances.

#### V. ESTIMATED COST OF THE LEGISLATION

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the Committee provides the following estimate of the cost of S. 1422, prepared by the Congressional Budget Office.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., January 12, 1982.*

HON. WILLIAM V. ROTH, JR.,  
*Chairman, Committee on Governmental Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1422, a bill to authorize the donation of surplus property to any State for the construction and modernization of criminal justice facilities, as ordered reported by the Senate Committee on Governmental Affairs, December 9, 1981.

The bill would amend the Federal Property and Administrative Services Act of 1949 to authorize the Administrator of the General Services Administration (GSA) to donate surplus property to any State for the construction and modernization of criminal justice facilities. Donation of such property would be without cost to the State except for the costs of care and handling of the property. Under current law surplus property that is not donated to State or local governments for certain uses may be sold by GSA. This bill would, therefore, reduce receipts to the government by the potential sale price of any property that is donated to a State that would, otherwise, have been sold.

The CBO estimates that \$30 to \$50 million in receipts would be forgone in the first five years after enactment of this bill. This estimate is based on information provided by the Bureau of Prisons and GSA. This estimate assumes that all properties currently identified by the Bureau of Prisons as having a potential for donation as correctional facilities would be donated to the states, and that they would have been sold if this bill had not been enacted.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RAYMOND C. SCHEPPACH  
(For Alice M. Rivlin, Director).

#### VI. ROLLCALL VOTES IN COMMITTEE

In compliance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the rollcall vote taken during Committee consideration of this legislation is as follows:

Final passage: Ordered reported, 9 yeas, 0 nays.<sup>1</sup>

##### YEAS (9)

Danforth  
Cohen  
Mattingly  
Rudman  
Eagleton  
Chiles  
Nunn  
Sasser  
Stevens<sup>2</sup>  
Roth

##### NAYS (0)

#### VII. CHANGES IN EXISTING LAWS

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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, and existing law in which no change is proposed is printed in roman):

SECTION 203 OF THE FEDERAL PROPERTY AND ADMINISTRATIVE  
SERVICES ACT OF 1949 (40 U.S.C. 484)

### UNITED STATES CODE

#### TITLE 40—PUBLIC BUILDINGS, PROPERTY, AND WORKS

##### CHAPTER 10—MANAGEMENT AND DISPOSAL OF GOVERNMENT PROPERTY

#### 484. Disposal of surplus property—Supervision and direction

(a) \* \* \*

(o) The Administrator with respect to personal property donated under subsection (j) of this section and with respect to personal or real property transferred or conveyanced under subsection (p) of this section, and the head of each executive agency disposing of real property under subsection (k) of this section, shall submit during the calendar quarter following the close of each fiscal year a report to the

<sup>1</sup> By committee rules, proxy votes are counted for recording purposes only on final passage.  
<sup>2</sup> Vote by proxy.

Senate (or to the Secretary of the Senate if the Senate is not in session) and to the House of Representatives (or to the Clerk of the House if the House is not in session) showing the acquisition cost of all personal property so donated and of all real property so disposed of during the preceding fiscal year. [Such reports shall also show donations and transfers of property according to State, and may include such other information and recommendations as the Administrator or other executive agency head concerned deems appropriate.]

(p) (1) *Under such regulations as he may prescribe, the Administrator is authorized in his discretion to transfer or convey to the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any political subdivision or instrumentality thereof, surplus property determined by the Attorney General to be required for correctional facility use by the authorized transferee or grantee under an appropriate program or project for the care or rehabilitation of criminal offenders as approved by the Attorney General. Transfers or conveyance under this authority shall be made by the Administrator without monetary consideration to the United States.*

(2) *The deed of conveyance of any surplus real property disposed of under the provisions of this subsection—*

(A) *shall provide that all such property shall be used and maintained for the purpose for which it was conveyed in perpetuity, and that in the event the property ceases to be used or maintained for that purpose, all or any portion of the property shall, in its then existing condition, at the option of the United States, revert to the United States; and*

(B) *may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Administrator to be necessary to safeguard the interests of the United States.*

(3) *With respect to surplus real property conveyed pursuant to this subsection, the Administrator is authorized and directed—*

(A) *to determine and enforce compliance with the terms, conditions, reservations, and restrictions contained in any instrument by which such transfer was made;*

(B) *to reform, correct, or amend any such instrument by the execution of a corrective reformatory or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and*

(C) *to (i) grant releases from any of the terms, conditions, reservations, and restrictions contained in, and (ii) convey, quitclaim, or release to the transferee or other eligible user any right or interest reserved to the United States by any instrument by which such transfer was made, if he determines that the property so transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was so transferred: Provided, That any such release, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as he or she shall deem necessary to protect or advance the interests of the United States."*

Mr. BURTON. Thank you.

You mentioned four problems with the first bill, H.R. 4450. All these problems are solved with the second bill. The only thing you do not like in the second bill is that you become the landlord instead of GSA.

Am I right or wrong?

Mr. HARRIS. There are two things. One is what you mentioned. The other is that we believe that a separate subsection of the law ought to be set up to govern correctional use.

Mr. BURTON. Why do you feel that way?

Mr. HARRIS. It should not be put in with the existing uses.

We believe that correctional use ought to receive a clear priority.

Mr. BURTON. Over anything else?

Mr. HARRIS. That is correct.

Mr. BURTON. I see.

I strongly differ with you on that. On the other problem, I will have to talk with the experts and find out why.

The Federal Property Act was enacted in 1949. That contains the laundry list to which H.R. 6028 would add correctional facilities. The Wildlife Act was passed before that. Our predecessors, I guess, never thought about making things somewhat consistent.

But beginning with and after the passage of the Federal Property Act, the Cabinet-level area involved with the agency involved has been given responsibility that this bill would give the Attorney General.

I do not know whether I can sanction, from the standpoint of the Attorney General saying:

"It is so important we have these facilities that we want to give them a priority.

"Yet we will not take them on a laundry list if there is so much work involved. On the other hand, we think it is important."

I do not know if I would want to make that the greatest confrontational issue when we are trying to accomplish a purpose that everyone agrees with.

Would you be able to tell me this? Is the problem manpower resources? You probably do better on the budget than GSA has done lately.

Mr. HARRIS. I do not believe it is the question.

Mr. BURTON. Is it an expertise problem?

Mr. HARRIS. It is partly expertise. It is that GSA has an organization which is in place, operating, and is established to do things like that.

Mr. BURTON. But they do not do it except for wildlife and historic monuments. Everything else is done the way we are suggesting.

In other words, maybe this is not as great a problem as I have made it out to be. I do not think that it should be the cutting issue.

Is it a matter of expertise?

Mr. HARRIS. It is more the expertise which is already in place over there. They do it over there. Frankly I think if you ask them I think you will find that they have found the situation in which the property is sent to other agencies from their point of view is not satisfactory.

Mr. BURTON. GSA is not crazy about this bill. They would like to control everything. That is just territorial imperative.

Does not the Attorney General's office have a Land and Natural Resources Division in the Department of Justice?

Mr. HARRIS. Yes.

Mr. BURTON. What do they do?

Mr. HARRIS. They do a number of things.

They defend the EPA in litigation. They litigate for client agencies, the Department of the Interior.

Mr. BURTON. Do they have real property expertise?

Mr. HARRIS. They have real property expertise in the litigation area. They do not sell or dispose of lease property.

Mr. BURTON. Mr. Markon is going to be leaving GSA. He would be open to a contract. [Laughter.]

Basically you have this. We are going to be dealing with H.R. 6028.

You have two basic problems with that. One is this. You would like a fixed priority for correctional facilities, a separate piece of legislation. I do not necessarily see that forthcoming.

The other is that you would like to see GSA become the real estate agent.

Let us assume that it is going to be included on the laundry list and that the Attorney General's office was not going to be in the real estate business.

What would be your position?

Mr. HARRIS. Are you asking this? Would we prefer that to nothing? Is that what you are asking?

Mr. BURTON. We know what you would prefer. What would be your position?

I feel very strongly it should on the laundry list. It is heads or tails as to who is the real estate agent.

Mr. HARRIS. We would prefer having a correctional use in the laundry list as opposed to having it in no list. As I have said, our strong position is, however, that it ought to be separate.

Mr. BURTON. If it were on the laundry list—well, what it comes down to is this: Your being the real estate agent is the reason you would oppose the bill?

Mr. HARRIS. Let us put it this way. It would not be our preference. But frankly the prison and jail situation in this country is so critical that it is my view that anything is better than nothing.

Some others might say: "Well, we ought to hold out for what we want."

But you asked for my opinion and that is it.

Mr. BURTON. I think that is an honest opinion.

Let me ask you this. I think the laundry list is going to be a difference of opinion with people.

Justice is probably the only Federal agency that has expertise in correctional facilities standards so far as existing structures are concerned. GSA does not have that.

You are going to have a role in this, whether it is appraisal or whatever, no matter what.

I think you should have a very strong role in it.

Mr. HARRIS. That is one of the things that this clearinghouse now does. We would have that role, to look at a piece of property and see whether it is suitable for correctional use, if there are ex-

isting structures, what needs to be done to make it suitable for correctional purposes.

We have that expertise in the Bureau of Prisons and under any scheme would expect to play that role at a minimum.

Mr. BURTON. I have one more question.

In 1973 the Department's Advisory Commission on Criminal Justice Standards and Goals recommended a moratorium on prison construction.

Now the task force of which you were Executive Director is recommending a \$2 billion construction grant program and land donations for prisons.

This is an about face. Can you explain the reason for the change in policy there?

Mr. HARRIS. To the extent that that was recommended in 1973 it was probably one of the greatest mistakes ever made.

The situation we are in in this country today with prisons and jails is precisely because we have, at all levels of government not kept up with construction of prisons and jails in the same way that we did with hospitals, schools, and other uses.

Very frankly, we find ourselves now in a crisis situation. This is more so at the State and local level than at the Federal level.

I think this is precisely because of the failure to construct during the 1970's.

Mr. BURTON. Thank you. Mr. Walker?

Mr. WALKER. Thank you, Mr. Chairman.

In your statement you mentioned that the Attorney General has endorsed the task force's recommendation to include correctional facilities on the list of recipients for donated Federal surplus property.

You also talked about the clearinghouse that was put together in the Bureau of Prisons. I just have a couple of questions about that.

Was the clearinghouse set up in anticipation that Congress was going to take some sort of action with regard to surplus property for correctional facilities?

Mr. HARRIS. It was set up with the view that Congress might. But it was set up to perform a purpose even if the Congress did not act. This was namely to try to identify properties and if the Congress did not act then the States would have to decide if they could pay for them or work out a lease arrangement.

So it was set up in part in anticipation but also it had a purpose whether Congress acted or not.

Mr. WALKER. As I understand the work they have been doing, they have been transferring property but the people who have been getting the property have been paying for it. Is that right?

Mr. HARRIS. They have not been transferring property but they have been assisting. The people who have been getting the property have been paying for it in one form or another, in a lease or sale in some case.

Mr. WALKER. Why is it we believe that people would not continue to pay for the property if there is, in fact, a kind of crisis situation that you have described that we face in the country?

Mr. HARRIS. Very frankly, I think a number of the States and localities who are willing to pay or anticipating that their payments will soon be terminated if, in fact, the law changes.

I do not believe that on a continuing basis most States and localities could afford to pay for the property, the budget being what it is.

Also, it is a fact of life that while correctional facilities may be needed in a community, most people are hesitant about appropriating money for that purpose. It is perfectly understandable fact. They would much rather have a park or a library or whatever so that honest taxpayers can get some use out of it.

I think that has contributed to the crisis we are in. Corrections is always on the bottom of everyone's appropriation list. Hence, by the donations scheme, we could assist States and localities to correct this.

Mr. WALKER. You always start with the assumption that somehow the Federal Government has all the money to pay for this.

It seems to me that we have a rather severe budget situation on the Federal level. One proposal to get ourselves out of that budget mess, is to sell off surplus property and raise, about \$4 billion in the fiscal year 1984 budget.

This seems to be a rather high figure based upon what I have seen of property values. I am wondering where we are going to match up between those two different philosophies that seem to be coming out of the same administration.

Mr. HARRIS. I think there are two answers. One is this. If you look at the big ticket property items—the Waikiki Beach property and so forth—those generally are not the ones that are suitable for correctional uses.

For example, the ones we have had the most interest in are some old Hawk missile sites in isolated areas where the property really has no present commercial value or development value.

I think we are talking about a class of property which you would not find to be the desirable commercial properties that the Government could sell.

Second, the Government has two very serious problems here—the budget problem and a criminal justice crisis. I believe what they say is:

"Look, we can raise money by selling property."

But in the area of correctional use, we recognize that it is a matter of domestic security and that with all the money that we could get in the coffers, if we do not do something about the criminal justice crisis in this country, that money is not going to make much difference.

Mr. WALKER. That is understandable. But then we do a full circle here.

I come back to the fact that there are some people right now who are willing to pay for the property, evidently. You may be right that they are willing to pay for it because they think that the Federal Government is going to do something to relieve them of the payments.

But the fact is that the system we are now operating under would seem to be along the lines that, in fact, the properties are worth something and the Federal Government indeed is receiving some money for them.

It seems to me that whether you take the chairman's bill or the other bills that are up here, what they are going to do is, No. 1,

they are going to forfeit the money we have already gotten. I gather that from your testimony.

Mr. HARRIS. Yes, everyone who has one will apply for the donation portion.

Mr. WALKER. Absolutely. We will lose all that money. There will be no incentive whatsoever for anybody in the future to pay anything for the land because obviously the land is going to be donated.

So this is not just worthless land that is being given away. It is land that right now has some real value to it in that we are getting money for it.

Is that not correct?

Mr. HARRIS. That is correct. But there is a vital Federal interest in the donation of that property. It is as follows.

In the United States the Federal Government operates four jail facilities. We incarcerate—and I may be wrong in this number, but I think I am in the ballpark—on a daily basis 10,000 prisoners in jail.

But for these four facilities—San Diego, Tucson, New York, and one other which escapes me—we lodge all those prisoners in local jails.

We do get a great benefit. By far the bulk of all Federal detainees are lodged locally. One of the problems we have is that we are being asked to leave because of overcrowding hundreds and hundreds of jails. Today we take prisoners to appear in Federal court in Las Vegas, Nev., and lodge them in San Diego overnight.

We take people who have to go to court in Sacramento to Lompoc. What I am saying is that donation of property does give the Federal Government a very valuable use, namely, the ability to lodge Federal detainees.

Mr. WALKER. I think that is your best case, then.

The question I would have as a follow-on to that is this: How many cells is it going to take? How many additional cells do we need in the country to literally withdraw from the streets all career criminals and violent criminals? How many additional cells do we need in the country?

Mr. HARRIS. We have a prison population in this country now in the neighborhood of 350,000. That is a very difficult question to answer.

Mr. WALKER. Could you give that to us for the record? I would appreciate having that. I think it would give us some idea of the extent of the need.

What I find among my constituents and I think generally out across the population is this.

They do want to lock away the people who are career criminals and who are violent criminals.

What puzzles me is that I have in front of me a Department of Justice press release that is talking about a study that was completed evidently in March 1981 which suggests that the long-term solution may not be additional prison construction.

Mr. HARRIS. We will provide that.

Mr. WALKER. Thank you.

Mr. WEISS [presiding]. Without objection, that material will be placed in the record at this point.

[SUBCOMMITTEE NOTE: Department of Justice supplied a study, "American Prisons and Jails," vol. I, dated October 1980, containing table 3.3 at page 65, indicating a shortfall of 106,400 cells nationwide (Federal and State) between prison population and capacity at 60 square feet per inmate in 1978. State inmate population in 1978 was 229,200 and is reported to be at 340,000 at the end of 1981.]

Mr. HARRIS. I have seen that study. I disagree violently with its premise. I am not so sure of its methodology. But I will tell you what I think that study is trying to say, in my view.

I think it is saying that there has to be other answers in terms of human behavior and incarceration. With that basic notion I do not have a great quarrel. I think that we have to try to make people who come out of prison less dangerous than when they went in as opposed to more dangerous.

We are not talking about whether we ought to be incrementally sending more people convicted of crimes to jail as a percentage of all those convicted.

What we are talking about here is a prison system which can't even accommodate those convicted defendants that all of us, regardless of our political philosophy, would agree have to be kept away from the rest of society.

When we reach the stage when we start to get an argument that we have a prison capacity so that we reach those discretionary cases:

"Should this person go to prison? Does he need prison or not?"

Then I think we begin to deal with that study. We are not there.

Mr. WALKER. I have one final question.

You say that the administration favors an endorsement of the correctional facilities as being something which supersedes all other donations of property.

I somewhat agree that if you have a facility that is presently being used for incarceration it would be logical to see to it that this use is retained.

However, it also seems logical to me that, for instance, if we have a Federal hospital facility being used for hospital purposes, we should not write into law something which would convert that into a prison.

You would have a priority that someone could come along and say:

"We want to use this hospital facility for a prison." You would not have a law stating that health care ought to be a priority item in terms of the use of that facility.

Do we not have a danger, if we put the correctional facilities at the topmost rung on the ladder, that some of those kinds of situations would develop that an educational facility would be turned over for prison purposes when it would be better used for education or hospitals turned over for prison purposes when they would be better used as hospitals?

Mr. HARRIS. There is a danger to that, but where we come out is that we balance it against the danger we see that unless there is a priority for correctional uses, nothing will get used for correctional purposes.

Mr. BURTON [presiding]. If the gentleman would yield, I would like to ask this.

You indicated you are doing something in the clearinghouse now and you are selling properties. However, you are telling me nothing would be used for correctional institutions if you were giving it away. Is that not ludicrous?

You are selling property to people for correctional institutions. If we let you give it away, you are not going to be able to give it away?

Mr. HARRIS. The ones we have been selling for correctional institutions are the ones that are presently correctional institutions.

Mr. BURTON. Those are some of the ones we would like you to give away.

Mr. HARRIS. We are talking about properties, for example, the one I mentioned. There are a number of old Hawk missile sites around the country. They have barracks. They could be easily converted, for example, to a medium or minimum security correctional use.

They also could be used for other purposes. We think in those situations—politics being what it is and you are more expert in that than I am—it is very difficult to have a correctional use prevail over other possible uses in the community.

Mr. WALKER. Mr. Chairman, just to follow up on my original point, we went through a rather wrenching exercise here about a year or so ago in shutting down some public service health hospitals in some of the cities.

In this instance most of those health facilities were turned over to some other groups who are now running them. What could have happened under a priority conveyance, is that instead of being used for health and hospital purposes for which they were originally designed, they could have been turned over to be used for prison facilities.

That, too, is ludicrous.

I am just wondering whether or not that should be the direction in which we push the law.

Mr. HARRIS. I understand what you are saying and I think it is clear that there are those possible dangers in the hypothesis that you put forward.

What I am saying is that the dangers on the other side are greater. For example, in the hospital area, you pick something which is very often a prime candidate for a correctional use.

A number of State prison systems need hospital facilities. But they need them in a correctional setting. There just are not enough mental care facilities in the prisons systems. Generally there are not enough medical care facilities.

Those very well may be appropriate for that purpose.

Mr. WALKER. But the point is that it should be up to the local community to some extent to decide that.

That is what this administration is supposedly all about. If they decide their priority need is for correctional facilities, that is fine. But if they also decide that the basic need is health, they should be able to elect that.

That is my point.

Mr. HARRIS. That is right. Under our scheme, we do not initiate any of this. It is only when the community comes to us and says—

Mr. BURTON. It is not the community. It is the bureaucrat who comes to you, sir.

Mr. HARRIS. Either they are elected or appointed representatives of the community.

Mr. WALKER. That is understandable. But you weight it at the top and say to them that the main thing they can come to us for is a correctional facility. If they say:

"We want to convert that for a hospital," they go to HHS, and if the topmost priority is correctional facilities, somebody in the bureaucracy here is going to say:

"Hey, wait a minute. If you let that go for a hospital, we are not going to get a correctional facility out of it."

The tendency will be to throw a roadblock in the way of the conveyance if you prioritize the correctional facility.

I do not have any problem adding it to the list. I think that correctional facilities are probably a very good thing to add to the list.

But what I am questioning is the idea of setting that as the absolute priority, bar none.

Mr. HARRIS. I guess where I finally come out is that having looked at this—and I clearly am in the criminal justice area. I am not in the hospital area and I am not in the education area.

But I believe, and I think it is the position of the Attorney General—and I know it is the position—that the prison and jail systems in this country are in such a state of crisis that we just have to live with that danger and at least at the present create such a priority until we have a prison and jail system that can serve the criminal justice system and the people of this country.

I recognize there are countervailing balances.

Mr. BURTON. If the gentleman will yield, I would like to point out one thing.

In Norco, Calif., there is a former naval hospital which was disposed of for the public benefit under health category, and the recipient was a drug rehabilitation and detoxification center affiliated with the California Penal System.

Hospitals can be utilized in the penal system without becoming prisons.

The same thing is true in Charleston, Maine. There it was for educational purposes, and a medium security prison was the recipient.

You are not really prevented from doing a lot of the things you are talking about.

I just wanted to bring that to your attention.

Mr. HARRIS. I did not mean to suggest that. I was just trying to suggest that sometimes hospitals or correctional use might be advantageous.

Mr. BURTON. What I am saying is that we can do them both. The correctional facilities are in bad shape. The schools are in bad shape.

I recognize Mr. Weiss.

Mr. WEISS. Thank you, Mr. Chairman.

Mr. Harris, how long have you been in charge of the task force?

Mr. HARRIS. The task force has long been out of business. That ran from April of last year through August when it issued its final report.

Mr. WEISS. How long have you been associated with the Department? Did you come in with this administration? Were you there previously?

Mr. HARRIS. I was a Federal prosecutor in New York in the early 1970's for 5 years. I was an assistant to Attorney General Levi and then came back to the Department with Attorney General Smith.

Mr. WEISS. Do you have any recollection or knowledge as to when the Attorney General's office adopted the current position that you are espousing today?

Mr. HARRIS. The position that we are espousing was first recommended by the task force. The Attorney General adopted it upon the completion of the task force work in August after he reviewed the recommendations.

Mr. WEISS. Up to that point the position of the Attorney General's office had been that we ought to go slow on the construction of prisons. Is that the idea?

Mr. HARRIS. With regard to the donation of surplus Federal property, I believe before the task force report, very frankly, that the Department had not considered the question of donation of Federal surplus property.

Mr. WEISS. I am actually separating the two out because in my mind I think you could be for this legislation and still raise some very serious underlying questions about the whole philosophy of prison construction.

I am really addressing myself to the prison construction policy.

Mr. HARRIS. The prison construction issue—the Department's position comes out like this.

We recognize there is a critical need for prison construction in this country. Frankly, that priority—

Mr. WEISS. When did that recognition become policy in the Department? That is what I am asking.

Mr. HARRIS. Very early on; in the first months of the administration.

I would say in the spring of 1981. Let me just finish by telling you that that departmental policy came up against the budget priorities and was subsumed in it. The recommendation that the task force made, namely, that there be \$2 billion in the budget for assistance to State and local government for prison and jail construction was rejected on budgetary grounds.

Mr. WEISS. You had referred earlier in your testimony to a 1973 task force report which seemingly went the other way so far as recommendations are concerned.

Mr. HARRIS. In answer to the chairman's question; right.

Mr. WEISS. I assume that that position, the position of that recommendation, held forth for a period of time until the current administration came in?

Mr. HARRIS. I cannot speak for what the policy was during the Carter administration.

Mr. WEISS. Or the Nixon-Ford administration because it overlapped?

Mr. HARRIS. I honestly do not know that was the policy of the Nixon-Ford administration with regard to prison construction.

Mr. WEISS. Well, 1973 came right in the midst of this.

Mr. HARRIS. I know the recommendation was made by a task force. I just do not know whether the administration endorsed it or rejected it.

Mr. WEISS. You indicated in the course of your testimony about how the crisis exists and the prison system is not able at this point to handle the career criminals and violent criminals.

I do not know if you had occasion to catch a Buckley article yesterday. I saw it in the New York papers but it appeared in the Washington Post as well.

He was writing about his conversations or discussions with Charles Colson. In the course of it he cited these statistics, if I have them correctly.

He said that as of now, the highest prison population in the history of this country, we only incarcerate about 2 out of 100 criminals who have committed crimes. This is not necessarily those who have been convicted.

Mr. Colson's argument is that it is not more prisons that you need, given all the reasons why people should not like to be tossed into prisons because as you say they come out being worse so far as society is concerned in far too many instances than when they went in.

But half the people who are there are, in fact, there for having committed nonviolent crimes and are not career criminals.

A way ought to be found, and Mr. Buckley supported the thesis, of really making sure that prison really is for those people who have to be there in order to protect themselves or society from them.

The reason that we have this huge prison population and this huge drive now for more prisons to be built to house them is because we have become very indiscriminate. We have not really given a great deal of thought as to who really belongs in prison and who can best repay society for the crimes they have committed by not being in prison.

Mr. HARRIS. I did not see the article. I was in San Antonio yesterday. But I do know what you are speaking about.

I think in the past we have been indiscriminate in our use of prisons. It was not a scarce enough resource for us to treat it with the care that it deserves.

In any program favoring prison construction or jail construction, I believe at the same time there has to be a more rational classification system of who is incarcerated.

We have been changing the mix as of late so that we are incarcerating more of the violent people and more of the career criminals as a percentage than we did before.

We have a way to go. I do believe that any incarceration policy has to take into account what you mentioned.

There is one caveat I would place. In the area of white collar crime—and I have stood before many a Federal judge in New York advocating a white collar criminal be sent to prison—there clearly is no question that the defendant did not present a physical threat to the community if not incarcerated.

But frankly there is a real question about whether or not without incarceration you can have an adequate deterrence to white collar crime.

If white collar criminals knew that they did not fit the profile, as you have suggested outlined in the Buckley-Colson exchange, whether in fact probation and fines or other nonincarceratory penalties would be enough to deter white collar crime, I am not sure of the answer to that.

So with that caveat I generally agree.

Mr. WEISS. It is hard to really have it both ways. If you do agree with Mr. Colson's statistics, then it seems to me that we could make a tremendous jump on the overcrowding by reviewing the census that we have.

None of the things that have been suggested are brandnew. You have seen them. You have been in the system, as I have, not in the Federal, but in the State criminal justice system, of making people pay for their crimes so that they benefit their victims, they benefit society, and they are punished.

Their good name is, in fact, no longer a good name. There are all the attributes of penalties and punishment without necessarily throwing them into a jail situation which is awfully expensive for all of society.

Mr. HARRIS. First, where I personally come out, I believe that swiftness of punishment and certainty of punishment are far more important than length. I think we could do with much shorter sentences.

I think the certain speedy imposition of a short jail term is much better than the elongated delayed imposition of a very long jail term.

Second, when I was prosecutor, when I started, I used to prosecute these cases where someone would steal a letter from the mail.

Mr. BURTON. We ought to put this discussion over into the Criminal Justice Subcommittee.

Mr. WEISS. With your permission, I would just as soon take the response and submit it for the record. I think—

Mr. BURTON. You are hitting on an issue in our whole criminal justice system as opposed to the bill.

Mr. WEISS. The justification for priorities, for example, is all premised on the idea that there is this tremendous crisis.

It seems to me that it is not proved that the crisis is not to a great extent bettered by the underlying philosophies and which are adopted by the Department.

Thank you, Mr. Chairman.

Mr. BURTON. Why do you not go ahead and answer him?

Mr. HARRIS. The answer is very short.

People convicted of stealing a letter, college kids working in the post office during Christmas, were given 3 years probation. It tied up a probation officer for 3 years. The kid mailed in his post card from Cornell and it tied up the system.

I always thought it would be better to send that fellow to jail for 2 days, for a weekend. Let him hear the door slam behind him and the criminal justice system would never see him again.

Mr. WEISS. Thank you, Mr. Chairman.

Mr. BURTON. Mr. Daub?

Mr. DAUB. Thank you, Mr. Chairman.

I tend to philosophically feel that my colleague, Mr. Weiss, is headed in the right direction.

I get worried when I see all this rush to get a whole bunch more space allocated, whether it is built by local funds which most localities cannot afford to do or whether they get it from the Federal Government and then try to put it to use.

I am a lawyer. I have been a prosecutor. I have tried cases. I have defended cases. How many pieces of property are we talking about? Six pieces of property a year?

Mr. HARRIS. That is my estimate, which is really a guesstimate.

Mr. DAUB. Out of a pool of how many?

Mr. HARRIS. There are lots of Federal property. Based on the number that we have been able to find that States find suitable and that we think are appropriate, I think we are only talking about a handful a year.

Mr. DAUB. I need to know. Are there 50 or 100? Or are there 200 or 600?

Mr. HARRIS. My colleagues from GSA tell me 600.

Mr. DAUB. Where are they? Are they spread out very evenly among the 50 States or do we find a concentration of them in the more populated States and near the more populated cities, if you threw them up on a map right now?

Mr. HARRIS. GSA is going to follow me in testifying. I think you would probably get a more accurate answer from them.

Mr. DAUB. Thank you; I have no further questions.

I think there is more at stake. I do not see much of an argument between the two bills here. I do not even know why we are arguing with you. I think you are putting your oar in the bucket for your priority. I appreciate your being here.

Mr. BURTON. I have one other question.

Not to belabor this, but you are concerned about being the real estate agent. It is my understanding that it really requires about one lawyer person-year to perform all the HEW signing of the deeds over.

In other words, we are back to your being the real estate agent for these properties.

No matter who signs that transfer, you are going to need an awful lot of oversight and input and time. The only thing you would be getting out of this by not being the real estate agent is having one attorney who signs conveyance deeds.

Mr. HARRIS. I am not quite so sure that it is that simple.

Mr. BURTON. There is much you are going to have to do anyway to see that it is done right and proper. But the clearinghouse, in effect, is doing more than less, I think.

Mr. HARRIS. That is right. It is clear, under any scheme, that the clearinghouse will still play a major role in this.

Mr. BURTON. I think their concern may be exaggerated so far as the burden and the office go by having you do this the way the other agencies do it. I think it might be helpful even if you talked with people such as Secretary Schweiker of HHS.

Mr. HARRIS. I have been told, for example, that HUD is trying to get out of doing it. They are one of the agencies that do it.

Mr. BURTON. Everybody is trying to get out of everything now because of the budget constraints, I think. You could have someone check just how much time it really takes them to do that.

You are going to be doing a lot of monitoring. I do not mean after it happens. They are going to make it before. They are going to have to do this.

Mr. ROMNEY. H.R. 6028 would relieve the Department of Justice of a considerable amount of its administrative work, that is, the compliance and enforcement function, which would be assumed by the General Services Administration.

In that respect, H.R. 6028, differs from the format in the present section 203(k) of the Federal Property Act, so that the process up to the conveyance involving the review and approval of applications, the finding of desirability and necessity by the Department of Justice, the further review and eventual approval by GSA, and then referral back for conveyance, would be one phase. The second phase—compliance—would be assumed by the General Services Administration. It would be done after consultation with your Department. That is not as much a responsibility as the present Secretary of Health and Human Services has or the present Secretary of Education has with respect to their donation programs.

Mr. BURTON. That is for your edification. That is the holy gospel. Thank you very much for your testimony.

Mr. HARRIS. Thank you.

Mr. BURTON. We will now hear from Roy Markon, Commissioner, Federal Property Resources Service, GSA.

We are pleased to have you with us today. You may proceed.

**STATEMENT OF ROY MARKON, COMMISSIONER, FEDERAL PROPERTY RESOURCES SERVICE, GENERAL SERVICES ADMINISTRATION, ACCOMPANIED BY EARL JONES, ASSISTANT COMMISSIONER**

Mr. MARKON. Thank you, Mr. Chairman.

It is nice to be here today. Since I was advised there will be another hearing next week, this is my first farewell appearance before this committee.

Mr. BURTON. It is our plan to travel the length and breadth of this land looking at every piece of potential surplus property, including American Samoa, Micronesia, the Virgin Islands, Hawaii, Pago Pago. We are going to look at the airport there.

Mr. MARKON. There is an old prison site on the island of Saipan that I would recommend you look at.

Mr. Chairman, I have a prepared statement and it parallels 100 percent what the Department of Justice witness just presented.

Mr. BURTON. Without objection that will be made part of the record.

[Mr. Markon's prepared statement follows:]

STATEMENT  
OF  
ROY MARKON  
COMMISSIONER  
FEDERAL PROPERTY RESOURCES SERVICE  
GENERAL SERVICES ADMINISTRATION

Mr. Chairman and Members of the Subcommittee:

I am Roy Markon, Commissioner of the Federal Property Resources Service, General Services Administration. On behalf of the Administrator of General Services, I wish to thank you for the opportunity to express the views of the General Services Administration on H.R. 4450, a bill "To authorize the donation of surplus property to any State for the construction and modernization of criminal justice facilities," and H.R. 6028, a bill "To amend the Federal Property and Administrative Services Act of 1949 to permit the disposal of surplus property to States and local governments for correctional facility use." Both bills and others such as S. 1422 have for their purpose making surplus real property available to States and local governments for correctional facility use.

We support S. 1422 and the principles contained in H.R. 4450 and H.R. 6028. With respect to the donation of surplus Federal real property for public purposes, the Federal Property and Administrative Services Act of 1949, as amended (Property Act), and related statutes, authorizes the disposal of surplus real property for certain public uses including park and recreation, health, education, airports, historic monuments and wildlife conservation.

Such disposals have been made either without consideration or at a substantially reduced monetary consideration and deeded subject to certain use restrictions. Of course, in line with the President's property disposal program, we intend in the future to make these conveyances at full fair market value; subject only to those cases of exceptional merit where the proposed use represents the property's highest and best use.

The only means whereby State and local governmental bodies can obtain surplus property for correctional facility use is through negotiated sale provided the estimated fair market value of the property and other satisfactory terms of disposal are obtained. On the basis of the report by the Attorney General's Task Force on Violent Crime and the Administration's strong commitment to provide assistance and support to States and localities in the criminal justice area, we support the objectives of H.R. 4450 and H.R. 6028 through the use of surplus real property for this limited purpose. H.R. 4450 would authorize conveyance of property without reversionary rights in event of nonuse, and without compliance monitoring to ensure appropriate use for the purpose conveyed. We believe that any transfers should provide these very basic safeguards of the interests of the United States. Further, the bill is otherwise administratively cumbersome and inefficient in many detailed respects. Such problems with an identical bill introduced in the Senate as S. 1422 were rectified by an amendment of the bill by the Senate Committee on Governmental Affairs. The bill, as amended, was reported by the Committee for further action by the Senate on March 26, 1982. This amended bill represents language carefully worked out between GSA and the Department of Justice and adopted by the Senate Committee after detailed review by the Subcommittee on Civil Service, Post Office, and General Services. We believe the amendments will better enable GSA to carry out the objectives of the legislation more effectively, and at the same time provide better protection for the essential interests of the United States.

We strongly favor the approach of S. 1422, as reported, which establishes a simple donation program under a new subsection. We believe it would be more effective for the following reasons:

1. The procedures of S. 1422, as reported, would ensure that there would be no duplication of effort on the part of GSA and Justice staffs involved with this process. As a matter of fact, there probably would be no need for any Department of Justice real estate staff at all. The Federal agencies sponsoring the various section 203(k) programs, Education, Health, and Interior, must maintain real estate organizations to administer their programs and regulations. Under S. 1422, Justice would be responsible for the correctional facility program aspects only and GSA would be responsible for the real property aspects.

2. Very similar donation policy and program procedures are now in effect under the provisions of Public Law 80-537 which authorizes the donation of Federal real property to State agencies for wildlife conservation purposes. Under this law, GSA is the disposal agency and bases its decisions to dispose of Federal property for wildlife conservation purposes on the advice of the Fish and Wildlife Service of the Department of the Interior. Fish and Wildlife merely gives GSA an advisory opinion as to the suitability of the property for wildlife conservation purposes. If approved, GSA handles the conveyance and is responsible for monitoring the real property utilization requirements of the deed. Fish and Wildlife needs no staff or regulations to participate in this program-only its expertise is used. These procedures have worked effectively for over 30 years. We feel a similar program for the correctional facility program would be equally effective without the necessity of a staff in Justice to implement detailed regulations, administer structured program policies, establish compliance criteria, and further encumber the participating State and local agencies with operating responsibilities.
3. There is no discerned need for the section 203(k) procedures in this program such as those implemented by regulation extensively by the Department of Health, Education, and Interior. Such regulations and organizational implementation have been required only because of the extent of the section 203(k) surplus property programs administered by these agencies. The format of S. 1422 as reported would be highly workable and most efficient for the extent of activity expected for this program. Therefore, consistency with section 203(k) procedures would be unnecessary to such workability and efficiency. Presently, State governments have expressed interest in only 5 properties for correctional facility use. If the interest remains the same, we can estimate five-year program costs of

4. New Federal real property management initiatives of this Administration may change the level of activity of agency programs under section 203(k). The implementation of these initiatives as expressed in Executive Order 12348 of February 25, 1982, are now being formulated. As to the extent of emphasis among the various programs, the Director of the Office of Management and Budget stated on February 25, 1982, in testimony before the Subcommittee on Energy, Nuclear Proliferation, and Government Processes, of the Senate Committee on Governmental Affairs that while section 203(k) public benefit discount conveyances may be limited, "Exceptions to this policy will be made only for property transfers earmarked for use as correctional facilities and other selected cases reviewed by a high level policy board." However, specific policies in this regard can be effectively carried out under the provisions of S. 1422, as reported, irrespective of the current provisions of section 203(k).
  5. Finally, the Department of Justice has determined that State and local correctional facilities warrant a full donation as an incentive to accomplish Administrative law enforcement objectives. We believe that a simple and inexpensive program under the provisions of S. 1422 would be most effective to implement this determination. We thus recommend that H.R. 4450 be amended to be consistent with S. 1422 as reported. At this time, we would also like to suggest an additional amendment to this legislation. We do recognize the conveyance of correctional facilities to State governments as an exception to the Administration's policy that such conveyances be made at full, fair market value, and we fully intend to make donations of real property for this purpose. We would prefer, however, that the bill be amended to authorize, and not require, the Administrator to make donations, or to sell property at less than fair market value for use as correctional facilities. The Administration's policy with respect to donation for use as correctional facilities has not changed; however, we believe this amendment will give us needed flexibility in the operation of the program.
- Mr Chairman, this concludes my statement. I will be happy to respond to any questions which you or ther other members of the Subcommittee may wish to ask.

Mr. BURTON. Would you like to make some comments on what has been said today?

Mr. MARKON. This is a procedural question of who does what and whether it could be done more effectively and more efficiently by the General Services Administration under one procedure or by the Department of Justice under the other.

Mr. BURTON. Let us stipulate for the purposes of this question that it is going to be included on the laundry list and it is not going to be a whole new program.

How do you think it could be more efficiently and economically handled? Do you think it could be done the way it is in the bill that was introduced by Congressman Zeferetti and myself or the Attorney General throwing it over to you?

Mr. MARKON. In either case the General Services Administration will play a key role. In any case the Department would make an application for the property. The General Services Administration still has the discretion to determine the highest and best use.

I think similar questions were asked here in terms of priority and a situation was described where you have hospitals and the highest and best use would be a hospital.

This would be taken care of in the screening process. As the General Services Administration gets the property, makes this determination, there would be consultations with the Attorney General in response to his application and with the Health and Human Services Department in response to their request.

Among the Cabinet members they would resolve which is in the best Government interest, so to speak. So, the priority would not be absolute.

Mr. WALKER. My problem is this. Would you have discretion to make those kinds of judgmental decisions if you had in the law a stipulation that the correctional facility is to receive a priority?

Mr. MARKON. That is not in any of the bills.

Mr. BURTON. But that is what the Attorney General was talking about.

Mr. WALKER. We have had a couple of suggestions of that kind. Mr. Zeferetti earlier today suggested that would be a good idea.

We had a suggestion from Justice that would not be a bad idea.

Mr. BURTON. That would eliminate the give and take you were talking about in the process.

Mr. MARKON. I think you would have to interpret, in that case, what priority means. You would not exercise a priority in cases where it is an absolute misfit.

We have, for example, some downtown office buildings that even though the priority was there I doubt—

Mr. BURTON. They are talking about a flat priority, a first claim for correction facilities.

I do not think we are talking about that, so I do not think that will occur.

It would eliminate the process that you are talking about if we made a first priority; right?

Mr. MARKON. Yes; I think you have to have flexibility and you have to give the Cabinet members and the Administrator of GSA some discretion in these areas rather than to legislate these things.

Not knowing all the possible circumstances that could arise in the future legislating a direct use could be a mistake.

Mr. BURTON. Do you think they have exaggerated the burden which will be placed on the Attorney General's Office?

Mr. MARKON. It is a burden. The General Services Administration would be involved in the screening process; the excess process.

We would have so much time invested I think it would be a lot more efficient and effective if we would just follow through more or less as their agent and execute the deeds.

Mr. BURTON. The other agencies are doing that. HHS is doing it; Education is doing it; and others are also.

Mr. MARKON. Yes, they had major programs and they have staffs that they maintain.

They have staffs in almost all their regional offices. They have 10 or 15 people working in this area. The program is that large.

This program is not that large. I think it is a service that GSA can very effectively provide for the Department of Justice. The system would not suffer one way or the other.

Mr. BURTON. How are you going to get hired as a consultant by Justice if GSA does this? [Laughter.]

Mr. DAUB. If the gentleman would yield, how many are we talking about? Six a year was the estimate that the previous witness stated. Would you agree with that?

Mr. MARKON. I think the reason why he said six is also recognition by the Department of Justice that all property would not be suitable for this purpose. Even if they had a priority they would be selective in exercising their priority.

They would not insist that the prison be located someplace where it is just absolutely wrong.

Mr. DAUB. So the six is an estimate, it is an assumption that there are six a year that would be suitable?

Mr. MARKON. Yes, it is an assumption.

Mr. DAUB. Are there 600 in the country which could be suitable?

Mr. MARKON. There can be. What comes into the inventory over the years—you know, this legislation looks ahead. We cannot look at our current inventory and make a decision of what the inventory will look like next year or the year after.

Mr. DAUB. Where are these properties located? Are they spread out pretty well on the figures we are assuming? That breaks down into its logical parts. I am always afraid of that word.

How complicated a thing are we talking about?

Mr. MARKON. The property is situated in the same pattern that the Federal Government is situated in the 50 States. It is Federal property. We have a larger concentration in the southern tier mainly because of the Defense Department having a lot of their bases in the South.

Mr. DAUB. Is that where we need prisons?

Mr. MARKON. We need prisons in the Southern States as well as the Northern States. You would not get the benefit equally in all States.

Mr. DAUB. I guess what I am saying is that if we have someone looking at these bills who matched the figures of the problem with the potential for location, are we talking about creating even third

problems like transportation and things that just do not make it work?

It is then a kind of empty kind of problem in the first place.

Mr. MARKON. This is where the discretion comes in. The prior witness, Mr. Harris, identified certain types of property—the Nike sites.

The Nike sites were in the suburban areas. They were on the fringes of the municipalities. They had about 10 or 15 acres with some buildings that were barracks, mess halls, and administrative space. It was generally fenced in.

These are ideal situations because they are within communicating distance from within the inner core of the city. They are easily converted to minimum or medium security installations.

With those kinds of properties I think that the priority would come into play and we would have the question of the local interest of whether or not this fits in with all other development plans of local interest.

I doubt that the States correctional departments can really force a use in a particular area that is absolutely wrong.

Mr. DAUB. Do you see where I am headed? You can look about needs and you can look about trying to solve them and if you are looking about putting the square peg in the round hole, we have a tier of property that could be prioritized that does not meet with the New York-California need for corrections institutions. We set up a bureaucracy to deal with an impossible puzzle.

Mr. MARKON. I do not think that anyone meant to convey that this legislation will solve all of the facility problems of the States. This is a partial solution. Every little bit helps.

Mr. DAUB. Do you agree that we should give them away if we can instead of selling them?

Mr. MARKON. Yes; because of the situation as described in the task force report and by the Attorney General that this requires some sort of seed; some sort of help from the Federal Government to get this program going. That is the seed or the kind of help that we can give them.

Mr. DAUB. Thank you. Those are all my questions.

Mr. WALKER [presiding]. Let me ask you the question I asked the Justice Department.

Do you perceive any conflict between the administration's position? On the one hand they want to sell off a lot of surplus property and on the other hand they are supporting an approach that will put more land available for surplus?

Mr. MARKON. I do not see a conflict. I see this as an exception to that general rule. Like most exceptions to a general rule, it appears to be a little contrary to the basic intent of the Executive order signed by the President.

I think when you get back to the scope again you look at the small amount of properties that we are talking about, it is not really a big exception.

Mr. WALKER. I still come back and say that it seems to me—and this is, I guess, what we will get into in next week's hearing—but it seems to me that if we are talking about selling off \$4 billion worth of property in 1 year as the budget seems to indicate, we are talking about selling off one heck of a lot of property.

We do not have that many parcels of land that are worth an awful lot of money so to get to a \$4 billion figure you have to sell one whale of a lot of it.

Every little piece that you put up for surplus for a particular program is that much less property that you have as a potential for those kinds of sales.

Does that not present a conflict of sorts?

Mr. MARKON. Yes, there is a conflict of sorts. But I do not think it is a great inconsistency because of the scale.

We are talking about a figure which, I think the figure in the 1983 fiscal year budget was \$2 billion and in 1984 was \$4 billion.

But in a program of that size when you talk about the small number of properties that we are talking about for prisons, I do not think of it as a conflict. I think of it as a minor deviation.

Mr. WALKER. It certainly appears to me to be inconsistent. The other inconsistency in all of this is that we are diverting from the provisions of the Property Act when we talk about assigning the role to GSA.

I think you have indicated that the small size of the program might be a factor in all of this. But do we begin to set a precedent for further surplus donations that we might have in the future of moving away from the idea that it should be handled on an agency-by-agency basis?

Mr. MARKON. I do not think that is a bad idea. I think some of the provisions in the law now you probably would get more efficiency if you would change the law to require all these properties to be handled as we are proposing in this bill.

Mr. BURTON [presiding]. It is a little territorial imperative? Do you guys want to keep control of it? Do you think it is efficiency rather than the grasping hands of the GSA reaching out for more power?

Mr. MARKON. I have no further interest in grasping power.

Mr. BURTON. You have given your life to GSA's programs and you want to see them go on.

Mr. MARKON. I have been with the program for many years. I see some efficiencies, particularly in the compliance.

I think when you place compliance and inspections with someone other than the agency that has the program responsibility, you get more of an objective report.

So I think the procedure recommended by the Department of Justice and the administration, in this case, is one that is more effective, more efficient, and would produce I think better control over the entire program.

Mr. WALKER. Is that what you mean when you refer to the fact that there are regulatory implementations problems in H.R. 6028 as compared with H.R. 4450?

Mr. MARKON. Yes. I might add, Mr. Walker, that there was some testimony that there is only one exception to the laundry list approach described by the chairman and that was for fish and wildlife.

The General Services Administration does grant and make the deeds for the historic monument conveyances as well as the airport conveyances.

It is not the single exception. There are other precedents.

**CONTINUED**

**1 OF 2**

Mr. WALKER. I have just learned something. In other words, off that laundry list of categories, about half of them are covered by GSA?

Mr. MARKON. No, the ones for parks, the Department of Interior does the granting.

Mr. BURTON. GSA takes care of fish and wildlife, historic monuments, and airports?

Mr. MARKON. Yes.

Mr. BURTON. Thank goodness.

Mr. MARKON. Except we do not have compliance in airports.

Mr. WALKER. You have everything but health, education, and parks and recreation?

Mr. MARKON. Yes, I think so.

Mr. BURTON. There is something to be said for that process.

When you give property to an agency—well, for example, we had an airport, Hamilton Field. If FAA had that final authority Langhorne Bond would have zapped it right out the door.

You have to give it first to FAA to do that; do you not? We are really just talking about a deconveyance act. It does not make that much difference one way or another; right?

Mr. MARKON. I think it could work both ways. We are saying that it is more effective and more efficient to work it the way we recommend.

Mr. BURTON. You do not know that; you think that? Can you compare what you do with a historic monument to a correctional facility?

Mr. MARKON. If our experience and expertise means anything, that is what we are saying based on our past experience.

Mr. WALKER. I just want to make something clear for the record. I was under the impression—and I think it is an important point—that surplus property can be donated for the following purposes at the present time: health, education, parks and recreation, public airports, historic monuments and wildlife refuges.

Is that correct?

Mr. MARKON. That is correct.

Mr. WALKER. We talking about adding correctional facilities to that?

Mr. MARKON. That is correct.

Mr. WALKER. Of that list you handled about half. I think that is correct. You handle airports, historic monuments purposes, and wildlife refuges, is that correct?

Mr. MARKON. That is correct.

Mr. WALKER. Therefore, there are really only—it is divided about half and half between what you handle and what the agencies handle?

Mr. MARKON. Yes. I think when you look back—

Mr. BURTON. What is the number? What would the volume of the three versus the three be?

Mr. MARKON. Over what period of time?

Mr. BURTON. Just generally.

Mr. MARKON. The biggest volume is in parks and recreation because of the legacy of parks program over the last few years. Then education is next.

Mr. BURTON. The biggest volume is the one which other agencies do themselves?

Mr. MARKON. Yes.

Mr. BURTON. You may have half the laundry list in your jurisdiction but perhaps other agencies have the lion's share of conveyances.

Mr. WALKER. Again, the precedent is that the smaller programs have been yours to run and it is the bigger programs which we have left to the agencies.

Mr. MARKON. That is a very good point.

Mr. WALKER. I think this is one of the smaller programs.

Mr. BURTON. Mr. Weiss?

Mr. WEISS. Mr. Chairman, I have no questions.

Mr. BURTON. We thank you very much. We will see you Tuesday.

What is the status of Hamilton Field?

Mr. MARKON. It is status quo.

Mr. BURTON. Thank you very much.

Now we have two members of the California State Assembly; Marian La Follette who chairs the Subcommittee on Jails, and James Cramer, member of the Subcommittee on Jails of the California State Assembly, the finest legislative body in the Nation.

You may proceed.

#### STATEMENT OF MARIAN La FOLLETTE, CHAIRPERSON, SUBCOMMITTEE ON COUNTY JAILS, CALIFORNIA STATE LEGISLATURE

Ms. LA FOLLETTE. Thank you, Mr. Chairman.

Good morning, Mr. Chairman and members.

Incidentally, Mr. Chairman, Willie Brown sends his greetings.

As you know, I am Assemblywoman Marian La Follette, chairperson of the California State Assembly's Subcommittee on County Jails.

I would like to thank you for this opportunity to address the very significant legislation before you, H.R. 4450 and H.R. 6028.

This legislation is of vital importance to California, the State with the largest population and, I believe, the most serious correctional crisis in our Nation.

For a year I have studied the jail crisis in California, focusing on the issues of overcrowding, health and safety, security, and, most importantly, cost.

Last fall Assemblyman Cramer and I conducted a hearing on this subject in Los Angeles. What we learned was disturbing but by no means surprising to individuals involved in local corrections.

First, 2 years ago fewer than 25 percent of California's jails were short of bed space and facilities. Today, two-thirds of our jails are overcrowded, some by as much as 300 percent.

Second, with the rising crime rate and stiffer penalties, the jail population is exploding. In the next 3½ years, the jail population is expected to increase by nearly 10,000 in our State, with total population reaching 40,000 by 1986.

Third, by 1986 we will need 9,000 new jail beds and must have renovated 7,000 delapidated and unsafe beds which currently exist. The total cost in today's dollars will be \$900 million.

Many people have urged that alternatives to incarceration be used more. In California, we have stretched such alternatives to all reasonable limits.

In a 1980 State survey, 75 percent of those arrested in California were released through citation, their own recognizance, or community placement. Release of the remaining 25 percent would be irresponsible at best, and yet that is what we may be faced with in many instances.

Because of jail conditions, like many other States, we are currently finding half of our counties involved in jail-related law suits. Nine of our largest counties are under court order to reduce population. These include San Francisco, Los Angeles, San Diego, and the State capital, Sacramento.

Nine other counties face suit for unequal treatment relative to facilities for men and women. The biggest stumbling block to resolving these issues is money and resources.

Jail construction is very costly. The price for a jail bed ranges from \$40,000 to \$65,000 depending on security level according to the State board of corrections.

You gentlemen can certainly appreciate one other factor which especially impacts California. In order to build facilities of any kind, it is necessary to have the real estate upon which to do so; and real estate in California is extraordinarily expensive.

California is no exception to the economic problems confronting government today. Our chairman of Ways and Means, Assemblyman John Vasconcellos tells me that the well is dry.

When there was a question asked as to whether we could use vacant land; yes, we could use vacant land. In fact, we could use whatever you might be willing to send our way.

I guess Mr. Walker is concerned about making the Federal budget balanced. We, of course, have that concern in our State.

In addressing your question about how you can balance both in your arguments, I would like to say this. You want to give to the State and yet you want to balance your budget by selling.

I would agree with some other witnesses who said that there are certain properties that you will receive an inflated value for that property, particularly in California, but which would not be suitable for jail facilities.

So maybe the money you would gain from that value would help to offset the money that you would be helping to provide us in donating facilities.

Yet with our \$900 million jail problem, we are told by the courts that a lack of means is no defense for violations of cruel and unusual treatment due to overcrowded jails. That is why it is imperative that we make every effort to acquire any and every resource to resolve our jail crisis.

This is also why I was so pleased to be informed of the efforts of Congressmen Zeferetti and Burton in the House and Senator Grassley in the Senate.

Your legislation, providing for sale or donation of Federal surplus property for correctional uses, is essential.

Part of my purpose in being here today is to present you with Assembly Joint Resolution 81 passed without opposition by the California State Legislature, urging expeditious action by the Con-

gress and the President to turn over to the States and local governments all available surplus Federal property that might be put to correctional uses.

I would ask that this be put in the record.

Mr. BURTON. Without objection, so ordered.

[The material follows:]

**Assembly Joint Resolution****No. 81**

Introduced by Assemblymen La Follette, Cramer, McAlister, Wright, Baker, Bergeson, Deddeh, Filante, Goggin, Hallett, Ingalls, Johnson, Kelley, Lancaster, Naylor, Nolan, Larry Stirling, and Young

February 16, 1982

Assembly Joint Resolution No. 81—Relative to federal detention facilities.

## LEGISLATIVE COUNSEL'S DIGEST

AJR 81, as introduced, La Follette. Federal detention facilities.

Requests federal review relative to the transfer to, or acquisition by, the several counties of the State of California of all federal facilities that might appropriately be used as local detention facilities.

Fiscal committee: no.

1 WHEREAS, The counties of California are  
2 experiencing severe difficulties regarding the  
3 inadequacy of local detention facilities and jails due to  
4 overcrowding, dilapidation, and insufficient security; and

5 WHEREAS, These difficulties have in too many  
6 instances reached crisis proportions and caused judicial  
7 intervention resulting in court ordered release of pretrial  
8 detainees and misdemeanor criminals due to inadequate  
9 bed space, as well as health and safety violations affecting  
10 staff and inmates; and

11 WHEREAS, The Legislature, through the Assembly  
12 Subcommittee on County Jails, is seeking every possible  
13 resource to provide adequate local detention facilities;  
14 and

**AJR 81**

— 2 —

1 WHEREAS, It has come to the attention of the  
2 Assembly Subcommittee on County Jails that certain  
3 deactivated federal facilities and sites exist within  
4 California which may be appropriate for use by local  
5 government as detention facilities; and

6 WHEREAS, The President of the United States and the  
7 Attorney General of the United States have indicated  
8 that such deactivated facilities should be made available  
9 to state and local governments for such purposes; and

10 WHEREAS, Because such transfer or acquisition by  
11 state and local governments requires a request be made  
12 to the federal government; now, therefore, be it

13 *Resolved by the Assembly and the Senate of the State*  
14 *of California*, That the Legislature of the State of  
15 California respectfully requests federal review relative to  
16 the transfer to, or acquisition by the several counties of  
17 the State of California of all federal facilities that might  
18 appropriately be used as local detention facilities in the  
19 State of California, and memorializes the Congress and  
20 the President of the United States to act expeditiously to  
21 implement the transfer to or acquisition by California  
22 counties of all such federal facilities for use as local  
23 detention facilities and for jails as appropriate; and be it  
24 further

25 *Resolved*, That the Chief Clerk of the Assembly  
26 transmit copies of this resolution to the President and  
27 Vice President of the United States, to the Speaker of the  
28 House of Representatives, and to each Senator and  
29 Representative from California in the Congress of the  
30 United States.

Ms. LA FOLLETTE. Such action would be very significant for all the States, but particularly for California where some 33 surplus Federal sites have been identified with a value exceeding \$94 million, many of which might potentially be put to correctional use.

Conservatively, sale, lease, or donation of existing surplus property in California to the State or local government would mean at a minimum \$55 million in property resources for county jails. If transfer is limited to sale or donation, this amount could be much greater.

\$55 million may not be a large sum when compared with the \$900 million in need. However, when you consider that the total appropriation available for jails from the State of California in 1981-82 was only \$40 million, such amounts become significant.

We are not asking the Federal Government to bail us out. As I already indicated, we have made maximum use of alternatives. Next November Californians will decide whether to issue \$240 million for jail construction and renovation in bonds. We are looking to every possible resource available.

I believe the use of Federal surplus property for jail and related purposes is very appropriate, since these are facilities that taxpayers have already underwritten, and which can be of great benefit in relieving those same taxpayers from the burden of jail finance, if only partially.

In order to maximize the potential benefit to our citizens, I urge the committee to make correctional use of such surplus facilities and properties a high priority, and to make the conditions and provisions related to donation or sale as flexible as possible in terms of State and local prerogatives.

I urge every Member of Congress to work toward the swift passage of this legislation, bearing in mind that if we fail to address correctional needs we are faced with unprecedented release of dangerous and potentially dangerous offenders into our communities and that is something I am sure neither the people nor their elected representatives desire.

Thank you.

I understand you have the problem of who is going to be the landlord. After listening to the debate, all I can say is that whatever is decided, we would just like you to move ahead as fast as possible so that we can begin to get some relief as soon as possible.

It does not sound to me, just from sitting and listening, as if that is a matter that should hold up the passage of these bills.

I would just ask for your sincere consideration and effort in making this move.

Once again, thank you.

[Ms. La Follette's prepared statement follows:]

APRIL 21, 1982

CALIFORNIA STATE LEGISLATURE

ASSEMBLYWOMAN MARIAN LA FOLLETTE  
CHAIRPERSON, ASSEMBLY SUB-COMMITTEE  
ON COUNTY JAILS

STATEMENT TO THE HOUSE SUB-COMMITTEE ON GOVERNMENT ACTIVITIES  
AND TRANSPORTATION (CONGRESSMAN JOHN L. BURTON, CHAIRMAN)

MR. CHAIRMAN AND MEMBERS:

I AM ASSEMBLYWOMAN MARIAN LA FOLLETTE, CHAIRPERSON OF THE CALIFORNIA STATE ASSEMBLY SUB-COMMITTEE ON COUNTY JAILS.

I WOULD LIKE TO THANK YOU FOR THIS OPPORTUNITY TO ADDRESS THE VERY SIGNIFICANT LEGISLATION BEFORE YOU... H.R. 4450 AND 6028. THIS LEGISLATION IS OF VITAL IMPORTANCE TO CALIFORNIA, THE STATE WITH THE LARGEST POPULATION AND, I BELIEVE, THE MOST SERIOUS CORRECTIONAL CRISIS IN OUR NATION.

FOR A YEAR I HAVE STUDIED THE JAIL CRISIS IN CALIFORNIA, FOCUSING ON THE ISSUES OF OVERCROWDING, HEALTH AND SAFETY, SECURITY AND MOST IMPORTANTLY, COST.

LAST FALL ASSEMBLYMAN CRAMER AND I CONDUCTED A HEARING ON THIS SUBJECT IN LOS ANGELES. WHAT WE LEARNED WAS DISTURBING BUT BY NO MEANS SURPRISING TO INDIVIDUALS INVOLVED IN LOCAL CORRECTIONS:

FACT: 2 YEARS AGO FEWER THAN 25% OF CALIFORNIA'S JAILS WERE SHORT OF BED SPACE AND FACILITIES.

TODAY, TWO-THIRDS OF OUR JAILS ARE OVERCROWDED... SOME BY AS MUCH AS 300%.

FACT: WITH THE RISING CRIME RATE AND STIFFER PENALTIES, JAIL POPULATION IS EXPLODING.

IN THE NEXT 3½ YEARS, JAIL POPULATION IS EXPECTED TO INCREASE BY NEARLY 10,000 IN MY STATE, WITH TOTAL POPULATION REACHING 40,000 BY 1986.

FACT: BY THAT YEAR (1986) WE WILL NEED 9,000 NEW JAIL BEDS AND MUST HAVE RENOVATED 7,000 DELAPIDATED AND UNSAFE BEDS THAT CURRENTLY EXIST.

TOTAL COST IN TODAY'S DOLLARS: 900 MILLION DOLLARS.

MANY PEOPLE HAVE URGED THAT ALTERNATIVES TO INCARCERATION BE USED MORE. IN CALIFORNIA, WE HAVE STRETCHED SUCH ALTERNATIVES TO ALL REASONABLE LIMITS.

IN A 1980 STATE SURVEY, 75% OF THOSE ARRESTED IN CALIFORNIA WERE RELEASED THROUGH CITATION, OWN RECOGNIZANCE OR COMMUNITY PLACEMENT. RELEASE OF THE REMAINING 25% WOULD BE IRRESPONSIBLE AT BEST, AND YET THAT IS WHAT WE MAY BE FACED WITH IN MANY INSTANCES.

BECAUSE OF JAIL CONDITIONS, LIKE MANY OTHER STATES, WE ARE CURRENTLY FINDING HALF OF OUR COUNTIES INVOLVED IN JAIL RELATED LAW SUITS. NINE OF OUR LARGEST COUNTIES ARE UNDER COURT ORDER TO REDUCE POPULATION AND THESE INCLUDE: SAN FRANCISCO, LOS ANGELES, SAN DIEGO AND THE STATE CAPITOL, SACRAMENTO.

NINE OTHER COUNTIES FACE SUIT FOR UNEQUAL TREATMENT RELATIVE TO FACILITIES FOR MEN AND WOMEN.

THE BIGGEST STUMBLING BLOCK TO RESOLVING THESE ISSUES IS MONEY AND RESOURCES.

JAIL CONSTRUCTION IS VERY COSTLY. THE PRICE FOR A JAIL BED RANGES FROM \$40,000 TO \$65,000 DEPENDING ON SECURITY LEVEL ACCORDING TO THE STATE BOARD OF CORRECTIONS.

YOU GENTLEMEN CAN CERTAINLY APPRECIATE ONE OTHER FACTOR WHICH ESPECIALLY IMPACTS CALIFORNIA:

IN ORDER TO BUILD FACILITIES OF ANY KIND, IT IS NECESSARY TO HAVE THE REAL ESTATE UPON WHICH TO DO SO; AND REAL ESTATE IN CALIFORNIA IS EXTRAORDINARILY EXPENSIVE.

AND CALIFORNIA IS NO EXCEPTION TO THE ECONOMIC PROBLEMS CONFRONTING GOVERNMENT TODAY. OUR CHAIRMAN OF WAYS AND MEANS, ASSEMBLYMAN JOHN VASCONCELLOS TELLS ME THAT THE WELL IS DRY.

YET, WITH OUR 900 MILLION DOLLAR JAIL PROBLEM, WE ARE TOLD BY THE COURTS THAT A LACK OF MEANS IS NO DEFENSE FOR VIOLATIONS OF CRUEL AND UNUSUAL TREATMENT DUE TO OVERCROWDED JAILS.

THAT IS WHY IT IS IMPERATIVE THAT WE MAKE EVERY EFFORT TO ACQUIRE ANY AND EVERY RESOURCE TO RESOLVE OUR JAIL CRISIS.

THIS IS ALSO WHY I WAS SO PLEASED TO BE INFORMED OF THE EFFORTS OF CONGRESSMEN ZEFERETTI AND BURTON IN THE HOUSE, AND SENATOR GRASSLEY IN THE SENATE. YOUR LEGISLATION, PROVIDING FOR SALE OR DONATION OF FEDERAL SURPLUS PROPERTY FOR CORRECTIONAL USES IS ESSENTIAL.

PART OF MY PURPOSE IN BEING HERE TODAY IS TO PRESENT YOU WITH ASSEMBLY JOINT RESOLUTION 81, PASSED WITHOUT OPPOSITION BY THE CALIFORNIA STATE LEGISLATURE, URGING EXPEDITIOUS ACTION BY THE CONGRESS AND THE PRESIDENT TO TURN OVER TO THE STATES AND LOCAL GOVERNMENTS ALL AVAILABLE SURPLUS FEDERAL PROPERTY THAT MIGHT BE PUT TO CORRECTIONAL USES.

SUCH ACTION WOULD BE VERY SIGNIFICANT FOR ALL THE STATES, BUT PARTICULARLY FOR CALIFORNIA WHERE SOME 33 SURPLUS FEDERAL SITES HAVE BEEN IDENTIFIED WITH A VALUE EXCEEDING 94 MILLION DOLLARS, MANY OF WHICH MIGHT POTENTIALLY BE PUT TO CORRECTIONAL USE.

CONSERVATIVELY, SALE, LEASE OR DONATION OF EXISTING SURPLUS PROPERTY IN CALIFORNIA TO THE STATE OR LOCAL GOVERNMENT WOULD MEAN AT A MINIMUM 5 MILLION DOLLARS IN PROPERTY RESOURCES FOR COUNTY JAILS. IF TRANSFER IS LIMITED TO SALE OR DONATION, THIS AMOUNT COULD BE MUCH GREATER.

\$55 MILLION MAY NOT BE A LARGE SUM WHEN COMPARED TO THE \$900 MILLION IN NEED, HOWEVER, WHEN YOU CONSIDER THAT THE TOTAL APPROPRIATION AVAILABLE FOR JAILS FROM THE STATE OF CALIFORNIA IN 1981-82 WAS ONLY \$40 MILLION, SUCH AMOUNTS BECOME SIGNIFICANT.

WE ARE NOT ASKING THE FEDERAL GOVERNMENT TO BAIL US OUT. AS I ALREADY INDICATED, WE HAVE MADE MAXIMUM USE OF ALTERNATIVES. NEXT NOVEMBER CALIFORNIANS WILL DECIDE WHETHER TO ISSUE \$240 MILLION FOR JAIL CONSTRUCTION AND RENOVATION IN BONDS. WE ARE LOOKING TO EVERY POSSIBLE RESOURCE AVAILABLE.

I BELIEVE THE USE OF FEDERAL SURPLUS PROPERTY FOR JAIL AND RELATED PURPOSES IS VERY APPROPRIATE, SINCE THESE ARE FACILITIES THAT TAXPAYERS HAVE ALREADY UNDERWRITTEN, AND WHICH CAN BE OF GREAT BENEFIT IN RELIEVING THOSE SAME TAXPAYERS FROM THE BURDEN OF JAIL FINANCE, IF ONLY PARTIALLY.

IN ORDER TO MAXIMIZE THE POTENTIAL BENEFIT TO OUR CITIZENS, I URGE THE COMMITTEE TO MAKE CORRECTIONAL USE OF SUCH SURPLUS FACILITIES AND PROPERTIES A HIGH PRIORITY, AND TO MAKE THE CONDITIONS AND PROVISIONS RELATED TO DONATION OR SALE AS FLEXIBLE AS POSSIBLE IN TERMS OF STATE AND LOCAL PREROGATIVES.

I URGE EVERY MEMBER OF CONGRESS TO WORK TOWARD THE SWIFT PASSAGE OF THIS LEGISLATION, BEARING IN MIND THAT IF WE FAIL TO ADDRESS CORRECTIONAL NEEDS WE ARE FACED WITH UNPRECEDENTED RELEASE OF DANGEROUS AND POTENTIALLY DANGEROUS OFFENDERS INTO OUR COMMUNITIES... AND THAT IS SOMETHING I AM SURE NEITHER THE PEOPLE NOR THEIR ELECTED REPRESENTATIVES DESIRE.

THANK YOU.

Mr. BURTON. Mr. Cramer?  
You may proceed.

# STATEMENT OF JAMES CRAMER, MEMBER, SUBCOMMITTEE ON COUNTY JAILS, CALIFORNIA STATE LEGISLATURE

Mr. CRAMER. Thank you, Mr. Chairman.

Mr. Chairman, I should explain to you my background. I guess the reason Willy Brown asked me to come here to testify before you is this.

I spent 20 years before I worked in the assembly as a prosecutor in the State and was a district attorney elected for a number of terms in that activity.

Ms. La Follette talked essentially about the county jail problems in California and really did not touch on the State prison problems which I will briefly furnish you information about.

We have done some recent hearings both on the design problems and on crowding problems in California.

Right now we have 30,381 inmates in the State prison system in California. We are gaining 125 inmates per week, net increase.

Right now, today, we are 5,078 people in the prison overcrowding for the prison. We are presently handling that overcrowding circumstance with double celling prisoners in a variety of places.

There are serious conversations for the first time in California of tents and serious conversations about trailers. I know in Texas they have already gone to tents in their prison facilities. That information was testified to before our committee some time back.

We figure by June 30 of this year we will have facilities for about 25,911 prisoners. This is because we are putting in camps.

We expect a population of 31,200 prisoners.

We have a program before us in design for additional department of California correctional facilities. If they all come into place by 1987, which is the target date, that will provide 38,389 beds.

Unfortunately with the kinds of programs we have in California now on getting tough on crime and determinant sentencing and that sort of thing, the population expected in the State prison system at that time of 1987 will be 47,400 people.

California is addressing this problem in three ways right now. One, we had before the citizens in June a bond issue. There was some \$490 million for bonds to authorize construction of prison facilities.

Unfortunately on that same ballot is a thing called proposition VIII, a victims' bill of rights. If that becomes law it will probably absorb all the prison capacity just from the change of the law that will exist in California.

At the same time that we are changing or planning the additional construction of prison facilities, we are also trying to change what we do with people in State prisons in terms of work, good time credits, prison industries, road maintenance camps, and that kind of thing.

Perhaps in the long term we have a person trained who has to be in prison to come and do a job when he comes out of prison.

I believe we support bipartisanly in both the assembly and the senate in the legislature the kind of bill that will assist us to stretch those dollars if there is land made available to us.

We could probably use that land more effectively than starting from scratch. I believe the Governor of the State in his activities in supporting the bond issue would also support these principles.

I appreciate the opportunity to be here with you today.

Mr. BURTON. Thank you both very much for your testimony.

Has the legislature stated where those prisons will be constructed if the bond issue passes? Is that for new construction or for renovation of existing facilities?

Mr. CRAMER. Right now—there was testimony presented Monday for building a new facility in Tehachapi, and refining an old facility at Folsom.

There is very loose discussion with a lot of opposition for a facility in Adelanto and a lot more opposition for a facility in Baker which are farther and farther out into the desert and farther and farther away from where family and people can meet with prisoners. There seems to be a great deal of evidence that that failure of contact means prisoners are more likely to be a failure when they are released from prison.

Mr. BURTON. But nobody wants a prison in their backyard; right?

Mr. CRAMER. We are having a major war going on, as you might know, in San Diego now where a facility which has been discussed for a number of years—

Mr. BURTON. Is that still in the blueprint?

Mr. CRAMER. It is still in public hearings. It is just as bad with halfway houses. We have a major program of taking people out of State prisons and putting them into halfway homes for treatment and for moving into the community and for that different kind of setting.

Every time you seek a home, you have all the neighborhoods saying: "We do not want those State prisoners around our kids." It is a continuing and difficult problem.

Mr. BURTON. I have just one question, and both of you could comment, if you will.

This relates to the colloquy Mr. Weiss had with the Attorney General about the overclassification of prisoner security needs.

The testimony of one of the witnesses who follows you states specifically that in our State of California that they overclassify the prisoner security needs.

Mr. CRAMER. In the past 6 months, California has adopted a new system of classification of prisoner security needs. It goes from a level I to a level IV. It might be useful. If you like, I will have those classifications as identified for your consideration.

[The material follows:]

## DEPARTMENT OF CORRECTIONS

SACRAMENTO, CA 95814 (916) 445-4737  
630 K Street or  
P.O. Box 714

MAY 11 1982



May 3, 1982

The Honorable John Burton, Chairman  
Government Activities and Transportation  
Subcommittee  
2157 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Burton:

I am pleased to describe our classification levels in response to the request by your committee to Assemblyman Jim Cramer at your hearing on April 21, 1982.

The policy of the department is to place inmates at the lowest practical security level of housing commensurate with housing availability and individual program needs. To adhere to this, a uniform way of classifying inmates was developed. The foundation of the plan is a definition of four facility security levels directly related to physical control capabilities.

Level I

Lowest security level. Non-secure housing consisting of either dormitories or individual room/cells surrounded by an indirectly supervised perimeter or without a secure perimeter. Our forestry camps with only boundary markers for a perimeter are an example.

Level II

Slightly more restrictive from Level I and has the same housing characteristics, but with a more secure and constantly supervised perimeter.

Level III

Provides secure single cell housing, an armed perimeter and controlled inmate movement.

Level IV

The most restrictive of the four security levels. Very high security facilities in which housing is single-cell with armed capability inside. The perimeter is armed and inmate movement restricted. Level IV institutions have the capability of segregating individuals or varying sizes of groups who require carefully controlled isolation from other inmates. San Quentin and Folsom are our Level IV institutions.

Determining the level of the institutions is the easy part. The difficult question is which inmates should be where and why.

After a lot of complicated study, a relatively simple classification process was developed. Basically a weighted checklist is used. Scores are entered for a wide variety of factors including the sentence length, prior criminal history, prior institutional behavior (both good and bad) prior escapes, and such measures of stability as age, marital status, education, employment and military history.

The individual item scores are added. Those with the lowest scores (up to 19 points) are designated as Level I inmates. Inmates scoring 20-29 are Level II; 30-49 Level III and 50 or more Level IV. Inmates are periodically reclassified on the basis of their current behavior and their level may be changed accordingly. Exceptions can be made in institutional placement for medical or psychiatric needs, to complete a training program or other explicit and documented reasons.

Use of the system has resulted in a substantial increase in the proportion of inmates classified as in need of only minimum custody and at the same time, the rate of escape has decreased.

The typical Level I inmate can be described as having less than a 30-month sentence, a minor history of criminality, limited prior incarceration, and some history of social stability.

A Level II has a sentence over 30 months, a history of state incarceration or criminality, with no escape or violence in the background, and a lack of social stability.

A Level III has a somewhat longer sentence, significant prior incarceration, prior walk-aways and disciplinaries in past incarcerations, and no social stability.

A Level IV has a long-term history of extensive criminal behavior and serious disciplinaries in past incarcerations, has had serious escapes in the past or has a term of such length that an escape attempt is highly possible. Very few of the Level IV's have any history of social stability.

As of March 31, 1982 the Department's inmate population, by custody level, was as follows:

Level I	7,804	or	31%
Level II	5,485	or	22%
Level III	5,912	or	23%
Level IV	6,219	or	24%
TOTAL	25,420		100%

This does not include 2,328 inmates in the reception centers, 1,375 Female inmates, 685 re-entry, and 752 inmates whose score sheets have not yet been entered on the computer due to a time lag.

We will be happy to provide more detailed information at your request.

Sincerely,



WALTER L. BARKDULL  
Assistant Director  
Legislative Liaison

cc: Jim Cramer, Assemblyman

Mr. CRAMER. I believe they are a substantial step forward. If you build a class IV, the most secure facility, you are talking about \$100,000 a cell. We just cannot build a Cadillac or even maybe a fancier system in California at those kind of prices. You just cannot afford it.

Mr. BURTON. Would you like to comment, Ms. La Follette?

Ms. LA FOLLETTE. This is indirectly a comment. But at this point only 7 percent of those arrested for felonies in California go to prison.

Of those over 70 percent are committed to crimes of violence. I do not know what the solution is but I do know that we have to have more facilities immediately to help address this problem.

This brings me up to something I was thinking about as you were testifying and concerned about whether detention centers should be designated as a priority for release of Federal surplus land facilities.

I wonder if you could consider making it a priority for a certain number of years, like possibly for the next 5 years?

This is just so we can begin to meet this crisis which has developed so suddenly.

I see you are saying no.

Mr. BURTON. You are in the legislature. You know you only do those things for 2 years. We had a tax increase enacted for 2 years. It will be on the books when we have grandchildren's grandchildren.

Ms. LA FOLLETTE. I was just talking about establishing it as a priority.

Mr. BURTON. That is what I am talking about. Once it becomes a priority, it will never be changed.

Ms. LA FOLLETTE. May I ask another question?

Mr. BURTON. Certainly.

Ms. LA FOLLETTE. We are assuming this legislation is going to pass.

Mr. BURTON. So am I.

Ms. LA FOLLETTE. When do you feel, then, the mechanism would be in order for us to begin to ask for release of some of these Federal facilities?

Mr. BURTON. I would not even want to be held to this because I am speaking as one member of the subcommittee. I feel that our biggest problem will be getting a quorum to move the bill. I know the full committee will not be considering legislation until after May 1.

The bill conceivably could be enacted by the August recess. I think if we gave jurisdiction to the GSA instead of the Attorney General we might expedite the process because the Attorney General might then be in favor of the bill.

I would start getting ready now. I would think that all bills normally have an urgency clause. Once signed, it is the law. They do not have to wait 3 years unless that is specifically in the bill.

I would think you could be jumping into the Federal trough sometime next year.

Ms. LA FOLLETTE. I know we are already receiving requests from counties.

Mr. BURTON. Mr. Romney, would you give a quick answer on that?

Mr. ROMNEY. There are arrangements which have been entered into in New York. If you were here when Mr. Zeferetti testified, and perhaps there will be testimony from Mr. Horn later, whereby under a temporary use permit a State can make use of this property.

You may be familiar with the situation in Santa Clara County where the Almaden Air Force Station was all ready to be turned over. The legal papers were all set to go. This would have been turned over on a temporary use permit.

Then for reasons involving sewage and roads and funding the county quite suddenly, and much to GSA's surprise after a considerable amount of effort on their part, backed away.

The point here is that the mechanism is in place now for temporary use. This can be done in anticipation of enacted legislation.

Mr. CRAMER. In fairness, we have been reviewing, consistent with that, a large number of pieces of potential property as to whether or not there are practical uses of prisons and whether or not they are practical in the renovation costs associated with it.

Mr. BURTON. Mr. Walker?

Mr. WALKER. Thank you, Mr. Chairman.

Ms. La Follette, you mentioned in your statement that the 1980 State survey revealed 75 percent of those arrested in California—that is arrested rather than convicted—were released.

Did that survey take into account what kind of crimes were committed?

Ms. LA FOLLETTE. No, I do not know that I have that information.

Mr. CRAMER. We also should indicate that this is an arrest situation, a precharge also.

Mr. WALKER. It is an arrest and pretrial situation.

And it did not distinguish between violent and nonviolent crime? It is just an overall arrest kind of record?

Ms. LA FOLLETTE. Right.

Mr. BURTON. Those would be meaningless statistics; would they not? In other words, it would be like including the May Day arrests here where they arrested so many.

Mr. WALKER. What I am interested in primarily is this: Do you have any statistics that tell how many violent criminals we are putting back on the streets as a result of overcrowded prison facilities in California?

Ms. LA FOLLETTE. I do have a figure that 7 percent of those arrested for felonies go to prison. Over 70 percent of these people are committed for crimes of violence. I do not know how many in numbers. That is percentage.

Mr. CRAMER. Excepting the discrepancy that is built into a bail judgment system, I know of no one in California that has been released because of overcrowded conditions who was a violent offender either at the county jail level or at the State prison level.

Mr. WALKER. For the most part we are not putting violent criminals back on the street?

Mr. CRAMER. We are not putting one in and putting one out. We are not in that circumstance.

Mr. WALKER. What about career criminals? Are we putting them back on the streets?

Mr. CRAMER. I do not know if you are aware, but California has a career criminal prosecution effort financed, in part, by the State. Those individuals are being prosecuted for the most serious offense for the most serious sentence. That is the policy of it. I am not aware of any deviation from that.

Mr. BURTON. If the gentleman would yield, Judge Brucell in Santa Clara County, I believe, was under a court order to release people from jail if they did not build something new. They could not build it new, thanks to Howard Jarvis.

What is the status of that?

Ms. LA FOLLETTE. Was this Santa Clara County?

Mr. BURTON. Yes.

Ms. LA FOLLETTE. I think they have released over 200 prisoners early.

Mr. BURTON. First, that was a county facility; and, second, someone who was going to be in for 6 months for shoplifting got out in 4; is that right?

Ms. LA FOLLETTE. Yes.

Mr. WALKER. You mentioned that there are some 33 surplus sites available in California.

Ms. LA FOLLETTE. This is according to the list that we have. We are not certain how updated this is. But there are 33.

Mr. WALKER. Do you have any idea of how many of those would be available for prison facilities if this bill were enacted?

Have there been any studies as to whether or not any of those 33 are suitable?

Ms. LA FOLLETTE. We have had nine that have been investigated by the board of corrections. That board of corrections has come up with reasons why none of these facilities would be usable.

We do not always agree with our board of corrections. We would have to have some further investigation of it to see why they determined what they did.

Mr. WALKER. In other words, what you have determined at this point is that certainly not all 33 are going to be usable.

Ms. LA FOLLETTE. Yes, certainly not all 33 would be usable.

Mr. WALKER. Did I understand you correctly a little bit earlier when you said that it makes no particular difference to the State as to what agency we designate to do the conveyance?

Ms. LA FOLLETTE. I would hate to see this whole matter dropped just over an argument of who will be the agent.

This is something that we vitally need in California.

Mr. WALKER. I understand that, but do you have any druthers on it? Would you rather have one than the other?

Ms. LA FOLLETTE. I am not sure that I was persuaded one way or the other by listening to the arguments.

I know that the Attorney General's office would feel strongly in their position. They have more expertise in this matter than I do.

Listening to GSA and the point that you made that they have been dealing with some of the minor responsibilities so far as numbers are concerned, and that this, according to the fact that this would entail six facilities—which I hope will be not a correct figure because I hope it will be more—then I would say that I should think that GSA could handle it.

Mr. WALKER. Thank you, Mr. Chairman.

Mr. BURTON. You want to see the program get moving and you do not care who signs the paper?

Ms. LA FOLLETTE. That is correct.

Just as long as we do not have any more bureaucracies established and more regulations and more forms to fill out—then whatever is decided is fine.

Mr. BURTON. You are not going to be paying any money. You will have to fill out a couple of pieces of paper.

In other words, it is like your dealing with those counties that ask you to give them bailout money.

Ms. LA FOLLETTE. We are trying to do the same thing in the State. It is difficult.

Mr. BURTON. Mr. Weiss?

Mr. WEISS. Thank you, Mr. Chairman.

Ms. La Follette, I am not sure if I really yet understand whether California has undertaken any kind of review—not of people who are being released because you apparently have concluded that no violent criminals or career criminals are, in fact, being released because of the shortage of prison facilities.

But as to those people who perhaps would be more or better treated for society's purposes—never mind their own individual purposes by not being incarcerated—is that kind of study ongoing in California?

Ms. LA FOLLETTE. This is an ongoing discussion; yes. We are looking at all kinds of alternatives to imprisonment. We are not closing the door on the fact that there are some people who can be rehabilitated and better to not to have to be behind bars.

I suppose our major concern now is with those who commit the violent crimes and who are the career criminals.

This is Mr. Cramer's field more than it is mine. I am sure he can add more to it.

Mr. CRAMER. I am also the chairman of the Juvenile Justice Committee in California. We are focusing on a wide variety of programs designed to see that people do not come into the system if at all possible. We have more success there.

But there is a wide variety of probation and diversion. Those kinds of programs exist in California. The continuing and most serious problem coming up is financing of some of these programs.

The State has helped local governments in a variety of these activities. And as that money begins to dry up those programs begin to suffer.

The halfway houses that I touched on is an active and ongoing program. It is a successful program and very difficult to get facility sites. But the program is being pushed aggressively.

One of the things I find useful and helpful in training far aside from what you are talking about is testing eyes and ears of individuals who come into the juvenile system. It begins to identify a category of individuals who, because of those physical problems, has picked up a career system or a solution for his lifestyle.

Mr. WEISS. I am concerned. When you have the kind of statistics that was included in the statement which seems to equate number of percentage of those arrested being released, I do not think that really demonstrates an understanding as to where the problem really is.

It is not those arrested. It seems to me that what you should be concerned about are those people who are convicted and then have some kind of gradation as to whether they are convicted for violent crimes, nonviolent crimes, career criminal activities, and so on.

Then if you have statistics which indicate what happens to those people, maybe you can start saying: "Why are 50 percent of nonviolent criminals ending up populating our jails?"

Mr. CRAMER. The answer to that is those studies are continuing to be an ongoing concern of California.

We have a determinate sentencing law which is reviewed statewide for consistency in terms of its application and who is subjected to it.

That is a quarterly and a yearly report.

Mr. WEISS. I suspect that you will never catch up with the burgeoning potential prison population simply by building prisons.

That is always a catchup game. There has to be a very serious attempt to maximize the use of facilities and funds available so that, in fact, those who really ought to be in jail are those in jail.

Ms. LA FOLLETTE. There are, in my mind, two major concerns addressing the immediate problem which is keeping the people safe in their homes and on the streets.

But the other problem which we have to face so that we do not have to continue to incarcerate is to look at the young offender and to get that person rehabilitated as soon as possible and find them before they even begin to lead a life of crime.

That is where we really have to center some attention. We are reviewing our juvenile justice system. I think the next emphasis will be on that matter.

Mr. WEISS. What percentage of your people in the correction facilities are juveniles as distinguished from the entire population or the adult population?

Mr. CRAMER. I think that is a separate system away from adults. I will have to check this. I think it is around to 2,500 as opposed to 30,000 adults.

Ms. LA FOLLETTE. But the number is fairly low in percentages.

Mr. WEISS. Focusing on juveniles is essential and you ought to be doing it. But that is not solving your adult prison population.

Ms. LA FOLLETTE. No, it is not. But hopefully it will eventually cut down on the adult prison population.

Mr. WEISS. By then we will all be dead.

Thank you, Mr. Chairman.

Mr. BURTON. Sooner or later we will all be dead.

Mr. McGrath?

Mr. McGRATH. I have no questions.

Mr. BURTON. Thank you very much for your testimony.

Our next witness is Martin Horn, assistant commissioner for correctional services, New York State.

Welcome; you may proceed.

**STATEMENT OF MARTIN F. HORN, ASSISTANT COMMISSIONER,  
NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES,  
APPEARING ON BEHALF OF THOMAS A. COUGHLIN III,  
COMMISSIONER**

Mr. HORN. Thank you, Mr. Chairman.

Mr. Coughlin asked me to express his regrets at not being able to be here precisely because of a situation that is directly related to our overcrowded situation.

In the last 2 weeks we have had inmate disturbances at two of our prisons—Clinton and Great Meadow in Comstock, N.Y. Yesterday we had to use tear gas, riot batons, riot shields to get inmates back into their cells at Comstock.

At Auburn we are picking up signals of disturbance. I do not say this to overly dramatize the situation but rather to make known to you the problem that we confront, which is that 5 years ago and even 2 years ago we always had the option when we had problems with any group of inmates of separating them.

If we had a problem at Clinton we always had a few empty cells elsewhere. That is how a system should operate with a certain amount of slush, if you will, so that you can take troublemakers and separate them.

You can then protect some inmates from other more troublesome inmates. If you lose a cell block through some natural disaster or if something so simple as a powerplant should go out, you have some reserve space.

Today we do not. Today we have 2,000 more inmates than we have physical capacity for. We are housing those inmates in temporary quarters and in prefabs and in day rooms.

We have so far avoided double celling. We have so far managed to avoid any total systemwide conditions-of-confinement litigation.

The city of New York, however, is not so lucky. They are under such a court order which says that in the event their population exceeds their capacity as defined by a Federal district court judge, they must release inmates.

Nassau County was confronted with a similar court order which said that for every four inmates they admitted they had to release five. They managed to modify that through a consent decree by double celling inmates which we view as very undesirable.

The situation exists in New York. Commissioner Coughlin has submitted a prepared statement which I would ask that you make a part of the record.

Mr. WEISS [presiding]. Without objection, so ordered.

[Mr. Coughlin's prepared statement follows:]



STATE OF NEW YORK  
DEPARTMENT OF CORRECTIONAL SERVICES  
THE STATE OFFICE BUILDING CAMPUS  
ALBANY, N.Y. 12226

THOMAS A. COUGHLIN III  
COMMISSIONER

MARTIN HORN  
ASSISTANT COMMISSIONER

Statement by Commissioner Thomas A. Coughlin, III  
on H.R. 6028 (An Act to Amend the Federal  
Property and Administrative Services Act of 1949  
to Permit the Disposal of Surplus Property to  
States and Local Governments for Correctional  
Facility Use and H.R. 4450 (An Act to Authorize  
the Donation of Surplus Property to Any State for  
the Construction and Modernization of Criminal  
Justice Facilities) for House Subcommittee on  
Government Activities and Transportation

The New York State Department of Correctional Services is pleased to provide this testimony concerning H.R. 6028, cosponsored by Congressmen Zeferetti and Burton, and H.R. 4450, introduced by Congressman Zeferetti, both under consideration by this Subcommittee under the leadership of Congressman John Burton.

First, I would like to endorse the alternative approach, utilized in H.R. 6028, in which there is a focus on the disposal of surplus property for "correctional facility use". The rationale for this endorsement is as follows:

My Department's facilities constitute the third largest state correctional system in this nation, and this system is rapidly expanding. On April 16, last Friday, our population was 26,798 inmates, with a system of institutions running at 113.6 percent of capacity. As such, the focus in H.R. 6028 on state and local correctional systems as the recipients of surplus Federal property is most welcome, since it would assist in relieving prison overcrowding and its accompanying problems. As you know, my State has already received surplus Federal property working in conjunction with the various involved agencies. The transferred Federal property in Watertown is the site of what will be our newest facility. Also, we earlier worked on the transfer of surplus Federal property in Lockport but due to certain legal challenges, a temporary restraining order followed by a preliminary injunction has, to date, prevented the transfer from being finalized.

H.R. 6028 will facilitate these and other property transfers for state and local correctional facility use by formalizing a system by which this operation may be streamlined. This will occur since GSA and the Department of Justice would work in close coordination especially in terms of the final sign-off by GSA within 30 days of notification by the Attorney General of a proposed property transfer.

The major correctional systems in our country are coping with unprecedented increases in the growth of the inmate population. With State budgets strained in the attempt to meet the ever escalating pressures on the criminal justice system,

H.R. 6028 is a vital key to the ability of States to provide needed confinement space for those felons responsible for increasingly violent criminal victimization. As the State of New York continues to legislate against such crime and provide for confinement of felons sentenced to prison, I wish to assure members of this Subcommittee panel that any property received through enactment of H.R. 6028 will be most appropriately utilized and maintained within the State system of secure and humane confinement.

In closing, I would like to acknowledge the sponsorship of H.R. 6028 by two distinguished Members of Congress and longstanding friends of corrections; this Subcommittee's Chairman, John Burton, of the 5th Congressional District in San Francisco, California and Leo Zeferetti, a fellow New Yorker from the 15th Congressional District of Brooklyn.

Mr. HORN. I would like to make some very brief comments because I know the committee's time is precious.

In New York we live as no other State does in the shadow of Attica. Time is of the essence. The question that I have heard repeatedly this morning is whether or not corrections should be given a priority.

Certainly you will have to grapple with that. From our point of view we should not lose sight of the fact that we are talking here in very, very real terms about human lives. We are talking about a crisis, an emergency which does not exist with respect to hospitals or schools.

I must say that I took umbrage at hearing it referred to as a laundry list. To say that we are going to add corrections to the laundry list along with parks and recreation and education and hospitals—I took umbrage at this.

In New York State we have a surplus of hospital beds. Do not put us in the same boat as hospitals. We are talking about closing hospitals in New York. They are talking about closing the public health hospital on Staten Island.

It was reversed but as soon as it was announced we said: "We need space."

Do not put us on that laundry list.

Whatever you do, please, we pray you: Do not get hung up over who has the deed conveyance responsibility.

I understand it is an important question. We urge you to resolve it quickly and expeditiously and to not lose sight of the fact that if action is taken 2 years from now, it will be too late.

The problem exists today and the attractiveness of Federal surplus property to us in New York—and I can only speak to New York in this situation—is the speediness with which we can get into it.

We acquired a temporary use permit from GSA for the Watertown Air Force station in September. We have moved staff in. We are ready to receive inmates 6 months later.

A contrary situation exists with respect to the Lockport Air Force station. There, too, we received notification from GSA that they wished to give us a temporary use permit under the same terms and conditions as Watertown.

The people who were opposed to our taking the site in Lockport—local people, who by the way, had never expressed an interest in the site until after we said we thought it would make a good prison, which was likewise the case in Watertown. The proposals for industrial development, light industry parks, they never seem to come up until all of a sudden we propose a prison, then economic development comes to the forefront.

They went into Federal court. They have been able to obtain a temporary restraining order preventing GSA from giving us that temporary use permit at Lockport.

Mr. WEISS. Who represents Lockport in Congress?

Mr. HORN. I do not know.

Is it Congressman LaFalce?

Mr. WEISS. Do you know what his position is on that?

Mr. HORN. No, I do not.

Ms. JOHNSON. He is not on our side.

Mr. WEISS. Right.

Mr. HORN. Nonetheless, my point is that there were two defects in the existing law which is what we would hope that the proposed changes here correct.

One was the issue of fair market rental. The district court held that the temporary use permit which would have leased the property to us, so to speak, for a dollar a year failed to meet the existing requirements for fair market rental.

The provisions of H.R. 6028 as well as H.R. 4450 would provide and make clear the fact that we could receive these properties as donations.

The second issue is the whole issue of preference. To the extent that H.R. 6028 does add correctional purposes to the laundry list, it does state a governmental preference for certain types of uses.

In the absence of it the Federal district court felt that GSA had acted at least arbitrarily and capriciously in fulfilling an executive administrative policy with respect to giving priority to correctional use.

With respect to the local control issue, which I know troubles everyone, Lockport is represented in the New York State Legislature and in this year's capital budget request we requested a total of \$350 million for capital construction for corrections projects.

There was only one item deleted from that capital construction budget by the State legislature. That was the \$5.8 million that would have gone to rehabilitate the Lockport site.

I make this point to say that the mechanism exists within the State for the local control to be exerted. If, in fact, Lockport does not want the Lockport Air Force station converted to a correctional facility, they clearly have exercised that power in the New York State Legislature and have succeeded in a split legislature, getting the Democratic assembly to go along with the Republican senate and they will release the funds.

Mr. BURTON [presiding]. Excuse me for a minute. Mr. McGrath had a comment.

Mr. McGRATH. Was that as a result of Mr. Murphy or Senator Daly?

Mr. HORN. I think it was bipartisan. The money was voted out of the budget in both houses.

Mr. McGRATH. On the Watertown facility, was that opposed by Assemblyman Nortz and Senator Barclay?

Mr. HORN. It was initially. We reached a compromise agreement with them whereby the State legislature appropriated \$200 to compensate the city of Watertown in the event—after they submitted a voucher—that there are any costs to the city and town of Watertown as a result of having the facility there.

Senator Barclay then supported the measure and the money was appropriated as part of the supplemental budget.

Mr. McGRATH. This is also with the support of Congressman Martin?

Mr. HORN. I believe so, along with the support of Assemblyman Nortz and Senator Barclay.

Mr. McGRATH. I consider that particular takeover to be a pretty gutsy move on the part of the commissioner of corrections in light of the fact that his hometown is Watertown.

To do that with local opposition without having—

Mr. BURTON. Is he appointed or elected?

Mr. McGRATH. He is appointed.

Mr. HORN. He is appointed and confirmed by the senate.

I think you raise an interesting point.

Mr. BURTON. We are not interested in the internal politics of New York, with all due respect.

Mr. HORN. They are tough decisions to be made. No one, as the people from California said, wants a prison in their backyard. That is a very real problem.

This is one of the things which makes the Federal surplus property somewhat easier because it is located very often in more remote sites.

Mr. BURTON. Are you familiar with this? There is property at LaGuardia Airport where the FAA is going to move people up to Massachusetts, making that property vacant. [Laughter.]

If we could prioritize this, that would be an excellent place for a correctional institution.

Mr. HORN. There is a 6,000-bed prison—

Mr. BURTON. You are missing the whole thrust of the conversation.

Mr. McGRATH. I would like to ask one more question.

What about the winter Olympic's dormitory sites?

Mr. HORN. That presently is a Federal prison, and fully utilized. We requested that it be turned over to us for temporary use and the Federal Bureau of Prisons said:

"Well, sorry, we need it for ourselves."

It is not excess or surplus. It is not available.

Mr. McGRATH. I have no further questions.

Mr. BURTON. Mr. Walker?

Mr. WALKER. Thank you, Mr. Chairman.

If the legislation before us is enacted, how many sites in New York potentially could be used for correctional facilities?

Mr. HORN. We believe there are four or five in New York State that have that potential. Some of them are within the local political process and have been ruled out. Some of them, such as the Lockport site, are still actively under consideration and should we clear up the title question in the court, we will go back to the legis-

lature and attempt to work out a compromise at the local level as we did with Watertown.

Mr. WALKER. But we are talking about four or five sites potentially that you would be interested in discussing with the Federal Government?

Mr. HORN. Potentially. I am not saying that we would go for all of them, but the potential exists.

We, in fact, have looked at every Federal surplus property in the last year.

Mr. WALKER. You have described the crisis in your New York prison system. It sounds as though you do have some problems.

How many people have you been forced to release because of overcrowded jails?

Mr. HORN. In New York State we have not released anyone. As I said, Nassau County was under a 5-for-4 release order. They had to release 5 for every 4 they admitted.

The city of New York has a release order hanging over its head which says if they should exceed their cap of approximately 9,300 inmates, they must release pretrial inmates, lowest bail, longest held first, working their way up until they get back under capacity.

We in the State government have not released inmates. We have created what we consider to be substandard space to house them.

Mr. WALKER. How soon would you reach a crisis proportion where you would have to begin releasing them?

Mr. HORN. I think that we are there. The problem which exists is that the mechanism for such a release—we, in corrections, have no control over release. We have absolutely no authority to release.

The parole board releases. The parole board takes the very clear position that—they do not consider overcrowding sufficient reason to release.

Mr. WALKER. Have you experimented with any alternative punitive measures?

Mr. HORN. Yes, we have. I wanted to make that point particularly in anticipation of Congressman Weiss' questions.

In New York State we have a program that we call intensive supervision probation. That was an experimental program. It provides for 100 percent reimbursement to the counties.

It provides that high risk probation eligible people who might otherwise might be going to State prison receive intensive supervision in caseloads of 25.

The system has been operational on an experimental basis for approximately 18 months. This year the Governor proposed a total statewide expansion of the program and a statewide pickup of 75 percent of the cost of local probation agencies.

In addition, in New York State we have in operation restitution programs. There is a community-service sentencing program operated by the VERA Institute of Justice in cooperation with the office of court administration and the department of probation in the city of New York which services approximately 500 sentenced misdemeanants with great success.

In our own department we have a work release program that services over 2,000 inmates each year.

I would like to say further that if you look at our State prison population and if you look at the statistics—and we have studied

them very closely in New York—we find that there is already a sieve in the New York State criminal justice system.

There are very few people in New York State prisons serving crimes that are not violent in nature. Seventy percent of our under custody population today stand convicted of crimes of violence. I literally mean crimes of violence.

An additional 28 percent of our 26,000 inmates, while not convicted of violent crimes, are repeat offenders. Only 2 percent of our 26,000 inmates—approximately 520 inmates—are first-time nonviolent offenders.

Those tend to be people who have violated a public trust, people who stand convicted of medicaid fraud and abuse and of what I might take the liberty of describing as organized crime types.

There was a study in the New York Times this past Sunday that with 100,000 car thefts reported in New York City in 1981 only 19 people went to State prison for that crime.

We have, in effect, decriminalized nonviolent crime in New York State. There is a natural diversion process taking place.

Two-thirds of the people in New York State convicted of the two lowest classes of felony—D&E felonies—who are probation eligible, already do not go to State prison.

The remaining one-third who do are, as I said, people who by virtue of the particular circumstances of their offense merit it.

We think that the arguments that use more alternatives and use all those things have some merit, we do that in New York. We have done it.

We are not asking for relief for now and all time. We have plans to build 1,500 new beds in prisons. We are asking for 2 or 3 years relief. The appropriation for Watertown has a sunset clause in it. It says that the legislature of New York State is appropriating money for us to move into Watertown, but we have to be out by 1985-86 fiscal year.

It is in there. It is part of the appropriations bill.

We are asking that the Federal Government carry us through while we work on alternatives and while we develop additional resources and get us through this crisis.

Mr. WALKER. My time is almost up, but let me yield briefly to the gentleman from New York, Mr. McGrath.

Mr. McGRATH. How do you reconcile the fact that you pick up any New York newspaper and you will see statistics and gory stories of rampant crime and at the same time reconcile that with the fact that the prison bond issue—by ever so small an amount—was defeated by the New York State voters last election? How did that happen?

Mr. HORN. I think it happened over the money issue which is a very real reason that we are here talking in terms of donation of Federal property.

We are talking about a State that is confronting soaring welfare and medicaid costs, a major public education financing issue and the voters, I do not think, objected to the spending of \$500 million on prison and jail construction.

I think they objected to spending \$1.5 billion when you threw in the debt service. The only issue that was before the voters in New York State last November was the financing mechanism.

The issue of prison construction had already been dealt with by the legislature. Most of the money that would have been provided by the bond issue would have reimbursed appropriations made in previous years.

This year's budget appropriates \$350 million in new money and reappropriations out of hard State tax dollars for prison construction.

That seems to me to tell you something about the commitment of the people of New York State to deal with the prison overcrowding crisis and to back it up with funds.

Mr. McGRATH. I think it gives a clear sense of the commitment of the legislature.

Mr. HORN. Who, after all, are elected to represent the people.

Mr. BURTON. The people know every vote that is cast.

Mr. McGRATH. The fact simply is this. When given—and I do not think there was a clear-cut issue of how the financing was going to be—the fact is that the people—and I happen to support Mr. Coughlin in his efforts—turned it down.

Mr. HORN. The Gallup poll says 57 percent of the people of the country support new prison construction and support the donation of surplus property.

Mr. McGRATH. My question to you is: Was the bond issue too rich? Was it sold improperly by the State government?

Mr. HORN. I will tell you quite frankly, if you look at the distribution of the vote, the bond issue carried 2-to-1 in the city of New York, Nassau, and Westchester.

It was defeated in all of the upstate counties.

Mr. McGRATH. Because that is where the prisons were going to be; correct?

Mr. HORN. No; we were told when we were out campaigning that those are the places that would vote for it because they had a vested interest in prison construction. The moratorium people say: "We have a vested interest in expansion."

Yet, the communities that have prisons do not want them.

Mr. BURTON. You have a vested interest in it because you are the department of corrections. The people who live in the communities where the prisons are have a vested interest in not wanting a prison in their community. You are not the community. You are a bureaucracy—and I am not putting you down for it—you have a vested interest because you have a job to run the department of corrections and you cannot do it without facilities.

But do not equate yourself, like you equate the people with the legislature and the communities, with the department of corrections. That is probably why the bond issue failed.

Mr. HORN. As I said, I think the people in the upstate communities felt that it was a New York City problem. I think what you saw with a 2-to-1 vote in favor in New York City was a clear sense letting New York City solve the problem.

Why should we pay that debt service to solve a New York City problem? The people in New York City were willing to pay it.

Mr. McGRATH. I think it could have been handled better. I think probably there could have been some more support on behalf of public officials.

In Nassau County, where I represent, I think you saw a representative vote of the feeling of the people in the county.

I think the upstate factors that most of the secure facilities in the New York State prison system are in upstate communities.

I think because of some of the problems which you just outlined in the opening of your testimony, plus the Attica situation some years back, that they are somewhat reluctant to construct new facilities in those small areas.

This is particularly in light of what you said. Most of the crime comes from areas where I represent and Mr. Weiss also. Most of the prisoners who are going to go to those—

Mr. HORN. There are 70 percent, which is intake every year which is from the New York metropolitan area, which includes Nassau, Suffolk, and Westchester.

Mr. McGRATH. I would suggest to you that when you try this effort again that those considerations ought to be taken.

Mr. HORN. Thank you.

Mr. WEISS. Commissioner, I assume if the suburbs and the city went for the bond issue by a 2-to-1 margin, that the upstate areas must have gone against it by about 4-to-1?

Mr. HORN. As you may be aware, Congressman, the voter turnout in New York City was very low as a result of the not exactly hotly contested mayoral race.

No; it was not defeated 4-to-1 upstate. It was just the fact that there were so few votes cast in total in New York City.

Mr. WEISS. You have the breakdown as to what that 28 percent comprises, what kind of crimes. You say there are repeat offenders.

What kind of repeat offenders are you talking about? Are you talking about three time repeat offenders?

Mr. HORN. In some cases, yes. I can provide you with the exact breakdown.

As you know, in New York State we have a second offender felony law.

Mr. WEISS. What kind of crimes?

Mr. HORN. We are talking about burglaries; we are talking about grand larcenies; we are talking about robbery thirds—which in New York is not defined as a violent felony offense.

We are talking about conspiracies and coercions. We are not talking about forgers. We only have 5 out of 26,000. We are not talking about very many embezzlers. We are only talking about 19 car thieves.

We are talking predominantly about burglaries and robberies.

Mr. WEISS. Your testimony has focused almost entirely—and I think maybe entirely, except I think for some statistical information—on the State prison system.

You would or would not have any information on the situation in the cities and counties?

Mr. HORN. Yes, I do.

Mr. WEISS. Do you have what the breakdown is as to who occupies their prison cells, and the situation in Nassau where you said there was a 5-to-4 release mandated?

Mr. HORN. What you are talking about in the county jails is basically two types of population. You are talking about pretrial de-

tainees, the vast majority of whom are being held pending trial on felony charges, a variety of felony charges.

Given the bail situation, or the way the bail system works, and given the availability of ROR, the extent to which it is utilized, the majority of them are held on more serious CB&A felony charges.

The other half of the population, just about, are sentenced misdemeanants, most of whom are nonviolent because the violent crimes in New York State have been made felonies with mandatory State imprisonment.

The release order governing New York City applies only to pre-trial detainees.

Mr. WEISS. I assume to whatever extent detainees, or people awaiting trial who are being held, for an excessive period of time, that has to do with all the flaws and things that go into any kind of bureaucratic system and that there is an effort to try to reduce that?

Mr. HORN. Indeed there is. In fact, just this week Chief Judge Cooke and Mayor Koch held a press conference to announce the results of a program that they have been working on for the last year.

What they have done is things like reduce the time between the point at which an inmate is convicted and he gets sentenced by reducing the time it takes to get the presentencing report, which as you know is required under New York State law prior to sentencing from 6 weeks to 3 weeks.

They have improved the scheduling of the buses from New York City jails to get the inmates to court on time. As a result, they have reduced the backlog of detained pending felony cases who have been detained more than 6 months.

Mr. WEISS. How many convicted misdemeanor offenders are there in prisons throughout the entire State of New York?

Mr. HORN. I do not have that information offhand, none in State prisons.

Mr. WEISS. Do you have information on how many in the city of New York, how many in Nassau?

Mr. HORN. In New York City they have approximately 4,300 sentenced misdemeanants.

Mr. WEISS. And Nassau?

Mr. HORN. I do not know offhand. I know more about the—

Mr. WEISS. But just extrapolating, I would assume that you would have somewhere between 10,000 and 12,000?

Mr. HORN. Around the State, perhaps that many.

Mr. WEISS. It would seem to me that could also relieve a great deal—

Mr. HORN. The more I think about it, that sounds very high. If you have 4,300 in New York City, the other counties do not have more than perhaps 100 apiece. The total population of the Suffolk County Jail is only 350. So if they have 100 or 150 apiece, you multiply that by 50 other counties, you are talking about not that many more, really.

Mr. WEISS. I do know that in places outside the city of New York, communities tend to take and courts tend to take the misdemeanor violations much more seriously by the very nature of the smallest of the community and the more direct impact and so on.

It has always occurred to me that there really ought to be some kind of a State effort to try to demonstrate to communities that, in fact, it is not necessarily in their best interest to throw misdemeanants into jail and throw the key away and think that is doing anything positive.

Mr. HORN. That is precisely what we are doing with the intensive supervision program and with community service sentencing.

Mr. WEISS. Thank you, Mr. Chairman.

Mr. BURTON. Thank you very much.

If there are no further questions, we thank you.

Our next witness is Ruth Flower of the Friends Committee on National Legislation who comes with a panel from the National Moratorium on Prison Construction.

Ms. Flower, why do you not testify and we will hear from the moratorium people after you have spoken?

You may proceed.

#### STATEMENT OF RUTH FLOWER, APPEARING ON BEHALF OF THE FRIENDS COMMITTEE ON NATIONAL LEGISLATION

Ms. FLOWER. Thank you, Mr. Chairman.

I am Ruth Flower. I appreciate the opportunity to appear before you today on behalf of the Friends Committee on National Legislation.

I am appearing in opposition to both of the bills that are before you today.

My own experience in the prison issues stems from California where I used to work with the Friends Committee on National Legislation. I worked primarily on prison construction issues there.

During part of that time I was also serving on the State Bar Commission on Corrections.

I would just like to touch on the highlights of my written testimony and would ask that it be placed in the record in its entirety.

Mr. BURTON. Without objection, so ordered.

Ms. FLOWER. I also have some responses to previous witnesses.

One major point I would like to make, as many of the previous witnesses have already shown, the rising prison overcrowding problem is not a direct demographic issue. It is not something that rises just because of a growing population or growing crime rate.

Indeed, in the last 10 years the rate of incarceration per 100,000 nationwide has doubled. So that rate represents some choices that people are making.

We are suggesting that people can make other choices and that States can make other choices. It is an extremely complex issue, as you have seen today.

There are many factors that come to bear on the rate of incarceration. The departments of corrections do not have control over all the factors that create this overcrowding.

The State legislatures and the local legislative bodies have more power over it than the State departments of corrections themselves do.

Some States now—and I can really only speak of my experience in California—some of these choices are now being recognized; they are trying some new things.

One thing that the department of corrections is trying in California or did try which was a great help, was a new objective classification system.

I believe Mr. Harris said that the Department of Justice favors a rational classification system. That is something that we worked toward for a number of years. The department of corrections then adopted one and when they gave out points based on previous crime history and so on, they found that well over one-third of their population landed in category I.

Their category I said: "No previous violence, criminal or noncriminal, no drug history whatsoever, and no escape risk."

One-third of their State prison population fell into that category. Before they counted up the number that was in that category they had said that this level would be eligible for some kind of community or noncustodial placement.

Under current law they cannot just release these people to a noncustodial placement like a probation or something. They do not have that power. Those people have been sentenced to prison.

But the legislature itself has the power to change the sentencing structure. The legislature is now looking at some of those options. There are bills under consideration in the California Legislature now to link the sentencing decisions to the capacity of the prisons.

We are not talking about releasing career criminals, violent criminals, or anything like that. We are talking about releasing some people that all the correctional people involved agree could actually be on the street.

The only reason they are in prison is they are being punished. As someone pointed out earlier, there are other ways to punish without using the very scarce and expensive resource of prison space.

We agree with all the concern that has been raised earlier about overcrowding. This, in fact, is one of the ways the Quakers started saying:

"Do not build any more prisons."

We became aware that the more prisons get built, the more the capacity is raised, the more the sentences are lengthened, and the prisons are built up again. There was a vicious circle going on; indeed there still is a vicious circle going on.

We are trying to point out that that vicious circle has got to be stopped. Building more space is not going to stop that problem.

We agree with the immediate previous speaker who said that time is of the essence. It very much is of the essence.

The solution that is being proposed here today is not only not a good long-term solution, as Mr. Zeferetti said, but it is not a good immediate solution.

It takes a step backward. It gives the States the fictional idea that they have a free solution here so that they do not have to look at some of these other options that they are finally willing to take a look at.

They are going to have to take a look at very some hard answers. They cannot just keep building more and more. They get them-

selves more into the situation of having to finance those prisons, maintain them, and then, of course, it gives the fiction that they can raise sentences again.

Thank you. Those are the major points I would like to make.  
[Ms. Flower's prepared statement follows:]

A rising prison or jail population, therefore, is not an inevitable consequence of general population growth in an area, or even of a rising crime rate. Indeed, in the last ten years the nationwide rate of incarceration per 100,000 population has nearly doubled. Federal, state and local jurisdictions have also been choosing to incarcerate more non-violent offenders than in the past. In 1973, 52% of the nationwide prison and jail population were incarcerated for violent crimes, while 48% were incarcerated for property offenses and public order or other offenses. In 1978, just five years later, the trend had reversed. Property and "other" offenders made up 53% of the prison and jail population and violent offenders only 47%.<sup>1</sup> These figures indicate that it is not a rise in violent crime which increases the size of the prison population.

SETTING PRISON OR JAIL CAPACITY FOR A JURISDICTION  
IS A POLITICAL DECISION, NOT TO BE USURPED BY THE  
ATTORNEY GENERAL.

The legislation before you would authorize the Attorney General of the United States to decide whether a state or local jurisdiction "needs" more jail or prison space. Removing this essentially local decision to the federal level is a gross interference in local political processes. This argument is entirely consistent with one of the major conclusions of a recent study called *American Prisons and Jails* by the National Institute of Justice, an agency of the Department of Justice. I quote at length because the analysis of the decision processes on this issue is so well stated:

*We can look at crowded prisons as meaning either 'not enough space' or 'too many people.' We can also say that regions and states vary tremendously in their choices about how many prisoners they wish to hold, and that it is not clear that this variation has much justification beyond historical precedent. The rates of imprisonment and lengths of prison terms which happen to be used are difficult to justify on the grounds of their rehabilitative, deterrent or incapacitative effects because no one is sure that such effects exist, much less how they might be related to specific sentences. In this context, the physical constraints of space and related conditions and costs of confinement can be viewed as a reasonable factor to be considered in sentencing and release decisions. Indeed, by linking the costs of confinement to the decision to incarcerate, more rational incarceration policies might emerge through public discussion of the kinds of prison conditions that are tolerable to the community and the amount of resources the state is willing to divert from other public purposes to maintain an incarcerated population.*<sup>2</sup>

<sup>1</sup>National Institute of Justice, *American Prisons and Jails*, a 5-volume study, October 1980, Table 1.3, page 18. (Copy appended to this testimony)

<sup>2</sup>*Ibid.*, p. 28.

NEW CONSTRUCTION DOES NOT SOLVE THE PRISON  
OVERCROWDING PROBLEM.

Since the problem of rising prison and jail populations is not due to simple demographic factors like growth in the general population, increasing the number of jail and prison spaces is not a real solution. The factors operating in a jurisdiction to drive the prison population upward continue to exert the same pressures. As a result the new spaces fill up very quickly. The Federal Bureau of Prisons had this experience recently when it constructed a large Metropolitan Correctional Center in San Diego with plans to accommodate future growth in prison population for the foreseeable future. Instead the facility was overcrowded within a year.

The study by the National Justice Institute made a similar finding:

*Our historical analysis suggests that where new space has been added, it has, on the average, been followed two years later by population increases of nearly equal size. This finding does not conclusively prove that increased capacity drives population, but does suggest that it may diminish reliance on non-custodial dispositions and inhibit other mechanisms that regulate and control prison population.*<sup>3</sup>

STATES CAN MAKE OTHER CHOICES.

Many states have been struggling for years with the many factors that drive their prison populations upward. The absolute necessity of changing some of the factors has given birth to some creative and courageous efforts to change a whole system of assumptions and beliefs. California, for example, believed for years that its problem was caused by increase in violent crime and that its prisons were filled with dangerous criminals. After years of unquestioning acceptance of this assumption, the Department of Corrections set up an objective classification system based on assignment of "points" for various characteristics. The Department discovered that well over a third of its population qualified for its very lowest classification -- no history of violence (criminal or otherwise), no history of drug use and no history of escape risk. The Department had designated this category as eligible for community correctional placements. Under present California law, these individuals cannot be placed in non-custodial programs, but the Department's own assessment indicates that these people are not a physical threat to the community. Thus the state has an option of creating a different kind of sentence structure that would not waste secured prison space on non-dangerous people.

<sup>3</sup>*Ibid.*, p. 25.

States are exploring sentencing commissions, early release provisions and modifications in discretionary release provisions in order to control the use of this one very expensive response to crime. The federal government should allow states to make their own decisions within their own resources. In the long run, the federal government does the states no favor when it eases the way to further prison construction.

#### RECOMMENDATION:

We recommend that the committee reject this proposal as an inappropriate action and role for the federal government. The federal government should not insert itself as a factor in the spiraling growth of prison capacity... and population...and more capacity.

Table 1.3  
Type of Crime Committed by Prisoners, Regions and U.S. Total,  
1973 & 1978

	Northeast % (n)	North Central % (n)	South % (n)	West % (n)	U.S. TOTAL % (n)
Violent Offenders					
1973	60 (16,193)	55 (19,250)	49 (40,022)	50 (15,025)	52 (90,440)
1978	45 (15,553)	52 (28,539)	44 (44,181)	48 (16,651)	47 (106,706)
Property Offenders					
1973	21 (5,514)	33 (11,745)	35 (28,519)	30 (8,991)	32 (54,769)
1978	37 (12,630)	34 (18,408)	41 (42,526)	28 (9,750)	37 (83,314)
Public Order & "Other" Offenders					
1973	19 (5,034)	12 (4,317)	15 (12,415)	20 (5,965)	16 (27,731)
1978	18 (6,030)	14 (7,525)	15 (15,705)	24 (8,298)	16 (37,558)

Sources: U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Information & Statistics Service, Census of Prisoners in State Correctional Facilities, 1973, National Prisoner Statistics Special Report No. SD-NPS-SR-3 (Washington, DC: U.S. Government Printing Office, December 1976); and Survey of State and Federal Adult Correctional Facilities (PC-2), 1978. Totals will not equal totals used elsewhere in this report due to missing data.

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Mr. BURTON. Thank you.

Now we will hear from the National Moratorium on Prison Construction.

You may proceed.

#### STATEMENT OF CAROL A. BERGMAN, COORDINATOR, NATIONAL MORATORIUM ON PRISON CONSTRUCTION

Ms. BERGMAN. Mr. Chairman and members of the committee, my name is Carol Bergman. I am the coordinator of the National Moratorium on Prison Construction in Washington, D.C., a project of the Unitarian Universalist Service Committee.

With me are the two other coordinators of the National Moratorium on Prison Construction, Walter Collins from our office in the South, based in Atlanta, Ga., and Naneen Karraker from our west coast office based in San Francisco.

We are here today to testify in opposition to H.R. 4450 and H.R. 6028, on behalf of the more than 7,000 members of the Unitarians Universalist Service Committee across the country.

Our intention is to speak briefly and to encourage questions from the committee members at the conclusion of our presentation.

It is my understanding that the proposed legislation has been developed as one means of alleviating prison overcrowding cost effectively.

The underlying premise is unassailable; that is, prisons are overcrowded and the States cannot afford to build more. However, increasing cell space will not alleviate overcrowding.

The transfer of Federal surplus property to the States, with or without abandoned military bases, will do little to minimize the astronomical costs of incarcerating more persons.

Study upon study has shown that prison population is a direct reflection of prison capacity.

In "American Prisons and Jails," the five-volume study completed by Abt, Inc., for the Justice Department's National Institute of Justice, the following conclusions were reached:

Additions were filled to rated capacity by the second year after opening additional space.

Within 5 years the occupancy rate of the new space averages 130 percent of rated capacity.

As early as 1972, the National Advisory Commission on Criminal Justice Standards and Goals, created and financed by the Justice Department, reached similar conclusions, which led to recommending a moratorium on jail and prison construction.

The 1981 Attorney General's Task Force on Violent Crime has found the cost of prison construction to be as high as \$130,000 per cell for a maximum security facility, and up to \$50,000 per cell in a medium security facility.

Expenditures for yearly operating costs were cited as falling somewhere between \$10,000 and \$20,000 per prisoner. The transfer of Federal land for construction does nothing to eliminate those costs and the costs of converting abandoned military bases could be almost as high as new construction.

Yet, we continue to seek more ways to lock up more people for longer and longer periods of time. Currently the United States

locks up more persons per 100,000 people than any other country in the industrialized world except for South Africa and the Soviet Union.

Mr. Chairman, you are trying to seek out a creative way of financing increased cell space. I presume that you are responding to the increased fear of street crime.

The Justice Department reported this week that there was no increase in the rate of violent crime involving strangers during the decade of the seventies, although the rate of violent domestic crime did increase.

Therefore, we should be clear that increased fears may not reflect an actual increase in crime.

However, your constituents, and all of us, are afraid of crime, and for legitimate reasons. Increased incarceration, however, is not an effective deterrent to the common perpetrators of street crime—the poor, the unemployed, urban young, disproportionately black and brown, whose prospects for achievement in our economy are slim indeed.

A recent study in New York State concluded that a 264-percent increase in expenditures for the entire criminal justice system would be necessary to reduce crime by just 10 percent.

I refer here to Jacqueline Cohen's, "The Incapacitative Effect of Imprisonment: A Critical Review of the Literature," in Blumstein, et al., editions, "Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates," published in Washington, D.C., National Academy of Sciences, 1978, page 226.

In Ohio, research suggests that sending all felony offenders to prison for 5 years would reduce violent crime by only 4 percent.

I refer now to Van Dine, Dinitz, and Conrad in "The Incapacitation of the Dangerous Offender: A Statistical Experiment" appearing in the "Journal of Research in Crime and Delinquency," January 1977.

The passage of this legislation will neither relieve overcrowded conditions in prisons nor affect the crime rate.

As written, H.R. 6028 would include prison facilities alongside of positively perceived community needs such as education, public health, and recreation.

Most communities would welcome a park in their neighborhood. But would they welcome a prison?

The recent Gallup poll on prison construction indicates the public's general confusion and misapprehension concerning incarceration and crime.

That kind of confusion is often borne out in situations analogous to the problem which the State of Maryland is currently facing. The legislature has mandated more prison space, but no one wants the new facilities near them.

It will take a great deal of energy and time to convince local Maryland people that they can live with a prison next door. I contend that such time and energy could be far better spent on the development of alternative community programs for many currently incarcerated persons.

In the words of William Nagel, longtime prison warden and president of the American Foundation: "As long as we continue to

build prisons, we will have neither the will nor the pressure to seek more workable alternatives."

This committee has the opportunity to look carefully at the legislation now before it and to refuse to cooperate in the expansion of a system which has clearly failed.

Thank you.

I would like to introduce Walter Collins at this point.

Mr. BURTON. Mr. Collins, please proceed.

#### STATEMENT OF WALTER J. COLLINS, COORDINATOR, NATIONAL MORATORIUM ON PRISON CONSTRUCTION

Mr. COLLINS. Thank you, Mr. Chairman.

I would like to submit my testimony as part of the written record.

Mr. BURTON. Without objection, so ordered.

Mr. COLLINS. I basically would like to comment on a statement made by a previous speaker that many of the military bases now abandoned are in the South.

The South is a region of the country where the most overcrowding exists. I submit to you that is because of a long enduring problem in the South where black people are incarcerated for relatively minor offenses.

I was recently at a conference in Georgia called by the Governor of Georgia, last week, in fact, where the director of the corrections department admitted that over one-third of all the people in prison in Georgia were there for misdemeanors and that 59 percent of the women in prison in Georgia were first-time offenders.

But the average amount of their offense was under \$100.

I submit to you similar statistics exist in every State in the South, the 11 States of the South that I work in.

The main comment I would like to make is that what we are talking about is rewarding States who, in fact, incarcerate black people in disproportionate numbers because they have no other means of dealing with the fact they do not have services and jobs for them.

I think the Congress should go on record in opposition to that and by opposing such transfer of Federal property.

Thank you.

[Mr. Collins' prepared statement follows:]

Testimony of Walter J. Collins

My name is Walter J. Collins. I work for the Unitarian Universalist Service Committee (UUSC). The Unitarian Universalist Service Committee is a 40 year old, not for profit, human rights organization, headquartered in Boston, Massachusetts. As a UUSC employee, I am stationed in Atlanta, Georgia from whence I promote the efforts of the National Moratorium on Prison Construction (NMPC). The National Moratorium on Prison Construction is a project of the Unitarian Universalist Service Committee with offices in San Francisco, California and Washington, D.C. in addition to an Atlanta Office. In promoting the efforts of NMPC, I have responsibility for monitoring and opposing prison and jail construction in North Carolina, South Carolina, Georgia, Tennessee, Arkansas, Texas, Mississippi, Louisiana, Alabama, Kentucky, and West Virginia, and to a lesser extent, I have responsibility for monitoring and opposing prison and jail construction in the states of Illinois, Michigan, Ohio, Indiana, and Missouri. Obviously, my office in Atlanta, Georgia cannot effectively work against prison and jail expansion in all of the above listed states of the U.S. Therefore, my office, the Atlanta Office of the National Moratorium on Prison Construction, primarily concentrates its work in the states of South Carolina,

Georgia, Alabama, Louisiana, and Texas. My work in these states (5) is the foci of my testimony.

South Carolina, Georgia, Alabama, Louisiana, and Texas are all states where African peoples were held in slavery. As a direct result of this situation South Carolina, Georgia, Alabama, Louisiana, and Texas, all have substantial numbers of Africans resident in their populations. And, just as more than a century ago Africans were brutally exploited and subjugated in slavery in the states of South Carolina, Georgia, Texas, Louisiana, and Alabama, today, a disproportionate percentage of the descendants of these African slaves of an earlier time are brutally exploited and subjugated in these states. Today, it is not the slavery of the plantation that brutalizes and exploits African-Americans; instead, it is the slavery of prisons and jails and the traditions, practices, and institutions that support prisons and jails which brutalize and exploit African-Americans. And, just as the plantation slavery of earlier times was abolished, so the prison slavery of today must be and shall be abolished.

All of the states of the U.S. in which my work with the National Moratorium on Prison Construction is focused, with the exception of West Virginia, are states which have large numbers of Black People, African-Americans, in their prisons. In many cases, Black persons are the majority prison population in these states. However, in none of the 16 states of the U.S. in which my work with NMPC is focused are Black People, African-Americans, a majority of the resident population.

Unless one believes that Black People are ordained by their biology and their genes to break laws and commit criminal acts, then one has to conclude that there are reasons resident in the operation of the economy of the U.S. and reasons resident in the traditions and practices of the society of the U.S. which make for the situation of having a large and disproportionate number of Black People imprisoned in the U.S. Every study of imprisonment in the U.S. that I know of has so concluded.

Given these conclusions, it then behooves the U.S. Congress not to act in ways to exacerbate and continue the U.S. tradition of imprisoning large numbers of Black People, historically young, adult black men and increasingly young, adult black women, whom U.S. society has not been able to integrate into its workings or work force nor, for whom, has U.S. society been willing to provide adequate essential life supporting and life enhancing services.

Imprisoning persons because a society has provided them with inadequate opportunities for supporting themselves is unjust in any case. In the U.S., such imprisoning is especially unjust because the persons so imprisoned, in addition to bearing the scars of society's neglect, also, feel the sting of U.S. society's long enduring traditions of assaults, hatred, and hostility against their personalities because of the colors of their skins.

No civilized society would countenance or continue such a situation. Yet, U.S. society seems to be bent on doing just that.

The U.S. Congress can stop the imprisonment of an ever increasing number of Black People in the U.S. This, the U.S. Congress can do by not passing any legislation to give currently unused and abandoned buildings owned by the U.S. government to states and other political subdivisions for them to use as prisons. Such a stand by the U.S. Congress would put a majority of members of the U.S. Congress on record as opposing the use of imprisonment as the major means of dealing with residents and citizens of the U.S. for whom there is neither regular or meaningful work nor, for whom are there adequate and sufficient programs for meeting their basic needs or nurturing their reasonable aspirations. I urge you to do this. I urge you to vote against H.R. 4450 and H.R. 6028.

Ms. BERGMAN. I would like now to introduce Ms. Karraker.  
Mr. BURTON. Ms. Karraker, you may proceed.

**STATEMENT OF NANEEN KARRAKER, COORDINATOR, NATIONAL MORATORIUM ON PRISON CONSTRUCTION**

Ms. KARRAKER. Thank you, Mr. Chairman.

My name is Naneen Karraker and I represent the National Moratorium on Prison Construction in San Francisco.

I have a prepared statement which I would ask be placed in the record.

Mr. BURTON. Without objection, so ordered.

Ms. KARRAKER. Basically I wanted to add two points to my testimony.

One is that I was interested when Mr. Cramer from the California Legislature spoke about what wonderful things the State was doing in terms of developing alternatives to imprisonment.

I think there are two things related to that. One is that it basically was the work of groups like ourselves that forced the State to develop any kind of alternatives to imprisonment.

It was through our efforts that a report that was being held by the department of corrections that said that California would not need to build additional prison space if they developed reentry facilities.

That report was made public by organizations like ourselves. There would be even greater need for prison construction if groups like ours were not pushing for the development of alternatives.

I was also interested in what Mr. Cramer said about the new projection of the California State prison population which he now says is 47,000 prisoners by 1987.

I think that statistic underscores again the point that I was trying to make in my testimony that the prison builders in California are really bunglers and to offer those people land on which to build prisons when they do not know how many people to expect and when to go and what is going to happen with the sentencing laws and how many alternatives are going to be developed and whatever, is a really questionable—and that is putting it mildly—direction in which to go.

I think being very close to the situation in California I am shocked over and over again by how incompetent the department of corrections is in terms of dealing with the prison population and what problems the legislature has in dealing with the whole problem of crime.

Thank you very much.

[Ms. Karraker's prepared statement follows:]

Testimony of Naneen Karraker

Mr. Chairman and members of the Committee, my name is Naneen Karraker. I am the coordinator of the National Moratorium on Prison Construction of the Unitarian Universalist Service Committee in San Francisco. I work with groups and individuals in opposing prison and jail expansion in most of the states west of the Mississippi River.

As seen from the west coast, these proposals before you (HR 4450 and HR 6028) are particularly wasteful and irresponsible. The California experience with prison expansion is a good example.

But let me begin with a slight digression concerning the compromise as suggested in HR 6028. Any bill which allows transfer of federal property to state prison builders is a wasteful and irresponsible proposal. We know that this administration has no intention of providing the states with surplus federal land for purposes other than prisons. According to Washington Post articles on March 11 and March 13, 1982, the president's plan for selling surplus federal properties only allows properties to be given to state and local governments if they are to be used for "correctional facilities", or, in other words, prisons or jails. To speak of other purposes for these lands is misleading, at least for the next few years. So with that situation in mind, let us look at the California prison building example.

California, like many other states, shifted its sentencing laws from indeterminate to determinate sentencing. This took place in the mid-1970's. The shift was initially conceived as a humane reform, a way of bringing greater justice to the law enforcement system.

Instead, what happened was that the reform backfired. The new determinate sentences were in many cases longer than the average indeterminate sentences had been and many sentences which had been discretionary concerning prison were made mandatory. This meant that many people who would otherwise have been sentenced to probation, now faced prison sentences.

California's Department of Corrections (CDC) foresaw what these new laws would do to the prisoner population and in 1976 began pushing to build more prisons. Initial prisoner population projections showed an increase of about 10,000, or from about 22,000 to about 32,000 by 1984. A master plan was drawn up to show how many prisons and of what security level were needed. CDC officials began running around the state searching for land on which to build. They could not find anything other than existing prison sites.

By 1980, our office discovered a secret CDC report showing that if CDC set up community-based re-entry programs for prisoners at the end of their terms, there would be no need to build all or at least most of the proposed new prisons. To the astonishment of many, California ranked lowest in the nation in ratio of traditional prison cells to community-based beds. This report was made public and CDC was forced by the state legislature to schedule establishment of re-entry programs.

By 1981, the prisoner population projections were again revised and showed an even greater increase than initially projected. CDC now sees a prisoner population of about 45,000 by 1989. In desperation, they have begun planning to build on two sites where prisons already exist (Folsom and Tehachapi) and at two new sites (Atelanto and Otey Mesa) in southern California.

But as these building plans progress, serious questions are being

raised about the need for these prisons at the classification levels planned and about whether the state can even afford to build the proposed prisons. The classification questions were initially raised in a report to the state legislature by the consulting firm of Arthur Young. They discovered "overclassification" in the prison system, or putting people in higher security levels than they should be. It has been pointed out that California puts 20% of its prisoners in maximum security while most other states average about 5-10% of their prisoners in maximum security. The questions about the ability of California to pay for more prisons have come up as the state faces an increasing budget deficit and as the voters decide in June 1982 whether or not to authorize bond sales of \$495 million to build only 5500 of the 12,500 prison cells that are supposedly needed.

In short, California officials have created a terrible prison overcrowding problem and are trying to solve it in ways that will first, not solve the problem, and, second, increase astronomically the financial burden on the state. To build 5500 more cells will not make room for 12,500 more prisoners and a \$495 million bond issue will, according to the legislative analyst's office, cost at least \$1.6 billion plus annual maintenance costs of \$15,000 or more per prisoner.

To seriously consider providing federal lands to these bunglers would be a wasteful and irresponsible decision. All it would do is allow state officials another chance to ignore the fact that we lock up too many people for too long and that what is needed is a change in sentencing laws to sharply reduce our over-reliance on imprisonment.

Mr. BURTON. First, we are not giving the department of corrections anything. We are putting them on a list.

I would assume that given where our prisons are, except for San Quentin, they are all in the middle of nowhere. Folsom was in a remote area until civilization has reached out.

But basically our prisons are out where land is empty. They are going to build them where land is cheap because that is where there are no people.

I do not know what this is going to do for prisons in California. The legislature still has to come up with the money. The work that the moratorium people did out there helped to give some people some kind of reason, but they did not want to spend the money. They went to the bond issues on that prison.

That one in San Diego has been kicking around for 100 years. When I was there they were talking about that.

I view this is a permissive thing that throws it in where I think there is a need for better correctional facilities. The facilities do not correct, which is one of the big problems.

I think the other problem is, as the gentleman stated, if you have the place loaded with first-time people who commit misdemeanors, you are turning out criminal factories. It is not a correctional institution.

But I do not know. If I thought that this legislation would slow down the very slow march to its penal reform I would not be for it. I do not think it is going to affect it one way or the other.

A case in point may be that two women in California who told me: "What is the present status of Bruce Allen's order down in Santa Clara?"

They said that the sheriff needed more money to build a new county jail. The board did not have the money because of proposition 13. Bruce Allen, who was a very hard-line law enforcement guy when he was in the State legislature, ordered 200 or more released.

I think if you look at some of the things he introduced half of the people are still in jail for smoking marihuana cigarettes from his pot penalty stuff.

They released 200 people. But what did that do? That did not solve the problem of the county jail. That just got some people out in the street 2 months early who may or may not have been ready to go on the street. I am sure they had been convicted for minor crimes such as shoplifting and forging and maybe marihuana possession or other misdemeanors.

What has the effect of that been in the county?

Ms. KARRAKER. So far as I know, there was no increase in the crime rate or anything like that.

Mr. BURTON. I did not mean that.

Crime is going to go up and crime is not going to go down until we have a society where people are not drug dependent and people have jobs and do not have to steal to stay alive.

There is evidence to suggest that, except for white-collar crimes which are profit motivated, most people go to jail for crimes related to domestic violence or for drug-related crimes.

I was asking what effect that had on the prisons. I am sure that shoplifting did not take a quick upturn.

Ms. KARRAKER. So far as I know it has not solved the jail overcrowding problems in Santa Clara County. He basically has been trying to stay ahead of the outrageous overcrowding in the jails right now.

What would be needed is to do something about the Santa Clara jail overcrowding or any of the other overcrowded jails in the State. First we could begin by doing some things like looking at the sentencing laws and looking at why so many people are being arrested and locked up.

He really is not dealing with it by his court orders.

Ms. FLOWER. May I comment on that, Mr. Chairman?

Mr. BURTON. Just one moment, please. Mr. Weiss, would you take over for a few minutes?

Mr. WEISS [presiding]. Please go ahead.

Ms. FLOWER. I just wanted to mention that one of the problems that California is dealing with is due to the change in its determinant sentencing law. It has changed where the discretion lies. It is now suffering some of the results of that.

Some of the experiments it is doing now would take back some of that discretion. Senator Presley who is a strong "law and order" person sponsored a bill a couple of years ago to allow a 5-day early release in county jails if and when they are overcrowded.

The discretion was with the local county board of supervisors and the sheriff. A similar bill is being considered now. It is a slight early release. I do not think that anyone would argue that a person is more ready or less ready to be released 5 or 10 days earlier.

But these few days sometimes can relieve a critical situation. It is these kinds of things that the States are trying out now.

Mr. WEISS. Ms. Bergman, in the course of your testimony you had indicated that you did not think this really solved the problems of the States in any event since the heavy cost is in construction or renovation.

If, in fact, that is so, then aside from the fact that I think this is a good opportunity and I have tried to take advantage of it myself, it ignores the basic underlying issues involved.

Why is there a problem in legislation which simply puts the surplus Federal property available for correctional purposes as well as for a whole list of other purposes which are currently permitted?

Ms. BERGMAN. I think there are a couple of issues here. Financially what I was trying to get at was the fact that there is so much cost involved in maintaining or keeping anyone in prison for a year at a time.

If you looked at the study, it asks us to look at prison stays as an exchangeable commodity. The fact that two people do not go to college because we are continuing to incarcerate one person for a year and those costs stay exactly the same regardless of whether they got that property for free in the first place or they had to build it, then—

Mr. WEISS. But that being the case, precisely why is it of concern to you that the Federal Government makes its surplus property available to the States for use as correctional facilities rather than for hospitals or educational institutions or whatever?

Ms. BERGMAN. It is of concern to me because I feel as though I represent a movement which is trying to educate people that the

solutions to crime at this point in time are not the increasing availability of cell space, whether it is through States voting bond issues to build more prisons or by whatever means they are able to acquire that kind of space.

This is just one way of trying to add on to that kind of cell space. We are opposed to utilizing that as a means of attempting to solve crime and responding to people's fear of crime.

Mr. WEISS. Suppose you reached the point—and I am not quite sure that you can take the New York testimony or a description of the New York situation at absolute face value—but the fact is that they have taken strides out of necessity as much as any other cause to reduce population in the prisons which do not absolutely have to be in prison.

Suppose in a State such as California, New York, or anywhere else you reached a position wherein the only people left in the prison were those who had committed crimes of violence.

At that point suppose you still had other people in the pipeline waiting to be sent somewhere or have something done with them.

Under those circumstances would you think that a community would be within its justification in seeking to provide additional space to keep those people out of the community at large?

Ms. BERGMAN. It is my opinion that according to the kinds of information that we have available to us that it is not a realistic appraisal of the situation.

Such an incredibly high percentage of people who are currently incarcerated really do not need to be there. They do not represent any kind of danger to the community or to themselves.

I think we are talking about something which is not realistic.

Mr. WEISS. Do you have information on the New York situation?

Ms. BERGMAN. I can tell you if you look across the board if you look at jails right now, 52 percent of the people in jail are there because they cannot post bond.

When you look at the statistics of the people who are in jails alone right now in this country who are there—

Mr. WEISS. Those are people awaiting trial.

Ms. BERGMAN. Many of them are. If you are talking about just opening cell space—if we currently looked at our situation had it filled to capacity with people who have committed violent crimes, then that is one thing.

But if you look at who is currently now populating our jails and prisons, such a high percentage of those people do not need to be there. So many people have not been convicted of anything in the first place, yet, and so many people who have been convicted do not need to be confined in that kind of way.

That is why we talk about developing the kinds of community alternative programs, restitution programs, and ways in which those people can be punished, if you will, or in some way there is some kind of retribution.

Mr. BURTON [presiding]. I agree with that for people who are nonviolent criminals.

There ought to be some way to rehabilitate them.

Ms. FLOWER. May I say one other thing?

In the hypothetical situation you posed, one other thing you might look at is the length of sentences and their nature—whether

they are mandatory sentences or not—to find where the discretion lies.

The ABA Commission on Corrections just came out with a statement in late 1981 in which they find that there is no deterrence value in a longer sentence for more people.

That is something that has always been assumed. I do not think it has ever been found to be fact.

Mr. WEISS. How do you feel about laws on the books? New York has one now. It says that if you are found in possession of a handgun you go off to jail. The judge must send you to jail.

Ms. FLOWER. I think it moves the discretion around in the system to the DA and/or the police officer who makes the initial arrest.

There still will be discretion there and there is still a wide variety of cases covered by that seemingly simple term.

I would still prefer for there to be judicial discretion in any individual case.

Mr. WEISS. The problem is that nobody was going to jail for possession of a handgun, no matter how many times they had been found in possession of a handgun until it became mandatory.

Even now it is not a 100 percent record. The law has been on the books for about 2 years. All it does is to make it a crime to possess it. It does not say that you have to be sent to jail if you were convicted of possession.

The law for the past 2 years has been——

Mr. BURTON. You are talking about possession being a crime with a mandatory jail sentence if it is used for a crime and but not just for possessing it.

Mr. WEISS. Even though it is mandatory it depends on the circumstances.

Mr. BURTON. Most jurisdictions are moving that way.

Mr. WEISS. What I am saying is that this whole area of discussion—we get beyond whether we should or should not allow the Justice Department or GSA or whoever to transfer, donate, or sell.

This is a very complicated issue and full of contradictions. I happen to think for people to be sent to jail for possession of narcotics, that produces the levels, as we have in New York which mandates that, is outrageous and stupid.

I happen to think that people who possess guns, handguns, seeing what happens with the idle possession of handguns, in fact, ought to know if they are caught with a loaded gun they are going someplace.

Ms. BERGMAN. I would like to make a comment on that.

We have right now in Washington, D.C., and I am sure you are aware there is a big push to pass a mandatory sentencing law for the District.

We, in conjunction with the ACLU and a number of other groups have been conducting various studies on the effectiveness of mandatory sentencing in various other places, including the State of New York.

According to everything we come up with, they are spending an incredible amount of money and it is not doing a thing to deter crime.

It is not affecting the crime rate. To assume that mandatory sentencing—and I think you are taking something that theoretically makes a lot of sense. We are afraid of people with handguns.

I think as a woman alone in the city, of course, I am concerned about those kinds of things. But I also know that most of the people who commit crimes of property usually out of desperation are not reading the papers to see whether or not they are going to be arrested, convicted, and staying abreast of changing kinds of laws about whether or not they are carrying a handgun.

Those are not the kinds of circumstances that enter into when somebody commits that kind of crime.

Mr. WEISS. You do not think that the broad ownership and possession of handguns in our society is related to the fact that people know that there is a sort of tacit approval of people?

Ms. BERGMAN. Yes, but I think that is separate than mandatory sentencing for crimes that are committed by having possession of a handgun.

I think they are two very different kinds of things. I would certainly be an advocate of gun control. I am not an advocate of mandatory sentencing which totally removes the process of any kind of discretion or any kind of allowing of the mitigating circumstances, the particulars of any individual case.

We are saying that across the board, whatever has been done, is heinous. That is not often the case.

Mr. BURTON. It may be heinous but there may be mitigating circumstances.

Ms. BERGMAN. Yes, and that needs to be taken into consideration.

Mr. WEISS. I think we are getting into much too specific conversations.

Let me close by suggesting to you that the problem with the position is that until something untoward happens because of the possession of the gun, there is no danger and some of the finest people who have never been in any trouble at all walk around packing a loaded revolver.

For the most part, they do it out of perfectly genuine motives and not because they want to commit a crime. It is because they are afraid. They want to be in a position of protecting themselves.

Invariably what happens ultimately is that the effort to protect themselves leads to tragedy. So what happens is that people get picked up and when the judge says that it is a nice schoolteacher who is carrying this gun and we are not going to send that nice schoolteacher to jail, pretty soon the word is out:

"Do not worry about the law. You can possess the gun. Nothing is going to happen to you."

So, the friends and everybody who reads about that says:

"Well, I had better get a gun to protect myself because there is no danger to me for doing that. I can protect myself."

It is a problem.

Ms. BERGMAN. I agree, but you are touching on a much larger issue on the public's fear of crime which I totally would agree with you needs to be dealt with and we need to come up with alternatives to respond to that fear of street crime.

But I do not feel that building more prisons or making more prison space available will do anything to affect that crime rate. That is the point.

These are two very different points.

We are not saying that we are not afraid of crime. We are not saying the public does not have a right to be afraid of crime.

Mr. BURTON. We are trying to justify our position on this bill as two bleeding hearts. I guess basically your position is that the only way that you can deal with the problem of classification of offenders and who should be in or out of jail is to write a hard-line law and order a guy like Bruce Allen who is telling them:

"Let people out of prison."

They then say: "Well, if we have to let them out, we have to look at them."

What you are saying is that the best thing is to make them look at them before they send them into prison and that by even this innocuous piece of legislation we are slowing down that final result if it is only by a day. That is your feeling on it.

Mr. WEISS. I think you said that very well.

Thank you very much, Mr. Chairman.

Mr. BURTON. Thank you very much for your testimony and your statements.

The record will remain open for a week for people who want to send in comments or any other further information.

Thank you very much.

The subcommittee is adjourned.

[Whereupon, at 1:20 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

## APPENDIX

### STATEMENTS SUBMITTED FOR THE HEARING RECORD

#### STATEMENT

#### OF

REP. ROBERT A. ROE  
OF NEW JERSEY

Thank you Mr. Chairman for the opportunity to appear before the subcommittee to testify in favor of H.R. 4450 and H.R. 6028 which would allow the federal government to donate surplus federal property to states or local governmental units for use as criminal justice facilities.

The lack of adequate facilities to house convicted criminals is a problem that is currently plaguing most of the nation.

In my own state of New Jersey, the prison population is expected to increase from the current 8,400 to 15,000 inmates by 1988. The sad fact of the matter is that New Jersey does not have enough spaces available in adult prisons to handle the prisoners it has now. Our county jails have been forced to house state prisoners until adequate facilities can be found or built.

The situation is so acute that the governor of

New Jersey has called prison overcrowding the most difficult, severe and immediate problem facing the state. New Jersey voters will be asked to approve a \$160 million bond issue in November to finance the construction of two new prisons and the expansion of a number of existing facilities.

Like New Jersey, many states, become of severe budget restraints, are hard pressed to build new correctional facilities. We in New Jersey were most fortunate last year when the Department of the Army agreed to lease the stockade at Ft. Dix to the state for use as a correctional facility.

I am certain there are many other surplus federal sites around the nation like the Ft. Dix stockade that could be converted into state and local correctional facilities.

Passage of the measures we are discussing today would open the way for that approval to be granted with a minimum of federal red tape.

Mr. Chairman, the people of our nation have cried out loudly and clearly for something to be done about the rising crime rates that have in some instances reached epidemic proportions.

In response to that cry for help, New Jersey enacted some of the toughest anti-crime laws in the nation. The result of that effort has been an increase in the number of criminals sentenced to

prison. In fact, since the new state penal code was enacted in 1980, the average state prison sentence in New Jersey increased from five to seven years. Also, persons convicted of using a firearm while committing a crime are mandated by law to receive a sentence of at least three years.

But unfortunately, that crackdown on crime has resulted in situations where judges must resort to probation in cases that in the past would have required incarceration because they know there is simply no prison space available for the offenders.

The federal government has a key role in the criminal justice system. I am pleased to note that U.S. Attorney General's Office has established a clearing house on surplus federal property that could be utilized as correctional facilities.

It is now up to Congress to insure that our states and local communities will have access to these facilities through the passage of both H.R. 4450 and H.R. 608.

Mr. Chairman, once again I thank you for the opportunity to express my thoughts on this most urgent matter.

NORMAN D. DICKS  
8TH DISTRICT, WASHINGTON

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APR 29 1982

Congress of the United States

House of Representatives

Washington, D.C. 20515

April 28, 1982

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The Honorable John L. Burton  
Chairman  
Subcommittee on Government Activities and Transportation  
B350A Rayburn HOB  
Washington, D.C. 20515

Dear John:

I am enclosing a statement on H.R. 4450, the Zeferetti bill concerning the transfer of surplus federal property to the states for use as correctional facilities. I hope you will include my statement as part of the hearing record on the legislation.

Thank you for your assistance, and for your consideration of this important bill.

Sincerely,

*Norman D. Dicks*

NORMAN D. DICKS  
Member of Congress

NDD:gwp

Enclosure

STATEMENT OF CONGRESSMAN NORM D. DICKS

H.R. 4450 - THE DONATION OF SURPLUS FEDERAL PROPERTY TO STATES FOR USE  
IN THE CONSTRUCTION OR MODERNIZATION OF CRIMINAL JUSTICE

MR. CHAIRMAN:

Thank you for allowing me this opportunity to present my views on the legislation before the Subcommittee.

Washington State has a particular interest in this bill. Just last year, the U.S. Bureau of Prisons abandoned its facility on McNeil Island after 105 years of occupancy. The State, suffering severe overcrowding at its other corrections facilities, assumed control of the prison and immediately moved some 250 prisoners into the Island's buildings. But the Federal government is charging the state some \$440,000 each year, or \$36,000 plus every month, for the use of the property. And a recently completed appraisal by GSA would raise that annual rent to \$1.5 million based on "fair market value".

The State has a series of problems with the establishment of a "fair market rent" for the property. First, as is true in many states across the country, Washington is facing a severe budget shortfall. In response to that budget crunch, the State Department of Corrections has taken a \$16 million cut over the last year. We cannot afford to pay the price demanded by GSA. Secondly, GSA is basing its valuation of the property on its potential commercial development and use. Since the Island has been a prison for over 100 years, and has therefore been restricted in its use, it has developed into a prime wildlife and fowl sanctuary. In fact, under our previous Governor, Dixy Lee Ray, plans were advancing to establish a wildlife refuge on the Island, under the control of the Interior Department.

Those plans were abandoned under Governor Spellman. But the fact remains that, if the Island continues to be available as a prison facility, the acres not employed directly by that facility must be restricted in their usage, and cannot be developed for commercial purposes. That fact severely restricts their "fair market" value.

An interesting comparison should be mentioned at this juncture. Washington State is home to a facility in Skagit County known as Northern State Hospital, formerly used as a State mental institution. Recently, the Department of Labor relocated one of its Job Corps units to this facility. However, DOL is prohibited by federal law from paying more than \$1 in annual rent to the State. Needless to say, the Northern State Hospital facility is valued at an amount far in excess of \$1. So an interesting comparison is made -- the State can receive no more than one dollar for allowing the Federal Department of Labor to use its property, yet it must pay over \$440,000 for its use of an isolated island with extremely limited commercial development potential. The comparison makes the financial burden on the State seem all the more unreasonable.

Washington State took control of the McNeil Island facility last summer. Since that time, without a lease or any clearly defined long-term access rights to the Island, the State has spent over \$2.5 million to bring the buildings up to code and replace items essential to the operation of the prison. Another \$15-20 million would be required to fully renovate the facility. But with the future ownership as yet undetermined, the State is understandably reluctant to enter into an obligation of that volume.

There is no question about the need for the McNeil Island facility within the State's prison system. State prisons are currently operating at 120% of capacity, and adding an average of 80 new prisoners every month. McNeil Island now houses 570 prisoners. Even with new construction of prison facilities in the coming years, Washington, like many other states, anticipates a shortfall of necessary space to house its inmates. Ask the State to spend \$1.5 million every year to lease the McNeil facility, and the construction of new facilities could be slowed or halted. Add to that the fact that, under current negotiations, the State would pay rent on the facility indefinitely, never achieving ownership, and ask yourself if that's a deal you would accept if you were in the Governor's position.

The legislation this Subcommittee is considering offers an alternative. It would allow the Federal government to transfer the property free of charge to the State for use as a correctional facility. I ask my colleagues to consider this bill favorably. The situation I have described in Washington State is true in many states across the nation. Many of our states have extremely limited financial resources, and prisons crowded over capacity. Federal facilities which are surplus to the use of the national government could be godsend to State administrators if those facilities could be made available without an impact on the State budget. Concerns that a bill of this nature might bring on a run on federal surplus property are answered by the extremely limited use to which the property could be put. Yet that limited use -- prison facilities -- is one which would be of valuable help to many states. Mr. Chairman, I hope that you will act quickly to report this bill to the Floor of the House with your endorsement.

Thank you again for giving me this opportunity to comment.

STATEMENT  
BY  
NORMAN DARWICK  
EXECUTIVE DIRECTOR  
INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, THANK YOU  
FOR THE OPPORTUNITY TO OFFER A STATEMENT TO THE RECORD OF YOUR  
HEARINGS ON H.R. 6028.

THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE REPRESENTS  
OVER 13,000 POLICE EXECUTIVES WHO FULLY SUPPORT THE CONCEPT OF  
A CONTROLLED TRANSFER OF SURPLUS FEDERAL PROPERTIES TO STATES  
AND LOCAL GOVERNMENTS FOR USE AS CORRECTIONAL FACILITIES.

WE HAVE TESTIFIED IN SUPPORT OF THIS PROPOSAL BEFORE THE  
ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME, AND BEFORE OTHER  
CONGRESSIONAL HEARINGS ON CRIME ABATEMENT.

THE 1980 PRISON POPULATION FIGURES SHOW US THAT UPWARDS OF

436,000 INDIVIDUALS ARE BEING HANDLED BY THE STATE AND LOCAL  
SYSTEMS, WHILE LITTLE MORE THAN 23,200 ARE IN PROCESS AMONG  
FEDERAL SYSTEMS.

LONG AGO, THE STATE AND LOCAL SYSTEMS EXCEEDED THE MAXIMUM  
POPULATIONS FOR WHICH THEY WERE DESIGNED. THESE SYSTEMS HAVE  
SO OVERCROWDED THEIR FACILITIES AS TO FORCE SOME COURTS TO ORDER  
THE RELEASE OF DANGEROUS FELONS FOR NO OTHER REASON THAN SPACE-  
SAVING.

WE BELIEVE THIS PRACTICE IS NOT ONLY DANGEROUS TO SOCIETY  
AT LARGE, BUT ALSO VIOLATES THE SENSE AND SPIRIT OF A FREEDOM  
FROM CRIME SHARED BY OUR CITIZENS.

THE FEDERAL GOVERNMENT IS IN AN IDEAL POSITION TO STEP INTO

THE BREECH WITH THEIR EXTENSIVE HOLDINGS OF MILITARY BASES  
WHICH NOW LIE VACANT AND UNPRODUCTIVE.

WITH THE PASSAGE OF H.R. 6028, THE VAST MAJORITY OF THE  
U.S. LAND ACQUISITIONS FOR MILITARY BASES WHICH MUSHROOMED  
ACROSS THIS NATION DURING THE SECOND WORLD WAR CAN BE RECOVERED  
FROM THEIR IDLENESS WITH SUFFICIENT SURPLUSES FROM THE TRANSFERS  
TO FACILITATE FUTURE MILITARY USE, IF NEEDED.

MEMBERS OF THE SUBCOMMITTEE, THE STATE AND LOCAL CORRECTIONS  
FACILITIES ARE AT THE BREAKING POINT, WITH VERY FEW JURISDICTIONS  
FISCALLY STABLE ENOUGH FOR NEW ACQUISITION AND CONSTRUCTION.

H.R. 6028 IS A PERFECT ANSWER TO THIS PROBLEM, AND WE URGE  
YOUR FAVORABLE CONSIDERATION AND PASSAGE OF THIS MOST IMPORTANT  
BILL.

THANK YOU!



STATE OF NEW JERSEY  
WASHINGTON OFFICE

THOMAS H. KEAN  
GOVERNOR

444 NORTH CAPITOL STREET, N.W.  
WASHINGTON, D. C. 20001  
202-638-0631

MEMORANDUM

TO: MILES ROMNEY  
FROM: BARBARA THOMPSON  
SUBJ: STATEMENT OF FIRST ASSISTANT THOMAS GREELISH IN SUPPORT OF H.R. 4450  
DATE: APRIL 28, 1982

Enclosed is the statement of Thomas Greelish, First Assistant Attorney General of New Jersey, in support of passage of H.R. 4450, legislation to amend the Federal Property and Administrative Services Act of 1949. I would appreciate it if you would submit this statement in the record of the Subcommittee's proceedings of April 21.

STATEMENT OF  
THOMAS W. GREELISH  
First Assistant Attorney General  
State of New Jersey

Mr. Chairman and Members of the Committee, I am pleased to submit this statement in support of the passage of H.R.4450, which as amended, supplements 40 U.S.C.-484 and permits the donation of surplus federal property to any state, county or city for the construction and modernization of correctional facilities. Support for this measure through my statement is being expressed by the National Association of Attorneys General and the State of New Jersey, the latter of which I serve as First Assistant Attorney General.

The National Association of Attorneys General adopted a resolution at its mid-winter meeting in New Orleans in the early part of December, 1981 which in part stated:

"Now, therefore, be it resolved that the National Association of Attorneys General supports legislation which would implement the recommendation of the Attorney General's Task Force on Violent Crime by making abandoned military bases and other surplus federal property available to states and localities for use as correctional facilities on a permanent basis."

The American Correctional Association has previously adopted a similar resolution at its delegate assembly meeting on August 20, 1981.

Both the National Association of Attorneys General and the American Correctional Association are cognizent of the increasing problem of prison overcrowding. The State of New Jersey, in particular, is presently facing an over increasing influx of inmates as a result of recent legislation mandating proscribed prison sentences for certain crimes and extended sentences for types of crimes and the perpetrators of same. Further, society is demanding persons convicted of crime, particularly crimes of

a violent nature, be incarcerated and incarcerated for longer periods of time.

Recently our state entered into a lease with the Department of the Army for a certain portion of property located at Fort Dix in Burlington County, upon which will be constructed a medium security prison. The cooperation extended to our state by the federal government is greatly appreciated. However, the cost of this process in manhours, expenditures by both the State of New Jersey and the federal government would have been minimized greatly, if not eliminated, had this legislation been adopted.

Concerning the impact of this legislation on the State of New Jersey, an extensive study of existing federal properties was conducted by the Facilities Planning Unit of the Bureau of Institutional Support Services of the New Jersey Department of Corrections. This study included on-site inspection of eleven (11) federal properties which ranged from three former NIKE missile bases to a Coast Guard repeater station containing one-tenth of an acre with one small building. Each site was considered solely for its desirability as facilities for immediate medium security housing and was not considered for any other type of correctional facility. While none of these sites was suitable for immediate use, it is possible certain of these may be beneficial to the State of New Jersey. If H.R.4450 becomes law, each site will be reconsidered.

Although the National Association of Attorneys General and the State of New Jersey favor this legislation, I would be remiss if I did not include one caveat. It is anticipated the donation of federal surplus property will not be looked upon by the federal government as a means to transfer to states, property which is unwanted by the federal government

due to the cost of upkeep. The fiscal burdens of state government are reaching catastrophic porportion. The donation of needed property to states for correctional facilities is warranted. The overall benefit to the general public, particularly with the concurrent increase in inmate population, insures to the benefit of society. With the "New Federalism" approach to government, the donation of land which is not being utilized by the federal government is an alternative to direct monetary assistance. Taxpayers are benefitted in that federal funds are not being used to pay for a facility which is not being used and state taxes are not being used to lease or purchase property from the federal government. The proposed legislation certainly follows this approach and is desperately needed.

Thank you for the opportunity to submit this statement.

THOMAS W. GREELISH  
First Assistant Attorney General



F. A. I. R.  
FREEDOM AGAINST INVASION OF RIGHTS INC.  
P. O. BOX 328 SANBORN, NEW YORK 14132

PRESIDENT \_\_\_\_\_ MARGIE SWAN  
VICE PRESIDENT \_\_\_\_\_ GLORIA MAROTTA

SECRETARY \_\_\_\_\_ ROSE BARCER  
TREASURER \_\_\_\_\_ PETER KREUTZ  
April 25, 1982

Mr. Miles Romney  
Counsel to Government Committee  
Activities and Transportation  
Rayborn Room B  
350 AB  
Washington, D.C. 20515

Re: Lockport Radar Air Force Base  
Town of Cambria, Niagara County, N.Y.  
G.S.A. Parcel No.# ( 2-D-NY-745 ) and ( 2-D-NY-745A )

Dear Mr. Romney,

The F.A.I.R. Organization realizes the devastation to the Town of Cambria and Niagara County, N.Y., that will definiately be caused if the State of New York and the State Corrections Department are allowed to have the Lockport Air Force Radar Base for a prison of any kind.

Thousands of Niagara County Residents are totally against a prison in this area along with the Niagara County Legislature, Niagara County Sheriff Anthony Villella, and many of our Elected Officials, Senator John Daly, Assemblymen Matthew Murphy and Joseph Pillittere, plus numerous officials who are not in our immediate area. These Officials have worked very hard to keep the funds out of the N.Y. State budget for a proposed prison. A recent telephone survey indicated that 83% of the thousands of Residents polled throughout Niagara County are totally against a prison, any kind of a prison. Thousands of signatures have been collected on petitions opposing this prison.

Among others who have so strongly voiced their opposition to this prison are the President of the U.A.W. Amalgamited Local 686, Joseph Kozyra; President of the AFL/CIO, Jack Kyzmir; all 41 Senior Citizen groups of Niagara County, the Lockport Housing Authority; numerous churches and schools in the area and many of the municipalities and various civic organizations of Niagara County.

There are over 70 homes within the perimeter of the former radar base, many of which house children and elderly. Within a five-mile radius of this area is Niagara County Community College, 2½ miles, Board of Co-Operative Education Services, (BOCES), 2 miles; Handicapped/Retarded BOCES a few hundred yards away; Starpoint Central School, 3 miles; Niagara County Girl Scout Camp "Windy Meadows", 1 mile located in a heavily wooded area. Another point of concern is the numerous farm structures in the area.

With the work and education release programs offered in medium security prisons and the weekend

furloughs, we feel the above mentioned facilities would be very much affected by a prison.

The F.A.I.R. Organization set up another corporation which has become known as Cambria FAIR Village, Inc.. We submitted a proposal to the General Services Administration to locate a Senior Citizen Village at the former radar base. We have numerous professional people working with us, such as our Consultant/Planner Sidney Spector of Cleveland, Ohio; Architect John Laping of the firm of Kideney, Smith, Fitzgerald and Laping of Buffalo, N.Y.; and our Developer Samuel S. Sansone of Lockport, N.Y. We have also Mark Hamister of Hamister Associates previously with the Presbyterian Homes of Western New York as our Market Consultant.

We have a complete board of directors which include many knowledgeable and professional persons such as the President of UAW 686, President Niagara County Community College, Assistant Supervisor of BOCES, Chairman Lockport Housing Authority; Administrator of the Council on Aging of Niagara County, and many other professional persons.

Director of the Office of Surplus Land and Housing, Mr. Angelo Scioscia, HUD in Washington, D.C., has been here and totally reviewed our proposal and completely backs us. The desperate need for housing for Senior Citizens is increasing steadily in the United States and very much so in the Niagara Area. Elderly persons are living longer and more fruitful lives, we know this "Village" we are proposing will be most beneficial to this area on a long-term basis. We feel the people of this area deserve something they can rightfully enjoy and be proud to have in their community. This will be a total blessing for the people.

We cannot understand why, when the public is totally against having a prison of any kind located at Cambria, Niagara County, N.Y. and with the opposition of such elected officials as Senators Alfonse D'Amato, Patrick Moynihan and Congressman John LaFalce along with some others not in our District, these people are in total support of our project which they have publicly announced in headlines in the papers along with letters we have received from them that we are being forced to have this unwanted prison in this area. The people have spoken, along with their local and government officials. This is supposed to be a "free" Country, a government which is run by the people for the people. We therefore, feel, there should not be a prison of any kind in Cambria, Niagara County, N.Y.

With the thousands of dollars being spent to promote tourism for this area, especially Niagara Falls, which is about eight miles from this base, it seems very unfeasible to locate a prison so close to a major tourist attraction. Many tourists would be inclined to think first before they venture into this area with large sums of money and valuable jewelry, clothing and etc. Another point of interest is the closeness of the Canadian Border.

The current unemployment rate is very high in the Niagara Area, and we feel a prison could not contribute much to the employment status of this area. This promise of hundreds of jobs and supplies being bought from the area has proved to be a farce to the Watertown area already. If this was such a benefit to the people we are sure our elected officials would not be totally against this prison. Our proposal of the Senior Citizen Village would, however, offer numerous jobs for area residents. We will be offering hundreds of jobs during the renovation and construction of this facility, and when in total operation there will be over 300 full-time jobs, along with about 150 part-time jobs. This will certainly be very beneficial to the area. We know many of the jobs in prisons are held by inmates and with the corrections department and unions, seniority rules, many transfers would take place from the maximum and other facilities to have the guards and such at Cambria.

We would like to see some input to the economy of this area also. Our proposal would mean using many of the area businesses for which we would become dependent on for supplies. Prisons get many of their supplies from various prisons and government contracted suppliers.

The Niagara Area also has a high rate of welfare cases. The welfare statistics are sure to rise if a prison comes into the area. Many families of inmates will more than likely settle in the area

during incarceration of family members and probably stay in the area once the inmate is released. This will cause more strain on the welfare department of the area, or else for those who work will be taking away the very badly needed jobs which should go to the taxpayers of the area and who have made this area their home. Even the guards and corrections people moving into the area and some living in the 27 ranch homes on the base will hurt our area by taking away jobs and being tax free. The tax payers of Niagara County should be getting something for their hard-earned money, not just paying out money for someone else's benefit.

We certainly hope that the General Services Administration seriously reconsiders what the best use over a long term period, for the most beneficial purpose is, and then anyone will certainly see that what is needed and most very beneficial to the area of Niagara County, Town of Cambria is the Senior Citizen Village.

With all of the excess acreage that already existing prisons have, and the many partially or unused mental and psychiatric centers around utilizing this would definitely be a savings to the tax-payer all around.

We certainly feel it is time that the Senior Citizens are taken care of and adequate facilities are made for them to live peacefully and safely where they can have a full and useful life ahead of them. They are one of our most important commodities and yet they seem to be pushed aside, it is time for a total change and we must start looking out for them, they should be given priority to the many benefits instead of the ones who have committed crimes.

I would certainly appreciate it if you would be so kind as to send me copies of the hearing. I will be looking forward to hearing from you.

MJS:RMB

Sincerely,

*Margie J. Swan*

Margie J. Swan  
President

## SERIOUS TAXPAYERS OPPOSE



## PRISON PLACEMENT

P.O. Box 220, Black River, New York 13612  
 aslo Dry Hill Rd. Watertown N.Y.  
 13601

MAY - 6 1982

May 3, 1982

Mr. Miles Romney, Counsel  
 Government Activities and Transportation Committee  
 House of Representatives  
 Rayburn House Office Bldg.  
 Washington, D.C.

Dear Mr. Romney:

Our earlier statement of January 18, 1982 indicated that we would like to present our position by coming to Washington for the hearing and to testify. However talking with you last week, I learned that it would be impossible.

Following our telephone conversation last week, I prepared a brief addition to the material stating STOPP's objection to giving the former Dry Hill Air Base to New York State to use as a prison. From our conversation I felt assured by you that written material would be accepted and considered.

Therefore we request that this addition be included with the materials previously submitted for the committee's deliberation only in respect to the Dry Hill location. Our previous request to be heard in person is still our desire if there are points to be further clarified.

You said that Commissioner Coughlin and Congressman Zeferetti of New York were presenting testimony in person and that you would mail me copies of their statements. I will be anxiously awaiting these papers.

Sincerely

*John H. Stone*  
 JOHN H. STONE  
 Spokesman  
 STOPP

JHS/h  
 encls.

STATEMENT OPPOSING THE GIVING OF THE FORMER DRY HILL AIR BASETOTHE NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICESUNDER H.R. 4450

The hearing now being held regarding H.R. 4450 and a companion Bill S. 1422 is of great concern to STOPP and respectfully request that this paper be included in the Committee's deliberations.

This statement, in objection to giving the former Dry Hill Air Force Station to the New York State Department of Correctional Services, is an addition to previous statements to the Committee of Government Activities and Transportation under date of January 18, 1982.

Additional background material was sent to Mr. Dale Hawkins of the General Services Administration prior to the lease being granted to the New York State Department of Correctional Services last September. I have been informed that this material has been made available to your committee.

The making of this prison from the Air Force Station is now at the end of 14 months of pushing and shoving by the NYSDOCS. The pleas of those who early on knew well the deficiencies of the site and the inadequacies of making it a prison there without unreasonable cost, were ignored. To hurry up the development, the Commissioner had an emergency declared. Sweetening up contracts with bonuses for early completion did not prove anything except, throwing money away uncontrolled at Government projects and using up tax dollars faster. The prison is not now open and by public announcement by prison officials, it may be June before prisoners can be brought there.

The STOPP group did not say that more prisons were not needed. We did not know. We took the fact that criminals must be locked up and that there were not enough spaces available as <sup>in</sup>trifling and some places must be found in a hurry as stated by the Commissioner.

The President's policy to make use of surplus property for prisons in the States is right and makes economic sense in these times of budget stresses. However, to give this location to the State of New York after having been run over rough shod by Commissioner Thomas Coughlin is an insult to our sense of values and our duty to help make our government function as citizens expect it should.

To show our dedication to inform our State legislators, enclosed is a STOPP card signed by over 4,000 people and mailed to our legislators along with about as many letters explaining the absurdity of this prison project. The arrogance in government was not original with STOPP but by State Senator Douglas Barclay. Also enclosed is a news-clipping of the Senator's characterization of the Commissioner of Corrections, Thomas Coughlin. You will note that in addition to "arrogance" among other remarks, he said it was "government at its worst."

The fact that water was not there in satisfactory amounts, we knew and said so. However, that made no difference. A point of great interest and concern to us is that when the Air Station was leased to the State for use as a prison last September, the Attorney General of the United States made note in his press release that this site was the first to be transferred to the states for prison use and it had the necessary utilities including water. From those remarks, we must assume that the Commissioner furnished the Attorney General with material for the release. It was similar to many other so called facts released by NYSDOCS during the last several months.

Wells in the vicinity could not produce enough water. It was stated clearly many times and introduced into the Environmental Impact Statement hearing on November 10, 1981. The stubbornness of Commissioner Coughlin again prevailed and he went on a drilling spree — spending over \$200,000 at seven well sites. Finally by political maneuvering he pushed the City Government into a position of selling water to the prison. This may also prove to be an expensive blunder if this area should experience an extended dry spell and recent projections are for a dry period.

Our two State Legislators, Senator Douglas Barclay and Assemblyman Robert Nortz have displayed unbelievable fence sitting acts. They apparently wanted to do something for everyone but usually came back to the Commissioner of Corrections for direction. You will note how angry they appeared to be at Mr. Coughlin in the Syracuse Post Standard on December 11, 1981 and even made very noticeable mention of the 11,000 underutilized beds in New York State. Under normal conditions one would feel their efforts are making sense and that Government does really listen sometimes. However, in early February 1982, our two legislators dumped in an amendment to the 1981 State Deficiency Budget giving the Corrections Commissioner what he wanted after making the necessary compromises. I have included a copy of that law which was passed and signed by the Governor before any ink could dry — in fact before the language of the law had been checked. Two days later it was amended to comply. We find it very worrisome not to be able to get an answer from anyone in State Government as to how much more than the \$1 Million has been wasted on the water and sewage referred to in the bill. We suggest that you should look into that while it is only \$1 Million, how many more will be thrown away should be of interest to your committee especially when we read about tight money and the federal budget.

It should be of interest to you that the State law passed in the deficiency budget includes a mandate calling for the closing of this prison by the State in 1984 and transferring the property over to the Town at that time.

There is so much that could be said about the attitude taken by the NYSDOCS and the actions taken to make a prison in a most unlikely location. However, to write all of this would require too much time in addition to being very confusing without showing documents and being in a position to answer your questions.

I had hoped by the earlier statement that I made it clear that we were interested in coming to the hearing. We do believe that you as legislators of our Federal Government should show some interest in what volunteers who have spent many dollars and thousands of hours gathering facts and mailing this material in to you in an effort to point out wrongs continually being stepped over in Big Government. We would appreciate a serious look at what we have been trying to bring to the front for many many months.

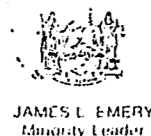
Respectfully submitted

*John H. Stone*  
JOHN H. STONE  
Spokesman  
STOPP

Photo Copies enclosed

1. Nov. 11, 1981 letter by Assemblyman James Emery, Re: Underutilized beds
2. Nov. 1981 Local News Post Standard
3. Water, Well Costs
4. State Deficiency Budget
5. 4/8/82 First Inmates in June
6. STOPP card

cc: Hon. David O'B. Martin  
30th District N.Y.



THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY  
1981

November 17, 1981

Dear Mr. Weldon:

Per your request, summarized below are several Mental Hygiene facilities which are currently underutilized. These data were compiled by our Republican Ways and Means Staff.

	Current Vacant Beds (Estimated)
I. Psychiatric Centers	
Utica	548
Harlem Valley	1,447
Marcy	243
Elmira	344
II. Developmental Centers	
Craig	752
Letchworth Village	1,092
Newark	914
Rome	1,441
Staten Island -- (Willowbrook)	2,286
Wassaic	1,203
West Seneca	557
Grand Total - All	10,827

If you have any questions regarding the data, please let me know.

Sincerely,

James L. Emery

Mr. Robert M. Weldon, Esq.  
131 Sherman Street  
Watertown, New York 13601

November 25, 1981

Dear Senators and Assemblymen:

RE: Proposed Dry Hill Prison

We enclose for your attention documented proof of available facilities for minimum security prison at little or no expense to the State and its taxpayers. These facilities already have security regulations in effect and most of the buildings which are of substantial nature have bars on the windows.

An additional benefit and tax saving could be derived from the fact that psychiatric personnel in these centers could also be used for the minimum security prisoners who are about to be released into society.

All Assemblymen, Senators and the Governor will receive this documentation.

By using the psychiatric and developmental centers, a movement could be started to alleviate the overcrowded conditions in the prisons with minimal expense to the State and the taxpayers and probably do away with any need for the construction of new prisons.

It would be a case of simple logistics.

And, we might add that the additional benefit will be that the prisoners will be near the metropolitan areas from whence over 70% of the prisoners are generated. We urge immediate action in order to stop unnecessary expenditures by the Department of Corrections.

Signed:

PATRICK PHILLIPS  
  
JOHN H. STONE, Pres. S.T.O.P.P.

MARGARET H. PHILLIPS

[From the Post-Standard, Dec. 11, 1981]

## BARCLAY, NORTZ TO FIGHT DRY HILL PRISON FUNDING

(By Bob Strom)

ALBANY.—Describing it as a case of "too many questions and not enough answers," State Sen. H. Douglas Barclay and Assemblyman H. Robert Nortz Thursday declared they would oppose funding to convert the abandoned Air Force radar station at Dry Hill into a medium-security state prison.

Instead, the two indicated they would back the proposal of Assembly Minority Leader James L. Emery: that the state look first to "under-utilized" state-owned developmental and psychiatric facilities to provide temporary housing for prisoners.

Their stand was announced in a statement released after the two legislators conferred Thursday with Robert J. Morgado, secretary to Gov. Carey; Corrections Commissioner Thomas A. Coughlin III and James L. Biggane, secretary to the Senate Finance Committee.

The two described that private discussion as "frank" and said it covered "the whole question of prison facilities in New York State.

"We have asked Commissioner Coughlin and the governor's chief of staff to take a hard look at alternatives that might serve our short-term needs in a more economical fashion," the two said in their joint statement.

"It is our understanding that nearly 11,000 beds are presently available in under-utilized Mental Hygiene facilities across New York State.

"We have urged the governor to examine these units as a possible method of meeting our critical prison needs."

In the statement outlining their position, Barclay and Nortz said that since last March, when Coughlin first expressed the state's interest in converting the former Dry Hill Air Force facility, "We have tried to insure that the interests of all the people have been protected.

Barclay met with Dry Hill-area residents opposed to the prison on May 10, and compiled a list of 10 issues the people felt must first be addressed before a decision to build a prison at Dry Hill could be reached.

Those issues were:

Availability of an adequate water supply and installation of suitable sewage treatment equipment.

Creation of visual pollution barriers from security lighting.

Excessive traffic.

Shortage of adequate housing for prison personnel.

Movement into the area of relatives of prison inmates.

Effectiveness of prison security systems.

Effect of the prison on property values.

Need for further environmental studies.

Potential burden on town services and tax rates.

Legality of a prison being located on that particular site, which is zoned for residential use.

"The people were informed at that time that we would attempt to have these concerns addressed by Commissioner Coughlin," Barclay and Nortz said Thursday.

"We subsequently pledged that without a full accounting of these issues, we could not—and would not—support any prison project at the Dry Hill site. That position has never changed."

The two said they passed that list along to Coughlin in a May 18 meeting, and Coughlin "agreed to supply written information fully resolving each of the questions raised before construction on the Dry Hill site would actually begin.

"Since that time, a number of developments have occurred that cast serious doubt upon the propriety of proceeding with this project," they said.

Despite the May 18 "understanding" with Coughlin, they said, "work at the Dry Hill site has progressed unabated."

And "serious questions—including those of adequate water supplies, and insufficient sewage treatment facilities—have apparently failed to deter the state's plans for Dry Hill, regardless of the consequences.

"In addition, there is strong evidence that the Department of Correctional Services has flaunted the decision of the courts by apparently ignoring the conditions of a temporary restraining order."

That order was obtained Nov. 25 by attorney Robert M. Weldon, counsel to Mr. and Mrs. Patrick Phillips, neighbors of the proposed prison site, who are challenging the prison on environmental grounds.

Weldon, Wednesday obtained an order directing Coughlin to show cause why he and his department should not be held in contempt of court for allegedly violating that order.

The state is due to appear Tuesday before Supreme Court Justice John O'C. Conway in Oswego.

The legislators said work on the prison "certainly defies the established concepts of reasonable government."

In July, they noted, the legislature "specifically prohibited" funding for the Dry Hill Prison.

"The intent of the Senate and Assembly was clear: there was to be no expenditure of state funds on this project until all questions were answered, and a specific appropriation for the site was provided.

"In spite of this fact, Commissioner Coughlin has spent thousands of taxpayer dollars on a project that the elected representatives of the people have specifically refused. This is government at its worst."

The two said it was their understanding that DOCS is asking Gov. Carey to request more than \$54 million in the 1982-83 fiscal year for the construction of temporary prison facilities across the state, in addition to the five-year, \$500 million appropriation the governor has already indicated he will seek to establish permanent cells in the wake of voter rejection of a prison bond issue.

"In the final analysis, we have reached the conclusion that until all the alternatives have been explored, and the best economic solution for the taxpayers found, we cannot support the appropriation of any state funds to finance the construction of a temporary prison facility at Dry Hill," they concluded.

[Memorandum]

STATE OF NEW YORK,  
DEPARTMENT OF CORRECTIONAL SERVICES,  
Albany, N.Y., December 16, 1981.

To Assistant Commissioner Russell O. DiBello.

From J. Alan Buck, Director of Facilities Planning & Development.

Subject: Legislative meeting followup.

As requested in your memorandum of December 7, 1981, requesting capital construction information discussed at our meeting with the Legislative Fiscal Staff, the following is provided:

## 1. PROPOSED WATERTOWN CORRECTIONAL FACILITY

Capital Funds encumbered and/or expended for this proposed facility can be categorized as follows:

## a. Environmental impact statement work

Since the proposed project may have an impact as defined under the State Environmental Quality Review Act (SEQRA), it has been necessary to undertake such work. This work has been performed by the Joint Venture Consultants of The Ehrenkrantz Group/McKeown & Franz, Inc. (TEG/MFI) under technical assistance consultant contract D202016. This consultant contract was executed on July 30, 1980 and amended on July 1, 1981. This consultant contract is intended to provide technical assistance for EIS/SEQRA work for a wide range of Department Expansion Plan projects.

Funds for this consultant contract have been allocated from Chapter 779/10/78 and 54/7/81 entitled "Acquisition of property, planning, construction or alternations and improvements to provide housing and support facilities for up to 3000 inmates" (called "3000 inmates" appropriation hereinafter).

For Watertown, in particular, the scope of work has been/is contemplated as follows:

Environmental assessment form [EAF] .....	\$8,000
Expanded environmental assessment form .....	12,000
Environmental impact statement [EIS] .....	60,000
.....	15,000
Permits for 7 water well test sites .....	31,500
Water well investigation—Marsala site .....	25,000
Water well investigation—Washington Monument site .....	23,500
Water well investigation—Reith site .....	18,500
Water well investigation—Percy, Cooper, Davis sites .....	39,500
Water well investigation—Pumphouse site .....	23,000
Finalize water supply/quality testing .....	25,000

Answer additional questions .....	18,000
Total .....	299,000

Additional, the Department has expended a total of \$3,000 for acquisition of water rights on three privately owned sites.

*b. Capital construction projects*

One project has been awarded for construction of the perimeter security fence and screen fence work at the proposed facility (Project 32803-L) in the amount of \$473,400. Funds for this project were allocated from the "3000 inmates" appropriation. Other projects are pending, but have not been awarded.

2. PROPOSED LOCKPORT CORRECTIONAL FACILITY

Capital Funds encumbered and/or expended for this proposed facility can be categorized as follows:

*a. Environmental impact statement work*

As with Watertown, such work is mandated by SEQRA and has been undertaken with the same Joint Venture Consultants and consultant contract.

For Lockport, in particular, the scope of work has been/is contemplated as follows:

Environmental assessment form [EAF] .....	\$8,000
Draft narrow focus environmental impact statement .....	60,000
Perform toxic waste services and analysis .....	29,000
Finalize EIS .....	20,000

Total ..... 117,000

*b. Capital construction projects*

No projects are awarded or currently pending for this proposed facility. So no capital funds have been encumbered for this purpose.

3. BUDGET REQUESTS FOR WATERTOWN, LOCKPORT

Attached please find copies of the original Department Budget Requests for Watertown and Lockport, in the amounts of \$7.2 million and \$7.6 million respectively.

Based upon discussions with Division of Budget, we believe they will support these Requests in the amounts of \$5.0 million and \$5.5 million respectively.

For convenience, I have marked the revised amounts in over the original request in order to show what the reduced Requests consist of.

4. 1982-83 CAPITAL BUDGET REQUEST SUMMARIES

Also attached please find a series of summaries (by program, priority, etc.) related to our overall Capital Budget submission to DOB. Hopefully, these will provide some beneficial reference information for the Legislative Fiscal Staff.

DEPARTMENT OF CORRECTIONAL SERVICES

REHABILITATION AND SUPERVISION OF OFFENDERS

Acquisition of property, preparation of plans, studies, alterations, and improvements, construction, and furnishings and equipment to provide housing and support facilities for approximately 210 inmates. Notwithstanding any other provision of law the monies hereby appropriated shall be allocated by the director of the budget subject to the provisions that no inmate shall be housed in the Watertown Dry Hill prison until an adequate water supply and distribution system shall be assured and a state health department permit shall have been issued without waiver after all requisite tests have been complete, nor until an adequate sewage disposal system shall be assured and a State Pollutant Discharge Elimination System permit shall have been issued without waiver and provided further that the combined capital costs for water and sewage systems shall not exceed one million dollars; that the town of Watertown and the county of Jefferson shall receive for any expenses associated with the support systems including but not limited to expenses for police, fire, snow removal, solid waste disposal, road repair and road reconstruction costs which directly results from the operation of the prison not to exceed the sum of two hundred thousand dollars per annum; that this facility shall be closed by December

31, 1984 and thereafter promptly turned over to the town pursuant to future federal permissive legislation; and that these provisions shall be binding notwithstanding a declaration of emergency with respect to this facility—5,000,000.

§ 3. This act shall take effect on the same date as such chapter of the laws of nineteen hundred eighty-two.

FIRST INMATES NOT DUE AT DRY HILL UNTIL JUNE

(By Larry Cole)

The "earliest possible" opening date for the Watertown Correctional Facility is June 10, according to William Coleman, deputy commissioner for the Department of Correctional Services (DOCS).

Inmates were to start arriving this week under the original timetable, but the opening has been delayed to allow the completion of the sewage treatment system.

Depending on how fast the contractor can construct the sewage treatment unit, the opening could be as late as July 9, according to Mr. Coleman.

Bids are to be opened in Albany this afternoon for the final piece of sewage treatment equipment, known as a tertiary system. The cost is expected to be about \$370,000.

The contractor will be given a bonus for each day he can deliver the system to the correctional facility ahead of the July 9 target date, Mr. Coleman explained.

"June 10 is the earliest possible date the tertiary system can be installed," said Mr. Coleman. "The contract will include a bonus clause and we'll backtrack from July 9."

The building to house the tertiary system will go up at the same time so that the unit can be installed as soon as it arrives.

Two weeks ago Edward Reynolds, director of the Watertown facility, thought the opening would only be delayed until May 1, but the state has apparently run into problems locating the equipment.

Mr. Reynolds said the state had hoped to find a unit already constructed that could be quickly installed.

However, a unit could not be located, so the state had to advertise for bids to have the tertiary system constructed.

"It will take three weeks to construct and then we'll have to get it here and install it," said Mr. Reynolds.

Officials of the state Department of Environmental Conservation (DEC) said it usually takes a day or two for a tertiary system to start operating properly.

While the tertiary system did not have to be operational until Oct. 1 under the DEC permit requirements, DOCS officials decided it would be best to have the system operable before inmates arrive.

Legislation creating the facility stipulates that there will be no waivers to any of the permits issued for operation of the prison.

Mr. Reynolds said that DOCS decided to install the tertiary system before inmates arrived rather than run the risk of being criticized. DEC does not consider the timetables for installation of the system to be waivers, but Mr. Reynolds said some people might think otherwise.

Meanwhile Mr. Reynolds said there is a hiring freeze until the facility moves closer to opening. There are about 40 people already at work at the facility, many of them local.

Mr. Reynolds and his management team are taking advantage of the delay to catch up on some "housekeeping" items, such as working toward accreditation from the American Corrections Association (ACA). The accreditation is not mandatory, but Mr. Reynolds has made it a personal goal.

Another contract has been awarded to O'Connell Electric Co., Victor, for the rehabilitation of electrical work in Phase II of the prison construction.

O'Connell submitted the low bid of \$188,888 for the work.

Phase II, costing a total of about \$3 million includes six major projects to complete the transition of the former Air Force Base into a medium security facility.

Phase I of the construction, which has cost about \$2 million, is essentially complete and the facility is ready to receive its first 170 inmates, once the tertiary unit is installed.

OREGON FIRM LOW BIDDER ON PRISON SEWAGE SYSTEM

An Oregon firm will construct the final stage of the sewage treatment system for the Watertown Correctional Facility, according to officials of the state Office of General Services.

Neptune Microfloc, Corvallis, Ore., has submitted the apparent low bid of \$88,612 for the construction of the tertiary treatment plant, the third stage of sewage treatment for the Dry Hill prison.

The plant will be shipped to the prison as a packaged unit, ready for installation.

The prison will not open until the tertiary system is installed which at the earliest will be June 10 and could be as late as July 9.

Neptune is getting a daily bonus for each day it delivers the tertiary system ahead of the July 9 deadline.

OGS will also open bids on April 28 for the plumbing and electrical work for the tertiary plant.

OGS officials said the plumbing is expected to cost about \$160,000, while the electrical work should run about \$7,000.

The completion dates is July 9 and the contractor will be awarded a bonus for each day it is finished ahead of schedule.

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Watertown Daily Times, May 1, 1982

## SERIOUS TAXPAYERS OPPOSE



PRISON PLACEMENT

P.O. Box 220, Black River, New York 13612

January 18, 1982

This statement is to explain what we understand S 1422 and/or H.R. 4450 is intended to accomplish and why we object to it as it relates to our particular and peculiar situation.

We understand the bill is to provide for the transfer of unused former U.S. Military land and facilities "gratis" to States which have such locations. Such States to use the donated surplus property for construction and modernization of Criminal Justice Facilities.

We have no disagreement with that intent as long as the locations are not transferred for those purposes where the locations are completely inappropriate for numerous reasons which I will try to explain as they relate to the former Dry Hill Air Force Base at Watertown, New York.

A number of very concerned citizens of STOPP reside in the area where the former Dry Hill Air Force Base was located. Since late last March we have opposed the development of a proposed prison at that site. Our objections have been based upon reasonable and readily available well known facts as to why the location is not appropriate, economically sound or justifiable for a temporary prison.

The government of the Town of Watertown where the parcel (consisting of 76 acres) is located has taken united opposition to the prison and presented its position against the New York State Dept. of Correctional Services in New York State Supreme Court.

A resident with a beautiful home adjacent to the proposed prison has also retained counsel and is now proceeding with contempt charges against the Comm. of Corrections for ignoring a restraining order preventing further expenditures of unappropriated state funds until the matter could be presented at a hearing. The Comm. of Corrections has ignored that order and granted a contract to place fencing around the proposed site and authorized the Rome Fence Company to proceed, which they have done with the aid of the New York Dept. of Transportation clearing a road for the fence erection.

The STOPP group has collected voluntary contributions of nearly \$25,000, most of which has now been expended in N.Y. State Supreme Court

over issues of violations of citizens rights.

The costs of printing, stationery, photocopying, mailing costs and hours and hours of typing and writing letters to get our story out cannot be calculated at this time. Of great concern and highly costly has been the time to do the job of getting the facts out. This time was and still is being taken from what should be given to home chores and more importantly to the members of the families of dedicated people who have brought this issue to the front. This controversial issue has been in our hearts and minds for a long nine months.

I would like to call your attention to some of the earlier calendar of events:

1. October 20, 1980, the City Council of the City of Watertown resolved by unanimous vote that the volume of water sold to the three Water Districts of the Town of Watertown would be restricted and the number of users of each district would likewise be limited. These restrictions were made because of the need to supply present and expected increases within the city limits and a New York State mandate to implement certain required improvements in the city water system. Facts regarding this matter can be obtained from Mr. Karl Burns, Mayor of the city.

2. March 31, 1981, the following unanimous motion was approved: "The City Council of Watertown opposes the establishment of a State Correctional Facility at the former Dry Hill Air Base."

3. April 1, 1981, The Watertown Daily Times: "The Town Board Votes Against Prison." Facts on this can be obtained from Mr. Ralph Dickinson, Supervisor of the Town of Watertown.

4. April 2, 1981, the Watertown Daily Times reports: "Coughlin Will Not Push for Prison if City Fights Plan."

These early press releases and local government commitments reassured us that a prison proposal was just testing the waters until very suddenly the Comm. of Corrections changed his mind and on May 7th said no matter what the outcome of a referendum was, there was going to be a prison on Dry Hill. At the same time he said if somebody sues us that's fine as he expected it to be settled in the courts "rather quickly". It is now nine months later and the issue is before three courts with the expectation of going to another on more citizens' issues.

The property was declared surplus by the General Services

Administration on September 28th. The New York State Department of Correctional Services and the Town of Watertown applied for the property. The Town retained a professional engineer and developed a plan for a town park. That proposal was sent to the Department of the Interior and was reviewed by the Department of Parks and Recreation. The plan was highly recommended and would be used as a model for future applications. That plan and recommendation was the result of numerous considerations for commercial uses, social services such as a nursing home and Senior Citizens Center. After serious evaluation of these possibilities all were rejected for the very reasons that the proposed prison cannot be made a reality by any reasonable or economical means. The two most essential elements for operation of any government agency or business are water of required quantity and quality and environmentally approved sewage treatment which is lacking at Dry Hill.

The Comm. of Corrections uses the argument that an emergency exists because the number of cells needed to confine the increased number of prisoners is not adequate. We do not refute that argument. The facts are well known and publicly stated and admitted by the N.Y.S. D.O.C.S. that there are alternate locations. Those locations could have been made "prison ready" months ago at a reasonable cost in these times when government is requesting and directing belt tightening for every agency of government and the citizen taxpayer who is most seriously effected.

With this statement is a copy of the D.O.C.S. MEMORANDUM dated July 7, 1981. Please note that the MEMORANDUM states that on June 29th a tour was made by J. Alan Buck of the N.Y.S.D.O.C.S. as suggested by Senator Barkley's office. The memo describes the numerous buildings at the Fort Drum site in detail regarding locations and conditions. Of particular interest:

1. The admission that there are alternative locations in this area. This would be an advantage for local jobs which some feel the most important consideration for a local temporary prison.
2. An admission that water and sewer are not problems.  
Quotation from MEMORANDUM: I also assume that water and sewage are not problems since I spotted several hydrants and manholes."
3. An admission that the site could be made to work.

Until this date enormous sums of tax dollars have been wasted looking for water.

The sewage disposal condition at the Dry Hill location has not been addressed other than in a draft E.I.S.

The STOPP people have left no stone unturned in trying to get the facts before the people in State and National governments regarding this terrible waste of tax monies when alternatives have not been seriously considered. It is our very serious concern that the Commissioner of Correctional Services of New York State has pushed his ego, his arrogance and his self-appointed power beyond the rules of reason and understanding of the required balance of powers between the EXECUTIVE, LEGISLATIVE and JUDICIAL branches of a democratic form of government.

To point to additional locations where prisoners may be housed enclosed is a copy of a letter of the Minority Leader of the New York State Assembly, Mr. James Emery. This letter has been sent to all members of the New York State Legislature and to Gov. Carey. We understand this will be considered this year. In the meantime tax dollars are being wasted at Dry Hill, conservatively estimated at nearly \$1,000,000 with a budget request for over \$7,000,000 for completion.

It is our understanding that the specific purpose of S. 1422 and /or H.R. 4450 is to provide economic assistance to states at this time in order to better address the increasing problems of prisoner incarceration.

The dollars required to make these locations usable as prisons becomes a large cost to our taxpayers. This is especially so as it relates to what is proposed to be spent at Dry Hill without specific appropriations and with complete disregard for alternative locations or cost.

We do not see this bill in relation to Dry Hill other than a liability to the taxpayers of the Town, County and State.

The question of transferring any surplus property to the State of New York for such purposes should be seriously scrutinized. The 500 Million Dollar Bond Issue for prison development and other correctional services was defeated in the recent election. It is now coming to light that the bond issue was not needed and was solely a propaganda tool to increase the coffers of the Capitol Construction Fund.

I feel it is impossible to forward all data that has been collected by STOPP. A member or several members of STOPP are ready and

willing to come to Washington and present our position to the Senate (H.R.) Committee when this bill is presented for hearings.

*John H. Stone*  
John H. Stone  
Spokesman for STOPP

**END**