H.R. CONF. REP. 96-897, H.R. Conf. Rep. No. 897, 96TH Cong., 2ND Sess. 1980, 1980 U.S.C.C.A.N. 832, 1980 WL 13119 (Leg.Hist.)
P.L. **96**-**247**, **CIVIL** **RIGHTS** OF INSTITUTIONALIZED PERSONS ACT
SEE PAGE 94 STAT. 349
HOUSE REPORT (JUDICIARY COMMITTEE) NO. 96-80, APR. 3, 1979
(TO ACCOMPANY H.R. 10)
SENATE REPORT (JUDICIARY COMMITTEE) NO. 96-416, NOV. 15, 1979 (TO ACCOMPANY S. 10)
HOUSE CONFERENCE REPORT NO. 96-897, APR. 22, 1980
(TO ACCOMPANY H.R. 10)
CONG. RECORD VOL. 125 (1979)
CONG. RECORD VOL. 126 (1980)
DATES OF CONSIDERATION AND PASSAGE
HOUSE MAY 13, 1979; MAY 12, 1980
SENATE FEBRUARY 28, MAY 6, 1980
THE HOUSE BILL WAS PASSED IN LIEU OF THE SENATE BILL AFTER AMENDING ITS LANGUAGE TO CONTAIN MUCH OF THE TEXT OF THE SENATE BILL. THE SENATE REPORT (THIS PAGE) AND THE HOUSE CONFERENCE REPORT (PAGE 832) ARE SET OUT.

HOUSE CONFERENCE REPORT NO. 96-897.

APR. 22, 1980

* * * *

****832 *8** JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

THE MANAGERS ON THE PART OF THE HOUSE AND THE SENATE AT THE CONFERENCE ON THE DISAGREEING VOTES OF THE TWO HOUSES ON THE AMENDMENT OF THE SENATE TO THE BILL (H.R. 10) TO AUTHORIZE ACTIONS FOR REDRESS IN CASES INVOLVING DEPRIVATIONS OF RIGHTS OF INSTITUTIONALIZED PERSONS SECURED OR PROTECTED BY THE CONSTITUTION OR LAWS OF THE UNITED STATES, SUBMIT THE FOLLOWING JOINT STATEMENT TO THE HOUSE AND THE SENATE IN EXPLANATION OF THE EFFECT OF THE ACTION AGREED UPON BY THE MANAGERS AND RECOMMENDED IN THE ACCOMPANYING CONFERENCE REPORT:

THE SENATE AMENDMENT STRUCK OUT ALL OF THE HOUSE BILL AFTER THE ENACTING CLAUSE AND INSERTED A SUBSTITUTE TEXT.

THE HOUSE RECEDES FROM ITS DISAGREEMENT TO THE AMENDMENT OF THE SENATE WITH AN AMENDMENT WHICH IS A SUBSTITUTE FOR THE HOUSE BILL AND THE SENATE AMENDMENT. THE DIFFERENCES BETWEEN THE HOUSE BILL, THE SENATE AMENDMENT, AND THE SUBSTITUTE AGREED TO IN CONFERENCE ARE NOTED BELOW, EXCEPT FOR CLERICAL CORRECTIONS, CONFORMING CHANGES MADE NECESSARY BY AGREEMENTS REACHED BY THE CONFEREES, AND MINOR DRAFTING AND CLARIFYING CHANGES.

INTRODUCTION

ONE MEASURE OF A NATION'S CIVILIZATION IS THE QUALITY OF TREATMENT IT PROVIDES PERSONS ENTRUSTED TO ITS CARE. THE PAST DECADE HAS BORNE TESTIMONY TO THE GROWING CIVILIZATION OF THIS COUNTRY THROUGH ITS COMMITMENT TO THE ADEQUATE CARE OF ITS INSTITUTIONALIZED CITIZEN. NOWHERE IS THAT COMMITMENT MORE EVIDENT THAN IN THE ACTIONS OF THE UNITED STATES JUSTICE DEPARTMENT.

SINCE 1971, THE ATTORNEY GENERAL HAS PARTICIPATED IN A SERIES OF CIVIL ACTIONS SEEKING TO REDRESS WIDESPREAD VIOLATIONS OF CONSTITUTIONAL AND FEDERAL STATUTORY RIGHTS OF PERSONS RESIDING IN STATE INSTITUTIONS. THROUGH LITIGATION CONDUCTED BY THE **CIVIL RIGHTS** DIVISION, THE JUSTICE DEPARTMENT HAS PARTICIPATED AS AMICUS CURIAE OR PLAINTIFF-INTERVENOR IN MORE THAN 25 SUITS BROUGHT TO SECURE BASIC LEGAL AND CONSTITUTIONAL CONDITIONS IN INSTITUTIONS HOUSING THE MENTALLY ILL, THE RETARDED, THE CHRONICALLY AND PHYSICALLY ILL, PRISONERS, JUVENILE DELINQUENTS, AND NEGLECTED CHILDREN. IN ADDITION, THE ATTORNEY GENERAL HAS PARTICIPATED IN SUITS SUCCESSFULLY CHALLENGING THE CONSTITUTIONALITY OF SEVERAL STATE COMMITMENT STATUTES.

AT LEAST TEN FEDERAL DISTRICT COURTS HAVE REQUESTED THE JUSTICE DEPARTMENT TO PARTICIPATE IN LITIGATION CONCERNING THE RIGHTS OF INSTITUTIONALIZED INDIVIDUALS. THE ATTORNEY GENERAL HAS ALSO PETITIONED TO ****833** INTERVENE IN PENDING CASES, TO REPRESENT THE INTERESTS OF THE UNITED STATES IN SECURING BASIC CONSTITUTIONAL RIGHTS FOR ITS INSTITUTIONALIZED ***9** CITIZENS. WHETHER BY REQUEST OF THE COURT OR BY PETITION TO INTERVENE, HOWEVER, THE JUSTICE DEPARTMENT INVARIABLY HAS BROUGHT TO THE LITIGATION PROCESS INVESTIGATIVE RESOURCES, TECHNICAL ADVICE, AND LEGAL EXPERTISE UNAVAILABLE TO PRIVATE LITIGANTS. COURTS HAVE BEEN OPENLY APPRECIATIVE OF THESE EFFORTS.

APART FROM THEIR SALUTARY EFFECTS ON THE MANAGEMENT OF SUCH LITIGATION, THE JUSTICE DEPARTMENT'S ACTIVITIES HAVE ENHANCED THE LIVES OF THOUSANDS OF INSTITUTIONALIZED INDIVIDUALS THROUGHOUT THE COUNTRY. IN EVERY SUIT IN WHICH THE DEPARTMENT HAS PARTICIPATED, THE TRIAL AND APPELLATE COURTS HAVE UPHELD THE PLAINTIFFS' CLAIMS AND ORDERED EXTENSIVE RELIEF. AS A RESULT, CONDITIONS HAVE IMPROVED SIGNIFICANTLY IN DOZENS OF INSTITUTIONS ACROSS THE NATION: DECENT AND HUMANE LIVING ENVIRONMENTS HAVE BEEN SECURED FOR MENTALLY ILL AND RETARDED RESIDENTS IN STATE HOSPITALS; BARBARIC TREATMENT OF ADULT AND JUVENILE PRISONERS HAS BEEN CURBED; PERSONS UNNECESSARILY OR IMPROPERLY COMMITTED HAVE BEEN RELEASED OR RELOCATED IN LESS RESTRICTIVE COMMUNITY PLACEMENTS; AND STATES FACING THE PROSPECT OF SUIT BY THE ATTORNEY GENERAL HAVE VOLUNTARILY UPGRADED CONDITIONS IN THEIR INSTITUTIONS AND REWRITTEN STATE COMMITMENT LAWS TO COMPLY WITH PREVIOUSLY ANNOUNCED CONSTITUTIONAL STANDARDS.

DESPITE THE PROVEN EFFECTIVENESS OF THE DEPARTMENT'S EFFORTS, ITS LITIGATION PROGRAM STANDS THREATENED BY TWO RECENT FEDERAL COURT DECISIONS. DISTRICT COURTS IN BOTH MARYLAND AND MONTANA RECENTLY RULED THAT, ABSENT EXPRESS STATUTORY AUTHORITY, THE ATTORNEY GENERAL LACKED STANDING TO INITIATE CIVIL ACTIONS CHALLENGING CONDITIONS IN TWO STATE FACILITIES FOR THE MENTALLY RETARDED. BOTH SUITS WERE RECENTLY UPHELD ON APPEAL.

ALTHOUGH CONGRESS HAS, IN OTHER CONTEXTS, GIVEN THE ATTORNEY GENERAL EXPLICIT AUTHORITY TO REDRESS SYSTEMATIC DEPRIVATIONS OF CONSTITUTIONAL RIGHTS, IT HAS NEVER EXPRESSLY AUTHORIZED HIM TO ENFORCE FUNDAMENTAL FEDERAL RIGHTS OF INSTITUTIONALIZED INDIVIDUALS. THE MARYLAND AND MONTANA DECISIONS MAKE CLEAR THAT WITHOUT A FEDERAL STATUTE CLARIFYING THE ATTORNEY GENERAL'S AUTHORITY TO INITIATE AND TO INTERVENE IN SUCH SUITS, THE DEPARTMENT'S LITIGATIVE EFFORTS TO PROTECT THE INSTITUTIONALIZED WILL BE PARALYZED.

H.R. 10 PROVIDES THAT AUTHORITY. IT CREATES NO NEW SUBSTANTIVE RIGHTS. IT SIMPLY GIVES THE

ATTORNEY GENERAL LEGAL STANDING TO ENFORCE EXISTING CONSTITUTIONAL AND FEDERAL STATUTORY RIGHTS OF INSTITUTIONALIZED PERSONS. BY CODIFYING THE AUTHORITY OF THE ATTORNEY GENERAL TO INITIATE AND TO INTERVENE IN SUITS TO REDRESS SERIOUS AND PERVASIVE PATTERNS OF INSTITUTIONAL ABUSE, H.R. 10 INSURES THAT INSTITUTIONALIZED CITIZENS WILL BE AFFORDED THE FULL MEASURE OF PROTECTIONS GUARANTEED THEM BY THE CONSTITUTION OF THE UNITED STATES.

ANOTHER PURPOSE OF THE BILL IS TO STIMULATE THE DEVELOPMENT AND IMPLEMENTATION OF EFFECTIVE ADMINISTRATIVE MECHANISMS FOR THE RESOLUTION OF GRIEVANCES IN CORRECTIONAL AND PRETRIAL DETENTION FACILITIES, AND TO ALLOW A COURT TO CONTINUE A CASE FOR A LIMITED PERIOD OF TIME WHEN SUCH AN EFFECTIVE MECHANISM EXISTS AND USE OF IT WOULD BE APPROPRIATE AND IN THE INTEREST OF JUSTICE. THE EFFECT OF H.R. 10 WOULD BE ****834** TO SECURE BASIC LEGAL AND CONSTITUTIONAL RIGHTS FOR INSTITUTIONALIZED PERSONS, AND TO ASSIST IN RELIEVING THE CASELOADS OF FEDERAL COURTS IN PRISONER PETITIONS.

***10** SECTION BY SECTION ANALYSIS

SECTION 2. DEFINITIONS

SECTION 2 OF H.R. 10 PROVIDES THE DEFINITION OF TERMS USED IN THE BILL.

THE FIRST DEFINITIONS ARE THOSE OF THE VARIOUS FACILITIES AND INSTITUTIONS, THE RESIDENTS OF WHICH MAY BENEFIT BY THE VINDICATION OF THEIR RIGHTS THROUGH SUITS BROUGHT UNDER THE BILL.

SECTION 2 LISTS 5 TYPES OF FACILITIES AND INSTITUTIONS WHICH ARE INCLUDED IN THE SCOPE OF THE BILL.

THE FIRST IS ANY FACILITY OR INSTITUTION WHICH IS ‘FOR PERSONS WHO ARE MENTALLY ILL, DISABLED, OR RETARDED, OR CHRONICALLY ILL OR HANDICAPPED.‘ THIS TERM IS GENERIC AND IT IS THE INTENT OF THE COMMITTEE THAT IT INCLUDE ALL TYPES OF FACILITIES AND INSTITUTIONS FOR THE MENTALLY IMPAIRED, AS WELL AS THOSE FOR THE CHRONICALLY ILL OR HANDICAPPED INCLUDING INSTITUTIONS FOR THE BLIND, THE DEAF, THE PARAPLEGIC AND THE EPILEPTIC. THE WORD ‘MENTALLY‘ MODIFIES ALL THREE WORDS, ‘ILL, DISABLED, OR RETARDED.‘

THE SECOND FACILITY OR INSTITUTION COVERED IS ANY WHICH IS ‘A JAIL OR PRISON OR OTHER CORRECTIONAL FACILITY.‘ CONGRESS, MINDFUL THAT PENAL INSTITUTIONS ARE FREQUENTLY LABELED, OFFICIALLY OR OTHERWISE, AS SCHOOLS, CAMPS, WORK FARMS, CORRECTIONAL CENTERS AND ANY NUMBER OF APPELLATIONS, HAS CHOSEN TO USE THIS TERM INCLUDE ALL PENAL INSTITUTIONS, THOSE INSTITUTIONS IN WHICH PERSONS ARE WHOLLY OR PARTIALLY CONFINED OR HOUSED AS PART OF A CRIMINAL SANCTION OR PROCESS.

THE THIRD FACILITY OR INSTITUTION COVERED IS ANY WHICH IS ‘A PRETRIAL DETENTION FACILITY.‘ THIS GENERIC TERM IS INTENDED TO COVER ANY INSTITUTION OR FACILITY WHICH CONFINES DETAINEES WHO ARE AWAITING OR PARTICIPATING IN CRIMINAL TRIALS. STATE AND LOCAL LAWS GENERALLY REQUIRE THE SEPARATION OF CONVICTED AND NOT CONVICTED PERSONS. THIS INSTITUTIONAL CATEGORY WILL REACH DETENTION FACILITIES FOR PERSONS WHO HAVE NOT BEEN CONVICTED.

THE FOURTH FACILITY OR INSTITUTION COVERED IS ANY WHICH IS FOR JUVENILES HELD AWAITING TRIAL OR RESIDING FOR PURPOSES OF RECEIVING CARE OR TREATMENT OR FOR ANY OTHER STATE PURPOSE. IT IS NOT THE INTENT OF CONGRESS THAT FACILITIES PROVIDING ONLY ELEMENTARY OR SECONDARY EDUCATION BE COVERED UNLESS SUCH A FACILITY IS FOR ONE OR MORE OF A SPECIAL

CATEGORY OF JUVENILES-- THOSE WHO ARE ADJUDICATED DELINQUENT, IN NEED OF SUPERVISION, NEGLECTED, PLACED IN STATE CUSTODY, MENTALLY ILL OR DISABLED OR MENTALLY RETARDED, OR CHRONICALLY ILL OR HANDICAPPED.

THE FIFTH FACILITY OR INSTITUTION COVERED IS ANY WHICH IS 'PROVIDING SKILLED NURSING, INTERMEDIATE OR LONG TERM CARE, OR CUSTODIAL OR RESIDENTIAL CARE.'

AMONG THE INSTITUTIONS WHICH MAY BE COVERED UNDER THIS ACT IS AN INSTITUTION PROVIDING 'RESIDENTIAL CARE.' THIS TERM REFERS TO A FACILITY WHICH MAY NOT BE OFFERING MEDICAL OR CUSTODIAL SERVICES, BUT MERELY INSTITUTIONAL LIVING ACCOMMODATIONS, E.G., A TRADITIONAL REST HOME OR HOME FOR THE AGED.

IT IS ESSENTIAL TO NOTE THAT THESE FIVE CATEGORIES OF INSTITUTIONS AND FACILITIES ARE MODIFIED BY A PARAGRAPH WHICH LIMITS THE COVERAGE OF THE BILL TO A FACILITY OR 'INSTITUTION' WHICH IS 'OWNED, OPERATED, OR MANAGED ****835** BY OR PROVIDES SERVICES ON BEHALF OF ANY STATE OR POLITICAL SUBDIVISION OF A STATE: ' THESE RELATIONSHIPS ARE DRAWN FROM CASES WHICH ALREADY HAVE BEEN DECIDED UNDER THE STATE ACTION PROVISIONS OF THE ***11** FOURTEENTH AMENDMENT. IT IS THE INTENTION OF CONGRESS THAT INSTITUTIONS COVERED BY THIS ACT PARTAKE IN SOME SIGNIFICANT RESPECT OF THE QUALITIES OF A STATE OR PUBLIC INSTITUTION.

SECTION 2(2) STATES THAT THE EXISTENCE OF CERTAIN RELATIONSHIPS BETWEEN AN OTHERWISE PRIVATE INSTITUTION AND THE STATE SHALL NOT SUFFICE TO BRING THAT INSTITUTION WITHIN THE SCOPE OF THIS ACT AS SPECIFIED IN SECTION 2(1)(A). THESE RELATIONSHIPS ARE STATED IN SECTION 2(B)(1), 2(2)(B), AND 2(2)(C). ADDITIONALLY, IT IS NOT THE INTENT OF CONGRESS THAT AN INSTITUTION WITHIN WHICH THERE IS A DE MINIMUS NUMBER OF INSTITUTIONALIZED PERSONS WHO RESIDE IN SUCH FACILITY AS A RESULT OF STATE ACTION SHALL BE COVERED BY THIS ACT. THERE MUST BE A SIGNIFICANT RELATIONSHIP WITH THE STATE BEFORE AN INSTITUTION OR FACILITY COMES WITHIN THE PURVIEW OF THIS ACT.

SECTION 2(B) IS DESIGNED ONLY TO PRECLUDE THE ATTORNEY GENERAL FROM ACTING PURSUANT TO THIS ACT WHERE THE NEXUS BETWEEN THE STATE AND AN INSTITUTION IS FOUNDED EXCLUSIVELY IN THESE RELATIONSHIPS. IT IS NOT DESIGNED TO DEFINE OR REDEFINE THE CONCEPT OF 'STATE ACTION' IN THE CONTEXT OF THE FOURTEENTH AMENDMENT OR ANY OTHER CONSTITUTIONAL AMENDMENT. IT IS NOT INTENDED TO SUGGEST CONGRESSIONAL POLICY WITH RESPECT TO ANY OTHER FEDERAL LAW. IT IS NOT INTENDED TO ESTABLISH STANDARDS WITH RESPECT TO LITIGATION INITIATED OUTSIDE OF THIS ACT. IT IS NOT INTENDED TO ESTABLISH MINIMUM RELATIONSHIPS BETWEEN INSTITUTIONS AND THE STATE BEYOND WHICH AN INSTITUTION IS AUTOMATICALLY WITHIN THE PURVIEW OF THE ACT.

SECTION 3. AUTHORITY TO INITIATE SUITS

THIS SECTION GRANTS AUTHORITY TO THE ATTORNEY GENERAL TO INITIATE ACTIONS IN FEDERAL COURTS FOR SUCH EQUITABLE RELIEF AS MAY BE APPROPRIATE WHEN HE HAS REASONABLE CAUSE TO BELIEVE THAT A STATE OR POLITICAL SUBDIVISION OF A STATE OR PERSON ACTING ON BEHALF OF A STATE OR POLITICAL SUBDIVISION IS SUBJECTING PERSONS RESIDING IN OR CONFINED TO ANY INSTITUTION TO EGREGIOUS OR FLAGRANT CONDITIONS WHICH DEPRIVE THEM OF RIGHTS PROTECTED BY THE CONSTITUTION OR LAWS OF THE UNITED STATES. IN ORDER FOR THE ATTORNEY GENERAL TO INITIATE A SUIT UNDER THIS SECTION HE MUST HAVE REASONABLE CAUSE TO BELIEVE THAT THE DEPRIVATION OF RIGHTS IS PART OF A 'PATTERN OR PRACTICE' OF DENIAL RATHER THAN AN ISOLATED OR ACCIDENTAL INCIDENT.

THE ADOPTION BY THE CONFERENCE COMMITTEE OF THE LANGUAGE 'EGREGIOUS OR FLAGRANT' ESTABLISHES A STANDARD FOR THE DEPARTMENT OF JUSTICE'S INVOLVEMENT THAT REFLECTS CONGRESSIONAL SENSITIVITY TO THE FACT THAT A HIGH DEGREE OF CARE MUST BE TAKEN WHEN ONE LEVEL OF SOVEREIGN GOVERNMENT SUES ANOTHER IN OUR FEDERAL SYSTEM. THIS IS A HIGHER

STANDARD THAN THAT REQUIRED OF PLAINTIFFS OTHER THAN THE UNITED STATES. THIS IS NOT INTENDED TO EXPAND OR RESTRICT THE EXISTING RIGHTS OF PLAINTIFFS OTHER THAN THE UNITED STATES. THIS STANDARD APPLIES TO THE UNITED STATES ONLY IN ACTIONS BROUGHT UNDER THIS ACT. CONGRESS RECOGNIZES THAT THIS ACT DOES NOT REQUIRE THAT PRIVATE LITIGANTS MEET THE 'EGREGIOUS OR FLAGRANT STANDARD' IN ANY ACTION WHICH THEY MAY HAVE THE POWER TO BRING.

****836** SEVERAL OF THE EXISTING **CIVIL RIGHTS** LAWS PERMIT THE ATTORNEY GENERAL TO INITIATE 'PATTERN OR PRACTICE' SUITS. THESE LAWS DO NOT PROVIDE AN EXPLICIT DEFINITION OF 'PATTERN OR PRACTICE' IN THE STATUTORY TEXT, HOWEVER, THROUGH LITIGATION THE TERM HAS COME TO HAVE A CLEAR MEANING. ***12** TO FULFILL THE REQUIREMENT THE ILLEGAL ACTS MUST RESULT FROM MORE THAN AN ISOLATED OR ACCIDENTAL OR PECULIAR EVENT. THE GOVERNMENT MUST SHOW THAT THE UNLAWFUL ACT BY THE DEFENDANT WAS NOT AN ISOLATED OR ACCIDENTAL DEPARTURE FROM AN OTHERWISE LAWFUL PRACTICE. IT HAS BEEN HELD, HOWEVER, THAT THERE IS NO REQUIREMENT THAT A CONSPIRACY BE ALLEGED, OR FOUND FOR A 'PATTERN OR PRACTICE' OF RIGHTS VIOLATIONS TO TAKE PLACE.

CONGRESS NOTES THAT THE ATTORNEY GENERAL, UNDER H.R. 10, MAY INITIATE SUITS IN 'ANY APPROPRIATE UNITED STATES DISTRICT COURT' AS DETERMINED BY THE APPLICABLE VENUE STATUTES.

SECTION 3 ALSO AUTHORIZES THE ATTORNEY GENERAL TO SEEK 'SUCH EQUITABLE RELIEF AS MAY BE APPROPRIATE TO INSURE THE MINIMUM CORRECTIVE MEASURES NECESSARY TO INSURE THE FULL ENJOYMENT' OF THE RIGHTS SECURED OR PROTECTED BY THE CONSTITUTION OR LAWS OF THE UNITED STATES. OF COURSE, THE SPECIFIC RELIEF APPROPRIATE IN ANY PARTICULAR CARE WILL DEPEND ON THE FACTS PRESENTED TO THE COURT.

CONGRESS RECOGNIZES THAT BEFORE INITIATING LITIGATION WITH RESPECT TO A PARTICULAR INSTITUTION, THE ATTORNEY GENERAL MUST, OF COURSE, THOROUGHLY INVESTIGATE SUCH INSTITUTION. IT IS ANTICIPATED THAT THE STATES AND RELEVANT OFFICIALS WILL COOPERATE IN THE INVESTIGATIVE PROCESS. IF THERE IS A FAILURE TO DO SO, THE ATTORNEY GENERAL MAY CONSIDER THIS FACTOR IN TAKING ANY ACTIONS UNDER THIS ACT.

THE ATTORNEY GENERAL MAY ONLY SEEK RELIEF APPROPRIATE TO INSURE THE MINIMUM CORRECTIVE MEASURES NECESSARY TO INSURE THE FULL ENJOYMENT OF RIGHTS. THIS IS NOT INTENDED TO LIMIT THE EQUITY POWERS OF ANY COURT TO ORDER RELIEF IT DEEMS APPROPRIATE. AFTER THE COMMENCEMENT OF THE SUIT, FURTHER INVESTIGATION AND DISCOVERY MAY INDICATE ADDITIONAL CORRECTIVE MEASURES ARE APPROPRIATE. CERTAINLY IT IS UNDERSTOOD THAT THE ATTORNEY GENERAL CAN RETURN TO THE COURT TO SEEK ADDITIONAL RELIEF CONSISTENT WITH HIS AUTHORITY TO SEEK RELIEF APPROPRIATE TO INSURE THE MINIMUM CORRECTIVE MEASURES NECESSARY TO INSURE THE FULL ENJOYMENT OF RIGHTS.

THE LEGISLATION FURTHER LIMITS ACTIONS TO ENFORCE THE RIGHTS OF PERSONS RESIDING IN 'ANY JAIL, PRISON, OR OTHER CORRECTIONAL FACILITY,' AS DEFINED IN SECTION 2(1)(B)(II). RELIEF WILL BE AVAILABLE TO SUCH PERSONS THROUGH ACTIONS BROUGHT UNDER THIS BILL'S AUTHORITY ONLY IF THE PERSONS ARE SUBJECTED TO CONDITIONS WHICH DEPRIVE THEM OF 'RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED OR PROTECTED BY THE CONSTITUTION OF THE UNITED STATES': RELIEF IN SUCH ACTIONS WILL NOT BE AVAILABLE ON THE BASIS OF THE BROADER TERM 'CONSTITUTION OR LAWS OF THE UNITED STATES' WHICH APPLIES TO PERSONS RESIDING IN THE OTHER INSTITUTIONS. THE PURPOSE OF THIS AMENDMENT IS TO PRECLUDE SUITS UNDER THIS BILL ON BEHALF OF PERSONS IN JAILS, PRISONS, OR OTHER CORRECTIONAL FACILITIES ARISING SOLELY FROM FEDERAL STATUTORY VIOLATIONS RATHER THAN CONSTITUTIONAL VIOLATIONS. OF COURSE ANY OTHER AUTHORITY THE ATTORNEY GENERAL MAY HAVE TO ADDRESS ANY OTHER VIOLATIONS OF LAW, CRIMINAL OR CIVIL, IN PRISONS IS NOT AFFECTED BY THIS ACT.

****837** IN BOTH THE INITIATION AND INTERVENTION SECTIONS, THE ACT MAKES CLEAR THE LIABILITY OF THE UNITED STATES TO OPPOSING PARTIES FOR ATTORNEYS' FEES WHENEVER IT LOSES. THE AWARD IS DISCRETIONARY WITH THE COURT, AND IT IS INTENDED THAT THE PRESENT STANDARDS USED BY COURTS UNDER THE **CIVIL RIGHTS** LAWS WILL APPLY. HOWEVER, IT IS NOT INTENDED THAT RECOVERY ***13** BE ALLOWED FROM THE UNITED STATES, AS A PLAINTIFF, BY ANOTHER PLAINTIFF OR PLAINTIFF-INTERVENOR. THE AWARD IS TO BE MADE TO AN OPPOSING PARTY WHO PREVAILS.

MINDFUL OF THE IMPORTANCE OF HARMONIOUS FEDERAL-STATE RELATIONS, THE CONGRESS HAS REQUIRED THAT THE ATTORNEY GENERAL OF THE UNITED STATES SIGN BOTH THE COMPLAINT ITSELF AND THE CERTIFICATE. THE PROCEDURES WHICH ARE SET FORTH IN 28 U.S.C. 508(A) AND (B) SHOULD BE FOLLOWED IF THERE IS A VACANCY IN THE OFFICE OF ATTORNEY GENERAL OR IF HE IS ABSENT OR DISABLED.

IT SHOULD BE EMPHASIZED THAT UNDER SECTION 3, THE ATTORNEY GENERAL'S AUTHORITY EXTENDS TO INITIATING SUIT 'FOR OR IN THE NAME OF THE UNITED STATES, ' IN ORDER TO REPRESENT THE NATIONAL INTEREST IN SECURING CONSTITUTIONALLY ADEQUATE CARE FOR INSTITUTIONALIZED CITIZENS. AS A REPRESENTATIVE OF THE UNITED STATES, THE ATTORNEY GENERAL DOES NOT DIRECTLY REPRESENT ANY INSTITUTIONALIZED PLAINTIFFS, AND THE AUTHORITY GRANTED HIM IS IN NO WAY INTENDED TO PRECLUDE, DELAY OR PREJUDICE PRIVATE LITIGANTS FROM ENFORCING ANY CAUSE OF ACTION THEY MAY HAVE UNDER EXISTING OR FUTURE LAW. THIS POINT IS MADE EXPLICIT IN SECTION 12 OF THE ACT.

THE ATTORNEY GENERAL MUST ALSO CERTIFY THAT HE BELIEVES THAT INTERVENTION BY THE UNITED STATES WILL MATERIALLY FURTHER THE VINDICATION OF CONSTITUTIONAL OR FEDERAL RIGHTS, AND THAT THE ISSUE IS OF GENERAL PUBLIC IMPORTANCE.

SECTION 4. CERTIFICATION REQUIREMENTS

THE BROAD PURPOSE OF SECTION 4 IS TO INSURE THAT BEFORE LITIGATION IS UNDERTAKEN BY THE ATTORNEY GENERAL PURSUANT TO SECTION 3, STATE AND LOCAL OFFICIALS WILL BE ADEQUATELY APPRISED OF THE ATTORNEY GENERAL'S CONCERNS AND WILL HAVE AN OPPORTUNITY TO CONSULT WITH HIM OR HIS DESIGNEE IN AN EFFORT TO RESOLVE THEIR PROBLEMS BEFORE ANY COMPLAINT IS FILED.

UNDER THIS SECTION, THE ATTORNEY GENERAL MUST AT LEAST 49 DAYS BEFORE FILING SUIT NOTIFY IN WRITING NOT ONLY THE INSTITUTION DIRECTOR BUT THE GOVERNOR AND ATTORNEY GENERAL OF THE STATE OR LOCAL OFFICIALS IN ANALOGOUS POSITIONS. SUCH NOTIFICATION MUST INCLUDE BOTH THE LEGAL BASES FOR THE ALLEGED DEPRIVATIONS OF FEDERAL RIGHTS AND THE FACTS UNDERLYING THOSE CLAIMS. THE NOTIFICATION MUST ALSO INCLUDE THE MINIMUM MEASURES BELIEVED NECESSARY TO REMEDY THE DEPRIVATIONS. CONGRESS REALIZES THAT BEFORE A COMPLAINT IS FILED AND DISCOVERY CONDUCTED, IT MAY BE IMPOSSIBLE FOR THE ATTORNEY GENERAL TO SPECIFY THE PRECISE MEASURES REQUIRED TO CORRECT THE ALLEGED ABUSES. FURTHER, CONGRESS BELIEVES IT IS ADVISABLE TO GIVE STATES THE PRIMARY RESPONSIBILITY FOR CORRECTING UNCONSTITUTIONAL CONDITIONS IN THEIR OWN INSTITUTIONS AND TO ATTEMPT TO REACH AN AGREEMENT ON THE NECESSARY REMEDIES TO CORRECT THE ALLEGED CONDITIONS THROUGH INFORMAL AND VOLUNTARY METHODS.

IN ADDITION TO NOTIFYING OFFICIALS OF THE ALLEGED DEPRIVATIONS, THE ATTORNEY GENERAL OR HIS DESIGNEE IS REQUIRED UNDER SECTION 4 TO NOTIFY ****838** THE APPROPRIATE STATE OFFICIALS IN WRITING OF HIS INTENTION TO COMMENCE AN INVESTIGATION AND TO MAKE REASONABLE EFFORTS TO CONSULT WITH SUCH OFFICIALS REGARDING FEDERAL ASSISTANCE WHICH MAY BE AVAILABLE. CONGRESS INTENDS THAT UNLESS STATE OFFICIALS PROVE UNWILLING TO CONSULT WITH THE ATTORNEY GENERAL OR HIS DESIGNEE, SUCH CONSULTATIONS WILL BE ROUTINE PROCEDURE IN EVERY SUIT FILED UNDER THE ACT. THIS CONSULTATION IS REQUIRED ***14** BY LAW. THE CONTENT OF

SUCH CONSULTATION MAY INCLUDE, BUT NOT BE LIMITED TO, APPRISING APPROPRIATE OFFICIALS OF FINANCIAL, TECHNICAL, OR OTHER ASSISTANCE WHICH MAY BE AVAILABLE FROM THE FEDERAL GOVERNMENT. IT HAS BEEN THE EXPERIENCE OF THE JUSTICE DEPARTMENT IN PAST LITIGATION THAT MANY STATES WHICH COULD QUALIFY FOR FEDERAL FUNDS HAVE NOT BEEN RECEIVING ANY AT THE TIME SUIT WAS FILED. WHERE THE RECEIPT OF SUCH FUNDS CAN SIGNIFICANTLY AID STATES IN IMPLEMENTING CONSTITUTIONALLY MANDATED REFORMS, IT IS IMPERATIVE THAT APPROPRIATE OFFICIALS BE MADE AWARE OF THE AVAILABILITY OF SUCH ASSISTANCE. NEITHER THIS PROVISION NOR THIS ACT ITSELF ARE INTENDED TO ELIMINATE OR ALTER THE CONTINUOUS OBLIGATION THAT STATE OFFICIALS HAVE TO CONFORM THEIR ACTIONS AND THE CONDITIONS OF INSTITUTIONS THEY SUPERVISE TO THE REQUIREMENTS OF THE FEDERAL CONSTITUTION.

THE CERTIFICATION SECTION ALSO REQUIRES THAT THE ATTORNEY GENERAL CERTIFY TO THE COURT THAT BETWEEN THE TIME OF THE NOTICE OF THE INVESTIGATION REQUIRED BY SECTION 4 AND THE COMMENCEMENT OF AN ACTION AUTHORIZED UNDER SECTION 3 HE HAS BECOME SATISFIED THAT THE APPROPRIATE OFFICIALS HAVE HAD A REASONABLE TIME TO TAKE APPROPRIATE ACTION TO CORRECT THE ALLEGED PATTERN OR PRACTICE OF CONDITIONS AND HAVE NOT ADEQUATELY DONE SO. IT IS THE INTENT OF THE CONGRESS THAT THE ATTORNEY GENERAL'S JUDGMENT THAT THE OFFICIALS HAVE HAD A REASONABLE TIME TO TAKE APPROPRIATE ACTION TO CORRECT THE ALLEGED PATTERN OR PRACTICE OF CONDITIONS AND HAVE NOT ADEQUATELY DONE SO WILL BE A JUDGMENT THAT IS MADE ON A CASE-BY-CASE BASIS AFTER REFLECTING UPON SUCH MATTERS AS THE TIME REQUIRED TO MAKE TO MAKE NECESSARY CHANGES, REASONABLE LEGAL OR PROCEDURAL ISSUES WHICH MAY BE PRESENT, THE URGENCY OF THE NEED TO CORRECT THE CONDITIONS AND OTHER CIRCUMSTANCES RELATED TO THE REASONABLENESS OF THE TIME WHICH THE OFFICIALS HAVE HAD. FURTHER, IT IS THE INTENT OF CONGRESS THAT WITH REGARD TO THE OTHER CIRCUMSTANCES CONSIDERED, THE ATTORNEY GENERAL SHOULD CONSIDER ANY SUBSTANTIVE AND GENUINE REMEDIAL MEASURES WHICH HE BELIEVES THE APPROPRIATE OFFICIALS ARE CURRENTLY ENGAGED IN, THE KNOWLEDGE WHICH HE BELIEVES THE OFFICIALS HAVE OR SHOULD HAVE WITH REGARD TO THE CONDITIONS, AND THEIR RECORD OF WILLINGNESS OR LACK THEREOF TO TAKE APPROPRIATE ACTION.

THE MEETING SCHEDULE OF A PARTICULAR STATE LEGISLATURE MIGHT, UNDER SOME CIRCUMSTANCES, BE CONSIDERED. ALSO, IN DETERMINING WHAT SHALL BE CONSIDERED A REASONABLE TIME UNDER THIS SECTION, THE ATTORNEY GENERAL MAY REVIEW THE SPEED WITH WHICH SOME OF THE REMEDIAL MEASURES WHICH HAVE BEEN AVAILABLE TO THE APPROPRIATE OFFICIALS COULD BE IMPLEMENTED. IF THE OFFICIALS HAVE FAILED TO TAKE EVEN THOSE REMEDIAL MEASURES WHICH COULD BE IMPLEMENTED MOST SPEEDILY, THE ATTORNEY GENERAL MAY CONSIDER THAT FACT. AS WITH CERTIFICATION REQUIREMENTS IN OTHER STATUTES, THE FACTS AND JUDGMENTS CONTAINED IN THE CERTIFICATION UNDER THIS SECTION ARE NOT JUDICIALLY REVIEWABLE AND SHALL NOT BE A MATTER OF LITIGATION IN ANY WAY. AT FOUR POINTS IN THE ACT CONGRESS HAS USED THE WORDS 'WHEN FEASIBLE' OR 'TO THE EXTENT FEASIBLE' TO MODIFY ACTIONS WHICH THE ATTORNEY ****839** GENERAL IS REQUIRED TO TAKE. IT IS THE INTENT OF THE CONGRESS THAT THE ATTORNEY GENERAL TAKE THESE ACTIONS TO THE EXTENT THE ACTIONS ARE CAPABLE OF BEING SUCCESSFULLY DONE OR ACCOMPLISHED.

SECTION 5. INTERVENTION IN ACTIONS

UNDER RULE 24(A) AND (B) OF THE FEDERAL RULES OF CIVIL PROCEDURE, THE UNITED STATES OR ANY OTHER PARTY MAY IN TIMELY FASHION ***15** APPLY TO A FEDERAL COURT TO INTERVENE AS OF RIGHT OR PERMISSIVELY. SECTION 5 GENERALLY CODIFIES THE AUTHORITY WHICH THE ATTORNEY GENERAL HAS BEEN EXERCISING SINCE 1971 UNDER THIS RULE.

GENERALLY, UNDER SECTION 5 OF THIS ACT, THE ATTORNEY GENERAL MUST WAIT 90 DAYS AFTER THE COMMENCEMENT OF A CIVIL ACTION BEFORE HE FILES A MOTION TO INTERVENE, BUT THE COURT MAY SHORTEN OR WAIVE THAT PERIOD IN THE INTEREST OF JUSTICE.

WHEN THE ATTORNEY GENERAL SEEKS TO INTERVENE IN THE CONTEXT OF THIS ACT, HE IS REQUIRED TO GIVE PROPER NOTIFICATION TO THE STATE AND RELEVANT OFFICIALS. THEREFORE HE MUST CERTIFY THAT AT LEAST 15 DAYS PREVIOUSLY HE HAS NOTIFIED THE APPROPRIATE STATE OFFICIALS OF HIS INTENTION TO INTERVENE AND OF THE SUPPORTING FACTS GIVING RISE TO THE ALLEGED CONDITIONS, AND, TO THE EXTENT FEASIBLE, OF THE MINIMUM MEASURES WHICH HE BELIEVES MAY REMEDY THE ALLEGED CONDITIONS. THE MINIMUM MEASURES WHICH HE SEEKS SHOULD BE CONSISTENT WITH THE INTERESTS OF THE OTHER PLAINTIFFS TO WHOM HE IS OF COURSE REQUIRED TO GIVE TIMELY NOTICE. CONGRESS DOES NOT INTEND TO DELAY OR PREJUDICE THE RIGHTS OF THE OTHER PLAINTIFFS IN THE ONGOING SUIT.

THE ATTORNEY GENERAL MUST ALSO CERTIFY THAT HE BELIEVES THAT INTERVENTION BY THE UNITED STATES WILL MATERIALLY FURTHER THE VINDICATION OF CONSTITUTIONAL OR FEDERAL RIGHTS, AND THAT THE ISSUE IS OF GENERAL PUBLIC IMPORTANCE.

SECTION 6. PROHIBITION OF RETALIATION

IT IS THE INTENT OF CONGRESS THAT THOSE WHO HAVE KNOWLEDGE OF SYSTEMIC ABUSE OF CONSTITUTIONAL RIGHTS IN INSTITUTIONS AND WHO REPORT SUCH ABUSE TO THE ATTORNEY GENERAL OR OTHER APPROPRIATE OFFICIALS OR INTERESTED PARTIES SHALL BE PROTECTED.

SECTION 7. EXHAUSTION OF ADMINISTRATIVE REMEDIES

SECTION 7 AUTHORIZES A FEDERAL COURT IN WHICH AN ADULT PRISONER'S SUIT FILED UNDER 42 U.S.C. 1983 IS PENDING, TO CONTINUE THAT ACTION FOR A PERIOD NOT TO EXCEED 90 DAYS IF THE PRISONER HAS ACCESS TO A GRIEVANCE RESOLUTION SYSTEM WHICH IS IN SUBSTANTIAL COMPLIANCE WITH THE MINIMUM STANDARDS PROMULGATED PURSUANT TO THIS SECTION. SUCH LIMITED CONTINUANCE WOULD BE FOR THE PURPOSE OF REQUIRING EXHAUSTION OF THE APPROVED GRIEVANCE RESOLUTION SYSTEM. IN ORDER TO ORDER SUCH A CONTINUANCE, THE COURT MUST FIND THAT IT WOULD BE 'APPROPRIATE AND IN THE INTEREST OF JUSTICE.'

IT IS THE INTENT OF THE CONGRESS THAT THE COURT NOT FIND SUCH A REQUIREMENT APPROPRIATE IN THOSE SITUATIONS IN WHICH THE ACTION BROUGHT PURSUANT TO 42 U.S.C. 1983 RAISES ISSUES WHICH CANNOT, IN REASONABLE PROBABILITY, BE RESOLVED BY THE GRIEVANCE RESOLUTION SYSTEM, INCLUDING CASES WHERE IMMINENT DANGER TO LIFE IS ALLEGED. ALLEGATIONS UNRELATED TO CONDITIONS OF CONFINEMENT, SUCH AS THOSE WHICH CENTER ON EVENTS OUTSIDE ****840** OF THE INSTITUTION, WOULD NOT APPROPRIATELY BE CONTINUED FOR RESOLUTION BY THE GRIEVANCE RESOLUTION SYSTEM.

THIS SECTION PROVIDES FOR THE DEVELOPMENT OF MINIMUM STANDARDS FOR GRIEVANCE RESOLUTION SYSTEMS WITHIN CORRECTIONAL INSTITUTIONS AND REQUIRES THE ATTORNEY GENERAL TO DEVELOP A PROCEDURE TO REVIEW THE CORRECTIONAL GRIEVANCE RESOLUTION SYSTEMS OF THE VARIOUS STATE AND LOCAL AGENCIES IN ORDER TO CERTIFY AS ACCEPTABLE THOSE SYSTEMS WHICH ARE IN SUBSTANTIAL COMPLIANCE WITH THE MINIMUM STANDARDS. THE STATE AND LOCAL AGENCIES ARE NOT REQUIRED TO SEEK SUCH CERTIFICATION, AND ***16** SUBMISSION FOR CERTIFICATION UNDER THE MINIMUM STANDARDS PROMULGATED PURSUANT TO THIS SECTION IS ENTIRELY VOLUNTARY.

THIS SECTION REQUIRES THAT THE ATTORNEY GENERAL PROMULGATE SUCH STANDARDS 'NO LATER THAN 180 DAYS AFTER THE DATE OF ENACTMENT OF THIS ACT.' FURTHER, THE SECTION REQUIRES THAT THE ATTORNEY GENERAL CONSULT WITH 'STATE AND LOCAL AGENCIES AND PERSONS AND ORGANIZATIONS HAVING A BACKGROUND AND EXPERTISE IN THE AREA OF CORRECTIONS' PRIOR TO PROMULGATING SUCH STANDARDS. CONGRESS INSISTS ON THIS PROVISION BECAUSE OF A KNOWLEDGE THAT MANY STATE AND LOCAL CORRECTIONAL OFFICIALS HAVE DEVELOPED HIGH

QUALITY GRIEVANCE RESOLUTION SYSTEMS WHICH MUST BE CONSIDERED IN ANY LEGITIMATE EFFORT TO DEVELOP STANDARDS. FURTHER, CONGRESS IS AWARE OF THE EFFORT WHICH MANY PRIVATE INDIVIDUALS AND ORGANIZATIONS HAVE MADE TO CRITIQUE AND IMPROVE EXISTING GRIEVANCE RESOLUTION SYSTEMS, AND THE ATTORNEY GENERAL SHALL CONSULT WITH THOSE MEMBERS OF ACADEMIA, THE PUBLIC INTEREST BAR, PRISONER ADVOCACY GROUPS CORRECTIONAL STAFF ORGANIZATIONS AND OTHER CITIZEN GROUPS PRIOR TO DEVELOPING STANDARDS IN THIS AREA. THE CHOICES AND METHODS INVOLVED IN SUCH CONSULTATION SHALL BE AT THE DISCRETION OF THE ATTORNEY GENERAL.

SECTION 7 REQUIRES THE ATTORNEY GENERAL TO DEVELOP A PROCEDURE FOR THE PROMPT REVIEW OF GRIEVANCE RESOLUTION SYSTEMS AND CERTIFY AS ACCEPTABLE THOSE SYSTEMS WHICH ARE IN SUBSTANTIAL COMPLIANCE WITH THE STANDARDS PROMULGATED PURSUANT TO THIS SECTION. IT IS THE INTENT OF THE COMMITTEE THAT THE VARIOUS JURISDICTIONS WHICH ELECT TO DO SO, SHALL SUBMIT TO THE ATTORNEY GENERAL DETAILED WRITTEN DESCRIPTIONS OF THE PROPOSED GRIEVANCE RESOLUTION SYSTEM TOGETHER WITH SUCH SUPPORTING INFORMATION, REGULATIONS, AND INMATE AND STAFF INSTRUCTIONS MATERIALS AS MAY BE REQUIRED BY THE ATTORNEY GENERAL IN ORDER TO DETERMINE IF SUCH SYSTEM IS IN SUBSTANTIAL COMPLIANCE WITH THE MINIMUM STANDARDS. SUCH DETERMINATIONS AND RESULTING CERTIFICATIONS SHALL BE MADE IN WRITING.

THIS SECTION ALSO PROVIDES THAT THE ATTORNEY GENERAL MAY SUSPEND OR WITHDRAW SUCH CERTIFICATION AT ANY TIME IF HE HAS REASONABLE CAUSE TO BELIEVE THAT THE GRIEVANCE PROCEDURE IS NO LONGER IN SUBSTANTIAL COMPLIANCE WITH THE MINIMUM STANDARDS. IT IS THE INTENT OF THE COMMITTEE THAT THE ATTORNEY GENERAL PROMPTLY REVIEW SUCH MATERIAL OR INFORMATION WHICH MAY COME TO HIS ATTENTION WHICH SUGGESTS THAT SUCH SUSPENSION OR WITHDRAWAL IS IN ORDER, AND THAT, FROM TIME TO TIME, A REVIEW BE CONDUCTED TO INSURE THAT NO UNWARRANTED CERTIFICATIONS ARE IN EFFECT. THE FACTS AND CONCLUSIONS CONTAINED IN THESE CERTIFICATIONS ARE NOT JUDICIALLY REVIEWABLE AND ARE NOT INTENDED TO BE A MATTER OF LITIGATION.

IT IS THE INTENT OF CONGRESS THAT THE PHRASE ‘ADULT PERSON CONVICTED OF A CRIME‘ MEANS ANY PERSON 18 YEARS OF AGE OR OLDER WHO HAS BEEN ****841** ADJUDGED GUILTY OF A CRIME BY A COURT. CONGRESS NOTES THAT NEITHER FEDERAL NOR STATE LAW DEEMS ACTS CONSTITUTING JUVENILE DELINQUENCY TO BE CRIMES.

IT IS THE INTENT OF THE CONGRESS THAT THE COURT, PRIOR TO MAKING A DETERMINATION WITH REGARD TO THE DEGREE OF COMPLIANCE OF A GRIEVANCE RESOLUTION SYSTEM WITH THE STANDARDS PROMULGATED PURSUANT TO THIS SECTION, SHALL CONSIDER WHETHER THE ATTORNEY GENERAL HAS REVIEWED SUCH SYSTEM FOR A SIMILAR DETERMINATION. OF COURSE, IT WOULD BE APPROPRIATE FOR THE COURT, IN ITS DISCRETION, TO NOTIFY THE ATTORNEY GENERAL ***17** OF THE PENDING LITIGATION AND SEEK THE VIEW OF THE DEPARTMENT OF JUSTICE AS TO THE COMPLIANCE OF THE CONCERNED GRIEVANCE SYSTEM WITH THE STANDARDS DEVELOPED PURSUANT TO THIS SECTION. IN CASES IN WHICH THE ATTORNEY GENERAL HAS REVIEWED A SYSTEM AND DENIED SUCH CERTIFICATION, IT IS THE INTENT OF CONGRESS THAT THE COURT GIVE ‘GREAT WEIGHT‘ TO SUCH DETERMINATION. IT IS IN THOSE SITUATIONS IN WHICH A REQUEST FOR CERTIFICATION HAS NOT BEEN SOUGHT OR IS PENDING THAT THE COURT WILL APPROPRIATELY DETERMINE IF THE GRIEVANCE RESOLUTION SYSTEM IS IN SUBSTANTIAL COMPLIANCE WITH THE MINIMUM ACCEPTABLE STANDARDS.

IT IS THE INTENT OF CONGRESS THAT THE PHRASE ‘IN SUBSTANTIAL COMPLIANCE WITH ‘ MEANS THAT THERE BE NO OMISSION OF ANY ESSENTIAL PART FROM COMPLIANCE, THAT ANY OMISSION FROM COMPLIANCE CONSISTS ONLY OF UNIMPORTANT DEFECTS OR OMISSIONS, AND THAT THERE HAS BEEN A FIRM EFFORT TO FULLY COMPLY WITH THE STANDARDS.

SUBSECTION (D) WAS ADDED TO STRESS THE VOLUNTARY ASPECT OF THE DECISION BY A STATE OR

LOCAL AGENCY TO ADOPT A GRIEVANCE PROCEDURE IN SUBSTANTIAL COMPLIANCE WITH THE MODEL MINIMUM STANDARDS. THAT DECISION WILL ONLY AFFECT WHETHER THE PRISONERS IN THAT FACILITY ARE REQUIRED TO EXHAUST THE PROCEDURE PRIOR TO FILING A SECTION 1983 SUIT. IF A STATE OR LOCAL AGENCY DOES NOT ADOPT A GRIEVANCE PROCEDURE IN ACCORDANCE WITH THE MODEL STANDARDS, THAT CHOICE WILL NOT BE CONSIDERED EVIDENCE OF A 'DEPRIVATION OF RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED OR PROTECTED BY THE CONSTITUTION,' UNDER THIS ACT.

SECTION 8. REPORT TO CONGRESS

THE REQUIREMENT OF SECTION 8 THAT THE ATTORNEY GENERAL ANNUALLY REPORT TO CONGRESS ON THE HISTORY, PROCEDURES, COSTS AND OTHER RELEVANT INFORMATION ABOUT ACTIONS BROUGHT UNDER THIS ACT IS DESIGNED TO ENSURE THAT CONGRESS WILL HAVE THE OPPORTUNITY TO ASSESS PERIODICALLY THE EFFICACY AND IMPACT OF THE JUSTICE DEPARTMENT'S LITIGATION PROGRAM. IN ADDITION, THE ATTORNEY GENERAL WILL BE EXPECTED TO REPORT ON THE PROGRESS MADE IN EACH FEDERAL INSTITUTION TOWARD MEETING THE STANDARDS EXPECTED OF THE STATE INSTITUTIONS AND HE WILL BE EXPECTED TO REPORT ON THE FINANCIAL, TECHNICAL AND OTHER ASSISTANCE WHICH HAS BEEN OFFERED TO THE STATES TO CORRECT THE CONDITIONS GIVING RISE TO SUIT.

SECTION 9. PRIORITIES FOR USE OF FUNDS

THE ACT INCLUDES A SENSE OF THE CONGRESS RESOLUTION THAT EXPRESSES THE DESIRE OF CONGRESS THAT, WHERE POSSIBLE AND WITHOUT REDIRECTING FUNDS FROM ONE PROGRAM TO ANOTHER OR ONE STATE TO ANOTHER AND WITHOUT IN ANY WAY CREATING HARDSHIP FOR CITIZENS IN AN INSTITUTION WHO MAY NOT BE AFFECTED BY EXISTING UNCONSTITUTIONAL CONDITIONS IN ANOTHER PART OF THE INSTITUTION, APPROPRIATE PROGRAM FUNDS SHOULD BE DIRECTED TO CORRECT UNCONSTITUTIONAL CONDITIONS AS A PRIORITY BEFORE OTHER CORRECTIONS ****842** OR IMPROVEMENTS ARE MADE IN THE INSTITUTION. WHILE THIS SECTION DOES NOT REQUIRE THE REDIRECTION OF FUNDS FROM ONE PROGRAM TO ANOTHER, IT REFLECTS A GOAL WHICH THE ATTORNEY GENERAL AND OTHER FEDERAL AND STATE AGENCIES SHOULD PURSUE.

SECTION 10. NOTICE OF FEDERAL DEPARTMENTS

THIS SECTION MAKES CLEAR THAT PRIOR TO THE COMMENCEMENT OF AN ACTION UNDER SECTION 3 OR SECTION 5 OF THIS ACT, THE ATTORNEY GENERAL SHALL NOTIFY THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES OR THE SECRETARY OF THE DEPARTMENT OF EDUCATION, RESPECTIVELY, IF EITHER ***18** AGENCY PROVIDES FINANCIAL ASSISTANCE TO THE RELEVANT INSTITUTION. THE ATTORNEY GENERAL MAY PROCEED WITH AN ACTION IF HE IS SATISFIED THAT SUCH ACTION IS CONSISTENT WITH THE POLICIES AND GOALS OF THE EXECUTIVE BRANCH. THIS PROCEDURE IS CONSISTENT WITH EXECUTIVE ORDER 12146 (JULY 8, 1979) ESTABLISHING A FEDERAL LEGAL COUNCIL TO AVOID UNNECESSARY AND INCONSISTENT LITIGATION BY FEDERAL AGENCIES.

SECTION 11. DISCLAIMER-- STANDARDS OF CARE

THIS SECTION STATES THAT THE PROVISIONS OF THIS ACT DO NOT AUTHORIZE THE FEDERAL GOVERNMENT TO PROMULGATE STANDARDS OF CARE FOR INSTITUTIONS.

SECTION 12. DISCLAIMER-- PRIVATE LITIGATION

THIS SECTION RECOGNIZES THAT IT IS ABSOLUTELY IMPERATIVE THAT THE ATTORNEY GENERAL AND

THE COURTS RESPECT THE FACT THAT THE RESTRICTIONS AND PRE-SUIT PROCEDURES REQUIRED OF THE UNITED STATES AS A PARTY IN SUITS UNDER H.R. 10 SHALL NOT IN ANY WAY EXPAND OR RESTRICT THE EXISTING RIGHTS AND POWERS OF CITIZENS TO BRING SUITS, PURSUE DISCOVERY, DEMAND REMEDIES, PURSUE APPEALS OR TO SETTLE LITIGATION.

FURTHER THIS SECTION IS CONSISTENT WITH THE INTENT OF CONGRESS WITH REGARD TO THE INTERVENTION IN SUITS UNDER SECTION 5 IN THAT IT WILL REQUIRE THAT THE DEPARTMENT OF JUSTICE BE SENSITIVE TO THE RIGHTS AND DESIRES OF OTHER PLAINTIFFS IN ANY INSTITUTIONAL SUITS IN WHICH THE DEPARTMENT MAY BECOME INVOLVED.

ROBERT W. KASTENMEIER,

GEORGE E. DANIELSON,

ROMANO L. MAZZOLI,

HERBERT E. HARRIS II,

LAMAR GUDGER,

BOB CARR,

TOM RAILSBACK,

CARLOS J. MOORHEAD,

HAROLD S. SAWYER,

MANAGERS ON THE PART OF THE HOUSE.

BIRCH BAYH,

HOWARD M. METZENBAUM,

HOWELL HEFLIN,

DENNIS DECONCINI,

ORRIN G. HATCH,

MANAGERS ON THE PART OF THE SENATE.

(Note: 1. PORTIONS OF THE SENATE, HOUSE AND CONFERENCE REPORTS, WHICH ARE DUPLICATIVE OR ARE DEEMED TO BE UNNECESSARY TO THE INTERPRETATION OF THE LAWS, ARE OMITTED. OMITTED MATERIAL IS INDICATED BY FIVE ASTERISKS: *****. 2. TO RETRIEVE REPORTS ON A PUBLIC LAW, RUN A TOPIC FIELD SEARCH USING THE PUBLIC LAW NUMBER, e.g., TO(99-495))

H.R. CONF. REP. 96-897, H.R. Conf. Rep. No. 897, 96TH Cong., 2ND Sess. 1980, 1980 U.S.C.C.A.N. 832, 1980 WL 13119 (Leg.Hist.)