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COMMITTEE PRINT

REPORT

TO THE

COMMITTEE ON THE BUDGET

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

SUBMITTED PURSUANT TO SECTION 301 OF THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974

ON THE

PROPOSED BUDGET FOR FISCAL YEAR 1981

MARCH 11, 1980

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LETTER OF TRANSMITTAL

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., March 11, 1979.

Hon. EDMUND S. MUSKIE,
Chairman, Committee on the Budget,
U.S. Senate, Washington, D.C.

Pursuant to section 301 of the Congressional Budget and Impoundment Control Act of 1974, I am submitting herewith the report of the Committee on the Judiciary on budgetary matters within its areas of interest. The report represents the committee's best present judgment of potential fiscal costs resulting from legislation under its jurisdiction.

Sincerely,

EDWARD M. KENNEDY.

INTRODUCTION

The Committee on the Judiciary is submitting this report on budgetary matters within its areas of interest, pursuant to section 301 of the Congressional Budget and Impoundment Control Act of 1974. The committee has organized its report by the broad program areas used by the Committee on the Budget in fashioning governmentwide fiscal policy.

Mission I—law enforcement—includes programs sponsored by both the Department of Justice and the Department of the Treasury. Mission II—State and local assistance—comprises the new Office of Justice Assistance, Research and Statistics, as well as the National Institute of Corrections. Mission III—other administration of justice programs—includes remaining Department of Justice programs, the entire Judiciary, and various interstate compacts, independent agencies, and commissions. It is the current belief of the committee that all new legislation under consideration should be supportable within the proposed estimates.

A summary of the estimates is as follows:

[In thousands of dollars]

	Budget authority		Outlays	
	President's budget	Committee estimates	President's budget	Committee estimates
Mission I	1,501,616	1,501,616	1,490,688	1,490,688
Mission II	581,573	581,573	617,899	617,899
Mission III	2,070,581	2,070,581	2,068,595	2,068,595
Total	4,153,770	4,153,770	4,177,092	4,177,092

NEW LEGISLATION

Victims of Crime Act

This bill would subsidize the cost of State programs which compensate innocent victims of crime for unreimbursed medical expenses and lost earnings resulting from a criminal act against them. Under the proposed legislation, States would be encouraged to establish victim compensation programs to aid these innocent citizens, and the Federal Government, as part of a comprehensive national criminal justice policy, would both encourage and assist States which have these programs.

Regulatory Flexibility and Administrative Reform Act

This bill establishes guidelines for agency rulemaking which would broaden opportunities for public participation in the rulemaking process and require each agency to develop, publish, and implement a plan for the review of its rules and regulations.

Equal Access to Justice

The bill rests on the premise that certain individuals, partnerships, corporations and labor and other organizations may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights. The economic deterrents to contesting governmental action are magnified in these cases by the disparity between the resources and expertise of these individuals and their Government. The purpose of the bill is to reduce the deterrents and the disparity by entitling certain prevailing parties to recover an award of attorney fees, expert witness fees, and other costs against the United States, unless the Government action was substantially justified. Additionally, the bill insures that the United States will be subject to the common law and statutory exceptions to the American rule regarding attorney fees. This change will allow a court in its discretion to award fees against the United States to the same extent it may presently award such fees against private parties.

Under the bill certain parties who prevail in administrative adjudications or civil actions brought by or against the United States will be entitled to attorney fees and related costs unless the Government action was substantially justified. The fees so awarded will be taken from the budgets of the offending agencies, thus providing a quantitative measure of whether an agency is engaging in excessive unreasonable regulation. Parties eligible to recover fees under this new exception include individuals with net assets of less than $1 million and partnerships, corporations, associations, or other organizations with net assets less than $5 million. The legislation is subject to a 3-year sunset provision.

Judicial Conduct and Disability Act

The purpose of the proposed legislation is to establish a procedure for investigating and resolving allegations that a member of the

Federal judiciary has been unable to discharge efficiently all the duties of his or her office by reason of mental or physical disability or has engaged in conduct which has been inconsistent with the effective and expeditious administration of the business of the courts.

An investigation of a complaint filed against a judge of the United States may result in the dismissal of the complaint, a certification of disability, a request that the judge voluntarily retire, an order that, on a temporary basis, no further cases be assigned to the judge, private or public censure or reprimand, the filing of a report to the House of Representatives suggesting the possibility of impeachment, or other action as deemed appropriate under the circumstances.

Federal Court-Annexed Arbitration Act

This proposal is similar but not identical to a predecessor bill which passed the Senate during the closing hours of the 95th Congress. The bill would require compulsory, nonbinding arbitration for certain categories of civil cases in U.S. district courts. Although there was some controversy surrounding the mandatory nature of the proposal when discussed by the full committee during the early part of the session, the subcommittee hopes to be able to resolve the controversies and report the bill from the committee during the second session.

Federal Criminal Diversion Act

This bill would provide an alternative to incarceration for certain types of criminal offenders.

Briefly, diversion operates in the following manner:

(1) At the time of arrest or the issuance of a summons, or soon thereafter, persons would be screened by diversion personnel for eligibility under the criteria of the act, regulations issued by the Attorney General, and guidelines issued by the U.S. attorney. Those persons meeting eligibility criteria would be reported to the U.S. attorney, who would make a preliminary determination of suitability. If additional investigation of the accused is required by the U.S. attorney, the diversion personnel would conduct a background check with the consent of the accused and make a final report to the U.S. attorney, who would then select persons for admission into the program. The diversion personnel would draft a diversion plan which would list conditions the person would fulfill, such as counseling, attending school, medical treatment, or reimbursing victims, etc. The plan would state a time period for completion of the program.

(2) When the plan is agreed upon by the U.S. attorney, the diversion administrator, eligible individual, the defense attorney, and the accused has received a copy of his diversion plan, the parties would go before the court where the defendant would waive his right to speedy trial and statute of limitations. The U.S. attorney would then move to continue the indictment, information or complaint for the period of diversion pursuant to 18 U.S.C. 3161(h)(2), the Speedy Trial Act.

(3) The diversion personnel would supervise the person's performance under the plan and report to the U.S. attorney and defense counsel. If the plan is successfully completed, the indictment, information, or complaint will be dismissed with prejudice on motion of the U.S. attorney by leave of court under F.R. Crim. P. 48(a).

(4) If the person fails to complete the plan, voluntarily withdraws, or if the U.S. attorney later discovers facts demonstrating that the person is not suitable for diversion, the U.S. attorney may resume prosecution. The person and his defense counsel are notified in writing of the factual basis for the resumption of prosecution and are provided the right to contest the facts before the U.S. attorney and to then appeal to the court. These hearings are brief and closely tailored to comport with due process.

Small Business Administration Court

This bill will establish a Small Business Administrative Court which will allow small businesses an inexpensive and effective means of challenging administrative action affecting them.

Taxpayers Protection and Reimbursement Act

This proposal amends the Internal Revenue Code and title 28 of the United States Code in order to provide for the award of reasonable court costs, including attorneys fees, to prevailing parties in civil tax actions.

Bilingual Procedures in Puerto Rico

This proposal provides that certain judicial pleadings in the Commonwealth of Puerto Rico may be conducted in Spanish.

Judicial Conferences and Councils in the Sunshine Act

This proposal requires, with certain exceptions, that the Judicial Conference of the United States and each of the circuit judicial councils and committees and subcommittees thereof, hold open public meetings.

Federal Courts Improvement Act

The proposal is an omnibus type bill that addresses many of the structural changes necessary to maintain an efficient judiciary. Among subjects addressed are makeup of circuit councils, chief judge tenure, retirement and pensions, temporary assignment of judges to administrative positions, transfer of cases, and interest.

A major proposal encompassed by title III of this bill eliminates the Court of Claims and Court of Customs and Patent Appeals and creates a new Court of the Federal Circuit to be initially made up of the judges of the defunct courts. This new court will fill a void in the judicial system by creating an appellate forum capable of exercising nationwide jurisdiction over appeals in areas of the law where Congress determines there is a special need for nationwide uniformity. The bill also creates a new article I trial forum known as the United States Claims Court, which would inherit the trial jurisdiction of the Court of Claims.

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