



UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
WASHINGTON, D. C. 20530

OFFICE OF THE ADMINISTRATOR

TO: William B. Saxbe
The Attorney General

FROM: *DS* Donald E. Santarelli
Administrator

SUBJECT: Comments on Proposed Model Criminal Justice Reform Act

Attached is my response to Vince Rakestraw's letter concerning the above-cited proposal.

Two important factors of a practical political nature which I omitted from the formal response should be noted here.

1. The Senate and House Judiciary committees completed extensive hearings constituting a full review of LEAA programs last year which culminated in the Crime Control Act of 1973 reaffirming and extending the block grant concept through FY 1976. Only those Judiciary Committee members interested in furthering Senator Mondale's Presidential ambitions are likely to be inclined to reopen the subject so soon on the heels of the 1973 Act. Conversely, many of the Members may be affronted by a proposal to plow the same ground so soon again.

Chairman Rodino would likely be among the latter group since he chaired the subcommittee last year which produced the 1973 Act and takes some pride in it. Congressman Conyers is chairman of the subcommittee assigned oversight jurisdiction for LEAA. He has demonstrated interest in his own amendment, H. R. 9175, which we opposed formally and continue to oppose.

2. Senators McClellan and Hruska have longstanding personal interest in the Safe Streets Act of 1968 and the Crime Control Act of 1973. As Chairman and Ranking Minority Member of the Criminal Laws Subcommittee, they should certainly be consulted in advance of the circulation of any proposed amendment. In addition McClellan, as Chairman of Appropriations, pays close attention to LEAA budgets. The Mondale bill calls for large additional funding.

The merits of the proposal are discussed in the attached letter.

Attachment

cc: Mr. Timmons

Handwritten notes:
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BT -
He mentions
same Bill
considerations
it's simply
an FYI
item
Pod



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WASHINGTON, D. C. 20530

OFFICE OF THE ADMINISTRATOR

The Honorable William B. Saxbe
The Attorney General
Department of Justice
Washington, D. C. 20530

Dear Mr. Attorney General:

This is in response to Vince Rakestraw's recent letter transmitting a copy of Senator Mondale's proposed "Model Criminal Justice Reform Act." I appreciate being given the opportunity to give you my reaction to it.

The bill authorizes the Administrator of the Law Enforcement Assistance Administration to make grants and provide technical assistance to states and localities for demonstration projects for the purpose of achieving comprehensive reform of the criminal justice system. The Administrator is to select no more than six states to receive such assistance from among those which have submitted a plan which he determines establishes the reasonable likelihood of substantial and fundamental change in the criminal justice system within four years after enactment of the legislation.

In approving state plans for comprehensive criminal justice system reform, the Administrator is required to give priority consideration to state plans which incorporate a number of specific proposals for reform. In the area of police and law enforcement personnel there are 11 enumerated "priority" proposals. Seven proposals for reform of the court system are to be given priority consideration. An additional priority item would require the state and localities within it to implement such necessary reforms that will insure the trial of criminal offenses (excluding juvenile offenses) will be commenced not later than 60 days from the date on which the defendant was arrested or charged. For failure to comply, the charges will be dismissed with prejudice, unless the case falls within certain exceptions designated in regulations by the Administrator.

Eleven priority reforms are listed in the area of corrections. Priority consideration shall be given to plans which also incorporate several other proposals. The state will study the consolidation of law enforcement agencies throughout the state. The state will study the application of criminal laws to offenses such as alcoholism and drunkenness, narcotics and drug abuse, gambling, and vagrancy and disorderly conduct. A final priority item is the creation of a commission to review the state's criminal laws.

The Administrator shall then classify the provisions of a state plan according to whether they may be carried out swiftly or without legislation (phase one), or whether they will take time or require the enactment of specific legislation (phase two). The federal government will pay 75 percent of the cost of phase one programs and projects and 90 percent of the cost of phase two. The federal share of programs or projects covered by the state plan which are not enumerated as one of the "priority" reforms, shall be only 50 percent for any fiscal year. If construction of facilities is required, title must be in a state or local public or private nonprofit agency. If within 20 years after completion of construction such agency ceases to be the owner of the facility or the facility is used for another purpose, the federal government can recover that portion of the value of the property which it originally contributed. The Administrator can, however, determine that there is good cause for release from this obligation.

The bill additionally contains some specific requirements for state plans and approval of project applications. The program is to run from July 1, 1974, to June 30, 1981. Such sums as are necessary are authorized to be appropriated.

While many of the goals set out in the proposed legislation are praiseworthy, my review of the bill has noted a number of objectionable features. From the standpoint of the operation of LEAA, the proposed legislation would significantly depart from the block grant approach to funding. The criteria which the bill and any regulations would establish would make a drastic departure from the Administration's position on the federal role in state criminal justice programs. As you know, Congress stated in the preamble to the LEAA legislation that "crime is essentially a local problem that must be dealt with by state and local governments if it is to be controlled effectively." Pursuant to this philosophy, the Act established a matching grant-in-aid program under which LEAA makes annual block planning and action grants to the states.

Under the block grant program the states order their own priorities through the comprehensive plan and LEAA cannot dictate to state and local governments how to run their criminal justice systems so long as the plan is consistent with the Act. The proposed legislation, on the other hand, is more in the nature of a categorical grant program, the requirements for state action being set forth rather explicitly. Such legislation would appear to run contrary to the desires of Congress, as expressed in the legislative history of the 1968 Safe Streets Act, that categorical grant programs, whereby the federal government sets the purpose and terms for the use of criminal justice grant funds by the state and units of local government, be avoided if possible.

The Declaration of Policy section of the proposed legislation states that "the recommendations of . . . the National Advisory Commission on Criminal Justice Standards and Goals . . . provide an excellent basis for the adoption of such reforms." The Commission, however, has also recognized that crime fighting was largely a local matter. LEAA has consistently taken the position that it will not impose the Commission's standards on state and local governments. Instead, we will assist and encourage them to go through the process of analyzing their criminal justice systems and to adopt such standards as each finds appropriate and necessary. As of this date, over 40 states have taken some steps towards adoption and implementation of their own standards and goals. This is important because the priorities of the bill are arbitrary in that the same standards are set for all states desiring to participate. These reforms may not, however, be appropriate in all areas. Examples which come to mind are Illinois, Arizona and Nebraska which have already completely revised their criminal codes.

Although it may be argued that the terms of the bill are voluntary, I would suggest that the language requiring that certain proposals be given priority consideration, and the fact that proposals not conforming to these enumerated items will only be funded to an extent of 50 percent rather than 75 percent or 90 percent, makes inclusion of these priority proposals in a state plan almost mandatory. Section 518(a) of the Crime Control Act of 1973 also has some bearing on this point. That section provides:

Nothing contained in this title or any other Act shall be construed to authorize any department, agency, officer or employee of the United States to exercise any direction, supervision, or control over any police force or any other political subdivision thereof. (Emphasis added.)

Because the emphasis placed on the priority reforms makes the bill almost coercive, that raises the spectre of the federal government exercising an undue amount of direction and supervision of state law enforcement and criminal justice. To that, I am opposed.

The proposal assumes a need for comprehensive planning when, in fact, comprehensive planning is a key feature of the existing program. The proposal is essentially duplicative of authority which LEAA presently possesses. Moreover, Section 303(b) of the Crime Control Act of 1973 mandates reform by requiring that "[n]o approval shall be given to any state plan unless and until the Administration finds that such plan reflects a determined effort to improve the quality of law enforcement and criminal justice throughout the State." LEAA uses the discretionary fund provided for in Part C of the Crime Control Act to assist programs of national scope and to provide special impetus for innovative and

experimental projects which are compatible with particular state plans. General revenue sharing is another existing vehicle for funding of criminal justice reform. A significant portion of revenue sharing is presently being used for law enforcement.

A number of projects which embody one or more of the priority reforms enumerated in Section 5 of the bill have received substantial amounts of either block grant or discretionary funding. A review of LEAA funding statistics has revealed that over \$600 million has already been utilized specifically for such programs in various states and localities. Examples include the expenditure of over \$98 million for programs relating to the treatment of alcoholism and drug abuse, over \$126 million for programs relating to parole and probation services, and over \$99 million dollars for programs relating to offender vocational and educational programs.

It should also be noted that LEAA's High Impact Anticrime Program, regarded as a significant and innovative crime reduction effort in eight major cities, required a commitment of \$160 million over three years. The program, however, is modest in comparison with the proposal to reform statewide criminal justice systems and the fiscal requirements of the latter would substantially exceed the cost of the Impact program.

To properly implement the proposal would require a substantial increase in personnel and other resources to administer the program and to evaluate the demonstration programs. The requirement of a substantial and fundamental change in the criminal justice system of a state would certainly demand the expenditure of a significant amount of federal funds. Furthermore, at the successful completion of the demonstration projects, other states would almost certainly demand that additional funds be made available so that they, too, could reform their criminal justice systems at federal expense.

A further objection to the bill is that it suggests excessive federal involvement in state activities in the great amount of discretion given to the Administrator. He is placed in a position of determining the eligibility of state plans, choosing the demonstration states and monitoring the states' compliance. Section 12 of the bill provides that payments may be withheld by the Administrator for noncompliance. Though some guidelines are suggested by the bill, and though regulations may further clarify its requirements, I believe further narrowing of such discretion by the Congress would be essential to avoid the obvious political implications of actions which LEAA would undertake.

Section 5(a)(2) authorizes the Administrator to regulate the state trial process so as to assure speedy trial in a way which exceeds the regulation which may have been deemed necessary by the U. S. Supreme Court. Although the Supreme Court made the 6th Amendment right to a

speedy trial applicable to the states through the 14th Amendment in Kloper v. North Carolina, 386 U. S. 213 (1967), and again addressed itself to the issue in Dickey v. Florida, 398 U. S. 30 (1970), its standard comes nowhere near approaching the 60-day limitation contained in the bill. It should also be noted that the ABA Minimum Standards for Speedy Trial make no recommendation with regard to the time between indictment and trial, though they do recommend dismissal of a case for noncompliance with speedy trial statutes. A six-month period has been established by the New York Court of Appeals and U. S. Court of Appeals for the Second Circuit. While the National Advisory Commission on Criminal Justice Standards and Goals also recommends a 60-day period from arrest to beginning of trial in felony cases (Courts, Standard 4.1), the Commission emphasizes that the period relates only to the norm or average and does not impose an outside limit. Thus, the Commission does not call for automatic dismissal. I have opposed for five years speedy trial statutes which do not require the same rule on the dilatory practices of the defense bar that they do on the prosecutor. Automatic dismissal punishes the innocent defendant who is entitled to vindication and in the case of the guilty, the people.

Section 5(a)(4) contains a provision for the study of law enforcement consolidation program and Section 5(a)(5) calls for a study of decriminalization of drunkenness, narcotics offenses, gambling, vagrancy and disorderly conduct statutes. Reform in these areas to date has been more difficult to achieve than have most of the current reform programs that are being conducted in the criminal justice field. The proposal adds nothing to the solution of that problem.

Sections 6(a)(4) and 7(a)(3) contain language calling for the use of federal funds to supplement, not supplant state and local funds. This raises the question of the possibility of very strict regulations concerning the expenditure of money for certain projects, particularly those for the purchase of equipment.

Section 7(b) provides that local grants must be approved by a state. The bill does not provide for a discretionary grant program similar to the present LEAA program. The 85-15 percent split in LEAA funds was one of the more heavily contested provisions of the original Act. Cities were concerned about the possibility that all funds going to a state would pass through the Governor's office. Thus, the proposal envisions a series of categorical grants to the participating states and to their local units of government pursuant to the state plan. The centralization of criminal justice functions which this necessarily infers would certainly be the subject of resistance by localities.

Section 5(b) of the proposed legislation calls for the creation by the participating states of a permanent law review commission. The type of commission and nature of membership is not, however, delineated. Inasmuch as there are a number of mechanisms which could provide for continuing law revision, the bill should make clear that there is flexibility in the type of revision process required. Your attention is directed, for example, to the work of the National Conference of Commissioners on Uniform State Laws and the minimum standards efforts of the American Bar Association.

Section 13, the provision calling for recovery of federal payment if a facility is transferred to a new owner or used for a different purpose, is also subject to question. While the Administrator may determine that there is good cause for releasing this obligation, this very power of review may be seen as an unwarranted intrusion of the federal government into the state's right to dispose of its property.

Although Section 15 of the Bill contains a provision with regard to labor standards for construction projects, it does not include a civil rights provision similar to that contained in the Crime Control Act. This protection is certainly necessary in an area of such extensive federal involvement.

Because of the specific points noted above, and because the prescriptive nature of the bill seems contrary to the spirit of "New Federalism," and to the intention of the framers of the LEAA concept embodied in its statute, I am opposed to the enactment of the proposed legislation.

Sincerely,

Donald E. Santarelli
Administrator

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United States Senate

WASHINGTON, D.C. 20510

March 12, 1974

MAR 18 1 41 PM '74

Dear Colleague:

On Friday, March 22, we will introduce legislation to bring significant change in the criminal justice system of the United States through a series of demonstration projects in criminal justice system reform.

Over the past five years, the Law Enforcement Assistance Administration has spent over \$3 billion in Federal funds in attempting to cut the crime rate and introduce change into the criminal justice system. During this period of time, some progress has been made, but many observers of the LEAA program continue to regard the central problems in the criminal justice system as largely unaffected by this Federal assistance. And clearly, the public's perception of the severity of the crime problem continues to grow, with survey data indicating over half of those questioned feeling that crime is on the increase.

There are many individual problem areas in the criminal justice reform system--touching on the police, the courts, the corrections system, and the criminal code--which desperately need change. But central to achieving effective change, we believe, is a comprehensive approach under which the states and localities, which have primary law enforcement responsibility, are given Federal assistance to totally revamp their criminal justice systems.

Our legislation deals with this problem by providing Federal assistance, for a limited number of states, to demonstrate the effectiveness of comprehensive criminal justice system reform.

We have every reason to believe, through discussions with Attorney-General William Saxbe, that he will personally support this legislation.

Under this legislation, state plans for criminal justice system reform would be submitted to the Administrator of LEAA, who would choose no more than six states to participate, giving preference to those states whose plans showed the greatest potential for making significant change in the criminal justice reform system in that state within four years. Those states chosen would receive from 75% to 90% Federal assistance to offset costs of implementing specific changes enumerated in the bill, as part of the state comprehensive reform plan.

The legislation spells out a variety of specific standards in the areas of the police, the courts, the corrections system and criminal code reform. These include uniform recruitment standards and promotional policies for police; speedy trial of offenders and improvements in the efficiency of court procedures; improved correctional facilities, parole and probation services; and studies of the structure of law enforcement agencies and the appropriateness of criminal penalties for certain "victimless" crimes. States would be free to include reforms other than those enumerated in the bill as part of their proposed state reform package, but the Federal share of assistance for such reforms would be significantly less (50%) than for those reforms outlined in the legislation.

The specific reforms outlined in the bill are based on the recommendations of two Presidential commissions--one under President Johnson and the other under President Nixon--as to the most effective means for reducing crime and improving the criminal justice system in the United States. Together, these recommendations provide an excellent basis for Federal assistance to the states which will provide the type of focused incentives needed to bring about real improvements in the criminal justice system.

We hope you will join us in co-sponsoring this legislation. A copy of the bill and a section-by-section analysis are included. If you have any questions, or wish to co-sponsor please have a member of your staff contact Roger Colloff on Senator Mondale's staff, X5641 or Ralph Neas on Senator Brooke's staff X2742.

Sincerely,

Walter F. Mondale

Walter F. Mondale

Edward W. Brooke

Edward W. Brooke

Thomas F. Eagleton

Thomas F. Eagleton

Robert T. Stafford

Robert T. Stafford

Memorandum

TO : / Donald E. Santarelli, Administrator
Richard W. Velde, Deputy Administrator
Charles R. Work, Deputy Administrator

DATE: March 25, 1974

FROM : Stephen T. Boyle *STB*
Director, Congressional Liaison

SUBJECT: Mondale Bill, S. 3227

Attached is the section from the Congressional Record relating to the introduction by Senator Mondale of the Model Criminal Justice Reform Act, S. 3227.

It may be significant that, despite his "Dear Colleague" letter, there are only eight sponsors--and a predictable group at that: Mondale, Brooke, Eagleton, Stafford, McGee, Hart, Gravel, and Mathias.

Attachment

cc: Messrs. Madden, Nardoza
and Caplan

Relatives of deceased servicemen are entitled to government transportation of the remains to a burial site selected by the next of kin, and up to \$623 for interment costs in a private ceremony, depending on the type of funeral. A military ceremony is provided without charge upon request.

The next of kin of all men who die during military service receive a death gratuity of from \$800 to \$3,000, depending upon rank. This money can be used any way the family sees fit, including for funeral travel expenses, according to a Pentagon spokesman.

A serviceman's government-sponsored insurance provides \$15,000 to beneficiaries, and the next of kin of men killed in action continue to receive full medical, commissary and exchange privileges unless the widow remarries. The children continue to receive those benefits until they are 21, unless they are adopted.

By Mr. MONDALE (for himself, Mr. BROOKE, Mr. EAGLETON, Mr. STAFFORD, Mr. MCGEE, Mr. HART, Mr. GRAVEL, and Mr. MATHIAS):

S. 3227. A bill to provide assistance to encourage States and localities to undertake comprehensive criminal justice reform in order to strengthen police protection, improve the prosecution of offenders, expedite overcrowded court criminal calendars, and strengthen correctional systems, and for other purposes. Referred to the Committee on the Judiciary.

Mr. MONDALE. Mr. President, on behalf of myself, the Senator from Massachusetts (Mr. BROOKE), the Senator from Missouri (Mr. EAGLETON), the Senator from Vermont (Mr. STAFFORD), the Senator from Wyoming (Mr. MCGEE), the Senator from Michigan (Mr. HART), the Senator from Alaska (Mr. GRAVEL), and the Senator from Maryland (Mr. MATHIAS), I am pleased to introduce the Model Criminal Justice Reform Act of 1974.

It is clear that Americans regard street crime as one of the most pressing issues facing our country. It is an issue which keeps tens of millions of Americans in daily fear for their lives and property. It is an issue which results in billions of dollars a year in property loss, and in tragic—though not similarly quantifiable—losses in human freedom and dignity.

Early in 1973, a Gallup poll revealed that more than one in every five people across the country had been victimized by crime in 1972. And over half of those questioned said they felt that there was more crime in their area than there had been a year ago.

In 1968, 31 percent of respondents to a Gallup poll said they were afraid to walk in their own neighborhood at night. By the end of 1972, the figure had risen to 42 percent. By 1972, Gallup found that one person in six did not feel safe in his own home at night.

The trend of public opinion is unmistakable.

And in our large cities, the public's concern is even clearer. A Gallup survey taken in early 1973 indicated that among residents of cities over 500,000 population, crime was regarded as far and away the top concern. Crime was named as their city's worst problem by 22 percent of those surveyed, twice the percentage of the next most important problem—

transportation and traffic. This was a startling change from a similar survey of large cities in 1947, which showed that only 4 percent regarded crime as their city's worst problem.

In short, the fear of crime in the public mind is growing steadily. And the overwhelming probability is that it will continue to grow unless there is real evidence that State and local governments, where primary responsibility for fighting crime undoubtedly lies, mount more effective efforts against street crime. To do this, they will need more Federal help. And without a different type of Federal help—focusing more on the need for total criminal justice system reform—the likelihood of reducing crime, and the public fear of ever-increasing crime, is virtually nonexistent.

The public's belief in the increasing danger which crime poses to the average citizen is, unfortunately, very well founded. The long-term trend in the number of crimes reported to the police is on the rise, with no peak yet in sight. From 1960 to 1971, the rate of violent crimes rose by an astounding 168 percent. Robberies were up by almost 260 percent, rape by 146 percent, murder by over 95 percent, and aggravated assault by 139 percent.

In 1972, the FBI reported the first decrease—of 2 percent—in serious crime in 17 years and the administration hoped that the worst of the crime rise had been seen. In the first 6 months of 1973, however, the jump upward began again, with the violent crime rate up 4 percent in the first 6 months of the year, and with murder up by 9 percent. Significantly, the rates of increase for murder and rape were highest not in the large cities, but in cities under 10,000 and in rural areas. And in other areas of crime as well, a trend which seems to have been emerging within the past 2 years once again proved true, as crime increased more rapidly overall in suburban and rural areas than in the major urban centers of our Nation.

In short, the crime problem which millions of Americans once thought was primarily a problem of the central city, has truly become national, threatening the health and security of every American.

And significantly, studies sponsored by the Law Enforcement Assistance Administration reveal that even the astronomical rates of reported crimes, as published by the FBI's Uniform Crime Reports, may reveal only the tip of the iceberg. This preliminary study, undertaken to gauge the true measure of crime in America, indicates that the number of crimes actually committed could run as high as five times the number officially reported by victims. For rapes and robberies, the number actually experienced was approximately twice the number reported, and for aggravated assaults the ratio of crimes committed to crimes reported was 5 to 1. This type of study, which will become a regular quarterly report in the near future, provides us with the first glimpse behind the facade of official statistics and into the real world of crime's impact on the citizen. It reveals that even the more than 3 million violent crimes and burglaries reported to the police in 1971 vastly un-

derestimates the seriousness of the problem confronting us.

In this area, the Federal response must match the severity of the problem. The principle must remain that criminal justice is primarily the responsibility of State and local governments; but the Federal Government can play a vital role in encouraging and financing reform.

The need for a new attack on crime is clear.

In 1967, the President's Commission on Law Enforcement and Administration of Justice made this gloomy assessment of crime in America:

There is much crime in America, more than ever is reported, far more than ever solved, far too much for the health of the Nation. Every American knows that. Every American is, in a sense, a victim of crime. Violence and theft have not only injured, often irreparably, hundreds of thousands of citizens, but have directly affected everyone. Some people have been impelled to uproot themselves and find new homes. Some have been made afraid to use public streets and parks. Some have come to doubt the worth of a society in which so many people behave so badly. Some have become distrustful of the Government's ability, or even desire, to protect them.

The situation is no better today. Each year, crime in America takes its toll in lives, injury, and tension. It has been estimated that crime costs our country between \$50 and \$100 billion every year.

We have been aware of these frightening facts and statistics for some time. But despite our knowledge, the crime rate continues to spiral.

There are no quick and easy solutions. The causes of crime are complex, and no single proposal will eliminate crime.

Most authorities do agree, however, that crime could be substantially reduced with more well-trained and better-paid police, speedy and efficient disposition of criminal cases, and corrections programs which rehabilitate offenders. In short, fundamental improvements in the entire criminal justice system of our States and localities would have a direct and dramatic impact on the crime rate in this country.

But the failures and inadequacies of the criminal justice system in most States have been well documented.

The report of the President's Commission on Law Enforcement and Administration of Justice noted this failure:

The increasing volume of crime in America establishes conclusively that many of the old ways are not good enough. Innovation and experimentation in all parts of the criminal justice system are clearly imperative. They are imperative with respect both to entire agencies and to specific procedures. Court systems need reorganization and case-docketing methods need improvement; police-community relations program are needed and so are ways of relieving detectives from the duty of typing their own reports; community-based correctional programs must be organized and the pay of prison guards must be raised. Recruitment and training organization and management research and development all require re-examination and reform.

A 1969 staff report to the National Commission on the Cause and Prevention of Violence contains the following critical—but I believe accurate—portrayal

of the criminal justice process in many States:

A system implies some unity of purpose and organized interrelationship among component parts. In the typical American city and state and under federal jurisdiction as well, no such relationship exists. There is instead, a reasonably well-defined criminal process, a continuum through which each accused offender may pass from the hands of the police, to the jurisdiction of the courts, behind the walls of a prison, then back into the street. The inefficiency, fallout, and failure of purpose during this process is notorious...

If any one part of the criminal justice system functions badly, the entire system will be adversely affected. An excellent police force is hampered in preventing crime if there are long delays in bringing a defendant to trial; speedy disposition of criminal cases will not prove effective if a convicted defendant is sent to a prison which is only a breeding place for more crime.

As a former State law enforcement official, I realize that most of the crime plaguing this country falls within the jurisdiction of State and local governments—and that the responsibility for law enforcement and the maintenance of an effective criminal justice system begins and ends with those State and local governments. I am firmly committed to the principle that law enforcement must remain a State and local responsibility.

It is difficult to carry out this responsibility, however, without adequate funds, and it is clear that most States and cities simply do not have the resources for meeting the increasingly complex demands being placed on them—from preventing crime to eliminating pollution. Consequently, Federal financial assistance to States and their cities is essential in combating crime. This principle was recognized with the passage of title I of the Omnibus Crime Control and Safe Streets Act of 1968.

Unfortunately, title I of the Safe Streets Act was not designed to remedy the basic defects of the criminal justice system as it exists in most States. The fractionalization and the strong tendencies to resist comprehensive reform have not been significantly aided by LEAA, largely stemming from the mandate and administrative structure which it was given.

Today, we are spending almost \$10 billion on crime prevention at all levels of government. The Federal Government alone is spending almost \$1 billion per year through LEAA as its share in this effort. Attempts have been made to improve the functioning of LEAA, and in certain areas improvements have already taken hold. But the present legislative directive to LEAA means that it will probably continue to be a relatively minor force in providing leadership and direction toward truly comprehensive criminal justice system reform.

Unless new legislation is enacted, which provides the type of focused and directed Federal incentives needed to break the hold of the present system, it is unlikely that true reform will occur. Without this type of incentive, basic reforms which most experts agree are essential may not be implemented in most States.

As the President's Crime Commission observed:

Many of the criminal justice system's difficulties stem from its reluctance to change old ways, or to put the same proposition in reverse, its reluctance to try new ones.

It is my belief that with a sufficient financial incentive for undertaking these reforms, some States and their localities would be willing and eager to overhaul their criminal justice system. That is why I have introduced this legislation.

The aim of this legislation is to establish model and experimental programs in more than six States to determine the effect of full-scale and comprehensive reform of the criminal justice system on the crime rate in those States. The program is, of course, completely voluntary and no State will be affected by this legislation if it does not choose to enter the program.

THE LEGISLATION

Central to the concept of improving the crime situation in America is the concept of total reform of the criminal justice system—attempting to relate each aspect of the system to the others and to arrive at a sound overall system which will aid the safety of the individual and improve the functioning of the criminal justice process.

The National Advisory Commission on Criminal Justice Standards and Goals, in its final report in 1973, noted the importance in its plan of a unified, systems-oriented approach to improving the criminal justice system.

The plan also emphasizes the need for all elements of the criminal justice system to plan and work together as a system and to plan and work together with the social service delivery system. The plan emphasizes the need for greater community support of the police and for the police patrolman to strengthen his ties to the community and to be given greater responsibility and authority for preventing and reducing crime in the community. The plan emphasizes the need for the prosecutor, defender, and judiciary to work toward insuring speedier trials while still protecting fundamental rights. The plan also emphasizes the need for corrections to develop effective programs and procedures for reintegrating offenders into the community as soon as possible consistent with the protection of the community.

The legislation I am introducing today attempts to bring this type of total system approach to the area of criminal justice reform. It uses the recommendations of the President's Commission on Law Enforcement and the Administration of Justice, the National Advisory Commission on Criminal Justice Standards and Goals, and a variety of other commissions and agencies as the basis for the comprehensive standards which form the heart of the bill.

These standards, of course, may not prove to be the total answer. But they represent the considered thinking and judgment of two separate commissions under two different national administrations. They encompass a wide variety of standards and goals which individual States and localities would be able to implement.

These standards are very broadly drawn—in such a way that the specifics of implementation must be left to the States. And different States can qualify under the bill's standards by implementing entirely different reforms—suited to the particular problems in those States.

For example, the standard for speedy disposition of criminal cases simply establishes a 60-day limit in which a trial must be commenced. To meet this standard some States may hire court administrators to make their court system more efficient; others might find it necessary in their plan to call for additional judges and court personnel. But whatever the actual reforms, they will be chosen by the State and they will be uniquely designed to solve that State's problems.

In short, most of these standards are goal-oriented and can be accomplished by individual States and localities in a variety of ways. But taken together, they represent the comprehensive approach without which real reform can probably not be achieved.

Under this legislation, a new program of grants and technical assistance to states and localities would be initiated for a period of 7 fiscal years, beginning with July 1, 1974.

A State or locality would be eligible to receive assistance under the act only if the Administrator of LEAA approves a comprehensive criminal justice system reform plan submitted to him pursuant to the act. In order to gain approval, this plan would have to establish the reasonable likelihood of substantial and fundamental change in the criminal justice system of a State or locality within 4 years after the enactment of the act.

In order to foster the goals and standards which two Presidential commissions have recommended over the past 7 years, the Administrator would be required to give priority consideration in approving plans to those States which, in submitting their comprehensive State plans, included a variety of provisions relating to every major element of the criminal justice system.

LAW ENFORCEMENT

In the law enforcement area, these provisions would set uniform standards throughout each State seeking to participate in the program. The need for such uniform standards was endorsed by the task force on the police of the President's Commission on Law Enforcement and Administration of Justice:

Many (police) departments provide little or no training, use ineffectual selection and screening techniques, and have no organized recruiting programs. This results in substantial variation in the quality of police service, not only in different areas of the country, but within the same State.

The bill also calls for appropriate educational requirements for advancement which are uniform throughout each State. Linking education with promotion will simultaneously encourage police officers to pursue advanced education and improve the quality of the upper ranks of the police service. The President's Commission on Law Enforcement and Administration of Justice recommended this approach to improving the quality of law enforcement personnel.

Another important standard would provide for beginning compensation and increases in compensation which are appropriate for a professional—considering the size of the community for law enforcement personnel and the cost of living in the community in which such individuals serve.

Other standards in the area of police and law enforcement personnel include a uniform, statewide retirement and pension system; to the extent possible, uniform promotional policies and standard operational procedures throughout the State; lateral entry between law enforcement agencies within the State and between Federal, State, and local law enforcement agencies located within the State; facilities offering short-term mandatory training for all police personnel; programs to increased use of civilian personnel; volunteer neighborhood security programs, where feasible, and community crime prevention units; and policing programs to insure stability of assignment in given geographic areas for individual patrol officers.

For most of these standards, significant changes will be needed in the police practices and standards now in place in most jurisdictions within the country. This is the intent of this legislation—to act as a Federal incentive to undertake the type of systemic changes which will help bring about more effective law enforcement in the States participating in the demonstration program established by this legislation.

DISPOSITION OF CRIMINAL CASES

The bill contains one basic standard designed to accomplish the speedy disposition of criminal cases in those States participating in the program. This standard calls on a State—and its localities—to implement whatever reforms necessary to insure that the trial of all criminal cases will be commenced no later than 60 days from the date of a defendant's arrest or the initiation of prosecution whichever occurs first. Failure to meet this standard will result in dismissal with prejudice of the charges against the defendant.

The administrator of this program will specify those periods of delay to be excluded in computing the time for commencement of a trial. For example, delays due to the absence or unavailability of a defendant or hearings on defense motions would probably be excluded from this 60-day limitation.

Underlying this basic standard is the need for States and localities to reform their judicial system in whatever way they deem appropriate to meet the 60-day deadline. Some States might have to increase the number of judges and clerks, and build more courthouses; other States might be able to reach this goal by streamlining their judicial system through the use of professional court administrators and more efficient court procedures. Increasing personnel engaged in prosecuting criminal cases and defending indigents may be another means of reaching this goal.

In any event, the administrator of this act would simply determine whether a

State's reform proposals were adequate to insure a speedy trial; the Federal Government would not be dictating a particular scheme for reform.

The speedy disposition of criminal cases is one of the most vital reforms in this bill.

A speedy trial eliminates the unfairness inherent in the lengthy pretrial detention of a defendant—presumed innocent under our system—who cannot raise bail or who is denied bail. Pretrial detention often hampers a defendant in adequately preparing his defense, and while awaiting trial he will usually be confined in an overcrowded institution.

But far more than unfairness to individual defendants results from long delays in disposing of criminal cases. It is clear that such delays are a major cause of our increasing crime rate.

Long delays in bringing a defendant to trial often make it more difficult for the Government to obtain a conviction. Witnesses tend to be less reliable after such delays, and some witnesses are no longer available. And it is the repeat criminal offender who is usually aware of the advantages of a long delay between arrest and trial.

Studies have shown that the longer it takes to bring to trial a defendant out on bail, the more likely it is he will commit a crime while awaiting trial. The pressure for some form of preventive detention would be reduced by more speedy trials.

Finally, it is a truism of criminology that the surest deterrent to crime is the knowledge that its commission will be followed by swift and appropriate punishment. The delays in most judicial systems have obviously negated the impact of this important type of deterrence.

Chief Justice Burger, recognizing the link between increasing crime and court delays, has also recommended a 60-day limit for the commencement of all criminal trials.

I cannot think of any judicial factor more important than delay and uncertainty. It's always difficult to assign priorities in this sort of thing, but I know of none I can think of more important than the absence of the sure knowledge that a criminal act will be followed by a speedy trial and punishment. And that's why I have said that if we could have every criminal trial ready to be presented within 60 days after the arrest or the charge, I think you'd see a very, very sharp drop in the crime rate. It would surely put an end to the large number of crimes committed by men out on bail waiting six months to 18 months to be brought to trial.

As the Chief Justice pointed out:

We cannot blindly cling to methods and forms designed for the 17th and 18th centuries.

Also in the area of disposition of criminal cases, the bill recommends the establishment of family courts with jurisdiction over all legal matters related to family life. This recommendation of the National Advisory Commission on Criminal Justice Standards and Goals would help integrate the entire system of justice as it relates to the family, so that the juvenile court does not continue to be a distinct entity which largely ignores the many close relationships between de-

linquency and other family problems. This concept, as now used in New York, the District of Columbia, and Hawaii, would be a valuable addition in aiding the courts to deal with problems of the family unit effectively.

Finally, the bill recommends the implementation of standards leading to the reduction of plea negotiations between defendants and prosecutors, on an experimental basis, to determine the impact of such reductions on the criminal justice system and the goal of reducing the time between arrest and trial.

The National Advisory Commission on Criminal Justice Standards and Goals has recommended that plea negotiations be abolished by no later than 1978. The Commission felt strongly that plea negotiations, in the manner in which they are presently being carried out—especially in large metropolitan areas—posed a major threat to the public and the defendant. The public is threatened because of the increased use of light, plea-negotiated sentences, and defendants' rights may be threatened because of the tendency of some defense attorneys to engage in plea negotiations primarily to expedite the movement of cases.

Clearly, the goal of reducing the time between arrest and trial—which is the principal aim of this section of the bill—may be at odds with the elimination of plea bargaining. In fact, the widespread growth of plea bargaining is largely the result of burgeoning caseloads and inadequate personnel to handle them. Nevertheless, the legislation seeks to encourage States and localities to try—on an experimental basis—a reduction in plea bargaining, in an attempt to learn more both about the effects of such a reduction on the criminal justice system and on the goal of speedy trials.

By not requiring a specified reduction or the elimination of plea bargaining, it is my hope to prod the States and localities participating in this act to undertake as much of a reduction as is possible consistent with the goals of the act, in a concerted attempt to insure the public that criminals are not routinely given light, plea-bargained sentences merely because of the lack of adequate personnel, and to insure criminal defendants that their rights to trial will be fully protected.

CORRECTIONS

As the President's Commission on Law Enforcement and Administration of Justice observed:

For a great many offenders . . . corrections does not correct. Indeed, experts are increasingly coming to feel that the conditions under which many offenders are handled, particularly in institutions, are often a positive detriment to rehabilitation.

But in corrections, just as in other aspects of the criminal justice system the recognition of major defects does not automatically lead to meaningful reform.

The President's Crime Commission and other experts have called for the development of a far broader range of alternatives for dealing with offenders. As the Commission points out:

While there are some who must be completely segregated from society, there are

many instances in which segregation does more harm than good.

For the incorrigible offender who poses a clear danger to society, maximum security prisons are necessary. But it makes no sense to build an entire prison system designed to serve only the most hardened criminals, thereby forcing all other classes of inmates to adapt to such an institution.

The importance of properly classifying offenders was underlined by the disturbing finding of the President's Crime Commission:

That approximately one-fourth of the 400,000 children detained in 1965—for a variety of causes but including truancy, smoking, and running away from home—were held in adult jails and lockups, often with hardened criminals.

As the President's Commission and others have emphasized, a variety of penal institutions and programs are required to meet the special needs of various types of offenders. In particular the development of community-based correctional facilities—designed to avoid the use of far-removed and isolated institutions—is considered an extremely valuable rehabilitation tool.

But regardless of how an inmate is classified, it is important that institutions be adequately equipped and staffed to treat the inmates assigned there.

Therefore, the bill stresses the development of facilities and programs to match the type of corrections treatment to the age, abilities, and particular problems of the inmate. The bill's standards also stress the need for improving the working conditions of and establishing minimum standards for parole and probation officers, and for facilitating the improvement of employment opportunities for ex-offenders.

Specifically, the standards in the area of corrections would call on the States to:

Establish a system for classifying persons charged with or convicted of, criminal offenses so as to permit individualized treatment and security standards appropriate to the individual;

Establish a range of correctional facilities that are adequately equipped and staffed to treat the particular classifications of inmates assigned there;

Provide comprehensive vocational and educational programs designed for the special needs of rehabilitating each class of persons charged with or convicted of criminal offenses;

Provide separate detention facilities for juveniles, including shelter facilities outside the correctional system for abandoned, neglected, or runaway children;

Establish standards applicable throughout the State for local jails and misdemeanor institutions to be enforced by the appropriate State corrections agency;

Provide parole and probation services for felons, for juveniles, for adult misdemeanants who need or can profit from community treatment, and supervisory services for offenders who are released from correctional institutions without parole;

Establish caseload standards for parole and probation officers that vary in size

and in type and intensity of treatment according to the needs and problems of the offender;

Establish statewide job qualifications and compensation schedules for correctional officers, including probation and parole officers, along with a mandatory system of in-service training;

Develop and operate programs of treatment and rehabilitation for persons suffering from alcoholism and drug abuse, available both to inmates and as an alternative to incarceration;

Facilitate the improvement of employment opportunities for ex-offenders, including the repeal of all mandatory provisions in law or civil service regulations that deprive such ex-offenders of opportunities for employment; and

Unify within the executive branch all non-Federal correctional functions and programs for adults and juveniles.

OTHER PROVISIONS

In the area of administration, the bill calls on the State applying for assistance under the bill to study the consolidation of law enforcement agencies within the State and to report its findings to the Administrator of LEAA within 2 years.

In addition, the State would study the application of the criminal laws and the propriety of the application of such laws, to a variety of "victimless" crimes, including alcoholism and drunkenness; gambling; vagrancy; disorderly conduct; and other appropriate areas. And, narcotics addiction and drug abuse would be similarly studied, with the results of all these studies to be reported to the Administrator within 2 years.

Finally, the State would be called on to create a permanent criminal law review commission to review legislative proposals bearing criminal penalties, and to propose suitable legislation to correct functional gaps in the statutes of the State as they relate to criminal law enforcement.

FEDERAL FUNDING

In order to provide strong incentives for States and localities to undertake the type of comprehensive criminal justice system reform envisioned in the bill, the Federal share of funding needed to undertake these reforms would range from 50 to 90 percent, depending on the particular nature of the program involved. For those standards set forth in the bill which are part of an approved State plan and which do not require the enactment of new legislation or ordinances, the Federal share would be 75 percent. For those standards which require such legislation, the Federal share would increase to 90 percent. And, for those elements of an approved State plan which are not enumerated in the standards of the bill, the Federal share would be 50 percent.

These funding levels are specifically set in order to encourage States and localities to undertake the most thorough and comprehensive criminal justice system reform possible. By placing priority in Federal funding on those longer-term proposals which require new legislation, it is my hope that we can encourage the States to begin quickly the type of revision in State law which will be needed in order to reduce crime and improve the

quality of service by the criminal justice system to both the public and those involved in the system.

Since much of this bill seeks to use a comprehensive, demonstration project approach to the total criminal problem, funding would be made available for a maximum of six States. The legislation would direct the Administrator of LEAA to disburse the recipient States geographically, to the maximum extent feasible, although the principal criterion for approval would remain the extent to which the individual State included in its plan the reforms specifically designated in the bill.

In addition, the bill provides for Federal payments of 50 percent of the cost of preparing State plans for submission to the LEAA Administrator, and contains strong safeguards to insure that moneys expended under the legislation are properly used, and are employed to supplement—rather than supplant—existing Federal efforts in the area of the criminal justice system.

Mr. President, we must recognize that State and local governments have and should continue to have the primary responsibility in dealing with the problems of crime. But we must also recognize the general feeling of public dissatisfaction with the overall crime-fighting effort at every level of Government. We must avoid turning all law enforcement into the responsibility of the Federal Government. But if this is to be avoided, it is imperative that State and local governments begin the job of reforming their outmoded criminal justice systems.

This bill, then, is not an effort to make the Federal Government responsible for all law enforcement. Instead, it is based on the assumption that the States and localities—with substantial Federal assistance—can sharply reduce their crime rate by comprehensive criminal justice reforms.

Justice Felix Frankfurter reminded us some years ago that—

There is no inevitability in history except as men make it.

And yet, for too long, Government has acted as if an increasing rate of crime was inevitable and beyond its reach. We have been overwhelmed by the apparent complexity of the problem, ignoring the obvious relationship between rising crime, on the one hand, and low police salaries, long court delays, and disgraceful prisons on the other.

Many of the reforms which this bill seeks to encourage are relatively easy to implement; others will take time and require the investment of money and other resources.

But we clearly have the means to carry through all of these reforms and to make them work.

Rising crime need not be a fact of life during the next decade. Only our inaction and inertia will make it so.

Mr. President, I ask unanimous consent that the text of this legislation and a section-by-section analysis appear in the Record at the conclusion of my remarks.

There being no objection, the bill and analysis were ordered to be printed in the Record, as follows:

S. 3227

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Model Criminal Justice Reform Act of 1974".

DECLARATION OF POLICY

SEC. 2. The Congress hereby finds that—

(1) the ever-increasing number of serious crimes committed in the United States, the backlog of criminal cases in the courts, and the overcrowded and inadequate conditions of correctional institutions require that only comprehensive reform can achieve a truly adequate system of criminal justice in the United States;

(2) effective control and prevention of crime can best be attained if States and localities adopt comprehensive criminal justice reforms, including reforms in recruiting, training, compensating, and supervising police and other law enforcement personnel, expediting and improving criminal court procedures, and strengthening correctional systems;

(3) the recommendations of the President's Commission on Law Enforcement and the Administration of Justice, and the National Advisory Commission on Criminal Justice Standards and Goals, together with the planning and recommendations of a number of State planning agencies and commissions and other agencies provide an excellent basis for the adoption of such reforms;

(4) the responsibility for law enforcement and the administration of criminal justice is essentially the responsibility of State and local governments, but the Federal Government has a responsibility and a unique opportunity to provide financial and technical assistance to encourage demonstration projects leading to comprehensive criminal justice reform; and

(5) adoption of a demonstration approach to such comprehensive reform will prove useful in establishing the most effective means to implement fundamental change in the criminal justice system.

DEFINITIONS

SEC. 3. As used in this Act—

(1) "Administration" means the Law Enforcement Assistance Administration;

(2) "Administrator" means the Administrator of Law Enforcement Assistance Administration;

(3) "criminal offense" includes juvenile offenses, except as otherwise specified;

(4) "locality" means any city or other municipality (or two or more municipalities acting jointly) or any county or other political subdivision or State (or two or more acting jointly) having general governmental powers;

(5) "Federal agency" means any department, agency, or independent establishment in the executive branch of the Government, including any wholly owned Government corporation; and

(6) "State" means each of the several States of the Union, and the District of Columbia.

PROGRAM AUTHORIZED

SEC. 4. The Administrator is authorized to make grants and provide technical assistance to States and localities for demonstration projects in accordance with the provisions of this Act, beginning July 1, 1974, and ending June 30, 1981.

ELIGIBILITY FOR ASSISTANCE

SEC. 5. (a) A State or locality is eligible for assistance under this Act only if the Administrator determines, pursuant to regulations established by him under section 8, that a plan for comprehensive criminal justice system reform submitted to him pursuant to this Act establishes the reasonable likelihood of substantial and fundamental change in the criminal justice system of such

State or locality within four years after the enactment of this act.

(b) In approving State plans for comprehensive criminal justice system reform pursuant to this Act, the Administrator shall give priority consideration to those States which, in submitting such plans, include the following provisions:

(1) The State (and, where appropriate, any locality within such State eligible to receive assistance under this Act) will establish, with respect to police and other similar law enforcement personnel—

(A) standards for recruitment which are uniform throughout the State;

(B) appropriate educational requirements for advancement which are uniform throughout the State;

(C) beginning compensation and increases in compensation which are appropriate for a professional, considering the size of the community and the lost of living in the community in which such personnel serve;

(D) a retirement system that is uniform throughout the State, and a statewide pension plan for such personnel;

(E) to the extent possible, uniform promotional policies for such personnel throughout the State;

(F) to the extent appropriate, standard operational procedures for such personnel throughout the State;

(G) lateral entry between law enforcement agencies of each locality within the State and between Federal, State, and local law enforcement agencies located within the State, with appropriate conditions on the period of initial service for such personnel; and

(H) facilities offering short-term mandatory training for all such personnel within the State;

(I) programs to increase use of civilian personnel in all police tasks suitable for performance by such personnel;

(J) volunteer neighborhood security programs, where feasible, and crime prevention units to work with the community in reducing criminal opportunities; and

(K) policing programs to insure stability of assignment in a given geographic area for individual patrol officers who are operationally deployed.

(2) The State and any locality within such State having jurisdiction over the trial of criminal offenses will implement such necessary reforms as will insure that (A) the trial of all such offenses (excluding juvenile offenses) will be commenced no later than sixty days from and date on which the defendant was arrested or from the date on which the defendant was charged by the authorities with such offense, whichever occurs first, and (B) the charges will be dismissed with prejudice for failure to comply with the requirements of this paragraph, except that the Administrator shall, by regulation, provide for the exclusion from such sixty-day period of any periods of delay that he designates as may reasonably be necessitated in the interest of justice; and reforms under this paragraph may include, without limitation—

(i) increasing the number of judges trying criminal offenses;

(ii) improving the efficiency of criminal court procedures;

(iii) appointing professional court administrators;

(iv) increasing personnel engaged in prosecuting and defending criminal cases;

(v) diverting, in appropriate circumstances, of offenders into noncriminal programs before formal trial or conviction;

(vi) implementation of standards leading to the reduction of plea negotiations between defendants and prosecutors, on an experimental basis, to determine the impact of such reductions on the criminal justice system and the goals of this paragraph; and

(vii) establishment of family courts with jurisdiction over all legal matters related to family life.

(3) The State and, where appropriate, each such locality within such State eligible to receive assistance under this Act—

(A) will establish a system for classifying persons charged with, or convicted of, criminal offenses so as to permit individualized treatment and security standards appropriate to the individual;

(B) will establish a range of correctional facilities that are adequately equipped and staffed to treat the particular classifications of inmates assigned there, including small-unit, community based correctional institutions;

(C) will provide comprehensive vocational and educational programs designed for the special needs of rehabilitating each class of persons charged with or convicted of criminal offenses;

(D) will provide separate detention facilities for juveniles, including shelter facilities outside the correctional system for abandoned, neglected or runaway children;

(E) will establish standards applicable throughout the State for local jails and misdemeanor institutions to be enforced by the appropriate State corrections agency;

(F) will provide parole and probation services for felons, for juveniles, for adult misdemeanants who need or can profit from community treatment, and supervisory services for offenders who are released from correctional institutions without parole;

(G) will establish caseload standards for parole and probation officers that vary in size and in type and intensity of treatment according to the needs and problems of the offender;

(H) will establish statewide job qualifications and compensation schedules for correctional officers, including probation and parole officers, along with a mandatory system of in-service training;

(I) will develop and operate programs of treatment and rehabilitation for persons suffering from alcoholism and drug abuse, available both to inmates and as an alternative to incarceration;

(J) will facilitate the improvement of employment opportunities for ex-offenders, including the repeal of all mandatory provisions in law or civil service regulations that deprive such ex-offenders of opportunities for employment; and

(K) will unify within the executive branch all non-Federal correctional functions and programs for adults and juveniles.

(4) The State will study, through an appropriate and responsible group, the consolidation of law enforcement agencies within such State, as best suited to the particular needs of that State; and will report to the Administrator on its findings not later than two years following the approval of its State plan under this Act.

(5) The State (and each locality eligible to receive assistance under this Act) will study through, an appropriate and responsible group, the application of the criminal laws, as well as the propriety of the application of such laws, to—

(A) alcoholism and drunkenness;

(B) narcotics addiction and drug abuse;

(C) gambling;

(D) vagrancy and disorderly conduct; and

(E) such other related areas which the State deems appropriate

and will report to the Administrator on its findings with respect to such matters not later than two years after the approval of its State plan.

(6) The State will create a permanent criminal law review commission to review legislative proposals bearing criminal penalties, and to propose suitable legislation to correct functional gaps in statutes of that State as they relate to criminal law enforcement.

(c) Pursuant to regulations which he shall promulgate, the Administrator shall classify the provisions of subsection (b) of this section in the following manner—

(1) phase one—All provisions (A) which the State can meet without the enactment of legislation of general applicability for such State or the enactment of ordinances by the governing body of the appropriate locality within such State, or (B) which the Administrator determines can be met within a relatively short period of time; and

(2) phase two—All provisions (A) which will require the enactment of legislation of general applicability for such State or by the enactment of ordinances by the governing body of the appropriate locality within such State, or (B) which the Administrator determines will require more time than is specified under paragraph (1) of this subsection.

STATE PLANS

SEC. 6. (a) Any State desiring to receive assistance under this Act shall submit a State plan consistent with such regulations as the Administrator may establish under section 8. Each such plan shall—

(1) provide for the administration of such plan by the chief executive of such State or by a public agency which is designated, established, or created for the purposes of this Act in accordance with State law;

(2) set forth a comprehensive statewide criminal justice reform program which incorporates, to the maximum extent feasible, the provisions set forth in section 5, including such assurances as may be necessary for the Administrator to determine the Federal share of the cost of any portion of such program;

(3) with respect to any State project, service, or activity which is substantially similar to any such project, service, or activity for which a locality within such State is eligible under this Act, set forth provisions identical to the provisions of the application required under section 7;

(4) set forth policies and procedures which assure that Federal funds made available under this Act for any fiscal year will be so used as to supplement, and to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available by the State for the purposes for which the State plan is submitted, and in no case supplant such funds;

(5) provide that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the State, including funds paid to localities by such State under this Act;

(6) provide that no application by a locality will be denied without first affording the agency submitting such an application reasonable notice and opportunity for a hearing; and

(7) provide that the State will make to the Administrator—

(A) periodic reports evaluating the effectiveness of payments received under this Act in carrying out the objectives of this Act; and

(B) such other reports as may be reasonably necessary to enable the Administrator to perform his functions under this Act, including such reports as he may require to determine the amounts which localities of that State are eligible to receive for any fiscal year, and assurances that such State will keep such records and afford such access thereto as the Administrator may find necessary to assure the correctness and verification of such reports.

(b) The Administrator shall, initially and annually thereafter (subject to limitations contained in section 11 of this Act), approve a plan which meets the requirements specified in subsection (a) of this section and he shall not finally disapprove a plan except after reasonable notice and opportunity for a hearing to such State.

APPROVAL OF PROJECT APPLICATIONS

SEC. 7. (a) A grant under this Act pursuant to an approved State plan for criminal justice reform may be made, upon application, to the appropriate State at such time or times, in such manner, and containing or accompanied by such information as the Administrator deems necessary. Such application shall—

(1) provide that the activities and services for which assistance under this Act is sought will be administered by or under the supervision of the applicant;

(2) set forth a program for criminal justice reform which is consistent, to the maximum extent feasible, with the provisions set forth in section 5 with respect to the applicant;

(3) set forth policies and procedures which assure that Federal funds made available under this Act for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purposes described in the application and in no case supplant such funds;

(4) provide, in the case of an application for assistance under this Act which includes a project for the construction, remodeling, or renovation of necessary facilities, satisfactory assurance that—

(A) upon completion of the construction, title to the facilities will be in a State or local public or private nonprofit agency;

(B) in developing plans for such facilities due consideration will be given to excellence of architecture and design, and efficiency of energy usage;

(C) the requirements of section 15 will be complied with;

(5) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this Act; and

(6) provide for making an annual report and such other reports, in such form and containing such information, as the Administrator may reasonably require to carry out his functions under this Act and to determine the extent to which funds provided under this Act have been effective in carrying out the policy of this Act, and for keeping such records and for affording such access thereto as the Administrator may find necessary to assure the correctness and verification of such reports.

(b) An application by a locality for a grant under this Act may be approved by a State only if it is consistent with the applicable provisions of this Act, and

(1) meets the requirements set forth in subsection (a); and

(2) such State has on file a State criminal justice reform plan approved by the Administrator.

(c) Any locality denied approval under subsection (b) of this section, may within ten days file a written appeal with the Administrator. Upon a determination that the denial was unreasonable or not consistent with terms of the applicable State criminal justice reform plan, the Administrator shall negotiate a resolution of the differences between such State and locality on which the denial of such application was based.

(d) Amendments of applications shall, except as the Administrator may otherwise provide, be subject to approval in the same manner as original applications.

REGULATIONS

SEC. 8. As soon as practicable after the enactment of this Act, the Administrator shall issue such regulations as may be necessary to implement sections 5, 6, and 7. In establishing regulations under this section the Administrator shall consider the recommendations of each of the States and the purposes of this Act.

FINANCIAL ASSISTANCE FOR PLANNING COMPREHENSIVE CRIMINAL JUSTICE REFORM PLANS

SEC. 9. (a) The Administrator is authorized to make grants to, and to contract with, States and localities to pay 50 per centum of the costs of planning and developing State plans and project applications under this Act.

(b) Financial assistance will be provided under this section only if—

(1) the application for such assistance has been approved by the chief executive of the State, and

(2) the Administrator has determined that there exists administrative machinery through which coordination of all related planning activities of localities can be achieved.

TECHNICAL ASSISTANCE

SEC. 10. The Administrator is authorized to undertake such activities as he determines are necessary to provide, either directly or by way of grants, contracts, or other arrangements, technical assistance to States and localities in the planning, developing, and administering of comprehensive criminal justice reform programs for which assistance is provided under this Act.

PAYMENTS

SEC. 11. (a) The Administrator shall pay in any fiscal year to each State which has a plan approved pursuant to this Act for that fiscal year that Federal share of the cost of such plan as determined by him, provided that such plans shall be approved for no more than 6 States, and that in approving such plans, the Administrator shall attempt, to the maximum extent feasible, to provide for representation of different geographical regions of the United States.

(b) The Federal share of programs and projects covered by the State plan which are in phase one under the provisions of section 5(c) of this Act shall be 75 per centum for any fiscal year. The Federal share for programs and projects covered by the State plan which are in phase two shall be 90 per centum for each fiscal year. The Federal share of programs or projects covered by the State plan which are not enumerated in section 5(b) of this Act shall be 50 per centum for any fiscal year.

(c) The Administrator shall pay to each applicant which has an application approved pursuant to section 10, 75 per centum of the cost of such application.

(d) Payments under this section may be made in installments, in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

(e) Grants made under this section, pursuant to a State plan, for programs and projects in any one State shall not exceed in the aggregate 25 per centum of the aggregate amount of funds authorized to be appropriated under section 17.

WITHHOLDING OF PAYMENTS

SEC. 12. Whenever the Administrator, after reasonable notice and opportunity for a hearing to any State, finds—

(1) that there has been a failure to comply substantially with any requirement set forth in the plan of that State approved under section 6; or

(2) that there has been a failure to comply substantially with any requirement set forth in the application of a locality approved pursuant to section 7; or

(3) that in the operation of any program or project assisted under this Act there is a failure to comply substantially with any applicable provision of this Act;

the Administrator shall notify such State of his findings and that no further payments may be made to such State under this Act (or, in his discretion, that the State shall not make further payments under this Act to specified localities affected by the failure).

until he is satisfied that there is no longer any such failure to comply, or the noncompliance will be promptly corrected. The Administrator may authorize the continuance of payments with respect to any program or project assisted under this Act which is being carried out pursuant to such State plan and which is not involved in the noncompliance.

RECOVERY OF PAYMENTS

SEC. 13. If within twenty years after completion of any construction for which Federal funds have been paid under this Act—

- (a) the owner of the facility shall cease to be a State or local public agency; or
- (b) the facility shall cease to be used for the purposes for which it was constructed, unless the Administrator determines there is good cause for releasing the applicant or other owner from the obligation to do so; the United States shall be entitled to recover from the applicant or other owner of the facility an amount which bears to the then value of the facility (or so much thereof as constituted an approved project or projects) the same ratio as the amount of such Federal funds bore to the cost of the facility financed with the aid of such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

REVIEW AND AUDIT

SEC. 14. The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination, to any books, documents, papers, and records of a grant recipient that are pertinent to the grant received.

LABOR STANDARDS

SEC. 15. All laborers and mechanics employed by contractors or subcontractors on all construction projects assisted under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 27a-276a-5). The Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

SAVINGS PROVISION

SEC. 16. Nothing contained in this Act shall be construed to prevent or impair the administration or the enforcement of any other provision of Federal law.

AUTHORIZATION OF APPROPRIATIONS

SEC. 17. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

SECTION-BY-SECTION ANALYSIS: MODEL CRIMINAL JUSTICE REFORM ACT OF 1974

Section 2. Declaration of policy.

Section 3. Definitions.

Section 4. Authorization of program.

The Administrator of the Law Enforcement Assistance Administration is authorized to make grants and provide technical assistance to states and localities for demonstration projects in accordance with terms of the Act over a seven-year period beginning July 1, 1974 and ending June 30, 1981.

Section 5. Eligibility for assistance.

(a) States are eligible for assistance if the Administrator determines that a plan for comprehensive criminal justice system reform submitted to him under the Act establishes the reasonable likelihood of substantial and fundamental change in the criminal justice system of the state and its localities within four years after the date of enactment.

(b) In approving state plans for comprehensive criminal justice system reform, the

Administrator must give priority consideration to states which include the following provisions in their applications.

(1) With respect to police, that the state will establish:

1. uniform recruit standards throughout the state;
2. appropriate educational requirements uniform throughout the state;
3. beginning compensation and increases in compensation appropriate for a professional, considering the size of the community and the cost of living in the relevant community;
4. uniform statewide retirement systems and pension plans;
5. to the extent possible, uniform promotional and operational procedures;
6. lateral entry between local law enforcement agencies within the state and between Federal, state and local law enforcement agencies located within the state;
7. facilities offering short-term mandatory training for all such personnel within the state;
8. programs to increase use of civilian personnel in all police tasks suitable for performance by such personnel;
9. volunteer neighborhood security programs, where feasible, and crime prevention units to work with the community in reducing criminal opportunities; and
10. policing programs to insure stability of assignment in a given geographic area for individual patrol officers who are operationally deployed.

(2) With respect to the courts, that the state will establish whatever reforms are necessary, including increases in court personnel, to insure that trials of all criminal offenses (excluding juvenile offenses) are commenced within 60 days from the date of arrest or charge, whichever comes first. Provision must be made to insure that failure to commence trial, in the absence of exceptions spelled out initially by the Administrator, will result in a dismissal of the case with prejudice.

States may also implement standards leading to the reduction of plea negotiations between defendants and prosecutors on an experimental basis, to determine the impact of such reductions on the criminal justice system and the goals of the bill.

(3) With respect to the corrections system, that the state will establish

1. a system for classifying persons charged with or convicted of criminal offenses;
2. a range of adequately equipped and staffed correctional facilities to treat the various classifications of inmates assigned there, including community-based correctional centers;
3. a comprehensive vocational and educational program designed to accommodate the needs of each class of criminal offenders;
4. separate detention facilities for juveniles including shelter facilities outside the correctional system for abandoned, neglected, or run-away children;
5. standards applicable (statewide) for local jails and misdemeanor institutions to be enforced by the appropriate state corrections agency;
6. parole and probation services for felons, juveniles and adult misdemeanants who need or can profit from community treatment;
7. caseload standards for parole and probation officers based on the needs and problems of the offenders;
8. statewide job qualifications and compensation schedules for correctional officers and probation and parole officers, along with a mandatory system of in-service training;
9. treatment and rehabilitation programs for persons suffering from alcoholism and drug abuse. These programs must be available both to inmates and as an alternative to incarceration;
10. means to facilitate the improvement of employment opportunities for ex-offend-

ers, including the repeal of all mandatory provisions in law or civil service regulations that deprive such ex-offenders of opportunities for employment; and

11. methods to unify within the Executive branch all non-federal correctional functions and programs for adults and juveniles.

(4) That the state will study the consolidation of law enforcement agencies within the state, as best suited to the particular needs of the state, and report to the Administrator on its finding within two years.

(5) That the state will study the application of the criminal law—and the propriety of such application—to alcoholism and drunkenness; narcotics addiction and drug abuse; gambling; vagrancy and disorderly conduct; and other areas the state deems appropriate. The state must report to the Administrator on its findings within two years.

(6) That the State will create a permanent criminal law review commission to review legislative proposals bearing criminal penalties, and to propose suitable legislation to correct functional gaps in statutes of that state as they relate to criminal law enforcement.

(c) The Administrator must classify the specific reform elements of subsection (b) in the following manner:

(1) phase one—all provisions which the state can reasonably assure will be met without the enactment of legislation (ordinances where appropriate) or those which the Administrator determines can be met in a relatively short period of time.

(2) phase two—all provisions which will require the enactment of legislation (ordinances where appropriate) or those which the Administrator determines will require more time than is specified for phase one.

Section 6. State plans.

(a) A state desiring assistance under the Act must submit a state plan consistent with appropriate regulations issued by the Administrator. Each plan must

1. provide for the administration of such plans by the chief executive of such State or by a public agency designated, established or created for the purposes of this act;

2. set forth a comprehensive program which incorporates to the maximum extent feasible, the provisions set forth in section 5, including the assurances enabling the Administrator to determine the federal share for the cost of any portion of such program;

3. with respect to any State project, service, or activity which is substantially similar to any such project, service, or activity for which a locality within such State is eligible under this Act, set forth provisions identical to the provisions of the application required under section 7.

4. set forth policies and procedures which assure that the federal funds will be used to pay the cost of reform beyond those funds that, in the absence of federal funds, would be made available by the state for the purposes for which the state plan is submitted;

5. provide for the appropriate fiscal control and fund accounting procedures;

6. provide reasonable notice and an opportunity for a hearing to localities before an application is denied; and

7. provide that the state will make periodic reports to the Administrator evaluating the effectiveness of the payments received and to enable the Administrator to perform his functions under the Act. A state must also assure that it will keep records that are made accessible to the Administrator for the purpose of verifying such report.

(b) The Administrator shall approve a plan, initially and annually thereafter, which meets the requirements of subsection (a) of this section. He cannot disapprove a plan except after reasonable notice and an opportunity for a hearing to such State.

Section 7. Approval of project applications

(a) Grants may be made pursuant to an

approved state plan and upon application by the state. The application must:

1. contain assurances that the applicant will supervise the administration of the activities and services for which assistance under this Act is sought.
2. set forth a program consistent, to the maximum extent feasible, with the provisions of section 5.
3. set forth policies and procedures that will insure that federal money will only be spent on the cost of reform.
4. provide that, in the case of construction projects,

(A) title will be in a state or local public agency;

(B) consideration will be given to excellence of architectural design;

(C) the requirements of section 15 will be complied with;

5. provide for appropriate fiscal control and fund accounting procedures.

6. provide for making an annual report and such other reports containing sufficient information to enable the Administrator to evaluate the effectiveness of the Act.

(b) An application by a locality may be approved by a state only if it is consistent with this Act and:

1. they meet the requirements of subsection (a); and

2. such state has on file a state criminal justice reform plan approved by the Administrator.

(c) If approval is denied to a locality under subsection (b), the locality may file a written appeal within 10 days with the Administrator. If it is determined that the denial was unreasonable or inconsistent with that state's criminal justice reform plan, the Administrator shall negotiate a resolution of the differences between such state and locality on which the denial was based.

(d) Amendments of applications shall, except as the Administrator may otherwise provide, be subject to approval in the same manner as original applications.

Section 8. Regulations.

The Administrator is required to issue the appropriate regulations. Under this section the Administrator shall consider the recommendations of each of the states and the purposes of this Act.

Section 9. Financial assistance for planning comprehensive criminal justice reform plans.

(a) The administrator is authorized to pay 50% of the costs of planning and developing state plans and project applications under this Act.

(b) Financial assistance will be provided under this section only if—

(1) the chief executive of this state has approved such application, and

(2) the Administrator has determined that sufficient administrative machinery exists through which the coordination of all related planning activities of localities can be achieved.

Section 10. Technical assistance.

The Administrator is authorized to make arrangements, financial and otherwise, for technical assistance to states and localities in the planning, developing and administering of their programs.

Section 11. Payments.

(a) The Administrator must pay to each state with an approved plan the federal share of the cost of such plan as determined by him. Such state plans may be approved for no more than six states, and in approving such plans, the Administrator must attempt, to the maximum extent feasible, to provide for representation of different geographical regions of the country.

(b) The federal share of programs and projects covered by the state plan which are determined to be in phase one as outlined in section 5(c) shall be 75% for any fiscal year. The federal share for programs and

projects covered by the state plan which are in phase two shall be 90%. The federal share of programs and projects which are included in an approved state plan, but which are not listed in section 5(b), shall be 50%.

(c) The Administrator shall pay 75 percent of the technical assistance applications that have been approved under section 10.

(d) Payments under this section may be made in installments, in advance or by way of reimbursements, with necessary adjustments on accounts of overpayments or underpayments.

(e) Grants made under this section pursuant to a state plan shall not exceed 25% of the aggregate amount of funds authorized to be appropriated under section 17.

Section 12. Withholding of payments.

The Administrator may withhold grants for so long as, after reasonable opportunity for a hearing, he finds

(1) Failure to comply with any part of the state plan, or

(2) Failure to comply with any requirement set forth in the application of a locality, or

(3) Failure to comply with any applicable provision of the Act.

Section 13. Recovery of payments.

Federal recovery of payments used for construction of facilities for the purpose of the Act shall be permitted within 20 years where the facility is no longer being used in accordance with the Act.

Section 14. Review and audit.

The Administrator and U.S. Comptroller General shall have power to review and audit any records of grant recipients.

Section 15. Labor standards.

Fair labor standards shall be met in the construction of facilities under the Act.

Section 16. Savings provision.

Nothing in the Act shall be construed to prevent the administration of any other provision of Federal law.

Section 17. Authorization of appropriations.

Such sums as may be necessary to carry out the Act are authorized to be appropriated.

Mr. EAGLETON. Mr. President, I am pleased to join with Senators MONDALE, BROOKE, and STAFFORD in sponsoring, once again, the "Model Criminal Justice Reform Act."

This bill originated 3 years ago when it was first introduced by Senators MONDALE, BROOKE, SAXBE, and myself, each of us having formerly been the attorney general of his home State. Senator SAXBE, of course, is now U.S. Attorney General Saxbe and I am very gratified that he recently restated his support for the concept embodied in this bill; that is, the establishment of a series of goals for all elements of the criminal justice system and the provision of Federal financial support, on a demonstration basis, to aid States in achieving these goals.

We are indeed fortunate to have the distinguished Senator from Vermont (Mr. STAFFORD), also formerly the attorney general of his home State, join in place of former Senator Saxbe, thus maintaining the bipartisan sponsorship.

I am also pleased that each of the sponsors is joining today in cosponsoring of my bill, S. 1114, the Criminal Justice Reform Act, which I introduced on March 6, 1973. S. 1114 is itself modeled on the bill we are offering today except for a revision of the State plan requirements. It is in many respects the twin of this bill and I am confident that the bipartisan support for these bills will

ultimately be manifested in the enactment into law of the concept contained in them.

By MR. MONTTOYA (for himself Mr. DOMENICI and Mr. MOSS):

S. 3230. A bill to provide for the efficient development of the natural resources of the Navajo and Hopi Reservations for the benefit of its residents, to assist the members of the Navajo and Hopi Tribes in becoming economically fully self-supporting, to resolve a land dispute between the Navajo and Hopi Tribes, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. MONTTOYA. Mr. President, I am pleased to submit today, on behalf of my fellow Senator from New Mexico (Mr. DOMENICI) our neighbor and colleague to the northwest (Mr. MOSS) and myself, a bill offering a solution to the Navajo-Hopi land dispute, and providing, at the same time, for the economic development of the Navajo and Hopi Reservations.

The Navajo-Hopi land dispute has been before committees of the Congress with increasing frequency since 1958. Previous attempts to reconcile conflicting claims have failed, but now the Congress seems determined to provide a final solution to the problem. In the coming weeks, I will be inserting into the Record background material on the dispute as well as on the need for economic development of the region. Today, however, my comments will be relatively brief.

For years now the time which members of the congressional Interior Committees have devoted to a consideration of the problems of the Navajos and Hopis has largely been allocated to one subject: The land dispute between the Navajos and Hopis. Yet, in spite of allegations to the contrary, the people of the two tribes have been, aside from occasional unrelated altercations, at peace with each other. The "dispute" has been raging in the Congress and in congressional hearings.

One reason why the people themselves have not been "disputing" is that they are preoccupied with the hard task of eking out a meager living under very difficult circumstances. For, as distinct from the manmade argument over real estate, there are serious problems which nature poses to the people who want to live on the Navajo and Hopi Reservations. These are the problems with which the inhabitants of the area must deal on a day-by-day basis. They are problems which can be solved. The area can be made economically viable and its residents self-supporting. But to accomplish these goals requires foresight, imagination and—congressional assistance.

If we strip away from the present legislative controversy over Hopi-Navajo affairs the legalisms, the preoccupation with real estate titles, the reliving of 19th century ethnic disputes, if our focus of attention were to shift from official spokesmen to just plain people, Navajo and Hopi herdsman and farmers, we would see the following: Thousands of men and women, working hard to support themselves on what is now a totally

inadequate economic base. For the shortage in this area is not a shortage of living space. There would be plenty of room for tens of thousands additional Hopis and Navajos. The shortage is a shortage of blades of grass.

This shortage is not limited to the area in controversy between the Hopis and Navajos on which congressional attention has focused. It extends to the entire reservation area. To be sure, it has been pointed out over the years that Hopis engage in good conservation practices and that Navajos tend to overgraze. The finger has been pointed at the Navajos time and again for following a pattern of land utilization which will increasingly turn their reservation into a desert.

But the people at whom the finger is thus pointed are not affluent ranchers, who are being called upon to reduce the profit margin of their enterprise. They are families living on a bare subsistence level. What they are doing, as they increase their herds, is to provide sustenance for their families in the only way they know.

For the reservation population is increasing at an accelerated rate. The one Government program which has unquestionably been effective in the Indian country has been the health program. Infant mortality has dropped sharply, tuberculosis has been all but stamped out, and the incidence of mortality from infectious diseases has been substantially reduced. Yet, the birth rate has not as yet adjusted to these new conditions and the population curve is now shooting upward.

But available opportunities to earn a livelihood have not increased proportionately. The agricultural base, which was able to sustain a much smaller population, is shrinking and the various programs to provide alternative modes of employment have fallen far short of closing the gap. Relocation of the surplus population of Indian reservations to urban centers was once advocated and encouraged by Government programs. Yet, the overcrowding of our metropolitan areas has caused the Government to abandon this approach, which, at any rate, had never been popular with the Indian people.

Thus, on this reservation area, which stretches from New Mexico to Arizona and Utah, the Indian population continues to increase at a rapid rate while the available supportive resources lag further and further behind. Government and tribal service programs, the ploughing back into the economy of mineral income, make a situation which would otherwise be desperate just barely tolerable.

There has, to be sure, been a great deal of conversation about economic development. The concept has enthusiastic verbal support in all interested circles. But when one tries to determine to what extent words have been translated into reality, one discovers that only a pitifully small start has been made to build a healthy economic base for these Indian reservations. A vast rural slum for over 100,000 people is in the making.

It is the problems of poverty, of a rapidly expanding population on a shrinking economic base which are the true problems of this area. These are the problems which should take the time and attention of the Congress.

As yet the situation is not as bleak as it could become. The traditional social fabric still exists. Family ties are strong. We do not encounter here the symptoms of total social disorganization so prevalent in some of the other areas of economic deprivation. People's spirits have not as yet been broken. Chronic dependency has not yet been created. A vigorous economic development effort could succeed here better and faster than it might in many other places.

But this effort should be undertaken without further delay. The totally disorganized and haphazard expenditure of funds on Federal programs and federally financed tribal programs—dependent as they are not on what the tribe believes it needs but what the Federal Government is prepared to fund—should be replaced by a deliberate, purposeful effort to build a self-supporting economic structure, to turn an economic liability of the Southwest into an economic asset.

The last decade has taught us that not all social problems are amenable to solution "by throwing money at them." But that does not mean that sound economic planning cannot serve to reduce unemployment and dependence and thus help avoid the creation of serious social problems. A comprehensive, unified effort to improve the economic base on the Navajo and Hopi Reservations could have a multitude of benefits for the people directly affected, for the States in which they live, and for the country as a whole.

But any attempt to improve the economic base of the Navajo Reservation and the lives of its residents would be hindered significantly by an approach to the Navajo-Hopi land dispute which would uproot upward of 6,500 Navajos and cause their opportunity to earn a livelihood to be totally destroyed. The results of this upheaval are not only going to affect the people who would be moved, but also those reservation communities which will have to take the expellees in and will have to provide for them.

The bill which we are introducing today provides for a resolution to the land dispute based both on human compassion and a concern for the taxpayer's dollar. It is also a solution which is in keeping with precedents set by Congress over and over again in similar situations.

What we find here is a situation in which certain land has for generations been used and occupied by Hopis while other land has been used and occupied by Navajos. We say that the Hopis should be given a clear interest in all the land which they have used and occupied and are now using and occupying and that the Navajos should be granted the same right in the land which they have been using and occupying. We also say that each tribe should be granted easements on the land of the other tribe for any ceremonial or other traditional uses they may have made of that land.

Under our solution, the Navajos would be authorized to buy out the Hopis' vested interest in the surface of some of the land on which these Navajos have lived for generations. That vested interest was created by an act of Congress passed as recently as 1958.

If private land were involved here, the Navajos would long ago have acquired it under adverse possession. If they were non-Indians having a long-term residence or making long-term use of Indian land, we would provide for a buyout, as we did in passing such laws as the Pueblo Lands Act of 1924, the Ute Jurisdictional Act of 1938, the Indian Claims Commission Act of 1946, and the Alaska Native Claims Settlement Act of 1971. We suggest that the same policy be applied here, that we do not discriminate against the Navajos by applying a different policy to them from that which we would apply if they were non-Indian settlers who had lived on a tract of Indian land for a century.

To sum up, a permanent solution to the problem confronting the Navajo and Hopi Reservations must be based on two equally important components. The approach must be one which leads to a condition of economic self-support for the two reservations. But it must also be an approach which permits the resolution of the Navajo-Hopi land dispute in a manner which recognizes and respects human needs, and which does not visit upon thousands of Navajos the devastating economic and social dislocation that inevitably will result from a program of massive removal and relocation.

Mr. DOMENICI. Mr. President, I am extremely pleased to join today with the distinguished senior Senator from New Mexico (Mr. MONROYA) in introducing legislation designed to finally put to rest the problem of land use and occupancy which exists between the Navajo and Hopi tribes.

The history of this problem is one of which no one can be proud, especially the U.S. Government and the Congress of the United States. The problem has its roots in Government actions and it owes its longevity to continued Government failure to establish and follow policies to equitably settle the resultant dispute.

I will say no more about the history of this problem since it is well recorded in congressional documents and well known by many Members of the Congress. I feel it is sufficient to say that the time is well past due for resolution of a problem which had its origin in 1832.

My distinguished colleague from New Mexico has addressed himself eloquently to the broader aspects of the relations between the Navajo and Hopi tribes and to some of the problems which plague both tribes—problems this bill attempts to address through the creation and operation of the Navajo-Hopi Development Commission. Among the major functions of that Commission would be those which would contribute toward making the entire area economically viable and self-supporting. I associate myself with those remarks and I hope the concept and programs proposed in titles I and II

will receive full examination and consideration as part of the legislative process.

My, remarks, Mr. President, are directed primarily at the proposals in this bill designed to finally settle the land interests of the Navajo and Hopi people. For reasons I will outline, I feel this bill would provide a fairer solution than any other settlement proposal I am aware of.

On the reservation in question it is an established fact that land use and occupancy of long duration are at conflict with asserted legal interests of questionable validity. It, therefore, becomes the duty of those who have the power to do so, to provide an equitable means to resolve for all time the conflicting interests. The power and the obligation to develop and institute that resolution is in the Congress.

This bill breaks the land area involved down into three major categories, all three of which are definite, identifiable geographic areas within the larger Navajo Reservation. One area is that which is for the exclusive use of the Hopi Tribe and this bill confirms that separate, exclusive use by the Hopis.

The second area is one designated in the bill as "the joint use area" because in that area it is recognized that the Navajo people and the Hopi people have a joint, equal and undivided one-half interest. This bill would settle the conflicting claims of Navajos and Hopis by having the Commission referred to previously identify and dispose of three subcategories of land, depending on land use as of July 27, 1958. This date is proposed since it is the date of the Navajo-Hopi Jurisdictional Act which represents the last statutory attempt to settle conflicting claims of land interest between the two tribes. The three subcategories of land and the disposition of each category would be as follows:

First. Land which on July 22, 1958, was used by Hopi Indians for residential or agricultural purposes—to be held in trust for the Hopi Indian Tribe.

Second. Land which on July 22, 1958, was used by Navajo Indians for residential or agricultural purposes—to be held in trust for the Navajo Tribe of Indians.

Third. Lands identified under the second subcategory in the joint use area which on July 22, 1958, were used by Hopi Indians for certain specific purposes, including ceremonial and hunting purposes—to be subject to easements in favor of the United States in trust for the Hopi Indian Tribe according to the specific uses made on or about July 22, 1958.

It is anticipated that the value of the surface interests which would be identified in subcategory 1 to be held in trust for the Hopis, would be less than one-half the value of the surface interests of the total area of joint use. This bill provides that the Navajos would pay the Hopis from a Government loan the difference between one-half the total surface interest and the total surface value of lands to be held in trust for the Hopis. This would compensate the Hopi people for having received in actual land less than one-half of the area of present joint use and would require very little, if any, dislocation of Indian families.

This method would also be the less ex-

pensive to the taxpayer since relocation allowances would be held to a minimum and since the Navajo Tribe would repay the Government loan from proceeds it will receive from its part of funds derived from the sale of minerals.

It should be noted that all these provisions in the joint use extend only to surface rights and maintain equal rights of the two tribes to all minerals in the joint use area.

The third category of land interests recognized by this bill covers the area related to the act of 1934. In this area, known as the Moencopi Area, the bill would authorize a judicial determination of the interests of the two tribes. The bill provides for addition to the Navajo Reservation of all land which the court determines Navajos have exclusive interest in and addition to the Hopi Reservation all land where the Hopis have exclusive interest.

For that land which the court determines that there is a joint or undivided interest, this bill provides for judicial partitioning in accordance with the principles of fairness and equity. The two tribes would be authorized to exchange lands which are part of their respective reservations.

In conclusion, Mr. President, I state with firm conviction that this bill provides reasonable means to finally determine the land interests of the Navajo Tribe and the Hopi Tribe.

In addition to being logical and reasonable, it is fair and honest and recognizes all legitimate interests whether predicated on law or usage. I, therefore, urge its swift enactment into law.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1114

At the request of Mr. MONDALE, for Mr. EAGLETON, the Senator from Minnesota (Mr. MONDALE), the Senator from Massachusetts (Mr. BROOKE), and the Senator from Vermont (Mr. STAFFORD) was added as a cosponsor of S. 1114, to authorize assistance for demonstration projects designed to develop reforms in the criminal justice system in the United States.

S. 2136

At the request of Mr. DOMENICI, the Senator from Utah (Mr. MOSS) was added as a cosponsor of S. 2136, the American Arts and Handicrafts Act.

S. 3043

At the request of Mr. NELSON, the Senator from Minnesota (Mr. MONDALE) and the Senator from South Dakota (Mr. MCGOVERN) were added as cosponsors of S. 3043, the Federal Citizens' Appeal Act of 1974.

S. 3056

At the request of Mr. HASKELL, the Senator from Wyoming (Mr. MCGEE) was added as a cosponsor of S. 3056, to authorize the Secretary of Agriculture to amend retroactively regulations of the Department of Agriculture pertaining to the computation of price support payments under the National Wool Act of 1954 in order to insure the equitable treatment of ranchers and farmers.

S. 3064

At the request of Mr. ARBOREZZE, the Senator from Florida (Mr. GURNEY) was added as a cosponsor to S. 3064, to amend section 111 of title 38, in the United States Code, relating to the payment of travel expenses for persons traveling to and from Veterans' Administration facilities.

S. 3095

At the request of Mr. HASKELL, the Senator from New Jersey (Mr. CASE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from California (Mr. CRANSTON), the Senator from Illinois (Mr. STEVENSON), the Senator from Nevada (Mr. CANNON), and the Senator from California (Mr. TUNNEY) were added as cosponsors to S. 3095, to deny treatment as a foreign tax payment, under the Internal Revenue Code, to any royalty payment made in connection with the extraction of oil or gas from a foreign country.

S. 3123

At the request of Mr. HUMPHREY, the Senator from Illinois (Mr. STEVENSON) was added as a cosponsor of S. 3123, to establish a universal school food service for children.

S. 3144

At the request of Mr. HASKELL, the Senator from New Hampshire (Mr. MCINTYRE) was added as a cosponsor of S. 3144, to impose an excess profits tax on the excess petroleum profits income of certain domestic corporations engaged in multinational operations.

S. 3168, S. 3169, AND S. 3170

At the request of Mr. TOWER, the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 3168, to amend title II of the Social Security Act to permit the payment of benefits to a married couple on their combined earnings record; S. 3169, to amend title II of the Social Security Act to provide that an insured individual otherwise qualified may retire and receive full old-age insurance benefits, at any time after attaining age 60, if he has been forced to retire at that age by a Federal law, regulation or order; and S. 3170, to amend title II of the Social Security Act to provide that any individual who has 40 quarters of coverage whenever acquired, will be insured for disability benefits thereunder.

SENATE JOINT RESOLUTION 196

At the request of Mr. NELSON, the Senator from Iowa (Mr. HUGHES) and the Senator from Delaware (Mr. ROTH) were added as cosponsors of Senate Joint Resolution 196, designating the week of April 21-28, 1974 as Earth Week 1974.

SENATE RESOLUTION 298—SUBMISSION OF A RESOLUTION EXPRESSING THE SORROW OF THE SENATE IN RESPECT TO THE DEATH OF FORMER SENATOR B. EVERETT JORDAN

(Considered and agreed to.)

Mr. ERVIN (for Mr. CANNON) (for himself, Mr. PELL, Mr. ROBERT C. BYRD, Mr. ALLEN, Mr. WILLIAMS, Mr. COOK, Mr. HUGH SCOTT, Mr. GRIFFIN, Mr. HATFIELD, Mr. ERVIN, and Mr. HELMS) submitted a resolution expressing the sorrow of the

Much more.

ATTORNEY GENERAL SAXBE: Well, I mean, but we don't know.

QUESTION: General, may we switch the conversation to Watergate? We're on the eve now of historic indictments in the case.

Has the Special Prosecutor given you a status report?

ATTORNEY GENERAL SAXBE: No.

QUESTION: Do you expect to meet with him before the indictments are returned?

ATTORNEY GENERAL SAXBE: No.

QUESTION: Do you have any thoughts on the case and its importance for the nation?

ATTORNEY GENERAL SAXBE: No.

QUESTION: You don't.

[Laughter.]

QUESTION: Why? Why don't you have any thoughts?

ATTORNEY GENERAL SAXBE: I don't know.

That never occurred to me.

QUESTION: I'd like to try one on the LEAA.

When you were in the Senate, you joined with Senators Mondale and Brooke and Eagleton in sponsoring a bill that really wouldn't drastically overhaul the present structure of LEAA. And, as I understand it, they're going to introduce a

skimmed-down version of that bill, a kind of a Model Cities or Model State program. What's your feeling now, do you think that kind of overhaul is needed, or do you think you should work together on something else?

ATTORNEY GENERAL SAXBE: I would welcome it.

QUESTION: You would welcome it?

ATTORNEY GENERAL SAXBE: I would welcome it.

Because I think that until we get some kind of a model program going, we don't know really what can be done. And we're still pumping money into a system that is not doing the job, and you look into the big cities and realize how few people actually get a trial, even, you realize the weakness, because it's overloaded.

And if we could get a State to try some really innovative procedures in criminal justice, I think it would be very helpful. I'd like to see them pass a law so that LEAA could do this.

QUESTION: But this would limit it, would it not, to the participating States?

ATTORNEY GENERAL SAXBE: Oh, no. No. We would undertake more in participating States. In other words, the bill that we had we would fund up to fifty percent of the actual salaries of the law enforcement people.

We aren't funding any salaries at the present time.

QUESTION: Does this indicate that you're dissatisfied

with the way that the LEAA is now being operated?

ATTORNEY GENERAL SAXBE: I'm not dissatisfied with LEAA, but I'm dissatisfied with, in general, criminal justice procedures in most States of the United States.

They just are not going to be able to meet the challenge of ten years from now.

QUESTION: What would this -- what would you want to do, then? On LEAA.

ATTORNEY GENERAL SAXBE: This would be to make a deal with any State who would be willing to proceed in a certain manner. In other words, it would require they set a limit on trials, that they permit lateral transfer of police, that they establish some kind of uniformity in pay, and other things, on police throughout the State; that it would provide well-paid full-time district attorneys; that they would provide adequate courts to keep the docket current -- well, we could do that by limiting times.

That they would provide modern prisons and good rehabilitation, good parole.

In other words, we've got some pretty stringent things that we would require.

Now, some of these things we're getting done indirectly by LEAA. This would be a comprehensive program, and it would have to have the enthusiastic support of a State. We have nothing to approach it at the present time.

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QUESTION: And if the State didn't go along with that, it wouldn't get money?

ATTORNEY GENERAL SAXBE: They'd get the money just like they do on LEAA at the present time. This would be a favored program.

QUESTION: They'd get more money then?

ATTORNEY GENERAL SAXBE: They would get more money. And they would get it for different purposes, for policemen's pay, for bricks and mortar, maybe, which we try to keep away from.

QUESTION: Excuse me, General, has a money figure ever been talked about for this model State?

ATTORNEY GENERAL SAXBE: Well, two years ago we estimated it would take four billion dollars nationally. If every State did it.

QUESTION: That would be four billion a year?

ATTORNEY GENERAL SAXBE: Four billion dollars a year. But that was if every State did it, and did it a hundred percent.

QUESTION: Well, how about if one State agreed to be the model for this? Did you come up with an estimate for what it might cost the one State, for modern prisons and so on?

ATTORNEY GENERAL SAXBE: If Delaware and Nebraska would do it, it would not be any great significant amount. And we would prefer to start out -- I mentioned Delaware and

September 4, 1973

MEMORANDUM FOR: GEOFF SHEPARD
FROM: WILLIAM E. TIMMONS
SUBJECT: Gun Control Legislation

Reference your August 20 memo to Laird and August 27 option report to the President on subject.

I recognize the President has said "I'm a liberal on gun control" and has publicly committed to control of Saturday Night Specials. I concur in the need for a Presidential listening session with proponents and opponents representing their views.

However, as you know, our hard-core support in Congress oppose any legislation in this area because the "criminal can always get a gun." Gunowners generally are "Middle Americans" the group from which the President draws his strongest backing on the real Big Issues. Also attention should be given to a measure the gun lobby will not actively oppose.

We must also be alert to criticism that the President did nothing in this area until he was threatened recently in New Orleans -- so this legislation is in his self-interest.

THE WHITE HOUSE

WASHINGTON

August 31, 1973

MEMORANDUM FOR: WILLIAM E. TIMMONS

FROM: TOM C. KOROLOGOS *TK*

SUBJECT: Shepard's Gun Memo

We have only two choices on this gun control question. A) Go all the way, all out with a complete control; or B) Do nothing.

The issue spooks me greatly because if we decide to go with a bill we surely will try to find some compromise thing that NRA likes and that appeases the Eastern libs which puts us in the middle, puts our friends on the Hill in bad light and gains nothing. If we send up a half-way bill, then Kennedy, Hart and the rest will confront us with arguments we cannot resist on an issue we cannot enforce, cannot defend and which would open us up to being soft on crime (prosecutors want to ban all guns).

On the other hand, since November 1962, we have been insisting that we let the states do it. So far, there has been virtually nothing happen in the states. (Even Lindsay says it cannot be done by states since New York has a tough law and New Jersey a soft one, and everybody goes to New Jersey to buy a gun to use in New York). Out West, the distances are different and the impact, of course, would be less severe.

The thing that worries me is that the President's hard core support comes from the gun-folk and obviously we need support these days. This doesn't mean NRA members. It means those who own sporting guns. Guns are a culture out west. Last week in Utah, every pickup truck I saw had a gun rack in the rear window. These people are not the "hated gun lobby", they're Americans.

Neither McGovern nor the President raised gun control in the election. It was dormant and obviously both saw the danger of coming down for or against it.

August 31, 1973

On the Hill, Hruska, of course, is our leader on this. He is ambivalent at the moment and probably will do anything the President wants him to do. Indeed, the President promised to send up new gun legislation after the Stennis shooting and we do run the risk of someone else getting shot and then the blame would be on us for doing nothing.

I recommend we do indeed, start something internally. A meeting with those suggested in Geoff's paper plus Hruska would be fine, except Roman will just listen and we run the risk that the President may take advantage of his ambivalence and we might go with something we will be sorry about later.

Roman has a better picture of this than anyone. He has had to take the heat for years and knows where the politics are. If we do nothing, he runs the risk of being in an awkward position if another Stennis-type shooting occurs.

There are several courses to consider in the internal considerations, such as "tracing" (in lieu of licensing) which means have some super bureau trace guns used in crimes, mandatory sentences, take the discretion away from the judges altogether in crimes with guns.

Lurking in the background is the President's personal statement: "I'm a liberal on gun control." Also, we should remember the President has been stalked by killers which I have not, and he may have a different attitude.

Summary

I vote for a "talk" meeting and then "tough it out" by doing nothing and hope nobody gets shot in the next three years.

THE WHITE HOUSE

WASHINGTON

August 20, 1973

ACTION

MEMORANDUM FOR MEL LAIRD

SUBJECT: GUN CONTROL

The gun control issue has always been political dynamite.

President Nixon promised legislation (on Saturday Night Specials) last January after the Stennis shooting. At that time we prepared an option paper for him which was never submitted. Consequently, no legislation is under preparation.

I have just updated that option paper for submission (Tab A), since the gun control issue is again receiving some publicity (Star editorial attached at Tab B).

This paper has not even been discussed with Attorney General Richardson. I believe it would be preferable to have President Nixon make the initial decision for two reasons: First, if it is staffed to Justice, it will certainly leak; and there is no sense in enduring that sort of publicity if the President is not prepared to go as far as banning handguns. Second, if the President is prepared to go that far, then he should get the credit. If potentially banning handguns is viewed as Richardson's idea, the President and conservative Republicans will have a much tougher time swallowing it. The Department of Justice will certainly be involved once the initial decision of the President has been made.

Please call if you have any questions.

ACTION: Ken would like your opinion as to whether this paper should be submitted to the President at this time.

SUBMIT MSL DO NOT SUBMIT _____

Geoff Shepard

THE WHITE HOUSE

WASHINGTON

August 27, 1973

ACTION

MEMORANDUM FOR: THE PRESIDENT
THROUGH: KEN *COLE*
FROM: GEOFF SHEPARD *JS*
SUBJECT: GUN CONTROL LEGISLATION

The attached paper on possible gun control legislation (Tab A) is submitted to gain policy guidance for your staff on just how far you are prepared to go in this issue.

Because of the highly political nature of this issue, no specific option is recommended for your approval.

Previously, you had indicated a desire to meet with staff to discuss some problems in depth. This might be an appropriate occasion. The meeting could be designed as a listening session only, which would enable you to get a real feel of the emotions involved in this issue, but not require you to commit on any particular policy. Attendees should include: Attorney General Richardson, FBI Director Kelley, Assistant Attorney General Petersen, LEAA Administrator Santarelli, plus Senator Hruska and L. A. County Sheriff Peter Pitchess, Treasury Asst. Sec. Ed Morgan.

RECOMMENDATION:

That you meet with the above group of individuals for a private discussion on gun control or indicate a preliminary preference for one of the three attached options for staff guidance.

_____ Schedule "listening session" meeting in September;

- OR -

Prepare legislation as described in:

_____ Option A: Submit a Saturday Night Special bill with some objective standards which is

designed mainly to pass the Congress and
to fulfill your public commitment. - *

_____ Option B: A combination of strong anti-
handgun measures.

_____ Option C: Outlaw all handguns.

TAB A

GUN CONTROL LEGISLATION

At your press conference of January 31, 1973, you responded to a question concerning the shooting of Senator Stennis by saying you had asked the Attorney General to prepare legislation outlawing Saturday Night Specials which could actually pass the Congress. This paper presents three options available in that regard.

I. Background

Gun control has traditionally evoked a strong, but divided, emotional response from the American electorate. Urbanites and Eastern liberals have traditionally been the most articulate spokesmen for expanded gun control, with rural areas, Westerners, and the blue collar workers taking the opposite position. There is no identifiable group advocating a "middle ground."

The gun issue is said to have been politically fatal to a number of politicians, the most recent of which being Joe Tydings from Maryland and possibly Gordon Allott from Colorado (Allott's main problem was his perceived anti-environmental stand in advocating the Olympics for Colorado; but since he voted in favor of the Bayh-Hruska Saturday Night Special bill, the gun lobby complicated his re-election effort.).

Two major political figures have recently articulated strong stands for gun control: Mayor Richard Daley of Chicago has advocated the virtual confiscation of all handguns for several years. Within the past two years Sheriff Peter Pitchess of Los Angeles County has become a strong and articulate advocate against the private ownership of handguns. Pitchess claims he has not experienced half the adverse reaction he anticipated when he began speaking against handguns and has experienced support he did not anticipate.

Public support for gun control has proven to be a transitory phenomenon. Most authorities agree the strongest public support for gun control in recent memory set the stage for passage of the 1968 Gun Control Act. The assassination of JFK had resulted in no legislation and was further aggravated by the assassination of

his brother. Public support for some sort of gun control touched eighty percent. The gun lobby was unable to stop passage of the Act, but they did water it down: Although the Act does virtually eliminate mail order gun sales, it only purports to establish minimum federal requirements for gun ownership (outlawing sales to minors, adjudged mental incompetents, fugitives from justice, convicted felons, dishonorably discharged veterans) because the only Federal requirement of a dealer prior to sale is that he ask the intended buyer if he fits any of the outlawed categories. The increasing rate of gun sales and of violent crimes involving guns were virtually unaffected by the 1968 Act.

Public demand for Saturday Night Special legislation was carefully nurtured by your Administration under the theory this would satisfy those calling for further gun control without impinging upon legitimate gun owners. The basic concept was that higher standards of performance of handguns would increase costs beyond the capacity of most petty street criminals. Your Administration worked very closely with sporting organizations and gun manufacturers in developing possible legislation. We ultimately decided not to submit Saturday Night Special legislation when several things became obvious: Even responsible elements within the gun lobby (the NRA is moderate by comparison with other groups opposing gun control) said they would actively oppose the bill, that no bill could be acceptable, and in fact, they really wanted to repeal substantial elements of the 1968 Act. Our "objective" tests showed inexpensively manufactured handguns could equal or outshoot some of the most expensive ones, so that our requirements would either be ineffective in raising prices or would outlaw the manufacture of many expensive and highly regarded handguns. We realized in trying to compromise we had drafted a bill establishing extensive bureaucratic machinery (to test and judge handguns) which would have a costly and adverse effect on manufacturers, but would have virtually no effect on handgun availability in the marketplace. Consequently, our bill would incur the undying enmity of the gun lobby but be ineffective even if passage had occurred.

The Wallace shooting again provided sufficient outcry for gun control legislation to be considered feasible, and we turned our material over to Senator Hruska who compromised it further with Senator Bayh to produce a bill which passed the Senate August 9, 1972, by a vote of 68 to 25 with the support of many conservatives. However, by the

time that bill reached the House, the election season was too close at hand and not only did it never get reported from Committee, Senators stopped calling for its passage, and your Administration worked quietly to oppose it.

Neither House of Congress has shown any inclination to initiate legislation on this issue since then. However, the issue recently surfaced with the National Advisory Commission on Criminal Justice Standards and Goals' recommendation that private ownership of handguns be outlawed. Further, the FBI's Uniform Crime Reports for 1972 just released show 54% of all known homicides are committed with handguns (graph attached). This is up from 51% in 1971. Your Administration should work now to develop a thoughtful position since the gun issue is sure to surface again.

II. Options

- A. Submit a Saturday Night Special bill with some objective standards which is designed mainly to pass the Congress and to fulfill your public commitment.

Although this bill in all likelihood would have no effect on the number of handguns available, it would meet your public commitment without unduely aggravating the gun lobby. The brevity of this option should not detract from its main advantages -- compromise and imagery -- the ingredients of much legislation.

- B. A combination of strong anti-handgun measures.

Submit a combination of measures designed to have a cumulative effect on reducing handgun availability in future years. This bill would deal with more than Saturday Night Specials alone, and would be designed to restrict the availability of handguns.

It would consist of several parts: (1) a bill outlawing the sale of Saturday Night Specials, defined objectively but stringently; (2) a Federal concealment statute with minimum mandatory penalties for possession and use of handguns when committing other felonies; (3) stricter requirements for sale of handguns to end their being handled by pawn shops; (4) a Federal registry under the FBI of people who may not purchase or possess handguns (Federal law, as stated in the Background, outlaws certain categories of people from buying or possessing handguns but is presently unenforceable). This registry

would enable dealers to check with the FBI before selling or might be used to encourage states to pass likewise minimum standards with appropriate delays in the transaction until the name could be processed -- perhaps with fingerprints -- through the FBI. Although this is a cumbersome process and might prove costly, it seems the only way to enforce existing law.

C. Outlaw all handguns.

Submit legislation outlawing the sale and private possession (outside of the home) of all handguns except by public and private law enforcement officers. This would have to be connected with a "no questions asked" turn in policy on handguns, perhaps a provision allowing collector's handguns to be rendered inoperable if desired, and a repurchase clause of handguns to comply with constitutional provisions against a taking without due process of law. It would also include minimum mandatory sentences for possession or use of handguns in any situation outside the home. The only reason for the exception for possession within the home is to preclude the specter or necessity of the Federal Government searching all American homes to confiscate handguns.

→ The scenario surrounding use of this option would certainly require a dramatic Presidential TV address stating the time had come to end the public menace of handguns. This would be clear reversal of present Federal gun control policy, but many people feel if the President stood up, denounced handguns, and asked for the support of the American people, there would be a sigh of relief from our nation that someone finally faced the problem, and strong grass-root support would then develop for such a stand.

Since you will not again stand for re-election, it could be argued you are in a singularly unique position to do this: perhaps to actually secure passage, but at least to further mold public opinion and state your position for history. Others feel Middle America will never give up its handguns and that when the move faltered, its early Congressional supporters would face disaster at the next election.

Far from disarming the American people, your proposal would affect handguns alone -- which are concealable and thus have such a high potential for misuse. Rifles and shotgun oversight would be unaffected, and they still could be used for protection of the home as well as sporting purposes. The entire gun lobby would vehemently oppose the proposal -- not on the merits, but on the theory that you were disarming law-abiding Americans.

This is the solution proposed by the National Advisory Commission on Criminal Justice Standards and Goals in their recently released National Strategy to Reduce Crime. L. A. County Sheriff Peter Pitchess, as Vice Chairman of the Commission, is the strongest proponent of this position.

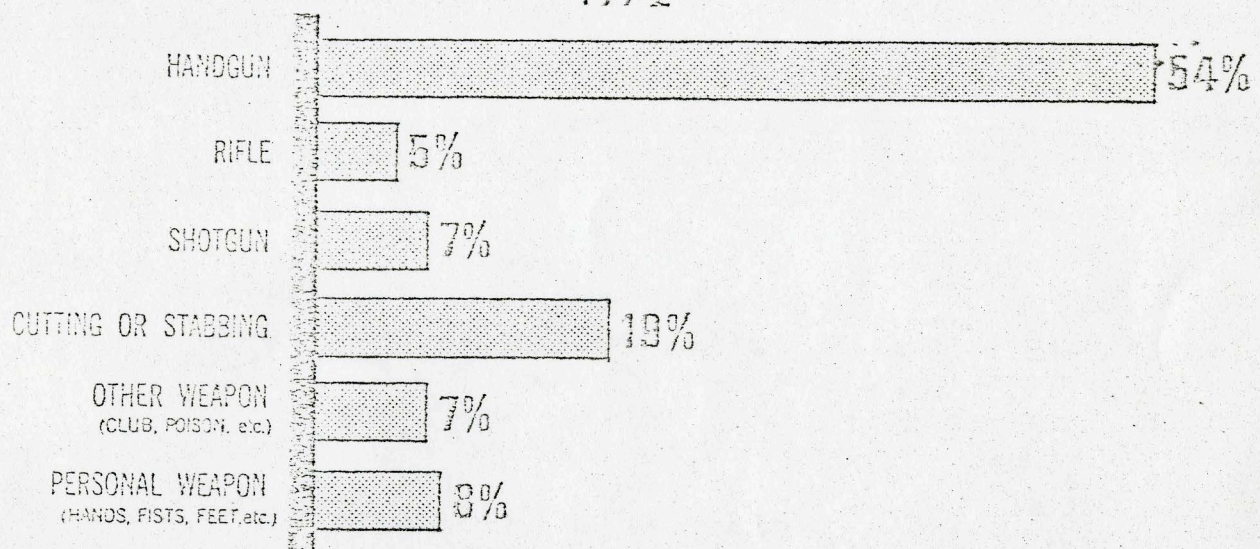
This paper does not propose either federal licensing or registration because these "popular" solutions would be very expensive, have little effect on criminal elements, and the effort to secure passage would have to be as great as that to outlaw all handguns.

August 17, 1973

MURDER

BY TYPE OF WEAPON USED

1972



FBI CHART

FBI UNIFORM CRIME REPORTS, 1972

* The 54% is up from 51% in 1971.

Misc - Crime

November 15, 1972

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: DAVID YOUNG
FROM: WILLIAM E. TIMMONS
SUBJECT: Espionage Legislation

I have not reviewed the law on espionage and, therefore, am not commenting on the substance of the alternatives presented in the attached paper. I do, however, have some strong feelings on the tactical options available to us which lead me to argue against Option II (Not, I repeat, on substantive grounds).

As you point out, the problem with any legislation submitted alone is that it becomes quite apparent that liberal "leaks" are being singled out for special attention by a security-conscious executive. Such a bill stands virtually no chance of enactment by the Congress, and will cause unnecessary "headaches" similar to those caused by the pre-trial detention legislation.

At the same time, one of the priority items in the next Congress will be the reform of the federal criminal laws -- a project which has been underway at the Department of Justice for approximately two years and before that, the subject of a report submitted to the President by the National Commission on the Reform of Criminal Laws. This re-write of Title 18 includes at least a recodification of the espionage law.

The code revision is well under way and it is anticipated that a bill will be submitted soon after the President delivers the State of the Union message. The espionage and subversion laws will be re-written in any event and it provides us with the opportunity to achieve the desired substantive change in the law without any major disadvantage.

Indeed, we should have this bill through in two years, since much of the work has already been done. Instead of singling out and thereby focusing attention on one single issue, the espionage changes could be considered as part of a major reform effort and, consequently, a single controversial provision will receive less individual attention.

Moreover, I see at least two other disadvantages to single submission. First, the bill could end up in Senator Ervin's Subcommittee on Constitutional Rights. Ervin would be strongly opposed to such legislation. Second, if the bill moved, it could be used as a vehicle for unwanted legislation such as a newsmen source or privilege bill.

For the above reasons, I conclude that the substantive reforms be incorporated into the criminal code revision and not submitted alone. To do so will be less controversial and will probably result in more expeditious Congressional consideration.

MEMORANDUM FOR THE PRESIDENT

THROUGH: JOHN D. EHRLICHMAN
FROM: DAVID R. YOUNG
SUBJECT: ESPIONAGE LEGISLATION

You asked for a paper on possible legislative measures to tighten up our espionage statutes. The objective would be to counter the increase in leakage to the press of information relating to the national security.

I. Present Law

A. Traditional Espionage Statutes

Our traditional espionage statutes (Espionage and Censorship, Chapter 37, 18 U.S.C. §§ 793, 794) are strictly limited in scope. In particular they require proof that the accused intended to injure the United States or aid a foreign nation and that the information involved related to the national defense. The latter requirement means that it is often necessary to have the government disclose more "classified" information in order to prove that the material relates to the national defense. In certain cases this has lead to a decision not to prosecute.

Nevertheless, these statutes have been reasonably successful in dealing with the classic espionage case as is evidenced by the following convictions obtained under them: Gorin v U.S. (1941), U.S. v Coplon (1950), U.S. v Rosenberg (1953), U.S. v Able (1958), U.S. v Soblen (1962) and U.S. v Sobell (1963).

A new section (§ 793) was added to the Espionage and Censorship Chapter of 18 U.S.C. in 1951 to specifically cover the unauthorized disclosure

of information relating to cryptography. It does not require proof that the accused intended to injure the United States, but there has never been a prosecution under this statute.

B. Internal Security Statute -- Control of Subversive Activities

The only remaining statute in this area, often called the Scarbeck statute (Internal Security, Chapter 23, 50 U.S.C. § 783), prohibits the communication or receipt of "classified" information by a government employee without requiring proof of an intent to injure the United States or aid a foreign nation. By penalizing the disclosure of "classified" information, per se, it does not require proof that the information relate to the national defense but it does require that the communication be to a foreign agent.

II. Problems

A. The conceptual problem is one of association. Namely, should the type of leakage which we are attempting to deal with - i.e. disgruntled present or former government employees leaking "classified" information to newspapers for political reasons - be addressed under the present espionage or internal security statutes, or by a separate and new statute.

B. The Constitutional problem is how to meet the First and Sixth Amendment questions raised by such a measure.

C. The practical or political problem is whether the political liabilities inherent in such a measure can best be minimized by using an existing statute as a vehicle or proposing a new one.

III. Legislative Options -- Pros and Cons

Option I

Leave the above described espionage and internal security statutes as they are and create a new crime covering disclosure by anyone of

"classified" (national security) information to any unauthorized person. [Draft preferred by Defense but as part of comprehensive overhaul Option III at Tab I.]

Advantages:

- The traditional espionage statutes and case law which have already survived constitutional tests would remain in tact.
- The new crime could be dissociated from the moral opprobrium connected with espionage and subversive/internal security activities.
- The penalties could be made less severe than in espionage and internal security/subversive activities.
- Could be acted upon by Congress in next session.

Disadvantages:

- Obvious that we are zeroing in on the leakers with consequent outcry by press and Hill.
- Gives high profile to First Amendment questions and in worst light.
- Most difficult option to get Congress to enact.

Option II

Amend the Internal Security/Subversive Activities statute (50 U.S.C. § 783).

A. Expand to prohibit

- (1) communication by a former government employee or any employee of a non-government institution handling classified information,

- (ii) an attempt to communicate, and

- (iii) communication to any unauthorized person.

[Draft preferred by CIA, Justice and State at Tab II.A.]

B. Expand as in A. above but also punish the unauthorized recipient of the classified information.

[Draft at Tab II.B.]

Advantages:

- Would cover vast majority of leakage situations.
- Could be proposed in context of plugging up loopholes in existing statute.
- New and less severe penalties could be added.
- Could be acted upon by Congress in next session.

Disadvantages:

- As with Option I it is obvious we are zeroing in on leakers.
- Close association in public eye with internal security/ subversive activities and espionage makes enactment difficult.

- If recipients of "classified" information are subject to criminal sanctions, even more difficult constitutional questions are raised. In this connection it should be noted that recent British study on their very strict Official Secrets Act recommended recipient coverage be dropped.

Option III

Completely rewrite the whole law of espionage and internal security so as to cover all crimes from the classic espionage case to the leakage of official information. [Draft preferred by Defense at Tab III.]

Advantages:

- Problem of leakage could be dealt with as part and parcel of an overall package to improve the law.

- Basis of approach would be Brown Commission Report (appointed by LBJ in 1967) which made recommendations for the complete overhaul of the Federal Criminal Code.

- Overall structure is to create three basic categories of offenses; classic espionage, disclosure by person in position of trust and disclosure by anyone.

Disadvantages:

- Repeals traditional espionage statutes and constitutional case law interpretation of them.

- Would not be enacted by Congress for at least 4 or more years if considered as part of overhaul of Criminal Code.

Comment:

Under any one of the above options there is a First Amendment question on freedom of speech if there is no need to prove the substantive propriety of classification; i.e. classification marking alone though wrong is sufficient to convict. To avoid this impediment an in camera hearing on the propriety of the classification could be required in any new legislative measure. For persons in a position of trust, i.e. present government employees, this would not be necessary (e.g. Scarbeck case under 18 U.S.C. § 783) - but when applied to former

government employees or employees of non-government institutions it would be most unusual if the courts would not require proof on an element of the crime. If such proof were presented in camera a question of a public trial by jury under the Sixth Amendment then arises. To what extent the courts would allow abridgement of a person's First and Sixth Amendment rights in view of their present or former positions of trust as government employees is unknown - though they are likely to allow more abridgement here than in non-public trust position in non-government institution. Solution here might be written waiver by employee as condition of employment.

Recommendation

I recommend that we propose legislation under Option II; i.e. amend internal security statute (18 U.S.C. § 793) to prohibit (i) disclosure of "classified" information to any unauthorized person by employees of non-government institutions and former as well as present government employees, or (ii) an attempt to make such a disclosure. This would not cover prosecution of the recipient and the substantive propriety of classification would be determined by in camera hearing.

Approve _____

Disapprove _____

Prefer option _____