

The original documents are located in Box 54, folder “9/7/76 HR12261 District of Columbia Criminal Laws (1)” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library

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Note:

9/7

Statement being
resolved - will let you
have it just as soon as
possible

per Mr. Ralston

APPROVED

SEP 7 - 1976

8/9/76

ACTION

THE WHITE HOUSE
WASHINGTON

Last Day: September 7

September 3, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: JIM CANNON *Jm*

SUBJECT: Enrolled Bill H.R. 12261 -
District of Columbia Criminal Laws

This is to present for your action H.R. 12261, a bill which would amend section 602(a) (9) of the District of Columbia Self-Government and Governmental Reorganization Act (the "Self-Government Act").

BACKGROUND

- The Self-Government Act provides that the City Council of the District of Columbia will have authority to revise the District's criminal laws beginning January 3, 1977. H.R. 12261 would extend Congress' sole jurisdiction over these criminal laws for two additional years so that the Council would not have authority to revise the laws until January 3, 1979.
- The purpose of H.R. 12261 is to give the District of Columbia Law Revision Commission until January 3, 1979 to make recommendations to the Congress for the comprehensive revision of the District's criminal laws. The Commission, which was established subsequent to the enactment of the Self-Government Act, has begun to review these laws but will not complete its work by January 3, 1977.
- H.R. 12261 also contains an amendment by Congressman Dent of Pennsylvania which was apparently intended to nullify the District of Columbia's Firearms Control Act. The Firearm's Control Act was enacted on July 23, 1976 by the District of Columbia to ban possession of unregistered handguns.



Statement issued 9/7/76

archives 9/7/76

- However, in the opinion of the Justice Department the Dent Amendment does not nullify the Firearms Control Act. Nevertheless, many groups which oppose gun control maintain that H.R. 12261 invalidates the District's ban and therefore are strongly urging its approval.

ARGUMENTS FOR APPROVAL

1. H.R. 12261 is consistent with Congress' original intent that a thorough revision of the D.C. Criminal Code be completed before the Council is empowered to enact changes in the criminal law.
2. A major revision of the District's Criminal Code should not be undertaken without the benefit of the Law Revision Commission's recommendations.

ARGUMENTS FOR DISAPPROVAL

1. H.R. 12261 improperly restricts the right of self-government of the citizens of the District of Columbia under the Self-Government Act.
2. In the opinion of the Justice Department, the Dent Amendment would not invalidate the District's Firearms Control Act. H.R. 12261 is solely prospective in application and consequently irrelevant to the District's Control Act.
3. The District agrees that no major revision of its criminal laws should be undertaken without the benefit of the Law Revision Commission's recommendations. However, the Council should not be delayed further from enacting urgently needed changes in the D.C. Criminal Code.
4. If Congress disapproves of the Firearms Control Act, it has the power to employ a one-House veto of the Act. The exclusive method of disapproving an enactment of the District is by "concurrent resolution" within a period of 30 legislative days after final District action.
5. H.R. 12261 does not involve a substantial Federal interest in the District.

AGENCY RECOMMENDATIONS

| | |
|---------------------------------|--------------|
| Office of Management and Budget | Disapproval |
| Department of Justice | No Objection |

COMMENTS

Lynn: "In our view, the bill is not consistent with the right of self-government for the citizens of the District of Columbia under the Home Rule Act. Extending the limitation on the D.C. Council's authority to change the Criminal Code is unnecessary. Additions to the D.C. criminal laws are needed now to enable the District to meet the challenges of a changing society. Granting the power to the D.C. Council to legislate on local matters under the Code would not interfere with the work of the Law Revision Commission and the Council does not require the results of the Commission's study to weigh the need for such legislation."

STAFF RECOMMENDATIONS

| | |
|-------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Counsel's Office: Ken Lazarus with Phil Buchen's concurrence | "Approval of the measure would be fundamentally inconsistent with the President's announced position on his role with respect to the legislative powers of the District government." |
| Max Friedersdorf, Assistant to the President for Legislative Affairs | "Recommend approval. Both House passed by voice vote and veto would likely be overridden. John Rhodes strongly recommends signing because Presidential veto would incite anti-gun control lobbyists to oppose President. Gun lobby perceive bill as very favorable to them because of Dent Amendment." |

RECOMMENDATION

I recommend approval of H.R. 12261.

The Department of Justice, the White House Counsel's Office and the Congressional Research Service of the Library of

Congress state that the Dent Amendment would not negate the District of Columbia's Firearms Control Act.

My recommendation is based on the fact that Congress intended that the D.C. Criminal Code be completely revised before the City Council be given the authority to enact changes in the criminal law. Without this legislation, the D.C. City Council would be able to act in a piecemeal way without the benefit of the Law Revision Commission's recommendations.

Jim Lynn's memorandum, which includes a letter from Mayor Walter Washington and Sterling Tucker, together with a letter from Michael M. Uhlmann, Assistant Attorney General, is at Tab A.

DECISIONS

1. Sign H.R. 12261 at Tab B.

Issue signing statement at Tab C.

Approve WJ Disapprove _____

2. Disapproval H.R. 12261 and sign veto message at Tab D.



Need

Facsimile



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

SEP 2 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 12261 - District of Columbia
Criminal Laws
Sponsor - Rep. Diggs (D) Michigan

Last Day for Action

September 7, 1976 - Tuesday

Purpose

To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District by direct amendment of the D.C. Criminal Code or through changes in police regulations.

Agency Recommendations

| | |
|---------------------------------|-------------------------------------|
| Office of Management and Budget | Disapproval (Veto message attached) |
| District of Columbia Government | Disapproval (Veto message attached) |
| Department of Justice | No objection |

Discussion

The District of Columbia Home Rule Act, approved December 24, 1973, delegates to the Council of the District of Columbia the authority to make changes in the criminal laws of the District, but not until January 3, 1977. The Congress, in a related action, enacted the District of Columbia Law Revision Commission Act, approved August 21, 1974, which established the District of Columbia Law Revision Commission to examine the District's laws and to recommend,



in annual reports to the Congress, changes in them. The Commission--a D.C. Government body-- did not become operational until a year later and now expects its work on the revision of the criminal laws to be completed within the next two years.

The enrolled bill would extend for two additional years, until January 3, 1979, Congress' sole jurisdiction over the criminal laws of the District for the purpose of giving the Commission adequate time to complete its work and make its recommendations to the Congress. The bill also contains a provision intended to preclude the Council's amendment of police regulations in a manner which, effectively, alters the Criminal Code. The provision was added by amendment on the House floor by Representative Dent of Pennsylvania, and was apparently directed at the District of Columbia's Firearms Control Regulations Act, approved by the Mayor on July 23, 1976, which is presently being considered by Congress. Mr. Dent explained that he wanted to prohibit any criminal code changes by "... any subterfuge or any roundabout, off-the-street method by any departmental police regulation."

The Dent amendment was passed 262 to 92 and the amended bill was then approved by voice vote. Twenty-four hours later, the bill was passed by the Senate without debate on a voice vote.

In its report on the bill, the House D.C. Committee maintains that extension of the prohibition on the Council's changing the Criminal Code is necessary because completion of the comprehensive revision and recodification of the District's Criminal Code by the Congress was intended to be a prerequisite to the transfer of jurisdiction to the Council over the D.C. Criminal Code. The Committee report points out that the conference report on the Home Rule Act stated:

It is the intention of the conferees that their respective Committees will seek to revise the District of Columbia Criminal Code prior to the effective date of the transfer of authority referred to. (Emphasis added.)

The House D.C. Committee report further notes that the conferees on the Home Rule Act provided for a single House veto of Criminal Code changes that might be made by the Council once the jurisdiction was transferred from the Congress to the Council. The report states:

This reinforces the commitment of the Congress to maintain exclusive jurisdiction over amendments to the Criminal Code until the Law Revision Commission has completed its study and made its recommendations, and the Congress has acted on the totally revised Criminal Code.

The District of Columbia Government, in its attached views letter, agrees that a major revision of the D.C. Criminal Code is necessary and should not be undertaken without the benefit of the Law Revision Commission's recommendations. It points out, however, that empowering the D.C. Council to enact changes in the D.C. Criminal Code should not be delayed further, because there are a number of additions or revisions to the criminal laws which are urgently needed.

A number of such provisions have been proposed by the District to the Congress -- for example, proposals to prohibit the unauthorized use of credit cards, to include mobile homes within the scope of the crime of burglary, and to make it unlawful to obtain telecommunication services through misrepresentations. Moreover, the D.C. Government maintains that enactment of such changes would not interfere at all with the work of the Commission.

The effect of the Dent amendment in the enrolled bill is unclear. As noted earlier, it was apparently intended to prohibit the Firearms Control Regulations Act which would ban possession of handguns to anyone who does not, on the date of its enactment, possess a valid registration for a handgun. That measure will become effective unless Congress disapproves it within 30 legislative days, a period which will elapse sometime at the end of September. However, the Department of Justice advises, in its attached views letter, that the enrolled bill, in and of itself, would not invalidate the gun control measure.



Moreover, the effect of the bill is also uncertain in other respects. First, the amendment references articles regulated under Title 22 of the D.C. Criminal Code. However, it is not clear whether licensing of firearms would be affected by the amendment because under the District of Columbia Code, the licensing of firearms is carried out pursuant to authority found in Title I of the D.C. Code, a provision which predates home rule. Second, the amendment references "criminal offenses." In the District of Columbia it is not clear what constitutes a "criminal offense" since District of Columbia law, as interpreted by the courts, is not settled in regard to whether or not criminal sanctions imposed pursuant to police powers translate civil violations into criminal matters.

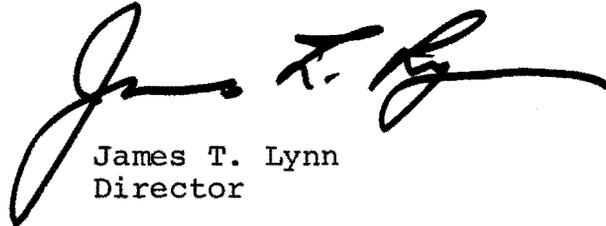
We agree with the District of Columbia recommendation that the bill be disapproved. It can be argued that a further extension of the limitation on the D.C. Council is consistent with the original intent of Congress that a thorough revision of the D.C. Criminal Code be completed before the D.C. Council is empowered to enact changes in the criminal law. However, we believe the basic issue presented by the bill is whether the two-year extension is necessary to protect the Federal interest in the District of Columbia and if it and the Dent amendment are consistent with the purpose of the Home Rule Act, namely the grant to the inhabitants of the District of Columbia of powers of local self-government.

In our view, the bill is not consistent with the right of self-government for the citizens of the District of Columbia under the Home Rule Act. Extending the limitation on the D.C. Council's authority to change the Criminal Code is unnecessary. Additions to the D.C. criminal laws are needed now to enable the District to meet the challenges of a changing society. Granting the power to the D.C. Council to legislate on local matters under the Code would not interfere with the work of the Law Revision Commission and the Council does not require the results of the Commission's study to weigh the need for such legislation. Further, this bill is not necessary to enable the Congress to protect the Federal interest in the District of Columbia. The



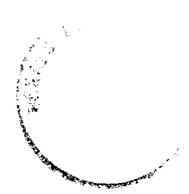
Home Rule Act gives the Congress clear authority to disapprove D.C. Government legislative acts. Finally, the Dent amendment, as noted above, is both an unnecessary erosion of the home rule concept and uncertain in its effect on other actions of the D.C. Government.

A proposed veto message is attached for your consideration.



James T. Lynn
Director

Enclosures





THE DISTRICT OF COLUMBIA

WALTER E. WASHINGTON
MAYOR

WASHINGTON, D. C. 20004

AUG 27 1976

Mr. James M. Frey
Assistant Director for Legislative
Reference
Office of Management and Budget
Executive Office Building
Washington, D. C. 20503

Dear Mr. Frey:

This is in reference to the facsimile of the enrolled enactment of Congress entitled:

H.R. 12261 - To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District

which you transmitted on August 25, 1976. The enrolled bill would amend section 602(a)(9) of the District of Columbia Self-Government and Governmental Reorganization Act (the "Self-Government Act") [D.C. Code, § 1-147(a)(9)] by extending for two years the prohibition against the Council of the District of Columbia taking any action "with respect to any provision of title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners)."

Section 602(a)(9) currently provides that the Council may exercise such authority on January 3, 1977; this bill would postpone the date on which the Council could

exercise this authority to January 3, 1979. Additionally, the bill, as amended during debate on the floor of the House of Representatives upon the adoption of the "Dent Amendment", prohibits the Council from taking any action "with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 of the District of Columbia Code" (relating to weapons), until January 3, 1979. The bill's provisions are totally inconsistent with the principal, stated purpose of the Self-Government Act, namely the "grant to the inhabitants of the District of Columbia of powers of local self-government", P.L. 93-198, § 102 (a), 87 Stat. 777; it therefore is unacceptable.

An essential aspect of the right of self-government is presently denied to the citizens of the District, as they still are denied the authority to enact criminal laws and those relating to judicial procedure and the treatment of prisoners. Notwithstanding that the proper subjects of such laws are of paramount concern to the inhabitants of this City, this bill seeks a further postponement of the citizen's authority to address these concerns, for another two years. It would deny to the citizens of the District the exercise of a right -- through its elected officials -- explicitly granted to them seventy years ago, when Congress provided:

The Council is hereby authorized and empowered to make ... all such usual and police regulations ... as the Council may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind. D.C. Code, § 1-227.

The original purpose of the bill, as stated by Chairman Diggs, its author, was to give the District of Columbia Law Revision Commission sufficient time within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission, which was established subsequent to the enactment of the Self-Government Act by P.L. 93-379, 88 Stat. 480, has begun the task of reviewing the criminal laws of the District and has made significant

progress. The District agrees that no major revision of its criminal laws should be undertaken without the benefit of the Commission's recommendations, and so informed the House District Committee by letter of June 29, 1976. However, there are additions to the criminal laws which are needed to enable the District to meet the challenges of a changing society. A number of such provisions have been proposed by the District to the Congress -- for example, proposals to prohibit the unauthorized use of credit cards, to include mobile homes within the scope of the crime of burglary, and to make it unlawful to obtain telecommunication services through misrepresentation. Nonetheless, these proposals are still pending before the House District of Columbia Committee.

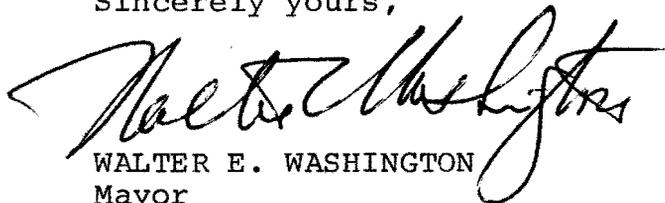
The enactment by the Council of provisions such as the foregoing would not interfere with the work of the Commission. And it cannot be said that the Council requires the result of the Commission's study to weigh the need for such legislation. Nor can it be said that in the absence of the provisions of the subject bill there would be no Congressional "oversight" of acts of the Council pertaining to the criminal laws: § 602(c)(2) of the Self-Government Act provides that such act of the Council shall take effect only if not disapproved within thirty days by either the House or the Senate.

The discussion of the amendment on the floor demonstrates that it was premised on a fundamental misunderstanding of the Self-Government Act. Its stated purpose is to "prohibit ... Criminal Code changes by any subterfuge or any roundabout, off-the-street method by any departmental police regulation". Cong. Rec. H. 8798 (Aug. 23, 1976, daily ed.). These considerations aside, the impetus for the amendment -- the passage of the Council of the Firearms Control Regulations Act of 1975 -- was an exercise by the Council of explicit police power conferred on it by D.C. Code, § 1-277. Its legislation does no more than to amend similar police power

regulations adopted by the prior appointed Council, in 1969, under the same authority. Thus, the amendment seeks to strip the City's elected Council of an authority which Congress conferred long prior to its grant of home rule, and permitted an appointed Council to exercise.

In conclusion, this bill would extend, for an additional two years, the period during which the people of the District may not enact, regardless of manifest need, any criminal laws, nor any police regulations with respect to any weapon mentioned in D.C. Code, § 22-3201, et seq. Its provisions are inconsistent with the spirit of the Self-Government Act and the principle of self-determination. It does not serve any Federal interest; rather it is addressed to a matter which is essentially local in nature. Therefore, the District Government strongly urges that H.R. 12261 be disapproved. A proposed message of disapproval is attached.

Sincerely yours,



WALTER E. WASHINGTON
Mayor



STERLING TUCKER
Chairman
Council of the District of Columbia

Attachment

9/7/76

FOR THE RECORD:

This is the final version of the statement as given to the Records Office at 1 pm today.

A copy of this statement together with the stencil which accompanied it was givento Thym Smith of the Press Office for release.

It is to be released at 3:30 pm today.

Tom Jones

STATEMENT BY THE PRESIDENT

Today, I have signed H.R. 12261, a bill "To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District."

The prohibition on the Council's changing the Criminal Code is necessary because completion of the study for the comprehensive revision and recodification of the Criminal Code by the D.C. Law Revision Commission is a prerequisite to the transfer of jurisdiction to the Council over the D.C. Criminal Code.

The bill gives the Commission additional time within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission has begun the task of reviewing the criminal laws of the District but will not be able to complete its work by January 3, 1977, when without this legislation, the D.C. Council would have been able to amend the District of Columbia Criminal Code.

No major revision of the District's criminal laws should be undertaken without the benefit of the Commission's recommendations.



STATEMENT BY THE PRESIDENT

Today, I have signed H.R. 12261, a bill "To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District."

The prohibition on the Council's changing the Criminal Code is necessary because completion of the *study for the* comprehensive revision and recodification of the Criminal Code by the *D.C. Law Revision Commission* ~~Congress~~ is a prerequisite to the transfer of jurisdiction to the Council over the D.C. Criminal Code.

The bill gives the ~~District of Columbia Law Revision~~ Commission additional time within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission has begun the task of reviewing the criminal laws of the District but will not be able to complete its work by January 3, 1977, when without this legislation, the D.C. Council would have been able to amend the District of Columbia Criminal Code.

No major revision of the District's criminal laws should be undertaken without the benefit of the Commission's recommendations.

STATEMENT BY THE PRESIDENT

Today, I have signed H.R. 12261, a bill "To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District."

The prohibition on the Council's changing the Criminal Code is necessary because completion of the study for the comprehensive revision and recodification of the Criminal Code by the D.C. Law Revision Commission is a prerequisite to the transfer of jurisdiction to the Council over the D.C. Criminal Code.

The bill gives the Commission additional time within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission has begun the task of reviewing the criminal laws of the District but will not be able to complete its work by January 3, 1977, when without this legislation, the D.C. Council would have been able to amend the District of Columbia Criminal Code.

No major revision of the District's criminal laws should be undertaken without the benefit of the Commission's recommendations.

Although some confusion has arisen regarding the intended force and effect of H.R. 12261, I am advised by the Department of Justice that the measure is only applicable in the future and is thus irrelevant to the "Firearms Control Regulations Act of 1975" (act. 1-142), recently adopted by the District of Columbia.

Consistent with the right to self-government of District citizens, I have in the past supported fully the legislative powers of the District, subject only to the constraints imposed by the Home Rule Act itself or some overriding Federal interest. This operating principle properly should apply regardless of the views of the Executive on the merits or shortcomings of individual legislative items. In the circumstances involving H.R. 12261, I find no justification for interference with this principle of self-determination.

For these reasons, I am returning H.R. 12261 without my approval.

THE WHITE HOUSE,

TO THE HOUSE OF REPRESENTATIVES:

I am returning, without my approval, H.R. 12261, a bill "to extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District". This bill would extend for two years, or until January 3, 1979, the prohibition against any action by the Council of the District of Columbia on provisions of the present District laws relating to crimes, criminal procedure, and the treatment of prisoners.

The bill would give the District of Columbia Law Revision Commission additional time within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission, which was established subsequent to the enactment of the District of Columbia Self-Government and Governmental Reorganization Act, has begun the task of reviewing the criminal laws of the District but will not be able to complete its work by January 3, 1977, when, under current law, the D.C. Council will be able to amend the District of Columbia Criminal Code.

I agree that no major revision of the District's criminal laws should be undertaken without the benefit of the Commission's recommendations. I do not agree, however, that it is either wise or necessary to delay even further the time when the citizens of the District of Columbia, through their elected representatives, may exercise the right of self-government in this vital area which will affect their daily lives.

The bill would also prohibit the Council from taking any action "with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 of the District of Columbia Code" (relating to weapons) until January 3, 1979.

STATEMENT BY THE PRESIDENT

Today, I have signed H.R. 12261, a bill "To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District."

The prohibition on the Council's changing the Criminal Code is necessary because completion of the comprehensive revision and recodification of the Criminal Code by the ^{D.C. Law Revision Commission} ~~Congress~~ is a prerequisite to the transfer of jurisdiction to the Council over the D.C. Criminal Code.

The bill gives the ~~District of Columbia Law Revision~~ Commission additional time within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission has begun the task of reviewing the criminal laws of the District but will not be able to complete its work by January 3, 1977, when without this legislation, the D.C. Council would have been able to amend the District of Columbia Criminal Code.

No major revision of the District's criminal laws should be undertaken without the benefit of the Commission's recommendations.

THE WHITE HOUSE

WASHINGTON

~~TO THE HOUSE OF REPRESENTATIVES~~

Today, I have signed H.R. 12261, a bill "To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District."

The prohibition on the Council's changing the Criminal Code is necessary because completion of the comprehensive revision and recodification of the Criminal Code by the Congress is a prerequisite to the transfer of jurisdiction to the Council over the D.C. Criminal Code.

The bill gives the District of Columbia Law Revision Commission additional time within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission has begun the task of reviewing the criminal laws of the District but will not be able to complete its work by January 3, 1977, when without this legislation, the D.C. Council would have been able to amend the District of Columbia Criminal Code.

No major revision of the District's criminal laws should be undertaken without the benefit of the Commission's recommendations.

ACTION

THE WHITE HOUSE

WASHINGTON

Last Day: September 7

September 3, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Enrolled Bill H.R. 12261 -
District of Columbia Criminal Laws

This is to present for your action H.R. 12261, a bill which would amend section 602(a) (9) of the District of Columbia Self-Government and Governmental Reorganization Act (the "Self-Government Act").

BACKGROUND

- The Self-Government Act provides that the City Council of the District of Columbia will have authority to revise the District's criminal laws beginning January 3, 1977. H.R. 12261 would extend Congress' sole jurisdiction over these criminal laws for two additional years so that the Council would not have authority to revise the laws until January 3, 1979.
- The purpose of H.R. 12261 is to give the District of Columbia Law Revision Commission until January 3, 1979 to make recommendations to the Congress for the comprehensive revision of the District's criminal laws. The Commission, which was established subsequent to the enactment of the Self-Government Act, has begun to review these laws but will not complete its work by January 3, 1977.
- H.R. 12261 also contains an amendment by Congressman Dent of Pennsylvania which was apparently intended to nullify the District of Columbia's Firearms Control Act. The Firearm's Control Act was enacted on July 23, 1976 by the District of Columbia to ban possession of unregistered handguns.

- However, in the opinion of the Justice Department the Dent Amendment does not nullify the Firearms Control Act. Nevertheless, many groups which oppose gun control maintain that H.R. 12261 invalidates the District's ban and therefore are strongly urging its approval.

ARGUMENTS FOR APPROVAL

1. H.R. 12261 is consistent with Congress' original intent that a thorough revision of the D.C. Criminal Code be completed before the Council is empowered to enact changes in the criminal law.
2. A major revision of the District's Criminal Code should not be undertaken without the benefit of the Law Revision Commission's recommendations.

ARGUMENTS FOR DISAPPROVAL

1. H.R. 12261 improperly restricts the right of self-government of the citizens of the District of Columbia under the Self-Government Act.
2. In the opinion of the Justice Department, the Dent Amendment would not invalidate the District's Firearms Control Act. H.R. 12261 is solely prospective in application and consequently irrelevant to the District's Control Act.
3. The District agrees that no major revision of its criminal laws should be undertaken without the benefit of the Law Revision Commission's recommendations. However, the Council should not be delayed further from enacting urgently needed changes in the D.C. Criminal Code.
4. If Congress disapproves of the Firearms Control Act, it has the power to employ a one-House veto of the Act. The exclusive method of disapproving an enactment of the District is by "concurrent resolution" within a period of 30 legislative days after final District action.
5. H.R. 12261 does not involve a substantial Federal interest in the District.

AGENCY RECOMMENDATIONS

| | |
|---------------------------------|--------------|
| Office of Management and Budget | Disapproval |
| Department of Justice | No Objection |

COMMENTS

Lynn: "In our view, the bill is not consistent with the right of self-government for the citizens of the District of Columbia under the Home Rule Act. Extending the limitation on the D.C. Council's authority to change the Criminal Code is unnecessary. Additions to the D.C. criminal laws are needed now to enable the District to meet the challenges of a changing society. Granting the power to the D.C. Council to legislate on local matters under the Code would not interfere with the work of the Law Revision Commission and the Council does not require the results of the Commission's study to weigh the need for such legislation."

STAFF RECOMMENDATIONS

| | |
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| Counsel's Office: Ken Lazarus with Phil Buchen's concurrence | "Approval of the measure would be fundamentally inconsistent with the President's announced position on his role with respect to the legislative powers of the District government." |
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| | |
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| Max Friedersdorf, Assistant to the President for Legislative Affairs | "Recommend approval. Both House passed by voice vote and veto would likely be overridden. John Rhodes strongly recommends signing because Presidential veto would incite anti-gun control lobbyists to oppose President. Gun lobby perceive bill as very favorable to them because of Dent Amendment." |
|-------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

RECOMMENDATION

I recommend approval of H.R. 12261.

The Department of Justice, the White House Counsel's Office and the Congressional Research Service of the Library of

Congress state that the Dent Amendment would not negate the District of Columbia's Firearms Control Act.

My recommendation is based on the fact that Congress intended that the D.C. Criminal Code be completely revised before the City Council be given the authority to enact changes in the criminal law. Without this legislation, the D.C. City Council would be able to act in a piecemeal way without the benefit of the Law Revision Commission's recommendations.

Jim Lynn's memorandum, which includes a letter from Mayor Walter Washington and Sterling Tucker, together with a letter from Michale M. Uhlmann, Assistant Attorney General, is at Tab A. A ~~memorandum of approval~~ ^{SECRET} is attached at Tab B, ~~disapproval~~ at Tab C. The enrolled bill is attached at Tab D.
Veto Message

DECISION

1. _____ Approve H.R. 12261.
2. _____ Disapprove and issue memorandum of disapproval.

A vertical line with a decorative top section. The top section consists of a vertical line that curves inward at the top, followed by a horizontal line, and then a vertical line that curves outward at the top. The letter 'A' is positioned in the upper part of this decorative section.

A



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

SEP 2 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 12261 - District of Columbia
Criminal Laws
Sponsor - Rep. Diggs (D) Michigan

Last Day for Action

September 7, 1976 - Tuesday

Purpose

To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District by direct amendment of the D.C. Criminal Code or through changes in police regulations.

Agency Recommendations

| | |
|---------------------------------|-------------------------------------|
| Office of Management and Budget | Disapproval (Veto message attached) |
| District of Columbia Government | Disapproval (Veto message attached) |
| Department of Justice | No objection |

Discussion

The District of Columbia Home Rule Act, approved December 24, 1973, delegates to the Council of the District of Columbia the authority to make changes in the criminal laws of the District, but not until January 3, 1977. The Congress, in a related action, enacted the District of Columbia Law Revision Commission Act, approved August 21, 1974, which established the District of Columbia Law Revision Commission to examine the District's laws and to recommend,

in annual reports to the Congress, changes in them. The Commission--a D.C. Government body-- did not become operational until a year later and now expects its work on the revision of the criminal laws to be completed within the next two years.

The enrolled bill would extend for two additional years, until January 3, 1979, Congress' sole jurisdiction over the criminal laws of the District for the purpose of giving the Commission adequate time to complete its work and make its recommendations to the Congress. The bill also contains a provision intended to preclude the Council's amendment of police regulations in a manner which, effectively, alters the Criminal Code. The provision was added by amendment on the House floor by Representative Dent of Pennsylvania, and was apparently directed at the District of Columbia's Firearms Control Regulations Act, approved by the Mayor on July 23, 1976, which is presently being considered by Congress. Mr. Dent explained that he wanted to prohibit any criminal code changes by "...any subterfuge or any roundabout, off-the-street method by any departmental police regulation."

The Dent amendment was passed 262 to 92 and the amended bill was then approved by voice vote. Twenty-four hours later, the bill was passed by the Senate without debate on a voice vote.

In its report on the bill, the House D.C. Committee maintains that extension of the prohibition on the Council's changing the Criminal Code is necessary because completion of the comprehensive revision and recodification of the District's Criminal Code by the Congress was intended to be a prerequisite to the transfer of jurisdiction to the Council over the D.C. Criminal Code. The Committee report points out that the conference report on the Home Rule Act stated:

It is the intention of the conferees that their respective Committees will seek to revise the District of Columbia Criminal Code prior to the effective date of the transfer of authority referred to. (Emphasis added.)

The House D.C. Committee report further notes that the conferees on the Home Rule Act provided for a single House veto of Criminal Code changes that might be made by the Council once the jurisdiction was transferred from the Congress to the Council. The report states:

This reinforces the commitment of the Congress to maintain exclusive jurisdiction over amendments to the Criminal Code until the Law Revision Commission has completed its study and made its recommendations, and the Congress has acted on the totally revised Criminal Code.

The District of Columbia Government, in its attached views letter, agrees that a major revision of the D.C. Criminal Code is necessary and should not be undertaken without the benefit of the Law Revision Commission's recommendations. It points out, however, that empowering the D.C. Council to enact changes in the D.C. Criminal Code should not be delayed further, because there are a number of additions or revisions to the criminal laws which are urgently needed.

A number of such provisions have been proposed by the District to the Congress -- for example, proposals to prohibit the unauthorized use of credit cards, to include mobile homes within the scope of the crime of burglary, and to make it unlawful to obtain telecommunication services through misrepresentations. Moreover, the D.C. Government maintains that enactment of such changes would not interfere at all with the work of the Commission.

The effect of the Dent amendment in the enrolled bill is unclear. As noted earlier, it was apparently intended to prohibit the Firearms Control Regulations Act which would ban possession of handguns to anyone who does not, on the date of its enactment, possess a valid registration for a handgun. That measure will become effective unless Congress disapproves it within 30 legislative days, a period which will elapse sometime at the end of September. However, the Department of Justice advises, in its attached views letter, that the enrolled bill, in and of itself, would not invalidate the gun control measure.

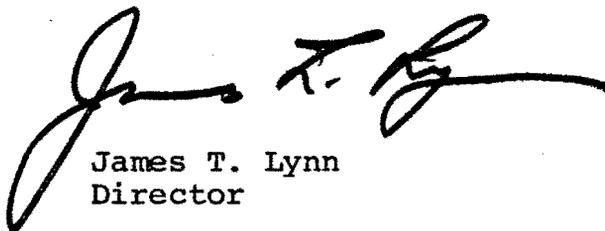
Moreover, the effect of the bill is also uncertain in other respects. First, the amendment references articles regulated under Title 22 of the D.C. Criminal Code. However, it is not clear whether licensing of firearms would be affected by the amendment because under the District of Columbia Code, the licensing of firearms is carried out pursuant to authority found in Title I of the D.C. Code, a provision which predates home rule. Second, the amendment references "criminal offenses." In the District of Columbia it is not clear what constitutes a "criminal offense" since District of Columbia law, as interpreted by the courts, is not settled in regard to whether or not criminal sanctions imposed pursuant to police powers translate civil violations into criminal matters.

We agree with the District of Columbia recommendation that the bill be disapproved. It can be argued that a further extension of the limitation on the D.C. Council is consistent with the original intent of Congress that a thorough revision of the D.C. Criminal Code be completed before the D.C. Council is empowered to enact changes in the criminal law. However, we believe the basic issue presented by the bill is whether the two-year extension is necessary to protect the Federal interest in the District of Columbia and if it and the Dent amendment are consistent with the purpose of the Home Rule Act, namely the grant to the inhabitants of the District of Columbia of powers of local self-government.

In our view, the bill is not consistent with the right of self-government for the citizens of the District of Columbia under the Home Rule Act. Extending the limitation on the D.C. Council's authority to change the Criminal Code is unnecessary. Additions to the D.C. criminal laws are needed now to enable the District to meet the challenges of a changing society. Granting the power to the D.C. Council to legislate on local matters under the Code would not interfere with the work of the Law Revision Commission and the Council does not require the results of the Commission's study to weigh the need for such legislation. Further, this bill is not necessary to enable the Congress to protect the Federal interest in the District of Columbia. The

Home Rule Act gives the Congress clear authority to disapprove D.C. Government legislative acts. Finally, the Dent amendment, as noted above, is both an unnecessary erosion of the home rule concept and uncertain in its effect on other actions of the D.C. Government.

A proposed veto message is attached for your consideration.

A handwritten signature in black ink, appearing to read "James T. Lynn", with a long horizontal flourish extending to the right.

James T. Lynn
Director

Enclosures



THE DISTRICT OF COLUMBIA

WALTER E. WASHINGTON
MAYOR

WASHINGTON, D. C. 20004

AUG 27 1976

Mr. James M. Frey
Assistant Director for Legislative
Reference
Office of Management and Budget
Executive Office Building
Washington, D. C. 20503

Dear Mr. Frey:

This is in reference to the facsimile of the enrolled enactment of Congress entitled:

H.R. 12261 - To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District

which you transmitted on August 25, 1976. The enrolled bill would amend section 602(a)(9) of the District of Columbia Self-Government and Governmental Reorganization Act (the "Self-Government Act") [D.C. Code, § 1-147(a)(9)] by extending for two years the prohibition against the Council of the District of Columbia taking any action "with respect to any provision of title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners)."

Section 602(a)(9) currently provides that the Council may exercise such authority on January 3, 1977; this bill would postpone the date on which the Council could

exercise this authority to January 3, 1979. Additionally, the bill, as amended during debate on the floor of the House of Representatives upon the adoption of the "Dent Amendment", prohibits the Council from taking any action "with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 of the District of Columbia Code" (relating to weapons), until January 3, 1979. The bill's provisions are totally inconsistent with the principal, stated purpose of the Self-Government Act, namely the "grant to the inhabitants of the District of Columbia of powers of local self-government", P.L. 93-198, § 102 (a), 87 Stat. 777; it therefore is unacceptable.

An essential aspect of the right of self-government is presently denied to the citizens of the District, as they still are denied the authority to enact criminal laws and those relating to judicial procedure and the treatment of prisoners. Notwithstanding that the proper subjects of such laws are of paramount concern to the inhabitants of this City, this bill seeks a further postponement of the citizen's authority to address these concerns, for another two years. It would deny to the citizens of the District the exercise of a right -- through its elected officials -- explicitly granted to them seventy years ago, when Congress provided:

The Council is hereby authorized and empowered to make ... all such usual and police regulations ... as the Council may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind. D.C. Code, § 1-227.

The original purpose of the bill, as stated by Chairman Diggs, its author, was to give the District of Columbia Law Revision Commission sufficient time within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission, which was established subsequent to the enactment of the Self-Government Act by P.L. 93-379, 88 Stat. 480, has begun the task of reviewing the criminal laws of the District and has made significant

progress. The District agrees that no major revision of its criminal laws should be undertaken without the benefit of the Commission's recommendations, and so informed the House District Committee by letter of June 29, 1976. However, there are additions to the criminal laws which are needed to enable the District to meet the challenges of a changing society. A number of such provisions have been proposed by the District to the Congress -- for example, proposals to prohibit the unauthorized use of credit cards, to include mobile homes within the scope of the crime of burglary, and to make it unlawful to obtain telecommunication services through misrepresentation. Nonetheless, these proposals are still pending before the House District of Columbia Committee.

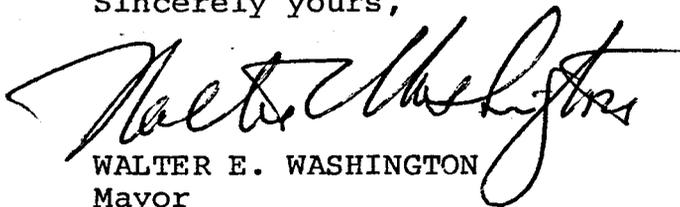
The enactment by the Council of provisions such as the foregoing would not interfere with the work of the Commission. And it cannot be said that the Council requires the result of the Commission's study to weigh the need for such legislation. Nor can it be said that in the absence of the provisions of the subject bill there would be no Congressional "oversight" of acts of the Council pertaining to the criminal laws: § 602(c)(2) of the Self-Government Act provides that such act of the Council shall take effect only if not disapproved within thirty days by either the House or the Senate.

The discussion of the amendment on the floor demonstrates that it was premised on a fundamental misunderstanding of the Self-Government Act. Its stated purpose is to "prohibit ... Criminal Code changes by any subterfuge or any roundabout, off-the-street method by any departmental police regulation". Cong. Rec. H. 8798 (Aug. 23, 1976, daily ed.). These considerations aside, the impetus for the amendment -- the passage of the Council of the Firearms Control Regulations Act of 1975 -- was an exercise by the Council of explicit police power conferred on it by D.C. Code, § 1-277. Its legislation does no more than to amend similar police power

regulations adopted by the prior appointed Council, in 1969, under the same authority. Thus, the amendment seeks to strip the City's elected Council of an authority which Congress conferred long prior to its grant of home rule, and permitted an appointed Council to exercise.

In conclusion, this bill would extend, for an additional two years, the period during which the people of the District may not enact, regardless of manifest need, any criminal laws, nor any police regulations with respect to any weapon mentioned in D.C. Code, § 22-3201, et seq. Its provisions are inconsistent with the spirit of the Self-Government Act and the principle of self-determination. It does not serve any Federal interest; rather it is addressed to a matter which is essentially local in nature. Therefore, the District Government strongly urges that H.R. 12261 be disapproved. A proposed message of disapproval is attached.

Sincerely yours,



WALTER E. WASHINGTON
Mayor



STERLING TUCKER
Chairman
Council of the District of Columbia

Attachment

B

THE WHITE HOUSE
WASHINGTON

TO THE HOUSE OF REPRESENTATIVES

Today, I have signed H.R. 12261, a bill "To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District."

The prohibition on the Council's changing the Criminal Code is necessary because completion of the comprehensive revision and recodification of the Criminal Code by the Congress is a prerequisite to the transfer of jurisdiction to the Council over the D.C. Criminal Code.

The bill gives the District of Columbia Law Revision Commission additional time within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission has begun the task of reviewing the criminal laws of the District but will not be able to complete its work by January 3, 1977, when without this legislation, the D.C. Council would have been able to amend the District of Columbia Criminal Code.

No major revision of the District's criminal laws should be undertaken without the benefit of the Commission's recommendations.



C

TO THE HOUSE OF REPRESENTATIVES

I am returning, without my approval, H.R. 12261, a bill "to extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District". This bill would extend for two years, or until January 3, 1979, the prohibition against ^{any} action by the Council of the District of Columbia on ~~any~~ provisions of the present District laws relating to crimes, criminal procedure, and the treatment of prisoners.

The bill would give the District of Columbia Law Revision Commission additional time within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission, which was established subsequent to the enactment of the District of Columbia Self-Government and Governmental Reorganization Act, has begun the task of reviewing the criminal laws of the District but will not be able to complete its work by January 3, 1977, when, under current law, the D.C. Council will be able to amend the District of Columbia Criminal Code.

I agree that no major revision of the District's criminal laws should be undertaken without the benefit of the Commission's recommendations. I do not agree, however, that it is either wise or necessary to delay ^{even} further the time when the citizens of the District of Columbia, through their elected representative may exercise the right of self-government in ^{this vital} ~~an~~ area ^{which} ~~that~~ _{will affect} affects their daily lives.

from taking any action "with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 of the District of Columbia Code" (relating to weapons) until January 3, 1979.

Although some confusion has arisen regarding the intended force and effect of H.R. 12261, I am advised by the Department of Justice that the measure is ^{only} ~~applicable in the future and is irrelevant to~~ ~~prospective in its application and is thus~~ ~~irrelevant~~ ~~inapposite to the enactment of the~~ ^{the} "Firearms Control Regulations Act of 1975" (act. 1-142), recently adopted by the District of Columbia.

Consistent with the right to self-government of District citizens, I have in the past supported fully the legislative powers of the District, subject only to

the constraints imposed by the Home Rule Act itself or some overriding Federal interest. This operating principle properly should apply regardless of the views of the Executive on the merits or shortcomings of individual legislative items. In the circumstances involving H.R. 12261, *I find no justification* ~~there is simply no basis to~~ ~~warrant~~ ^{for} interference with this principle of self-determination.

For these reasons, I am returning H.R. 12261 without my approval.

THE WHITE HOUSE
 September , 1976



D

H. R. 12261

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (9) of section 602(a) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 1-147(a)(9)) is amended by striking out "twenty-four" and inserting in lieu thereof "forty-eight", and by inserting, immediately preceding the word "during", a comma and the words "or with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 of the District of Columbia Code".

Speaker of the House of Representatives.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

SEP 2 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 12261 - District of Columbia
Criminal Laws
Sponsor - Rep. Diggs (D) Michigan

Last Day for Action

September 7, 1976 - Tuesday

Purpose

To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District by direct amendment of the D.C. Criminal Code or through changes in police regulations.

Agency Recommendations

| | |
|---------------------------------|-------------------------------------|
| Office of Management and Budget | Disapproval (Veto message attached) |
| District of Columbia Government | Disapproval (Veto message attached) |
| Department of Justice | No objection |

Discussion

The District of Columbia Home Rule Act, approved December 24, 1973, delegates to the Council of the District of Columbia the authority to make changes in the criminal laws of the District, but not until January 3, 1977. The Congress, in a related action, enacted the District of Columbia Law Revision Commission Act, approved August 21, 1974, which established the District of Columbia Law Revision Commission to examine the District's laws and to recommend,

TO THE HOUSE OF REPRESENTATIVES

I am returning, without my approval, H.R. 12261, a bill "To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District."

The purpose of the bill is to give the District of Columbia Law Revision Commission additional time, until January 3, 1979, within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission, which was established subsequent to the enactment of the District of Columbia Self-Government and Governmental Reorganization Act, has begun the task of reviewing the criminal laws of the District but will not be able to complete its work by January 3, 1977, when, under current law, the D.C. Council will be able to amend the District of Columbia Criminal Code.

I agree that no major revision of the District's criminal laws should be undertaken without the benefit of the Commission's recommendations. I do not agree, however, that it is either wise or necessary to delay further the time when the citizens of the District of Columbia, through their elected representatives, may exercise the right of self-government in an area that affects their daily lives.

The Congress should not prohibit changes in the District of Columbia's criminal laws which may be needed now to meet the problems of the community. A number of such changes have been proposed by the District and are pending before Congress. Granting the power to the District of Columbia Council to legislate on local matters such as these would not interfere with the work of the Commission. Furthermore, the Council does not require

the results of the Commission's study to weigh the need for such legislation. Nor is this bill necessary to enable the Congress to protect the Federal interest in the District of Columbia. The home rule law gives the Congress clear authority to disapprove District of Columbia legislative acts.

Finally, an amendment to H.R. 12261, added on the floor of the House with hasty and inadequate consideration, would prohibit the Council from taking any action "with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 of the District of Columbia Code" (relating to weapons), until January 3, 1979. This provision is objectionable on two grounds: first, like the bill as a whole, it is an unnecessary erosion of the home rule concept; second, it is ambiguous and its potential effect on other actions of the District of Columbia Government is unclear.

For these reasons, I am returning H.R. 12261 without my approval.

THE WHITE HOUSE

September , 1976

File with H.R. 12261

(True Copy - copy ^{also} sent to Central Files)

COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20004



DAVID A. CLARKE
Councilmember - Ward 1

RECEIVED AND SECURITY UNIT
THE WHITE HOUSE
WASHINGTON

1976 AUG 30 PM 6 53

30 August 1976

Fin
By Mrs

The Honorable Gerald R. Ford
President of the United States
Washington, D. C.

Dear President Ford:

I was most pleased to learn from the House Republican Conference Legislative Digest (August 20, 1976, Vol. V, No. 281, p.4.) that the administration is opposed to H.R. 12261, and this letter is to earnestly solicit your veto of that bill now pending before you for approval or veto.

The issue involved in this bill is that of the degree of democracy to be afforded to the citizens of the National Capital in the governance of local affairs and not the narrow issue of gun control in the District of Columbia.

H.R. 12261 was designed to extend for two years a prohibition currently in the Home Rule Act prohibiting the Council from legislating with respect to three titles of the D. C. Code (22-24) in which most of the District's criminal law is codified in order to allow the D. C. Law Revision Commission to complete its work on recommending changes. I respectfully submit that H.R. 12261 violates fundamental principles of this country which are embodied in your statements with respect to the District and in the platforms of both major political parties and furthermore is not needed to attain the goals for which it was introduced.

In declining to sustain the Mayor's veto of our Affirmative Action in District Government Employment act and in sustaining the Mayor's veto of the District of Columbia Shop-Book Rule act, you announced your intention to act with respect to matters arising from the District in such a manner as to sustain the local government except where the federal interest was substantially affected or where the Home Rule Act was violated, and, in accord with your policy, you let stand our

| | |
|-------------|-------------------|
| Date | 9.1.76 |
| Action Copy | <i>Ken Legras</i> |
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The Honorable Gerald R.. Ford
30 August 1976
Page 2

override of the Mayor's veto of the Affirmative Action act despite your personal aversion to some parts of it. This action was basically consistent with the plank of your party's platform which calls for "full /District/ home rule over matters that are purely local" and that plank of my party's platform which calls for "elimination of Federal restrictions in matters which are purely local." More importantly, it is consistent with the fundamental principle of democracy upon which our country was founded. I urge you to extend your policy regarding the District to bills originating in Congress as well as to bills coming to you from City Hall.

In no area is local dominion more clearly proper than that of the criminal law. The federal government has religiously avoided involving itself with the definition and enforcement of local laws to the extent that it has consistently refused to commission a national police force even for the enforcement of its own relatively few criminal laws. Instead, it has chosen to address crime through assistance to local jurisdictions. Thus there is no substantial federal interest in the matter of local criminal legislation. Indeed this is conceded by the bill itself which recognizes that such authority will come at some time.

Moreover, the bill is not necessary to the revision of the criminal code. Our Law Revision Commission is working hard on its recommendations and the local government has expeditiously assisted it with all that it has requested. The delay has been in the time Congress took to enact the Law Revision Commission Act (eight months after the passage of the Home Rule Act) and the time Congress took in approving the Commission's original budget. The Commission Act gave the Commission four years from the date of first appropriation to complete its work. Moreover, the Council is anxious to receive the Commission's product, and, given its relative importance in the Council's universe of concern as opposed to its importance in the Congress' far wider universe, it is more likely to receive expeditious and careful attention in the Council than if it goes directly to Congress. The Congress will of course retain its powers of disapproval and original legislation if you veto the instant bill so that there will continue to exist more-than-adequate procedures to protect any federal interest.

The Honorable Gerald R. Ford
August 30, 1976
Page 3

Over half of the city's Advisory Neighborhood Commissions have voted to oppose H.R. 12261 and none have voted to support it. Moreover the Steering Committee of the Division of the Unified Bar of the District of Columbia relating to courts, lawyers, and administration of justice has recommended opposition to the bill.

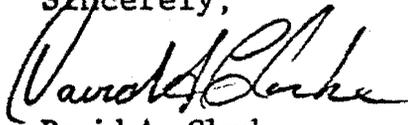
I would also like to discuss what the bill is not. It is not a gun-control bill nor an anti-gun-control bill. When it came before the House, Congressman Dent moved an amendment to prohibit local legislation with respect to articles governed by one chapter of one of the prohibited titles some of which include rifles and pistols. (Others include machine guns, sawed-off shotguns, razors, switchblade knives, bowie knives, and false knuckles.) In his presentation, Congressman Dent indicated a concern with the Police Department doing what the Council cannot do and with the recent local passage of the Firearms Control Regulation act of 1975 (122 Cong. Rec. H 8797-H 8800) (August 23, 1976). He apparently felt that the Police Department promulgated the Police Regulations of the District of Columbia which is not the case, as the Council promulgates these regulations pursuant to authority dating back to at least 1887 (See D. C. Code, secs. 1-224-1-227. Please note that 1-227, adopted in 1906 and not repealed or expressly amended by H.R. 12261, specifically authorizes the "regulation of firearms, projectiles, explosives, or weapons of any kind.") More importantly, Congressman Dent agreed with the Chairman of the House Committee on the District of Columbia that his amendment would not affect the Firearms Control Regulation act of 1975 which so disturbed him when he said "anything previous to the amendment to the act today would be in effect, if they [The Council] put it into effect." (122 Cong. Rec. H 8800 (August 23, 1976)). The bill therefore does nothing with respect to the Firearms Control Regulation act of 1975. Unfortunately, the Senate's rapid consideration left no indication of its intent.

The bill should also be disapproved because of the confusion it has created. Apart from the statements of Congressman Dent and the Chairman of the House District Committee that the bill would not affect the Firearms Control Regulation act of 1975, others have argued that it will and some in the public may be led to disobedience by the confusion. If Congress wants to disapprove our act, they have in the Home Rule Act a procedure for doing so involving disapproval resolutions for which several

The Honorable Gerald R. Ford
August 30, 1976
Page 4

proposals have been introduced. This procedure involved only the Congress and not the President and should be employed rather than a charter-amending bill necessitating your action when the Congress does not approve of some local measure we have passed. To allow H.R. 12261 to become law would be to establish a precedent--not only of enactment of confusing and undemocratic legislation for the District--but of requiring Presidential attention to relatively minor matters of local concern because Congress chooses not to use the procedures it has ordained for itself.

Sincerely,



David A. Clarke
Chairperson, Committee on the
Judiciary and Criminal Law

cc: James M. Frey, Esq.