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THE WHITE HOUSE ACTION

WASHINGTON

May 26, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Crime Message - Mandatory Sentences

This memorandum seeks clarification of your decision regarding mandatory minimum sentences.

I am informed that, upon reviewing the Crime Message options package, you indicated your desire to provide mandatory minimum sentences for any person (a) who commits an offense which involves physical injury or the use of a dangerous weapon, or (b) who is a repeat offender.

With respect to these offenders, do you prefer:

1. Mandatory minimum sentences with no possibility of immediate parole?

2. Mandatory minimum sentences with the possibility of immediate parole?

3. Mandatory minimum sentences with no possibility of parole, but allow judges to fail to incarcerate certain offenders who fall into narrowly drawn categories of mitigation (e.g. under 18, no prior record, etc.)?

Most of your advisers (The Attorney General, Buchen, Marsh, Friedersdorf, Goldwin and I) recommend Option 3.

DECISION

Option 1 _____

Option 2 _____

Option 3 JRT

DECISION

THE WHITE HOUSE

WASHINGTON

May 22, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: Jim Cannon

SUBJECT: Crime Message

This memorandum seeks your guidance with respect to several matters to be addressed in your special message to Congress on crime.

OVERVIEW

The Attorney General recently submitted a draft Crime Message for your consideration. A working outline of the Message (at Tab A) identifies as the major themes (1) an emphasis on the plight of the innocent victim of crime, and (2) the need to insure that punishment of criminal offenders is certain, swift and just. The Message builds upon your remarks at Yale Law School and outlines specific proposals to meet the stated goals.

The Message recognizes that the principal vehicle for any timely reform of criminal law on the Federal level is S. 1, a bill to revise, reform and recodify the totality of Federal criminal law. Thus, your efforts in this regard are designed to shape the development of this measure as it is considered by the 94th Congress (see Tab B for general background of S. 1).

Finally, while recognizing that law enforcement is primarily the responsibility of State and local governments, the Message points out that the Federal government can and must provide leadership in this area through the use of LEAA funds and through enactment of model penal statutes.

OPEN ISSUES

The draft Message raises several key issues with respect to which your guidance is required. These include: *

1. Gun control -- What, if any, additional steps should the Administration recommend to further enhance our capacity to prevent and control handgun misuse?

2. Mandatory sentences -- What type of mandatory sentencing structure should the Administration advocate, and for whom?

3. Restriction on employment of ex-offenders -- Should the Administration encourage the removal of Federal- and State-enacted restrictions on the employment of ex-offenders and, if so, by what means?

4. Corrections reform -- What steps should the Administration recommend to help alleviate the problem of decrepit, over-crowded and unsafe correctional facilities?

5. Victims' compensation -- Should the Administration endorse the provisions of S. 1 providing compensation for victims of Federal crimes?

6. National defense sanctions -- Should the Administration indicate its dissatisfaction with the provisions of S. 1 dealing with offenses involving national security?

Attached, at Tabs C through H, are a series of memoranda which address each of these open issues in more detail and set forth options, where appropriate. Resolution of these issues will allow us to proceed toward our target date of June 5 for transmittal of the Message to Congress.

You may wish to meet with the Attorney General and staff to discuss these items prior to final determination.

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* In addition to those listed, the question of what should the Administration recommend with respect to extension of the LEAA program and the Juvenile Justice and Delinquency Prevention Act must be decided. Jim Lynn is preparing a memo on this point for your consideration.

A

OUTLINE: DRAFT CRIME MESSAGE

I. Themes of the Message

A. Emphasis on Victims -- It is time we direct our attention to the victims of crime. For too long we have dwelled on the plight of the defendant, often losing sight of the plight of the victim.

B. Swift and just punishment -- The criminal justice system needs to be improved to ensure that it functions in a swift and just manner. The effectiveness of our system is often diminished because of the long delay between apprehension and sentencing.

II. Costs of Crime

A. Rate of serious crime reported -- Murder, forcible rape, robbery, aggravated assault, burglary, larceny and auto theft -- 17 per cent higher in 1974 than in 1973. (Largest increase in 42 years.)

B. Level of actual crime -- 300 to 500 per cent higher than reported crime level.

C. Violent crime increase -- 11 per cent in 1974.

D. Crime committed against strangers -- 65 per cent of all violent crime.

E. Social toll is inestimable -- pervasive fear that causes people to rearrange their lives to be suspicious of their fellows.

III. Factors Contributing to Crime

A. Economic deprivation.

B. Deterioration of social institutions which promote respect for law.

C. Increasing crime rate itself. Respect for the law declines as the people believe that lawbreakers are not being punished. A decline in respect for the law, in turn, leads to the commission of more crimes.

IV. Proposals to Attack Crime

A. Improvements in the law itself.

1. Reform of the Federal Criminal Code -- necessary to revise current laws to make them more effective and to create new offenses to deal with such matters as organized crime, white collar crime, consumer fraud.

2. Principles of sentencing -- "just punishment" and "incapacitation", as well as "deterrence" and "rehabilitation" should guide sentencing judges.

3. Require mandatory incarceration for offenders who commit violent offenses or use a dangerous weapon. Cures current deficiency since offenders often not sent to jail.

4. Appellate review of sentences -- provide for two-way review.

5. Focus on victims also includes victim's compensation -- no federal appropriations necessary; funds derived from fines (levels of which are increased) and profits from prison industry sales.

6. National security -- balance public's right to know with legitimate interests of intelligence community.

7. Handgun control.

B. Reforming the Federal Criminal Justice System.

1. Improve the management of prosecutors' offices -- urge the use of data retrieval systems so that prosecutors can make informed judgments as to which offenders deserve trial and incarceration.

2. Career criminal program -- 56 percent of inmates are recidivists. Objectives of program:

a. Provide quick identification of career criminals.

b. Accord priority to their prosecution.

c. Assure that they receive appropriate sentences so that they are not quickly released to victimize the community.

3. Pretrial diversion -- objective is to divert certain first offenders who do not deserve incarceration from the criminal justice system at the outset.

a. Reduce caseloads.

b. Enable offenders to avoid criminal record and thus increase likelihood for productive lives.

c. Insure maximization of prison resources to house the more dangerous offenders.

4. Expand criminal jurisdiction of U. S. Magistrates

5. Corrections reform -- prisons must be secure and provide humane conditions.

6. Drug abuse -- announce Administration initiative to review overall Federal effort to prevent and treat drug abuse.

C. State Assistance

1. Law Enforcement Assistance Administration -- while crime is largely a State and local responsibility, the Federal government can help shoulder this responsibility through work of LEAA. Emphasis on high crime areas.

2. Other assistance programs -- prevention and vocational rehabilitation efforts of HEW and Labor.

3. Juvenile delinquency -- categorical grant program under the auspices of LEAA. Contrary to trend toward revenue-sharing and black grants.

B

S. 1: GENERAL BACKGROUND

Although there have been several consolidations and technical revisions of federal criminal law (Title 18, United States Code) over the years, the United States, unlike many of the states and most of the other countries in the world, has never enacted a true "criminal code."

The failure to codify a rational formulation of our federal criminal laws has posed a number of acute problems.

First, there is uncertainty in the law -- courts of appeal are often divided and impose a different "federal" law depending on the circuit.

Second, inconsistencies, loopholes and unnecessary technicalities result from the present hodge-podge of laws. For example, we now have about 80 federal statutes dealing with theft -- the definition of the offense depends upon the jurisdictional basis, whether it is theft of government property, theft of the mails or theft of interstate commerce.

Third, problems arise due to the fact that our laws define an offense in terms of the jurisdiction. For example, under some interpretations a person does not commit theft of property moving in interstate commerce under present federal statutes unless he knew it was traveling interstate.

Fourth, never-used statutes clutter up our law, e.g., operating a pirate ship on behalf of a foreign prince; detaining a United States carrier pigeon, and seducing a female steamship passenger, all statutes still on the books.

Finally, the sentencing scheme of current law is eratic. Robbery of a bank carries a 20-year sentence while robbery of a post office carries 10 years.

In 1966, then Congressman Richard Poff spearheaded the enactment of a law creating a National Commission on Reform of Federal Criminal Laws, which was charged with the duty of reviewing current statutes and case law of the United States and recommending to the President and Congress legislation to improve the federal system of criminal justice.

In 1971, the Commission submitted its recommendations to the Congress and the President in the form of a Final Report. This was intended to serve as a "work basis" to facilitate Congressional choices. In February 1971, the Senate Subcommittee on Criminal Laws and Procedures (McClellan - Chairman; Hruska - Ranking) began hearings on the recommendations of the Commission.

After extensive hearings during the remainder of the 92nd Congress, Senators McClellan and Hruska introduced S. 1 early in the 93rd session. This bill was largely the work-product of Congressional staffers. Later in the same session, Senators Hruska and McClellan also introduced S. 1400, the Administration's draft on the same subject.

In the current session of Congress, Senators McClellan and Hruska (joined by Senators Mansfield, Scott, Bayh, Moss, Thurmond, and others) introduced a compromise version bill, hopefully embodying some worthwhile new provisions and the best features of both S. 1 and S. 1400 as introduced in the 93rd Congress. This bill (approximately 800 pages in length -- the longest in history) and Committee Report (approximately 2,000 pages in three volumes) will serve as the basis for anticipated Senate action sometime later this year.

The Judiciary Subcommittee on Criminal Justice (Hungate - Chairman; Wiggins - Ranking) has committed itself to begin its hearings on S. 1 in June with a view toward final House floor action on the measure next year.

During Congressional consideration of S. 1, you will have the opportunity to shape its development in many areas. Although it raises many highly controversial political issues, the measure is generally supported by conservatives and liberals alike. Strong Presidential support for enactment with any reservations you may care to make, is essential to passage of this important legislation in the 94th Congress.

C

What, if any, additional steps should the Administration recommend to further enhance our capacity to prevent and control handgun misuse?

BACKGROUND

A. The Problem

Violent crime is on the rise. The Federal Bureau of Investigation's latest figures show that the rate of serious crime increased faster in 1974 than in any year since the FBI started keeping statistics. More than half the murders, one-third of the robberies and one-fourth of the aggravated assaults are committed by persons using handguns.

The stock of handguns in the United States has been estimated at more than 40 million, and that number increases each year by about 2.5 million. The most virulent handguns are the cheap, small, low-quality handguns that have been given the name "Saturday Night Specials." A study of 4,537 handguns used in crimes in four major cities recently found that 70 per cent of them were "Saturday Night Specials."

The problem of handgun violence is at its worst in crowded metropolitan areas. In 1973, the FBI's violent crime rate for cities with populations of 250,000 or more was 762.9 crimes per 100,000 population, while in rural areas the rate is 134 crimes per 100,000 population. The contrast between the simple numbers of violent crimes in urban and rural areas is even more stark. In 1973, 537,432 violent crimes were reported in the nation's cities of 250,000 or more population, while in rural areas 27,019 violent crimes were reported.

B. The Current Law and Its Limitations

Current Federal gun control laws ban importation of so-called "Saturday Night Specials" under a set of defining standards. Manufacturers must place a serial number on each weapon. Manufacturers, wholesalers and dealers must keep a journal of the identities of buyers of their weapons. Retailers are prohibited from knowingly selling firearms to youths, non-residents of the dealer's State and

other proscribed categories of purchasers -- convicted felons, persons under indictment, mental defectives, drug users, certain aliens, and persons who have renounced their citizenship. It is illegal for any dealer or private individual knowingly to sell a handgun to someone who resides in another State. A person who uses a firearm to commit any Federal felony is guilty of a separate offense carrying an additional 1- to 10-year sentence. A second conviction under this provision carries a mandatory minimum sentence of 2 years and prohibits the judge from suspending sentence or placing the defendant on probation.

Current Federal laws have a number of loopholes. First, Federal dealer licenses can be obtained by persons who are not bona-fide dealers in weapons. Second, it is difficult to prove that a dealer knowingly sold a weapon to a member of one of the prohibited classes of persons. The dealer need only ask for some identification from the buyer and have the buyer sign a form stating that he is not a member of the prohibited classes. He need not go behind the buyer's statements to check their accuracy. Third, there is little control on sales of weapons after the first sale by a dealer. Because no record of subsequent sales is required, persons bent on illegal interstate transactions simply make the first purchase through a "straw man" -- one who either is a legal purchaser or who uses false identification. Fourth, while current law prohibits the importation of assembled "Saturday Night Specials," it does not prohibit the importation of their parts for assembly domestically.

DISCUSSION

A number of approaches to the problem of more effective handgun control are available. Set forth below are a range of approaches which warrant your consideration. Although set forth as alternatives, a preferable approach would be to employ two or more in combination.

A. Endorse no new handgun laws.

The argument is made that no new handgun laws are needed because current law would suffice if only it were enforced. While enforcement efforts are less than adequate, this fails to take into account the fact that current law does not facilitate proof of its violation. It also assumes that the criminal justice system is operating efficiently so that proven violators face swift and certain punishment.

B. Improve current law.

Some modest changes in current law would prompt little opposition even from those who generally oppose new laws in this area. Amendments would increase the effectiveness of the enforcement effort. Standards could be imposed so that only bona fide dealers could obtain Federal dealers' licenses. Special license categories could be created for dealers who specialize in selling ammunition or long guns or who are gunsmiths. Dealers' licenses could be withheld from persons who are barred by State law from dealing in weapons. A system of administrative fines and compromise authority could be set up to augment the penalties now in effect for violations of dealers' regulations -- license revocation and criminal punishment. A waiting period of three to five days between purchase of a handgun and its receipt could be imposed. The dealer could be required during that period to obtain an FBI name-check of the buyer from local police to determine whether he is a convicted felon. The language of the prohibition on possession by convicted felons could be amended to overcome a court decision that construed the current statute to require that purchase or transportation of the weapon in interstate commerce be proven as an element of the offense.

C. "Saturday Night Special" ban.

Cheap, low-quality, highly concealable handguns currently cannot be imported legally. But their parts can be imported, and they can be assembled or manufactured and sold within the United States. Domestic manufacture, assembly and sale of these weapons could be stopped in one of two ways: (1) by simply prohibiting manufacture, assembly and sale of weapons fitting a definition similar to the one currently used by the Treasury Department in prohibiting import; and (2) by imposing a tax on a sliding scale so that no handgun would be sold at less than a specific amount -- $100, for example. The first approach has the virtue of taking into account concealability of a weapon as well as its price. The second approach falls prey to the claim that it discriminates against poor people.

D. Illegal Transportation Approach.

Many big cities have tough gun control laws, but police officials complain that, without some control of the supply of weapons coming into the cities, local controls have been ineffective.

Current law prohibits the knowing sale of a handgun by a dealer or private individual to someone residing in another State. It also prohibits sale of a weapon where possession would be prohibited at the point of sale or delivery.

A Federal gun control approach could be fashioned that would essentially tighten the provisions of the 1968 Act to strike at this commerce in handguns.

(1) Require the seller of a handgun to take reasonable steps to ensure that the buyer is not a resident of, nor intends to transport the handgun to, another state. This would require both licensed dealers and private sellers of handguns to take reasonable steps to determine the identity and residency of the buyer. In this regard, it merely changes the standard of care under the current law. In the case of a private seller, this would be accomplished by receipt of a written statement or affidavit from the buyer; in certain cases, personal knowledge would suffice. Alternatively, a private seller could discharge this burden by consummating the sale at a dealer's place of business where the dealer would take reasonable steps to identify and determine the residency of the buyer. In the case of dealer sales, particularly multiple sales, the standard of care required would be higher. Both civil and criminal penalties would be available as sanctions, depending on the culpability and status of the offender.

(2) Require the seller of a handgun to take reasonable steps to ensure that the buyer is not a resident of, nor intends to transport the handgun to, a locality where the buyer's possession of a handgun would be illegal. This would revise current law to strike at intrastate as well as interstate sales, where the purchaser resides in a locality which makes his possession of a handgun illegal. The standard of care, method of discharging such standard and sanctions for failure to do so would be the same as in (1) above.

(3) Assign to ATF Strike Forces the job of investigating violations of the Federal gun laws in certain selected areas, such as the ten largest cities in the United States. If commerce in handguns prevents local laws from being effective, and if that commerce were made clearly a violation of Federal law, a concentrated effort by the Bureau of Alcohol, Tobacco and Firearms, together with specifically assigned Federal prosecutors could help cities fight gun violence. ATF's project ID, pursuant to which it attempts to trace all handguns apprehended in connection with criminal use, could also be undertaken in such cities.

E. Metropolitan Area Approach.

Rather than keying the Federal law to State and local gun control provisions, a Federal regulatory scheme could go into effect in Standard Metropolitan Statistical Areas with a population of more than one million. The controls could include:

(1) Prohibition of transfer or sale within the metropolitan area and prohibition of transportation of a handgun into a metropolitan area. This approach strikes most directly at commerce in handguns. It should be coupled with a presumption that possession of more than five handguns is possession with intent to sell.

(2) Prohibition on possession of handguns outside the individual's home or place of business. This approach would provide an easily provable Federal charge against persons who deal in guns illegally. It would also augment local law enforcement efforts against carrying concealed weapons. It is vulnerable to two arguments: that it would be unenforceable because violations would be rife and that it would make virtually all street crime a Federal offense.

F. Federal Safety Certification Card.

A handgun purchaser could be required to obtain either from the Treasury Department or from certified private organizations such as the National Rifle Association a handgun safety certification card bearing his correct address and his photograph. The issuing organization could be required to determine whether the applicant lives at the address he has given and whether he has been convicted of a felony. The applicant could also be required to pass a simple handgun safety course before purchasing a handgun. This certification system would make enforcing a regional ban on sale or possession much easier and would help to prevent convicted criminals from purchasing handguns. (The cost of this is undetermined.)

G. Transfer Notice

Handgun owners who wish to transfer possession of a handgun to another could be required to consummate the transaction at a dealer's office. The dealer could be required to keep a record of the transaction in the same manner he keeps records of initial sales. This provision would facilitate the tracing of handguns used in crime or found in metropolitan areas subject to Federal controls. Any failure to record the transfer of -- or to report theft or loss of -- a handgun could be punished if the handgun later turned up in the illegal possession of another.

ASSESSMENT OF ALTERNATIVES

A handgun control bill incorporating features of all the alternatives described above would be the most effective in minimizing handgun violence in the United States. However, some of the alternatives would likely meet with strong opposition from gun enthusiasts.

The transfer notice provision in Alternative G, pursuant to which all handgun sales must be made through a licensed dealer, would be seen as a nationwide handgun registration system in disguise. The Federal safety certification card system would be seen as a nationwide licensing system. Federal licensing does not meet with nearly as much opposition as other approaches, but if it were coupled with a regional ban on possession or sale, gun enthusiasts would probably be outraged.

The metropolitan area approach has political strengths, since it would apply in areas where acceptance of the need for Federal controls is the greatest and would not apply where opposition to Federal controls is the greatest. It would suffer from enforcement problems if it were not coupled with some sort of licensing or registration system. Moreover, many view this as simply a scheme to disarm "inner city" areas.

Amending the current law in the ways described above in Alternative B, and attacking the "Saturday Night Special" problem would meet with little opposition. Placing a higher standard of care on handgun sellers and beefing up enforcement efforts in major urban areas, as suggested in Alternative D, likewise, would not be tremendously controversial.

Doing nothing in the way of new Federal gun control legislation could itself have serious political liabilities in a time of rising violent crime and rising sentiment against handguns.

OPTIONS

A. No new Federal law.

Agree _____ Disagree DRF

B. Improve current law.

[The Attorney General, the Counsel to the President, the Domestic Council, Bob Goldwin and Max Friedersdorf, favor this.]

Agree DRF Disagree _____

C. "Saturday Night Special" ban.

1) By quality and concealability definition.

[The Attorney General, the Counsel for the President, the Domestic Council and Bob Goldwin favor this.]

Agree WRF Disagree _____

2) By Federal tax on sliding scale.

Agree _____ Disagree WRF

D. Illegal transportation approach.

1) Prohibit sale to resident of another State.

[The Attorney General, the Counsel to the President, the Domestic Council and Bob Goldwin favor this.]

Agree _____ Disagree _____

2) Prohibit sale to resident of an area covered by local law.

[The Attorney General favors this.]

Agree _____ Disagree _____

3) Assign ATF to investigate gun commerce in key cities.

[The Attorney General, the Counsel to the President, the Domestic Council and Bob Goldwin favor this.]

Agree MRC Disagree _____

E. Metropolitan approach.

1) Ban on sale and transfer.

Agree _____ Disagree _____

2) Ban on possession outside home or business.

Agree _____ Disagree _____

F. Federal safety certification card.

Agree _____ Disagree _____

G. Transfer notice system.

Agree _____ Disagree _____

D

What type of mandatory sentencing structure should the Administration advocate, and for whom?

BACKGROUND

Mandatory minimum sentences under current Federal law are imposed only upon those who carry or use a firearm during the commission of a Federal felony. A minimum 1-year sentence is imposed for the first such offense. But the judge may suspend the sentence or grant probation. A minimum 2-year sentence is required for any additional offense, and the judge is precluded from suspending sentence or granting probation.

Mandatory minimum sentences could be applied to other offenses and could be tightened in various ways so that a convicted offender would with certainty be placed in prison for a given amount of time without parole.

DISCUSSION

In your speech at Yale Law School, you indicated your intention to seek modification of the Federal Code to impose mandatory prison sentences for those convicted of violent crimes.

A. Mandatory Sentencing Structure

The initial question is what type of mandatory sentencing is most appropriate. Several approaches suggest themselves:

1. Require mandatory minimum sentences with no possibility of parole.

   This approach assures that the convicted offender for whom a mandatory minimum sentence is imposable will, in fact, be incarcerated for a period of time. The advantages of this approach may be illusory, however. Because prosecutors would be less likely to be able to exact a guilty plea from defendants because they have no leeway as to the recommended sentence, the prosecutors would probably not often prosecute on charges carrying a mandatory minimum. Judges, deprived of discretion, could, in some cases, simply acquit defendants rather than impose the mandatory term. Finally, this sort of mandatory sentence would fail to take into account circumstances that should reasonably affect the sentencing decision -- such as the age of the offender and his prior criminal history. They would treat one who commits a one-time crime of passion the same way they would treat a cold-blooded, willful offender.

2. Require mandatory sentence with immediate possibility of parole.

This approach assures that the convicted offender will either be incarcerated or subject to Federal supervision for a period of time. For this reason, it has sometimes been referred to as a "fake" mandatory sentencing scheme. By including the possibility of parole, some of the inflexible aspects of a "true" mandatory sentencing scheme would be avoided; however, prosecutors and judges could still be expected to attempt to avoid proceeding under laws imposing the "fake" minimum. (This is the approach taken by S. 1 with respect to crimes committed with a firearm and certain drug-trafficking offenses.

3. Require mandatory minimum sentences with no possibility of parole, but authorize judges to avoid imposition of the minimum sentence if certain statutorily defined mitigating circumstances are present.

This approach is similar to Alternative 1, but allows a bit more flexibility in application. The mitigating circumstances under this approach could be very narrowly drawn to give judges some discretion, but not enough to destroy the value of a mandatory minimum. For example, they could include: 1) that the offender has never been convicted of a violent offense, 2) that he was younger than 18 at the time of the offense, 3) that he was mentally impaired, 4) that he was acting under substantial duress, and 5) that he was only implicated in a crime actually committed by others and participated in the actual crime in a very limited way. Such an approach would deter the career criminal, who would find it impossible to fit himself into one of the categories. But it would not force judges to acquit defendants whom they believe to be guilty but who ought not be incarcerated. The discretion of prosecutors would still be diminished, but, since the range of offenders to whom the mandatory minimum would apply would be narrowed, the burden on prosecutors of not being able to plea bargain would not lead them as often to fail to charge the offense carrying the mandatory minimum.

B. Included Offenses

Once the type of mandatory sentencing structure is selected, the question becomes: to what class or category of offender will mandatory minimum apply? Again, several alternatives deserve consideration.

1. Apply mandatory minimum sentences to all offenses.

The advantage of this approach is that it recognizes that there are many serious offenses warranting certainty of punishment that do not involve physical violence directed against the victim. War-time treason, serious drug crimes, and crimes involving political corruption may warrant a fixed sentence fully as much as crimes of violence. To impose mandatory minimum sentences for all such offenses, however, would entail a radical restructuring of the whole Federal sentencing system. Such a restructuring would have to be preceded by considerable analysis and care in order to avoid criticism based upon harshness, inflexibility and overbreadth.

2. Apply mandatory minimum sentences for all offenses involving the potential of physical injury to the victim.

This approach would have the advantage of concentrating on the kinds of crimes that are of most immediate concern to American citizens. Such offenses would include those in which the victim is actually injured and those within certain categories of offenses that are commonly apt to result in physical injury to the victim. The former kinds of offenses would include homicide offenses, assault offenses, and nonconsensual sex offenses; the latter kinds of offenses would include kidnapping and aircraft hijacking offenses, arson and other property destruction offenses, burglary offenses, and robbery offenses. While applying mandatory sentences to such broad categories of offenses would be contrary to recommendations by such groups as the American Bar Association, it would, particularly if applied in the form suggested under Alternative A 3 above, accord with recommendations recently made by some respected sociologists and economists.

3. Apply mandatory minimum sentences for all offenses involving actual physical injury to the victim.

This approach would be similar to that suggested immediately above, but would apply only to those offenders who did, in fact, cause injury to their victims. This would remove from the application of such sentences those offenders who were willing to threaten a victim with injury but who may not actually have intended to cause the threatened injury. It should be noted that this approach, as well as the one immediately above, would apply to the most common crimes of passion, for which no form of penalty is apt to provide effective deterrence.

4. Apply mandatory minimum sentences for all offenses involving use of a dangerous weapon, aircraft hijacking and trafficking in opiates.

This approach would subject to mandatory penalties only those offenders who committed a crime with a dangerous weapon or who committed such other serious offenses as aircraft hijacking and trafficking in opiates. A dangerous weapon could be defined to include not only the commonly known destructive device, such as firearms or explosive devices, but also any other instrument that, as used or as intended to be used, is capable of producing death or serious bodily injury. This approach would reach the most serious forms of street crime, but would not reach those kinds of physical assaults that may not warrant being singled out as deserving of a mandatory penalty. A prime practical advantage of this approach is that it has the potential for receiving support from both conservatives and liberals. It has been advocated by the National Rifle Association; the Criminal Justice Section of the American Bar Association has recommended that the ABA Standards be modified to permit such an approach; and Senator Mansfield has been a principal supporter of such a provision. It could be effected simply by a minor modification of section 924 (c) of the existing title 18. This is the approach that is included in S. 1.

5. Alternatives 1, 2, 3 or 4 for repeat offenders only.

This approach would limit the applicability of mandatory minimum sentences to repeat offenders. It could be tailored to cover all repeat offenders or a more narrowly defined class of repeat offenders (e. g., those convicted of violent crimes). This would be the least objectionable alternative to judges and prosecutors, since it is aimed only at the recidivist -- the so-called hardened criminal.

In assessing these alternatives, two factors should be kept in mind: (1) the mandatory minimum sentence need not be long to be effective, and (2) the alternative structures and categories of offenses can be "mixed and matched" (e.g., providing "true" mandatories for all weapons offenders and "fake" mandatories for other violent offenders not using a weapon).

Finally, it should be noted that the impact of expanded mandatory sentencing on existing Federal prosecutorial resources and prison facilities has not been incorporated into these options. As a general proposition, however, one can assume that a significantly expanded mandatory sentencing requirement would place additional burdens, fiscal and otherwise, on the Federal criminal justice system.

OPTIONS

1. Require mandatory minimum sentences with no possibility of parole for:

   a) All offenses. _____

   b) Offenses involving potential for physical injury. _____

   c) Offenses involving physical injury. NR7

   d) Offenses involving a dangerous weapon, etc. NR7

   e) Repeat offenses. NR7

2. Require mandatory minimum sentences with possibility of parole for:

   a) All offenses. _____

   b) Offenses involving potential for physical injury. _____

   c) Offenses involving physical injury. NR7

      [The Counsel to the President favors this.]

   d) Offenses involving a dangerous weapon, etc. NR7

   e) Repeat offenses. NR7

3. Require mandatory minimum sentences without parole, but allow judges to fail to incarcerate offenders who fall into narrowly drawn categories, for:

a) All offenses. _____

b) Offenses involving potential for physical injury. _____

[Bob Goldwin favors this.]

c) Offenses involving physical injury. DRF

d) Offenses involving a dangerous weapon, etc. DRF

[The Attorney General, the Counsel to the President, the Domestic Council and Max Friedersdorf favor this.]

e) Repeat offenses. DRF

E

Should the Crime Message emphasize the removal of Federal and State restrictions on the employment of ex-offenders?

BACKGROUND

Substantial evidence supports the proposition that an ex-offender who obtains employment is less likely to commit another crime than an unemployed ex-offender.

Notwithstanding that evidence, convicted ex-offenders are severely discriminated against in the job market. Repeated surveys show that a heavy majority of employers will not hire anyone with an arrest record, much less a conviction record. In 13 States, offenders are legally deemed civilly dead, prohibiting them from entering into contracts, from suing and from being sued. Various States disqualify offenders from the ability to marry and to exercise the authority of a parent over their children.

An American Bar Association survey has found that State legislative codes contain nearly 2,000 separate statutory prohibitions which inhibit the licensing of persons having arrest or conviction records. About 350 different occupations are completely closed or severely restricted to ex-offenders. They cannot become accountants, architects, barbers, beauticians, butchers, bartenders, taxi drivers, dental hygienists, electricians, junk dealers, nurses, pharmacists, social workers, teachers, or watchmakers. If the job requires a State license, it is generally closed to ex-offenders.

DISCUSSION

Clearly, legitimate work opportunities ought to be available for ex-offenders who want to "go straight." Job market discrimination against ex-offenders seems to be counterproductive with respect to your goal of reducing violent crime. Some of the discrimination is private and may be regulated by Federal statute; some is Federal and may be regulated by Executive Order; and probably the most significant discrimination is sanctioned by State statutes and can be changed only by amendments to those statutes.

Steps the Administration could recommend include:

(1) Appealing to all employers, public and private, not to discriminate against ex-offenders, except as commission of a particular offense is related to performance in a specific job.

(2) Directing the Justice Department to draw up ex-offender civil rights legislation which would make it illegal for an employer or a union to deny a job or membership based upon an applicant's criminal record. Denial of a job or of union membership based upon an arrest, police detention (without charge), investigation, or conviction record should be barred.

(3) Directing the Civil Service Commission to submit to you an Executive Order to prohibit Federal discrimination against ex-offenders as a class.

(4) Directing LEAA, the Department of Labor, and the Department of Health, Education, and Welfare to encourage States to eliminate licensing and other statutory restrictions against the employment of ex-offenders as a class, and to cut off Federal manpower training funds (including LEAA and HEW vocational education and rehabilitation monies) after FY 1977 from all States which at that point retain statutory discrimination against ex-offenders as a class.

OPTIONS

1. Take the opportunity of your special message to encourage all employers not to discriminate against ex-offenders as a class.

[The Attorney General, the Counsel to the President, the Domestic Council and Bob Goldwin favor this.]

Agree MRF Disagree _____

2. Direct the Justice Department to draw up ex-offender civil rights legislation.

Agree _____ Disagree DRF

3. Direct the Civil Service Commission to submit to you an Executive Order to prohibit Federal employment discrimination against ex-offenders as a class.

Agree DRF Disagree _____

4. a) Direct LEAA, the Department of Labor, and the Department of Health, Education, and Welfare to encourage States to eliminate statutory restrictions against employment of ex-offenders as a class.

[The Counsel to the President, the Domestic Council and Max Friedersdorf favor this.]

Agree DRF Disagree _____

b) Direct a cut-off of Federal manpower training funds after FY 1977 from all States which at that point retain such statutory discrimination.

Agree _____ Disagree DRF

F

What steps should the Crime Message recommend in the area of corrections reform?

BACKGROUND

The problem of decrepit prisons is at its worst at the State and local levels. Many State prisons were built before the turn of the century. They are run down, overcrowded in many places, and unsafe. Not only are they unsafe in that prisoners can find ways to break out of them, they are also unsafe for the prisoners themselves. The run-down conditions make it difficult for prison personnel to protect prisoners against violent attack and homosexual rape by other prisoners.

The Federal government subsidizes many of these State and local adult and juvenile facilities by billions of dollars of grants and contracts. Grants come from a plethora of programs, including Elementary and Secondary Education Act Title I funds for juvenile institutions, vocational education and vocational rehabilitation funds for prisons and jails, adult education funds, manpower training funds under a variety of legislative authorizations, and LEAA monies. The Bureau of Prisons and the Department of Defense, moreover, contract with State and local facilities to temporarily detain Federal prisoners and, in some cases, to incarcerate them for long sentences.

The Federal corrections system has an ongoing program to upgrade its facilities. Currently, it is building or planning to build new detention centers in several cities where Federal prisoners have been housed in substandard and overcrowded local jails while awaiting trial.

DISCUSSION

The effort to get judges to send more convicted violent offenders to jail will fail so long as judges believe the conditions in jails are inhumane and that incarceration breeds criminality rather than nurturing rehabilitation.

On the State level, the Law Enforcement Assistance Administration could play an important role in a program to modernize prisons. Its FY 1976 budget earmarks more than $97 million for corrections programs, and half of that can be spent by LEAA at its discretion. LEAA could be directed to place special emphasis on encouraging States to upgrade their prison facilities so that they are decent and secure. LEAA's effort in this regard could be most helpful if it encouraged States and localities to experiment with smaller, community-based institutions and move away from huge, unmanageable penitentiaries.

Additionally, because various Federal grant programs heavily subsidize State and local correctional systems, and because the Bureau of Prisons and (less so) the Defense Department fund State and local systems through contracts, the Federal government has financial leverage over State and local prisons.

In order to alleviate unnecessary cruelty to which prisoners and detainees are subjected, you may want to direct all Federal agencies that minimum Federal standards must be met by any prison, juvenile institution, jail, or other detention facility as a prerequisite to the receipt of any Federal money under grant or contract. As a first step, you may want simply to direct Justice and HEW to draft minimum Federal standards by a date certain.

In assessing the available options, two factors should be noted:

1. The ultimate cost to State and local governments of providing facilities which meet minimum Federal standards will obviously depend upon the nature of the standards imposed. Even a "bare bones" approach would have a significant fiscal impact, however.

2. Because of the high cost of prison construction, the $97 million budgeted for the LEAA corrections program in 1976 would serve only to "prime the pump" in terms of encouraging State and local governments to undertake a major initiative in this area.

OPTIONS

1. Direct LEAA to encourage States to upgrade existing prison facilities so that they are decent and secure and to move in the direction of smaller, community-based institutions which are cheaper and more manageable.

   [The Attorney General, The Counsel to the President, the Domestic Council and Bob Goldwin favor this.]

Agree _____ Disagree _____

2. Direct the Departments of Justice and Health, Education, and Welfare to draft new standards for submission to you by September 1, 1975.

[The Counsel to the President, the Domestic Council, Bob Goldwin and Max Friedersdorf favor this.]

Agree JRT Disagree _____

3. Direct all Federal agencies that no Federal funding is to go, under grant or contract, to any State or local prison, juvenile institution, jail, or other detention facility which is not in compliance with Federal standards after July 1, 1977.

Agree _____ Disagree JRT

G

Should the Crime Message endorse the concept of compensation to victims of crime?

As a result of careful compromise among Senators Mansfield, McClellan, and Hruska, provisions have been included in S. 1 to provide a program for the compensation of certain needy victims of Federal offenses which result in personal injury.

S. 1 provides for compensation of up to $50,000 for uncompensated (by insurance, tort, etc.) out-of-pocket loss resulting from a Federal personal injury crime plus lost earnings or support resulting from injury or death of the victim in instances where there is a finding of "financial stress." The standard is cast so as to include the so-called economic middle-class.

Compensation would be paid from a Criminal Victim Compensation Fund consisting of all criminal fines paid for Federal offenses, funds derived from suits by the Attorney General against the perpetrators of personal injury crimes, and dividends from Federal Prison Industries.

Preliminiary studies by the Department of Justice indicate that the fund would be self-supporting. Indeed, there is no appropriation authorization in the bill. This is not to say, of course, that the program lacks a budgetary impact. For example, dividends from Federal Prison Industries fund vocational and educational training programs. If these dividends were diverted to the Victim Compensation Fund, additional resources would be needed for vocational and educational programs. Approximately $10-$15 million per year would be lost from general Treasury funds. Previous Administrations have resisted similar proposals for this reason.

S. 1 would cover all Federal offenses against the person. It would leave to separate legislation for the District of Columbia compensation for those offenses applicable exclusively in the District of Columbia. A Federal offense resulting in personal injury would be covered even if no person was charged with the offense or if the person charged was turned over to a State or local government for prosecution.

The Crime Message would specifically endorse this concept.

[The Attorney General and the Counsel to the President recommend that you specifically endorse this concept.

The Domestic Council, Bob Goldwin and Max Friedersdorf recommend that you reserve judgment on this.]

Specifically Endorse _____ Reserve Judgment _____

H

Should the Crime Message indicate some dissatisfaction with the national defense provisions of S. 1?

During the development of S. 1, most adverse commentary focused upon the provisions contained in Chapter 11 (Offenses Involving National Defense) of the bill. Basically, Chapter 11 recodifies current law save the new provisions contained in Section 1124.

Section 1124 makes it an offense for a person in authorized possession of classified information knowingly to communicate such information to a person not authorized to receive it. As originally drafted, it was not a defense to the crime that the information was improperly classified.

As a result of the hearings on S. 1, three changes have been incorporated in the current draft. First, a complete bar to prosecution would become operative if there were not in existence at the time of the offense an agency and procedures to provide for the review of the classification. Second, an appropriate government official would have to certify prior to prosecution that the classification which was violated was correct. Third, an affirmative defense is created which would have applicability in circumstances where the defendant has exhausted his remedies under administrative review provisions and has not communicated the classified information to a foreign agent or for anything of value. If these requirements are met, the defendant would be allowed to litigate the propriety of the classification. Although it should be noted that a recipient of the classified information, such as a newsman, is not subject to prosecution under Section 1124, the press generally perceives this particular section of the bill to be violative of basic free press concepts.

In light of recent enactments, e.g., the Freedom of Information Act, it is likely that further changes will be made to Section 1124. Although it is impossible to identify these changes with any degree of precision at the current time, there would be some utility in having your Crime Message indicate that you do intend to review options in this area and other controversial aspects of the subject bill. This should preclude any adverse commentary on the Crime Message which would deal only with this one section and disregard the balance of the statement.

[The Attorney General, the Counsel to the President and the Domestic Council recommend that you agree.

Bob Goldwin and Max Friedersdorf make no recommendation.]

Agree MF Disagree _____

THE WHITE HOUSE

WASHINGTON

May 26, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM CANNON

FROM: JERRY H. JONES

SUBJECT: Crime Message

Your memorandum to the President of May 22 on the above subject has been reviewed and the following was noted:

TAB C -- What, if any, additional steps should the Administration recommend to further enhance our capacity to prevent and control handgun misuse?

A. No new Federal law. Disagree.
B. Improve current law. Agree.
C. "Saturday Night Special" ban.
   1) By quality and concealability definition. Agree.
   2) By Federal tax on sliding scale. Disagree.
D. Illegal transportation approach.
   3) Assign ATF to investigate gun commerce in key cities. Agree.

TAB D -- What type of madatory sentencing structure should the Administration advocate, and for whom?

1. Require mandatory minimum sentences with no possibility of parole for:
   c) Offenses involving physical injury. Approve.
   d) Offenses involving a dangerous weapon, etc. Approve.
   e) Repeat offenses. Approve.

2. Require mandatory minimum sentences with possibility of parole for:
   c) Offenses involving physical injury. Approve.
   d) Offenses involving a dangerous weapon, etc. Approve.
   e) Repeat offenses. Approve.

3. Require mandatory minimum sentences without parole, but allow judges to fail to incarcerate offenders who fall into narrowly drawn categories, for:
   c) Offenses involving physical injury. Approve.
   d) Offenses involving a dangerous weapon, etc. Approve.
   e) Repeat offenses. Approve.

TAB E -- Should the Crime Message emphasize the removal of Federal and State restrictions on the employment of ex-offenders?

1. Take the opportunity of your special message to encourage all employers not to discriminate against ex-offenders as a class. Agree.

2. Direct the Justice Department to draw up ex-offender civil rights legislation. Disagree.

3. Direct the Civil Service Commission to submit to you an Executive Order to prohibit Federal employment discrimination against ex-offenders as a class. Agree.

4. a) Direct LEAA, the Department of Labor, and the Department of Health, Education and Welfare to encourage States to eliminate statutory restrictions against employment of ex-offenders as a class. Agree.

   b) Direct a cut-off of Federal manpower training funds after FY 1977 from all States which at that point retain such statutory discrimination. Disagree.

TAB F -- What steps should the Crime Message recommend in the area of corrections reform?

2. Direct the Departments of Justice and Health, Education, and Welfare to draft new standards for submission to you by September 1, 1975. Agree.

3. Direct all Federal agencies that no Federal funding is to go, under grant or contract, to any State or local prison, juvenile institution, jail, or other detention facility which is not in compliance with Federal standards after July 1, 1977. Disagree.

TAB H -- Should the Crime Message indicate some dissatisfaction with the national defense provisions of S. 1? Agree.

In addition, your memorandum to the President of May 26 entitled "Crime Message - Mandatory Sentences" has been reviewed and Option 3 -- Mandatory minimum sentences with no possibility of parole, but allow judges to fail to incarcerate certain offenders who fall into narrowly drawn categories of mitigation (e.g. under 18, no prior record, etc.) -- was approved.

Please follow-up with the appropriate action.

Thank you.

cc: Don Rumsfeld