STATEMENT OF

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ATTORNEY GENERAL OF THE UNITED STATES

before a

Sub-Committee of the Committee on the Judiciary

of the

House of Representatives

in support of the

Proposed Federal Corrections Act

Tuesday, May 18, 1943

The proposed "Federal Corrections Act" (H.R. 2140) is the recommendation of the Judicial Conference of Senior Circuit Judges, based upon the report of its distinguished Committee on Punishment for Crime, of which Judge Parker is Chairman. The Bill is the product of long and careful study of two of the most vital and perplexing problems in the administration of federal criminal justice: The problem of determining the length of the prison sentence in cases in which the judge is satisfied that the defendant should be sentenced to imprisonment for a substantial period of time; and the problem of improving existing techniques for the control and rehabilitation of youthful offenders. Others will discuss the particular provisions of the Bill in detail. I wish to express my approval of its essential principles.

I.

The provisions of the Bill relating to adult offenders are addressed to two difficulties that have concerned both the Department of Justice and the judges for many years. There can be no doubt that Federal sentencing has been characterized by substantial inequality in the practices of judges throughout the country and even within the same geographical area--inequality in the disposition of cases which are indistinguishable from one another either in the terms of the nature of the offense or the character of the offender. Neither can there be any doubt that there is inherent difficulty in fixing a sentence definitively at the time of conviction when it may take months of careful observation of the offender under institutionalized procedures to discover those of his personal qualities which should properly be considered in determining what the sentence is to be. The problem has been to devise a solution for these difficulties without detracting from the authority of the district courts

or insulating the determination of sentence from the circumstances brought out at the trial and the knowledge of local conditions which the trial judge so uniquely holds. The Bill advances a solution that seems to me wholly admirable. The authority of the district court to determine the sentence in particular cases is fully preserved. But in exercising that authority in cases in which the judge is disposed to impose a sentence of more than a year, the court will have the benefit of a recommendation from the proposed Board of Corrections. In making its recommendations the Board will be in a position to view the problems presented by particular types of cases on a nation-wide basis, formulating general policies designed so far as possible to eliminate unjust inequalities. What is even more important, the Board will take into account in making its recommendations the results of extensive study and observation of the offender by the prison authorities during the first few months of his imprisonment. Thus, the recommendations of the Board will bring to the attention of the sentencing judge the two types of information which it is most difficult for the judge to obtain at the time of conviction: A view of the sentencing norms recommended for general adoption throughout the country and a full picture of the characteristics of the individual offender in so far as those characteristics have revealed themselves to the medical men and the psychiatrists of the prison service. The Board's recommendation and the data upon which it is based will supplement the judge's knowledge without controlling his decision. He will continue to bring to the task of sentencing his unique familiarity with the local situation, local standards and local reactions to the particular case. He will continue to utilize what he has learned from seeing the offender in

court and from the progress of the trial. Most important of all, he will continue to employ the special skills and awarenesses which are the product of judicial and legal experience with the adjustment of conflicting human interest. The proposed Board will supply him with technical information indicative of sentencing practice in general and technical findings concerning the individual. It is the judge who in the light of all the data will make the final decision. He will make the decision fortified by the assurance that it is based upon all the relevant information that he can possibly obtain.

Punishment is a distinctly human institution which serves many purposes. It is idle to suppose that men can obtain complete agreement as to the relative importance of each of the purposes to be served or the measures that are needed to serve them. If agreement is difficult to attain when the problem is posed in general terms, disagreement is almost inevitable in disposing of particular cases. What is involved is the difficult task of mediating among the various purposes that punishment must serve, the deterrence of others, the incapacitation of the offender himself and his rehabilitation, if rehabilitation is possible. It is this inherent complexity of the problem of punishment that has led to an insistent demand for individualization of the process, coupled with the older demand for equality before the law. We now recognize that the equality which justice enjoins must comprehend a wide variation in the treatment of persons who violate the same statute, depending on both the circumstances of the crime and the background and potentialities of the criminal. What we seek, therefore, is not an over-simplified equivalence of treatment—whether it be measured in terms of the offense or the offender, but rather an underlying consistency in the evaluation of the multiple factors which have a bearing on the issue of sentencing and in the values sought to be served in fixing sentences in different cases. It is equality in these terms which the present bill will further.

In addition to providing a mechanism for furnishing the judges with information that will enable them to fulfill their responsibility in imposing sentence on a more satisfactory basis, the Bill will serve the desirable purpose of providing a closer integration between the determination of sentence in the first instance and the release procedures subsequently employed. The Board of Parole now comes into the picture only when the period of eligibility for release on parole arrives. The Board of Corrections, to which the functions of the Parole Board are transferred, will take cognizance of its cases at the beginning for the recommendation of sentence. By the time consideration of release becomes appropriate, the ground work will already have been laid.

II.

No less important than the proposal with respect to adult offenders are the provisions of Title III of the Bill relating to youth offenders. Based in large measure upon the study and recommendations of the American Law Institute, the Bill would enhance the treatment methods available to the trial judge in the case of offenders under 24 years of age, by authorizing the judge to sentence the youth to the custody of a division of the proposed Board for special treatment and supervision. The court is not required to follow this course. As in the case of adult offenders sentence may be suspended or the defendant may be placed on probation, or, indeed, the court may sentence the youth as it would an adult under the first title of the Bill. The special treatment authorized is merely an additional possibility to be employed in cases where the youth will benefit from the type of special treatment and supervision contemplated for his rehabilitation.

The upper age of 24 years for the jurisdiction of the Youth Authority is based upon a long record of experience and treatment. Physiologists and psychiatrists are of the opinion that this age represents final arrival at physical, intellectual and emotional maturity. England has long since adopted a specialized form of treatment for youthful offenders in the form of the Borstal System. It consists of a method of closely integrated and individualized institutional rehabilitation and after-care of youthful offenders in this age group. Twenty-one was the age originally set as the upper limit for Borstal care, but after considerable experience with the system this was raised to 23. Its success is well known. The present proposal builds upon that experience.

While the youth offender provisions will work the largest change in the present procedure in dealing with youths above juvenile court age, it may be expected that the establishment of the Board and the Authority will operate to strengthen the facilities of the Federal Government in dealing with juvenile offenders within the age covered by the present Juvenile Delinquency Act. The problem of youthful delinquency has never been more sharply before us than it is at the present time. The unmistakable increase in juvenile crime poses a problem of long range dimensions. Anything that can be done to strengthen the hand of the courts and the Government in meeting the problem is entitled to warm support.

The proposed "Federal Corrections Act" represents an eminently reasonable approach to some of the abiding problems involved in the administration of the Federal criminal law. The Bill may be susceptible of improvement in matters of detail, but its basic principles and essential approach seem to me unquestionably sound. I hope that the Bill will gain the approval of Congress, and I heartily recommend its enactment.