Department of Justice

STATEMENT

BY

ATTORNEY GENERAL RAMSEY CLARK

BEFORE

SUBCOMMITTEE NO. 5
OF THE
HOUSE JUDICIARY COMMITTEE

ON

HR 5384 - State Firearms Control Assistance Act of 1967
HR 5385 - To Establish a Federal Judicial Center
HR 5038 - To Create a United States Corrections Service
HR 5386 - Right of Privacy Act of 1967

THURSDAY, MARCH 16, 1967

Before the Committee this morning are four bills relevant to the war on crime in quite different ways. They do not promise to add to the public safety the protection offered by the Safe Streets and Crime Control Act. But each is exceptionally important.

Of these bills, one would aid control of the principal weapon of the criminal: guns.

A second would provide a greatly enhanced opportunity to perfect federal justice through the Federal Judicial Center.

A third would unify federal corrections enabling a more effective effort at rehabilitation.

Finally, a ban on "bugs" would add to our respect for law by eliminating conditions that are hardly respectable while increasing that sense of dignity in the individual which is essential to respect for anything.

I will discuss the specifics of these proposals against the background afforded by your hearings on the Crime Control Act without repeating many of the facts and conditions there related which are pertinent here.

FIREARMS

In his Message to Congress last month on Crime in America, President Johnson stated that: "any effective crime control program requires the enactment of firearms legislation." He strongly recommended that the Congress enact legislation to prohibit mail order sales and shipments of firearms, except between Federal licensees, and prohibit over-the-counter sales of firearms, other than shotguns

and rifles, to persons not residing in the state where purchased. The President also stated: "This legislation is no panacea for the danger of human irrationality and violence in our society. But it will help to keep lethal weapons out of the wrong hands.

"This legislation will not curtail ownership of firearms used either for sport or self-protection. But it will place a valuable restraint on random trade in handguns--the use of which has more and more characterized burglaries and other crimes. It will gain added strength as states pass firearms legislation and licensing laws similar to the Sullivan Law in New York.

"To pass strict firearms control laws at every level of government is an act of simple prudence and a measure of a civilized society. Further delay is unconscionable."

Existing Federal firearms laws are largely ineffective and inadequate. These laws do little to control the mail order sale of handguns, rifles, and shotguns. It is estimated that 1,000,000 dangerous weapons are sold by mail each year. Many persons circumvent local law by ordering firearms by mail and receiving them in interstate commerce.

Strict firearms controls by one state or city are nullified when a potential criminal secures a firearm in a

neighboring jurisdiction with lax controls and returns to his own state to commit crime.

Another inadequacy in the present system of firearms control is the ease with which low priced and widely available surplus weapons are brought into the United States from foreign countries. These surplus military weapons include inexpensive pistols and revolvers, and antitank guns, bazookas and other such destructive devices.

The bill before you today is designed to provide better controls over interstate and foreign commerce in firearms, thus enabling the states to control more effectively the traffic of firearms within their own borders.

An estimated 750,000 Americans have died since 1900 by means of firearms, other than in armed conflicts. In contrast, 530,000 Americans have been killed in all our wars from the Revolution through Vietnam. Each year 17,000 people die by means of firearms. Guns claim on the average of 50 lives a day, or one every half-hour. This is not to say that most of these deaths are the result of criminal acts, though many are. It is to say guns are dangerous. They can kill, They should not be available for those who will use them for crime. Common sense dictates that we act now.

J. Edgar Hoover, in the FBI Law Enforcement Bulletin in June 1963, observed forcefully: "The easy accessibility of firearms is a significant factor in murders committed in the United States today. It is a problem which the American public needs to examine closely. . . .The questionable traffic in deadly weapons in many sections of our country is a disgrace. To my mind, the public has a right to expect that the distributor and the purchaser of weapons so deadly and easily concealed such as handguns must meet certain regulations and qualifications. Spotlight of such attention should be focused on the easy accessibility of firearms and its influence on willful killings." Only yesterday, Mr. Hoover repeated his support for adequate firearms legislation.

As the National Crime Commission pointed out in its February report, during the year 1965, 5,600 murders, 34,700 aggravated assaults and the vast majority of the 68,400 armed robberies were committed by means of firearms. All but 10 of the 278 law enforcement officers murdered during the period 1960-65 were killed with firearms.

The National Crime Commission supported firearms legislation similar to that which you are considering here today. The Commission stated that it "strongly believes that the increasing violence in every section of the nation compels an effort to control possession and sale of the many kinds of firearms that contribute to that violence."

FBI statistics, released yesterday, show that reported serious assaults with a gun increased 23 percent during 1966 (more than twice the reported increase for all serious crime). Six of every 10 murders were committed by means of firearms. Handguns were used in 71 percent of these murders, shotguns in 17 percent, and rifles or other firearms in 12 percent.

Ownership of guns among those legally entitled to own them will not be curtailed by this bill, nor will regulations be forced on unwilling states.

The bill would:

(1) Prohibit interstate mail order sale of all firearms. However, rifles and shotguns purchased in person at the licensee's place of business may be shipped interstate to the purchaser at his residence.

(2) Prohibit a Federal licensee from selling or delivering a firearm to a person less than 21 years of age, and 18 years of age in the case of a rifle or shotgun.

(3) Prohibit a Federal licensee from selling or delivering a firearm to a person who the licensee believes is prohibited by state or local law from receiving or possessing a firearm.

(4) Prohibit the sale or delivery of any firearm, other than a rifle or shotgun, to anyone not residing in the state in which the licensee's place of business is located.

(5) Provide standards and increase licensing fees for Federal firearms dealers, importers and manufacturers.

(6) Prohibit interstate transportation of destructive devices, machine guns, and short-barrelled shotguns and rifles, except between Federal licensees or with the approval of the Secretary of the Treasury.

(7) Regulate the importation of firearms into the United States.

The bill before this Subcommittee does not deal with the question of gun permits or registration, leaving it to the states and local communities to decide what firearms laws, if any, they want. It does not prohibit sportsmen from carrying their shotguns or rifles across state lines, and pistols could be carried in conformity with state laws.

The people of the United States want stricter control of guns. The Congress is fully empowered to act. The issue has been bruited beyond reason. The public safety requires action now.

FEDERAL JUDICIAL CENTER

The administration of justice in the United States courts is vital to our society. We must, therefore, view with grave alarm the increasing congestion and the backlog of cases which threaten to swamp our judicial system and destroy its essential contribution to our way of life.

The mere addition of judges and supporting personnel is not the answer. One hundred and forty-four additional judgeships have been created for the United States district courts since 1941, an increase of 73 percent, and still the backlog of cases rises.

John Stuart Mill noted of the judicial function that ". . .There is no part of public business in which the mere machinery, the rules and contrivances for conducting the details of the operation, are of such vital consequence." Indeed, he believed ". . .all the difference between a good and a bad system of judicature lies in the procedure adopted . . ." to apply the rule of law.

This much seems clear, the most just corpus juris has but academic value, except as it is fairly and efficiently applied in disputes between citizens or between citizen and society. The vital purpose of the judiciary is action, not abstraction.

In essence, improvements in the administration of justice require better research, more training and continuing education programs covering all aspects of the judicial functions.

The Judicial Conference is well aware of their growing problems and has taken firm steps in the right direction. It has, at one time or another, recommended or established on an ad hoc basis numerous programs of research and education. These programs have not, however, been sufficiently staffed or supported to accomplish the awesome tasks they have faced. They have lacked the permanence and resources which are needed to provide the continuity of effort and the coordination of endeavor to master the complex demands which are now being made upon our judicial system.

We must learn why the delay and docket congestion in our Federal courts is getting worse each day and what we can do to reverse this trend. We must establish and maintain programs for continuing education and for training for the personnel in the judicial system and insure that such education and training is made available in a timely and meaningful way. Thirty to thirty-five new judges are appointed every year in the Federal Judiciary and numerous commissioners, referees, court clerks and probation officers. All need training and an

opportunity to participate in a continuing education program.

H.R. 5385 will establish in the Administrative Office of the United States Courts a Federal Judicial Center which will have a three-fold mission: (1) to stimulate, coordinate and conduct research and tests in all aspects of Federal judicial administration; (2) to stimulate, develop and conduct programs of continuing education and training for personnel in the judicial system; and (3) to provide staff, research and planning assistance to the Judicial Conference of the United States and its committees.

The Center will be supervised by a Board composed of the Chief Justice of the United States, two judges of the United States Courts of Appeals, three District Court judges and the Director of the Administrative Office of the United States Courts. The Board is authorized to appoint and fix the duties of an Administrator who will be the chief executive officer of the Center.

As President Johnson has noted:

"A Federal Judicial Center, established in the Administrative Office of the United States Courts, will enable the courts to begin the kind of self-analysis, research and planning necessary for a more effective judicial system . . . and for better justice in America."

We recommend early enactment of H.R. 5385.

UNIFIED FEDERAL CORRECTIONS

Corrections is a key, a very major part, of our total opportunity to reduce crime. If we cut the rate of recidivism in half, and science tells us we can, a major part of our crime will be eliminated.

Whatever our view of the purposes of the sanctions of criminal law, society must seek two consequences from their exercise:

Protection of the public from further offenses, and

Rehabilitation of the individual and his return to a useful life.

But to separate these two essential aims obscures their oneness. Rehabilitation is protection. The best, the only sure way to protect society from the anti-social convicted of crime, who will be at large again some day, is to rehabilitate him.

Our success will be measured by the effectiveness of our corrections system. The value of the most effective corrections system devisable is measurable not only in billions of dollars, but in lives and human happiness.

One of the law's primary goals must be the rehabilitation of the offender and his return to useful community life. To accomplish this end, he is placed in the corrections process, which extends from the imposition to the completion of sentence. This process, which includes probation, imprisonment, and parole, is presently divided. Parole and probation supervision are lodged with the courts, prison services are lodged with the executive branch, and research is diffused through both systems.

We believe that this disunity impedes the channeling of resources and efforts in a rational, systematic manner. For example, although probation and parole supervision are two of the key steps in avoiding a return to a criminal activity, the depth and quality of supervision may depend on the caseloads and presentence reporting duties of the approximately 550 probation officers in the 93 judicial districts. This diversity of supervision may affect the planning of an offender's treatment program, since the program must take into account the amount of support which the probation officer can provide a parolee in the community.

If this division of responsibility and authority were eliminated and the corrections process worked toward the rehabilitation goal as a single, unified mechanism, it would

be greatly strengthened. Directed by one authority, an offender's rehabilitation program would correlate the efforts of the institutional personnel who evaluate his needs and devise and execute his treatment plan, and the community personnel who supervise his release on parole.

The division of the correctional function between the courts and the prison system is at perhaps the most critical point in the correctional process, distinguishing prison operations from community operations. This at one point when, as we can see from our past experience, the great need in corrections is the strong shift toward community operations. For here is the opportunity to rehabilitate.

The value and potential of community based operations is shown by a recent experimental treatment program conducted by the California Youth Authority and discussed in the National Crime Commission Report. Juvenile court commitments, excluding those for whom institutional care was deemed requisite, were divided between community and regular institutional programs.

Youths assigned to the community treatment project were supervised by officers having a caseload of 10 to 12 and employing treatment methods designed to meet each youth offender's individual needs. After 5 years, the community treatment project reports that only 28 percent of its group

have had their paroles revoked, as compared with 52 percent of those who were institutionalized. Community supervision employing a variety of individually tailored treatment alternatives could similarly benefit Federal offenders, both youths and adults. This type of treatment program would be feasible under the proposed corrections system.

To date, there has been no major national investment in corrections research. However, since the goals of parole and probation and their supervision techniques are so closely analagous, a division of research could be created within the service to conduct study on subjects of benefit to the entire system. There would be no gaps, no duplication of effort. Most important, results could then be implemented on a uniform basis, throughout the corrections system.

In answer to the need for strengthening the corrections process, the 89th Congress enacted legislation providing three innovative techniques to be used in achieving prisoner rehabilitation. This important legislation authorizes the Attorney General to place prisoners in residential community treatment centers, to permit them to take emergency or rehabilitative leave, and to permit them to work or participate in community training programs. As a result, new techniques

involving pre-release and work release programs and halfway houses are being perfected to return useful, rehabilitated individuals to their communities.

Under the work program alone, almost 3 percent of our prison population are being released for employment in the community. If these new techniques are to achieve their maximum rehabilitation potential, adequate supervision is an essential adjunct. To this end, we have appointed a force of work release coordinators in the newly established Division of Community Services. These new techniques may soon apply to probationers and parolees. Efficiency and reason would require that a single authority be used to provide coordinated assistance and supervision for them. Such supervision would extend from the court granting probation or the instition in which sentence is served, to the residential institution center from which the offender is eased back into community life.

That the respective corrections agencies have accomplished as much as they have under the present system is a tribute to their efforts and cooperation. But to be fully effective, the corrections system should have a single administrative framework within which the flexible sentencing

and treatment alternatives presently available can operate and in which time and money can be budgeted on a coordinated basis. Such a framework would permit a better balanced range of services, since coordinated planning will assure that funds and personnel are allocated in relation to need. Moreover, it would free probation officers to devote more time to the preparation of presentence reports.

The establishment of a unified corrections system within the Department of Justice is predicated on its responsibilities in the field of law enforcement, particularly those of containing and reducing the incidence of criminal activity.

A unified corrections system will afford an opportunity to greatly reduce crime by enabling us to return to their communities to lead productive lives many persons who would otherwise continue criminal activity. It is essential to the public safety. It is essential to our humanitarian purposes.

THE RIGHT OF PRIVACY ACT

As the President declared in his Message to Congress on Crime in America, "We would indeed be indifferent to the command of our heritage if we failed to take effective action to preserve the dignity and privacy of each among us."

We deal here with the right to be let alone, the right that Justice Brandeis eloquently called "the most comprehensive of rights and the right most valued by civilized man." Unrestricted invasions of privacy made possible by sophisticated electronic devices are too great to permit their exploitation even by government agents acting in the name of law enforcement. The legitimate needs of law enforcement can be met without the use of such abhorrent devices. As Justice Brandeis observed nearly 40 years ago "Even general warrants are but puny instruments of tyranny and oppression when compared to wiretapping."

Recent proposals have been advanced to authorize limited wiretapping and eavesdropping under judicial supervision. Constitutional challenges to such state legislation are now presented to the Supreme Court in the case of Berger v. New York. Before this session of the Congress expires, the

Supreme Court may well decide some of the constitutional issues. But even if the practice withstands this constitutional test, it should be stopped by statute. It is inconsistent with our hopes for America.

Only the most urgent need can justify wiretapping and other electronic surveillance. Proponents of authorization have failed to make a case--much less meet the heavy burden of proof our values require. Where is the evidence that this is an efficient police technique? Might more crime be prevented and detected by alternate use of the same manpower?

If wiretapping is effective, why are jurisdictions which utilize wiretaps sometimes seriously infested with organized crime while areas where they are prohibited are sometimes free of organized crime? Can the public be adequately protected against excessive use if use is permitted? Can innocent people be adequately protected from disclosures of false statements intercepted by wiretaps? How many cases will be lost because rights such as that to counsel are invaded, however unwittingly?

Consistent with the approach taken in connection with other Federal crimes, the Right of Privacy Act is predicated on Congress' ample powers to regulate interstate and foreign commerce. The provisions of the Bill can also be

sustained under other powers of the Congress.

Section 2510(a) is a blanket prohibition against the interception of wire communications. Wire communications involve the interstate communications network, and it has long been clear that Congress has plenary power in this area. Violations of the section will be punished by a penalty of up to five years' imprisonment or a fine of up to $10,000, or both. The statutory ban closes a major gap in existing law by making clear that interception alone is a criminal violation--whether or not the information thereby obtained is subsequently disclosed. Section 605 of the Communications Act of 1934 (47 USC 605) prohibits "interception and divulgence" and has long been subject to the interpretation that interception alone is not an offense. In addition to prohibiting interception per se, Section 2510(a) prohibits the disclosure or the use of any information obtained from wiretapping.

Section 2511 of the Bill deals with eavesdropping. Like wiretapping, eavesdropping involves a serious invasion of the privacy of conversations. Its incidents, however, range far beyond the overhearing of telephone conversations. The sophisticated electronic devices presently available and

aggressively promoted on the market are capable of intruding into almost any conversation anywhere. Such devices, highly portable and easily concealed, can be secreted in the innermost reaches of a person's home. They indiscriminately record his most private conversations. They can be used to overhear conversations even where there has been no physical trespass on private premises to install the devices.

Section 2511(a) adopts several different approaches to achieve a comprehensive ban on the use of electronic, mechanical, or other devices for the purpose of eavesdropping. Section 2511(b) bans the disclosure or use of any information so obtained. As with Section 2510, the maximum criminal penalty for violation of Section 2511 is a $10,000 fine or five years' imprisonment, or both.

The prohibitions against wiretapping and eavesdropping apply only where none of the parties to the conversation has consented to the activity. Entirely different practical and legal considerations come into play when wiretapping or eavesdropping is carried on with the consent of one of the parties. The use of electronic devices in such circumstances has consistently been upheld by the Supreme Court against constitutional attack.

In addition to the broad prohibitions of Sections 2510 and 2511 against the use of wiretapping and eavesdropping devices, the statute will reach the sources of supply. Section 2512 contains specific prohibitions against the manufacture, shipment, or advertisement of devices whose design renders them primarily useful for the purpose of wire interception or eavesdropping. Violations of the section carry a maximum penalty of a $25,000 fine or one year imprisonment, or both.

The limited approach taken in the statute to the manufacturing and distribution problem will not prevent persons from obtaining devices that may be easily adapted to eavesdropping and wiretapping. Nevertheless, the section will eliminate many objectionable devices now readily obtained on the market, such as the spike microphone, the cuff-link microphone, the notorious martini olive transmitter, and other devices whose design indicates that their primary purpose is to facilitate the surreptitious overhearing of private conversations. The section will not affect the manufacture or shipment of simple induction coils, tape recorders, or other innocent electronic equipment that may occasionally be adapted to wiretapping or bugging uses. It should be noted, however, that Section 2512(c)(2) prohibits the advertisement even of legitimate devices, whenever the advertisement promotes the use of the devices for wiretapping or eavesdropping.

Section 2514 excepts wiretapping and eavesdropping directly related to and necessary for the protection of the security of the Nation. Even in this narrow area, however, no information obtained as a result of such measures will be admissible in evidence in judicial or administrative proceedings. Other use or disclosure of such information is prohibited except as essential to national security. The national security exception is a necessary provision in the statute and the evidentiary restrictions will serve an important function in confining such activity to the extremely narrow bounds that are appropriate.

To harmonize the proposed statute with Section 605 of the Communications Act, minor amendments are made in Section 605. The principal amendment is the limitation of the "intercept and divulge" requirement to radio communications. Under existing law, as discussed earlier, the requirement also applies to wire communications, which will now be covered by Section 2510 of the proposed statute.

This Bill is far-reaching and comprehensive. If enacted, it will go far toward granting major protection to a fundamental right of all Americans. Its specific prohibitions will lay to rest a tragically confused area of the law.

Legislation to safeguard the right of privacy is long overdue.

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In summary, each of these bills would fill a need in our law enforcement process. I urge their prompt and favorable consideration.