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The Gun Criminal: Dangerous Special Offender

Mike Mansfield 1903-2001
March 8, 1973

STATEMENT OF SENATOR MIKE MANSFIELD (D., MONT.)

THE GUN CRIMINAL: DANGEROUS SPECIAL OFFENDER

Mr. President,

On February 7th, I voiced my concern to the Senate about the mandatory sentencing sections of the gun-crime laws and the fact that there was little evidence indicating the extent of their application by the Nation's Federal courts. I then noted that while certain leeway should be preserved in the trial courts concerning first-offender sentences, no discretion was in order in the case of second or subsequent offenders since the criminal who chooses a second time to resort to a weapon of violence and death deserves no leeway.

A first offender may deserve a second chance. If confined, a second chance is not available because of the current status of our penal institutions. They don't rehabilitate. They breed more crime. Discretion in these matters is and should be retained by the trial court.

At the same time the second-offender gun criminal deserves nothing short of prison. His resort to a firearm is inexcusable.

There is still another concern in the matter of gun crime that for too long has been ignored. To protect society, it is
my opinion that the gun criminal should be considered a **dangerous special offender**. The dangerous special offender category was written into the criminal laws as a means of protecting society from those whose actions are most likely to cause harm and injury. No one would dispute the fact that one who chooses to use a gun or firearm in committing a crime must be labeled and treated as a dangerous special offender. Up to now, however, he has not been. Up to now, the criminal who carries a gun has not been placed in this category reserved for special criminal cases.

But he should be. In the case of a dangerous special offender, the law gives the Federal prosecutor a vital additional tool. It permits an appellate court to review the sentence imposed by the lower court.

I would hope this matter would be remedied and submit a bill, Mr. President, that classifies the gun criminal for what he is: a dangerous special offender.

My bill, if adopted, will first provide a sentence of 5-10 years in the case of a first offender who resorts to a firearm in committing a crime. This sentence would be imposed in addition to the sentence imposed for the underlying crime itself. It strengthens the 1970 law which contains the Mansfield provision that I authored. In the case of a second or subsequent offender, my bill would impose...
a sentence of from 10-25 years and no leeway could be granted; there could be no probation, no suspension and the sentence would have to be served separately.

The major distinction in my new proposal is that the sentence, in the case of a first or second offender, may be appealed by the Federal prosecutor should he feel that a stiffer sentence is in order, or that the trial judge erred by not imposing a prison term at all. On appeal, the Court of Appeals could make the sentence more severe; it could impose any sentence which the sentencing court could have originally imposed, or it could simply affirm the sentencing action taken by the lower court.

In practice, I feel that this procedure will prove necessary and vital in our system of criminal justice. It is necessary simply because the prosecutor too often confronts a criminal whose actions present a particular threat to society at large, but who, for whatever reason, escapes the penalty of confinement—or sufficient confinement—the only penalty that offers true protection to society.

I recognize that this proposal—allowing the prosecutor to appeal from a sentence that is too lenient—may be greeted as of dubious validity under the Constitution. As neither a lawyer nor an expert on Constitutional problems, I enter this arena of criminal law and sanctions rather reluctantly. It is
out of a deep sense of outrage over violence with firearms generally that I believe something has to be done—something that serves notice on the criminal who resorts to weapons of violence that he will pay an additional price for doing so. Allowing a court of appeals to impose an even stiffer sentence against a gun criminal will provide, I think, the price increase needed for this type of crime. Such a procedure, I might add, is not without some Constitutional foundation. My attention has been directed, for example, to at least one precedent. It is the case of Robinson versus the Warden of the Maryland House of Corrections where the Fourth Circuit Court of Appeals of the United States ruled that an increased sentence given on appeal to a criminal convicted under Maryland law did not violate Constitutional guarantees against double jeopardy, nor did it offend due process considerations or fall in the category of cruel or unusual punishment.

In short, I believe there is an added safeguard owing to society where gun crime is involved. The criminal ought to be considered a “dangerous special offender” and the sentence against him should be open to review if there is any danger at all that society is not adequately protected from his threatened acts of violence.

In the case of the gun criminal my bill would give society
the added protection it needs. For the gun criminal, it adds to the price he already pays for choosing a weapon of violence in committing his crime.

I would hope that this bill would be considered with utmost dispatch and that it might be reported expeditiously along with the many other recommendations to update the criminal laws that are now before the Committee on the Judiciary.
IN THE SENATE OF THE UNITED STATES

Mr. MANSFIELD

introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend title 18, United States Code, so as to authorize a more severe penalty to be imposed in connection with certain crimes involving the use of, or unlawful carrying of, firearms.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (c) of section 924 of title 18, United States Code, is amended by striking out the language in paragraph (2), and inserting in lieu thereof the following language:

"carries a firearm unlawfully during the commission of any felony for which he may be prosecuted in a court of the United States, shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than five years nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than ten nor more than twenty-five years and, notwithstanding any other provision of law, the court shall not suspend the sentence in the case of a second or subsequent conviction of such person or give him a probationary sentence, nor shall the term of imprisonment
imposed under this subsection run concurrently with any
term of imprisonment imposed for the commission of such felony."

(b) Subsection (e) of section 3575 of title 18, United States
Code is amended (1) by striking out the period at the end of para-
graph (3) thereof and inserting in lieu thereof a semicolon and the
word "or", and (2) by adding immediately after paragraph (3)
thereof the following new paragraph:

"(4) the defendant used a firearm (as defined in section
921 (a) (3) of this title) to commit such felony, or unlawfully
carried a firearm (as defined in section 921 (a) (3) of this
title) during the commission of such felony."

(c) Section 3575 of title 18, United States Code, is amended
by adding at the end thereof the following new subsection:

"(h) Nothing in this section shall be construed as amending,
altering, modifying, or otherwise affecting the provisions of
subsection (c) of section 924 of this title, or as affecting
the applicability of such provisions to any defendant sentenced
pursuant to this section":
March 8, 1973

By Mr. DOMINICK (for himself and Mr. PAYNE, Mr. OWENS, Mr. BROOK, Mr. COOK, Mr. DOMINICK, Mr. EASTLAND, Mr. ERVIN, Mr. HANSEN, Mr. HAYFIELD, Mr. MCKINLEY, Mr. SCOTT of Virginia, Mr. TAPI, and Mr. WEBSTER):

S. 1147. A bill to amend the Occupational Safety and Health Act of 1970. Referred to the Committee on Labor and Public Welfare.

By Mr. CRANSTON (for himself and Mr. WILLIAMS):

S. 1148. A bill to provide authorization for the ACTION Agency to operate domestic volunteer service programs, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. MAGNUSON (for himself and Mr. BENNETT, Mr. BURBICK, Mr. CLARK, Mr. Dole, Mr. DOMENICI, Mr. DOMINICK, Mr. EASTLAND, Mr. GRAVEL, Mr. HART, Mr. HARTKE, Mr. HAYFIELD, Mr. HANSEN, Mr. HATHAWAY, Mr. HUGHES, Mr. HUMPHREY, Mr. JACKSON, Mr. JAVITS, Mr. MANSFIELD, Mr. MUSKIE, Mr. MCMEEKRY, Mr. McGOWAN, Mr. McDALE, Mr. MOSS, Mr. NELSON, Mr. PACKWOOD, Mr. PEARSON, Mr. PELL, Mr. PERRY, Mr. RANDOLPH, Mr. REIHOF, and Mr. Young):

S. 1149. A joint resolution to assure the separation of federal powers and to protect the legislative function by providing a procedure for requiring Federal officers and employees to inform the Congress. Referred to the Committee on the Judiciary.

By Mr. ERVIN:

S. J. Res. 72. A joint resolution providing for the spending of $1,500,000,000 out of the proceeds from the sale of Federal property. Referred to the Committee on Public Works.

By Mr. CRANSTON:

S. J. Res. 73. A joint resolution authorizing the President to proclaim April 16, 1973 as "Jim Thorpe Day." Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MANSFIELD:

S. 1124. A bill to amend title 18, United States Code, so as to authorize a more severe penalty to be imposed in connection with crimes involving the use of, or unlawful carrying of, firearms. Referred to the Committee on the Judiciary.

THE GUN CRIMINAL: DANGEROUS SPECIAL OFFENDER

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A first offender may deserve a second chance. If confined, a second chance is not available because of the current status of our institutions. They do not rehabilitate. They breed more crime. Discretion in these matters is and should be retained by the trial court.

At the same time, the second offender gun criminal deserves nothing short of prison. His resort to a firearm is inexcusable.

There is still another concern in the matter of gun crime that I feel is not yet given the attention it deserves. It is my opinion that the gun criminal should be considered a dangerous special offender. The dangerous special offender category was written into the criminal laws as a means of protecting society from those whose actions are most likely to cause harm and injuries. They do not rehabilitate. They breed more crime.

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There is progress. Yet, no one can claim to have final answers. We do not know how to prevent experimentation with dangerous substances, and we do not have the legal or medical means to ensure that no one will ever become addicted to any drug.

In fact, as a society, we are just beginning to recognize certain essential truths about addiction. We know that young people who experiment with alcohol and other drugs are receiving help. We also know that alcoholics and other addicts are receiving help. Many hundreds of talented biological, behavioral, and social scientists are conducting research, and thousands of the victims of addiction are receiving help.

SENATE

and thousands of the victims of addictive governmental policies and programs.

Of the victims of addiction are receiving help.

Mr. President, I send the bill to the desk and ask that it be appropriately referred.

The PRESIDING OFFICER. Without objection, the bill will be received and appropriately referred.

By Mr. HUGHES (for himself, Mr. BARKLEY, Mr. BURTON, Mr. CHURCH, Mr. CLARK, Mr. CRANSTON, Mr. GRAVEL, Mr. HAYAN, Mr. JAVITS, Mr. MCCVEY, Mr. McGOWEN, Mr. MATTHEWS, Mr. MONDALE, Mr. MOSS, Mr. NELSON, Mr. PASTORE, Mr. RANDOLPH, Mr. RISICOFF, Mr. SCHWEIKER, Mr. SPARKMAN, Mr. STEVENSON, and Mr. WILSON):

S. 1125. A bill to amend the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act and other related acts to center the resources of the Nation against the problem of alcohol abuse and alcoholism. Referred to the Committee on Labor and Public Welfare.

Mr. HUGHES, Mr. President, I introduce for myself and Senators BARKLEY, BROOKE, CHURCH, CLARK, CRANSTON, EAGLETON, GRAVEL, HAYAN, JAVITS, MCCVEY, McGOWEN, MATTHEWS, MONDALE, MOSS, NELSON, PASTORE, RANDOLPH, RISICOFF, SCHWEIKER, SPARKMAN, STEVENSON, and WILLIAMS, a bill to amend the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act and other related acts to center the resources of the Nation against the problem of alcohol abuse and alcoholism.

During the past 3 years the Congress has enacted legislation to mount a major attack on the nationwide problems created by the irresponsible use of alcohol and other drugs and the tragic addictions that often result from such use. Our message to the American people has reflected a rising national concern, to which we have tried to respond, perhaps not always successfully, by developing rational and compassionate governmental policies and programs.

We have authorized funds to finance research, preventive education, treatment, and rehabilitation. Many hundreds of talented scientists, federal, state, and local officials have tried to respond, perhaps not always successfully, by developing rational and compassionate governmental policies and programs.

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