

1. In worthy cases the representatives of the U.S. attorney's office will find ways of reducing the charges of burglary to petty larceny or some similar offense not carrying a mandatory minimum term.

2. The U.S. attorney's office will be under constant pressure from the defense counsels, and others, to reduce the charge.

3. The courts will not be slow in dismissing or finding unsupported by the evidence those counts of the indictment carrying high mandatory minimum sentences.

4. Defendants charged with offenses carrying mandatory minimum terms will not plead guilty, request jury trials, raise all possible defenses and technicalities.

5. Juries will be hesitant to convict a defendant when they know that conviction will bring him a minimum 20-year sentence or 5 years for the relatively minor offenses that can be tried under the definition of burglary as defined in this bill.

6. The appellate courts will comb the record to find some grounds for reversing the case.

7. More cases will be brought to the President for the exercise of his clemency powers.

All of these things have occurred as a result of the mandatory penalties of the Narcotics Control Act. This has also occurred in those States where conviction of certain offenses carries with it a mandatory penalty. The result is destructive to the orderly administration of criminal justice and enhances the possibility that a defendant can escape the consequences of his crime.

Under the proposed bill, H.R. 7525, if enacted in its present form, injustice is not only inevitable as a consequence of the mandatory minimum penalties but as a consequence of the broad, all-embracing definition of second-degree burglary.

As the definition now stands, almost any act of petty theft could be charged as second-degree burglary, as for instance:

1. A youth going into a dime store and stealing a pencil from a counter.

2. A derelict passing an open garage, spying a pile of old newspapers and stealing them to sell them for a few pennies.

3. A young man walking down the wharf, and seeing a coil of rope on the deck of a nearby boat and impulsively stealing it.

4. An alcoholic removing a few pieces of rusted metal from a junkyard in order to sell them for the price of a drink.

These and many other examples could be cited, each of which would be second-degree burglary, requiring the judge to impose a 5-year minimum.

You can predict the result as well as I.

If the provision were actually enforced as written, the District of Columbia would have to build several more penal institutions to house the petty offenders that would be imprisoned for 5 years or more. Appropriations for the District of Columbia would have to be substantially increased. The crime statistics on the District would also give an unfair picture of the actual crime situation.

But experience with only mandatory sentencing statutes around the Nation indicates that the provisions would not be enforced as written. Burglary charges would be downgraded to petty larceny, law enforcement people would find ways around the statute, juries would hesitate to convict and as a consequence respect for the law would drop another notch in public estimation.

The present District of Columbia housebreaking statute seems more than adequate to me in its provision for a 15-year maximum term. But if the committee feels that this statute should be broken up into two degrees of burglary, which I think would be desirable, the action relating to second-degree burglary ought to be rewritten. The distinction between first- and second-degree burglary ought to rest on whether the dwelling or room used as a sleeping apartment was occupied or unoccupied at the time of the offense. The rest of the offenses potentially covered by H.R. 7525's definition of second-degree burglary can be left to existing statutes.

Similarly, the bill's provisions barring probation, parole short of the minimum, or suspension of sentence should be removed. We must not rob a man of all hope. No civilized country can afford to bury a man in the penitentiary giving him no chance to reform and set no goal he can possibly attain. We have done away with wholesale hangings, banishment, transportation to penal colonies so let's not substitute in this day and age medieval penalties of the same stripe.

Our judges can safely be trusted with the responsibility of fair and adequate sentencing and protecting fully the public. They are carefully selected, well qualified, able, knowledgeable, and realistic men who take their responsibilities