

And it is to be borne in mind that the judge has no discretion in this bill when it comes to imposing the penalty. Neither you nor I, Senator Bible, from your experience in the law courts, and so on, know how difficult that makes the problem of prosecuting attorneys when he comes to, after indictment, choosing the charge. You realize the pressures that are brought upon him.

And you realize, I am sure, that these penalties are self-defeating. Efforts are made, and successful efforts are made, to circumvent these penalties by every person and every individual having any contact with the case.

Judges and courts undertake to avoid them in various ways. They charge the case out of court. Some of them will ignore the statute entirely, and other judges, of good conscience, find ways to prevent imposing this mandatory penalty.

The defendant, since he has nothing to lose, in every case will demand and get a jury trial which prolongs the case, and adds additional work to the court. He will appeal it.

And the appeal courts, as you know, Senator, are likely to comb the record for technicalities by which they can upset the conviction when such a mandatory penalty is imposed.

We have had examples of this sort of thing in the Federal system. In the Federal courts there are two, only two, laws where mandatory penalties are required.

One is the robbery of a post office while armed. That gives a mandatory sentence of 25 years.

Now, this penalty or this statute or people, rather, who are indicted under this statute are relatively few in the number of cases, but there are some cases.

It frequently happens that a person will go into a country store, and I am reciting a specific case, where he goes into a country store and he robs the store. Well, there happens to be a post office in that store.

Then the case is frequently made into a Federal case and it is transferred to the Federal court and the person is subjected to a mandatory minimum penalty of 25 years.

Well, judges get around the statute in two ways. First, the courts found that probation was applicable in such cases and even though they realized that the defendant might require some period of treatment in an institution to avoid this 25-year penalty they would grant him probation.

Other judges will completely ignore the penalty provision and sentence him, under whatever they feel the circumstances require. Now, of course, the defendant doesn't appeal that. And the U.S. attorneys for the most part have been reluctant, and I know of no case where they have filed a mandamus provision, to require the imposition of the longer sentence.

The other statutes on the Federal books that require mandatory penalties are under the Narcotics Control Act.

As I guess you know, it provides for a mandatory minimum penalty of a term of 5 years for the first offense of possession of narcotics and 10 years for the second offense, and so on.

Now, the judge can make no distinction in these cases. When he has a case before him of the victim of the drug peddler, the addict,