Department of Justice

STATEMENT OF

JOHN N. MITCHELL
ATTORNEY GENERAL OF THE UNITED STATES

in support of

PROPOSED AMENDMENTS TO
THE BAIL REFORM ACT OF 1966

before the

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

October 21, 1969

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

This Administration is firmly committed to a vigorous and comprehensive action program to combat crime in America, particularly street crime.

We have given the highest priority in our anti-crime program to the nation's capital by presenting a legislative package which seeks to attack rising street crime on a broad front. This model package and its appropriation request for fiscal 1970 is now pending before the Congress.

As part of our Washington model program, and for the federal system, I believe that the prompt passage of our proposed Bail Reform Act amendments, H.R. 12806, is a necessity.

As you know, the present law --- the Bail Reform Act of 1966 --- was passed as part of a nationwide movement to eliminate the financial inequities in the money bail system.

The Act was sponsored by the Chairman of this Committee. It was premised on the supposition that the financial condition of a criminal suspect should not be a consideration in the application of criminal justice. I fully support this policy. I believe that the indigent defendant and the rich defendant must be given equal

treatment if our system of justice under law is to have any relevance in today's society.

The Bail Reform Act of 1966 modified the historic money bail system by permitting release on personal recognizance of any suspect whose character and community ties would reasonably assure that he would remain subject to the jurisdiction of the court and would not flee.

The studies done of released defendants by the Vera Foundation and by the Junior Section of the D. C. Bar Association clearly showed that a man's personality, living habits and community ties had a direct relation to whether or not he would show up for his trial. Unfortunately, there were no studies done on whether or not a suspect might commit another crime while out on pre-trial release. Therefore, very little attention was given to that issue.

However, we now have had three years of experience with the Bail Reform Act and we have come to the conclusion that there is sufficient evidence to warrant substantial modification. Basically, we adhere to the philosophy that financial status should not determine the right to pre-trial release. But we also believe that provision must be made for those criminal suspects whose

past history, and course of conduct might reasonably lead one to believe that there is a very high potential for them to commit a crime if they are released.

Of course, the amendments we propose will apply to all federal jurisdictions, but their primary impact will be in Washington. No other federal judicial district faces the high volume of street crime that we face here in Washington and although there are bail reform experiments in more than 125 cities, in no other city is the risk of flight used in practice as the sole criteria for release of suspected robbers, muggers, rapists, narcotics addicts and other street criminals.

A look at Washington's crime picture is frightening. The FBI, in its most recent Uniform Crime Report, stated that, in just the first half of this year alone, the rate of serious crime has increased here 37 percent compared to just a 13 percent national increase. In robberies, the increase was a staggering 46 percent. The nation's capital also saw a rise in forceable rape of 50 percent and in burglary of 15.5 percent.

There is no doubt at all that a significant number of serious crimes are being committed by those released on bail although the exact number of these offenders is subject to wide divergence of opinion, depending on the studies undertaken.

One study in the District of Columbia indicated that of 557 persons indicted for robbery in calendar 1968, 242 of the 345 persons released prior to trial, or 70 percent were subsequently rearrested. The 70 percent recidivism is even more significant when you recognize that the 70 percent is of those released prior to trial. Presumably many dangerous defendants were detained by failing to meet conditions imposed on release such as money bond.

When statistics and crime on bail are discussed we must remember that the true rate of crime on bail is not being measured at all. The lowest rates of crime on bail come from studies that concerned themselves with reindictment figures. The crime on bail rate of 6 to 9 percent that these studies reveal is in itself too high, but it only represents the exposed tip of an iceberg. The great mass of crime remains unsolved, hidden and often unreported.

For instance, the FBI in its Uniform Crime Reports - 1968, stated that in the nation in 1968 the police solved only 27 percent of all reported robberies. The President's Commission on Law Enforcement and Administration of Justice indicated that the actual robbery rate was 50 percent greater than the reported rate. Combining these two figures indicates that over eight out of every ten robberies go unsolved. In the District of Columbia the solution rate is well under 20 percent of reported robberies. Many of these robberies are surely committed by those on bail. The same is true in some degree of all other crimes of violence.

A comparison between the extent of reported crime for the six month period prior to enactment of the present law which requires release of such dangerous persons and the comparable first six months of 1969, three years later, is highly significant. There were 1,466 reported robberies the first six months of 1966. This figure more than tripled to over 5,000 in the first six months of 1969. Reported rapes more than doubled from 69 to 150. Burglaries also more than doubled from 4,464 in the first six months of 1966 to over 10,000 in the first six months of 1969.

In view of such an enormous increase in reported crime, the limitation of pre-trial detention to capital offenses makes no sense at all. The addict-robber, the professional burglar, the confirmed rapist are all far more dangerous to the community than the husband charged with first degree murder of his wife. Though precise statistics on crime committed on bail are not available because of the very low arrest rate for violent crimes (under 10 percent of all crime) many law enforcement experts -- judges, prosecutors, and police investigators -- believe that crime on bail is a major factor in all street crimes.

Five separate federal grand juries recently complained to the President and Congress of "shocking" rates of crime committed by defendants on pre-trial release.

Just two weeks ago at a White House Conference with the President, legislative leaders on crime problems in the District of Columbia and D. C. Police Chief Jerry Wilson called for amendment of the Bail Reform Act to permit temporary pre-trial detention.

The District of Columbia Crime Commission has called for legislation to permit pre-trial detention of dangerous defendants.

The District of Columbia Judicial Council Committee on Bail, chaired by U. S. District Judge George Hart, called for amendment of the Bail Act to permit pre-trial detention of dangerous defendants.

In light of all available evidence, I believe that the pre-trial release of potentially dangerous defendants constitutes one of the most serious factors in the present crime wave. I believe that danger to the community must be made a significant consideration in the ultimate decision to release a suspect. I believe that we meed a more flexible approach which will offer a range of possibilities -- pre-trial release without close supervision; pre-trial release with close supervision, and other conditions such as employment; and no pre-trial release at all for those suspects who clearly present a potential for committing another serious crime.

The present Bail Reform Act does not meet the problem of crime on pre-trial release. It was not drafted with that problem in mind, and there was no experience or factual surveys to indicate the problem.

Indeed, the Bail Reform Act was premised on a supposition that a defendant who was released without bail being posted would remain under the court's jurisdiction for 2 purposes -- to stay within the jurisdiction and to behave lawfully.

That has not been the case.

In order to give effect to the court's jurisdiction over defendants charged with crime and to prevent and deter crime on bail we urge enactment of our Bail Act Amendments contained in H.R. 12806.

Under the proposal a judge in setting nonfinancial release conditions will be able to consider danger to the community, ending the present anomaly in the law that requires a judicial officer to forget society and consider risk of flight in making a release decision.

In addition, anyone who commits a crime on bail will receive an additional sentence that will be made consecutive to all other sentences. Bail jumpers will also receive consecutive sentences, and the bill proposes, for the first time, strict and enforceable sanctions for violation of release conditions.

All these changes will provide our courts with many necessary weapons to deter crime, but they cannot do the entire job. We need to authorize pre-trial detention to hold prior to trial those clearly dangerous defendants who cannot be released with safety.

Pre-trial detention is the heart of H.R. 12806 -- the single measure in the proposal that can most effectively reduce crime on bail. We have carefully limited this proposal

in scope and effect so that only the truly dangerous will be held, and we have afforded these defendants ample safeguards for protection of their rights.

Under the proposal no one will be held in pre-trial detention unless (1) he comes within one of a group of carefully chosen categories of defendants who may pose a danger to society, (2) the judge finds that he cannot be released on any condition that would assure community safety, and (3) there is a substantial probability of his ultimate conviction.

There are four categories of detainable defendants in the bill. These categories were designed to narrow the application of the statute to those defendants most likely to be dangerous, thus sifting out defendants charged with less serious crimes and who should not be detained.

The first category covers certain dangerous crimes -- robbery, burglary, rape, arson and drug sales. These are crimes of grave dangerousness, or, like drug sales, they are crimes that serve as breeding grounds for other and more violent crimes. In all of these the potential for recidivism is high. The charge of one of these offenses can be

sufficient to trigger a motion for a pre-trial detention hearing.

The second category covers the entire range of crimes of violence. The mere charge of a violent crime is, however, insufficient. In addition, the defendant must be on bail on another charge of a crime of violence when arrested or have been convicted of such an offense within the last ten years.

Narcotic addicts charged with a crime of violence comprise the third category. Probably no act is more predictable than the commission of a crime by an addict driven by his habit. The bill carefully limits the charge on which the addict is held to that of a violent crime. Of late too many addicts have graduated from property offenses to crimes of violence and something must be done to keep them off the streets.

The final category covers those persons who, irrespective of the offense charged, obstruct justice by threatening witnesses or jurors.

Only when the defendant fits into one of these categories may a motion for a pre-trial detention hearing be made by the United States Attorney. The hearing is a full-scale

evidentiary and adversary proceeding. At this hearing the judicial officer has to find, on the basis of information available on the defendant and the facts of the offense charged, that there are no conditions of release which will reasonably assure the safety of the community.

Some have said that this finding makes the judge into a prognosticator of future behavior and that this is unprecedented and unreliable. The short answer to this is that our system has always called on the trial judge to make numerous predictions of future behavior from the first appearance after arrest until final sentencing. No one, for instance, has objected to the judge's predicting, under the Bail Reform Act, the likelihood of flight. When a capital offense is charged, the very same judge is directed by the Bail Reform Act to take danger to the community into consideration and thus predict whether the defendant will present a danger to the community if released.

Moreover, every time a judge imposes or suspends a sentence or grants or denies probation he makes a prediction of future behavior and the possibility of rehabilitation. If a judge can predict with some reliability without constitutional prohibition in these areas he can also predict the dangerousness

of a defendant before him.

At the hearing the judge must also find a substantial probability of the defendant's ultimate conviction. This is not intended to abrogate the presumption of innocence or to deny the right to trial. It is intended merely to guarantee that no one will be held in pre-trial detention unless an experienced judicial officer concludes that the case against the defendant is a strong one. Freedom will not be lost under this bill, even for a short time, on a flimsy case or on an improper charge by the prosecutor.

The proposal also contains a number of strong procedural protections to safeguard the rights of defendants. For example, at the hearing the defendant may be represented by counsel, will be able to testify freely, to call his own witnesses and to cross-examine government witnesses presented. He will be entitled to an expedited trial and will not be held in pre-trial detention for more than sixty days unless the trial has started or he is delaying his trial. No proposal made to date for pre-trial detention provides the range of protections for both the substantive and procedural rights of the defendant that this bill grants.

The proposal I have outlined would thus amend the Bail Reform Act to establish selected pre-trial detention on a limited basis with strong safeguards against abuse. The bill will hold for pre-trial detention only those persons who appear to be so dangerous that their release pending trial would probably result in the commission of other crimes.

Last January 31, President Nixon called for legislation to enable the courts to hold "dangerous hard-core recidivists in temporary pre-trial detention when they have been charged with crimes and when their continued pre-trial release presents a clear danger to the community." H.R. 12806 is a carefully drafted and comprehensive response to that call.

Mr. Chairman, in conclusion, let me urge you and this subcommittee to take prompt action to approve this legislation. It will provide our courts with a number of indispensible weapons and procedures to combat the scourge of crime in our streets. Crime on bail does exist and those who are faced with it on a day to day basis know that it is a major factor in the rising crime rate.