

Law, Order and Civil Rights

The Nixon Administration's proposal for preventive detention of "dangerous" defendants in Federal criminal cases reflects the same disturbing tendency to bypass constitutional rights that has flawed some other recent Administration moves in its crusade for law and order.

Like the Justice Department's assertion in Chicago last month of unfettered powers to eavesdrop in national security cases, the preventive detention bill seeks to curb criminal activity by means that threaten the innocent. Reacting to widespread opposition to the eavesdropping claim, Attorney General Mitchell appeared to retreat somewhat in this area Monday when he told a news conference he's phasing out a lot of electronic eavesdropping in the national security field.

But the President again risked infringement of civil liberties when he asked Congress to give Federal narcotics agents authority to break into residences unannounced to seize drug evidence quickly.

The detention bill would permit the imprisonment of a suspect for up to 60 days without bail if a judge found a "substantial probability" that the defendant was guilty as charged, and also determined after a hearing that release of the defendant would be a danger to the community. Among those who could be detained are narcotics addicts charged with any crime of violence; persons charged—but not necessarily convicted—with two violent crimes; and others charged with such "dangerous crimes" as bank robbery or the sale of narcotics.

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In spite of an attempt to provide safeguards, this measure directly contravenes the principle that a man is presumed innocent until proved guilty, which is at the heart of American criminal law. It extends discretionary power to judges that perilously skirts guarantees that were carefully spelled out in the Bill of Rights to protect the innocent. The pertinent amendments—the Fourth through the Eighth—were based on bitter experience with governmental abuse in criminal cases dating back to Magna Carta days.

The problem of crimes committed by suspects while free on bail awaiting trial is a serious one. It has become more acute recently, partly because of bail reforms that limit—but do not entirely prevent—the practice of imposing prohibitive bails, but principally because court congestion has caused prolonged delays between indictment and trial.

The surest way to ease this problem of potentially dangerous criminals at large, without perverting justice, is to reform the court system so that all defendants receive the speedy trial to which they are entitled under the Constitution. Pending such long overdue reform, the cases of suspects deemed dangerous could be advanced on court calendars to minimize delays in meting out justice.

Beyond this, the danger from criminals on bail is related to the larger problem of failures of the correctional system. Too many men revert to anti-social behavior even after they have theoretically discharged their debt to society. Prison reform must go hand-in-hand with court reform if the public is to be spared the compound dangers of repetitive offenses.