

# Law Enforcement Reform Act of 1976

## Title

### Sec. 1:

This Act (a) abolishes the Omnibus Crime Bill of 1968 as amended, and (b) may be cited as the Law Enforcement Reform Act of 1976.

## Declaration of Emergency

### Sec. 2:

The Congress has found the Constitutional guarantees of civil liberties to be in jeopardy from two principal sources: the growing incidence of crimes against persons and related offenses, and a pattern of abuses by law enforcement, security and related agencies which tend toward a covert transformation of the nation into a virtual police state. The Congress has also found that the philosophy and practices associated with the Omnibus Crime Bill of 1968 have not only been chiefly discredited in fact by the failure to curb the incidence of crime, but have contributed to the proliferation of police-state-like activities. These facts define an emergency, to which the Congress must respond in part by enacting measures of reform in law enforcement policy and practices.

## Rise In The Crime Rates

### Sec. 3:

The causes for the increasing incidence of crimes against persons are found to be ultimately economic. Since the 1957-58 recession, there has been a secular tendency for decline in the proportion of the potential labor force productively employed as skilled or semi-skilled operatives in manufacturing, mining, and construction as a whole. This has been acutely worsened since the beginnings of the current period of general monetary crises, beginning during the period of the November 1967 pound sterling devaluation and the February and early March 1968 crisis of the dollar. Since the beginning of 1968, there has been an accelerating emphasis on austerity, leading to a tendency for stagnation and more recently sharp declines in the number of fully employed operatives in basic industries.

Although economic hardship and actually increased incidences of economic desperation may influence the rate at which persons act upon criminal tendencies, poverty in and of itself does not cause the criminal tendencies. The increase in the incidence of potential criminality, the incidence of criminal tendencies, is most directly caused by the effects of industrial semi-stagnation upon belief in the Idea of Progress as the implicit moral commitment characterizing the nation and its people as a whole.

This point is most conspicuously demonstrated in the case of large concentrations of urban poor, especially those poor concentrated in so-called ghettos characterized by racial and ethnic minorities. Although the educational services offered such poor do tend to be inferior to those available to other strata, it is clear that it is not such discrepancies in quality of education provided which cause the degree of poorer educational achievement among the indicated ghetto youth strata. The most relevant point is that the despair rooted in the household and ghetto neighborhood undermine the youth's confidence in the benefits of enriching his or her mind. These strata who represent concentrations of persons

shut off from meaningful assimilation into industrial society, as a result of a lack of expansion of skilled and semi-skilled operatives' employment, see in their home-life and neighborhood circumstances overwhelming evidence that industrial progress has little of immediate importance for them.

Consequently, these underprivileged ghetto concentrations readily assimilate "cargo cult" or other "redistributionist" ideologies. They do not situate themselves in a nation susceptible of solving its material and cultural difficulties through technologically oriented industrial and related expansion, but rather view the nation as representing a constant magnitude of wealth and privilege, such that the material and cultural conditions of one group could be enhanced only at the expense of another group.

There is a direct connection between belief in the Idea of Progress and the kind of moral sense which has been most serviceable in the history of this nation. Expansion of production means technological advancement and other forms of innovation by individuals for the common good. Consequently, the Idea of Progress places a premium upon skill, knowledge, and inventive capabilities of the individual mind as that which is most desirable in one's self and the most precious contribution one enjoys from others. As a rule of thumb, the moral sense is associated with an emphasis on the importance of the mind as opposed to emphasis on those other physical qualities in which the essential moral distinction between man and animal is obscured. Discredit the Idea of Progress, and the importance of the mind is deemphasized, with the result that the affected persons tend to regard themselves and their relations to other persons as they might imagine proper to animals in general. There is a direct correlation among the weakening of the Idea of Progress since 1958, the popularity of the anti-Progress "Triple Revolution" and "Zero Growth" ideologies, the popularization of pornography, the increased incidence of homosexuality and exotic sexual practices, the proliferation of the so-called rock-drug counterculture, and criminal propensities.

This deterioration of the moral sense is not peculiar to ghettoized lumpenproletarians and semi-lumpenproletarian strata. The deemphasis on progress permeates the suburban populations, where the immediate reflection of the disorder is a decreased sense of driving purpose in life for social achievement, and an increased emphasis on personal sensual gratification per se.

The loss of the moral commitment and perspective associated with the Idea of Progress directly results in an increased incidence of crimes against persons. The increase of aversive economic circumstances essentially provides the circumstances in which the potential for criminality is realized more frequently.

It is emphasized that the philosophy of "community control," especially as applied to the operations of the Department of Health, Education and Welfare, the Law Enforcement Assistance Administration, and related agencies among ghetto youth, inevitably increases the propensity for criminal acts. Any intensification of narrowed emphasis upon immediate locality or localized associations caters to paranoid tendencies among those subjected to such "social work" and similar programs, weakening the broader strata

of society. It is emphasized that the so-called "counterinsurgency" approach to controlling the criminal and political tendencies of targetted sections of the population is based on the principle of setting fragmented constituency groups into conflict with other constituencies; consequently, the philosophy characterizing LEAA-sponsored and related programs in such areas of activity are inevitably counterproductive, actually worsening the incidence of criminal propensities.

There is some specious truth to the argument that a man will steal to get a loaf of bread for his hungry family, but the problem of crime in the U.S.A. does not arise directly from hunger, but from the impairment of the moral sense in a way which most emphatically affects ghetto and suburbanite youth strata.

Although the increased propensity for crime cannot be checked through any sort of reforms in law enforcement institutions or practices, the subsumed increased incidence of crimes against persons and psychologically related offenses constitutes a major problem for the general population and represents both a provocation for proponents of police-state measures and a direct subversion of civil liberties and Constitutional government.

#### **Subversion of Civil Liberties**

##### **Sec. 4:**

The most dangerous kind of increase in crimes is the growth in explicit and implicit subversion of Constitutional guarantees of civil liberties by security and law enforcement agencies acting in parallel or in concert with certain private agencies. The offenses shown to have been committed by the Central Intelligence Agency, Federal Bureau of Investigation, and other agencies of federal, state, and local government constitute a grave and immediate danger to the continuation of constitutional government.

The principal common feature of subversive practices by security and law enforcement agencies is the abuse of statutes concerning alleged "politically subversive associations," and an excessively broad interpretation of "national security" statutes generally to license political harassment and actual crimes under the cover of a purported investigation. It has been principally the Federal Bureau of Investigation's corrupting association with pursuit of actual or suspected "communist influences" which has channeled so large a portion of that agency's efforts into dubious and overtly unlawful and subversive practices. A similar problem exists among state police agencies and the "red squads" of local law enforcement agencies.

The danger from such abuses is hideous at this juncture. Extremely influential political forces in the U.S.A. have been increasingly preoccupied since 1968 with a desire to impose stringent austerity measures upon both the U.S. and foreign populations, principally in the interest of securing debt-service payments against a growing overhang of outstanding public and private financial obligations. During the most recent years, the advocacy of austerity has become increasingly a knowledgeable commitment to emulate the methods of Nazi finance minister Hjalmar Schacht. Although there are some efforts to implement Schachtian austerity measures through "soft" corporatist political forms, such techniques are in fact either unworkable from the outset or merely transitional to hard police-state alternatives. Austerity of the dimensions currently proposed in the interest of rolling over financial obligations cannot be implemented

politically without overthrowing or subverting the U.S. Constitution and imposing "hard" police-state forms. The close association between political factions committed to maintaining debt-service through austerity and various elements of the criminal justice and political intelligence and security establishments permeates such agencies with a powerful tendency toward police-state forms of subversion of the Constitution through institutionalized abuses insinuated into law enforcement and security agency practices.

For that reason, it is imperative that the corresponding powers of security, political intelligence, and law enforcement agencies be sharply curtailed, that the "anti-communist" statutes of federal, state and local government be repealed en bloc, and that "red squads" be summarily disbanded.

#### **Crimes by Law Enforcement Agencies**

##### **Sec. 5:**

Second in importance to the subversive tendencies of "thought police" activities in contributing to offenses by government agencies is the general area of "control" of illegal drug and certain other areas of "crime control."

The areas of law enforcement least subject to serious abuses are the activities of the uniformed policeman on the beat and the straight-forward investigations of crimes which had been committed. In these areas of basic law enforcement work, it is the obligation and intent of Congress to facilitate law enforcement effectiveness.

The danger begins at the point that security and law enforcement agencies plant agents or recruit informers into either groups of known criminals or other groups. The worst type of situation is the case in which a local law enforcement agency is prevented from interfering in criminal activities in its jurisdiction because of intervention by some influential other law enforcement or security agency, on the pretext that the interfering agency wishes to prevent a local police action from impairing an ongoing investigation. Under these circumstances, both the local law enforcement agencies and other agencies involved tend to become complicit in continuing criminal activity, and too often law enforcement and security agents become accomplices and even coordinators of criminal activities under this pretext.

The programs of "hard drug maintenance" are one of the best illustrations of the way in which crime control fosters the proliferation of crime. These and practices based on similar philosophies of "crime control" are to be discontinued and superseded by a policy of early arrest and prosecution of offenders.

#### **Code of Conduct For Law Enforcement Agencies**

##### **Sec. 6:**

To provide law enforcement agencies with a clear code of allowed and prohibited practices in ordinary law enforcement procedure, the following rules are enacted governing all such agencies.

No law enforcement agency shall engage in any activities or practices which increase the propensity for criminal acts. Programs based on the philosophy of "community control" and other counterinsurgency programs are hereby prohibited, on the grounds that such programs weaken the sense

of connection and moral responsibility towards the broader society.

No law enforcement agency shall engage in, or refer persons to, any programs based upon "behavior modification" or other forms of psychological coercion; the use of such practices, whether by surgical, electrical, chemical, or other means, is hereby outlawed as a penal or rehabilitative method. Likewise, the use of "methadone maintenance" programs or other programs which maintain persons on addictive drugs or chemicals is hereby prohibited.

No law enforcement agency shall engage in the practice of using informants, undercover agents, or agent provocateurs against legitimate political activity. The use of infiltrators for purposes of disruption, entrapment, or otherwise interfering with legitimate political expression is expressly prohibited.

The creation or control of political organizations for the purpose of artificially manipulating the political expression of the society is prohibited. This includes the creation of so-called "countergangs" as well as attempts by government agencies to manipulate, control, or otherwise interfere with political expressions regarded as a subversive and prohibited practice.

The protection of First Amendment rights and related constitutional rights is an express responsibility of law enforcement agencies. Every law enforcement agency shall promulgate clear directives and policies for the protection of such constitutional rights, and shall prosecute any persons interfering with the exercise of rights granted by the United States Constitution.

With respect to paragraphs (3), (4) and (5) immediately above, as a matter of law all law enforcement officials are to be held strictly accountable for the activities of officials or officers under their command. This shall include liability for criminal prosecution and civil remedies.

#### **Criminal Justice Policy**

##### **Sec. 7:**

Insofar as the conception of punishment of convicted offenders perpetuates the tradition of propitiatory retributive justice, that philosophy is morally unacceptable and counterproductive. However, in weaning our criminal justice system from such vestiges of a barbaric past, we must take into account a number of interrelated practical problems.

The proper policies of the penal provisions of a criminal justice system are to directly protect society from injuries which may be probably caused to it by persons of criminal propensities, and to establish and maintain awe for the society's commitment to prevent specific types of offenses. The policy toward the convicted offender is the simplest to define: on the assumption that penal institutions are efficient in remedying the propensity for criminal behavior, the need

of society is to keep the offender under administrative control until the propensity has been checked significantly. The problem is made clearer as we add to consideration the case of the individual with strong criminal propensities who has not yet committed a known offense, or has not been convicted of such an offense.

There are several weighty civil liberties problems involved.

First, in respect of sentences, our sensibility of civil liberties does not permit us to commit convicted persons for indefinite sentences "until reasonably cured," since this would tend to subject the convicted person to the prejudices and vagaries of judgment of penal system administrators. Therefore, a strictly limited sentence is the only admissible procedure from the standpoint of civil liberties. This then compels society to relate the length of the sentence to the gravity of the offense as compared with admissible evidence concerning the convicted person's manifestations of a greater or lesser degree of criminal propensity. In that way, awkward as it may be, the concept of determined sentences represents a crude means for practically approximating proper penal procedure.

It may be objected that our penal system does not function effectively. It is our obligation to correct that ineffectiveness.

Second, not all acts defined as offenses by statute and judicial proceedings are in fact expressions of a significant propensity for crime. The law may be wrong or may be inappropriately applied to the circumstances for which an offense is charged. If criminal justice procedure is based on attacking the propensity for criminal behavior in the meaningful sense of a *mens rea*, in such classes of offenses the convicted person's sentence is not directed to preventing that person from committing a fresh offense, but as a presumed deterrent to such actions by other persons.

Third, a pure system of criminal justice would subject persons to administrative control of a penal system, not on the basis of the offenses committed but on the basis of the degree of propensity for certain types of criminal behavior. Such an approach would eliminate the iniquities implicit in the first and second points, but would award to some implied agency powers we are not prepared to entrust.

Thus, the objective of criminal justice policy is to approximate the results sought by a pure system of criminal justice within the accessible terms of reforms within existing procedures and penal practices.

The objective of criminal justice is to diminish and counter criminal propensities on the basis that all mental traits which might be meaningfully defined psychologically as criminal propensities are forms of paranoia. The general corrective therefore indicated is to treat the paranoia as such (as psychoanalytically) while building up the individual's social ego-ideals.