*1435 P.L. 92-128, CRIMINAL PROCEDURE-- DETENTION CAMPS
House Report (Judiciary Committee) No. 92-116,
Apr. 6, 1971 (To accompany H.R. 234)
Senate Report (Judiciary Committee) No. 92-304,
July 26, 1971 (To accompany S. 592)
Cong. Record Vol. 117 (1971)
DATES OF CONSIDERATION AND PASSAGE
House September 14, 1971
Senate September 16, 1971
The House bill was passed in lieu of the Senate bill.
The House Report is set out.

(CONSULT NOTE FOLLOWING TEXT FOR INFORMATION ABOUT OMITTED MATERIAL. EACH COMMITTEE REPORT IS A SEPARATE DOCUMENT ON WESTLAW.)

HOUSE REPORT NO. 92-116
Apr. 6, 1971

THE Committee on the Judiciary, to whom was referred the bill (H.R. 234) to amend title 18, United States Code, to prohibit the establishment of emergency detention camps and to provide that no citizen of the United States shall be committed for detention or imprisonment in any facility of the United States Government except in conformity with the provisions of title 18, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

PURPOSE OF THE AMENDMENTS

Amendment No. 1 deletes sections 1 and 2 of H.R. 234 as introduced and inserts a single new provision in lieu thereof, making clear the intent of the measure to prohibit the imprisonment or detention of a citizen except pursuant to an Act of Congress.

Amendment No. 2 renumbers section 3 of H.R. 234 as section 2.

A further amendment conforms the title of the amended bill to its content.

PURPOSE OF THE AMENDED BILL

The twofold purpose of the amended bill is (1) to restrict the imprisonment or other detention of citizens of the United States to situations in which statutory authority for their incarceration exists and (2) to repeal the Emergency Detention Act of 1950 (Tit e II of the Internal Security Act of 1950) which both authorizes the establishment of detention camps and imposes certain conditions on their use.

STATEMENT

H.R. 234 is one of 15 identical bills, sponsored or cosponsored by 157 Members of

the House, whose salient purposes are two: First, ***1436** to prohibit the establishment of detention camps and second, to repeal the existing Emergency Detention Act of 1950 which grants authority for the establishment of such camps.

The Emergency Detention Act was enacted as Title II of the Internal Security Act of 1950, the year in which the Korean War began. It established procedures for the apprehension and detention, during internal security emergencies, of individuals deemed likely to engage in espionage or sabotage.

Although no President has ever used or attempted to use these provisions, the mere continued existence of the Emergency Detention Act has aroused much concern among American citizens, lest the Detention Act become an instrumentality for apprehending and detaining citizens who hold unpopular beliefs and views. Also, groups of Japanese-American citizens regard the legislation as permitting a recurrence of the round ups which resulted in the detention of Americans of Japanese ancestry in 1941 and subsequently during World War II. They urge that the Act should be repealed.

The history of the measure before the Committee warrants brief review. In the 91st Congress, H.R. 11373, and a number of identical measures that would have prohibited detention camps and would have repealed the Emergency Detention Act, were referred to the Committee on the Judiciary. On the other hand, H.R. 1157 and a number of House bills which would have a comparable effect, were referred to the Committee on Internal Security. In addition, S. 1872, a repealer, was passed by the Senate and thereupon was also referred to the House Committee on Internal Security.

In the interest of expeditious and conclusive action, the Senate bill, S. 1872, having been referred to the Committee on Internal Security, Chairman Celler indicated to the Chairman of the Internal Security Committee that if that Committee was planning early action on S. 1872, the Committee on the Judiciary would defer consideration of the legislation before it. Subsequently, hearings were held by the Internal Security Committee. Ultimately, on September 14, 1970, that Committee reported a clean bill, H.R. 19163, introduced by Chairman Ichord and Mr. Ashbrook.

Instead of repealing the Emergency Detention Act, this measure reported by the Committee on Internal Security would amend it by adding a number of procedural changes to it. A rule was requested, but the 91st Congress adjourned before a rule was granted, so that floor consideration of the Ichord- Ashbrook bill was not accomplished. In the present Congress, the Committee on Internal Security has reported favorably without amendment H.R. 820, identical to H.R. 19163 which had been reported in the 91st Congress.

As has been indicated, 157 Members of the House have, in the present 92d Congress, reiterated their support for measures repealing the Emergency Detention Act. They have done this by sponsoring identical measures which would be and have in fact been referred to this Committee.

In view of the large number of Members who, with full knowledge of the fact that in the 91st Congress the Internal Security Committee rejected the idea of repeal and substituted a bill merely amendatory of the Emergency Detention Act, have nevertheless introduced repeal bills that would be and were referred to this Committee. The Committee believes that respect for the wishes of these many Members requires action on the bills pending before us.

***1437** JUSTICE DEPARTMENT VIEWS

The Department of Justice has consistently recommended repeal of the Emergency

Detention Act. This is of considerable significance in light of the Attorney General's responsibility to cope with subversion. Assistant Attorney General Mardian, at the hearings before Subcommittee No. 3, testified as follows:

The Department of Justice is unequivocally in favor of repealing Title II of the Internal Security Act.

As Deputy Attorney General Kleindienst stated in his letter of December 17, 1969, to Chairman Celler of the House Judiciary Committee, 'the continuation of the Emergency Detention Act is extremely offensive to many Americans. In the judgment of this Department, the repeal of this legislation will allay the fears and suspicions-- unfounded, as they may be-- of many of our citizens. This benefit outweighs any potential advantage which the Act may provide in a time of internal security emergency.'

The Committee agrees and in consequence the repeal of the Emergency Detention Act is found in Section 2 of H.R. 234 as herein reported. In its further testimony before the Subcommittee, though endorsing repeal, the Department of Justice witness criticized Sections 1 and 2 of the bill as introduced, whose purpose it was to prohibit detention camps. He testified:

These sections would amend title 18 of the United States Code to provide that no citizen of the United States may be detained in any facility except in conformity with the procedures and the provisions of title 18. These amendments assume that all provisions for the detention of convicted persons are contained in title 18. The proposed amendments fail to take into account the provisions of title 21, dealing with crimes involving narcotics and dangerous drugs; title 50 involving Selective Service violations; title 26, involving Internal Revenue law violations; title 49, involving aircraft hijacking, carrying explosives aboard aircraft and related crimes; and other titles involving confinement of persons convicted of Federal crimes. * * *

COMMITTEE CONCLUSIONS

To alleviate these problems raised by the Department of Justice, the Committee recommends an amendment that would take the place of Sections 1 and 2. The amendment provides that **no citizen** shall be **imprisoned** or otherwise **detained** by the United States except pursuant to an Act of Congress.

On the basis of testimony received at the public hearing held by Subcommittee No. 3 at which a representative of the Attorney General and a number of Members of the House appeared as witnesses, and after study of the issues, the Committee is of the view that the Emergency Detention Act serves no useful purpose, but, on the contrary, only engenders fears and resentment on the part of many of our fellow citizens.

***1438** What is more, the constitutional validity of the statute is subject to grave challenge. The Act permits detention of-- each person as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or of sabotage.

This criterion would seem to violate the Fifth Amendment by providing imprisonment not as a penalty for the commission of an offense, but on mere suspicion that an offense may occur in the future. The Act permits detention without bail even though no offense has been committed or is charged. In a number of ways the Act violates the First Amendment. In a number of ways, also, the provisions of the Act for judicial review are inadequate in that they permit the government to refuse to divulge information essential to a defense.

The concentration camp implications of the legislation render it abhorrent; there is no compensating advantage to be derived from permitting this law to remain on the books. Should drastic measures be called for at some future time, it is inconceivable that this already dated statute would fill the needs of the moment. Almost certainly, new and different legislation would be called for, tailored to current needs. In the Committee's opinion the Emergency Detention Act is beyond salvaging, cannot be adequately amended, and should be repealed in toto.

But the Committee believes that it is not enough merely to repeal the Detention Act. The Act, concededly can be viewed as not merely as an authorization for but also in some respects as a restriction on detention. Repeal alone might leave citizens subject to arbitrary executive action, with no clear demarcation of the limits of executive authority. It has been suggested that repeal alone would leave us where we were prior to 1950. The Committee believes that imprisonment or other detention of citizens should be limited to situations in which a statutory authorization, an Act of Congress, exists. This will assure that no detention camps can be established without at least the acquiescence of the Congress.

SECTION-BY-SECTION ANALYSIS

First section.-- Subsection (a) of the first section of the bill as amended amends section 4001 of title 18 of the United States Code by inserting at the beginning thereof the follow: '(a) **No citizen** shall be **imprisoned** or otherwise **detained** by the United States except pursuant to an Act of Congress.' Existing paragraphs of section 4001 are denominated (b)(1) and (2).

Subsections (b) and (c) of the first Section change the section heading and the chapter analysis applicable to section 4001 from 'Control by Attorney General.' to 'Limitation on detention; control of prisons.'

Section 2(a) repeals in toto Title II of the Internal Security Act of 1950, popularly known as the 'Emergency Detention Act' (50 U.S.C. 811-826).

Section 2(b) amends section 8312(c)(1)(C) of title 5, United States Code, by deleting those offenses which are referable to the Emergency Detention Act from a list of offenses for the conviction of which payment of Federal retirement benefits to an individual would be stopped.

***1439** Section 2(c) amends clause (4) of section 3505(b) of title 38, United States Code, by deleting those offenses which are referable to the Emergency Detention Act from a list of offenses for the conviction of which entitlement to so-called gratuitous benefits under laws administered by the Veterans' Administration shall be terminated, and by rewording such clause.

The Committee recommends enactment of H.R. 234 as herein amended.

COST

The Committee estimates that no cost to the United States will be entailed by enactment of the amended bill. The Department of Justice has informally advised that it anticipates no cost from the repeal of the Emergency Detention Act.

(Note: 1. PORTIONS OF THE SENATE, HOUSE AND CONFERENCE REPORTS, WHICH ARE DUPLICATIVE OR ARE DEEMED TO BE UNNECESSARY TO THE INTERPRETATION OF THE LAWS, ARE OMITTED. OMITTED MATERIAL IS INDICATED BY FIVE ASTERISKS: *****.

2. TO RETRIEVE REPORTS ON A PUBLIC LAW, RUN A TOPIC FIELD SEARCH USING THE PUBLIC LAW NUMBER, e.g., TO(99-495))

H.R. REP. 92-116, H.R. Rep. No. 116, 92ST Cong., 1ST Sess. 1971, 1971 U.S.C.C.A.N. 1435, 1971 WL 11359 (Leg.Hist.)

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