

of testimony of expert witnesses, thus sharply curtailing the practice of court-directed verdicts of acquittal by reason of insanity. It is a major modification of the *Durham* rule. It is noteworthy that in the *McDonald* case the en banc opinion of the court was unanimous, and reflected a willingness on the part of the court to make adjustments in the *Durham* rule and to apply a continuing re-evaluation to developments in this field of the law. We believe, therefore, that the court should be given the opportunity to further consolidate and crystallize its recent departure in the field of criminal responsibility, and that legislation at this time would only bring new controversy and confusion into a field which seems to be clarifying in a satisfactory way.

It should be added that the effect of *McDonald* appears to have been to reduce sharply the rate of acquittals by reason of insanity. The following comparison of fiscal years may be of interest to the committee:

Fiscal year	Defendants disposed of by verdicts of not guilty by reason of insanity ¹	Verdicts of not guilty by reason of insanity in trials by court	Verdicts of not guilty by reason of insanity in trials by jury	Verdicts of not guilty by reason of insanity directed by court
1958.....	21	8	13	4
1959.....	35	19	16	10
1960.....	36	19	17	5
1961.....	66	47	19	8
1962.....	67	42	25	9
1963.....	² 50	34	15	3

¹ Total of cols. 3 and 4.

² Total of cols. 3 and 4, plus 1 case verdict of not guilty by reason of insanity directed by court of appeals.

TITLE III. DETENTION OF SUSPECTS AND MATERIAL WITNESSES

Section 301 of title III permits an officer or member of the Metropolitan Police Department to detain, for a period of 6 hours, any person found abroad whom such officer has reason to suspect is committing, has committed, or is about to commit a crime, and who, upon inquiry, fails to identify himself or give a satisfactory explanation of his action.

Such detentions are arrests. Legislative statements to the contrary cannot avoid the fact that title III provides for seizure without probable cause. This is a violation of the fourth amendment to the Constitution. Further, title III provides for 6 hours of detention without any provision for the assistance of counsel. This procedure may well be violative of sixth amendment rights. See *In re Groban* and *Anonymous v. Baker*, cited above. In addition, the detention proposed by title III deprives a person of his opportunity to seek bail immediately, keeps him incommunicado, suspends his right of habeas corpus, and tends to impair his privilege against self-incrimination under the fifth amendment. Essentially, section 301 is a legislative effort to reinstitute investigative arrests, a practice long criticized by the bar of the District of Columbia, condemned by a special committee appointed by the District of Columbia Commissioners to study the problem, and ended by order of the Commissioners in March of this year.

While, for these reasons, we must oppose section 301 of H.R. 7525, we fully recognize the necessity for securing the appearance of material witnesses, which is the subject of section 302. In this connection, we call your attention to S. 1148, a bill prepared by the District of Columbia Commissioners "To amend the law relating to material and necessary witnesses to crimes committed in the District of Columbia." We believe that bill represents a sounder approach to the problem of material witnesses than does section 302. S. 1148 is patterned after rule 46(b) of the Federal Rules of Criminal Procedure. It does not permit a 6-hour detention; rather, it requires presentment of the witness to a judicial officer "without unnecessary delay" for determination of whether the person is a material and necessary witness and whether there is a reasonable probability he will not be available at the trial.

If the committee should be disposed to consider S. 1148 favorably, we offer the following suggestions for improvement of that bill:

Recognizing that the person involved is not accused of a criminal act, and may even be the victim of that act, it would seem desirable to provide a means for witnesses to be released from confinement when financially unable to post bond.