

In some States, by statute, once the defendant is apprehended the deposition of the witness may be taken, and the defendant afforded the right of cross-examination. Rule 15(a) of the Federal Rules of Criminal Procedure has a similar provision. While the rules of criminal procedure for the District of Columbia provide for depositions of material witnesses for the defendant who are about to leave the District (D.C. Code, sec. 23-111), no like provision is made for depositions of witnesses for the government.

It is also suggested that although the witness is not accused of a crime, he should have the right to counsel and be advised of this right. An analogous situation is the right of an accused to counsel in a preliminary hearing. There is precedent for this practice. In New York, for example, the magistrate advises the witness of his right to counsel, and if he cannot pay for it the court will assign an attorney to serve without compensation. (See 40 Neb. L. Rev. 503, 510; 511, note 42 commenting on "Imprisonment of the Material Witness for Failure to Give Bond.")

Consideration should also be given to compensating a witness for time spent in detention awaiting interrogation or trial. While there are provisions in the District of Columbia Code for witness fees for attendance in court (D.C. Code, secs. 11-1501 and 23-109), under the weight of authority these provisions would not be broad enough to permit payment of compensation to a material witness under detention. Even if detention is a public duty which a person may properly be called on to perform, it may operate as an intolerable burden on a witness and his family if, while prevented from working, he is denied reimbursement during a prolonged detention period.

As is provided in rule 46(b) of the Federal Rules of Criminal Procedure, consideration should be given to a provision which would authorize the judge or commissioner to order the release of the witness if he has been detained for an unreasonable amount of time, and to modify at any time the requirement as to bail.

Under the language of the bill the police would, without judicial process, be empowered physically to take the material witness before the judge on the basis of their own determination that the statutory grounds exist. As a practical matter this would seem to be necessary where a witness is taken into custody at the scene of the crime. However, with respect to witnesses other than those taken into custody at the scene of the crime we suggest that consideration be given to a revision of the proposal to provide that such witnesses may not be taken before a judge except pursuant to a court-issued subpoena. This could be based on an ex parte affidavit or petition. Such a revision would be consistent with rule 46(b) of the Federal Rules of Criminal Procedure.

Also, to clarify the intention that not all witnesses must be detained but that those who are must be taken before a judicial officer without unnecessary delay, it is suggested that on page 2 of S. 1148, lines 2 through 4, should be amended to read: "* * * believed to be a material and necessary witness may be detained by a member of the Metropolitan Police force, or by a Federal law enforcement officer. Any person so detained shall, without unnecessary delay, be taken

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TITLE IV. DEFINITION OF CRIME OF VIOLENCE

The Department has no objection to title IV of H.R. 7525. Title IV amends 22 District of Columbia Code 3201 to include robbery within the definition of "crime of violence" as used in the chapter entitled "Weapons". The definition includes the crimes of murder, manslaughter, rape, mayhem, maiming, kidnapping, burglary, housebreaking, larceny, assault with intent to kill, commit rape or robbery, assault with a dangerous weapon, and assault with intent to commit any offense punishable by imprisonment in the penitentiary.

TITLE V. CRIMINAL OFFENSES AND MINIMUM SENTENCES

Title V of H.R. 7525 contains numerous redefined criminal offenses and provisions for minimum sentences. For the most part we believe that the provisions of title V are unnecessary and undesirable.

Sections 501, 502, 503, 505, and 507 establish mandatory minimum sentences for assault with intent to kill, rob, rape, or poison (2 years), for burglary (20 years, first degree: 5 years, second degree), for robbery (5 years), for crimes of violence committed when armed with a firearm (5 to 30 years additional), and for use of explosives with intent to injure (5 years). Mandatory sentencing is not in keeping with modern thinking, as expressed repeatedly by judges and