

of an arrested person to be taken before a committing magistrate without unnecessary delay."

If title I of the bill be amended as set forth above, the Commissioners would have no objection to its enactment.

TITLE II

Title II of the bill is patterned after the formulation recommended by the American Law Institute as the test of insanity as a defense in criminal cases, sometimes referred to as the test of criminal responsibility. This title is intended to apply to criminal cases in the District of Columbia, replacing the test of criminal responsibility stated for the District of Columbia by the U.S. Court of Appeals in the line of cases beginning with *Durham v. United States* (94 U.S. App. D.C. 228, 214 F. 2d 862 (1954)) and ending with *McDonald v. United States* (312 F. 2d 847), decided October 8, 1962. The language of the title is identical with the purview of bills previously introduced as H.R. 2519 in the 86th Congress, H.R. 7052 of the 87th Congress, and H.R. 1932 in the 88th Congress.

Title II changes existing law in a number of respects. The language of the title provides for the exclusion of sociopathic and psychopathic personality, or apparently any combination of these two types of personality, from the category of mental illnesses or defects which exclude responsibility for crime. The title places on the defendant the burden of proof of establishing a mental illness or defect excluding such responsibility, instead of leaving the burden of proof on the prosecutor to prove a lack of mental illness or defect, when mental illness becomes an issue. The title also requires that a defendant give notice at the time of his plea or within 15 days thereafter, of his intention to rely on the defense of mental disease or defect, or else be precluded from having evidence of mental disease or defect introduced, unless the court may have good cause to permit the introduction of such evidence at a later time. The title requires a notice supported by prima facie evidence, or substantial reason to doubt the defendant's fitness or capacity to proceed, or substantial reason to believe that mental disease or defect of the defendant will become an issue, before the court may order an examination of the defendant or a commitment for such examination. After any such examination, the issue must then be resolved by a judge without a jury. Further, the title requires that when a defendant is acquitted on the ground of a mental disease or defect excluding criminal responsibility, the court shall order him committed to a hospital for custody and care. If the superintendent of such hospital determines that such person is no longer suffering from such mental illness, the superintendent must make application to the court for the discharge or release of such person, and the court must then appoint two psychiatrists to examine the person and report to the court with respect to his mental illness. In any case in which the court is not satisfied with the report of the psychiatrists appointed by it, the title provides that the court may order a hearing in the nature of a civil proceeding, in which the burden of proof will be on the committed person to prove that he may safely be discharged or released.

The Commissioners question the desirability of changing existing law in the District of Columbia with respect to the test of criminal responsibility, as set forth in the *Durham-McDonald* line of cases. The Commissioners are informed that from a public health point of view, the so-called Durham rule as modified by *McDonald* seems to be working very well, because any person acquitted by reason of his plea of insanity at the time of the commission of the alleged crime, or any person determined to be incapable of contributing toward his defense because of mental illness or defect at the time of trial, must be sent to a mental hospital for treatment, and continue to receive treatment for his mental illness or defect. The Commissioners are informed that while the treatment of such persons has not been a complete success in every case, nevertheless it can be said that experience indicates that there is less likelihood of recidivism on the part of such persons than there is on the part of those sent to prison.

Aside from the fact that the enactment of title II would have the effect of substituting a new test of criminal responsibility for a test that has been hammered out in court decisions in the past 9 years, and possibly lead to a new series of court decisions, the Commissioners believe that the enactment of this title will operate to complicate the determination of mental illness or defect by preventing evidence of sociopathic and psychopathic personality from being presented to the jury in a determination of whether there is mental illness or defect. Since it is generally accepted in this jurisdiction that such evidence is material in establishing whether a person is suffering from or has had a mental disease