

or defect, the Commissioners are informed that this proposed provision of law will in many cases operate to prevent the commitment of persons needing treatment for mental disease or defect. Further, the Commissioners believe that the title will operate to complicate the release of apparently recovered persons by introducing a process that could be very costly to the District of Columbia, requiring the appointment of two psychiatrists to advise the court in every case in which the superintendent of a hospital has determined that the patient has recovered and should be released.

In view of the foregoing, the Commissioners recommend against the enactment of title II of the bill. They note, incidentally, that their position with respect to this title of the bill is substantially in accord with the position of the Department of Justice as stated in its report to your committee.

#### TITLE III

Title III is virtually identical with the purview of bills previously introduced in the Congress as H.R. 12851 of the 87th Congress and H.R. 1929 of the 88th Congress. The language of the first of the two sections of the title (sec. 301) is virtually identical with that of the so-called Uniform Arrest Act. The purpose of the section is to permit an officer or member of the Metropolitan Police force to detain, for a period not exceeding 6 hours, any person found abroad whom such officer or member has reasonable ground to suspect is committing, has committed, or is about to commit a crime, who, upon demand of him of his name, address, business abroad, and whither he is going, fails to identify himself or explain his actions to the satisfaction of the officer or member. Under the provisions of the bill, such detention is not an arrest and shall not be reported as an arrest in any official record.

Section 302 amends section 401 of the Revised Statutes of the United States, relating to the District of Columbia (sec. 4-144, District of Columbia Code), to provide for the detention of certain material witnesses prior to their presentment before a judge or commissioner for the purpose of determining whether they may be required to post bond or deposit collateral to secure their appearance when needed. Suitable accommodations for the witness so detained, and for the witness who is unable to furnish security for his appearance, are authorized.

On March 9, 1961, the Commissioners appointed Charles A. Horsky, Esq., Roger Robb, Esq., and William B. Bryant, Esq.—three distinguished members of the bar of the District of Columbia—as a committee “to inquire into the policy and practices of the Police Department that lead to arrests for ‘investigation’ and to make recommendations to the Commissioners in respect thereto.” In its report and recommendations to the Commissioners, submitted in July 1962, the committee concluded “that arrests for investigation, as presently practiced in the District of Columbia, are not sanctioned by any District statute and are in violation of the constitutional rights of persons thus arrested.” The report of the committee is an exhaustive and excellent study of the problem of police arrests for investigation, and its conclusion that arrests for investigation are illegal is amply supported by authority.

The Commissioners are in accord with the conclusion contained in the report of this committee and are unalterably opposed to the enactment of section 301. The Commissioners are of the opinion that “arrests for investigation” are unconstitutional in that such arrests sanction the search and seizure of any person thus detained without the requirement of “probable cause” as a basis therefor. The Commissioners are of the further opinion that the enactment into substantive law of this section of the bill will not operate to cure the constitutional objections to arrests for investigation, and that the proviso, set out in subsection (c) of such section, that the detention will not be labeled “an arrest,” will not make such physical restraint on an individual’s liberty any less unconstitutional. The Commissioners note, incidentally, that the committee mentioned in the preceding paragraph included in its report, at pages 72 through 76, a discussion of certain court decisions interpreting provisions of Delaware and Rhode Island law virtually identical with subsections (a), (b), and (c) of section 301 of H.R. 7525. In Delaware, the Supreme Court said in *De Salvatore v. State*, 163 A. 2d 244 (1960), that—

“We can find nothing in 11 Del. C. § 1902 [substantially identical, except for the 2-hour period of detention, to subsec. (a), (b), and (c) of sec. 301] which infringes on the rights of a citizen to be free from detention except, as appellant says, ‘for probable cause’. Indeed, we think appellant’s attempt to draw a dis-