

*Criminal Code*

the peace. This will probably be a good thing because it will place on these people the onus of exercising good, common sense in regard to making arrests and permitting people to be released on bail.

In its present legislative form, the bill looks like a step forward. The principle that the financial means of a person who has been arrested and detained should not be the determining factor in deciding whether or not he should be released on bail pending trial is a step forward, as is the principle that the onus of establishing why bail should not be granted is on the authorities concerned. The test now in legislative form is whether an accused is likely to turn up for his trial. This test has been stated in many cases, and since we now have it in legislative form this is certainly another step forward.

You will recall, Mr. Speaker, that when the minister introduced the first bail reform bill in June he imposed on an arresting officer the duty of establishing reasonable grounds for justifying the arrest; no other grounds for arrest were adequate. The minister indicated at that time that any unjustifiable arrest might leave an arresting officer open to civil liability. Following conversations and discussions with police associations across the country, the minister made a substantial change in the bill which he later introduced. He has now set forth guidelines to assist a police officer who is making an arrest without warrant. These guidelines are to be found in section 436 (1) and (2). The police officer is also protected by the law, because the bill states that he shall be deemed to be acting lawfully and in the execution of his duty.

The fact that 90 per cent of all arrests are without warrant indicates the heavy duty imposed on an arresting officer in regard to offences under the Criminal Code. The law is now in the same position that it was in prior to the introduction of the bill—the onus will be on the person arrested to show the arrest was unlawful in order for him to succeed in a civil action. I am not being severely critical of the minister for his making that change. He has had the opportunity of speaking to police officers across the country, so we shall have to await the test of time to determine the adequacy and fairness of this provision.

I recall when we were in committee asking detective Syd Brown whether he had heard of any successful civil actions for unlawful arrest. If my memory serves me correctly, he said that in his 20 or 24 years' experience he had heard of no such successful action. There was certain apprehension on the part of the police in regard to the stringent sections in the Code prior to the second bill that was introduced by the minister. I think the minister will have to give some direction to arresting officers in regard to what they should do when making an arrest. The minister will probably have to set forth some of the charges in connection with which an arrest can be made, so the officer can issue the appearance notice at the time of arrest. I also think the minister will have to give similar indication to the officer in charge of a station before any issuance of a promise to appear on notice.

Time will indicate the effectiveness of these measures. We have given an arresting officer wide discretion, and I

[Mr. Gilbert.]

expect that in the application of the new law there will be wide variations of application. We shall constantly have to scrutinize the behaviour of arresting officers in relation to charges brought under the Criminal Code.

• (8:50 p.m.)

I am very pleased the minister has included a clause in the bill which gives a magistrate the opportunity, when imposing a sentence, to take into account the time an accused person has spent in jail while awaiting trial. This has been very important in the past when sentence had to be passed. One situation which comes to mind concerns a second offence of driving while impaired. Under the Code, if a person was found guilty of a second offence of driving while impaired the magistrate had no discretion; he had to impose a jail sentence of 14 days minimum or a maximum of 3 months. If such a person did not have bail money it meant that he could spend upward of a month in jail and then would have to serve the mandatory 14 days jail term required by the Code. The provision which gives the magistrate an opportunity to take into account the time in jail spent by an accused while awaiting trial is a great step forward.

My last point is rather important. We have permitted an accused cash bail or other security in cases where he does not ordinarily reside more than 100 miles from the place where he is in custody, with the onus on Crown counsel to demonstrate that none of the other methods are satisfactory. I am sure the Minister of Justice (Mr. Turner) did some mental wrestling in respect of this particular provision and has come up with something which he believes adequate, reasonable and fair. I should like to remind the minister of the question I posed to him the other day concerning students, young people, who will be travelling across Canada during the summer. I can picture many of these young people perhaps getting into trouble with the municipal police and finding themselves in a position of being 100 miles away from their ordinary residence.

It may be that Crown counsel will try to demonstrate there is no satisfactory method of releasing such a person. We heard of cases last summer where a number of students were detained under the vagrancy sections of the Criminal Code. It seems to me we should not continue this practice of harassing young people and students who travel across the country. The only way out in this regard is for the Minister of Justice to rescind the vagrancy sections of the Criminal Code. This would take away from the municipal police the power of harassment in respect of students or young people who travel across Canada. Therefore, I again plead with the Minister of Justice, in my awkward but persuasive style, to bring forward an immediate amendment to the Criminal Code to delete the vagrancy sections and stop police harassment of students who travel across the country in the summer.

Mr. Speaker, at the beginning I said the test of this bill is dependent on the wise discretion exercised by the arresting officer at the scene of the arrest, or by the officer at the station, the justice of the peace, the magis-