Without some judicial power to guarantee security, judges will be reluctant to use hospital orders. Such reluctance will mean that hospital orders will not live up to the right to treatment that they are supposed to guarantee. On the other hand, hospital orders containing terms and restrictions, in relation to sentences under two years, will give the judges power to deal with matters presently dealt with by provincial corrections officers.

Bill C-206 in clause 2 decisively shifts the power to control the terms of sentence into the judicial sphere. The amended section 688.2 would provide that no release on parole or temporary absence is possible without a court order. Unfortunately, this does not deal with the fact that courts lose touch with the course of an offender's progress.

Tentative indications from consultations with key officials and professionals indicate that psychiatrists will not accept long-term prisoners for treatment if the completion of treatment means a return to prison which will undo the treatment. In fact, this is one of the problems which the subcommittee observed last year with the federal facility in Matsqui, British Columbia. Prisoners were admitted without consultation with the psychiatric faculty and removed without consultation. Assignments and withdrawals were made purely for disciplinary reasons without consultation with the staff and adequate attention to psychiatric needs. It is the long-term prisoner who is most likely to have the severest psychiatric disorder and the longest record. Therefore, mechanisms guaranteeing input by psychiatrists into the decision-making process with regard to how the remainder of a sentence is to be served after treatment must be developed and some form of sentence shortening must be considered.

The sensitive issue of sentence shortening on successful completion of treatment must be answered. If the psychiatric cause of the crime is removed, should not the sentence be shortened once treatment is successfully completed? Preliminary indications are that the majority of judges do not want to get into sentence supervision.

● (1622)

Psychiatrists are unanimous in the view that no treatment should be ordered without the consent to treat of the psychiatric facility. Psychiatrists and hospital administrators are also unanimous in the view that the treating unit should also be the assessing unit. This will mean that a hospital order would have to be based on the diagnosis of the psychiatric facility which will be doing the treating. The court will not be prevented from hearing the opinion of a psychiatrist in private practice that the offender needs treatment as long as someone else does the treating, but the court would not be able to base a hospital order solely on that opinion. Psychiatrists emphasize the great differences of opinion that exist as to the treatability of various disorders. Therefore it is important that the treating unit also be the assessing unit.

The Law Reform Commission places consent at the very heart of the hospital order proposal. It says that after considering the psychiatric report and the representations of both defence counsel and the prosecution, the presiding judge "may, with the consent of the accused and the agreement of the appropriate psychiatric institutions", order that the accused spend part or all of his sentence in a hospital or psychiatric institution.

The matter of consent is argued by the Law Reform Commission as follows:

> The most contentious aspect of our proposal is that the offender must consent to the hospital order. This is in contrast to the position taken in two earlier Canadian studies recommending a similar disposition and is also at odds with present practice in England. Nonetheless, we feel such a requirement is essential. Compulsory treatment conflicts with our previously stated sentencing policy that within the context of a just sentence the offender should not only have access to adequate psychiatric treatment but should also have a right to refuse such treatment.

The Acting Speaker (Mr. Ethier): Order, please. I regret to interrupt the hon. member but the time allotted to him has expired. However, he may continue by unanimous consent. Is there unanimous consent?

Some hon. Members: Agreed.

Mr. MacGuigan: Thank you, Mr. Speaker. I shall not take the time of the House much longer but I shall finish, if I may, the quotation I was reading.

> We feel that an offender who has been found responsible for his acts and capable of being tried should also be capable of consenting to or refusing medical treatment. His status as a prisoner should not deprive him of the right to make this decision any more than it does his right to decide whether he will have his wisdom teeth pulled.

Here we see the dilemma raised by this bill. On the one hand, there is an interest on the part of society in ensuring that people who have been convicted of criminal conduct of a particularly unpleasant kind and who are likely to repeat their offence should be dealt with by the law; on the other hand, there is the knowledge that merely putting them in prison is not the answer. Sometimes it makes things worse. It exposes offenders to unconscionable treatment from other prisoners, and while they do not deserve much from society, justice demands that all who are in prison should be subject only to the sentences imposed upon them and not to a whole array of other punishments, especially when administered arbitrarily by fellow prisoners.

Then there is the Soviet experience, not a very encouraging one. This is apt to become a large scale way of dealing with people who are not like ourselves. I do not believe that this should hinder or prevent us from dealing with the subject, but it does indicate the need for considerable caution in dealing with it. The English are moving away from their system which, until now, has not required consent. The Law Reform Commission here has recommended that we do require the consent of the inmate.

Thus it is an intricate question, and it seems to me the best way of dealing with it would be to study the subject thoroughly in the Standing Committee on Justice and Legal Affairs. It is certainly not one we can deal with this afternoon, involving as it does all the considerations I have mentioned in my speech and others which I have not had time to discuss. I hope it will