

Criminal Code

across the country which have different juvenile delinquents acts covering young offenders of ages varying from 16 to 18 years. A young fellow 16 years of age in Saskatchewan will be brought into a juvenile court, whereas a young fellow 16 years of age in Ontario will be brought into an adult court and perhaps be tagged with a criminal conviction, which we know is very difficult to get rid of.

The hon. member for Calgary North has gone into the substance of these provisions. He pointed out how necessary and meaningful they are and what they contain. It would be very foolish for us to prolong this debate, talk out the bill and not give an opportunity for it to be referred to the Justice and Legal Affairs Committee. Therefore, I have made my remarks very brief. I hope other members of the House who participate in this debate will not speak right up to the end of private members' hour, but before that will give us an opportunity to vote on the bill and refer it to the Standing Committee on Justice and Legal Affairs.

Mr. Hyl Chappell (Peel South): Mr. Speaker, the last three members have all ably and eloquently expounded the subject. I agree in their condemnation of those things which are wrong. I agree that these wrongs should be righted as rapidly as possible. I do not think things are quite as bad as they are painted. There are many provisions today which are quite good, perhaps as good as we can get, which require explaining. In any event, I hasten to admit that as a member of the Justice and Legal Affairs Committee I welcome these various suggestions coming before us so that we can study them in detail and make recommendations.

If I may deal with the bill specifically for a moment, clause 1 provides that no person shall be tried for or convicted of an offence if he is under the age of 12 years. The law at the moment is seven years; obviously that is much too young. This bill would change the level of potential criminality from seven to 12 years of age.

The Department of Justice Committee on Juvenile Delinquency reported in 1967. I believe the age they recommended was ten years. I am not too concerned whether ten years or 12 years is the limit, because as I understand it all the provinces have an act, which we might call the protection of children act. There are undisciplined children who require control, and there would not be a vacuum because they could be looked after under the laws of the province.

[Mr. Gilbert.]

The second clause, which deals with onus, would change the provisions of the act applicable to offenders of the very tender age of seven to 14, to the age of 12 to 16. Under that clause it would be up to Crown counsel prosecuting the child to prove that the child had the mental capacity to commit an offence or that he knew the nature and consequence of his conduct and appreciated that it was wrong. That is a rather substantial step, Mr. Speaker. Whereas before we were dealing with offenders as young as 7 years old, now the age is between 12 and 16. Indeed, it is a very heavy onus on the Crown to prove—and the Crown does not have the power to force psychiatric or psychological examination—that a person did have the required mental capacity. I think in that respect the bill is perhaps going too far and is putting too great an onus on the Crown.

• (5:40 p.m.)

To explain my point, let us compare for a moment a child's position in a civil action. If a child is injured on a crosswalk or out of a crosswalk by a motor vehicle, at seven years of age he is quite often found capable of giving evidence, being examined for discovery and cross-examined at trial. He can, in fact, be found guilty of contributory negligence and as a result will forfeit part of the sum he would have recovered. We must also remember that a child of that age can give evidence and be cross-examined in a criminal case.

Clause 3 of the bill would provide that no person under the age of 16 years can be sentenced to imprisonment in a penitentiary—absolutely no one in Canada. Instead, he would be sent to an industrial school. With respect to the hon. member for Calgary North (Mr. Woolliams), there are some vacuums or loopholes if we proceed in this manner. Right now the juvenile court has exclusive jurisdiction over offenders up to the age of 16 years in some provinces, and higher in others. Ordinarily, with the exception which I will give in a moment, such children cannot be sent to penitentiary. So when can they be sent to penitentiary? If the juvenile court is dealing with an indictable offence, under section 9 of the act it may refer the child to an ordinary high court for trial. But that procedure must be followed only if the court is of the opinion that it is good for the child and/or is in the interest of the community.

There have been very few cases where they have proceeded against a child in the higher