● (1612)

The need for law reform in the management of mentally disabled offenders is well documented. The hospital order or hospital permit proposal in a variety of forms and applications has received widespread support. Indeed, a form of hospital order has been operating in England and Scotland for almost two decades.

The subject of mentally abnormal offenders and the U.K. system for managing them was exhaustively studied by the Butler committee in England which reported in 1975. The Butler committee recommended changes which tend to bring the U.K. system closer to what our Canadian Law Reform Commission recommended.

Therefore, the Department of Justice has studied Bill C-206 with a great deal of interest. The ideas and the intent contained therein reflect modern perception and thinking regarding the mentally abnormal offender. However, every policy initiative, and therefore every sentencing alternative, regardless of its own merit must also be considered within the over-all context in which it will operate. In this case, Bill C-206 must be evaluated in relation to both the existing criminal justice system and the mental health system.

The proposal of hospital orders as a sentencing alternative is a matter of considerable continuing priority in the department. Preliminary informal results of departmental work on the subject I understand will be made available, and at some time undoubtedly could be made available to the Standing Committee on Justice and Legal Affairs if this measure or another one like it were referred to that committee for study.

Hospital orders raise the issue of treating that whole range of people presently not covered by the criminal law, people who fall between those who are normal and those who are insane under section 16 of the Criminal Code or unfit to stand trial. The Law Reform Commission's report dealing with mental disorder in the criminal process uses the phrase "psychiatric disorder that is susceptible to treatment". This phrase could include alcoholics, addicts, and psychopaths, including sociopaths, depending upon the availability of psychiatrists at the local level willing to define such disorders as "susceptible to treatment". The breadth of the definition used will determine what percentage of offenders will be eligible for a hospital order.

It must be noted that Bill C-206 embraces a potentially unlimited range of psychiatric disorders once the finding of "dangerous offender" has been made. The criteria set out are:

(i) the court is satisfied, in the evidence of two psychiatrists,

(A) that the offender is suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; and

(B) that the mental disorder is of a nature or degree that warrants the detention of the offender in a hospital for medical treatment; and

(ii) the court is of opinion, having regard to all the circumstances, including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this paragraph.

The purpose of hospital orders as a sentencing alternative is a matter of continuing priority for the government. I believe it would be extremely useful if this matter were given the opportunity of being aired in more detail before the standing committee.

The resulting costs, and the impact upon prison populations, of giving judges the power to order psychiatric treatment could be substantial. At present, when passing sentence judges can only recommend treatment. Such a recommendation is now binding in law upon prison authorities, a most important distinction in their work given the presently inadequate psychiatric facilities, although that certainly is not the factor which should decide whether such legislation is needed.

Bill C-206 empowers the judge, in certain circumstances, to order a dangerous offender to serve all or part of his sentence in a psychiatric facility. Neither an agreement to treatment by the offender nor by the facility are prerequisites. Ordering treatment without requiring the agreement of patient or facility was a feature of the old U.K. hospital order system. This approach was found to be problematical and was therefore amended.

The Ouimet committee studied the concept of hospital orders under the English system almost a decade ago and found that the Canadian reaction across the country was mixed but basically against the English system. The committee concluded, however, that "the Code be amended to authorize the court to issue a 'hospital permit' to allow an offender to benefit at once from treatment in a psychiatric facility". The concept "hospital permit" incorporates the criterion of prior agreement to treatment by both the offender and the facility.

At present, psychiatric facilities are provincial or private. In some provinces they are almost non-existent. Until we consult with the psychiatric community concerned with forensic psychiatry, we cannot be sure that a hospital order will not give the courts the power to force provinces to provide psychiatric facilities they cannot afford.

Additional federal psychiatric facilities as part of the penitentiary system are being built now across Canada. However, they will not be completed until 1981 and we do not yet know, without further consultation, whether these facilities could handle the numbers that a judicial hospital order might produce or whether they could adapt to admitting this type of program.

A hospital order is a sentence of custody. Therefore, should the judge not have the power to specify the terms of that custody—open or secure custody, in-patient or out-patient? But a hospital order is also a sentence of treatment. Therefore, should not the psychiatrist have complete control of the terms of sentence?

The conflict is between security and treatment; psychiatrists want to treat, not to provide custody. In England a court may accompany a hospital order with a restriction order, which prevents the hospital authorities and the review tribunal from discharging, transferring or allowing temporary absences without the prior consent of the secretary of state. Such orders have been severely criticized in England.

[Mr. MacGuigan.]