elsewhere. As matters developed, these bondsmen in many cases were charging between 15 and 20 per cent for supplying bonds which were necessary in order to allow the accused a measure of temporary freedom while awaiting trial. It must be obvious that these moneys or charges were paid by people who could least afford them; they could least afford to buy their freedom. The alternative was a period of detention before trial. During that period they languished in jail as a result of crowded dockets.

In this connection, we ought to consider the Manhattan bail project in New York and the report of the Amicus Foundation of Toronto. In both projects, certain studies were undertaken with regard to bail and detention. As a result of those studies, it was found that the percentage of those who failed to appear for trial was almost the same as between those who had posted bail and those who were released on their own recognizance. Let us think about that, Mr. Speaker. In other words, the percentage of people who had posted bail and failed to appear was the same as the percentage of those who failed to appear after being released on their own recognizance.

The second finding was that detention in jail imposed difficulties in obtaining counsel in preparing the case and interviewing witnesses. In addition, detention in jail resulted in a higher percentage of pleas of guilty, as compared with the numbers of accused persons on bail. The attitude of a person who is not granted bail is, "well, I may as well get it over with and plead guilty." A person may do that without appreciating the charge and the consequences of the plea of guilty.

The fourth finding made was that there was a variation in sentences and fines applying to those accused who were in jail and to those admitted to bail. That, I think, is remarkable, and illustrates that the human factor, or human weaknesses of judges and justices, must be considered. It must be far easier for a justice to impose a light fine on a person who is well dressed than on a young fellow who is poorly dressed. Conversely, it must be much easier to impose a jail sentence on a fellow who is poorly dressed than on a man who is well dressed and represented by counsel.

Another factor which these studies illustrated was this: there was a serious loss of employment, a loss of income and loss of protection for the family. That, I think, has been instrumental in bringing about an ameliorated attitude on the part of justices, magistrates—in Ontario magistrates are now called provincial judges—and superior court judges with respect to bail. I can well recall when the late Crown Attorney of the county of York, Mr. Henry Bull, Q.C., was before a committee which was discussing bail. He pointed out the changes which had been made in Toronto. There, bail magistrates travelled round to the different jails during the evening and made arrangements for bail. The attitude of magistrates had changed; they were granting personal bail instead of forcing the accused to put up money. I think that this process, shown in certain ameliorated attitudes, culminated in the criminal amendment bill of 1968-69, which gave power to the peace officer to release. One can say that this bill respecting bail is almost too late. In England, one does not need to put up money for bail. The same procedure is followed in Scandinavian countries, notably in Sweden and Denmark.



Many of the provisions of the bill are good. It says that the accused does not require to put up money unless he resides 100 miles from his place of arrest; even in that case, the limit is $500. The bail may be by way of the accused's personal recognizance. The justice or the officer in charge has the discretionary power as to forcing the posting of a deposit. Mr. Speaker, the more I look at this bill, the more I consider it as a colossus of complexities. In his opening remarks the minister said, "You know, we are introducing this measure because there have not been guidelines for peace officers to follow with regard to bail provisions. Now, we are bringing them forward. We shall now place a heavy duty on peace officers. Consequently, we shall need to embark on an expensive educational program to train people; they must become familiar with the provisions we have passed and with the application of those provisions."

It seems to me that some of the provisions we are now considering may impose a heavy burden on the peace officer making the original arrest. They may impose a heavy burden on the officer in charge, who is defined as the constable at the station in charge of the guardroom, et cetera. He must ask the accused to sign a promise to appear in court. The minister also mentioned justices of the peace. If the peace officer does not release the accused on bail, he will take him into custody. Next, he must go before the justice of the peace. He has the power either to obtain an undertaking without conditions or to have the man sign an undertaking with conditions. I wonder whether this is the type of procedure used in English courts. It seems to me to be very complex.

• (2:40 p.m.)

I hope when we are in committee the minister will give us the details with regard to the procedures followed in other jurisdictions. Hon. members are familiar with the old, legal maxim that equity varies with the length of the chancellor's foot. If bail is granted, the terms of it may vary according to the health and mood of the arresting officer, the officer in charge, the justice of the peace or the judge. The guidelines that have been imposed may be too stringent rather than flexible and helpful. That is the main thrust of the argument concerning the complexity of the bill. I hope the minister will also go into detail with regard to the problem of detention without bail. In the past, when a person was kept in custody, this was done to ensure his attendance at trial. Now, the minister is setting forth a new test, the primary object of which is the assurance that the accused will be present at the trial and, secondly, the safety of the public. It seems to me that in this case what the minister has done has been to develop case law and extend it into statutory law. I do not think he is to be given any great credit for that achievement.