excessive fines imposed, nor cruel and unusual punishments inflicted. This wording was adopted with very little change by the United States and now forms the substance of the 8th amendment to the constitution of that country which was ratified in 1791.

The language of our Canadian Bill of Rights, for which the right hon. gentleman, the hon. member for Prince Albert (Mr. Diefenbaker), deserves the gratitude of his country—and I am delighted to see him in the House—guarantees also that no law of Canada, unless it is expressly declared that it shall operate notwithstanding the Canadian Bill of Rights, shall be construed and applied so as to deprive a person charged with a criminal offence of the right to reasonable bail without just cause.

• (12:20 p.m.)

The attitude the ordinary man and woman in our society holds about our law does not result merely from what we do in this Chamber to reform the substance of the law. It depends, in great measure, on the proceedings which he or she encounters if brought into contact with the law. At root, the attitudes of ordinary men and women in this country are based on the first contacts that they have with the local law enforcement authorities, with the local police force or local criminal court. This bill is directed at making that first contact between citizens and the criminal judicial process less abrasive.

In this age of confrontation, law enforcement agencies the world over are required to deal with a complete spectrum of problems that run from so-called misdemeanors or petty crimes such as theft, assault and so on, through to new and sophisticated ranges of crimes that border on civil disobedience and all the way to violence and organized, syndicated crime. We, as legislators, have the duty to provide the police with the flexibility that they need to meet whatever particular situation is at hand and to meet it, of course, with measures that are effective in restoring order and in preserving public order; yet, these must not amount to overkill, with the resultant destruction of the rapport, public support and community identity which police forces across Canada are striving, I believe, to achieve. This rapport, this consensus, this feeling of necessary community identity between our law enforcement authorities and the people who entrust them with the preservation of freedom and order under law, is the only continuing basis for sustaining the rule of law in our country.

The initial decision to arrest is the decision that activates and initiates the entire criminal law process. It is a decision involving a certain administrative discretion. It is a decision which involves, as Henry Culp Davis, of Stanford University has said, an invisible, low profile discretion that is not easily understood nor seen by the average person. As a matter of fact, the adversary process, as we understand it in criminal law, only comes into play if a charge is laid and not at the time an arrest is made, a summons is issued, or a warrant is issued from the bench. The arrest is the citizen's first confrontation with the criminal law process. The way it is done or the fact that it is done may well have a determining influence on that citizen's reaction to the law generally and to the criminal-legal process in particular for the rest of his life.

I believe it to be a fact, Your Honour, that at present in Canada many persons are unnecessarily subjected to arrest.

Mr. Woolliams: Such as, under the Public Order Act.

Mr. Turner (Ottawa-Carleton): And I believe that there are other means, such as a summons, which might be perfectly adequate to secure the ends of justice. I believe that we can in many cases avoid the indignity and embarassment that begins with arrest. At the moment the only alternatives open to a peace officer who has reason to believe that a crime has been committed are, first, to arrest without warrant or, second, to go before a justice of the peace and lay a charge, at which time the justice of the peace decides whether to issue a summons or to issue a warrant. The suspect may be arrested without a warrant or arrested under the authority of a warrant issued by the justice of the peace.

Professor Martin Friedland of the University of Toronto Law School has pointed out in a study he made and incorporated in a very important book entitled "Detention Before Trial" that a summons was used in only 10 per cent of the cases studied, although most prominent criminal lawyers in the metropolitan area who had studied this question were of the opinion, on the basis of their own practice, that a summons was used in at least 40 per cent of the cases. Furthermore, notwithstanding the intention of the Criminal Code that arrests are to be made primarily only after a warrant had been issued by a judicial officer in ordinary cases, arrest without a warrant was in fact made in over 90 per cent of the cases.

Mr. Woolliams: Did the minister say 100 per cent?

Mr. Turner (Ottawa-Carleton): No, in 90 per cent of the cases where an arrest was made.

There are a number of changes in the law of arrest that I feel to be desirable. First of all, I believe that a peace officer, a policeman, presently lacks sufficient statutory flexibility or the statutory guidelines that would help him in judging whether or not an arrest should be made. In order to avoid unnecessary arrests, the peace officer, surely, should be obliged not to arrest without a warrant where he has reasonable and probable cause to believe that the public interest may be secured by proceeding other than by arrest. An exception would be made in cases of murder and certain very serious offences against public order.

Second, a justice of the peace, at the moment, before whom a charge is laid has an unfettered discretion to issue a summons or a warrant. I believe that the present vague and inarticulate situation should be replaced with statutory guidelines which would oblige the justice or magistrate to issue a summons, except where a warrant, and hence an arrest, may be necessary in the public interest.