ficed in the effort to reduce crime, as worthy as that goal is. Let us not forget that innocent and guilty alike are caught in this kind of net. While more sophisticated, substantial citizens are protected by their knowledge or even their appearance, titles I and III patently discriminate against the less knowledgeable, less fortunate members of society.

Title II is a reversion toward the antiquated McNaughten rule of ability to distinguish "right from wrong" as a test of criminal insanity. It would annul the more enlightened evaluation of District of Columbia Federal court decisions, relying upon the Durham rule, as modified by the McDonald case. The Durham and McDonald rules provide that a person is not criminally responsible if his act was the product of a mental disease or defect which impairs behavior control. Title II disregards 50 years of development of the behavioral sciences. In the hearings last year, the U.S. attorney for the District of Columbia, David Acheson, testified:

> The Department of Justice feels that it would be best for the system here if we could live with those *McDonald* rules a little longer before the criteria were changed again by statute, and give us a chance to work our problems out with the court under that quite promising set of rules. (Hearings p. 148.)

Title II provides that the jury shall not be told of the consequences of a verdict of not guilty or acquittal on grounds of mental disease. The minority views of last year's report state:

> Hospital authorities are very conservative about recommending release of a person committed after a criminal charge.

Juries should be aware of the procedures. In addition, under this bill the defendant would have to establish mental disease as a defense by a preponderance of the evidence.

Mr. Speaker, the proponents of this measure claim that it will result in a lower crime rate. However, nothing in the bill will favorably affect the deep social roots from which crime grows. Nothing in it will improve the quality of law enforcement, nor will it provide for more efficient practices in the courts. It simply grants sweeping powers of arrest and harsher penalties.

Last year, acknowledging the urgent need to remedy the growing crime rate, President Johnson vetoed the District of Columbia crime bill. Specifically he objected to: police interrogation prior to arrest, the detention of material witnesses under harsh conditions, prior restraint of publications that might be obscene, and mandatory minimum sentences, which he termed "a step backward in judicial and correction policy." Fundamental constitutional questions, the President said, pervade the bill.

Two of the grounds upon which President Johnson vetoed the measure—police interrogation prior to arrest and mandatory minimum sentences—remain. In addition, title I adds a new repugnant provision for preventative detention on probable cause without a warrant.

I firmly second the President's position that the solution to crime lies in better trained and paid policemen, better staffed courts, and "a great national effort to lift the blight of bad housing, poor education, and unemployment from our cities." This effort, said the President in his veto message, "attacks the conditions which nourish high crime rates."

I might add that the existence of this bill, and of the shocking conditions within sight of the Capitol which produce crime, are further arguments in favor of meaningful home rule. Shortsighted measures, which show contempt for due process, neither contain crime, nor stem its causes.

Mr. HAGAN. Mr. Speaker, all responsible persons are concerned with the rehabilitation of convicted criminals. But of late we have noted an appalling tendency on the part of many well-intentioned people toward considering rehabilitation as the only, or prime, solution to the staggering crime problem now running rampant in the District of Columbia.

These same people apparently ignore the fact that rehabilitation must follow arrest, trial, and conviction of the criminal. Yet every year, thousands of felons are not arrested and brought to trial. In some cases, this is because their crimes are never reported. In other cases, they are not arrested even though their crimes are reported. Experts tell us that only about 3 percent of those responsible for crimes in the District are arrested. And so rehabilitation, while a necessary part of remedying the crime problem, can reach only a small portion of those it would affect, under present circumstances.

Our prime consideration must be protection of lives and property. This cannot be accomplished by the spoon-feeding of criminals or the hamstringing of our law enforcement agencies.

We must have a means of swift arrest and trial of felons, coupled with more stringent laws and stiffer penalties. Then and only then can rehabilitation be considered a valid part of combating crime.

One of the greater factors in considering the overall crime picture in the District of Columbia is the practice of reducing felony charges to misdemeanors. Unfortunately, this practice is becoming more prevalent every day in District courts. Of 369 felony charges filed last month in the District of Columbia U.S. attorney's office, 175 were reduced to misdemeanors. This practice is condoned on the dubious grounds that it prevents a formidable backlog of cases from overloading the District court, since such reduction of charges moves a case from District court to the District of Columbia court of general sessions.

This practice has two major negative consequences; it encourages those "repeaters," who know they will get off with a lighter sentence than their crime deserves, and it fosters in the law-abiding citizen a growing disrespect for the courts and the laws.

Mr. COHELAN. Mr. Speaker, I want to associate myself with the separate views on H.R. 10783 on page 56 of the committee's report and signed by six distinguished members of the committee.

One cannot have served on the District of Columbia Committee, as I did for some years without being aware of its many critical problems. Like all large cities in the United States, Washington, D.C., has, among other things, a serious crime problem. However, from my own experience with legislation similar to that presently before the House, I have my own misgivings which are well expressed in the separate views relating to the provisions of titles II and III. I feel that before final action is taken on this legislation these sections should be perfected. There are other recommendations concerning the crime problem in the District of Columbia that should also receive favorable consideration.

Specifically, I oppose any erosion of the Durham rule relating to the criminal responsibility of an accused if his unlawful act was a product of mental disease or mental defect. There are a number of court decisions which carefully define this rule, and the bill before us today would appear to upset this growing body of law. To shift the burden of proof to the defendant in cases where the plea is insanity raises, in my judgment, serious constitutional questions.

I am inclined to believe that the investigative arrest as now set forth in the bill, and despite the statements made in support of it, will prove to be unconstitutional. Moreover, it has been proven in many thorough studies that investigations of this type very seldom lead to convictions on the charges.

Mr. Speaker, I vote for this bill today with strong reservations. I do so in the hope that the Senate-House conference committee will remove these imperfections in the bill. If the offending titles are not perfected I will not be able to vote for the conference report.

Mr. CONYERS. Mr. Speaker, the proposed District of Columbia crime bill, H.R. 10783, is unconstitutional. I opposed the omnibus District of Columbia crime bill, as offered by the District Committee in 1965, as unconstitutional. I was greatly heartened by President Johnson's veto of the bill last fall. Though the sponsors of this bill claim it is a compromise between last year's crime bill and the bill proposed by the administration, it is, in fact, still unconstitutional and quite objectionable, just as was the bill that the President vetoed.

I only have a short time allotted to me to discuss this bill. I would like to summarize my objections to the bill by reading from the statement on the bill prepared by the Washington Bar Association, on my request, which is an excellent and exhaustive analysis of each section of the bill.

First of all, the bill tramples on basic constitutional rights by overriding the Mallory rule, which requires that an arrested person be taken immediately before a court. This bill instead allows a 4-hour delay.

Second, the bill drastically alters the Durham rule requiring plea of insanity as a defense against criminal charges. The Durham rule is clear and well defined, and requires that a defendant must prove by the substantial body of the evidence that he was not responsible for his conduct. This bill would instead put upon the defendant the much greater burden of establishing his innocence of the criminal charge on the basis of a preponderance of the evidence. This extreme and unusual burden upon the defense in

a criminal prosecution certainly goes against the entire basic tenets of American justice, which requires that the major burden of proof be laid upon the prosecution and not upon the defense. The Durham rule was established some years ago and has proven that it promotes justice and does not result in any extreme burden upon law enforcement.

Mr. Speaker and my colleagues, I cannot stress too much that this bill will not cure the crime problem in the District of Columbia. The basic problems of crime can only be dealt with by meeting the basic causes of crime. What this bill does is attempt to eliminate injustice against some Americans, the victims of crime, by perpetrating injustice against those who happen to be accused of crime.

Because of the very short time allowed me during this debate, I am inserting the complete statement of the Washington Bar Association opposing this bill, as prepared by its president, Attorney Alexander Benton, a distinguished member of the District of Columbia bar, to be inserted in the RECORD immediately following my remarks. This statement is an excellent and thorough analysis of the bill and I commend it highly to my colleagues:

THE WASHINGTON BAR ASSOCIATION, INC.,
Washington, D.C., June 26, 1967.

Hon. JOHN CONYERS, Jr.,
The House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CONYERS: Pursuant to your request, enclosed please find a statement on behalf of the Washington Bar Association in opposition to Crime Bill H.R. 10783.

If and when it becomes advisable a representative of the Association will be available to appear before the appropriate Congressional Committee and testify in opposition to the bill.

Very truly yours,
ALEXANDER L. BENTON,
President.

STATEMENT OF ALEXANDER L. BENTON ON BEHALF OF THE WASHINGTON BAR ASSOCIATION IN OPPOSITION TO THE DISTRICT OF COLUMBIA CRIME BILL REPORTED BY THE HOUSE DISTRICT COMMITTEE—H.R. 10783

As early as 1963, at the time the Senate District Committee was holding hearings on the omnibus crime bill, the Washington Bar Association went on record as opposing the bill. More recently, the Washington Bar Association had occasion to forward a special letter to the President expressing opposition to the crime bill passed last year and urging him to veto it.

The bill just reported out by the House District Committee is essentially the same as the Omnibus Crime Bill, although its sponsors claim it is a compromise between last year's crime bill and the bill proposed by the Administration. Be that as it may, an examination of key sections merits special comment and because of the objections raised thereto the bill as a whole becomes unacceptable. In considering the bill one cannot help but note the ostensible purposes of the bill, the backgrounds of the sponsors, the racial constituency of the District of Columbia and the people who are most likely to be affected, in a direct manner, by operation of the bill.

The specific titles objected to and the reasons therefor are set forth herein below.

TITLE I

Sec. 101. This section of the bill extends the arrest authority of police officers of the Metropolitan Police Department to cover certain situations and offenses not previously covered under existing sections of the District of Columbia Code but at the same time it takes away a basic constitutional right of the arrested person, a right which is recognized in the current corresponding section of the D.C. Code, that is, the bill eliminates the requirement that the arrested person be taken immediately and without delay, before the proper court or a judicial officer.

TITLE II

This title is objectionable in several respects.

It substitutes the American Law Institute test of insanity for the Durham Rule, as clarified and supplemented by McDonald. Because the Durham Rule, as it is known in the District of Columbia, is the product of case law developed by the courts in a number of decisions, it's dynamic and viable and has some flexibility and elasticity. Accordingly, to put it in static statutory form at this time would be a grievous mistake. Moreover, the American Law Institute test shifts emphasis in the test from a focus of disease-offense to one of conduct-law requirements, with no substantial difference in ultimate results in the event the defendant is in fact mentally ill.

Sec. 201(c)(1). This section not only requires the defendant to affirmatively plead the insanity defense but it also requires that the insanity defense be established by a preponderance of the evidence. This is contrary to the Federal due process presumption of innocence and the prosecution's burden of persuasion and truth. Moreover, it flies directly in the face of the Supreme Court test applied in the Davies case to the effect that if there is "some" (emphasis supplied) evidence supporting the defendant's claim of mental disability, he is entitled to have that issue submitted to the jury.

Sec. 201(j). This section would prohibit the court or counsel for the government or the defendant from advising the jury as to the consequences of a verdict of not guilty on the ground of mental disease or defect excluding responsibility. This is an ill-conceived and arbitrary provision. It can only result in many sick, mentally ill and diseased and defected persons being found guilty and being sent to prison when they should be sent to a hospital for treatment. This is true notwithstanding other provisions in this title designed to safeguard against such by providing for post-trial and conviction machinery, via hearing and receiving evidence of mental illness prior to imposition of sentence. Furthermore, for those that do not escape the attention of the court and enjoy the benefits of the post-trial hearing it can only mean a duplication of effort on the part of the court, the prosecutor, the defense attorney, with attendant additional costs and expense and consumption of time to do what could have been done at the time of the trial on the merits, simply by advising the jury as to the consequences of a not guilty by reason of insanity verdict.

TITLE III

Title III is particularly troublesome and obnoxious. It is dangerous. This title would empower any officer of the Metropolitan Police Department to detain any person abroad whom the officer reasonably believes is committed or has committed a crime. Moreover, this title would deny that a person is arrested when in fact the person is arrested. It would require a citizen to answer questions upon the demands of a police officer when he has not been arrested, contrary to the Fifth Amendment to the Constitution and despite Miranda. Under this title the police are clothed with too much authority, and it makes the police officer both judicial officer and prosecutor.

This title can only lead to widespread, dragnet arrests without probable cause and serve as a vehicle for harassment. In addition, the obvious objection to this bill is that under this title police officers would be provided with an open sesame to resort to third degree tactics; and would be further provided with pseudo short cuts to solving crimes, at the risk of sacrificing the Constitutional Rights of citizens. The foregoing factors become increasingly important when consideration is given to the fact that the citizenry of the District of Columbia is more than 62% Negro while the composition of the Metropolitan Police Department is approximately 90% white and the vast majority are nonresidents. Therefore, it would appear that the bill should have a concomitant provision for improving the standard of training and calibre of the constituents of the Police Department, requiring members to be residents of the District of Columbia, and providing machinery for improving police-community relations.

Excerpts from an editorial in the Washington Post under date of October 24, 1966 in connection with last year's crime bill are particularly apropos:

"Title III of this bill empowers any Metropolitan policeman to 'detain any person abroad whom (sic) he has probable cause to believe is committing or has committed a crime.' It empowers the police, in their absolute and unchecked discretion and without requiring any judicial determination as to whether probable cause existed, to detain and interrogate suspects for a period of four hours. It says expressly that 'such detention shall not be recorded as an arrest in any official record.' And it neglects to say anything which would forbid the police to rearrest suspects and detain them for another four hours over and over again when the initial detention period has expired.

"Make no mistake about the purpose and effort of this bill. It is meant to reinstitute arrests for investigation. The detention and interrogation can have no other intent. They are designed to circumvent the courts and give the police an absolute power. But the situation would be even more dangerous than under the old system of arrests for investigation outlawed by the District Commissioners. For, by pretending that detention does not constitute arrest, the bill would permit police to hold suspects indefinitely without any record of their incarceration—without affording relatives or friends or lawyers any means of finding them.

"This is the very definition of a police state. Such police power existed in Nazi Germany and in Fascist Italy; it exists today in the Soviet Union and in Communist China. But it has never, until now, been countenanced in the United States. To say that such power is not dangerous is to deny the whole of the American experience."

TITLE VI

Sec. 602—Burglary.
Sec. 603—Robbery.
Sec. 605—Committing crime when armed—Added punishment.

This title divides burglary into two degrees, with different penalties for each. First degree burglary carries a penalty of "not less than five years nor more than thirty years." Second degree burglary carries a penalty of "not less than two years nor more than fifteen years."

The crime of robbery has been made more serious in the sense that the penalty has been increased with respect to the minimum sentence. Under the bill it is "not less than four years."

The penalty for the offense of committing crime when armed has been made more severe and the offense broadened. The bill provides that the additional punishment to that provided for the crime may be "an indeterminate number of years up to life as determined by the court." And if convicted more than once of the offense "the court shall not suspend his sentence or give him a probationary sentence." The existing Code has been broadened to include a number of weapons and instruments other than a pis-