

DELEGATE GRANT: In line 6, it should read "unless public peace would require otherwise."

THE CHAIRMAN: Unless public what?

DELEGATE GRANT: Peace.

THE CHAIRMAN: Is there any objection to the modification?

If not, the amendment will be regarded as so modified and the Clerk will please read the amendment as modified. This will be amendment No. 16.

READING CLERK: Amendment No. 16 to Committee Recommendation No. R&P-1, by Delegate Grant:

On page 3, section 5, Rights of Accused, following line 12 add the following:

"An accused, except in cases punishable by death or life imprisonment, shall be entitled, unless public safety would require otherwise, to release pending trial conditioned only upon such bail or other terms as are reasonably necessary to secure his appearance before the court."

THE CHAIRMAN: The amendment is submitted by Delegate Grant. Is there a second?

DELEGATE GLEASON: Second.

THE CHAIRMAN: The Chair recognizes Delegate Grant to speak to the amendment.

DELEGATE GRANT: Mr. Chairman, I will try to make this brief.

In the discussion this morning which resulted in Article 5(b) being deleted, it seemed that there were two lines of argument going, both of which had substantial merit. In the case of the Committee Report, we were faced with the situation where they were trying to raise the constitutional dignity, the right of a person not to be summarily incarcerated without some good reason. In the case of the people who were advocating that this section be eliminated, their fears were well founded because of the fact that it said that they should be entitled to release and that the only conditions that their release would be based upon would be the conditions necessary to get them back to trial. This would not allow the judge any discretion in whether or not as a matter of public interest the person should be at that time granted the right of bail.

This amendment attempts to take the two points of view and bring them together; first of all to raise to constitutional dignity

the right of a person not to be incarcerated. There was ancillary discussion on whether or not this was a constitutional or statutory matter. There were people advocating the fact that the right was already inherent, people suggesting we maintain the constitutional dignity, and some maintaining it was not inherent. The argument then based itself, however, primarily on a deeper issue and that is the unwarranted incarceration versus the question of the protection of the public.

This amendment simply takes what the Committee Report said, that there would be a constitutional right to bail, except in capital cases, and that there could be no interference with this, with this one exception, that the public peace would require otherwise. Public peace is a well defined and well understood legal concept. I bring to the Committee of the Whole's attention several citations from *Words and Phrases* in which this is found. A contract case defined public peace as used in this statute, pointing out the penalties to be imposed, as: "where a breach of the peace means that in the physical sense every security which every man feels is so necessary to his comfort and for which all governments are instituted."

In a New York case, it was defined as: "public peace as used in this statute means free from agitation of disturbance which is guaranteed by the law and which is practically synonymous with the word order."

In an Iowa case it was defined as: "public peace is that tranquility enjoyed by the citizens of a municipality where good order reigns among its members," and in a North Dakota case, "public peace means tranquility, joy for the citizens of the municipality or community where good order reigns, a visible sense of security which every man feels is necessary for his comfort and for which all governments are instituted."

In other words, this is putting in a well defined legal concept of public peace as the only other restriction on a right to bail.

If this amendment is adopted it will mean there is a constitutionally demandable right to bail, except in three instances: where the crime is punishable by death, where the crime is punishable by life imprisonment, and where it would be contrary to public peace or as stated, unless public peace would require otherwise.

THE CHAIRMAN: Are there any questions of the sponsor of the amendment?

Delegate Scanlan.