

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*One Hundred and Seventh
Legislature*

OF THE

STATE OF MAINE

1975

KENNEBEC JOURNAL
AUGUSTA, MAINE

SENATE

Friday, April 25, 1975

Senate called to order by the President.

Prayer by The Honorable Minnette H. Cummings of Newport:

God has his plan and program for today, the day that he has made, the master plan conceived majestically, the smallest detail specified and every detail good. At first we may not see the workings plain, the distant purpose that he sets entrained to bless us in its season, but we know God is at work. And this we know also, that love, intelligence and power combine to bring all things precisely into line.

The PRESIDENT: The Chair would like to call the Senate's attention to the fact that this is National Secretary's week, in case it has escaped anyone's attention. At the Holiday Inn we do have cards on the dining room tables which calls this to our attention. It says "Put a sparkle in her eyes. Take your secretary to lunch." Well, since there are so many of us that it would be impossible for us all to take our good Secretary to lunch, we thought it would be fitting if we presented him with a flower as a token of our esteem, and we hope it will put a sparkle in his eyes. (Applause)

Mr. Hichens of York was granted unanimous consent to address the Senate.

Mr. HICHENS: Mr. President, this is probably the quickest poem that I ever wrote on a very short notice. I was asked about three minutes ago if I would compose something appropriate for the day, and here it goes for what it is worth:

This is Secretary's Week as you must surely know

When to our Secretaries — our pleasures we doth show.

Some give flowers — some give sweets — whate'er the case may be

And today we as a Senate — do honor our Harry.

Along with tangibles galore — as presented to him now

I'd share with you a little verse I penned some time ago

When Harry had a confrontation with his little dog

When he did tease Diana and his memory I'll jog

By sharing with you one and all — the little rhyme I wrote

For an occasion such as this — and now the verse I'll quote.

"There is a little dachshund — though not large — very able

To protect his mistress when she's chased around the kitchen table

His bark is sharp and so's his bite when a crisis is affected

And thank God for good old Harry — the bite was not infected.

(Applause)

Reading of the Journal of yesterday.

**Papers from the House
Non-concurrent Matter**

Bill, "An Act Relating to Special Agency Stores." (S. P. 290) (L. D. 1015) in the Senate April 18, 1975, Passed to be Engrossed as Amended by Committee Amendment "A" (S-59).

Comes from the House, Passed to be Engrossed as Amended by Committee Amendment "A" and House Amendment "A" (H-193), in non-concurrence.

Thereupon, on motion by Mr. Berry of Cumberland, the Senate voted to Recede and Concur.

Non-concurrent Matter

Bill, "An Act to Restrict Armed Forces Preferences in State Employment to Veterans Who Were Not Career Officers or Career Enlisted Personnel and to Remove a Barrier to Affirmative Action Programs." (H. P. 1491) (L. D. 1739)

In the House April 15, 1975 Passed to be Engrossed.

In the Senate April 22, 1975, Passed to be Engrossed as Amended by Senate Amendment "A" (S-74), in non-concurrence.

Comes from the House, that Body having Insisted and Asked for a Committee of Conference with the following conferees appointed on its part:

COONEY of Sabattus
QUINN of Auburn
SNOWE of Gorham

Thereupon, on motion by Mr. Katz of Kennebec, the Senate voted to Insist and Join in a Committee of Conference.

Non-concurrent Matter

Bill, "An Act Granting a Property Tax Exemption for Property Leased by Community Mental Health Centers." (H. P. 480) (L. D. 599)

In the House April 15, 1975, Passed to be Engrossed.

In the Senate April 23, 1975, Bill and accompanying papers, Indefinitely Postponed, in non-concurrence.

Comes from the House, that Body having Insisted and Asked for a Committee of Conference.

Mr. Wyman of Washington then moved that the Senate Insist and Join in a Committee of Conference.

On motion by Mr. Graham of Cumberland, a division was had, 18 having voted in the affirmative, and 11 having voted in the negative, the motion prevailed.

**Communications
STATE OF MAINE
Senate Chamber
President's Office
Augusta, Maine 04330**

April 25, 1975

Mr. Harry N. Starbranch
Secretary of the Senate
Augusta, Maine
Dear Mr. Starbranch:

The Committee on Reference of Bills has met and decided to extend the date by which all bills must be reported out of committee.

All bills and resolves must be reported from all committees by 5:00 p.m. on May 23, 1975.

Respectfully submitted,

Signed: JOSEPH SEWALL
Chairman
Committee on Reference of Bills
(S. P. 502)

Which was Read and Ordered Placed on File.

Sent down forthwith for concurrence.

Orders

On motion by Mr. Collins of Knox, WHEREAS, it appears to the Senate of the 107th Legislature that the following is an important question of law and that the occasion is a solemn one; and

WHEREAS, there is pending before the 107th Legislature in its Committee on Judiciary, a bill entitled, "An Act Creating the Maine Criminal Code," Senate Paper 113, Legislative Document 314 (Exhibit A) which in pertinent part the Committee has

voted to amend via Committee Amendment "A" (Exhibit B); and

WHEREAS, the bill, as amended by Committee Amendment "A," proposes, among other things to repeal the Revised Statutes, Title 15, sections 451 and 1703; to make clear that Class A through Class C crimes and homicides in the first and 2nd degree are to be viewed and treated as "infamous" within the meaning of the Constitution, Article I, section 7 (i.e., requiring prosecution by indictment unless waived) while Class D and E crimes are to be viewed and treated as noninfamous (i.e., allowing for prosecution by indictment, information or complaint) and to provide that a sentence to the State Prison is possible for sentencing Classes D and E as well as for Classes A, B and C and homicides in the first and 2nd degree; and

WHEREAS, the constitutionality of sections 9 and 1252 of section 1 of the bill, as amended by Committee Amendment "A," has been questioned as it relates to the Constitution, Article I, section 7 and it is important that the Senate be informed as to the constitutionality of these proposed provisions; now, therefore, be it

ORDERED, that the Justices of the Supreme Judicial Court are hereby respectfully requested to give to the Senate, according to the provisions of the Constitution, on its behalf, their opinion upon the following questions, to wit:

QUESTION NO. 1:

Would sections 9 and 1252 of section 1 of Legislative Document 314, as amended by Committee Amendment "A" if enacted into law, violate the Constitution, Article I, section 7?

QUESTION NO. 2:

Would a crime be "infamous" within the meaning of the Constitution, Article I, section 7, if, irrespective of the length of possible imprisonment, a conviction for that crime could potentially result in a sentence of imprisonment at the State Prison even though the maximum length of that sentence is less than one year?

STATE OF MAINE
SENATE

107TH LEGISLATURE

Committee Amendment "A" to S. P. 113, L. D. 314, Bill, "An Act Creating the Maine Criminal Code."

Amend said Bill by striking out all of that part designated "\$9." of section 1 and by striking out all of the comment under section 9 and inserting in place thereof the following:

"§9. Indictment and jurisdiction

Notwithstanding any other provision of law:

1. All proceedings for class A, B and C crimes shall be prosecuted by indictment, unless indictment is waived, in which case prosecution may be by information; and

2. All proceedings for criminal homicide in the first degree and in the 2nd degree shall be prosecuted by indictment; and

3. The District Courts shall have jurisdiction to try class D and E crimes and to bind over for the grand jury all other crimes.

Comment:

This section declares it to be the Legislature's judgment that the crimes it defines in the 3 most serious classes, plus the 2 most serious criminal homicides, are "infamous" within the meaning of the State Constitution's requirement that infamous crimes must be prosecuted by indictment. Subsection 3 provides the District Courts with the authority to try D and E crimes and to find probable cause

and bind over for indictment criminal homicide in the first and 2nd degrees as well as class A, B and C crimes.

Further amend said Bill in that part designated "§1252." of section 1 by striking out all of paragraph D of subsection 2 and inserting in place thereof the following:

'D. In the case of a Class D crime, the court shall set a definite period of less than one year; or'

Further amend said Bill by striking out all of section 2 and inserting in place thereof the following:

'Sec. 2. 15 MRSA §§2, 102, 341, 342, 451, 452, 751, 1701-A, 1703, 1741 to 1743 and 1842 are repealed.'

Statement of Fact

The purposes of this amendment are reflected in the comment which is included with the new section 9 contained in the amendment and to repeal section 1703 of Title 15 of the Revised Statutes and to reduce the maximum definite sentence for conviction of a Class D crime from one year to less than one year.

Which was Read and Passed.

Committee Reports House

The following Ought Not to Pass reports shall be placed in the legislative files without further action pursuant to Rule 17-A of the Joint Rules:

Bill, "An Act Relating to Municipal Participation in Civil Emergency Preparedness Agencies." (H. P. 691) (L. D. 853)

Bill, "An Act to Establish Fish and Game Stations for Registration of Skins and Furs." (H. P. 979) (L. D. 1226)

Leave to Withdraw

The Committee on Election Laws on, Bill, "An Act Changing the Date of Primary Election to the First Wednesday after Labor Day." (H. P. 4) (L. D. 9)

Reported that the same be granted Leave to Withdraw.

Comes from the House, Bill and accompanying papers Indefinitely Postponed.

Which Leave to Withdraw Report of the Committee was Read and Accepted in non-concurrence.

Sent down for concurrence.

Ought to Pass

The Committee on Election Laws on, Bill, "An Act to Repeal Certain Unconstitutional Provisions of the Election Laws." (H. P. 248) (L. D. 300)

Reported that the same Ought to Pass.

Comes from the House, the Bill Passed to be Engrossed.

Which report was Read and Accepted, the Bill Read Once and Tomorrow Assigned for Second Reading.

Ought to Pass — As Amended

The Committee on Appropriations and Financial Affairs on, Bill, "An Act Making a Supplemental Appropriation for the Supplemental Security Income Programs for the Purpose of Increasing the Base Rate for Boarding Home Care." (H. P. 477) (L. D. 597)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-192).

Comes from the House, the Bill Passed to be Engrossed as Amended by Committee Amendment "A".

Which report was Read and Accepted in concurrence and the Bill Read Once. Committee Amendment "A" was Read and Adopted in concurrence and the Bill,

as Amended, Tomorrow Assigned for Second Reading.

Divided Report

Seven members of the Committee on Judiciary on, Bill, "An Act Regulating Handguns." (H. P. 18) (L. D. 26)

Reported in Report "A" that the same Ought Not to Pass.

Signed:

Senators:

COLLINS of Knox
MERRILL of Cumberland

Representatives:

MISKAVAGE of Augusta
HEWES of Cape Elizabeth
GAUTHIER of Sanford
BENNETT of Caribou
SPENCER of Standish

Four members of the same Committee on the same subject matter reported in Report "B" that the same Ought to Pass in New Draft under New Title: "An Act Regulating the Sale of Handguns" (H. P. 1511) (L. D. 1828)

Signed:

Senator:

CLIFFORD of Androscoggin

Representative:

HENDERSON of Bangor
HOBBINS of Saco
HUGHES of Auburn

Two members of the same Committee on the same subject matter reported in Report "C" that the same Ought to Pass in New Draft under New Title: "An Act Regulating the Sale of Handguns" (H. P. 1512) (L. D. 1829)

Signed:

Representatives:

McMAHON of Kennebunk
PERKINS of South Portland

Comes from the House, Bill and accompanying papers Indefinitely Postponed.

Which reports were Read.

Mr. Clifford of Androscoggin then moved that the Senate Accept the Ought to Pass in New Draft under New Title Report "B" of the Committee.

The PRESIDENT: The Senator has the floor.

Mr. CLIFFORD: Mr. President and Members of the Senate: This is a bill which I think is misunderstood by many persons. It is not a registration of handguns or other guns bill. It is a bill which is limited in its application only to handguns, and it merely requires that there be a 72 hour waiting period for people to purchase guns to allow the police to check the records to ascertain whether or not the person who wishes to purchase a handgun is a convicted felon or under indictment for a felony.

It has a very liberal exemption provision in it; people who deal in guns are exempted. And I think that the intent is to prevent the crime of passion, the person going out and rushing into a secondhand store and purchasing a gun in a moment of passion. I think I am pretty sure what the result on this bill is going to be, but I just wanted to indicate that it is really not that kind of a radical proposal. Many of the communities in the state have similar legislation, so I hope we would accept Report "B", and if it would have to be amended then we could amend it later on down the line. And I would request a division, Mr. President. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator O'Leary.

Mr. O'Leary of Oxford then moved that the Bill and all accompanying papers be Indefinitely Postponed.

Thereupon, a division was had, 19 having voted in the affirmative, and nine having voted in the negative, the Bill and accompanying papers were Indefinitely Postponed in concurrence.

Divided Report

The Majority of the Committee on State Government on, Bill, "An Act to Provide Low Cost Financing through the Maine State Housing Authority for nursing Homes and Similar Facilities for Persons of Low Income." (H. P. 756) (L. D. 926)

Reported that the same Ought Not to Pass.

Signed:

Senators:

CURTIS of Penobscot
WYMAN of Washington
GRAHAM of Cumberland

Representatives:

SNOWE of Auburn
FARNHAM of Hampden
QUINN of Gorham
LEWIN of Augusta
COONEY of Sabattus
CARPENTER of Houlton
STUBBS of Hallowell

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-183).

Signed:

Representatives:

PELOSI of Portland
KANY of Waterville

Comes from the House, the Minority report Read and Accepted and the Bill Passed to be Engrossed as Amended by Committee Amendment "A".

Which reports were Read.

Thereupon, the Majority Ought Not to Pass Report of the Committee was Accepted in non-concurrence.

Sent down for concurrence.

Senate

The following Ought Not to Pass report shall be placed in the legislative files without further action pursuant to Rule 17-A of the Joint Rules:

Bill, "An Act Concerning the Definition of Wrecker under the Motor Vehicle Statutes." (S. P. 372) (L. D. 1199)

Leave to Withdraw

Mr. Collins for the Committee on Veterans and Retirement on, Resolve, Providing a Minimum Service Retirement Allowance under the State Retirement Law for Edward G. Miller of Portland. (S. P. 433) (L. D. 1419)

Reported that the same be granted Leave to Withdraw.

Which report was Read and Accepted.

Sent down for concurrence.

Ought to Pass

Mrs. Cummings for the Committee on Public Utilities on, Bill, "An Act to Amend the Charter of the Winthrop Water District." (S. P. 328) (L. D. 1114)

Reported that the same Ought to Pass.

Mr. Cyr for the Committee on Public Utilities on, Bill, "An Act Declaring the Lewiston-Auburn Water Pollution Control Authority to be a Quasi-municipal Corporation." (S. P. 316) (L. D. 1093)

Reported that the same Ought to Pass.

Which reports were Read and Accepted the Bills Read Once and Tomorrow Assigned for Second Reading.

Ought to Pass — As Amended

Mr. Corson for the Committee on Legal Affairs on, Bill, "An Act to Amend the