

MAINE STATE LEGISLATURE

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House Legislative Record
of the
One Hundred and Eighteenth Legislature
of the
State of Maine

Volume II

First Special Session

May 16, 1997 - June 20, 1997

Second Regular Session

January 7, 1998 - March 18, 1998

Joy, Joyce, Kasprzak, Kerr, Lane, Layton, Lemke, Lindahl, Lovett, MacDougall, Mack, McAleve, Nass, Nickerson, Ott, Paul, Perkins, Perry, Pinkham WD, Plowman, Savage, Skoglund, Snowe-Mello, Stedman, Tobin, Treadwell, Tuttle, Underwood, Vedral, Volenik, Waterhouse, Wheeler EM, Winn.

ABSENT - Campbell, Cross, Dexter, Dutremble, Farnsworth, Gamache, Jones KW, Jones SL, Meres, Sanborn.

Yes, 95; No, 46; Absent, 10; Excused, 0.

95 having voted in the affirmative and 46 voted in the negative, with 10 being absent, the Majority "**Ought to Pass**" as amended Report was accepted.

The Bill was read once. Committee Amendment "A" (H-569) was read by the Clerk and adopted.

Under suspension of the rules the Bill was given its second reading without reference to the Committee on **Bills in the Second Reading**.

Under further suspension of the rules the Bill was passed to be engrossed as amended by Committee Amendment "A" (H-569) and sent up for concurrence. Ordered sent forthwith.

The Speaker resumed the Chair.

The House was called to order by the Speaker.

The following items were taken up out of order by unanimous consent:

REPORTS OF COMMITTEES

Divided Report

Majority Report of the Committee on **Banking and Insurance** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-668) on Bill "An Act to Establish the Breast Care Patient Protection" (H.P. 1113) (L.D. 1556)

Signed:

Senators: LaFOUNTAIN of York
MURRAY of Penobscot
ABROMSON of Cumberland

Representatives: MAYO of Bath
PERRY of Bangor
DAVIDSON of Brunswick
SAXL of Bangor
WINN of Glenburn
O'NEIL of Saco
STANLEY of Medway
BRUNO of Raymond
CARLETON of Wells

Minority Report of the same Committee reporting "**Ought to Pass**" as amended by Committee Amendment "B" (H-669) on same Bill.

Signed:

Representative: JONES of Pittsfield

Was read.

On motion of Representative SAXL of Bangor the Majority "**Ought to Pass**" as amended Report was accepted.

The Bill was read once. Committee Amendment "A" (H-668) was read by the Clerk and adopted.

Under suspension of the rules the Bill was given its second reading without reference to the Committee on **Bills in the Second Reading**.

Under further suspension of the rules the Bill was passed to be engrossed as amended by Committee Amendment "A" (H-668) and sent up for concurrence.

Committee of Conference

Report of the Committee of Conference on the disagreeing action of the two branches of the Legislature, on Bill "An Act to Remove Restrictions on Items that May Be Auctioned by Public Broadcasting Stations" (EMERGENCY) (H.P. 953) (L.D. 1316) has had the same under consideration, and asks leave to report:

That the House recede and concur with the Senate.

Signed

Representatives: TUTTLE of Sanford

DAVIDSON of Brunswick

DONNELLY of Presque Isle

Senators: DAGGETT of Kennebec

CAREY of Kennebec

FERGUSON of Oxford

Was read.

Representative TUTTLE of Sanford moved that the House accept the Committee of Conference Report.

Representative GERRY of Auburn requested a roll call on the motion to accept the Committee of Conference Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: A roll call has been ordered. The pending question before the House is acceptance of the Committee of Conference Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 263

YEA - Bagley, Baker CL, Berry DP, Berry RL, Bigl, Bodwell, Bolduc, Bouffard, Brooks, Bruno, Bull, Bunker, Carleton, Clark, Colwell, Cowger, Davidson, Donnelly, Driscoll, Dunlap, Etnier, Fisher, Fisk, Frechette, Fuller, Gagnon, Goodwin, Gooley, Green, Hatch, Jabar, Joyner, Kane, Kerr, Kontos, Labrecque, LaVerdiere, Lemaire, Lemont, Lindahl, Mailhot, Mayo, McAleve, Mitchell JE, Morgan, Murphy, Muse, O'Neal, O'Neil, Ott, Paul, Peavey, Perry, Pieh, Poulin, Povich, Quint, Richard, Rines, Rowe, Samson, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Spear, Stanley, Stevens, Taylor, Tessier, Thompson, Townsend, Tripp, True, Tuttle, Usher, Vigue, Volenik, Watson, Wheeler EM, Wheeler GJ, Winsor, Wright, Madam Speaker.

NAY - Ahearn, Baker JL, Barth, Belanger DJ, Belanger IG, Bragdon, Brennan, Buck, Bumps, Cameron, Chartrand, Chick, Chizmar, Cianchette, Clukey, Desmond, Foster, Gagne, Gerry, Gieringer, Honey, Jones SA, Joy, Joyce, Kasprzak, Kneeland, Lane, Layton, Lovett, MacDougall, Mack, Madore, Marvin, McKee, Nass, O'Brien, Pendleton, Perkins, Pinkham RG, Pinkham WD, Plowman, Powers, Savage, Snowe-Mello, Stedman, Tobin, Treadwell, Underwood, Vedral, Waterhouse, Winglass, Winn.

ABSENT - Campbell, Cross, Dexter, Dutremble, Farnsworth, Gamache, Jones KW, Jones SL, Lemke, McElroy, Meres, Nickerson, Sanborn, Skoglund.

Yes, 85; No, 52; Absent, 14; Excused, 0.

85 having voted in the affirmative and 52 voted in the negative, with 14 being absent, the Committee of Conference Report was accepted.

Subsequently, the House voted to Recede and Concur.

By unanimous consent, all matters having been acted upon were ordered sent forthwith.

The Chair laid before the House the following item which was tabled earlier in today's session:

HOUSE DIVIDED REPORT - Majority (10) "**Ought to Pass**" as amended by Committee Amendment "A" (H-604) - Minority (3) "**Ought to Pass**" as amended by Committee Amendment "B" (H-605) - Committee on **Judiciary** on Bill "An Act to Amend the

Laws of Murder and Manslaughter to Include the Death of a Fetus" (H.P. 541) (L.D. 732) which was tabled by Representative THOMPSON of Naples pending his motion to accept the Majority "Ought to Pass" as amended Report.

The SPEAKER: The Chair recognizes the Representative from Hampden, Representative Plowman.

Representative PLOWMAN: Madam Speaker, Men and Women of the House. I ask you to reject the motion and go on to pass the Minority "Ought to Pass Report." The Majority "Ought to Pass" while acknowledging the fact that fetal manslaughter, or the death of a baby, or loss of a pregnancy is certainly something that should be taken into account. The amendment only covers assault, what it says is, if someone beats a woman until she loses her baby, that person will be charged with aggravated assault, rather than just assault. In recognition of the fact that she was pregnant. It changes the title, in fact.

I guess my objection is that it only covers certain circumstances where a woman would lose her pregnancy. Aggravated assault is not something that you're charged with, if you cause a death driving drunk, or driving too fast, or driving to endanger. That's just one of the examples of what is not covered. So if someone beats you until you loose your child, we recognize the severity of that, but if someone drunk driving causes you to loose your pregnancy, this doesn't cover it. The Minority Amendment is An Act to Amend Murder and Manslaughter to Include the Death of a Fetus, if you look through the amendment you will find that we've taken great care to draft the bill so that nothing done by your doctor, whether in the abortion technique, or a life saving technique, or any kind of surgery or treatment that causes the death of a fetus can be considered manslaughter. We've very carefully gone through to make sure that no doctor will feel constrained in the treatment, or the providing of an abortion by this. This says just that if a woman is carrying a pregnancy, a wanted pregnancy, and looses that pregnancy, we've had testimony where women were beaten until they lost their babies by jealous ex-husbands, or jealous boyfriends, that would be covered under the aggravated assault. However, it doesn't recognize that there was a victim besides the woman. It doesn't recognize the loss. The Minority Report will and I would ask you to go on and accept the Minority Report. I believe 21 states recognize this. I'm sorry, I'm not prepared and I'm freezing. Arizona recognizes the death of an unborn child at any state of development as manslaughter. Keep in mind that all of these are outside of the realm of abortions or medical treatments. This is in the commission of a criminal act. California offers it as murder, it is recognized as murder. It sets the stage as becoming a fetus. Georgia has two, feticide and feticide by vehicle, applicable on quickening of the fetus and on and on, it just continues through. It's not a new concept, I believe there are 19 or 20 states that now recognize the fact that the loss of a fetus, the loss of a pregnancy is a real loss and there is a real victim. I ask you to please go ahead and vote this down, so we can accept the Minority "Ought to Pass" Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Naples, Representative Thompson.

Representative THOMPSON: Madam Speaker, Men and Women of the House. Let me explain a little bit about what this does. The Majority Report takes the crime of aggravated assault and adds a new provision to that crime, which indicates as follows: a person is guilty of aggravated assault if that person intentionally, knowingly, or recklessly causes bodily injury to a woman, who is in fact pregnant, that includes loss or injury to her pregnancy. Then it contains the exceptions that it does not apply to medical or other health care acts, or omissions of the pregnant

woman. The intent of this report, or this bill, is to increase the penalties in the class level of the crime when a pregnant woman is assaulted and it results in injury to, or loss of her pregnancy. The majority of the committee felt this was the appropriate way to handle this matter, because it is impossible to separate an injury to the woman and her pregnancy. What we are saying is you can not have an assault on a fetus without having assaulting the woman. So we are saying, that if you assault the woman and it results in an injury to her and the fetus then it is an enhanced level of crime. And for this aggravated assault it enhances it to a class A crime. The original bill creates a number of new crimes, solely against the fetus, including intentional homicide, voluntary manslaughter of an unborn child, involuntary manslaughter of an unborn child, assault of an unborn child, and aggravated assault of an unborn child. Five new crimes. Already in our sentencing procedures, the court is able to take whatever the circumstances are of the victim, the physical condition of the victim included, to determine the length of sentence for an appropriate crime. We've gone beyond that, in our Majority Report and indicated that it should be elevated another level, or the higher crime, so that even stricter sentences are available against someone who assaults a woman who is pregnant. We believe that this is a rational way of dealing with this issue and we would ask for your support for the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative WATERHOUSE: Madam Speaker, Ladies and Gentlemen of the House. I'm not saying what we have before us now, the motion the Majority Report, is a bad Report, however, I will say it doesn't go far enough. Assaults on the woman are already covered in the law, assault and battery, aggravated assault, and so forth. What the original bill attempted to do and the Minority Report does is recognize the fact, as 25 other states in the nation do, that when we have a woman who is pregnant with a wanted pregnancy and she's assaulted, either by her husband or her boyfriend, or her child is killed in a car accident, that there's not one victim in that assault, or in that accident, there's two victims. Now for those of you who feel queasy about that concept, that it might infringe on the woman's right to choose, that's not so. There has been no constitutional challenges to any of these provisions, in any of these 25 states, and I dare say that if there was going to be one, there certainly would have been one challenged to the one in California that has been on the books since 1971. California has some of the most liberal abortion laws in the country. We're asking you to vote against the Majority Report and go on to the Minority Report and support the idea, as 25 other states have done, that when these things happen there are two victims. Certainly, when the woman is assaulted, or there's a car accident by a drunk driver, in order for the child to get injured or killed, it would have to affect the mother. There's no way of getting around that. The mother's carrying the child. We have to recognize the fact and get beyond this pro-choice, pro-life issue, and recognize the fact that this isn't a choice issue, and recognize the fact that there's two victims here. I urge you to vote against the Majority Report and go on to the Minority Report.

Representative WATERHOUSE of Bridgton requested a roll call on the motion to accept the Majority "Ought to Pass" as amended Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Newport, Representative Kasprzak.

Representative KASPRZAK: Madam Speaker, Men and Women of the House. I surely appreciate the Majority Report on

this from the Committee, but I would ask that you would support the Minority Report in so much that it just makes it a more serious crime. When a woman who chooses to have her child, who's ready to give birth, she may have already gone to her baby shower, grandparents are expecting, everyone is awaiting this baby. This is a baby she chooses to have and someone, a husband, a boyfriend, someone decides that they don't want that child to be born and takes the right of the woman away to have that child by injuring the child in such a manner that when he's born, he doesn't survive, or he dies right there in her womb. I would ask that you would support her in this matter, that when she decides to have the child she would be able to give birth to the child and not have that right taken away from her. I think it's pretty clear in our debates on the floor that I've never been interested in taking away the rights of a woman to have, or have not, a child. It's always been about that little child, that little baby and when that baby's life is taken by someone in a manner such as a drunk driving accident, or a man who decides he's jealous and he doesn't want that baby to be born, he deserves to be punished in a way that will recompense her in some manner, that she has the right to choose to have that baby. This certainly isn't an abortion issue, this is only to protect the woman who has the child who wants to give birth to a child. I would ask that you would not support the Majority Report, but that you might support the Minority Report and make it a real crime. Call it what it is. He's taken the life of a person. A person that the mother wanted to give birth to. I'd ask you to support that.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Mayo.

Representative MAYO: Madam Speaker, May I pose two questions through the Chair?

The SPEAKER: The Representative may pose his questions.

Representative MAYO: Is there in this bill, or in statutes, a definition of the term wanted pregnancy, would be my first question. The second question would be, does this, or does it not, establish a new definition in statutes of the term unborn child?

The SPEAKER: The Representative from Bath, Representative Mayo has posed a series of questions through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Naples, Representative Thompson.

Representative THOMPSON: The Report that's before us, it does not contain either of those terms. The original bill does define an unborn child, means any individual of the human species from fertilization until birth.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Townsend.

Representative TOWNSEND: Madam Speaker, Men and Women of the House. The loss of a wanted child is a tragedy, no question about that. However, I'm disturbed to hear repeated discussion of the assault's affects on an unborn child, without an acknowledgment of the fact that that child was carried within a human being. By accepting Committee Report A we can acknowledge the assault upon the woman who carried that child, as well as acknowledge the tragedy of the loss of that child. I would be very, very sad if we were to treat women as containers within which a fetus were held. I will be voting to accept the Majority "Ought to Pass."

The SPEAKER: The Chair recognizes the Representative from Hampden, Representative Plowman.

Representative PLOWMAN: Madam Speaker, Men and Women of the House. When a woman looses a baby, she doesn't say, I lost my pregnancy. She doesn't say, I lost my fetus. She looses her baby. I have yet to find a way to have a baby without a baby being carried by a woman in her womb. We

already acknowledge that there is an assault on the woman and I apologize if we created any misconceptions that were overlooking the woman. That's something that has already been discussed. Past, and people have been prosecuted and put in jail for it. We're talking about recognizing, as 25 other states have, without any impact on the availability of reproductive choice in the 25 states, many of these statutes go back to the 70's, earlier and more recent. It is not an attack on reproductive choice. It is acknowledging that at a certain point, that the potential life is recognized by the state and in decision after decision as the pregnancy progresses, each Supreme Court decision, law court decisions, and statute recognizes that the state has an interest in protecting a potential life. Life, okay. I don't think it would be enough for a woman who looses her child. Now if she looses the 3 month old sitting next to her in a drunk driving accident, she's lost a child, if she's pregnant, on the way to the hospital, 10 centimeters dilated and looses her child in the next 20 minutes to a drunk driver, a savage beating, someone shooting her as she crosses the parking lot, that's an aggravated assault. I don't see that as loosing a fetus. I don't think the woman sees that as loosing a fetus. It's a tragic, criminal act that must be recognized and in this case it wouldn't even be recognized as an aggravated assault. If the woman was run down by a drunk driver, that's vehicular manslaughter, you can have your choice, you could charge the guy with aggravated assault, because he ran over a pregnant woman, or you could charge him with vehicular manslaughter, if the woman dies. But if the woman lives, there's no death involved, as far as our statutes are concerned. We heard earlier, in earlier debates, that different movements served to protect reproductive choice.

Representative DONNELLY of Presque Isle moved that the rules be suspended so that the House may extend session until 10:00 p.m.

The same Representative requested a roll call on his motion to suspend the rules.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

ROLL CALL NO. 264

YEA - Ahearne, Baker CL, Belanger IG, Berry RL, Bodwell, Bouffard, Brennan, Brooks, Bruno, Bull, Bumps, Bunker, Cameron, Carleton, Chartrand, Chick, Clark, Clukey, Colwell, Cowger, Davidson, Desmond, Donnelly, Driscoll, Dunlap, Etnier, Fisher, Foster, Frechette, Fuller, Gagnon, Gerry, Goodwin, Green, Hatch, Jabar, Kane, Kerr, Kneeland, Kontos, Labrecque, LaVerdiere, Lemaire, Lovett, Madore, Mailhot, Marvin, McAlevey, McKee, Mitchell JE, Morgan, Muse, O'Neal, O'Neil, Ott, Peavey, Perkins, Perry, Pieh, Povich, Powers, Quint, Richard, Rowe, Samson, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Spear, Stanley, Stedman, Stevens, Taylor, Tessier, Thompson, Townsend, Tripp, Usher, Volenik, Waterhouse, Watson, Wheeler EM, Wheeler GJ, Winglass, Wright, Madam Speaker.

NAY - Bagley, Baker JL, Barth, Belanger DJ, Berry DP, Bigl, Bolduc, Bragdon, Buck, Chizmar, Cianchette, Fisk, Gagne, Gieringer, Gooley, Honey, Jones SA, Joy, Joyce, Joyner, Kasprzak, Lane, Layton, Lemke, Lemont, Lindahl, MacDougall, Mack, Mayo, Murphy, Nass, O'Brien, Paul, Pendleton, Pinkham RG, Pinkham WD, Plowman, Rines, Savage, Snowe-Mello, Tobin, Treadwell, True, Tuttle, Underwood, Vedral, Vigue, Winn.

ABSENT - Campbell, Cross, Dexter, Dutremble, Farnsworth, Gamache, Jones KW, Jones SL, McElroy, Meres, Nickerson, Poulin, Sanborn, Skoglund, Winsor.

Yes, 88; No, 48; Absent, 15; Excused, 0.

88 having voted in the affirmative and 48 voted in the negative, with 15 being absent, the motion to suspend the rules did not prevail.