

MAINE STATE LEGISLATURE

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House of Representatives
One Hundred and Nineteenth Legislature
State of Maine

Volume II

First Regular Session

May 13, 1999 – June 19, 1999

Second Regular Session

January 5, 2000 – March 22, 2000

McKee, Mitchell, Muse, Nass, Norbert, O'Brien LL, O'Neil, Peavey, Pieh, Powers, Quint, Richardson E, Richardson J, Rines, Rosen, Savage W, Saxl JW, Saxl MV, Schneider, Shiah, Skoglund, Stanwood, Stevens, Sullivan, Tessier, Thompson, Townsend, Tracy, Tripp, True, Twomey, Volenik, Watson, Williams, Mr. Speaker.

NAY - Ahearne, Andrews, Belanger, Berry DP, Bouffard, Bowles, Bragdon, Bryant, Bumps, Campbell, Carr, Chick, Chizmar, Cianchette, Clark, Clough, Collins, Cross, Davis, Desmond, Dugay, Duncan, Fisher, Foster, Gerry, Gillis, Glynn, Gooley, Heidrich, Honey, Jones, Joy, Kasprzak, Kneeland, Lemoine, Lemont, MacDougall, Mack, Madore, Martin, Matthews, McAlevey, McKenney, McNeil, Mendros, Murphy E, Murphy T, Nutting, O'Brien JA, Perkins, Pinkham, Plowman, Richard, Samson, Sanborn, Savage C, Sherman, Shields, Shorey, Sirois, Snowe-Mello, Stanley, Stedman, Tobin D, Tobin J, Trahan, Treadwell, Usher, Waterhouse, Weston, Wheeler EM, Wheeler GJ, Winsor.

ABSENT - Buck, Cote, Labrecque, McDonough, O'Neal, Perry, Povich, Tuttle.

Yes, 70; No, 73; Absent, 8; Excused, 0.

70 having voted in the affirmative and 73 voted in the negative, with 8 being absent, the motion to **RECEDE AND CONCUR FAILED**.

Subsequently, the House voted to **ADHERE**.

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 Not to Pass** - Minority (3) **Ought to Pass as Amended by Committee Amendment "A" (H-612)** - Committee on **JUDICIARY** on Bill "An Act Creating Offenses Against Unborn Children"

(H.P. 805) (L.D. 1128)

Which was **TABLED** by Representative THOMPSON of Naples pending his motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

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

Representative **PLOWMAN**: Mr. Speaker, Men and Women of the House. I urge you not to accept the Report and go on to accept the Minority Ought to Pass Report. This bill makes the killing of an unborn child a crime. Currently, in the State of Maine it is not a crime to cause the death of an unborn child. This crime exists in many other states. This bill does not, it is very specific that abortion is not including in killing an unborn child, that it must be an assault with the intent to cause the death of a child. It cannot be vehicular manslaughter, such as a drunken driver case, it must be where the intent is to deprive the woman of her right to choose to carry her child to term. I would ask that you defeat the pending motion and insure the woman's right to choose to carry her baby to term be upheld by the state and that the killing of her child be considered a crime for the first time here in Maine. Thank you.

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

Representative **KASPRZAK**: Mr. Speaker, Ladies and Gentlemen of the House. It's unfortunate that this bill has been

grouped together with the abortion bills that we have heard this evening. I would like it to be an anti-abortion bill. I would like that. I would like it if we could save the life of one child who doesn't have the opportunity to be born, but this isn't an abortion bill.

This is domestic violence bill, if anything. In my circle of friends, family and acquaintances, and I won't share for the record what relationship I personally have with this couple, but suffice it to say that during the period of time in which I was drafting the bill, working my presentation, an event took place that brought the need for this kind of legislation home to me personally. There's a couple that I know and love deeply, they're a couple who go through the ups and downs of marriage like many couples, I suppose, but on this afternoon the event took place, the husband of this couple was especially angry about something, who knows what, he goes through these periods of time when he is that way. Usually, it's not much of an event, but sometimes it is. On this day it was. The wife of this couple is pregnant, even now she is expecting. He was left home alone with the other children and when she arrived home from grocery shopping, a little later than he expected her, he was upset. They argued and in ensuing moment things got out of hand, completely out of hand as far as I see it. Amongst the yelling and screaming that followed, this very large man, over 200 pounds, maybe 250, slapping the expected mother across the face and then he proceeded to pour a colander of hot pasta over her. More yelling and screaming went on, who knows where it would have gone. He knew she was expecting, it is his child and we don't know yet whether it's a son or daughter, they hope for a son. But in a case like this, if something else had happened, if he had gone further and he had taken the life of this baby, this baby that many are expecting and looking forward to, some have even purchased baby items for this baby, I have, personally, many are looking forward to the day when this little one will show his or her face. In current law there is nothing to hold this man responsible for what he might have done, what he still may do. She hasn't delivered. She's not due for some time now. There's nothing to punish him further than a usual assault. It's the same as breaking her arm. If he causes the loss of a child, she hasn't just broken an arm, she hasn't got a black eye, she has lost the child that she looked forward to having. I urge you, I encourage you, I beseech you to consider this bill for what it is. It is not an abortion bill. It's been written so carefully that it can't possibly affect an abortion. What it can do is protect the right of a mother to have her child and if she can't because someone has abused her to the point where she loses her child, she has something to stand on, something the judge can hold him accountable for other than a broken limb. I urge you to vote against the pending motion. Thank you.

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

Representative **WATERHOUSE**: Mr. Speaker, Ladies and Gentlemen of the House. The sponsor of the bill the Representative from Newport, is entirely right as far as I'm concerned and I also don't think this should have been bunched with the abortion bills because it has nothing, nothing, nothing to do with abortion. A woman's choice is not in play here. This has everything to do with the killing of an unborn child that's wanted, it's not an abortion issue. The classic case for these laws is 34 states have variations of fetal homicide. Laws on the books that might say that the constitution does not tremble for abortion rights, none of these fetal homicide statutes in the 34 states have

been overturned by any court decision. In fact, California has had their's on the book since 1970. California being one of the most liberal, abortion, pro-choice states in the country.

Very briefly, I want to read the classic case read by any law student is *Kela vs Superior Court of Amando County*, in that case a husband whose wife was 35 weeks pregnant with another man's child, confronted her saying, I'm going to stomp it out of you and kneed his wife in the abdomen. An emergency cesarean produced a stillborn child with a fractured skull. Kela's child was murdered under the statutes, which used the common law definition murder, which is the unlawful killing of a human being with malice and forethought. The California Supreme Court, in a 5 to 2 decision, held that statute in terms of human being used in that statute was not to able to the child unless it was born alive. A crime committed up to that time would be classified as a fetal homicide.

I have to stress this has nothing to do with a woman's choice, it has everything to do with violence to the woman. It has a lot to do with domestic abuse to the woman and completely constitutional. I urge you to vote against the pending motion.

Representative WATERHOUSE of Bridgton **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought Not to Pass** 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 Madawaska, Representative Ahearne.

Representative **AHEARNE**: Mr. Speaker, Ladies and Gentlemen of the House. I hope you will join me in vote against the pending motion. To me this is a no brainer, it shouldn't matter whether you're pro-life or for abortion, or Democrat or Republican. This is sensible legislation. Everywhere we go to the store, to a restaurant, there's no doubt we have seen pregnant women, most of the time, but not all of the time everybody does their best to insure that woman receives due respect and common courtesy due to the fact that she is pregnant. We all instinctively hold the door open, give up our seat, if there are no other seats available. You must ask yourself the question of why, why should we as human beings provide some form of comfort or protection to a woman who is pregnant. It is because we not only value her life, but we equally value the life of the unborn baby. If a pregnant woman is involved in an accident, everything humanly possible is done to insure that not only is the mother okay, but also that the baby is fine. If the baby is in danger, all medical technology is used to preserve that baby's well being and life. There is no doubt of the sorrow we all feel when we hear of a couple who has lost a baby through miscarriage.

There was a time when my brother's wife had a complication during her pregnancy and I could say without doubt not all was my brother stressed out, but also the whole Ahearne family. Thank goodness there was no problems and the baby was born in perfect health. So it only follows that if anyone potentially does harm to a woman who is pregnant, not only should that individual be charged with assault and battery to the woman, but also should be charged with an additional penalty of the unborn baby is hurt or killed. It is critically important through methods that this unborn baby is a wanted baby. If we truly value that wanted baby's life then I foresee no reason why we cannot enact legislation that would place on the books stated protection that would penalize those individuals who intentionally cause harm or

even death to that unborn baby. I ask you to reject the pending motion.

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

Representative **THOMPSON**: Mr. Speaker, Men and Women of the House. I would ask you to take a look at this bill and see that it does much more than create crimes for intentionally inflicting an injury upon a pregnant woman and thus affecting her unborn child. It also creates the crimes of voluntary manslaughter and involuntary manslaughter of an unborn child. Involuntary manslaughter of an unborn who recklessly caused the death of the unborn child, even if you didn't know the woman was pregnant. Involuntary manslaughter of an unborn child, even if it's the result of a traffic infraction, resulting in an accident. So if you run a stop sign and bump into a car with a woman in the other vehicle, you bump her such that she miscarries, which doesn't have to be a huge bump under the worse circumstances for her, you are guilty of a felony manslaughter charge. Now there's something to be said about creating or doing something about intentional accidents against pregnant women, but is this what we envision as Maine law. If your traffic violation happens to be criminal violation, it's a class B felony, if it's only a civil violation, than it's a class C felony, punishable by up to five years in jail.

Then under voluntary manslaughter, if you are under the influence of extreme anger or extreme fear, brought about by adequate provocation and if you negligently or even accidentally cause the death of the unborn child, accidentally caused the death of this unborn child, you may be guilty of involuntary manslaughter which is a class A crime, which is punishable by up to 40 years in jail. Is this what we had in mind, when we think of crimes against an unborn child. I think not. Under the current law, if you assault a woman who is pregnant and it causes harm to her fetus, it's clear that you could be charged with aggravated assault, which is a felony and be subject to those penalties. The bill before us, I feel, is very flawed. It sounds good by the title, and it sounds good by some of the examples that were given to you, but in reality it is also going to result in very unintended consequences and I would ask that you support the Majority **Ought Not to Pass** Report.

The **SPEAKER**: The Chair recognizes the Representative from Winslow, Representative Matthews.

Representative **MATTHEWS**: Mr. Speaker, May I pose a question through the Chair?

The **SPEAKER**: The Representative may pose his question.

Representative **MATTHEWS**: Mr. Speaker, Ladies and Gentlemen of the House. For anyone who might have the answer, in discussions on this floor many, many times, many have talked about viability. I happen to believe that human life begins at conception, that's my viewpoint. In this discussion we talked about viability in the third trimester, my question is this. How many states have protections for an unborn child, as an attempt to bring some kind of commonality and agreement here on the discussion and does Maine have currently in the statutes protections for an unborn child in the third trimester. It seems to me with my mind, which is not quite as sharp as it used to be, there have been some cases that come to mind, not only in our state, but elsewhere, there has been assault on an unborn child, usually because of a domestic dispute and I am a strong believer, as I know this House is, and I know doggone well that the Judiciary Committee, which I have a great deal of respect for, is a strong proponent of legislation to protect women and against

domestic violence. Does Maine have a law protecting a child, a human life, we know from medical research that having had joy feeling my little boys and girls kick daddy when they were early in the stage of this life and we know a Governor in the State of Georgia, advocated that we have music for the baby in the womb, because they listen and they respond and we know medical research tells us that we are learning more and more about their stage of development. Many of us didn't need all that medical research, we knew by imperial evidence and common sense, but my question is, what does Maine do to protect that unborn child? Thank you, Mr. Speaker.

The SPEAKER: The Representative from Winslow, Representative Matthews has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Naples, Representative Thompson.

Representative THOMPSON: Mr. Speaker, Men and Women of the House. In response to the question, there are no laws in Maine regarding any period of viability, there are no laws at all, but this law here specifically states that the unborn child is from fertilization up through birth, so this would be a law that if you damaged the fetus at any stage, you would be guilty of these crimes.

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

Representative PLOWMAN: Mr. Speaker, Men and Women of the House. I would like to answer part of the question that was asked by the good Representative. In Arizona it's a crime of manslaughter of any age of the fetal development, in California it's murder for any fetus, Georgia is determined at the point where the baby quickens within the womb, Illinois is from fertilization to birth, Iowa any pregnancy at any point, Louisiana fertilization and implantation to birth, Nevada quickening, North Dakota conceived, but not yet born, Rhode Island quickening, South Dakota conceived but not born. Recently, one of our district attorneys asked for a law like this, because he couldn't prosecute the death of the child of Ginger Raymond. District Attorney David Crook, he wanted to charge a drunk driver with causing the loss of her child, but he found out that he couldn't charge him with anything to do with the death of the baby. So this editorial asked a couple of questions and I'll ask them. Would pro-choice advocates consider legalizing abortions done against the woman's will, of course not they answer, then why should abortion by negligence or intention be permitted. This is what our state law permits by omission. A woman who suffers a tragic loss at the hands of another intentionally or by negligence has no recourse and as the district attorney pointed out there was no choice involved for Ginger Raymond. The Legislature, as it considers this bill, should seek to write a law that would allow prosecution for the death of a fetus. The law of the woman's choice in the matter should weigh heavily in any legislation that is considered. Of course none of this is easy, but the right of women to bear children, of both men and women to become parents, deserves protection, too and as this case clearly illustrates, they're not getting it from Maine law. Please vote to defeat this and give the protection to the people like Ginger Raymond and her husband that they deserved. Thank you.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Mendros.

Representative MENDROS: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative MENDROS: Mr. Speaker, Men and Women of the House. We've heard under the proposed law if an unborn child were killed and the person doesn't know that the woman was pregnant, hits a car and committed manslaughter and they didn't know. My question is under current law somebody sitting in a parked car, you don't know they are in there, you hit that car and you're negligent and that person in the car was killed and you didn't know they were there, can you be tried for negligent manslaughter?

The SPEAKER: The Chair recognizes the Representative from Calais, Representative Shorey.

Representative SHOREY: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative SHOREY: Mr. Speaker, Men and Women of the House. I've heard thus far the reason we shouldn't go forward with this bill is because of all the accompanying problems that may come from it, such as people not knowing that someone is pregnant in an automobile accident. Did the committee look at amending the bill so that if someone willfully killed a child they would be prosecuted?

The SPEAKER: A roll call has been ordered. The pending question before the House is to accept the Majority Ought Not to Pass Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 264

YEA - Bagley, Belanger, Berry DP, Berry RL, Bolduc, Brennan, Brooks, Bruno, Bryant, Bull, Bumps, Cameron, Chick, Cianchette, Colwell, Cowger, Davidson, Dudley, Dugay, Dunlap, Duplessie, Etner, Fisher, Frechette, Fuller, Gagne, Gagnon, Gooley, Green, Hatch, Jabar, Jacobs, Jodrey, Jones, Kane, LaVerdiere, Lemoine, Lemont, Lindahl, Mailhot, Marvin, Mayo, McAlevey, McGlocklin, McKee, Mitchell, Murphy T, Muse, Norbert, Nutting, O'Brien LL, O'Neil, Peavey, Perkins, Pieh, Powers, Quint, Richard, Richardson E, Richardson J, Rines, Rosen, Savage W, Saxl JW, Saxl MV, Schneider, Shiah, Skoglund, Stevens, Sullivan, Tessier, Thompson, Townsend, Tracy, Tripp, True, Twomey, Volenik, Watson, Wheeler GJ, Williams, Mr. Speaker.

NAY - Ahearne, Andrews, Bouffard, Bowles, Bragdon, Campbell, Carr, Chizmar, Clark, Clough, Collins, Cross, Daigle, Davis, Desmond, Duncan, Foster, Gerry, Gillis, Glynn, Heidrich, Honey, Joy, Kasprzak, Kneeland, Lovett, MacDougall, Mack, Madore, Martin, Matthews, McKenney, McNeil, Mendros, Murphy E, Nass, O'Brien JA, Pinkham, Plowman, Samson, Sanborn, Savage C, Sherman, Shields, Shorey, Sirois, Snowe-Mello, Stanley, Stanwood, Stedman, Tobin D, Tobin J, Trahan, Treadwell, Usher, Waterhouse, Weston, Wheeler EM, Winsor.

ABSENT - Baker, Buck, Cote, Goodwin, Labrecque, McDonough, O'Neal, Perry, Povich, Tuttle.

Yes, 82; No, 59; Absent, 10; Excused, 0.

82 having voted in the affirmative and 59 voted in the negative, with 10 being absent, the Majority Ought Not to Pass Report was **ACCEPTED** and sent for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.
