

# MAINE STATE LEGISLATURE

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**Legislative Record**  
**House of Representatives**  
**One Hundred and Twentieth Legislature**  
**State of Maine**

**Volume I**

**First Regular Session**

December 6, 2000 – May 17, 2001

Pages 1-889

97 having voted in the affirmative and 42 voted in the negative, with 12 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** in concurrence.

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

Majority Report of the Committee on **JUDICIARY** reporting **Ought Not to Pass** on Bill "An Act Creating Offenses Against Unborn Children"

(H.P. 1049) (L.D. 1406)

Signed:

Senators:

RAND of Cumberland  
McALEVEY of York  
FERGUSON of Oxford

Representatives:

LaVERDIERE of Wilton  
BULL of Freeport  
JACOBS of Turner  
MITCHELL of Vassalboro  
MUSE of South Portland  
SIMPSON of Auburn  
SHERMAN of Hodgdon

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-235)** on same Bill.

Signed:

Representatives:

MADORE of Augusta  
WATERHOUSE of Bridgton  
MENDROS of Lewiston

**READ.**

Representative LaVERDIERE of Wilton moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

The SPEAKER: The Chair recognizes the Representative from York, Representative Andrews.

Representative **ANDREWS**: Mr. Speaker, Ladies and Gentlemen of the House. I am going to ask you to vote against the Majority Ought Not to Pass Report. This is my bill. This is a bill about life. This bill creates new crimes against unborn children for knowingly causing the death of an unborn child. For some reason, this bill has been locked in with the abortion bills. If you fully read the summary of this bill, the last paragraph says, "These crimes do not apply to an abortion to which the pregnant person has consented, nor do they apply to acts committed pursuant to usual and customary standards of medical practice during diagnostic or therapeutic treatment. These crimes do not apply to pregnant women. Twenty-four states have already enacted unborn victim laws. This is a bill about life. It is about a life that is often desperately wanted. These are women who want these children and some have gone to great lengths to bear this child. The loss of this child, even though it perhaps has not been born, is just as strong and just as traumatic as if that woman had had that child for a number of years.

I find it rather hypocritical that on one hand if you shoot a child being held in the hands of its mother, that is murder. If you shoot the mother and knowingly causing the death of that unborn child, this is not a crime. I leave it to your judgment. When the vote is taken, I ask for the yeas and nays. Thank you.

Representative **ANDREWS** of York **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 Ellsworth, Representative Povich.

Representative **POVICH**: Mr. Speaker, Men and Women of the House. Regarding LD 1406, this afternoon I checked on the current Maine law and general sentencing provisions. I believe that current Maine law and general sentencing provisions take into account the situation contemplated in this bill. For example, under Section 17A, Section 208 aggravated assault such circumstances as the observable physical condition of the victim. Aggravated assault is a class B crime with a 10-year sentence possible.

For example, under Section 1151 of general sentencing provisions Part five allows the judge to under 8B the selection of the defendant of the person against whom the crime was committed affected by the crimes. And under 1252 subsection 2, the sentencing factors include the effect of the offense on the victim. I believe that this bill is unnecessary and the egregious conduct can be covered under current Maine law. Thank you.

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

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

The SPEAKER: The Representative may pose her question.

Representative **KASPRZAK**: Mr. Speaker, Men and Women of the House. I would ask the good Representative from Ellsworth or anyone else who might answer the question, how long have these laws been on the books?

The SPEAKER: The Representative from Newport, Representative Kasprzak has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Ellsworth, Representative Povich.

Representative **POVICH**: Mr. Speaker, Men and Women of the House. I can't give you a specific date, but it pre-dates me, so at least seven years, I believe.

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

Representative **KASPRZAK**: Mr. Speaker, Men and Women of the House. I guess I am a little bit confused. I know the last time we passed this legislation in this House and in the other body and it made it all the way to the Appropriations Table and was killed off in the wee hours of the night that I had brought up the fact that the good judge, Judge Wathen, had been quoted as saying that he didn't have any statutes on the books that could support him judging an assault against an unborn child and protecting the mother.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Madore.

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

The SPEAKER: The Representative may pose his question.

Representative **MADORE**: Mr. Speaker, Men and Women of the House. To the good Representative from Ellsworth, if the good Representative could answer this. In his research, did you find any actual court cases where these statutes were applied and how were they applied in the court cases?

The SPEAKER: The Representative from Augusta, Representative Madore has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Ellsworth, Representative Povich.

Representative **POVICH**: Mr. Speaker, Men and Women of the House. You flatter me. I am not an attorney. I did check. My source book was the Maine Criminal Statutes, the Ferdico Book, current edition. I did not check the case law. Thank you.

The SPEAKER: The Chair recognizes the Representative from Waldoboro, Representative Trahan.

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

The SPEAKER: The Representative may pose his question.

Representative **TRAHAN**: Mr. Speaker, Men and Women of the House. To the Representative from Ellsworth, my question is, when the mitigating circumstances were considered, were the penalties then applied as if it were a homicide or was it applied as though it was a lesser penalty of aggravated assault?

The SPEAKER: The Representative from Waldoboro, Representative Trahan has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative **WATERHOUSE**: Mr. Speaker, Ladies and Gentlemen of the House. If you noticed on the handout that you have on your desk, the pink one, it says support the Majority Report, Ought Not to Pass. The interesting thing is one of the items on there says that these bills threaten reproductive freedom. It mentions LD 1406, which we are dealing with right now. It says it seeks to separate the woman from her fetus in the eyes of the law. Said separation is merely the first step towards eroding a woman's right to determine the fate of her own pregnancy and to direct the course of her own health. We are not talking about a woman's right to determine the fate of her own pregnancy, we are talking about an outside influence on that determination and that choice. We are not talking about a woman's right to direct the course of her own health. We are talking about an assault. As far as eroding those rights, there are a number of states that have had these laws on the books for many years. In my research when we had this bill before us before, one state that had this law on the books for 25 years and abortion rights are alive and well in that state. Thank you.

The SPEAKER: The Chair recognizes the Representative from York, Representative Andrews.

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

The SPEAKER: The Representative may pose her question.

Representative **ANDREWS**: Mr. Speaker, Men and Women of the House. Could you tell me whether it is mandatory that they consider those circumstances or they may consider those circumstances?

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

#### ROLL CALL NO. 80

YEA - Berry RL, Blanchette, Bliss, Bouffard, Brooks, Bruno, Bryant, Bull, Canavan, Chizmar, Collins, Colwell, Cote, Cowger, Crabtree, Cummings, Daigle, Dorr, Dudley, Dugay, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Green, Hall, Hatch, Hawes, Jacobs, Jodrey, Jones, Kane, Koffman, Labrecque, LaVerdiere, Laverriere-Boucher, Ledwin, Lemoine, Lessard, Lovett, Mailhot, Marley, Mayo, McDonough, McGlocklin, McGowan, McKee, McKenney, McLaughlin, McNeil, Michaud, Mitchell, Murphy T, Muse C, Muse K, Nass, Norbert,

Norton, Nutting, O'Brien LL, O'Neil, Peavey, Perkins, Povich, Quint, Richardson, Rines, Rosen, Savage, Schneider, Simpson, Skoglund, Smith, Sullivan, Tarazewich, Tessier, Thomas, Tracy, Twomey, Usher, Volenik, Watson, Wheeler GJ, Mr. Speaker.

NAY - Andrews, Annis, Belanger, Berry DP, Bowles, Buck, Bumps, Carr, Chase, Chick, Clark, Clough, Cressey, Davis, Desmond, Duncan, Duprey, Foster, Glynn, Gooley, Haskell, Heidrich, Honey, Kasprzak, Lundeen, MacDougall, Madore, Matthews, Mendros, Michael, Morrison, O'Brien JA, Paradis, Patrick, Perry, Pineau, Pinkham, Richard, Sherman, Shields, Snowe-Mello, Stanley, Tobin D, Tobin J, Trahan, Treadwell, Tuttle, Waterhouse, Weston, Wheeler EM, Winsor, Young.

ABSENT - Ash, Bagley, Baker, Brannigan, Bunker, Goodwin, Hutton, Landry, Marrache, Murphy E, Stedman.

Yes, 88; No, 52; Absent, 11; Excused, 0.

88 having voted in the affirmative and 52 voted in the negative, with 11 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

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Majority Report of the Committee on **JUDICIARY** reporting **Ought Not to Pass** on Bill "An Act to Prevent Violence Against Pregnant Mothers"

(H.P. 1179) (L.D. 1602)

Signed:

Senators:

RAND of Cumberland  
McALEVEY of York  
FERGUSON of Oxford

Representatives:

LaVERDIERE of Wilton  
BULL of Freeport  
JACOBS of Turner  
MITCHELL of Vassalboro  
MUSE of South Portland  
SIMPSON of Auburn  
MADORE of Augusta  
WATERHOUSE of Bridgton  
SHERMAN of Hodgdon

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-236)** on same Bill.

Signed:

Representative:

MENDROS of Lewiston

**READ.**

Representative LaVERDIERE of Wilton moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

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

Representative **MENDROS**: Mr. Speaker, Ladies and Gentlemen of the House. This bill has absolutely nothing to do with abortions. This bill makes it a crime to beat a pregnant woman and cause her to miscarry. What were the notices you got from people who were telling you to vote against this bill says from the MCEDB, they oppose these bills because they do not protect women who are victims of violence. The bill diverts attention from violence against women and fails to recognize the best way to protect the fetus is to better protect the woman. This Minority Report protects the woman. If you beat a pregnant woman with the intent to cause her to miscarry and she miscarries, it is a class A elevated aggravated assault. If you beat her with that intent and she doesn't miscarry, it is a class B aggravated assault. To quote Gloria Feld, President of Planned