

MAINE STATE LEGISLATURE

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House of Representatives
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State of Maine

Volume II

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May 13, 1999 – June 19, 1999

Second Regular Session

January 5, 2000 – March 22, 2000

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 (12) Ought Not to Pass - Minority (1) Ought to Pass as Amended by Committee Amendment "A" (H-590) - Committee on CRIMINAL JUSTICE on Bill "An Act to Reinstate the Death Penalty"

(H.P. 1558) (L.D. 2214)

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

The **SPEAKER**: The Chair recognizes the Representative from Ellsworth, Representative **Povich**.

Representative **POVICH**: Mr. Speaker, Men and Women of the House. I move the Majority Ought Not to Pass Report. LD 2214, "An Act to Reinstate the Death Penalty" received a 12 to 1 Ought Not to Pass report from the Criminal Justice Committee. The testimony our committee heard was powerful and compelling. According to Dr. Kimberly Cook, Professor of Criminology at the University of Southern Maine, there are five reasons not to reinstate the Death Penalty in Maine. One, the Death penalty has been studied extensively for deterrent effect. The death penalty offers no deterrent effect. Second, The death penalty is a terribly expensive budget item. I list these items in no particular order. It has been shown that in every jurisdiction where the death penalty is employed, the price tag far outstrips the costs of Life Without Parole Sentence from arrest to death. Each execution is approximately six times the cost of a life imprisonment sentence. Third, problems remain with racial bias in capital punishment. If you are a person of color and you are in this circumstance, you are probably going to get the death penalty. Fourth, public opinion research indicates that the general public is poised and ready to accept an alternative to the death penalty. When given a non-biased question such as Do you prefer the death penalty or life without parole for someone convicted of first degree murder? Repeatedly, when respondents are presented with an option they prefer life without parole. That question is not asked in the referendum question contemplated in this LD. The referendum question simply asks, do you favor reinstating the death penalty?

If we send this LD out to the people, an important question can be raised. Did this body choose a referendum as political cover? We are not saying the people of Maine do not know their business, but the people of Maine elected us to do their business and this is our business for the people of Maine.

Fifth, perhaps most chilling is the research conducted on the "Miscarriages of Justice", where factually innocent people have been sentenced to death and executed. Research shows that more than 400 innocent individuals have been convicted of capital crimes in the 20th century alone. Of those, we now know that at least 23, perhaps more, have been executed. With the modern death penalty there have been 77 innocent people released from death row around the country after the states admitted they had the wrong person.

Walter McMillian of Alabama, a black man, McMillian was convicted of murdering a white woman. After four unsuccessful appeals, three witnesses recanted. One of these had been

rewarded with a lighter sentence in another crime for testifying against McMillian. Two others had received money for their perjured testimony.

Federico Macias of Texas. His court appointed attorney did little to prepare his case for trial. Two days before his execution he received a stay so that new lawyers from a large Texan firm entered the case and devoted the firm's resources and expertise to the case. His conviction was overturned. The court said, "We are left with the firm conviction that Macias was denied his constitutional right to adequate counsel in a capital case in which actual innocence was a close question." The state paid defense counsel \$11.84 per hour. Unfortunately, the justice system got only what it paid for. There are 400 more examples as chilling as this.

Twenty-two years ago, this body disbanded the parole system. Twenty-two years ago this body said that if you are sentenced to a life term in prison, you stayed in prison for your natural life. You will die in prison, if you are sentenced to a life term in prison. Scott Baxter from Brewer said it best. "In Maine, we can sentence a person to life imprisonment with no possibility of parole. This is effectively a sentence of death with God serving as the executioner. The convict will die in prison. The only uncertainty is the date on which the sentence will be carried out. If we discover that the person is innocent, we can release the person, make apologies and restitution. Such actions cannot happen if the person has been killed by the State."

Supreme Court Justice John Paul Stevens wrote: "The quintessential miscarriage of justice is the execution of a person who is entirely innocent." This bill seeks to render the ultimate condemnation, but how do we guarantee that we don't condemn the wrong person? Please support the pending Ought not to Pass motion. Thank you very much.

Representative **WATSON** of Farmingdale assumed the Chair.

The House was called to order by the Speaker Pro Tem.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Dexter, Representative **Tobin**.

Representative **TOBIN**: Madam Speaker, Ladies and Gentlemen of the House. It is a beautiful afternoon to be discussing a rather dismal subject. I am the minority of one. I will try to be as brief as possible. There are a couple of good reasons about why I voted in favor of this bill. Our good chair has already spoken to the reasons of voting against it, but he has brought several things to mind. The first reason, ladies and gentlemen, can be termed as one word, introspection. Introspection is a term used by philosophers, which means, let's take a good look at ourselves in the mirror. I don't know about you, but when I get up, these full-size mirrors in these motels, I don't know who authorized them, but when you get out of the shower and you have to stand out in front of that full-length area, you wish you had stayed behind the shower curtain. When I did that, that brought something to life. Are we afraid of looking at ourselves in the mirror? I used to be 200 pounds of dynamite. Now I am 225 pounds of soft ripe pear. Thank God we can look and laugh at ourselves. Are we afraid to look in the mirror? Are we afraid to step on the scale? I think a lot of us are.

This bill, ladies and gentlemen, would have given each and every Mainer an opportunity to step on the scale. To look at

themselves in the mirror, not only at their physical appearance, but they would look at their own convictions, morals, principles and values in regards to taking of a human life.

I listen to public radio all the time driving back and forth to Dexter. Thank God for 91.3 out of Waterville. The other morning I was driving down and I listened to a Senator, Senator McCane from Arizona talking about the bombing in Kosovo. I wished I had an opportunity to vote on the bombing in Kosovo. We are taking innocent lives each and every day. We are not dropping just bombs to deteriorate damaged business and industry. We are dropping shrapnel bombs. We would like to think we are isolationists here in the State of Maine. We would like to think that Maine is one of 12 states that don't have capitol punishment and we are proud of it. We are insulating ourselves from the rest of the country. We cannot do that, ladies and gentlemen. We are part of the United States of America. We are condoning the dropping of bombs in Kosovo. How can we condone that and not even consider that this isn't passing the death penalty, this is just considering having the people weigh in on an issue.

Then, of course, we have the ban on partial-birth abortion. If this bill passed, wouldn't it look nice in November's election? Do you favor reinstating the death penalty in the State of Maine? Do you favor a ban on partial-birth abortion? We need to constantly look at ourselves in the mirror, ladies and gentlemen. We have to constantly weigh our values, especially as to the way that pertain to government's role in ruling society. Introspection, that is my first reason.

The second reason, is with mind and a very heavy heart. I have sat on the Criminal Justice Committee for three years, ladies and gentlemen. Dozens of victims have come before our committee. You may think that we have the best criminal justice system in the world and maybe we do. I personally feel as though it needs a lot of improvement. The system, ladies and gentlemen, is represented by a scale, a balance. That is a fallacy. That is a misnomer. The scale is heavily weighted. It is heavily weighted in favor of the accused in favor of the accused and the offender. Three out of 100 rapes end up in convictions. I asked the District Attorney from one of our counties how many sexual offenses he had in his county in 1998? He said, "200." I asked how many jury convictions did you get. He said, "Zero." It is his word against her word. The children are too young and their parents don't want them to testify. The system is heavily weighted towards the accused. When you hear these victims and I am not going to go into the details because you have read them in the papers. Man's inhumanity to man, ladies and gentlemen, is unbelievable. Those accused rights stand there on that scale tipped to its lowest point. It is made of concrete lined with lead. On the other end of that scale is a simple white down feather, the victim that is lost in the first gentle breeze. You can see the emptiness in their eyes. You can feel the emptiness in their hearts.

The bill, ladies and gentlemen, would give us an opportunity to look at what is going on in this state in regards to criminal justice. Yes, crime rates are going down. Thank God they are, but our criminal justice system, ladies and gentlemen, needs to be re-evaluated too. Thank you Madam Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Buxton, Representative Savage.

Representative SAVAGE: Madam Speaker, Men and Women of the House. I do think we have the best criminal justice system in the world. I agree with the previous speaker. It needs improvement. It needs a lot of improvement before we

even consider executing the human's convicted at the hands of that system. Thank you.

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

Representative PLOWMAN: Madam Speaker, Men and Women of the House. In Maine's past, this state had a death penalty. Thirty-eight states of our union there exists the possibility of punishment by imposition of the death penalty. I am standing here to allow the people of Maine, by referendum, to choose for themselves whether this state will reinstate the death penalty.

I am going to talk to you frankly and honestly about this bill. It is not a deterrent. It is not a money saver. This bill seeks a sentence, which says that the people of the State of Maine wish the ultimate condemnation to be made of the ultimate crime, murder. Before I speak specifically to the provisions of the bill, I would like to point out to you that the possibility of a jury voting to oppose the death penalty in Maine already exists. However, the jurors must be federal jurors and they must be sitting in a federal court before a federal judge. Federal law already allows for the imposition of the death penalty if the murderer causes the death of a federal agent or if the act occurs on federal property. For your information, the federal government owns 329 acres of land in the State of Maine. Every post office in every city, town, village or unorganized territory, federal buildings such as Bangor, Machias, Portland, Arcadia National Park, Cutler Naval Station, the Moosehorn National Wildlife Refuge and Togus Hospital are places where the death penalty may be sought by the US Attorney of the State of Maine for a murder.

The issue has been raised in recent press reports of persons being released from death row. This argument deals with the possibility that innocent persons are on death row and may be put to death. This bill is prospective. We do not have a backlog of prisoners sitting on death row in the State of Maine. We have state of the art science and technology, which helps to set murders free. They also help to convict with an incredible amount of determination that the person who was convicted was actually the perpetrator. We are not talking about people sitting on death row in the state with 30, 20 and 10 year old convictions. We are not talking about cases that were tried 100 years ago and persons who were put to death and were later found innocent. We are talking about, should the people of the State of Maine vote this in November. This will become a law that is prospective. If you or I were killed tomorrow, our murderer would not face this sentence.

I am going to talk to you about the specifics of the bill a little bit. First of all, there is a lot of information out there regarding persons who are mentally ill. The Governor has the ability to call a commission in this bill. A commission of three psychologists who must examine and determine whether the person who is accused is mentally ill. The person found mentally ill is committed to an institution, not convicted and not executed. A pregnant woman may not be executed. There is an automatic appeal and review process. Three justices on our Maine Judicial Supreme Court can remand for a new trial, three. A majority of the justices, a simple majority, of the sitting justices can reverse the sentence. The Supreme Court can also find the sentence excessive and remand the case for the imposition for a life sentence. What this bill does do is it does say there will be a life sentence. If there is not an execution, there will be a life sentence and it is mandatory. When you hear, life if life, that is when you know. That is not a plea bargain. That is life.

There are separate proceedings for the sentencing and evidence is presented by both sides to show why the death penalty should be merited. Following those proceedings, the court maintains the final say as to whether the death penalty will be awarded. The jury may reach the unanimous decision. The jury must reach a unanimous decision. The judge may still overrule the jury. If a jury does not reach a unanimous decision, the judge may order a life sentence. The net result is murder in the State of Maine will get you a sentence of life, minimum. If it is especially heinous, atrocious or cruel, if it is a multiple murder, children under the age of 16, police officers or corrections officers or an elected public official ranging from the person you elect as road commissioner to your district attorney and every elected public official that is elected in a public, open poll. If someone reaches out and causes the murder, they will get at least a life sentence. If they are found to reach these circumstances, they may receive the death penalty.

Right now there are people who want to vote on this. It is amazing how we alternate from morning to afternoon to evening and from issue to issue as to the right of the people to have a say. On this issue we have just been told that the people shouldn't have the say. On two issues ago, they had to have a say. It always amazes me how this goes back and forth. People know how they feel about the death penalty. They have expressed it to me in one way or another. There are very few people who doubt their feelings regarding the death penalty. The death penalty is appropriate.

I will share with you a couple of things that have happened just in my young life. We have a child burned to death in an oven. He was locked in an oven and burned to death. We had a beloved wife and mother hijacked and beaten to death so that two people could joy ride south in her vehicle. Recently two young men were killed while trying to protect a woman from domestic abuse. They were murdered and she was kidnapped. Just a couple of weeks ago, a husband ran down his wife with his van. We have lost law enforcement officers who were performing their duties to protect the citizens of the State of Maine. To my knowledge, we haven't yet lost a public official. In other states, one very close to us, elected officials were stalked and shot down for the actions that they had taken with respect to one of the citizens in the town.

I hope that you will join with me to oppose the Majority Ought Not to Pass Report and go on to send this bill to referendum so that the people of the State of Maine can decide for themselves whether they think we should have the ultimate sentence for the ultimate crime. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Woolwich, Representative Peavey.

Representative **PEAVEY**: Madam Speaker, Men and Women of the House. I hope you will vote for the Majority Ought Not to Pass Report on this committee report. Whenever we consider a bill in committee or in this chamber, we must always ask ourselves what is the compelling reason that drives the need for this bill and for this law? After extensive thought and consideration in committee from the public hearing and our work sessions, the majority of the committee really came down to the fact that there are no compelling reasons to have this bill. The death penalty does not serve as a deterrent. There has been an incredible amount of research done on this issue in all the states that have the death penalty. Research actually shows that when you compare death penalty states and non-death penalty states,

the death penalty states have a higher murder rate. That is certainly not a compelling reason to the death penalty.

Research talks to us about the cost, which is enormous. Representative Povich mentioned this. The most comprehensive study was done in North Carolina. It was found that each case that went through the death penalty process was \$2.16 million more than imprisoning that person for life. Those are funds that are going to be diverted from all the other programs for rehabilitation that could be happening in a prison, not necessarily for this prisoner who would be in there for life, but for the other prisoners who are not in there for life. The research finds that in most of the states with the death penalty, all of them, in fact, are three to ten times higher than the cost of lifetime incarceration.

The most compelling to me though is the possibility of convicting innocent people and executing them. Representative Plowman did address that. I agree that we have new and improved methods of proving someone's guilt or innocence. Where are we to decide that for sure? We know that 23 innocent people have been executed in this country. Since 1972, 50 people have been released from death row because new evidence came forward that they were innocent. In passing this law and creating the death penalty, it makes every single one of us part of putting a human being to death. That decision is just not ours to make.

I would also like to address the referendum issue. When we dealt with this death penalty bill, we went through extensive public hearings. Some of us have been through it several years in a row. We had the work session, which people come back and give us more information. We have this debate. We have our caucuses. We have an incredible amount of information here. Putting a human being to death is far too weighty a matter to put it out as a one-liner question on a referendum. I hope you will vote to Ought Not to Pass this bill.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Hodgdon, Representative Sherman.

Representative **SHERMAN**: Madam Speaker, Ladies and Gentlemen of the House. I am on the Majority Report, Ought Not to Pass. I think respect for this body compels me to tell you why I am there. I think I am from a slightly different angle than what Representative Povich and Representative Peavey have stated. I have been here five or six months. It seems like forever now. My opinion of the death penalty was formed many years before I ever came here. Maybe in 30 seconds or less, I can go through a greater than a half century of some of the greatest turmoil we have ever seen where nations states have done terrible things to one another. I call it hiding behind a strong conviction. People say this is not a deterrent. Life is life is a huge cost. It is easier once you get started. You have to be careful in some states now, because these deaths aren't even publicized. You don't have the protests. You talk about the borderline medical patients. I know the defense attorney said we are fallible. You may have problems with defense, but having lived in this century, my thought is I don't want to give the power to the state to kill in my name. I don't want to do that. That is the moral issue. Search what has happened in this century. Pick a country where the state has the power to kill in the people's name. I don't want that.

I had some other things to say, but I think they have been said. We had a lady who grew up in Germany in the early '40s. As she went out, her husband spoke to us. She came back and said, "Don't let the state kill in my name." I don't want to give the power to that collection of people to kill in my name. We had

some literature given to us for various writers who talked about this that went back to Thomas Jefferson and back to the Constitution. They talked about life and limb and cruel and unusual punishment and how those things got into the documents.

I would like to leave you with one quote. It is a classic American skeptic once defying justice as revenge in which the state imitates the criminal. I do not want to imitate the criminal. Thank you.

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

Representative **WATERHOUSE**: Mr. Speaker, Ladies and Gentlemen of the House. Just a few things, I have the same feelings that Representative Tobin had, having sat on the Criminal Justice Committee in the 117th Legislature and listening to some of the victim's stories. I want to back up a little bit to respond to the Representative from Ellsworth. Quoting from a study of how many people were innocent on death row and how many people were put to death, I have looked at all those studies over the years. All those claims have been disputed and disputed quite convincingly to me. It is the case of one person's statistics and looking how we arrived at those and a number of other things. I agree with the prime sponsor of this bill, the fact that technology now is so advanced. We are looking at things retrospectively in how things were looked at back before we had this technology. Let me just present two things to you. I was on a special committee looking at violent sexual offenders. The commissioner of corrections, Marty Magnusson, gave a number of us a printout of some of the profiles, criminal histories, of some of these people we are talking about. I am not going to read them all, there are quite a number of them. I have two in particular.

One, that was very, very gut wrenching to me when I listened to the story of the mother as she told what this person had done to her daughter. The next case, very briefly, is going to make the argument against the so-called life sentence in Maine as a sentence of death. There are no names on these for good reason. Subject number one on this profile, presently a 40 year old man who has been involved in the criminal justice system since the age of 21. In 1979 he broke into a home at random at 2 a.m. and assaulted and raped a woman while her infant, the only other person in the residence, lay sleeping in the other room. The woman was beaten and warned not to tell. In 1979, while the subject was on bail, he attacked and raped another woman. He chose at random. This subject received a 10-year sentence for the first rape and a 15-year sentence for the second rape to be served concurrently, straight release on both with no probation supervision at the completion of incarceration. While incarcerated, the subject refused any and all counseling. He was released from the corrections system in 1990. In 1991, he raped, stabbed and cut the throat of a teenage girl and left her for dead after he buried her body in leaves. He randomly spotted her riding her bicycle and intentionally bumped her with his vehicle to stop and knock her to the ground. In 1992, he was sentenced to 40 years for kidnapping and gross sexual assault and a 40-year sentence to follow for attempted murder. In 1993, he was indicted for a murder of woman in 1990, that they found he had committed through modern technology, DNA, which occurred after his release from prison, but before his 1991 offense. He was not discovered to have committed the 1990 offense until after he was caught in the 1991 offense. In 1995, for the 1990 murder,

he received a life sentence to be served after his previous conviction, 40 plus 40. These are the kind of people we are talking about folks.

This is a little bit of a shorter one, but this goes right to the heart of what the good Representative from Ellsworth was telling us. In Maine, a life sentence is a sentence of death. Subject number three, presently a 51 year old man who started his criminal career by stabbing a 15 year old school mate to death. He was 16 at the time and committed to the Augusta Mental Health Institute where he escaped three times. He escaped three times, you understand what that means, escaped. He was released in 1972 and in 1974 he committed a rape. He was convicted and sentenced to 10 to 20 years. He was paroled in 1982, but returned to prison in a month for misconduct with female employees where he worked. In 1983, with only a few weeks remaining on his sentence, he escaped from a work release program and proceeded to kidnap and restrain three women, but left the house when someone came to the door. Subsequently while on this escape, again, I stress the word escape, he committed a murder. He stabbed a woman and two assaults with a knife. None of the victims were known to the subject and all were woman. For these crimes, he received a life sentence.

I would submit to you, ladies and gentlemen, a life sentence is not a death sentence. These people escape and kill other people. That is what I look at when I would like to give a death sentence to some of these people. It is not the cost. Certainly if one of these people escaped and did one of these things to your loved ones, you would think the cost was worth it. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Lewiston, Representative Bouffard.

Representative **BOUFFARD**: Madam Speaker, Men and Women of the House. I can't believe what I am hearing this afternoon. I can tell you, two wrongs, don't make one right. Do we want to put ourselves in the position of being the killers of the killer? Are we going to do the same act as what the killer is doing? Are we going to do the same thing to him? The good Lord says, "Judge not, lest ye be judged." To me, it is up to the creator to judge these criminals. It is equally up to him to make sure that he is the one who is going to take their lives, no matter how long it takes. It could be their lifetime, 99 years or 20 years. It is up to the Lord to undo what he has created. It isn't up to us to try to make two wrongs be one right. Representative Povich is right. It isn't a deterrent in today's age. It is expensive. There is bias in doing this. The people seem to feel that it is better to give life sentences. I feel that too. My goodness gracious, this wonderful day to be locked up in a prison and not be able to enjoy it. I think this is a heck of a lot more of a penalty than killing someone. Once you have killed them, it is over with. He is at peace. He doesn't have the privilege of enjoying every day of his life that he could. Please, let's not put ourselves in the position where we are going to be the judges here on something that we don't have any business to do. Please accept the Majority Ought Not to Pass Report on this.

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

Representative **ANDREWS**: Madam Speaker, Men and Women of the House. I am a cosponsor of this bill. I rise in support of it. I have been accused by the newspapers of perhaps being a little bit too passionate about it. Ladies and gentlemen, if you haven't worn the shoes, if you haven't walked

the mile, you can't understand what a victim survivor feels. I am here today to represent all the victim survivors who cannot speak for themselves. It has been said that putting someone to death for committing murder does not deter crime. I am here to tell you that one of the two men involved in the robbery in which my husband gave his life, had killed before. This was not an accidental killing. My husband was shot five times. I am not asking you to make the decision. I am asking you to give the voters the right to make the decision. We talk about how the prisoners are in the prison for life in a small room. These prisoners sometimes get benefits that the victim survivors do not get. They get a free college education, quite often, if they so desire to pursue their education. Many of the victim survivors do not have that option. It has been said that this is cruel and unusual punishment. I am telling you as a victim survivor, that we suffer through cruel and unusual punishment and that I am now serving a life sentence. My pain is as great today as it was in 1964.

I would like to tell you about some of my cruel and unusual punishment. It is different from other victim survivors, but all victim survivors go through this. I consider it cruel and unusual punishment that in 1964 I turned on the radio to hear that my husband had been shot and killed in a bank robbery when he wasn't even on duty. He just happened to have to go to court that day. I consider it cruel and unusual punishment that at 27 years of age and nine months pregnant, I am buying a casket with my mother in law and planning a funeral. I consider it cruel and unusual punishment to have to tell a five year old son that they will never see their father again. I still live with this memory in my mind for about a year and a half of watching my middle son every time he saw a state trooper running up and claspng that trooper around the leg and hollering, "Daddy." I consider it cruel and unusual punishment that I went through the birth of a child without the most important person in my life. This child was born with a physical defect. I consider it cruel and unusual punishment that I have had to seek psychiatric first aide for my children because they could not accept the loss of their father. I consider it cruel and unusual punishment that I read in the newspaper that sometime, whether it was seven and half years or ten and half years, I cannot give you the actual date, because I was not notified, but this person had been released from prison. I only read it in the paper when he violated his parole. I do not know when he was released from prison. I consider it cruel and unusual punishment that my children still feel that their father gave his life in vain. They will carry this until the end of their days. His mother, when this bill was heard, called me and said, "Mary, you have to speak for us, the victims." I consider it cruel and unusual punishment that I had to attend that ceremony last year. All the bad memories are brought up to the front again. I have to testify here today.

Yes, prisoners supposedly have a life sentence, but you make the laws and you can change them. I am serving a life sentence that will never go away, as are many of the other victim survivors. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Augusta, Representative O'Brien.

Representative O'BRIEN: Madam Speaker, Ladies and Gentlemen of the House. It is often very difficult to stand and follow previous speakers, as impassioned as they are. I personally respect all of those on both sides of the aisle. This is a very difficult issue. Being on the Criminal Justice Committee for the last three years, this is the second time that I have heard

this bill. The hearings are impassioned. They are long. They are very difficult. I can tell you that that is the word. They are very, very difficult. They are heart wrenching. We have to look at this as logically as we can without the passion, with all due respect to previous speakers. In response to some of the reasons that Representative Povich, the Representative from Ellsworth gave, some of those I don't buy. I don't buy the fact that there is racial bias in this. I don't buy the fact that many, many innocent people will be put to death. I do agree with Representative Plowman that there is enough technology now that this is not going to happen. It has been said repeatedly that the death penalty is not a deterrent. However, having said that, I stand to say that I cannot support the death penalty.

There are several reasons and I would just ask your indulgence for a few moments. I know this is a long afternoon. It is getting longer by the minute. I am not trying to speak for the victims. I am not a victim survivor. The last thing I would want to do is to speak for them. I asked them during this hearing and the hearing of two years ago, listening to very, very difficult testimony. I asked them if their grief would be lessened if they knew that the perpetrator, the person that caused the death of their family member, had been put to death? The people that I asked said no. It wouldn't help my hurt. It wouldn't help my grief. I cannot say that that is the same for Representative Black Andrews. I don't know that and I can't speak for her. I would never intend to do that. I do know that those I asked said no. It would help if I knew this person would be put away for life. I pledge to you from standing here as a member of the Criminal Justice Committee that I intend on working very diligently to make sure that when it is life, it means life. There will be, if I have anything to say about it, no plea-bargaining if there is a murder conviction. No parole.

I want to relate a story. Those of you who were here before heard this. This person has gone public with this. I do have her permission to say this story. I will try to be as brief as I can. This is another very, very tragic situation. A friend of mine had four children. She had a lot of marital problems and domestic abuse. She decided, finally, to leave her husband after a long, long horrendous battle. She left the two older children with him. There had been no abuse of the children. She felt the children were safe. She left the two older boys, 9 and 11, at the time, with her soon to be ex-husband and moved to get her life in order. She would then call for the other two children. The younger two were still very young. She received a call one day that her nine year old had been killed. He had fallen out of a tree. Come to find out, to make a long story short, I attended the trial of her ex-husband. He had indeed killed the nine year old. He had kicked him in the stomach and hit him with a baseball bat. It was a death that took two days to occur. He then, the perpetrator, the gentleman, the animal, then proceeded to send the 11 year old up to find him. He knew he was dead. He concocted a story that he fell out of the tree. I attended this trial. It was the most heart-wrenching thing that you could ever see, to see this 11 year old on the stand testifying against his father. His father is now in Thomaston. He will be there, hopefully, for the rest of his life.

I want to say something. This 11 year old boy feels tremendous guilt about putting his father away. No matter what his father did to him, not matter what his father did to his 9 year old brother, he feels tremendous guilt about putting his father away. If we have the death penalty, as it is stated in here, this man would be killed. What guilt would he feel then knowing that

he killed his father? I asked my friend, would it make you feel better to know that your ex-husband did the ultimate deed, the ultimate horrendous deed? I can imagine nothing worse. Would it help you to know if he were dead? Do you want him dead? Would it help your grief? Would it help your sorrow? She said that it wouldn't take this away. It is always going to be here. It is not going to help.

I can't support the death penalty. I understand, appreciate and respect those who do support it. I feel that it is God who brings life and God who takes life. There is a reason for everything. I can't be the one to pull the switch and I am not going to ask anybody else to do the same thing. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Waterboro, Representative McAlevey.

Representative MCALEVEY: Madam Speaker, Ladies and Gentlemen of the House. Do we have people in prison who deserve to die for what they have done because of their crimes being so horrendous? I can name a few. Do we have a perfect system? No, we don't. I have lost two colleagues who died in the line of duty. One, was struck and run over by a drunk driver while he was stopping the car. The day the person who was driving that car plead guilty to a misdemeanor, he was given nine months in the county jail, all but 30 days suspended. The person behind him was found guilty of shooting a moose out of season and was given six months in jail and \$1,000 fine. Is that perfect? No. Three times in my career that I know of, I have come close to death. The last time I thought I had died when I lost consciousness. I suspected the lady that was there was going to shoot me with my revolver after I passed out. Four times in my career I came very close to killing somebody, justifiably in the line of duty. In fact, the hammer was coming back on the revolver one night. Yes, I would have the authority because you gave it to law enforcement in a situation where deadly force is projected. We do have a death penalty in jail, prison. I don't care how many three meals a day they get and how many hands of cards they play. They are told when to get up. They are told what to eat. They are told when to go to bed. The only discretion they have is when they choose to go to the bathroom. By the way, at least half of the people in Thomaston are there either serving a life sentence or because of the age and length of the sentence, they will die in prison. We do have a death penalty and we exact it day by day and hour by hour. Yes, they get up and they have life. They can rejoice that they are alive today. Let me tell you, the quality of their life is greatly diminished. We do have the death penalty. We just exact it over the length of that individuals remaining natural lifetime.

I would like to think I am a pretty hard-boiled cop. I am getting kind of soft on the edges having been here for five years. I echo the words of the Representative from Augusta. I am not going to ask something of somebody else to do, if I am not willing to do it myself. I am not willing to send somebody to death, directly or indirectly, through this process. I have great respect for the people who believe that the death penalty should go to the people. I respect their point of view and their opinions, but it goes right back to what the good Representative from Ellsworth said to one of the people who spoke to the committee. That decision of death rests with God, not with us. We are holding them there until we do die.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Danforth, Representative Gillis.

Representative GILLIS: Madam Speaker, Men and Women of the House. I am a little bit disappointed this afternoon

to see all the empty seats. It seemed to be more important when we were talking about jet skis. I think this is a very important issue, whether you agree or don't agree, I think it warrants you sitting here listening to what everybody has to say. I am disappointed to see the empty seats.

Let me bring up a couple of points. I want you all to think about this. Your family members are sitting up front here and a person comes and is going to shoot them, execute them in front of you. I want to tell you there is a death penalty in the State of Maine because you have the right to protect your family members. I doubt very much that very few of you would stand by and let that person kill your family in front of you. You would probably kill that person. If you didn't, there is probably something wrong with you. I would choose to believe that you would stand up for your family. There is a death penalty in the State of Maine. It is called protecting your family if someone intrudes in your home. You don't go to jail for that.

On the other hand, everybody has been talking about, who is going to throw the switch? This bill before us is not for us to decide that. It is to give the people to decide. We were sent down here to represent the people. It is only fair that we vote for this so that we can let the people decide. Leave your own emotions out of it. Let the people vote. They are the ones who brought you here.

I would like to finish up by saying that we all have a death sentence. We are all going to die someday. To let a person stay in prison and think that is a death penalty, I don't believe it. Probably the right thing to do would be the person who is a victim who loses a loved one through a murder, as the Representative said, people don't want to be called a killer. Let the victim make that decision if that person is found guilty, whether they have life in prison or they die through the electric chair or whatever.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Biddeford, Representative Frechette.

Representative FRECHETTE: Madam Speaker, Ladies and Gentlemen of the House. I rise today to support the Majority Ought Not to Pass Report. This is the second time in three years that the Criminal Justice Committee has had the death penalty bill before it. This bill would send the death penalty out to referendum, but there would be no option for life imprisonment, with no possibility of parole. I would like to read a few brief excerpts from testimony from the public hearing. I promise they will be brief. This one is from the Maine Council of Churches. "The goal of the criminal justice is to maintain a level of trust in our government, our court and our communities. We do not believe that the death penalty achieves this goal." The second one is from Mr. Scott Baxter from Brewer, Maine. "In Maine we can sentence a person to life imprisonment with no possibility of parole. This is effectively a sentence of death with God serving as the executioner." It would be very easy for us to sit here and take every issue that is very, very difficult to deal with and send it out to the public to vote on in referendum. That is what the constituents have sent us here to do. We take the tough issues everyday and we deal with them. This was not an easy issue for the Criminal Justice Committee this time around. It was not an easy one a couple years ago when we had a similar bill. The most compelling testimony I felt was when Mr. Magnusson, the commissioner of the Department of Corrections, testified. He had to think, would he be able to do it if he was in charge of having to provide the death penalty? Would he be able to do it. I know, myself, if I would be put into that situation, I would not be

able to do it. I can't imagine anybody right now being able to do it. I am sure there are people in our communities, our society that could probably find a way. I don't think this is the answer.

Madam Speaker, when the vote is taken, I request it taken by the yeas and nays.

Representative FRECHETTE of Biddeford **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 PRO TEM**: The Chair recognizes the Representative from Bremen, Representative PIEH.

Representative **PIEH**: Madam Speaker, Men and Women of the House. I rise in support of this Majority Ought Not to Pass Report, not because I am against the death penalty. Actually, I am for the death penalty. I think our system lacks in accountability. I think people get out to do it again. I don't think life in prison is an adequate reward for somebody who does murder. I don't think this is an appropriate issue to send to referendum. I think it is our job and I encourage you to support the Majority Ought Not to Pass Report.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Poland, Representative SNOWE-MELLO.

Representative **SNOWE-MELLO**: Madam Speaker, Men and Women of the House. It is very, very difficult for me to stand here before you today and speak on this subject. I am a cosponsor on this piece of legislation. I agreed to sign onto this legislation only after receiving the results of a survey that I received from my constituents where it shows 57 percent of their results of the questionnaires returned showed that people favor the reinstatement of the death penalty. I think many of us don't realize the type of individuals and criminals we are dealing with here. Many of these criminals who commit these crimes could very well be psychopaths and sociopath. These personalities simply do not have a conscience. They live by their own rules. These are truly evil people, in my opinion, who do not deserve to live. That is my opinion. They do not love and they do not know how to care about one another or another human being.

We are always worrying and fretting over the rights of criminals. We even give them the vote. Imagine giving a person that kills another person the right to vote. That is another subject. What about innocent people who have lost their loved ones. They will never ever see their loved ones again, mother, child, sister, brother or friend, ever on earth again. In my belief, people are sending a strong message to say that we will not tolerate violence in this society and the kills that are so prevalent in today's society. Please let the people in this state speak out. Let them be the judge. Thank you.

The **SPEAKER PRO TEM**: 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. 241

YEA - Ahearne, Bagley, Baker, Belanger, Berry DP, Berry RL, Bolduc, Brennan, Brooks, Bruno, Bryant, Bull, Cameron, Chick, Chizmar, Cianchette, Clark, Colwell, Cote, Cowger, Davidson, Davis, Desmond, Dudley, Duncan, Dunlap, Duplessie, Etnier, Fisher, Frechette, Fuller, Gagnon, Gerry, Goodwin, Gooley, Green, Hatch, Jabar, Jacobs, Jodrey, Kane, Kneeland, LaVerdiere, Lemoine, Lindahl, Madore, Mailhot, Martin, Matthews, Mayo, McAlevey, McDonough, McGlocklin, McKee, McKenney, McNeil, Mendros, Mitchell, Norbert, Nutting,

O'Brien JA, O'Brien LL, O'Neal, O'Neil, Peavey, Perkins, Perry, Pieh, Povich, Powers, Quint, Richard, Richardson E, Richardson J, Rines, Rosen, Samson, Sanborn, Savage W, Saxl JW, Saxl MV, Sherman, Shiah, Sirois, Skoglund, Stanley, Stanwood, Stedman, Stevens, Sullivan, Tessier, Thompson, Tobin D, Townsend, Tracy, Tripp, Twomey, Usher, Volenik, Watson, Weston, Williams, Mr. Speaker.

NAY - Andrews, Bowles, Bragdon, Buck, Bumps, Campbell, Carr, Clough, Collins, Cross, Daigle, Dugay, Foster, Gagne, Gillis, Glynn, Heidrich, Honey, Jones, Joy, Kasprzak, Labrecque, Lemont, Lovett, MacDougall, Mack, Marvin, Murphy E, Murphy T, Nass, Pinkham, Plowman, Schneider, Shields, Shorey, Snowe-Mello, Tobin J, Trahan, Treadwell, True, Waterhouse, Wheeler EM, Wheeler GJ, Winsor.

ABSENT - Bouffard, Muse, Savage C, Tuttle.

Yes, 103; No, 44; Absent, 4; Excused, 0.

103 having voted in the affirmative and 44 voted in the negative, with 4 being absent, the Majority Ought Not to Pass Report was **ACCEPTED** and sent for concurrence.

The Speaker resumed the Chair.

The House was called to order by the Speaker.

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

The **SPEAKER**: The Chair recognizes the Representative from Lewiston, Representative Bouffard who wishes to address the House on the Record.

Representative **BOUFFARD**: Mr. Speaker, Men and Women of the House. I would like the record to show that had I been here to vote for the death penalty, I would have voted yea.

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

UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, have preference in the Orders of the Day and continue with such preference until disposed of as provided by House Rule 502.

An Act to Amend Law Enforcement Powers of Maine Forest Rangers

(S.P. 397) (L.D. 1188)

(H. "A" H-326)

TABLED - May 17, 1999 (Till Later Today) by Representative PIEH of Bremen.

PENDING - **PASSAGE TO BE ENACTED**.

On motion of Representative McALEVEY of Waterboro, the rules were **SUSPENDED** for the purpose of **RECONSIDERATION**.

The same Representative moved that the House **RECONSIDER** its action whereby the Bill was **PASSED TO BE ENGROSSED**.

Representative PIEH of Bremen **REQUESTED** a roll call on the motion to **RECONSIDER PASSAGE TO BE ENGROSSED**.

The **SPEAKER**: The Chair recognizes the Representative from Bremen, Representative PIEH.