

# 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**

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Pages 1-889

103 having voted in the affirmative and 34 voted in the negative, with 14 being absent, and accordingly the Majority **Ought to Pass as Amended Report was ACCEPTED.**

The Bill was **READ ONCE. Committee Amendment "A" (H-468) 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-468)** and sent for concurrence.

### UNFINISHED BUSINESS

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

**HOUSE DIVIDED REPORT – Majority (9) Ought Not to Pass – Minority (4) Ought to Pass as Amended by Committee Amendment "A" (H-270) – Committee on CRIMINAL JUSTICE on Bill "An Act to Reinstate the Death Penalty for the Murder of Children"**

(H.P. 1124) (L.D. 1493)

**TABLED – May 3, 2001 (Till Later Today)** by Representative **COLWELL** of Gardiner.

**PENDING – Motion of same Representative to ACCEPT the Majority OUGHT NOT TO PASS Report.**

The **SPEAKER:** The Chair recognizes the Representative from North Berwick, Representative MacDougall.

**Representative MACDOUGALL:** Mr. Speaker, Ladies and Gentlemen of the House. What this bill would do is reinstate the death penalty by lethal injection for the murder of a child under the age of 6 years and would be subject to a referendum to the people, whether they want to reinstate the death penalty for this particular age group.

On November 9, 2000, some of you, particularly from the southern end of the state, may recall a little 21-month-old girl was beaten to death. She wasn't even two years old. Her name was Cassidy. She lived in Rochester, New Hampshire. She lived with her mother Amanda and her boyfriend, a man by the name of Chad Evans. This Evans has been indicted for second degree murder in New Hampshire with multiple assault charges against this little girl. He has been freed on \$100,000 bail. Through the intervening investigation there are pages of court documents that reveal Cassidy's final weeks of life was a continual maelstrom of beatings and torments that ended really only because she succumbed to a force that was far too blunt. It was a trauma to her head, sometime between the 8th and 9th of November she died. This case hits home.

I live very close to the border of New Hampshire. The Maine State Medical Examiner, Margaret Greenwald, performed an autopsy. Some of Maine was involved in this as well. The innocence and vulnerability of Cassidy is very compelling. She wasn't even two years old. There are some common threads that I find in this particular case of the mother, this little girl and the man she was living with weren't married, among other things. It is part of the cultural fabric we find ourselves today, living arrangements and unwed parents. In fact, Amanda, who is the mother, her sister who lives in Kittery, even though neither one of them are married, but they don't have the same last name. This thing gets more and more twisted.

The gentleman who was arrested had an excellent job as a District Manager for MacDonalds. He was very gainfully

employed. As I thought about these things, I thought it was time for Maine to consider reinstating the death penalty. However, in times past in previous Legislatures, the application had been a broad application for anyone. That was often the argument that it was too board and, therefore, did not meet with success. In this case, in a very narrow instance for the murder of children of less than six years old, I have chosen because this age range is already treated in Maine law as a vulnerable age where crimes against this age group are to be treated as more serious than other individuals. Indeed within that age group you have children who certainly aren't mentally capable of even realizing they are in danger. Physically they can't escape as easily as someone who is older. Their vulnerability and innocence is particularly heart wrenching, in this particular case of young Cassidy.

Our judicial system in Maine, I have looked through floor debates on the death penalty and on both sides of the issue it was stated that the judicial system in Maine is outstanding. I believe that is true. Maine has an excellent appeals system and many competent and thorough defense prosecuting attorneys. This, of course, protects all citizens and ensures equal treatment under the law. I submit to you, ladies and gentlemen, that equal protection under the law demands a possible death penalty sentence to those who commit and are found guilty of a vicious, cruel and heinous murder of a defenseless child. I do not propose a mandate. This legislation does not propose a mandate. I do not propose that the death penalty should be administered in every murder of a child even. I do propose providing the option to a jury and a judge so that if a murder is against this very young age group and was an act of such heinous proportion, the death penalty could be an option.

Some thoughts that I know we will hear from others, but some thoughts are deterrents. During the temporary suspension of capital punishment in the years 1972 through 1976, researchers gathered several murder statistics from across the country. Researcher Carl Spense of Texas A&M reported that in 1960 there were 56 executions in the US and 9,140 murders. In 1994, when there were only 15 executions the number of murders for that year had risen to 9,250. In 1969 when there were no executions, there were almost 14,590 murders committed. In 1975, after six more years with no executions, over 20,000 murders occurred.

Life without parole, first-committed criminals of murder can still commit horrible crimes within the criminal system. They can pose a serious threat and even kill prison guards or other inmates. Should they escape, innocent citizens are in danger as did happen recently with the escaped prisoners from Texas. Second, what guarantees are there that the law will not change? For example, in the State of New York in the early '60s a man had raped and strangled to death a 14-year-old girl and her parents decided to spare Moore the death penalty on the condition that he be sentenced to life in prison without parole. Later on, years later in the early '80s, a change in the sentencing laws took place and now this man is eligible for parole every two years. These parents have a nightmare to live every two years.

Murder is the unlawful killing of a person with malice and forethought. Execution is the lawful commuting of a death sentence as a result of a trial within our law, the court system. I submit they are not morally equivalent. There is a difference between murder and punishment. Executing the guilty will not bring back the victims, as is often heard, but that is not the point of the execution. Justice is not about bringing back the dead and it isn't about revenge. The purpose is to enforce consequences for one's own actions and to protect and respect life.

The 19th Century English philosopher, John Steward Mills, stated, "Finding a criminal shall want to respect for property or imprisoning him for personal freedom just as unreasonable it is

to think that to take the life of a man who has taken that of another is to show want of regard for human life. We show, on the contrary, our regard for it by the adoption of a rule that he who violates that right and another forfeits it for himself and while no other crime that he can commit deprives him of this right to live, this shall."

Constitutionality, in *Troop versus Delus*, Chief Justice Earl Warren, who incidentally was no advocate of the death penalty, referred to cruel and unusual punishment found in the Eighth Amendment said, "Whenever the arguments may be against capital punishment both on moral grounds and in terms of accomplishing the purposes of punishment, the death penalty has been employed throughout our history and in a day when it is still widely accepted, it cannot be said it violates the constitutional concept of cruelty." The Supreme Court Justice Scelia said in 1997, "No fewer than three of the justices with whom I have served have maintained that the death penalty is unconstitutional even though its use is explicitly contemplated in the Constitution. The due process clause of the Fifth and Fourteenth Amendment say that no person shall be deprived of life without due process of law. The grand jury clause of the Fifth Amendment says that no person shall be held to answer for a capital crime without grand jury indictment."

The death penalty, in general and in this proposal in particular, is a difficult issue. I realize it. It penetrates to the core of all of our beings. I don't treat it lightly. The gentleman who has been arrested for the murder of young Cassidy has not been tried yet. It will be later on this year, I believe. Therefore, he has not been found guilty of this murder. If this trial were in Maine and it was for first-degree murder, I would want the court to have at its disposal an ability to impose the death penalty if the jury found him guilty and found that the nature of the crime was heinous enough to warrant it. By all means, let us protect the right of the accused. Let us not minimize the rights of the victims, particularly our youngest citizens.

Before sitting down and allowing others to speak, within the bill, I just wanted to point a few items. In terms of the review of the death sentence, there is an automatic sentence review. When a person is sentenced to death, the Supreme Judicial Court shall review the sentence. That sentence review is automatic, in addition of any errors raised on direct appeal. Excess of our disproportionate sentence, if the Supreme Judicial Court finds the sentence excessive or disproportionate to the sentence imposed in similar cases, the court may in addition to any of its other powers set aside a sentence and remand the case to trial court for the imposition of a sentence of life imprisonment. Direct appeal, the sentence review and direct appeal, if any, have priority over other cases and must be heard. The sentence of death may not be executed unless the sentence is reviewed and affirmed.

Also, when a person is convicted of the murder of a child under 6 years of age, in this legislation, the court shall conduct a separate sentencing proceeding to determine whether the person should be sentenced to death or life imprisonment. After hearing all evidence, the jury shall deliberate and recommend to the court the sentence of life imprisonment or a sentence of death. The recommendation of the jury must be based upon its consideration of the matters relating to whether the murder was especially heinous, atrocious or cruel. Ladies and gentlemen of the House, the jury must reach a unanimous decision. The court may not impose a sentence of death unless it finds that the murder was especially heinous, atrocious or cruel. When the court imposes the sentence of death, the determination of the court must be supported by specific written findings of fact based on the records of the trial in this sentencing procedure.

When I was done with the public hearing a reporter asked me, you had a lot of people opposed to this measure, what do you think about that? I held up the picture of young Cassidy, who never got to reach her second birthday. I just simply said that I think they need to look at this picture of this little girl who is now dead. I will leave you with those thoughts. Those are the reasons, ladies and gentlemen, why I entered this legislation. It would allow the people to decide. I would ask for your support. Mr. Speaker, when the vote is taken, I would ask for the yeas and nays. Thank you.

Representative MacDOUGALL of North Berwick **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. Truly the crime that was described by the good Representative from North Berwick, Representative MacDougall, was a horrible crime in any state. The murder of a child is horrible at any age. Those who have proven to have committed that crime should face the severest punishment we can offer under due process.

Two things, I would ask the Clerk to Read the Report and then I would like to continue on with my remarks.

Representative **POVICH** of Ellsworth **REQUESTED** that the Clerk **READ** the Committee Report.

The Clerk **READ** the Committee Report in its entirety.

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

Representative **POVICH**: Mr. Speaker, Men and Women of the House. Dr. Kimberly Cook, a criminology professor at the University of Southern Maine told us that 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, these are not in order of importance certainly, the death penalty is a terribly expensive budget item. It has been shown that in every jurisdiction where the death penalty is employed, the price tag far strips that cost of life without parole sentence. Each execution is approximately six times the cost of a life imprisonment sentence. It becomes more compelling. Third, problems remain with racial bias in capital punishment with issues of poverty. 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 on a referendum, 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. The question is, not asking in the referendum question contemplated in this LD, do you favor reinstating the death penalty? Fifth, and perhaps most chilling, is the research conducted on the miscarriages of justice where factually innocent people have been sentenced to death and executed. Research has shown 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.

In the modern death penalty there have been 77 innocent people released from death row around the country after the states admitted that they had the wrong person. A fellow in Alabama by the name of McMillen, a black man, 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

McMillen. Two others had received money for their perjured testimony.

A Hispanic in 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 Texas firm entered this case and devoted the firm's resources and expertise for that case. His conviction was overturned. The court said that we are left with a firm conviction that Mr. McMillen was denied his Constitutional right to adequate council in a capital case in which actual innocence was a close question. The state had paid defense council \$11.84 per hour. Unfortunately, the justice system got only what it paid for. There are 400 more examples as chilling as this.

Twenty-four years ago this Legislature disbanded the parole system. This body said that if you are sentenced to a life term in prison, you will stay in prison for your natural life. You will die in prison if you are sentenced to a life term in Maine. 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 this person is innocent, we can release the person, make apologies and restitutions, 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."

I would like to conclude my remarks from reading from a wire report in Tuesday's edition of the *Bangor Daily News*. The headline read, Wrongly Convicted Man Set Free After 15 Years, Lexington Oklahoma. "A man was freed from prison 15 years after he was wrongly convicted of rape, based partly on a testimony from a police chemist, now under investigation for incorrectly identifying the evidence. Oklahoma county prosecutors received a report Monday from a California laboratory that a DNA test showed sperm and hair taken from the scene of the rape were not from the 39-year-old Jeffrey Todd Pierce. Former police chemist, Joyce Giltrist, now on paid leave also testified in the cases of 12 inmates who are on death row in Oklahoma and 11 who have already been executed. Those cases are being re-examined as are hundreds of others she worked on."

This bill seeks to render the ultimate condemnation, but how do we guarantee that we do not condemn the wrong person? Please support the pending Ought Not to Pass motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bristol, Representative Hall.

Representative HALL: Mr. Speaker, Ladies and Gentlemen of the House. The good Representative from Ellsworth has just made a compelling argument against the death penalty, but his five good reasons are not sufficient for me. For me, Mr. Speaker, there is only one compelling argument. It is simply this. The taking of life is always evil. The commission of a second act of evil can never correct the first. I urge you to please vote for this motion.

The SPEAKER: The Chair recognizes the Representative from Buckfield, Representative Gagne.

Representative GAGNE: Mr. Speaker, Ladies and Gentlemen of the House. I think the debate, the death penalty debate, is what you are getting into. I think that Representative MacDougall is talking more about the issue. I think that the time that we did discuss death penalty, I can remember investigating this and the cost of just the housing of a wing at the prison, the cost of creating a special way to do this no matter whether it was for the murder of a child or the murder of anyone, it was just

overwhelming for our state to afford to do that. That is what I remember. I don't know what the fiscal note is on this, but I would imagine it is tremendous. It is not so much that I would think it was worthy of the death penalty, but I don't think is in a position to do anything about it, unfortunately.

The SPEAKER: The Chair recognizes the Representative from Poland, Representative Snowe-Mello.

Representative SNOWE-MELLO: Mr. Speaker, Men and Women of the House. I stand here today because I am a cosponsor of this bill. I guess the reason why I cosponsored the bill was because in honor and respect for the child that was murdered by being literally cooked in an oven in Auburn a number of years ago. That stuck in my mind. It will always stick in my mind that the parents of that child literally got away with that murder, in my estimation. The good Representative that spoke before this, that this is evil, yes, the taking of any life is probably evil, but remember that that child was defenseless. That child did not have the parents there to protect her because they were the ones that committed this crime. In that case, there is absolutely no doubt in anyone's mind that they were the ones that performed this insane, hideous crime. That is why I cosponsored this bill. I think that many people in my district also believe, as I do, because they believe that our criminals are getting away with too much and that we aren't tough enough. It has been a joy and a pleasure for me to serve on the Criminal Justice Committee and I have learned a lot. I think that we have been fair on our committee in addressing a lot of these matters. Remember there are many people, many of our constituents, that truly believe in the death penalty. Yes, it is probably very expensive, but it is a statement.

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

Representative KASPRZAK: Mr. Speaker, Ladies and Gentlemen of the House. I realize that the debate will not change anyone's opinion on this issue because usually on these big issues people have their minds made up on before they come to this point. There are just a couple of points I would like to address for the record and then I will sit down.

The first one is that the death penalty is not a deterrent to murder. I would have to say that I disagree with that. One person will be deterred from committing murder and that is the person who loses their life for taking another. He will never commit another murder. The death penalty system is seriously flawed. If this is true, that defense lawyers are often ill trained and unprepared and grossly underpaid, then that is a very sad statement on our system and probably a lot of it is that people are going to jail and being punished then. The whole system is flawed and maybe we need to look at the entire thing. Thirdly, innocent people are executed. I will say that I am not for innocent people being executed, but I am also not in favor of at least 35 million innocent persons having been murdered by way of abortion either. The death penalty is unevenly applied that this statement says that many jurors are influenced by racial bias. I will say for the record that more minorities, percentage wise, are aborted than others. Are you for ending abortion due to racial bias? The financial cost of the death penalty can overwhelm the justice system. According to what we received on our desk the flyer by the good Representative Povich of Ellsworth, one out of 38 states still have the death penalty, but only one has had financial difficulties due to the death penalty. Thank you.

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. 192**

YEA - Ash, Bagley, Belanger, Berry RL, Blanchette, Bliss, Bouffard, Brannigan, Brooks, Bruno, Bryant, Bull, Bumps, Bunker, Canavan, Chick, Chizmar, Clark, Colwell, Cote, Cowger, Crabtree, Cummings, Daigle, Davis, Desmond, Dorr, Dudley, Dugay, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Goodwin, Green, Hall, Hatch, Hawes, Honey, Hutton, Jacobs, Jodrey, Kane, Labrecque, Landry, LaVerdiere, Laverriere-Boucher, Lemoine, Lessard, Lovett, Lundeen, Madore, Mailhot, Marley, Marrache, Matthews, Mayo, McDonough, McGlocklin, McGowan, McKee, McKenney, McLaughlin, Mendros, Michael, Michaud, Mitchell, Muse C, Muse K, Nass, Norbert, Norton, Nutting, O'Brien LL, Paradis, Patrick, Peavey, Perkins, Perry, Pineau, Povich, Quint, Richard, Rines, Rosen, Savage, Sherman, Simpson, Skoglund, Smith, Sullivan, Tarazewich, Tessier, Thomas, Tobin D, Tracy, Trahan, Tuttle, Twomey, Usher, Volenik, Watson, Weston, Wheeler EM, Wheeler GJ, Young, Mr. Speaker.

NAY - Andrews, Annis, Berry DP, Bowles, Buck, Carr, Chase, Clough, Collins, Cressey, Duprey, Foster, Glynn, Gooley, Haskell, Heidrich, Kasprzak, Ledwin, MacDougall, Murphy E, Murphy T, Pinkham, Schneider, Shields, Snowe-Mello, Tobin J, Treadwell, Waterhouse, Winsor.

ABSENT - Baker, Duncan, Jones, Koffman, McNeil, Morrison, O'Brien JA, O'Neil, Richardson, Stanley, Stedman.

Yes, 111; No, 29; Absent, 11; Excused, 0.

111 having voted in the affirmative and 29 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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The following items were taken up out of order by unanimous consent:

**PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE**

The following Bill was received, and upon the recommendation of the Committee on Reference of Bills was **REFERRED** to the following Committee, ordered printed and sent for concurrence:

**LEGAL AND VETERANS AFFAIRS**

Bill "An Act Concerning the Penalties for Late Filing of Accelerated Campaign Reporting Under the Maine Clean Election Act"

(H.P. 1352) (L.D. 1809)

Presented by Representative TUTTLE of Sanford.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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**SENATE PAPERS**

The following Joint Order: (S.P. 624)

ORDERED, the House concurring, that Bill, "An Act to Increase Funding for the Maine Dental Education Loan Program," H.P. 692, L.D. 896, and all its accompanying papers, be recalled from the Governor's desk to the Senate.

Came from the Senate, **READ** and **PASSED**.

**READ** and **PASSED** in concurrence.

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

**REPORTS OF COMMITTEE**

**Divided Report**

Majority Report of the Committee on **NATURAL RESOURCES** reporting **Ought Not to Pass** on Bill "An Act to Regulate Waste Transfer Facilities"

(H.P. 388) (L.D. 509)

Signed:

Senators:

MARTIN of Aroostook  
SHOREY of Washington  
SAWYER of Penobscot

Representatives:

ANNIS of Dover-Foxcroft  
BAKER of Bangor  
TOBIN of Windham  
KOFFMAN of Bar Harbor  
COWGER of Hallowell  
CLARK of Millinocket  
DAIGLE of Arundel  
DUPLESSIE of Westbrook  
CRABTREE of Hope

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A"** (H-485) on same Bill.

Signed:

Representative:

TWOMEY of Biddeford

**READ.**

On motion of Representative CLARK of Millinocket, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

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

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**CONSENT CALENDAR**

**First Day**

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the First Day:

(S.P. 42) (L.D. 210) Bill "An Act to Fund the Maine Biomedical Research Program" Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A"** (S-210)

(S.P. 60) (L.D. 224) Bill "An Act to Reinstate Emergency Assistance for Dependents of Veterans" Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A"** (S-209)

(S.P. 397) (L.D. 1313) Bill "An Act to Fund the Capital Construction and Improvements Reserve Fund" Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A"** (S-208)

(H.P. 1078) (L.D. 1447) Bill "An Act to Protect Off-track Betting Facilities" Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A"** (H-481)

Under suspension of the rules, Second Day Consent Calendar notification was given.

There being no objection, the Senate Papers were **PASSED TO BE ENGROSSED** in concurrence and the House Paper was