

# MAINE STATE LEGISLATURE

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OF THE

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(First Special Session)

OF THE

STATE OF MAINE

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tunity to come to a hearing and make the views of myself and his supporters known.

Mr. McBreairty was granted permission to speak a third time.

Mr. McBREAIRTY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question through the Chair. If this is not a mandate program, why is it these young people cannot get a drivers license?

The SPEAKER: The gentleman from Perham, Mr. McBreairty, has posed a question through the Chair to anyone who may care to answer.

The SPEAKER: The Chair recognizes the gentleman from South Berwick, Mr. Goodwin.

Mr. GOODWIN: Mr. Speaker, Ladies and Gentlemen of the House: I don't know how many more times I have to explain it and other people do. It is not mandated upon the schools. It is required of 16-year-olds to have drivers education but it is not mandated upon the schools to teach it. There is nothing in the law which says you have to teach it, there is nothing in the law that says you have to teach automobile drivers education. This is something that has developed over the course of time.

There are 16-year-olds that can't have automobile drivers education because either the courses are filled — I have had people complain to me because they can't get it because local school district courses are filled. It is not mandated on the school systems to provide this.

The SPEAKER: The Chair will order a vote. The pending question is on the adoption of House Amendment "A". Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

48 having voted in the affirmative and 22 in the negative, House Amendment "A" was adopted.

The SPEAKER: The Chair recognizes the gentleman from Bridgewater, Mr. Finemore.

Mr. FINEMORE: Mr. Speaker, have we got a quorum?

The SPEAKER: The Chair will check, everybody in their seats kindly vote.

The Chair will announce that a quorum is present.

The SPEAKER: The Chair recognizes the gentleman from Corinth, Mr. Strout.

Mr. STROUT: Mr. Speaker, I move that we reconsider where this amendment was adopted.

The SPEAKER: The gentleman from Corinth, Mr. Strout, moves that we reconsider our action whereby House Amendment "A" was adopted. The Chair will order a vote. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Mr. Farley of Biddeford requested a roll call.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of Mr. Strout of Corinth to reconsider adoption of House Amendment "A". Those in favor will vote yes; those opposed will vote no.

#### ROLL CALL

YEA — Albert, Ault, Berry, G. W.; Birt, Carpenter, Carter, Conners, Cote, Curtis, Dam, Drigotas, Durgin, Farley, Finemore, Gould, Hewes, Hunter, Hutchings, Jacques, Kelley, Lewin, Lewis, Lunt, Lynch, MacEachern, Mackel, MacLeod, McBreairty, McKernan, Perkins, T.; Peterson, P.; Rollins, Shute, Sprowl, Tarr, Teague, Tozier, Walker, Webber.

NAY — Bachrach, Bennett, Berry, P. P.; Berube, Boudreau, Burns, Bustin, Call, Carey, Chonko, Churchill, Clark, Connolly, Cooney, Cox, Curran, P.; Davies, Doak, Dow, Dyer, Faucher, Fenlason, Flanagan, Fraser, Garsoe, Gauthier, Goodwin, H.; Goodwin, K.; Gray, Greenlaw, Henderson, Hennessey, Hobbins, Hughes, Ingegneri, Jackson, Jalbert, Jensen, Joyce, Kany, Kauffman, Kelleher, Kennedy, LaPointe, Laverty, Leonard, Lizotte, Lovell, Mahany, Martin, A.; Martin, R.; Maxwell, Miskavage, Mitchell, Morin, Morton, Mulkern, Nadeau, Najarian, Peakes, Pearson, Pelosi, Perkins, S.; Peterson, T.; Pierce, Post, Powell, Quinn, Raymond, Rideout, Rolde, Saunders, Silverman, Snow, Snowe, Spencer, Strout, Stubbs, Susi, Talbot, Theriault, Tierney, Torrey, Truman, Twitchell, Tyndale, Wagner, Wilfong, Winship, The Speaker.

ABSENT — Bagley, Blodgett, Bowie, Byers, Carroll, Curran, R.; DeVane, Dudley, Farnham, Hall, Higgins, Hinds, Immonen, Laffin, LeBlanc, Littlefield, McMahon, Mills, Norris, Palmer, Smith.

Yes, 39; No, 91. Absent, 21.

The SPEAKER: Thirty-nine having voted in the affirmative and ninety-one in the negative, with twenty one absent, the motion does not prevail.

Mr. Spencer of Standish offered House Amendment "B" and moved its adoption.

House Amendment "B" (H-1155) was read by the Clerk and adopted.

The Bill passed to be engrossed as amended by House Amendments "A", "B" and "C" and sent up for concurrence.

The following papers appearing on Supplement No. 1 were taken up out of order by unanimous consent:

#### Divided Report

Majority Report of the Committee on Judiciary on Bill "An Act to Revise the Maine Criminal Code as Recommended by the Criminal Law Revisions Commission" (Emergency) (S. P. 697) (L. D. 2217) reporting "Ought to Pass" in New Draft "A" (S. P. 777) (L. D. 2334)

Report was signed by the following members:

Messrs. COLLINS of Knox  
CLIFFORD of Androscoggin  
— of the Senate.

Mrs. MISKAVAGE of Augusta  
Messrs. SPENCER of Standish  
HENDERSON of Bangor  
McMAHON of Kennebunk  
PERKINS of South Portland  
HEWES of Cape Elizabeth  
HOBBINS of Saco  
BENNETT of Caribou

— of the House.

Minority Report of the same Committee reporting "Ought to Pass" in New Draft "B" under New Title Bill "An Act Making Certain Revisions in the Maine Criminal Code" (Emergency) (S. P. 778) (L. D. 2333) on the same Bill.

Report was signed by the following members:

Mr. MERRILL of Cumberland  
— of the Senate.

Mr. HUGHES of Auburn  
— of the House.

Came from the Senate with the Majority Report accepted and New Draft "A" Passed to be Engrossed as amended by Senate Amendments "A" (S-488), "B" (S-495) and "C" (S-496).

In the House: Reports were read.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, I move we accept the Majority "Ought to pass" Report in New Draft "A" and would speak to my motion.

The SPEAKER: The gentleman from Stan-

dish, Mr. Spencer, moves that the House accept the Majority "Ought to pass" Report in New Draft "A" in concurrence.

The gentleman may proceed.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: The matter which is now before us is the bill to revise the Maine Criminal Code as recommended by the Criminal Law Revision Commission. There are a number of significant changes in the criminal code proposed in this bill and there will be a number of amendments to this bill submitted at second reading.

The only distinction between the two reports that are now before you is the question of when a person may utilize deadly force in their dwelling. The majority report of the committee provides that deadly force, which is defined as any force which is likely to cause death or serious bodily injury, may be used against an intruder into your house, somebody who was in your house in order to commit a crime, either if you feel that they are likely to use unlawful force against you or anyone else in the dwelling, also, if they are there to commit a crime, you warn them that they are to get out of your house and they refuse to get out. That is the only distinction between the two reports.

The criminal code, as it now exists, limits the use of deadly force for the situation where you reasonably believe that they are likely to use unlawful force against you or someone else in your dwelling.

The committee report provides that if somebody is in your house and you reasonably believe that they are there to commit a crime, if they are there unlawfully with the intention of committing a crime and you warn them and they refuse to leave, then you have the right to use deadly force against them.

The situation that this was drafted to deal with is a situation that has been discussed across the state where a person enters the dwelling which is occupied, for example, by a single person. The person who is in the dwelling has a gun. The person who is in the house committing the crime says, I am in your house and I am here to commit a crime but I am not going to hurt you. You have no reason to be afraid, I am not going to hurt you but I am going to rob you and burglarize the house. Or, another situation would be where a person came into the house and said, we are not going to hurt you but we have a truck here and we are just moving out all of your stuff. In that situation, under the present formulation there is a concern that you would not be able to stop this offense from being committed. Under the code version, you would have the authority to go and get your gun, point it at the person who was there and say, get out of here or I am going to shoot you, and if the person did not leave, you would then have the right to use deadly force against them. If the person did leave, in that situation you would not have the right to use deadly force.

Another situation which often might occur and which was of concern to the people that were disturbed with the present formulation is that somebody is in your house, you come upon them rummaging through your bureau or taking your stuff, they hear you and they start to run out the door carrying your television or whatever it is that they have taken. Under the majority recommendations, you would not, and I can't emphasize this strongly enough, you would not have the right to shoot somebody whose back was turned to you who was running out with a television set because they would be terminating the criminal trespass and it would not be necessary to use deadly force to terminate the criminal trespass. I think the question that is involved here is a matter of fundamental importance and we are really talking about the circumstances under which it is possible to take a human life. The committee has somewhat broadened the provisions of the present code so that you have the right to force someone who is in your house committing a crime to get out, as long as you warn them first. I think that extension is justifiable, but I think that the committee report has still retained the basic

provision of Maine law that human life should be placed above property.

sions of the present code so that you have the right to force someone who is in your house committing a crime to get out, as long as you warn them first. I think that extension is justifiable, but I think that the committee report has still retained the basic provision of Maine law that human life should be placed above property.

The only situation where you would be permitted to use deadly force under the committee recommendations where you would not be permitted under the code is where there is a person committing a crime in your house, you point the gun at him and he refuses to leave. In that situation, under the committee recommendation, you would have the authority to use deadly force.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mr. Hughes.

Mr. HUGHES: Mr. Speaker, Ladies and Gentlemen of the House: I hate to debate reports that are minorities as small as this minority, but as the acting House Chairman has said, this is a matter of life and death. It is not the life and death of thieves that I am especially concerned about, it is the life and death of people living in the house, of children living in the house, of people somehow entering the house on innocent purposes but mistakenly thought to be thieves, and it is those kinds of people that I am concerned about.

I think in our hysteria, to do something about a very real problem — that is, breaking and entering — we may be overlooking what are the real consequences of what we are doing. This is why I just want to take a few minutes to help make those consequences clear and then let you make your judgment.

We should know at first that we have not, when we passed this criminal code last year, changed the law of Maine. The law of Maine, since the early 1870's, has been that you may use deadly force only to defend your life or the life of others. We made no change in that; all we did in that when we adopted the code last year was to write it down in black and white in the criminal code the kind of thing the code was designed to do.

A columnist in one of our weekly newspapers picked it up, misinterpreted it, and that kind of misinterpretation spread around this state that somehow you and I had changed the rights of Maine people to defend their homes. We certainly had not.

Maine law, since 1870, has drawn the distinction between life and property. I would propose, in my minority report with a gentleman from the other body, to maintain that distinction, to leave the law just as it has been since the early 1870's.

I have an unusual ally in this effort, the Bangor Daily News, in an editorial, which I swear was not written by the usual editorial writer, defended this approach and said, don't change the code provisions on deadly force. It is a very thoughtful editorial: I am just sure it is not written by the man who writes the others that we have read. He has obviously done a lot of work on it. It has been distributed and I hope you will read it. I won't try to repeat all those arguments.

Here is my real concern. Again I am not concerned about thieves, I think they take a chance when they break into somebody's house. While I would not use deadly force on them personally, I can understand people's desire to do that, and it doesn't particularly concern me. What concerns me is this, that we are taking a stance, telling the people of Maine and encouraging this attitude that they have the right to defend anything with deadly force. That attitude leads to loaded guns lying around the house, to loaded guns lying around the house where there are probably children.

If you look at the real world and look at the statistics, the deaths in Maine are not caused by people breaking and entering and then shooting the homeowner. Most deaths in Maine are caused by accidents within the family or a member of a family either drunk or in a fit of emotion shooting another member of the family. Indeed, the majority of murders in the State of Maine are simply one member of a family killing another member of the family or a close friend. If we change this law from what we have had for 75 years, we are moving in the direction of encouraging that kind of attitude, encouraging the buying of weapons and then we do one thing further, we put our thieves on notice to do one of two things, to either desist from stealing, and that is what we hope they will do, or to arm themselves and be sure they have got a gun when they break into a house because the homeowner is armed and has some kind of license, probably to most citizens a vague license that they won't understand, to shoot them. I think we have just escalated the level of violence by this kind of move. I don't mind if you do it, I just wanted to say what I thought we were doing. That is why I have taken a few minutes to debate a matter of life and death.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: I hope that you will vote to accept the majority report as recommended by the gentleman from Standish, Mr. Spencer.

I would go further than does the majority report, and you may have seen that there is a House Amendment "B" that I will propose to offer at second reader that I believe is on your desks, and that relates to whether a warning need be given.

It seems to me that if a person breaks into your dwelling house, you shouldn't be obligated to first have to ask the intruder what he or she is doing. It seems to me that by asking, you give away your position and you may not live through the experience. If you want to ask him what he is doing there, that is perfectly all right, but I think to impose upon you that burden is going too far. So we in the Judiciary Committee who felt as I do, agreed to go along with the majority report at this time rather than to get involved in three reports — and there were other discussions and several compromises made — but go along with the majority report at this time and then the amendment relative to having to give a warning can be offered and debated at another time.

The SPEAKER: The Chair recognizes the gentleman from Madison, Mrs. Berry.

Mrs. BERRY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to ask a question if I might. What is the definition of deadly force? Is it killing somebody or wounding or just what would it be?

The SPEAKER: The gentleman from Madison, Mrs. Berry, poses a question through the Chair to anyone who cares to answer.

The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: In response to the question, the definition of deadly force is such force that the person using such force is reasonably likely to cause death or serious bodily injury. Then there is a section which says that if you fire a gun at a person, that is deadly force. In other words, there is no distinction in the code between shooting to kill and shooting to maim or shooting to wound. The reason that it is defined that way, I think, is that the experience is in these situations, if the gun is pointed at somebody and fired at them, the likelihood is that the actor really doesn't have, in most cases, enough control to be sure that he can draw the distinction between wounding

somebody and killing them. So, the language is if it is likely to cause serious bodily injury or death.

The SPEAKER: The Chair recognizes the gentleman from Madison, Mrs. Berry.

Mrs. BERRY: Mr. Speaker, Ladies and Gentlemen of the House: Am I led to believe that if somebody came in my house and I caught him and he started out the door with something under both arms, and I have a gun in the house, perhaps I might wing him on the leg just to stop him and what would happen then?

The SPEAKER: The gentleman from Madison, Mrs. Berry, poses a question through the Chair to any member of the House who cares to answer.

The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: In answer to the question of Representative Berry, if he was on his way out, and I know there is a great deal of feeling about wanting to "mark" one, and that is "wing them," the code as presented by the majority report would not permit that. He is leaving the premises and is terminating the criminal trespass. I suspect most of us would say "halt and drop what you have got or I am going to wing you," but I would suggest that you not do that while he is back to. The better part of valor would be say, "please turn around," then wing him because if you just happen to kill him you have got a better chance of holding your own in court.

Of the two reports, as has been indicated to you, this gives you what many people would like to have that they don't have now without going so far as to say that you do have a right to shoot somebody in all circumstances. We do have to keep in mind that there are circumstances that could develop where the use of a gun could really jeopardize innocent people, and you get the situation of estranged husbands and wives who come knocking on the door and they are going to lug off all the stuff and, you know, a gun, if permitted to be used in those circumstances, could well kill somebody and be downright outright murder.

So this ended up, by virtue of the majority report, in suggesting that if you have reason to believe that a person is in your premises committing a crime and you have reason to believe that to warn him would not endanger your life because you don't have to warn him, if you do suspect that your life is in danger, then he fails to stop what he is doing right then, and that is get out, you have a right to shoot him and kill him, not just wing him.

The minority report says, no. As has been clearly indicated to you, if he is there and he says, look I am going to be out of here in about five minutes if I can get it all out in that period of time, and if I can't, then I may take an extra ten minutes but I am not going to harm you, so if you go over in a corner and stay out of the way, nobody will do you any harm, just leave us alone, and you set there fretting about it, wishing you could go to a phone but you didn't happen to have one. The law, under the minority report, says you could not shoot him. You could not fire a gun and shoot him.

We have taken the stronger position, which I think is the temperament of this time at least, that we should have the right to say, get out this is my place and only my place, and if you don't do it you may be dead. The argument that was posed that it will put thieves on notice to carry guns with them because the homeowner is going to have a gun, I am not going to buy, not really. I think even a thief is afraid for his life, I really do. I think the thing we are concerning ourselves with today is the fact that he is so assured that the law is going to protect him that he can get by with going to the house and going through the process, as I told you before, before

the homeowner won't dare shoot him if he has no right to.

The SPEAKER: The Chair recognizes the gentleman from Sanford, Mr. Gauthier.

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: In Sanford a couple of years ago, there was one of our executives that came to his home and as he appeared at the door he noticed that there was a van in front of the door with Massachusetts plates and they had filled the van with most of the furniture in his house. If you accept the minority report, there is nothing he could do. All they had to do is go off with the van. I think the people should have some kind of protection.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker, Ladies and Gentlemen of the House: I have a couple of questions. Do you think a homeowner who might have a gun or some other deadly weapon would be able to distinguish between terminating unlawful conduct or determining criminal trespass? I think we are getting into some fine, tricky distinctions here. I really would question the ability of most of us to make that kind of judgment.

Secondly, on page 11, perhaps a member of the committee could answer another question. This is on L. D. 2334, the majority report, under Section 34, Subsection 2. A person is justified in using deadly force upon another person when he reasonably believes that such other person has entered or is attempting to enter a dwelling place. Can you tell me when this would apply?

The SPEAKER: The gentleman from Waterville, Mrs. Kany, poses a question through the Chair to any member who cares to answer.

The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I apologize, someone was asking me another question and I missed the question of the Representative from Waterville.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: I will try to answer the questions of Representative Kany. Insofar as the ability of the individual to reasonably determine when a person is committing a trespass, the one thing that we have in our system is a jury that we feel is a jury of reasonable men that will be able to determine whether or not our acts were such that they constituted a reasonable decision as to whether or not a trespass was being committed. Consequently, we have to make the decision as reasonable men in a given set of circumstances, and if we are wrong, a jury will determine that. If we are right, they will likewise determine that. So I think that section will take care of itself just by virtue of our system of justice, which I am very proud of.

The second issue is, what does it mean under Section 34, Title 17, 2-d. A person is justified in using deadly force upon another person when he reasonably believes that such other person has entered or is attempting to enter. It goes on to say more because there are other conditions involved there, but I think it means that deadly force may be used when, just as it says, such other person has entered or is attempting to enter. I can't conceive of a situation when I wouldn't know whether a person has either entered or was about to.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker, Ladies and Gentlemen of the House: These are serious questions to me. I am sorry to take your time, but I feel the need to.

The answer to your first question was that

after the fact then that determination would be made. That is the way I understood it. The determination would always be made after the fact as to if that individual with that deadly weapon exercised reasonable judgment in using deadly force. Thank you for answering that.

The second answer didn't really satisfy me. We were talking about a person is justified in using deadly force upon another person when he reasonably believes that such other person has entered or is attempting to enter a dwelling place. I am wondering if that applies to someone other than the homeowner in this particular case? I am not sure just looking at the bill, and if so, would it mean that if my niece, who is a freshman in college and in our community, comes and enters our home when we are away for the weekend, could a neighbor shoot her?

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: Again, in answer to Mrs. Kany's question, I think if she reads the rest of the section, it says that when he reasonably believes that such other person has entered or is attempting to enter a dwelling place or surreptitiously remained within a dwelling place without a license or privilege to do so and that deadly force is necessary to prevent the infliction of bodily injury by such other person upon himself or a third person present in a dwelling place. Consequently, you don't get the right to use deadly force merely because he is entering, you get the right to use deadly force when you believe he is attempting to enter or he has entered without any right to be there and that you have reason to believe that it is necessary to use that deadly force because he is about to inflict bodily harm upon you or some third person there, and that is the only time. So, if a niece is in the process of attempting to hammer somebody over the head with a hammer and you at that point decide she shouldn't be there, I would say you have the right to use deadly force.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: In response to the question of the Representative from Waterville, under paragraph 3 of Section 104, which is part of Section 26 in the bill, the initial sentence says a person in possession and or control of a dwelling place or a person who is licensed or privileged to be therein is justified in using deadly force upon another. This section applies only to the person who is in possession or in control of a dwelling place or licensed to be there and it is the person in that house that this section deals with, not with a neighbor who lives across the street.

The SPEAKER: The Chair recognizes the gentleman from Mexico, Mr. Fraser.

Mr. FRASER: Mr. Speaker, Ladies and Gentlemen of the House: Just a short question. What if somebody came into my house and I chose to use physical force. In other words, if I was lucky enough to let him have one on the chin and he was knocked out and I could capture him, what would happen then?

The SPEAKER: The gentleman from Mexico, Mr. Fraser, poses a question through the Chair to any member who cares to answer.

The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I think that the police would come and make an arrest. You are able to use nondeadly force against anyone who is committing a crime in your presence, so you could stop somebody, you could grab them, you have the power to make an arrest of anyone who is committing a crime in your presence. If he then escalates and turns on you and

threatens your life, then you would have the right to use deadly force if you needed it to protect yourself. There is no problem as far as nondeadly force is concerned.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: I am not sure if this point has been clarified or not, but one has the right to use deadly force only if it is necessary, it has to be necessary in order to prevent the action against yourself for the trespass. In other words, an individual is obliged to use nondeadly force, all other alternatives, calling the cops if you can or whatever. It is only when you have absolutely no other alternative and it is necessary. Only under those conditions may you use deadly force.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Joyce.

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I have a great deal of difficulty with this particular bill. Several times I was up to the Judiciary Committee. We exchanged ideas on it. I guess only yesterday I decided that I have got to accept the position spoken today by Representative Spencer of Standish. We can probably stay here all day and split hairs on this thing but you have got to realize that out there in that jungle people live in fear.

Not too many years ago I went on a case of this break and entry in a house, and I will tell you what it amounts to. It was down to the Deanery at St. Luke's Cathedral in Portland. It was three o'clock A.M. the dean was asleep, his wife beside him, the infant child in the nursery next door. People tell you many times, and I don't believe in ESP, but the clergyman's wife woke up at three and just opened her eyes, and as she opened her eyes, there was this man leaning over her in the bed looking into her eyes. This is the type of thing that you are talking about. You are talking about the house bandits that go in with a flashlight and they take a stocking off and put it over the flashlight so they can get around and you not see them. When you hear the noise, you are in fear. Sometimes you will never see these people.

This good lady saw them and how she could do this, she just rolled her eyes and watched them and he went through the dean's pants that were hanging on the door and got \$15. Yes, I was fortunate and arrested the guy because I had sent him to Thomaston College a few years before and he was out, he got his education down there.

These are the people. And I think that this bill, the way Representative Spencer has explained it to you, is going to let these people know that we respect the rights of a person's home. It is still his castle. We have got to make this clear.

The good gentlelady from Madison, the problem of the guy running out and hitting him on the way out, this is no problem. We had a basic rule in law enforcement about the officer who went to investigate the old dead horse complaint. It was Schenectady Avenue. The poor guy, it took him two hours to drag the horse around the corner so he would be on Hill Street — he couldn't spell Schenectady. This is what you have to do, drag him back into the house.

This thing has been knocked around and I know it has been knocked around and really admire the people in the Judiciary on this one. I told them I didn't think I could give them much help because, boy, there are a lot of problems.

Most house breakers, when people break into your house in the middle of the night, most people don't report it. This is hard for the lay person to believe. We pick up these people and they would make us a list, and this is standard operating procedure, we would tell them, look, we are going to send you down, you know, and you would give them all the rights the court said

you had to do, put them in a soft chair, speak to them gently. You know, we would do this and they would say, gee I have got a friend in there, Captain Joyce, and I said, listen, you are in the cradle of liberty here in the Police Station. I would say to them, look, let's get it all off and confession is really good for the soul. They would list off, and I would protect their rights, they know that, they would list me off 20 houses, so we had the grand tour. We always had the grand tour when we saw the sun come up in the morning. We would take that fellow and say, look, it is kind of too bad, if you have to go to Thomaston for four years and the day you get out we are waiting at the door to arrest you again on something that you did last week. So, we take him around the city, they point out — "I went in that house on the corner, third floor. I went in this one, this one," and they tell us. So, eight o'clock in the morning the detectives show up and we have the list and they check them out. They go and some young lady said, Yes, I didn't want to report it. When the man came in here he made an indecent attack on me and I didn't want that in the record. A man came in here, and you know, he stole undergarments, things like this, they are embarrassing, he ransacked my room and he didn't have anything but he kissed me before he left. So, I didn't want to report it.

It is a real problem in that jungle out there to these people that feel that they have got a right to go into anybody's house. You know, we give them so much protection that they can walk the streets, practically cut through your back yard at night. Listen, let's keep them out of the bedroom, that is what this will do.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mr. Hughes.

Mr. HUGHES: Mr. Speaker, Ladies and Gentlemen of the House: I think my purpose in debating the issue has been accomplished. I think we have had a good and thoughtful debate on this subject. I would just simply add one final thing, and that is what the real world really is. Maine, last year, the year previous to this last one, the one for which I have got the statistics, had 12 murders and nine of those 12 murders were a member of a family killing another member of the family or a friend killing a friend. That is the kind of situation that we have in the real world, death caused by people who either get angry, get drunk or for some reason lose control of themselves and there is a loaded weapon handy and they shoot somebody with it. I am saying, if you move in this direction, you ought to understand that that is probably one of the consequences. Thank you for this thoughtful debate.

The SPEAKER: The pending question is on the motion of the gentleman from Standish, Mr. Spencer that the House accept the Majority "Ought to Pass" Report. All in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

81 having voted in the affirmative and 10 having voted in the negative, the motion did prevail.

New Draft "A" was read once. Senate Amendment "A" (S-488) was read by the Clerk and adopted in concurrence. Senate Amendment "B" (S-495) was read by the Clerk and adopted in concurrence. Senate Amendment "C" (S-496) was read by the Clerk and adopted in concurrence.

Under suspension of the rules, the New Draft was read a second time.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: There are a number of amendments which are still being printed by the Legislative Research Office and I would ask that someone table this for one day.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: I would like to offer House Amendment "B", which is one that we more or less were discussing a few minutes ago relative to giving a warning. I have no objection, of course, to the whole bill being tabled at some other date, but at this moment, I would like to offer House Amendment "B" and move its adoption.

House Amendment "B" (H-1161) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: I would like to call your attention to L. D. 2334 on Page 9. This deals with the deadly force that we were talking about earlier. Under the report that we accepted, first reader, there is a provision relative to one being in ones dwelling house on Page 9, Section 104, Subsection 4, it says, "A person may use deadly force under these circumstances, only if he first demands the person against whom such deadly force is to be used to terminate the unlawful conduct and the other person fails to immediately comply with the demand, unless he reasonably believes it would be dangerous to himself in order to make the demand."

In other words, the way the bill is now, before you could use deadly force. In answer to the gentleman from Madison's question, you would have to give the other person some kind of warning unless you believe it would be dangerous to yourself to make such a demand. I submit that is going too far. I submit that Section 4 should be removed and if you do want to give a warning you are certainly free to but, if you don't want to, then you don't have to. I am thinking of a situation where a person lives alone, perhaps she is upstairs on the second floor and she can see down through the stairway to someone who is leaning over the bureau where her silver is kept or around the safe or something, if she were to tell him to leave, he might turn and attack her. I submit that Section 4 should be removed.

House Amendment "B" removes Section 4 and renumbers 5 to number 4 as a result and that is that part of it.

It also changes the charge of a telephone harassment to be the same as a general harassment to a Class E crime.

I do hope that you will adopt House Amendment "B".

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: In order that you would not have to consider the important matter of changing harassment by telephone to a Class E crime in the same bill as the matter of whether or not to warn someone before you killed them, I have had prepared another amendment that deals solely with the change regarding harassment by telephone so that we can discuss the deadly force question as an isolated issue. If this amendment is not adopted, I will offer an amendment that would reduce harassment by telephone to a Class E crime.

The question that is posed by the amendment submitted by Mr. Hewes, I believe, to be one which is profoundly serious to the number of killings which are going to occur in this state after this code is adopted.

On Sunday afternoon, I was talking to a police officer at Batch's Take-Out in Baldwin who told me of a case that he had come across in the past couple of months where a woman was in the house alone, a person was banging on the door, she was afraid, she called the State Police and said, that there is someone breaking into my

house, can you get over here? The police got there as soon as they could, the person was still outside, it turned out that he had been in a car accident, was badly injured, was in a state of shock, and that there was someone else in the car who was also injured, and that he was trying to get help, but because he was in a state of shock, he was unable to communicate clearly to the people who were in the house.

If Representative Hewes amendment is adopted, the people in the house would have been entitled to shoot that person even if they didn't feel that they or someone else in the dwelling was in danger of bodily harm or unlawful force.

Under the code, as it is now written, you have the right to use deadly force if you believe that the person who is attempting to enter or has entered your dwelling is likely to use unlawful force against anyone in the dwelling. In that case, you don't have to give a warning. If you think that they are going to hurt you or someone in the dwelling, you don't have to give a warning. The only time when we have said in the committee amendment that you have to give a warning is where the person is in your house, you don't feel that you are in danger then you have to give them a warning before you shoot them. The example might be a situation where you came into the kitchen and you found one of your neighbors children going through your wallet. You knew that the child was not armed, don't make it a child, make it a teenager, you could tell that he was not armed, but he was in your house and he was committing a crime. If you eliminate the warning requirement where there is no feeling of physical danger, I think you have created a licence to kill. I think that the result of this, if you eliminate the warning requirement will be just what Representative Hewes was talking about, that people will come out, they will see someone in the house and they will be able to start shooting. I think that the real question on this warning thing is, in fact, whether we are going to put property ahead of life. I don't think that we should. I think that if you can point the gun and say get out of here and they do, I don't think that you should be able to kill them.

I think that where you don't feel that you are in danger but you just want to get the person out of your house, I think that you should warn him and then if he leaves, that is that, you should call the police.

I would urge you not to eliminate this warning. I would move the indefinite postponement of House Amendment "B".

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Talbot.

Mr. TALBOT: Mr. Speaker, Ladies and Gentlemen of the House: I just want to clear up a couple of things that I have got on my mind. I have been sitting here listening because I didn't want to take part in the debate and I didn't want to drag it on and on.

This whole section scares me, there is just so much that can happen and, as most of you know, I sponsored gun legislation during the regular session last year and I did get in on a lot of what is happening and what you are talking about now. I think I understand what we are doing or what we are trying to do. I think we are dealing with two different areas, one the law, and the other one is life itself. Because, as I understand it, from my negative education, is if I wake up some night or in the morning and I wake up and I see somebody at the window or I see a shadow in the hall I just react, you know, I don't have time to go to the poster on the wall to find out what I can do and what I can't do according to the law. I just automatically react or that is what I think I would do, because I think the only deadly weapon I have got in my house is me, besides my wife. I don't have a gun. I don't have those things. Maybe my question is this, dealing with this amendment, is that if I do see somebody in my house early in the morning and there

is a shadow and suppose I do have a gun and I don't ask them to leave or if I do ask them to leave and then I shoot them dead, do I have to have a witness or who is to know what I asked him?

My other question is this: All of a sudden I wake up in the morning and there is someone running out of my front door, like the gentleman from Standish, Mr. Spencer said and instead of carrying the TV, he is carrying my child. What happens in that case? I understand Mr. Spencer says I can't shoot him. In other words, I can't shoot him in the back and there is no way in the world I can get around to the front, but there is a way that I am going to stop him and I am going to do everything — let me put it this way, I have got four girls with my wife and if I woke up or if I happened to turn around and there is a burglar or somebody is standing there that I don't know anything about, the fight is on, I would rather face the prosecution and that I guess is another question, what is the prosecution, what am I going to be charged with and how much because I would rather face that than face the possibility of going to a funeral of one of my children. This whole section really bothers me, there is just so many things that can happen because of life itself. I guess those are some of my questions that I have to have answered.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: In regard to this amendment and some of the questions that have been raised by Representative Talbot or his concern, I would like to state that the law, under the code, as it will, if it goes into effect, at least, does not require that a warning be given if you have reason to believe that it is dangerous to do so either just because of danger to yourself or to someone else. This deals with someone in your house. So, I re-emphasize that, the circumstances that were suggested of waking up and finding somebody in your room in the middle of the night, I would think, would be reasonable enough to me, to use deadly force to remove him or stop him. I think I would have reason, personally, to believe that it would be dangerous to myself or to someone else, possibly, to ask him to leave. So, it always ends up being an ultimate decision of facts at a given time. I assure you that in any case related, as it was by Mr. Talbot or just by myself right now, that a jury of 12 people, I think, would easily find that I was justified in using deadly force without warning. This is not saying that you have to give warning in every case. It is only where it is possible to do so without there being danger by giving the warning to yourself or to some third person that you are required to give that warning. I would hope that you would support the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I would like to clarify one point which is, if somebody is committing a kidnapping, which is the case that Representative Talbot raised, any citizen has the right to use deadly force upon another person when he reasonably believes it necessary to prevent another person from using unlawful deadly force against himself or a third person or when deadly force is necessary to prevent the person from committing or about to commit a kidnapping, robbery or forcible sex offense, so that those are all covered by a different section in the code.

The situation that we are discussing really is limited to the situation where there is a person who is in your house committing a burglary, he comes into the house illegally to commit a property crime and you have two choices really, you either can tell him to stop, if you think you are in danger you can use deadly force, if you don't think you are in danger you have two

choices, if you have a gun, you could say, stop where you are and arrest him or you could say, you get out of here. If you said stop where you are and he did, at that point you would have him under your control and you would be able to take care of the situation either by calling the sheriff or by having him get out, one or the other. If you said get out of here and he did, then you are no longer in danger. Those are the only situations where the two committee reports are different. The question regarding the kidnapping you have the right to use deadly force to prevent a kidnapping or a serious sex offense and you also have the right to use deadly force to effect an arrest in the case where a person has committed a crime involving the use of deadly force. Those are all in different sections of the code where the committee was unanimous.

The SPEAKER: The Chair recognizes the gentleman from Franklin, Mr. Conners.

Mr. CONNERS: Mr. Speaker, Ladies and Gentlemen of the House: I support the amendment of Representative Hewes, and over the years, we have kept considering and this seems to be all that we consider is the criminals rights. We don't seem to take into consideration the victims rights. I know that if I was in my home at night and I heard some noise downstairs and I came down and saw my television set or any of my property going out the door, I would hope that there would be a clause within the criminal code where I could plead temporary insanity, because I would probably do this. I would use whatever force was necessary whether it was knife, firearm or whatever was at my convenience and then this would probably be the way I would have to plead, because I earned that property, it is mine, and I don't intend to give it up to anybody that feels that they can come into my home and take it.

The SPEAKER: The Chair recognizes the gentleman from Farmington, Mr. Morton.

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: I took the privilege of going to the hearings on this particular bill, at this particular point, when they were discussing this use of deadly force. I have attempted to study what is meant by the original criminal code, the wording of it and I would urge you people in this house to realize that the Committee on Judiciary has put an infinite amount of care in choosing of the words and the setting up of the statute in Report A and it is a philosophical difference on those who prefer Report B. I think it is quite evident that Report A is favored by a majority here, but in going the distance that they have gone, in the Judiciary Committee, you had some of the finest minds in this legislature working on this problem. They have, over countless hours, discussed the wording. In my opinion, we would be making a tremendous mistake if we attempt to change that wording here in this body this afternoon. I urge you to consider very carefully if you really and truly think this wording should be changed. I think it should not.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: In response to the hypothetical question posed by the gentleman from Portland, Mr. Talbot, I think that he would want to adopt the amendment under circumstances that he gave. Otherwise, I think he would have to give a warning to someone before he would be able to use his deadly weapon or deadly force. Deadly force is not limited strictly to a use of a weapon or a gun. I would like to read for you the definition of deadly force in Section 2 of the Criminal Code, the Criminal Code that will go into effect May 1st and which was passed by the legislature and signed by the Governor last year. Deadly force means physical force which a person uses with the intent of causing or which he knows to create a substantial risk of causing death or serious

bodily injury, intentionally or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force, end of definition. So, I submit that the use of a shoe, if you were to get up at night in the dark and go down through the hall of your house with a shoe in your hand that the shoe is the nearest weapon that you had, that well would be a deadly force within the definition.

Now, with respect to the gentleman from Farmington, I agree, we are discussing a philosophy now, but I submit that the amendment which was Committee Amendment "B" which we adopted a few minutes ago, is not sacred. Section 4 can be removed without effecting the rest of the code except to renumber the one behind it which was numbered five, then becomes number four. I submit that a person should have a right to protect his property, his home is his castle, and I think the homeowner, it might be a rugged person, such as yourself, or as the gentleman from Franklin, Mr. Conners, but it might be your mother or anybody's mother or grandmother here that is living alone or an older gentleman, one of us, or an older person 70 or 80 years of age, whereas the intruder is a young person in good health and I think that this having to give a warning would just be something to ignite or cause the intruder to turn and attack the other person. I think this warning bit is wrong and should be removed and I hope you will vote against the pending motion to indefinitely postpone the amendment.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: Representative Hewes has raised a number of points, I think ought to be clarified. First of all, in the Talbot example, of the person who is leaving the house with the child, there is no requirement of a warning in that case. If you look at Section 34 of the bill, before you, which is on Page 11, you will see that a person is justified in using deadly force upon another person who is under A-2, committing or about to commit a kidnapping. Now, in that section, there is no requirement that the person give a warning. If you feel that you are in danger or that someone else in your house is in danger, you don't have to give a warning. If however, there is someone in your house committing a crime and for some reason, you know that you are not in danger, for example, if the person committing the crime is somebody that you know who isn't and hasn't ever been dangerous but who might be stealing something out of your house, if you have no reason to think you are in danger, then we require that you warn the person. The reason for that to reverse what Mr. Hewes is saying is that because the person in the house might be your mother, it might be a child, it might be a neighbor. If you don't feel that you are in danger before you kill a person you ought to let them know that you are there and that you are armed and that you have a gun. Now, if you are in a situation where you think it would be dangerous to warn them, you don't have to warn them. So, it is only in the situation where the person is in your house, you don't feel that you are in danger, you have a gun, you have got to warn them. The reason for that warning, and I think it is darn important, is so that if it turns out that the person is not somebody who is there to commit a crime, you will find out about it. If it is the person who is banging on the door because they have been in a car accident and they want help, you are inside the door and you say I have a gun, stop breaking in here, you give them a chance to say that I am just trying to get help. That to me, is crucial, because if you are not in danger, you shouldn't kill somebody before you give them a chance to terminate the conduct which is creating the problem. I think that this warning is a very important thing in

this area where you don't feel that you are in danger.

The SPEAKER: The Chair recognizes the gentleman from Stow, Mr. Wilfong.

Mr. WILFONG: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question through the Chair to any member of the Judiciary Committee. Does a person have to be stealing something inside your house, can they be in your garage, let's say, and you see out the window, you see them carrying things out of your garage or you see them going in the window of your garage, can you shoot them if we adopted Mr. Hewes amendment, could you shoot them half way out the window?

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: In response to the gentleman's question, this amendment, in fact this section, does not deal with the garage, it deals only with the dwelling house which would be the house in which you are living, it does not include an out building or garage. Either way, it is immaterial, we are not discussing that.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: All this talk going back and forth here this afternoon, I would like to pose a question through the Chair to any one of our learned brothers to define just what is burglary in the State of Maine? We have talked about going in and out of buildings or crime outside, if you are knocking on the door it is a crime, inside, you have got to be committing a crime, to my way of looking at police work, and I had thirty years of it, it is a crime to be in there in the night time in the first place, that is burglary. I would like to have some of our learned brothers here, well not my brothers, but they are learned in a sense, I would like to have somebody define the charge of burglary in the State of Maine.

The SPEAKER: The gentleman from Eastport, Mr. Mills, poses a question through the Chair to any member who cares to answer.

The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: Under the code, a person is committing a burglary if he unlawfully enters the dwelling or unlawfully remains surreptitiously within the dwelling with the intent of committing a crime within the dwelling.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: I pose another question to the same gentleman. According to my training, if he is in on the property at all, if it is in the day time, it is a breaking and entering in the day time with intent. At night time, it is burglary with intent. Now, am I right in those definitions, sir?

The SPEAKER: Mr. Mills of Eastport, poses a question through the Chair to the gentleman from Standish, Mr. Spencer, who may answer if he so desires.

The Chair recognizes that gentleman.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: As I understand the provisions of the code, the distinction between the day time and the night time is not retained and it is a burglary if you are unlawfully within the dwelling with the intent to commit a crime.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: I would pose a third question to the gentleman. Would you say the person was unlawfully there if they weren't invited to come?

The SPEAKER: The gentleman from Eastport, Mr. Mills, poses a question through the

Chair to the gentleman from Standish, Mr. Spencer, who may answer if he so desires.

The Chair recognizes that gentleman.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: A person is trespassing if they are on the property without a license to be there.

The SPEAKER: The Chair recognizes the gentleman from Ellsworth, Mr. DeVane.

Mr. DeVANE: Mr. Speaker, Ladies and Gentlemen of the House: Through the Chair, I would direct a question to any member of the Judiciary Committee. I would inquire what right the intended victim would have, to not ask the intruder to leave but to demand that the intruder remain fast, hold fast. Now, if the intruder, sir, initially responds by holding fast but then you do call the police and the intruder says "I am leaving", and proceeds to leave, does then the intended victim have the right to use deadly force because they wish the person prosecuted?

The SPEAKER: The gentleman from Ellsworth, Mr. DeVane, poses a question through the Chair to any member who cares to answer.

The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: Under the code, as I understand it, you would have the right to make an arrest by saying stand fast and pointing the gun at the person. Once, and I think I am going to have to rely on other members of the committee to correct me if I am wrong, once you had the person under your control I think that at that point if the person indicated that he was going to resist that arrest, you would have the right to use additional force in order to maintain your control. I don't think, as the code is now drafted, that if the person ran for the door, you would have the right to use deadly force against them unless they had committed a crime or were in the process of committing a crime which involved the use of deadly force or which was a serious offense such as kidnapping, rape, homicide, those offenses. I think, and I would really want to look at the code before I gave you a firm answer, I think that you would have the right to use deadly force to maintain control over that person if they had committed a serious offense. If it were simply a theft situation and they ran for the door, I don't think, at that point, you could kill them.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Talbot.

Mr. TALBOT: Mr. Speaker, Ladies and Gentlemen of the House: I will be as brief as possible. I just want to ask one more question, which comes from another angle, I think and that is, if we do adopt the warning, now if we defeat this motion and do adopt the warning where you have to give the warning before using deadly force, are we, in fact, telling a burglar by law or burglars, if that happens to be their business, that you can go and burglarize and maybe even go a step further because nothing is going to happen, until you at least get a warning?

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: In response to the gentleman's question, I submit that is the exact issue, yes, if the amendment is not adopted, then the thief knows that you have to give him a warning before he could be attacked with a deadly weapon.

The SPEAKER: The Chair recognizes the gentleman from Stow, Mr. Wilfong.

Mr. WILFONG: Mr. Speaker, Ladies and Gentlemen of the House: Let's see if I get this scenario straight. Let's assume that we have somebody in my house and they are in my bedroom, and they are searching around going

through my clothes and I wake up and I see them there. First of all, I am going to have to have, to use deadly force, if it is a rifle or a knife or something like that unless it is my fist, I am going to have to make a motion or a shoe as Mr. Hewes said — I am going to have to make a motion, I am going to have to get up out of bed or I am going to have to do something, that burglar is going to know that I am there. At that point, the burglar may choose to run. If he chooses to run, I am probably going to let him run as long as he is not running away with my wife, or if he chooses to fight at that point, deadly force, you can use it, as I understand the way the code is written, you will be able to use it, so I can start swinging, I can grab whatever I have there to defend myself. Let's assume that he is not in my bedroom, let's assume he is downstairs and I wake up and I hear something down there and I go to the head of the stairs and on my way, I reach into my closet and I grab a shotgun and I look down the stairs or look through the other room and I see this fellow rifling through a set of drawers. It is dark out and I have the shotgun and I have it aimed at him and I give him a warning. I say, don't move, I am going to blow your head off. I just wonder if you were able to defend yourself because, first of all, after you say that, he decides to run at you, you are going to be able to shoot him under the law. If he spins around with a gun, he really doesn't know where you are and you are going to be able to shoot him as well. I think there is a very fine line here.

I remember when I was a kid, my father used to work away on construction and he used to tell me, because I was the oldest boy in the family and he said, you have to take care of your brothers and your mother, etc., we had a shotgun in the house. He used to come home every Friday night and on this particular occasion, he called my mother and said he wouldn't be home. Well, somewhere along the line, he decided to change his mind and decided to come home and we had locked the doors. I was sleeping on the second story and my window was open and I heard the window go up, downstairs in the kitchen, I said, hmm, I looked out the window and I just saw this shadow, this arm and leg going in through the window and so being 13 or 14, I grabbed the shotgun that was in my father's room and proceeded out to meet whoever was coming. Fortunately, my father is as big as I am so he was easy to identify and it was somewhat light and I could see that it was a big figure and I figured it had to be him but I said, Dad, is that you? If I hadn't said that, I suppose I could have shot him and it certainly would not have been very good.

I think it is a very serious question we have here and I really question, if that person is not going to harm me, is my television set really worth that much to me? I don't know, I think that that is something every one of you will have to answer. If you think your television set is worth more than just giving a warning and being prepared to do whatever is necessary to defend yourself, after you have given that warning, I don't know, it is a very serious question.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: There have been several questions raised here just recently. I know that it is late and we would like to move along very quickly.

First of all, I think that Representative Hewes response to Representative Talbot's question is just the opposite from what he said, I don't believe that the code, as written, authorizes the thief to assume that he can come in and roam around, do whatever he wants to without his risking the chance of being shot and shot dead. The aspect of the warning goes to the



degree of dangerousness as the person who has the gun sees it.

The circumstances as described by Representative Wilfong point up the very serious problems that do develop. You can get the circumstance of somebody in your room in the middle of the night and it is equally clear it can be just as dangerous to provide a warning as not. You pick up the gun and say hold it, stop, you can make a citizen's arrest. And in respect to Representative DeVane's question, it is clear in the code on Page 10, Section 30B, deadly force, only when he reasonably believes such force is necessary to effect a lawful arrest or prevent the escape from such arrest of a person who in fact, the private citizen has made reasonable efforts to advise the person that he is a private citizen attempting to effect an arrest and the person is about to escape.

In other words, if you say, hold it, you are under arrest, and if you move, you have had it and he moves and you shoot him dead, then you are in, you are okay, but you should weigh the problem of what constitutes being in a dangerous position where you do not have to give the warning. If there is a chance that the person you are going to shoot may not be going to commit the crime intended or is not, in fact, the person that you thought he might be, then it would be just as well to give the warning first, and if you are, as I say, in a position where it is so dangerous or you believe that it is dangerous to give that warning and shoot, then you are protected.

The SPEAKER: The Chair recognizes the gentleman from Calais, Mr. Silverman.

Mr. SILVERMAN: Mr. Speaker, Ladies and Gentlemen of the House: Having been one of the legislators that put in this amendment before the Judiciary Committee in the hopes that a person could protect his property or a boat or home against the thief or burglar, I more or less would go along with the committee's report.

We are dealing with a most serious situation here. It is very easy to laugh, it is not a TV screen, it is not a motion picture screen, it is an attempt by the State of Maine to allow a person to protect his dwelling from intruders. It is also the most serious approach to life of the protection of life. If we take, for an example, a burglar or a thief stealing in a persons dwelling and you are standing upstairs and you are watching with a firearm and you say, well, that would be an easy shot, if you are the type that cares to kill, you could kill him dead or if you are capable of wounding, then you could, as the Representative said, wing him, but in my belief in protection of life, which is my background, I do believe that right should be protected and before someone's life is threatened there should be a warning. I think that the Judiciary Committee in coming out with a report that it came out with, I would favor that report and vote against the amendment.

There is one aspect which hasn't been totally clarified to me and in my approach to this problem, I asked that if a person shot — not to kill — and wounded a burglar, would the person who shot him be free from being sued? This to me was most important because in our system with courts and judgments today, a person can be sued, say, and it could be most expensive, even though he is innocent, even though he is the victim, be most expensive for him to be protected under the law. That I think is a little weak in the criminal code, using deadly force as I see it. I do believe that there should be a warning before someone takes another person's life if that is necessary.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: In answer to the gentleman from Calais, Mr. Silverman's ques-

tion, in respect to civil suit as a result of wounding someone, that is one of the primary reasons that this code has been enacted in this form. It tells those circumstances where an individual is justified in using the deadly force that we don't have now in the law, and under those circumstances, if one was wounded and he fell within these provisions, the person always may be sued but he has the defense which is available to him and the burglar could not recover.

The SPEAKER: The Chair recognizes the gentleman from Stowe, Mr. Wilfong.

Mr. WILFONG: Mr. Speaker, Ladies and Gentlemen of the House: I have a second thought on this thing. In the Bill of Rights that we have, and it was brought to mind because I happened to be watching a television program last night on Liberty, it was a very interesting program, and the Bill of Rights, I believe, guarantees us the right to own property and to protect property, it also guarantees the right of trial by jury. So, what is brought to mind here is that you have a burglar downstairs rummaging through your property with intent to steal and you at that point become judge and jury and can carry out the sentence. I wonder if that is just not pushing it too far. You can kill the person stealing, although I certainly don't recommend it and I wouldn't act very nicely to somebody who was in my house, I will tell you that, but I don't know if killing the person for that reason is a good thing to promote at all.

I think perhaps Mr. Hewes' amendment, although I believe it is really well intentioned, he sent me a note on a couple of things here, I think it is a gray enough area so that perhaps we should indefinitely postpone that amendment.

I certainly don't want to get into the position where we become judge, jury and executioner, and I think that is the position that we could slide into if we adopted that amendment.

The SPEAKER: The Chair recognizes the gentleman from Kennebunkport, Mr. Tyndale.

Mr. TYNDALE: Mr. Speaker, Ladies and Gentlemen of the House: I do not intend to continue this debate beyond the means of personal opinions of many lawyers in the House, which seems what this dialogue is all about, and I think we are forgetting one thing, that the law court may decide far differently than any of the opinions we have heard.

I certainly think that the one thing a person wants to do, if they are invaded by an outsider, is to be sure to get themselves a good lawyer on protection or else, as some other person said, which I think is too drastic a step, is to be sure he is dead because dead men don't tell any tales.

I don't see any reason, honestly, to be perfectly frank with you, to continue this dialogue through the rest of the evening and, as I said before, it is merely the opinions of a number of different lawyers.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: I have just had a book sent to me defining burglary and under the term of burglary, it is the breaking and entering of a house without a license to do so.

You also have the charge of trespass on private property, which is a very minor thing, but this is occurring during the nighttime and you are in your home with your family or without a family and a person makes an unlawful entry upon your property, it is my belief that if you can't apprehend this person by peaceful means, you may use force in any manner you so choose.

Therefore, when I sit down, I am going to vote in favor of Representative Hewes' amendment.

The SPEAKER: The pending question before the House is on the motion of the gentleman from Standish, Mr. Spencer, that House Amend-

ment "B" be indefinitely postponed. The Chair will order a vote. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Mr. Hewes of Cape Elizabeth requested a roll call.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: I think we have been talking in theory about men who are 6 feet 4 protecting their houses. We are talking about people who might only be 5' 2" and weighing 100 pounds and very feeble. I don't think they are the ones that ought to have to give warnings before they can try to protect their own dwelling places.

I hope that you will vote against indefinite postponement of this bill.

The SPEAKER: The Chair recognizes the gentleman from Dexter, Mr. Peakes.

Mr. PEAKES: Mr. Speaker, Ladies and Gentlemen of the House: What we are talking about is the value of human life over a material item that might be in your house, that is exactly what we are talking about.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: One final point. If you feel that you are in danger, you don't have to give a warning. We are only talking about whether you give a warning when you don't think that you are in danger. I think that if you are talking about taking a life when you are not in danger, a warning is not an awful lot to ask. When Mr. Hewes says that we are talking about your mother, your cousin and your little old ladies, it is true, we are talking about whether you are going to shoot them without giving them a warning, by a mistake.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: I would like to draw your attention to the fact that they are talking about you and your home and what you can do and what you can and cannot do, but they are not talking anything about the guy that is the burglar and breaks in without your permission, they don't tell you anything about him. That is the reason that I will support Representative Hewes.

The SPEAKER: The pending question before the House is on the motion of Mr. Spencer of Standish to indefinitely postpone House Amendment "B". Those in favor will vote yes; those opposed will vote no.

#### ROLL CALL

YEAS: Bachrach, Berry, P.P.; Birt, Boudreau, Burns, Bustin, Byers, Call, Carroll, Clark, Connolly, Cooney, Cox, Curran, P.; Davies, DeVane, Doak, Dow, Drigotas, Flanagan, Garsoe, Goodwin, H.; Greenlaw, Henderson, Hobbins, Hughes, Hutchings, Ingegneri, Jackson, Jalbert, Jensen, Joyce, Kany, Kennedy, LaPointe, Laverty, LeBlanc, Lewin, Lynch, Martin, A.; McKernan, Miskavage, Mitchell, Morton, Mulkern, Nadeau, Najarian, Peakes, Pearson, Pelosi, Perkins, S.; Peterson, T.; Pierce, Powell, Raymond, Rolde, Saunders, Silverman, Smith, Snow, Spencer, Sprowl, Susi, Tarr, Tierney, Usher, Wagner, Webber, Wilfong, The Speaker.

NAYS: Albert, Ault, Bagley, Bennett, Berry, G.W.; Berube, Blodgett, Carey, Carpenter.

Carter, Chonko, Churchill, Conners, Curtis, Dam, Durgin, Farnham, Fraser, Gauthier, Goodwin, K.; Gould, Gray, Hennessey, Hewes, Hunter, Immonen, Kauffman, Kelleher, Kelley, Leonard, Lewis, Littlefield, Lizotte, Lovell, Lunt, MacEachern, Mackel, MacLeod, Mahany, Martin, R.; Mills, Morin, Norris, Perkins, T.; Peterson, P.; Post, Rideout, Shute, Strout, Stubbs, Talbot, Teague, Theriault, Torrey, Tozier, Truman, Tyndale, Walker, Winship.

ABSENT: Bowie, Cote, Curran, R.; Dudley, Dyer, Farley, Faucher, Finemore, Hall, Higgins, Hinds, Jacques, Laffin, Maxwell, McBreairty, McMahon, Palmer, Quinn, Rollins, Twitchell.

Yes, 70; No, 61, Absent, 20.

The SPEAKER: Seventy having voted in the affirmative and sixty-one in the negative, with twenty being absent, the motion does prevail.

The Chair recognizes the gentleman from Sanford, Mr. Gauthier.

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: Mr. Spencer had asked that this bill be tabled for one day because of amendments coming in. I move that we table for one day.

The SPEAKER: The gentleman has debated the motion. There are other amendments that are ready and we could dispose of them at this time.

Mr. Gray of Rockland offered House Amendment "D" and moved its adoption.

House Amendment "D" (H-1170) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: As I understand the purpose of this amendment, it is to provide that in the event that a person is found guilty of a second burglary, there can be no suspension of the sentence.

In the amendments to the code, one of the things that we have tried to do is to re-emphasize and stress to the Judiciary the desirability of restitution to the victims of crimes. What I would urge you to consider in examining this amendment is the possibility that the Judiciary might feel in a case of a person, albeit a second offense, justice could be more properly carried out if that person were required to go to work and pay back the victim rather than be sentenced to a term of years. I think that on a second offense, in a very large percentage of these cases, the judges will sentence to a prison term, but we have tried to re-emphasize restitution as an alternative to that where it seems to be the best way of handling the case. My own feeling is that we would do better to leave the code as it is. I would urge you to vote against the adoption of this amendment.

The SPEAKER: The Chair recognizes the gentleman from Rockland, Mr. Gray.

Mr. GRAY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to share with you a postcard that I received from one of my constituents who is presently vacationing in Florida. I will read an excerpt from it. It says, "What is this legislation before you now? If someone breaks into your house, do you have to make sure he gets out safely? It puts quite a lot of responsibility onto the homeowner, I should say." Of course, the last vote we assured that he would get out of the house safely and now we hear the same people arguing that even if he is convicted twice, he should not receive a sentence. This amendment would just get after those who are trying to make a career out of burglary.

I don't take issue with the theory that they should make restitution to their victim, I certainly would support this. However, if they are going to make a career out of this, then I think

that they should be removed from society, if only for a short time, and that is what this amendment would do. It would simply restore mandatory sentencing for a second conviction of burglary, which was contained in the previous statutes.

The SPEAKER: The Chair recognizes the gentleman from Saco, Mr. Hobbins.

Mr. HOBBS: Mr. Speaker, I move for the indefinite postponement of House Amendment "D".

The SPEAKER: The Chair recognizes the gentleman from Franklin, Mr. Conners.

Mr. CONNERS: Mr. Speaker, Ladies and Gentlemen of the House: I support this amendment and if you remember, I think two years ago, a group of people in my district started a petition and inside of two weeks they had 4,250 names on it and brought these into the Governor to require a mandatory sentence for all crimes committed by second offense. I think it is about time that we did get at the criminal and this is one way of doing it.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mr. Hughes.

Mr. HUGHES: Mr. Speaker, Ladies and Gentlemen of the House: My own opinion of this amendment is a rather mixed one. I would not be unhappy to see it adopted; however, I don't think it is going to do a whole lot. The reason for that is that the penalties we have enacted for burglary are quite severe, either first or second offense.

Burglary is a Class A crime if the offender is armed. It is a Class B crime in certain other instances and it is a Class C crime in the remainder. The Class A crime has a 20 year maximum sentence, a Class B crime has a 10 year maximum sentence, and a Class C crime has a five year maximum sentence, so we are talking about a crime which has a fairly high mandatory sentence. In fact, if armed, it is the highest sentence we have for any crime.

I think the likelihood is that a person is going to get a sentence on the second offense. I don't think you are going to change much; I will probably vote for it.

The SPEAKER: The Chair recognizes the gentleman from Rockland, Mr. Curtis.

Mr. CURTIS: Mr. Speaker, Ladies and Gentlemen of the House: The point brought out by Representative Hughes, it just brings to mind my idea, because of the opinion of many of our judges that he must give a severe sentence for this crime is one reason why he may get off the second time. Let's show the criminal that if once convicted, on the second conviction he will receive the sentence.

The SPEAKER: The Chair will order a vote. The pending question before the House is on the motion of the gentleman from Saco, Mr. Hobbins, that House Amendment "D" be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

18 having voted in the affirmative and 77 in the negative, the motion did not prevail.

Thereupon, House Amendment "D" was adopted.

Mr. Burns of Anson offered House Amendment "F" and moved its adoption.

House Amendment "F" (H-1174) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: My amendment reinstates a mandatory sentence for the use of any crime committed with a firearm. If the individual is armed, he must have thought to get a gun. He had to take it with him, he had to premeditate the act that he was about to commit. I therefore feel that he should know what approximate sentence he will get if he does commit that crime.

When an individual puts a gun on, he automatically grows two feet. If he is already 3 or 4 feet high from alcohol or from drugs, you have a considerable giant on your hands when he gets there to commit the crime. A weapon, a gun, is an extension of his personality. He can reach out and get you. Fear is there. The victim is placed in mortal fear because of the weapon. It makes his job easier.

I would like to run down through the amendment and then if there are any questions I will go at it. This is an addition to the current code, it is added in. The state pleads and proves, it must prove, it must be by indictment or through information, and placed in the charge that he was armed while committing a Class B, C or D crime and it must be against a person. A minimum sentence then would be imposed and may not be suspended or put on probation. If the crime is a Class A crime, he shall serve four years; a Class B crime, he shall serve two years; and a Class C crime, he shall serve one year.

The provisions of Subparagraph 4 also applies, which states that any crime which is committed with a deadly weapon is automatically moved up one step for sentencing. We did not include D and E crimes in here because we could not find any D and E crimes that you could commit with a gun.

In the event that there are unique circumstances with the charge, there are several areas whereby this can be addressed. Number one, the indictment or the information — when the information is presented to the grand jury, the grand jury can take into consideration whether or not there are other circumstances, they may not wish to include the description that the man was armed.

Also, if the presiding judge should feel that there are extenuating circumstances as to why this individual was armed and he is charged as being armed, he could so instruct the jury that they could bring in a verdict of a lesser inclusive charge. Let's say that the charge was assault and battery with a firearm or while armed. The judge could instruct the jury and they could bring in a verdict of high and aggravated assault so, therefore, the mandatory sentence would not be in effect.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: I supported a bill in the last session that would ban handguns in this state. Ever since I have been in this legislature, I have never voted in here, to my knowledge, to handcuff the judges on mandatory sentences and I am not about to this afternoon. I think we have enough intelligent men and women who are sitting on the judicial benches of this state to use clear enough judgment without us writing it into the law books.

I move for the indefinite postponement of this amendment.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Norris.

Mr. NORRIS: Mr. Speaker,adies and Gentlemen of the House: I have stayed out this debate because there have been some folks that are a lot more knowledgeable than I am and I, like my good friend Mr. Kelleher, am opposed in most instances, practically every instance, to mandatory sentencing. I think that is the responsibility of the judges, unquestionably, except a person who is committing a crime with a firearm. If we don't do something, we don't retain what we have had along these lines, then they are going to take the firearms away from everybody, the people that are not criminals and the people that are.

I have been here many semesters with my good friend Mr. Kelleher and I agree with him that letting the Judiciary handle their business is great, but when it comes to crimes commit-

ted with firearms, there is only one place that they should go and that is to jail without any equivocation at all.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mr. Hughes.

Mr. HUGHES: Mr. Speaker, Ladies and Gentlemen of the House: My seatmate has given me a Wallace pin today and I have been wearing it for the last hour, it must be getting to me. I, too, support the amendment of Mr. Burns from Anson and I want to say that I supported it in the committee. The reason that you are hearing it now is because I lost in the committee and again I am in the minority. But I do think, although I oppose mandatory sentences in principle, in general, this is an area that we ought to carve out with a legislative pronouncement, that we are concerned about the use of guns by thieves and that we want to take special notice of it and we are even willing to put up with a little bit of unfairness to some people caught in a situation where perhaps the judge would not impose such a sentence, but we are willing to take that chance to try to teach a lesson to the criminal elements of this state, that indeed they ought not to be armed if they are going to commit crimes, and they ought not to commit crimes.

The code does provide for maximum sentences. A crime committed with a weapon would increase the class of the crime one notch so that, indeed, the maximum sentences would be very severe for crimes committed with a firearm.

I think, too, that the message we are trying to get across, and we really are talking about the psychological game as well as law, is to get a message across that we are not going to tolerate armed criminal behavior. I think that is why I support this motion and would oppose the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the gentleman from Orono, Mr. Davies.

Mr. DAVIES: Mr. Speaker and Members of the House: I rise today to support this amendment. My reason for supporting this amendment is I feel very strongly that we have a gun problem in this state and in this country. I supported the legislation that was presented by the Representative from Portland, Mr. Talbot, during the regular session which was unsuccessful, and I suspect that in the next couple of years it is going to continue to be unsuccessful.

I really feel this is a serious problem and because I do, I am going to go along with this, to give criminals who choose to use a gun in the commission of a crime full notice that if they commit that crime and they are caught and they are convicted, there will be no lenience, it is going to be definite. It is going to be known to them from the beginning of their actions that the ultimate result is going to be imprisonment. There will be no easy judge, there will be no technicalities, that person is going to go to jail.

I hope eventually we are going to move to some kind of control of firearms, particularly handguns, but until that time comes when we have enough people who are willing to support that, I am willing to go with this, what might be called a conservative measure, to give it a fair chance, to give it a test. If it doesn't work, we always have gun control that we can return to. But in the meantime, I want to go with something that is reasonable and something to give fair warning to the criminal who chooses to use a gun, that if he is caught and convicted, he is going to suffer the penalty without exception.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I have considered this provision at great length and there was a period when I thought I would cosponsor this legislation. My mind was changed by a situation that occurred in my district.

About two months ago, we had a situation

where there was a right-of-way across a person's land from one road to another that was used as a shortcut by a lot of people in the town. The person who owned the property felt that the people were driving across his land. The people who were using the roadway felt that the right-of-way had been established and that they had the right to take that shortcut. The situation got heated and the guy that owned the land got a truck full of gravel and he dumped it in the right-of-way cutting across his land.

The people who had consistently used the right-of-way were outraged that they — it wasn't clear whether it was a right-of-way or not, but they were extremely upset that this passageway had been blocked, and a whole group of people got together with shovels and they came and started shoveling gravel out of this right-of-way. The person who owned the property came out and some say that he had a shotgun and some thought that he didn't. But as I understand it, he had a shotgun and said, you all get off my land. Well, the people decided that they would leave and the town was all stirred up about it and we finally resolved it by having the town agree that they would go to court to determine whether or not that right-of-way was in fact a right-of-way and the people had the right to cross it or whether it belonged to the guy who owns the surrounding land.

If you had a mandatory sentence for a crime committed with a gun, in that situation, this person would have been guilty of criminal threatening and because he had a gun, it would have been a class C crime, and he would be required to spend a year in jail if he was charged with the offense and convicted.

While that is a pretty minor case and it is a rare exception to the general rule, and while I share the feeling of the people in this House that anyone who commits a crime with a gun ought to get a substantial jail sentence, I think that it may be a mistake and I have thought about this both ways and I have had conflicting feelings about it. I think it is a mistake to write a law which deals with every situation in a certain way when there are going to be some situations where the law doesn't apply.

I think that the judges of this state can and should and will, under the code, get the message that crimes committed with guns are viewed very unfavorably by this society and this legislature and I think that the people will be getting sentences when it makes sense. But in the rare case where it doesn't make sense, I think that the mandatory provision can create real problems. I think I am going to vote against this amendment on that basis, because I don't think that we can write a law today that will cover every case as well as the judiciary can and should be able to handle these matters.

I would urge you to consider that in voting on this amendment.

The SPEAKER: The Chair recognizes the gentleman from Stow, Mr. Wilfong.

Mr. WILFONG: Mr. Speaker and Members of the House: It is not often that I oppose the gentleman from Standish, Mr. Spencer, but I am going to today on this one. I feel that we should have a mandatory sentence also for the illegal use of firearms.

In the case that he mentions, I might also point out that it might teach that gentleman who came out with the shotgun a very good lesson if he had to spend a year in jail before he brought the shotgun out. Whether he is right or wrong, that is the wrong way to handle it.

I know of a case up where I live where one brother brought a shotgun out to get his brother off the property and they were gentlemen in their late fifties or early sixties, and he wound up shooting his brother before it was all over, killing him dead, absolutely dead.

If you bring out a weapon of any sort — we were taught this in military — bring out a

weapon of any sort, you are going to use it. That is the whole idea of bringing it out. In this society, I would think that before I got so angry by people shoveling dirt on something that I felt was a right-of-way that I would bring a shotgun out, it might do that gentleman a lot of good to sit in jail for a year.

I am going to support this amendment, because the only way we can get it across to some of these people that they should not use weapons, let's assume they were hungry and they were going to steal to feed their family, if I were in that situation, I would try to break in in the middle of the night and take something and leave. I wouldn't bring a gun along and try to hold somebody up in that case with a weapon if I were that hungry.

So if somebody has got a gun, they mean business and I think we should treat it that way.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Talbot.

Mr. TALBOT: Mr. Speaker and Members of the House: I have sponsored gun legislation in this House for two sessions, my first session and my second session, and I think I have a little bit of savvy in what I am trying to say.

I have been beaten in this House, and probably rightfully so, on gun legislation, but it was also those people who beat me on gun legislation, both at the hearing and in this House, that said they couldn't support gun legislation of that type in that kind of legislation, but they would support legislation such as this amendment. I, myself, voted against mandatory sentences in the regular session because I feel as Mr. Spencer does, but I am going to support this because I know that is one of the things that people want outside of this building.

I also testified before Congressman John Cormier's committee in New York City on gun legislation. It was also their feeling, their overwhelming feeling, that if gun legislation couldn't get through the House and the Senate at the federal level, that they definitely support and the people definitely support this kind of legislation. This isn't a bill, it is an amendment, but it does the same thing. If you don't pass this amendment, and I don't always like to go against my colleague from Bangor, but if you vote for indefinite postponement on this amendment, then we will be talking out of both sides of our mouth.

The SPEAKER: The Chair recognizes the gentleman from Livermore Falls, Mr. Lynch.

Mr. LYNCH: Mr. Speaker and Members of the House: I am sure we are all concerned in this general area, but I wonder if by mandatory sentence we are embarking upon a procedure by which we will open the front door to our prison for the more serious crimes, open the back door and let out many people who ought to be kept in jail for a while longer. I don't think we have the facilities to enlarge our prison population, and if you are going that route, then you certainly ought to consider funding an additional prison of some sort.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker, I would like to pose a question through the Chair to the gentleman from Anson or anyone else who may care to answer with respect to the use of deadly force that we have just adopted, if a person in fact uses deadly force mistakenly, a person is outside their dwelling and they didn't realize the technicalities of the law and they in fact kill or wound a person with a firearm, would they be required to serve a sentence in jail?

The SPEAKER: The gentleman from Bangor, Mr. Henderson, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and

Gentlemen of the House: In response to the question, the answer would be yes. He would have been armed and he would have committed a crime. If so charged, it would be. However, I tried to indicate in my initial presentation, number one, there are two built in possibilities, one through the indictment process. If the facts are really told to the grand jury, there is a good chance the grand jury may come back with no bill, or, they could come back with a high and aggravated assault charge without the weapon being mentioned, so therefore he would not be subject to this. The other way is through the judge and his charge to the jury, they could come back with a lesser crime.

There is a difference between this bill and the law that we have on the books or what I am asking and what we currently have on the books. What we currently have on the books states that if you commit a crime while armed, say that you are breaking into a place, you have a gun on you as you go in, you did not use this gun, it never came into play, under current law, you could be mandatorily sentenced to two years in jail. I have eliminated that in this provision. You must use this weapon in the commission of a crime and the crime must be against a person, not just against property but against a person.

I think we have answered the situation such as Representative Spencer alluded to. To Mr. Lynch's reference to loading up the jails and Thomaston, this measure in no way states that the sentence would be served at Thomaston. The Department of Mental Health and Corrections would still have their authority as they do under the criminal code, they would make the decision as to where this individual would serve his time. It could be in Thomaston, it could be out on the work farm, it could be in a halfway house or it could be on work release. We are not making any prejudgment as to where he should serve this.

The SPEAKER: The Chair recognizes the gentleman from Augusta, Mr. Bustin.

Mr. BUSTIN: Mr. Speaker, I am going to try for the dumbest question of the day award, and that relates to the phrase 'against a person.' Does that mean that this mandatory sentence would apply if the person carried the gun but did not shoot it, but would apply if he or she threatened to shoot it during the commission of a crime? Does the exact language of the amendment really pertain to the Statement of Fact?

The SPEAKER: The gentleman from Augusta, Mr. Bustin, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, in reply to the question, sir, it is the intention that the crime must be committed against another human being. If he waved the gun in front of him, it would be aggravated or armed assault. If he was carrying a weapon underneath his coat, the person did not know about it, then it would not come into effect.

The SPEAKER: The Chair recognizes the gentleman from York, Mr. Rolde.

Mr. ROLDE: Mr. Speaker, I don't believe anyone has asked for a roll call on this measure, and I would so ask.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question is on the motion of the gentleman from Bangor, Mr. Kelleher, that House Amendment "F" be in-

definitely postponed. All in favor of that motion will vote yes; those opposed will vote no.

#### ROLL CALL

YEAS: Call, Connolly, Cox, Dow, Hewes, Hobbins, Ingegneri, Kelleher, LaPointe, Lynch, Miskavage, Pearson, Powell, Spencer.

NAY: Albert, Ault, Bachrach, Bagley, Bennett, Berry, G.W.; Berry, P.P.; Berube, Blodgett, Boudreau, Burns, Bustin, Byers, Carey, Carpenter, Carroll, Carter, Chonko, Churchill, Clark, Conners, Cooney, Curran, P.; Curtis, Dam, Davies, DeVane, Doak, Drigotas, Durgin, Farnham, Faucher, Fenlason, Flanagan, Fraser, Garsoe, Goodwin, H.; Goodwin, K.; Gould, Gray, Greenlaw, Henderson, Hennessey, Higgins, Hughes, Hunter, Hutchings, Immonen, Jackson, Jalbert, Jensen, Joyce, Kany, Kauffman, Kelley, Kennedy, Laverty, LeBlanc, Leonard, Lewin, Lewis, Littlefield, Lizotte, Lovell, Lunt, MacEachern, Mackel, MacLeod, Mahany, Martin, A.; Martin, R.; McBrearty, Mitchell, Morin, Morton, Mulhern, Nadeau, Najarian, Norris, Palmer, Peakes, Pelosi, Perkins, S.; Perkins, T.; Peterson, P.; Peterson, T.; Pierce, Post, Raymond, Rideout, Rolde, Saunders, Shute, Silverman, Snowe, Sprowl, Strout, Stubbs, Susi, Talbot, Tarr, Teague, Theriault, Tierney, Torrey, Tozier, Truman, Tyndale, Usher, Wagner, Walker, Webber, Wilfong, Winship, The Speaker.

ABSENT: Birt, Bowie, Cote, Curran, R.; Dudley, Dyer, Farley, Finemore, Gauthier, Hall, Hinds, Jacques, Laffin, Maxwell, McKernan, McMahon, Mills, Quinn, Rollins, Smith, Snow, Twitchell. Yes, 14; No, 115; Absent, 22.

The SPEAKER: Fourteen having voted in the affirmative and one hundred and fifteen in the negative, with twenty-two being absent, the motion does not prevail.

Thereupon, House Amendment "F" was adopted.

The SPEAKER: The Chair recognizes the gentleman from Blue Hill, Mr. Perkins.

Mr. PERKINS: Mr. Speaker and Members of the House: Because of the verbiage that is in this bill and because I think you all have witnessed this afternoon the different interpretations that may occur in this, there was some question to the verbiage as it applies to Section 102, which applies to administering or furnishing drugs to children under 16. I have talked to the chairman of the committee and he suggested that this might be a problem and he suggested contacting the Attorney General's Office rather than submitting an amendment because the verbiage was in fact correct. I have done just this and the Attorney General's Office has furnished me with a statement of legislative intent, which I would like to read into the record at this time.

"It is the intent of this bill and the section which it corrects to make the criminal penalties more severe for trafficking in or furnishing schedule drugs to a child who is in fact under 16 years of age. It is not intended that this section prohibits parents or persons responsible for welfare of a child from administering drugs prescribed for the child by a physician or a dentist in good faith as a part of professional treatment. This section would apply, however, if the person was administering the drug for some purpose other than that intended by the prescription."

Mr. Spencer of Standish offered House Amendment "C" and moved its adoption.

House Amendment "C" (H-1162) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: House Amendment "C" reduces harassment by telephone to a Class E crime, which is the amendment that I

said I would present so that we could debate the warning question separately. There is another section in the code which is being included in the amendment which deals with harassment in general and makes that a Class E crime. Representative Hewes is correct, harassment by telephone ought to also be treated in the same manner. So I would urge you to support the amendment to make harassment by telephone a Class E crime with the same number of green lights that showed up on the last amendment.

Thereupon, House Amendment "C" was adopted.

Mr. Spencer of Standish offered House Amendment "E" and moved its adoption.

House Amendment "E" (H-1171) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: The purpose of House Amendment "E" is to include a number of provisions in the revisions to the criminal code which have been voted on by the committee since the bill had to be reported out. One of the problems that we ran into in establishing the category of a civil offense, which is not criminal, is that some of the fundamental protections that have been established in the Constitution may not be applicable to civil violations. So the principal purpose of this amendment is to provide the protection against self incrimination, which is built into the fifth amendment, and the right to be free from unlawful searches and seizures is also included in the case of civil violations.

In creating a civil offense, we ran into a problem where because it was a civil offense and not a crime, there was no power to make an arrest, so we ran into the situation that if an officer had reason to believe that somebody was committing a civil offense in his presence and he went up to the person and asked him who he was so that he could fill out the ticket, the person could say that his name was Mickey Mouse and that he lived at 2335 Sunset Boulevard in Hollywood, California, and there would be nothing that the police officer could do because he would not have the power to arrest the person. We have created a mechanism which allows the police officer to require identification and if the person wilfully refused to provide identification or wilfully fails, the officer may detain the person until he is able to verify the identification.

In this amendment, we have limited this to the civil offenses, so it doesn't apply in the situation of other offenses. The amendment has the support of the committee and I would urge you to support its adoption.

Thereupon, House Amendment "E" was adopted.

Mr. Silverman of Calais offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-1139) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, I would like to make a parliamentary inquiry as to the germaneness of House Amendment "A".

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. McKernan.

Mr. MCKERNAN: Mr. Speaker, I think the problem would be whether it violates Rule 28.

The SPEAKER: The Chair would rule that the House Amendment "A" violates Joint Rule 28 and Rule 21.

Thereupon, the Bill was passed to be engrossed as amended by House Amendment "D", "C", "E" and "F" and Senate Amendments "A", "B" and "C" in non-concurrence and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.