

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

One Hundred and Seventh Legislature

(First Special Session)

OF THE

STATE OF MAINE

1976

KENNEBEC JOURNAL

AUGUSTA, MAINE

CURTIS of Rockland
THERIAULT of Rumford
MORTON of Farmington
USHER of Westbrook

The Minority of the same Committee on the same subject matter reports that the same Ought Not to Pass.

Signed:

Representative:

POWELL of Wallagras

Which reports were Read.

The Majority Ought to Pass as Amended Report of the Committee was Accepted and the Bill Read Once. Committee Amendment "A" was Read and Adopted and, under suspension of the rules, the Bill, as Amended, was Read a Second Time.

Thereupon, on motion by Mr. Speers of Kennebec, tabled and Specially Assigned for April 5, 1976, pending Passage to be Engrossed.

Enactors

The Committee on Engrossed Bills report as truly and strictly engrossed the following:

An Act Relating to Community-based Facilities for Children and Adults. (H. P. 2142) (L. D. 2282)

Which was Passed to be Enacted and, having been signed by the President, was by the Secretary presented to the Governor for his approval.

The President laid before the Senate the following tabled and Specially Assigned matter:

Bill, "An Act Relating to Property of Survivor where Joint Deposits or Accounts are Involved." (S. P. 664) (L. D. 2102)

Tabled — April 1, 1976 by Senator Speers of Kennebec

Pending — Consideration

(In the Senate — Passed to be Engrossed as Amended by Committee Amendment "A" (S-460).)

(In the House — Passed to be Engrossed as Amended by Committee Amendment "A", as Amended by House Amendments "A" (H-1101) and "B" (H-1147) Thereto, in non-concurrence).

On motion by Mr. Collins of Knox, the Senate voted to Recede and Concur.

The President laid before the Senate the following tabled and Specially Assigned matter:

Bill, "An Act to Revise the Maine Criminal Code as Recommended by the Criminal Law Revision Commission." (S. P. 777) (L. D. 2334)

Tabled — April 1, 1976 by Senator Collins of Knox

Pending — Consideration

(In the Senate — Passed to be Engrossed as Amended by Senate Amendments "A" (S-488), "B" (S-495) and "C" (S-496).)

(In the House — Passed to be Engrossed as Amended by Senate Amendments "A", "B", and "C" and House Amendments "C" (H-1162), "D" (H-1170), "E" (H-1171) and "F" (H-1174), in non-concurrence.)

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I would like to make a parliamentary inquiry. Several amendments have been added to this bill in the other body, and it is my understanding that the Senator from Cumberland, Senator Merrill, wishes to offer motions relating to one of these amendments, and I wish to offer an amendment to House Amendment "E". Would the Chair advise us as to the proper procedure?

The PRESIDENT: Is it now the pleasure of the Senate to recede from its former action whereby the bill was passed to be engrossed?

It is a vote.

Whereupon, House Amendment "C" was Read and Adopted in concurrence, and House Amendment "D" was Read.

Mr. Merrill of Cumberland then moved that House Amendment "D" be Indefinitely Postponed.

The PRESIDENT: The Senator has the floor.

Mr. MERRILL: Mr. President and Members of the Senate: The criminal code revision bill, as it comes back from the other body with the amendments on it, would differ in several respects, two of which are relevant to the discussion here.

The criminal code, as it was originally written and as it would be amended by the passage of the bill recommended by the committee, would impose no mandatory sentences. The philosophy on the part of the committee in regards to that was, first, that the judicial branch would be in the best position to make a judgment in each individual case as to what punishment should be handed out. And it will be noted by those who are students of the past law and of the law as it will be changed by the code that in many instances those punishments that can be handed out by the court will be greater than they were in the past, representing a feeling on the part of the committee that some of these crimes could be and should be in many cases treated more seriously by the judiciary. Also, changes that have taken place in the courts due to the court revision have made it so now we can say that the punishments in many cases are handed out sooner, which is equally important to those of us interested in teaching a lesson to those who violate the law.

Also, the revisions in the code, as they have been suggested by the committee and as they have been amended here by the Senator from Androscoggin, Senator Clifford, place a much higher priority than in the past on the courts seeing to it that it can get restitution for the victims of the crime, not only to serve the victims, obviously, but to make that one of the elements of punishment. It is the feeling of the committee that restitution is a punishment that is not handed out often enough to those people who engage in crimes against property.

What we have before us in House Amendment "D" is an amendment which would impose a mandatory sentence in the cases of people convicted of burglaries for the second time. We will consider in just a few moments an amendment which has been offered by the House which is an amendment which would put into effect mandatory jail sentences for those people who commit crimes with a firearm. Now, there is a general philosophy on the part of those of us on the committee, and I think on the part of many in the legislature, as I stated earlier, that all mandatory sentences are probably not desirable. There is a recognition from those of us who are engaged in criminal law that when you demand a mandatory sentence that you are not ending the discretion of the penal process in whether or not the person will go to jail, because what you do is that you allow still, of course, prosecutorial discretion to charge with a lesser offense or for the policeman's discretion when he brings the case before the prosecutors. Also, of course, a lesser offense can be found by the court, even if he has been charged with the offense that would bring about the mandatory jail sentence.

So it has been felt by the committee that really very little is served, and in many cases, specific cases, mischief is done by mandatory jail sentences. However, I recognize that many members of the legislature, and some of them I am sure here, probably feel that in the case of a crime committed with a firearm there should be a mandatory sentence. We will be addressing that when we get to House Amendment "F", if anyone wishes to raise a question about it. It is the feeling of I think all of us on the committee that even if it is the will, or maybe especially

if it is the will of the legislature, that there would be a mandatory sentence in the case of crimes committed with a firearm, that it would give all the more strength to that statement, which of course is a statement on the part of the legislature of how abhorrent we feel crimes committed with a weapon are, if would give all the more strength to that statement if we were to have that be the only crime, the only case in the whole criminal code, where there is a mandatory sentence. What I am suggesting is that if any members of the legislature feel that it is important for us to make that statement in an especially strong and clear voice, it is probably all the more important or equally important that this amendment, House Amendment "D", be indefinitely postponed.

Second offenses of burglary, although they are obviously offensive to the legislature, I can assure those of you who don't have the occasion to be in courts of law that, whatever the actions have been in the past, that our judges are now being very strict in these cases and are in many cases handing out the maximum punishment, as I think that they should in many cases dealing with these people that repeatedly commit crimes against property and crimes against the dwelling place. It is the feeling of the committee that to single out burglary would really raise all sorts of questions about why other crimes haven't been singled out. It is not, in the feeling of the committee, as clearly distinguishable as crimes committed with a firearm in terms of the need to have a separate and special statement.

So it is then for the purpose of trying to remain true to the greatest extent to the idea that we don't think mandatory sentences are good, and also so that if we have any mandatory sentences in the code that it will be that special case of crimes committed with a firearm, that I ask the Senate to indefinitely postpone House Amendment "D", which is filed under 1170.

The PRESIDENT: Is it now the pleasure of the Senate to indefinitely postpone House Amendment "D"?

The Chair recognizes the Senator from Somerset, Senator Corson.

Mr. CORSON: Mr. President and Members of the Senate: I would just like to pose a question through the Chair before I vote on this particular item. I realize that last session we imposed mandatory sentences for persons convicted of night hunting, and I am wondering if the revision of our criminal laws has addressed this matter and possibly done away with the mandatory sentencing for night hunting. I would appreciate it if someone from the Judiciary Committee could answer that for me.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President and Members of the Senate: I stand ready to be corrected by my fellow members of the Judiciary Committee, but I think that the Committee on Judiciary approached the subject of night hunting as being a Fish and Game matter, with trepidation appropriate, considering the debate which took place here earlier, and left it to the will of that committee to make that change if they wanted it.

The PRESIDENT: Is the Senate ready for the question? Is it now the pleasure of the Senate to indefinitely postpone House Amendment "D"?

The motion prevailed.

House Amendment "E" was Read.

Mr. Collins of Knox then presented Senate Amendment "A" to House Amendment "E" and moved its Adoption.

Senate Amendment "A", Filing No. S-509, to House Amendment "E" was Read and Adopted and House Amendment "E", as Amended by Senate Amendment "A" Thereto, was Adopted.

House Amendment "F" was Read.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President and Members of the Senate: I intend to make no motion in regards to this amendment but only to point out that this is the amendment that I alluded to earlier which does create a mandatory jail sentence in the case of those people who commit crimes with a firearm.

It might also be noted for those who have a special concern with this matter that all through the code there are special increased penalties available to the judges in cases where people commit a crime with a firearm. I think, if memory serves me correctly, for example, burglary committed without a firearm is a "C" offense in many cases; it would be an "A" offense if committed with a firearm, more than doubling the penalty available to the judge.

So I point out to the Senate, so they may work their will, that this does create the mandatory sentence in the case of a firearm and that this matter is also considered in other parts that presently are in the code.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I join with my colleague, Senator Merrill, in some concern over this amendment. I am not going to try to defeat it, but I have to say for the record that mandatory sentences do not accomplish the purposes for which they are intended. The idea that there will be certainty of punishment because you put it in the statute is illusory. Time and again we see mandatory sentences circumvented by prosecutors and judges because they feel that the sentence is not appropriate for the situation.

I think it is unfortunate that we come to a time when we try to make sentencing a computerized matter. If any one of us stops to think, if we were in trouble and convicted in a court and about to be sentenced, would it be better for us to be sentenced by someone with human intelligence, or would it be better that we simply be sentenced by a mandatory numerical process? This is the problem that this kind of amendment creates. And what my friends who are very much concerned over law enforcement do not realize is that this kind of provision leads to fewer convictions. They seem to forget that before you have a sentence you must have a conviction, and the difficulty that prosecutors have in obtaining convictions when a mandatory sentence lies at the end of the road can be well documented. If you talk with experienced prosecutors, they can tell you about these problems.

At the same time that our well meaning friends were putting mandatory sentences on our statute books in the other body, they were stripping away from the police certain powers of enforcement that the Criminal Code Revision Commission had written into the bill and which the Judiciary Committee had approved. Again, I think it is most unfortunate that sometimes we get the cart before the horse in our zeal to accomplish a very worthy end. I didn't feel that I could let this occasion pass without expressing a little bit of my frustration in this respect.

The PRESIDENT: The Chair will interrupt debate to ask the Sergeant-at-Arms to escort the Senator from Cumberland, Senator Berry, to the rostrum where he has graciously offered to serve as President pro tem for the remainder of the afternoon.

Thereupon, the Sergeant-at-Arms escorted Senator Berry to the rostrum where he assumed the duties of President pro tem, and the President retired from the Senate Chambers.

The PRESIDENT pro tem: The Chair recognizes the Senator from Somerset, Senator Cianchette.

Mr. CIANCHETTE: Mr. President and Members of the Senate: I appreciate the remarks of the Senator from Knox, Senator Collins, but I just can't understand what conditions might exist that a prosecutor or a judge

could not want to sentence a person who has been caught using a firearm in order to commit a crime against another person. I think that is a pretty serious situation and I think it ought to be dealt with as such. And I think we should remember that the people we are passing these laws for are the criminals, and not the lawyers and judges. Perhaps if we had a law on the books that said if you are caught committing a crime with a firearm you are going to jail, period, if the law was there, I think that might serve as a deterrent to stop the crime before it happens. That is the context that I am considering when I support this amendment, and I do believe that it might be an ounce of prevention. And if we can stop a crime from happening by having a law on the books that can be publicized, and people know that in this state if they are caught committing a crime with the use of a firearm that they are going to go to jail for a good long time, then I strongly support the amendment.

The PRESIDENT pro tem: The Chair recognizes the Senator from Cumberland, Senator Graham.

Mr. GRAHAM: Mr. President and Members of the Senate: I want to strongly support the good Senator from Knox, Senator Collins. I believe these severe mandatory sentences are counterproductive. As he has said, we will get fewer convictions, not more, by this law. It seems to me we should leave it to the judge's discretion in some cases; otherwise, we are simply going to get fewer convictions. Anyone who has sat on a jury for drunken driving, for instance, knows how loath juries are to convict, knowing that the penalty may be severe on the individual's life. I therefore move the indefinite postponement of House Amendment "F".

The PRESIDENT pro tem: The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President and Members of the Senate: I think that the issues have been very well stated by the Senator from Knox, Senator Collins, as to the general theory of mandatory sentences, and I agree with him and I agree with Senator Graham. But in answer to the Senator from Somerset, Senator Cianchette, it seems to me that when he says I can't think of any reason why someone shouldn't go to jail in the commission of a criminal act with a firearm, first of all, under the existing code if someone does commit a criminal act with a dangerous weapon, any dangerous weapon, it need not be a firearm, then he is automatically, if he is convicted, sentenced for the class of a crime which is higher than the one which he committed. So, as the Senator from Cumberland, Senator Merrill, has pointed out, the code already addresses the seriousness of committing a crime with a firearm or a dangerous weapon.

But the second area which it seems to me might be the area where the court might want some discretion is in the area of restitution. It seems to me that you may have many situations where someone has been burglarized, where a firearm might have been used, where money or property of great value has been stolen, of great value to the victim of the crime, and it seems to me that oftentimes in the criminal justice system we overlook the victim of the crime. We only think of punishing the criminal, and I think we don't look often enough at what we are going to do for the victim. That is why it has been important to elevate restitution as an element to be considered by the court in sentencing and as an element to be considered by the court in granting probation. And it seems to me that there are and will be cases where the court would think it more just for everyone concerned if they were allowed to, for example, give a shock sentence or a sentence which would be less time than this amendment provides for, and then suspend the remainder of that

sentence and require the convicted person to restore the victim his property or her property. It seems to me that it makes a lot more sense for the victim if the court has the discretion in certain instances to do that. And under this amendment, I am afraid they are not going to have that discretion because there is a minimum sentence to be served in prison and there is not much restitution that can be made from prison.

We have added to the probation section of the law, even with restitution, an element that says a court can consider not only the convicted person's resources but the convicted person's ability to earn in compensating the victim. And it seems to me that it makes a lot more sense in many cases for the court to require that convicted person to restore to the victim the value of what has been taken from the victim.

Therefore, I think that is just one reason why mandatory sentence provisions are counterproductive, and will become much more counterproductive under the Maine Criminal Code which puts great emphasis on restitution. We are finally I think seeing restitution as a tool which should be used a lot more than it is or has been, and are providing for it in the criminal code on the one hand, and yet on the other hand we are taking away the court's discretion and the court's ability to use the restitution. We had a bill before this legislature in the regular session, a bill which provided for the state to reimburse the victims of crime, and it cost a lot of money, taxpayers' money. It seems to me it would make a lot more sense to have the convicted person restore that victim's property than it does the taxpayers of the State of Maine.

I hope you would go along with the motion of the good Senator from Cumberland, Senator Graham, and postpone this amendment. Thank you, Mr. President.

The PRESIDENT pro tem: The Chair recognizes the Senator from Somerset, Senator Corson.

Mr. CORSON: Mr. President, I must concur wholeheartedly with the comments of my distinguished colleague from Somerset, Senator Cianchette. I believe that this bill will help considerably in preventing crimes committed with a firearm. Now, I would like to make it clear that I am wholeheartedly in support of restitution, but I think it is pretty darn difficult to talk about restitution when someone has lost their life because a burglar was carrying a firearm and panicked and shot somebody. And I know, speaking personally, I would much rather be ripped off than shot.

I really can't understand the arguments about difficulty of conviction. Now, I admit I am not an attorney and possibly there is a lot in this area that I am incapable of understanding. I always understood though that an individual was convicted of a crime when it had been proven beyond any reasonable doubt that the individual was guilty of that crime. I think it is somewhat specious to discuss the attitude of juries when an individual is accused of driving under the influence. I could well see where a member of a jury might adopt the attitude of there but for the grace of God go I, recalling some time when they had left a party under the influence or possibly they had had a bit more to drink than they should have, and knew full well they shouldn't have been driving and they managed to elude capture on that incident, and therefore they might be sympathetic with an individual who under similar circumstances found themselves brought into a court. But I find it difficult to conceive of a member of a jury saying, while facing a man accused of armed robbery or shooting someone while burglarizing a home, to look at that individual and say there but for the grace of God go I. I don't buy that at all.

I hope that if we can enact this amendment into law that an individual who is perhaps going