

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

HOUSE

Friday, April 2, 1976

The House met according to adjournment and was called to order by the Speaker.

Prayer by the Reverend Peter Misner of Winthrop Methodist and Wayne Community Church.

The journal of yesterday was read and approved.

Papers from the Senate

From the Senate: The following Communication:

The Senate of Maine
Augusta, Maine

April 1, 1976

Honorable Edwin H. Pert
Clerk of the House
107th Legislature
First Special Session
Augusta, Maine 04333
Dear Mr. Pert:

The Senate today voted to reconsider its action whereby it voted to Adhere to its former action on Bill, "An Act to Implement a Central Licensing Division within the Department of Business Regulation" (H. P. 2153) (L. D. 2294).

The Senate further voted to Insist and Join in a Committee of Conference.

Respectfully,
(S) HARRY N. STARBRANCH
Secretary of the Senate

The Communication was read and ordered placed on file.

From the Senate: The following Joint Order: (S. P. 787)

WHEREAS, The Legislature has learned of the Outstanding Achievement and Exceptional Accomplishment of Stan Cowan Of Orono High School Named Outdoor Track Coach Of The Year For 1975

WE the Members of the Senate and House of Representatives do hereby Order that our congratulations and acknowledgment be extended; and further

ORDER and direct, while duly assembled in session at the Capitol in Augusta, under the Constitution and Laws of the State of Maine, that this official expression of pride be sent forthwith on behalf of the Legislature and the people of the State of Maine.

Came from the Senate read and passed.

In the House, the Order was read and passed in concurrence.

Non-Concurrent Matter

Bill "An Act to Revise the Maine Criminal Code as Recommended by the Criminal Law Revision Commission" (Emergency) (S. P. 777) (L. D. 2334) which was Passed to be Engrossed as amended by Senate Amendments "A" (S-488), "B" (S-495) and "C" (S-496) and House Amendments "C" (H-1162), "D" (H-1170), "E" (H-1171) and "F" (H-1174) in the House on March 31, 1976.

Came from the Senate, passed to be engrossed as amended by Senate Amendments "A," "B," "C," and House Amendment "C" and "E" as amended by Senate Amendment "A" (S-509) thereto in nonconcurrency.

In the House: On motion of Mr. Burns of Anson, the House voted to adhere.

Messages and Documents

The following Communication:

Committee on Education

April 1, 1976

Hon. Edwin H. Pert
Clerk of the House
State House
Augusta, Maine
Dear Hon. Pert:

The Joint Legislative Committee on Education was directed by Joint Order (H. P. 2214) to report out a bill providing a means of approv-

ing emergency school construction projects for the remainder of the biennium.

The Committee wishes to report that its response to this Joint Order may be found in Section 3750 of Committee Amendment "A" (S-651) to S. P. 561, L. D. 2056, Bill An Act to Clarify Certain Provisions in the Education Laws.

Respectfully,

Signed:

BENNETT D. KATZ
Senate Chairman

Signed:

ARTHUR P. LYNCH
House Chairman

The Communication was read and ordered placed on file.

The following Communication:
State of Maine

One Hundred And Seventh Legislature
Committee on Performance Audit

April 1, 1976

Honorable John L. Martin
Speaker of the House
House of Representatives
Augusta, Maine 04333

Dear Representative Martin:

It is with pleasure that I report to you that the Committee on Performance Audit has completed all actions necessary on the business placed before it by the 107th Legislature.

Total Number of Bills Presented	4
Ought to Pass	3
Ought to Pass as Amended	1
Unanimous Reports	4

Respectfully,

Signed:

GEORGETTE B. BERUBE
House Chairman

The Communication was read and ordered placed on file.

The following Communication:
State of Maine

One Hundred And Seventh Legislature
Committee on Public Utilities

April 1, 1976

Honorable John L. Martin
Speaker of the House
State House
Augusta, Maine 04330

Dear Mr. Speaker:

It is with pleasure that I report to you that the Committee on Public Utilities has completed all action necessary on the business placed before it by the Special Session of the 107th Legislature.

Total Number of Bills Presented	19
Unanimous Reports	16
Ought to Pass	4
Ought to Pass as Amended	7
Leave to Withdraw	5
Divided Reports	3
Total Number of New Drafts	1

Sincerely yours,

Signed:

EDWARD C. KELLEHER
House Chairman

The Communication was read and ordered placed on file.

The following Communication:
State of Maine

One Hundred And Seventh Legislature
Committee on Fisheries And Wildlife

April 1, 1976

Honorable John L. Martin
Speaker of the House
House of Representatives
Augusta, Maine 04333
Dear Speaker Martin:

It is with pleasure that I report to you that the Committee on Fisheries and Wildlife has completed all actions necessary on the business placed before it by the Special Session of the 107th Legislature.

Total Number of Bills Presented	5
Unanimous Reports — Ought to Pass as Amended	1
Leave to Withdraw	2
Divided Reports	2

Respectfully,

Signed:

KENNETH A. MILLS
House Chairman

The Communication was read and ordered placed on file.

The following Communication:
State of Maine

One Hundred and Seventh Legislature
Committee on Marine Resources

March 31, 1976

Honorable John L. Martin
Speaker of the House
State House
Augusta, Maine 04333

Dear Mr. Speaker:

It is with pleasure that I report to you that the Committee on Marine Resources has completed all action necessary on the business placed before it by the Special Session of the 107th Legislature.

Total Number of Bills Presented	7
Unanimous Reports	5
Ought to Pass	1
Ought to Pass as Amended	3
Ought to Pass in New Draft	1
Divided Reports	2
Total Number of New Drafts	1

Signed:

LAWRENCE P. GREENLAW, JR.
House Chairman

The Communication was read and ordered placed on file.

Orders

Mr. Carpenter of Houlton presented the following Joint Order and moved its passage: (H. P. 2274) (Cosponsor: Mr. Finemore of Bridgewater)

WHEREAS, The Legislature has learned of the Outstanding Achievement and Exceptional Accomplishment of St. Mary's CYO of Houlton State of Maine Catholic Youth Organization Basketball Champions 1975

WE the Members of the House of Representatives and Senate do hereby Order that our congratulations and acknowledgement be extended; and further

ORDER and direct, while duly assembled in session at the Capitol in Augusta, under the Constitution and Laws of the State of Maine, that this official expression of pride be sent forthwith on behalf of the Legislature and the people of the State of Maine.

The Order was read and passed and sent up for concurrence.

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

Mr. BURNS: Mr. Speaker, having voted on the prevailing side on L. D. 2334, I now move that we reconsider our action of earlier today and hope you all vote against me.

The SPEAKER: The gentleman from Anson, Mr. Burns, having voted on the prevailing side, now moves that we reconsider our action of earlier today whereby the House voted to adhere on Bill "An Act to Revise the Maine Criminal Code as Recommended by the Criminal Law Revision Commission Senate Paper 777, L. D. 2334.

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

Mr. MCKERNAN: Mr. Speaker, Ladies and Gentlemen of the House: I hope that we would reconsider. I think that it is important that we don't let this bill die between Houses. I think that it is important that we have a Committee of Conference on this and try to work it out.

As I understand it, there are just minimal dif-

ferences between the two bodies and it would seem these days, when we have a lot of debate going on, it would be easier to let a Conference Committee get together and work out the minor differences in this bill. I think they are important measures that everybody agrees that ought to be passed. In fact, we have even extended the effective date of the criminal code in order to get these amendments on. I think it would be too bad to lose them, so I hope that we would reconsider so that we could ask for a Committee of Conference instead of adhering.

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

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: The minimal differences referred to by the gentleman from Bangor is taking the gun mandatory sentence off the criminal code and is also removing the burglary mandatory sentence that Representative Gray put on. We passed this measure by a vote of 115 to 14 and I hope you stand firm.

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

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: I have some very mixed feelings about this. The one that primarily comes to mind is the fact that I am concerned, deeply concerned, that we will shoot down the tube the whole criminal code bill that we had before us. The reason that I am concerned about that is because I think in the other body, their position in terms of adhering would be even strong than ours. The criminal code commission enacted the criminal code and it will go into effect on May 1 as it presently is in the law without this bill and we would, in effect, have deleted the opportunity of having the deadly force issue, which we passed last week, changed, as well as some other very important and critical points. I suspect that that body could live with the code in its present posture much easier, perhaps, than we in this body can.

I support the position of Mr. Burns insofar as his amendment is concerned, but I would hope that at least by insisting and asking for a Committee of Conference, that we could stand our position; if we can't, then adhering would not make any difference because we will have lost it anyway, or they will come along with us. I would hope that we would not adhere but we would reconsider the motion to adhere and perhaps at that point ask for a Committee of Conference.

The SPEAKER: The Chair recognizes the gentleman from Westbrook, Mr. Laffin.

Mr. LAFFIN: Mr. Speaker, Ladies and Gentlemen of the House: I certainly hope this morning that we go along with Representative Burns. The other day when we debated this bill, I was sick and left early and I got a lot of letters as to why I didn't speak on this bill. This is a very important issue and it is a very important issue because there are a lot of amendments that were put in there that are good for the people of this state. Item one is, that if we don't have protection in our own homes, we don't have protection anywhere, and mandatory sentences is what this legislature has the responsibility of doing. Let's make the law so that we tell these criminals that it is going to be, if you commit this crime the second time, you are going to jail. It is our responsibility as legislators to make good, strong laws against these people who use guns in this state.

I support these amendments 100 percent. In fact, I had a speech ready weeks ago and wasn't here to use it. Probably we did not need it anyway. We had a lot of support on this bill and this bill is very important, and I for one am sick and tired of the other body over-ruling the good legislation that this body passes.

Last year, I was very disappointed with them and I am again this year, but I said nothing last year. I think the wisdom of this legislature is

just as intelligent and in many cases more so than the other body. In fact, I believe that the legislation that we have passed on making it harder for the criminal to survive in this state, who use guns, is something that we are going to eventually be faced with in years to come where vicious crime and murders and rapes are on the upgo. To be sure, they are only up 8 percent this year compared to 16 percent last year but still going in that direction and I believe that we are entitled to stand up and be counted, that the people of this state want good laws against the vicious crimes that are committed.

Last night in Miami, three policemen were murdered, shot in cold blood, and you can go all over this country and see where these things are happening.

I firmly urge the members of this House to stick to our guns and not let the other body tell us what they are going to do because we have had enough of that — I have anyway. I don't know about you. We are elected by the people the same as they are elected by the people, and I don't want to get too involved in this this morning but I certainly do hope that we stick to our guns and we let the other body know that we are not going to back down.

The SPEAKER: The Chair recognizes the gentleman from Hampden, Mr. Farnham.

Mr. FARNHAM: Mr. Speaker, first, a question of information? Did I understand that the gentleman from North Anson, Mr. Burns, recinded his motion to adhere?

The SPEAKER: The Chair would answer in the negative. The gentleman moved to reconsider whereby this body voted to adhere.

Mr. FARNHAM: Mr. Speaker, Ladies and Gentlemen of the House: I would urge this House to reconsider and then we would insist and ask for a Committee of Conference. It seems the only logical thing we can do. Otherwise than that, as the gentleman from South Portland explained, we will have the criminal code law May 1 without any amendments, even the committee amendment.

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

Mr. WILFONG: Mr. Speaker, Ladies and Gentlemen of the House: I would also ask that we reconsider the motion and ask to insist and ask for a Committee of Conference.

As you know, the other day I spoke for the mandatory sentencing on firearms and I still support that position 100 percent, but if it goes down in flames between the two Houses, I don't see where that is going to get us anywhere. I think it is important that we insist and ask for a Committee of Conference. Further, I would ask the Speaker to please, when he appoints that Committee of Conference, take into consideration the vote on mandatory sentencing for firearms of this body.

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

Mr. GRAY: Mr. Speaker, Men and Women of the House: The other body's idea of compromise is to yield to the defense lawyers. We have watched all session long the other body capriciously kill or badly maim bill after bill, amendment after amendment, that we have sent down to the other end of the hall.

The only people that are against these two amendments are the defense lawyers. As they have mentioned, these are minor differences, and now they are trying to rush us into a committee of compromise to knock off these two amendments that were passed in this House overwhelmingly.

I certainly don't believe that they are so unreasonable down there that they will kill the entire criminal code, so I would ask this House that we not reconsider.

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

Mr. JOYCE: Mr. Speaker, Ladies and

Gentlemen of the House: Let's make this issue clear. Let us recall last year when I told you that scientific study that was done about the chicken, why did she cross the street? They concluded that that chicken did not cross the street, it only went to the middle of the road so she could lay it on the line. This is what I want to do here now lay it on the line.

We have a good criminal code that will be going into effect shortly. This revision that we are talking about will put teeth in that code. The input is there from law enforcement. They went through this, and believe me, I found for the first time in two years that the law enforcement people were interested in something other than the front plate. Don't lose the good revision. We can save much by a Committee of Conference. We don't want to lose it all now.

We have got to put these teeth in there. We have got to make this clear. We have problems in the criminal law and I support that mandatory sentencing. We have got to come to a compromise here. Mandatory sentencing is a dirty word sometimes amongst the lawyers, I know that. I put it up there in that class with plea bargaining, you know, that nice ethical thing that we can't define.

I am concerned with this, this judge shopping, our lawyers, you think you have seen ballet dancers at their best, go down to the courthouse and watch those lawyers, how quick they develop that courthouse flu when there is a Thomaston engineer sitting on that bench, and that is how we refer to these judges, Thomaston engineers. They bring them in, listen to their story and they send them down there to the college of rockology, we know that.

We have got a good, a very good criminal code. I traveled through these halls, up and down stairs, I heard discussions on outhouses in Casco Bay and all this sort of thing that I never came in touch with before, but when I went to that Judiciary the last few months, believe me, I saw the workers here. They labored through this. They were up there from eight o'clock until twelve-thirty the other night. I think they should have stayed longer and they probably could have worked this out.

I think, really, that we have got to get in a Committee of Conference. I have always been for fundamental fairness, and I think this is what we owe that committee.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mrs. Najarian.

Mrs. NAJARIAN: Mr. Speaker, a parliamentary inquiry. If we adhere, would this kill the bill or will the Senate be able to take further action?

The SPEAKER: The Chair would advise the gentleman and members of the House that it would not kill the bill. The pending question of adhering would be to adhere to our position. The other body would have no choice but either to recede and concur or that would kill the bill, but the other body would have that option, since the bill left here without having been indefinitely postponed.

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

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: Thank you Mr. Speaker for that very lucid explanation of what will and can occur. I think the prospects are very clear, in order for this bill not to die, it would be necessary for the Senate to recede and concur.

I voted with Mr. Burns and Mr. Gray yesterday and I support their position, but I think that a change in deadly force was the item that came out of our passage of the criminal code last year. And as the provisions of that criminal code became rather widely known around the state, we immediately began to hear strong urgings that we do something about the use of deadly force as it applied to the defense of the

domicile. That is what the people were concerned about. The gentleman from Calais addressed this with an amendment to the criminal code. I did not hear the people screaming for mandatory sentences. I am sure that they would agree, I am sure that they would agree with the majority of this house that mandatory sentences are the right thing, but that is not what they were talking about.

There is strong sentiment in this body to strengthen the deadly force provision. We showed that, because that is the item we took up first on the criminal code and we supported it, and I certainly agree with the gentleman who spoke in favor of mandatory sentences, but regardless of what I think, if you vote to adhere, you probably will not get mandatory sentences for second offenses of burglary, you probably will not get mandatory sentences on offenses with a gun and, most importantly, you probably won't get a revision on the deadly force issue and I think this is the issue the folks out there were concerned about.

People have little knowledge of the total implications of the mandatory sentencing but they do perceive a real problem in the restrictions on the use of deadly force to defend the home. So in order not to lose this entirely, this change in the application of deadly force in the home, to defend the home, I think we should definitely vote to reconsider adhering this morning and move to a Committee of Conference, and I certainly hope that you support that position.

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

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: I don't know, if you heard Attorney General Brennan last Sunday speak on Channel 5. I was in my room here at the Senator Motel with my wife and we were listening to it. He was questioned by two reporters and at certain times they asked him, were there certain things that you didn't like in the criminal code? He said, yes, but he said, there have been a few amendment changes which are excellent. He said, as it is at the present time, it is about as good as you can get and I am very, very much in favor of it. He said, I was not at one time, but you can't make it perfect all at once. He said, a little later if we find a few things that don't work right, at that time, we can make changes. For God's sake, he said, let's not kill it now because we have it as good as we can get it at the present time.

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

Mr. PERKINS: Mr. Speaker, a point of inquiry. It is my understanding that other body put on a Senate Amendment 509, which was to correct a problem in the code as found by the committee. If we adhere, does that mean that we will not have the opportunity to put that on?

The SPEAKER: The Chair would answer in the affirmative.

Mr. PERKINS: Mr. Speaker, I think that is important.

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

Mr. NORRIS: Mr. Speaker, Ladies and Gentlemen of the House: We are in the throes of a parliamentary maneuvering, and that is what it amounts to. The other body has enforced their will over us on several issues by doing the very same thing on other matters and they would come back here to us and we would recede and concur and go along with them. So, what we are talking about this morning, when you come right down to it, is whether or not we are going to lose these two mandatory sentences in the two amendments that were presented from the floor of the House: it amounts just to that.

In my opinion, there is no more danger of this bill dying than there is for anything in the world to happen at all. If we adhere and it goes back to the unmentionable branch, they will recede and concur, there is no question about that. It is just the fact that they want to take these two things off and I think the people across this state want those two items on and for the minimal risk, the odds are 100 to 1 that they would go the other way. For the

minimal risk, I say, let's hold firm, let's adhere to our action and send it back down there and they can scratch their consciences and see what they want to do.

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

Mr. SILVERMAN: Mr. Speaker, Ladies and Gentlemen of the House: I agree with the gentleman from Brewer, Mr. Norris, as far as this being a parliamentary maneuver. The major thing that we are talking about here today is mandatory sentencing for the use of firearms when committing a crime. In my thinking, the major stake is this, those who do not want to use mandatory sentencing are saying, there is the occasional person who might be innocent and you leave the judge no choice but to follow the law and give him a mandatory sentence if he used firearms, that is one approach.

The other approach, and the approach which I favor, is that if it be understood in the State of Maine that we use mandatory sentencing in the use of firearms, then it is definitely and can be used as a deterrent for those people who might use it, such as in burglary or assault and I think that that is important on the laws of our state in this criminal code.

I realize there are both sides, but I listened to the speakers and the orations yesterday, especially from many of the younger members where I was somewhat surprised at the stand they were taking of the use of mandatory sentencing. I think they are taking that stand because they believe it is needed and I certainly agree with them, that most people who are going to use a firearm in committing a crime recognize that they have an automatic jail sentence in front of them, and possibly many of them are going to think twice and, therefore, I find it important that that stay in the criminal code, so I would ask that you adhere. Once this goes back down to the other end of the hall, they will get the message and you will certainly see this come back as a bill with the intent of this House being the law in the criminal code.

I would ask for a roll call and ask you to vote to adhere.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mr. Carey.

Mr. CAREY: Mr. Speaker, I am going to be going through a few parliamentary procedures here and I would ask, Mr. Speaker, that if I am incorrect, if you would be kind enough to interrupt me, to tell me that I am incorrect.

If we were to insist and go to a Committee of Conference, am I correct, Mr. Speaker, in saying that the House still has the alternative of rejecting the Committee of Conference report and adopting our previous position?

The SPEAKER: The Chair would answer that part of that assumption is correct, that we could reject the Committee of Conference. At that point, we would then appoint another Committee of Conference, but we could not go back to our original position.

Mr. CAREY: All right, so we would have lost our position to adhere as soon as we leave it today?

The SPEAKER: The Chair would answer in the affirmative.

Mr. CAREY: Mr. Speaker, Ladies and Gentlemen of the House: I am a proponent of the position that is taken by the Representative from Anson, Mr. Burns. We conducted some fairly extensive studies two summers ago under a rural crime study that the Legal Affairs Committee was charged with and this is exactly what we were finding out throughout the countryside, that people wanted some control over those criminals who were acting with guns, some controls over those people who were committing burglary for the second, third and fourth times. They wanted some controls over the people who were out on bail and committing further crimes while they are out on bail. This has not been addressed in this bill, it was defeated in the regular session. But the position that Mr. Burns has taken at this point is our only position that we can take, since this will be the last time that we can reach this position,

and I would certainly hope that we would stick with it.

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

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: For the last time, I will say a few words on this. I would like to disagree with my good friend Mr. Silverman. We had some very good bills that came out of this House here, as you all know, and those good bills were killed in the Senate.

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

Mr. HUGHES: Mr. Speaker, Ladies and Gentlemen of the House: I think I was the only member of the Judiciary Committee, and someone may correct me if I am wrong, to vote for both of these amendments. I do favor both of them. I was also the only one of the Judiciary Committee who favored the mandatory sentence for firearms in the committee and then spoke for it here on the floor. But there is a valuable Senate amendment which might be lost if we adhere today and, furthermore, there is a chance, even though it may be a long shot, that we lose the whole bill. For those two reasons, I would urge you that we not adhere and go to a Committee of Conference.

I think the will of this House has been well expressed and I think those conferees will go into that conference with a strong feeling of how we feel, and I am confident that we can come out of the conference in a strong position and if we don't, then I would not support the report of the Committee of Conference either. I would urge you not to adhere at this point and go to a Committee of Conference.

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

Mr. CONNORS: Mr. Speaker, Ladies and Gentlemen of the House: About everything has been said, but I would like to state my position, that I think we should adhere and then let the other body make their move and then let's go from there.

The SPEAKER: A roll call has been requested. 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 Chair recognizes the gentleman from Waterville, Mr. Pierce.

Mr. PIERCE: Mr. Speaker, Ladies and Gentlemen of the House: I, too, like I think many of you, have mixed emotions on what to do in this particular instance. However, I think you know as well as I do what happens in committees of conference. We might as well call them a committee of acquiescence, because that is what usually happens. Most of the time we end up on the losing side.

I think that the mandatory sentencing for the use of firearms receives overwhelming support in this body and I think certainly does from the vast majority of people across the State of Maine. I happened to be in the other body when the vote was taken over there, and I can tell you, there was a considerable amount of support for it there, also. It wasn't overwhelming in the other direction.

So I would just ask you to put yourselves in their place. If this bill came to you, would you kill it or would you recede and concur? I think for once we have got the upper hand in this body and I hope we will stick to it and vote not to reconsider.

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

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I would urge you to reconsider our motion to adhere on this matter. I think that the House expressed itself as clear-

ly as it would be possible to express itself on the subject of a mandatory one-year sentence for any crime which is committed with the use of a gun. The vote was clearly overwhelming and I think that the members of the other body have gotten that message clearly.

I, for one, feel at this point that the House has accurately expressed the feelings of the people of this state and although I personally have some reservations about the use of mandatory sentences in any case, at this point, with the House having expressed itself so clearly, I would not support any bill coming out of a Committee of Conference which did not have a mandatory one-year sentence for crimes committed with firearms. I don't think that there is any question or there is any danger that that provision will be lost.

There was, in the other body, strong opposition to the other amendment relating to mandatory sentences on burglary, and there also was an amendment that was put on in the other body to deal with the problem of enforcement of civil violations. I don't know how strong this sentiment is in the Senate, but I know that there is and has been strong sentiment in favor of the code as it exists right now among certain members of the body.

If the code goes into effect on May 1 as it is scheduled to go into effect, and I think that that is a possibility, there will be no mandatory sentences in the code, there will be no mandatory sentence for crimes committed with a firearm, and not only that, there will be a field day for the defense lawyers because the civil penalty provisions will be completely unenforceable.

The way the code is written right now, if the police officer has probably cause to believe that somebody has possession of marijuana, because marijuana possession is a civil offense, the officer has no power to make an arrest. All he can do is issue a civil summons. If he goes up to somebody who he knows is in possession of marijuana and says, please identify yourself so that I can write out this civil summons, and the person refuses to cooperate, the officer is completely without recourse. He can't arrest the person, he can't require him to identify himself. The person says, my name is Mickey Mouse. I live on Sunset Boulevard, and there is nothing that the police officer can do. So the revisions that we have made, I think, are important for law enforcement.

The code, as it goes into effect, if we don't have the revision bill, also does not permit the use of deadly force to remove an intruder from the dwelling house if he refuses to leave. I think that this House voted strongly in favor of that provision and that that is an important protection to the rural citizens of this state.

I don't think that there is any chance whatsoever that a Committee of Conference, made up of members from this House, will come back to this House with a Committee of Conference bill that doesn't include the mandatory one year jail sentence for crimes committed with a gun used against the person. And I for one, as the acting chairman of the Judiciary Committee, will not support any bill coming out of a Committee of Conference which doesn't have that provision. But I think that we would be wise to reconsider, allow a committee of conference so that we can get the two bodies in concurrence on this matter and get these revisions passed before the code goes into effect. I would urge you to vote to reconsider and I would urge you to watch my vote if we do reconsider and I will vote against anything that doesn't have that one year mandatory sentence for crimes committed with a gun.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: It is no secret to this

House what my position is on mandatory sentencing, but there is one thing that I am really sick and tired of, and this is not just in this session of the legislature, but in the previous sessions of the legislature, how that other unmentionable body has the ability to dictate to this House.

I would urge you not to reconsider. I would urge the House to stand fast, even though I object to mandatory sentences, and let's see if the other body will take a different position.

The SPEAKER: The Chair recognizes the gentleman from Skowhegan, Mr. Dam.

Mr. DAM: Mr. Speaker, Ladies and Gentlemen of the House: I, too, would urge you not to vote to reconsider but that you would vote to adhere.

I think Mr. Carey brought out some good points when he explained the parliamentary procedure, that with a Committee of Conference it is possible that we lose our position. I can see no reason to have a Committee of Conference if we all feel today as we did when we voted on this previously, because the Committee of Conference would only do one thing, come back in to weaken the bill.

I think the bill is good the way it is and I think it is time that this body said to the other body that we are not going to keep backing down for your wishes, that we have voted our position and we are going to hold our position. As far as this bill dying between the two Houses, I think Mr. Norris from Brewer brought out very well that this is too important a bill and the other body will not let it die. So I say, let the other body do some backing down for a change and let us hold our position; otherwise, we are only going to show that we are the weak sister arm of the legislature and that the other body is doing all the string pulling. I would ask you to vote to adhere.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: As I told you, I went several times before the Judiciary and I am proud today to see that one of the students of my lecture, the Representative from Standish, got the message.

I went up to clear up a problem there and this revision will clear it up. I don't want to get into a long debate on a Friday, but I am going to explain to you in laymen's terms. I am going to try to bring out in a few short sentences the way these attorneys confuse us. A lawyer can confuse me in about two minutes, until I write it down and look at what he said, and then I make a big zero.

What they are talking about, civil violations versus criminal violations, and most people don't know what they are, so I will identify in common layman's terms. In a civil violation, the state is going after your pocketbook, going to hit you in the pocketbook. And to the gentleman here, I could say, in the criminal law, the state is going out for your — uh — but to the ladies, they want that pound of flesh, and that is what it boils down to.

Now, on the marijuana thing, I went up and told them how the code would handle this, how the police would interpret it. It was clear.

Several years ago, the United States Supreme Court felt there should be some restrictions put on the behavior of policemen, the way they operated, and they brought to light once again the exclusionary rule, and this is what the ballgame is all about. If you are to be arrested, the policeman can't come to the front door, pull you out of your house and then go out back into your bedroom and get the evidence against you. He can't take you to court because it is excluded, and this is very clear. Policemen understand this. I explained to the Judiciary Committee that they made the possession of marijuana — and I know it is a no-no word here, but marijuana is a civil violation. I explained to the

Judiciary that the exclusionary rule cannot be applied to a civil violation, it doesn't count. It is not the rule to the ballgame, and I predicted to them that there would be ten times more arrests for the possession of use of marijuana in the next few years, but they left the thing the way it was. The police can come down the street and search every kid on the corner and then arrest those that he wanted to. They would have a field day out there.

I explained to them, you have got to do something here, and this is why this amendment is in there. The only redress that the kid on the corner would have is to turn around and sue the policeman. Now, everybody threatens to sue policemen, but you have such a long line waiting that they never get to you. That is why this revision has got to get on the books.

I have got children and many of you have got children. You have got to take a look at this, and I urge you to vote to reconsider so we can get into that Committee of Conference and right the wrongs that are there.

You know, the regular session, the Judiciary Committee didn't work until midnight or after. Now they have seen the problem, they have tried to correct, and believe me, I think they are sincere. I think there are a lot of good things in here and I don't like to see it go down the tube.

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

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: As House Chairman of the Judiciary Committee, I disagree with Mr. Spencer very much on this problem here. I agree with the Attorney General. The Attorney General said, you have got a good thing going. I am not agreeing a hundred percent with it, but if you tamper with it, you are going to be in trouble. Let's try to put it in, we can always come back and there will be changes. At least this thing here can be changed at the same time.

Mr. Pierce has told you that as far as the other body was concerned, the vote was very close. If it is that close and you go into a Conference Committee, you might have a chance of not disturbing the whole thing and passing what you want at the present time.

I am with Mr. Burns on what he wants, but I am afraid that we might hurt our criminal code if we go otherwise.

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

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: By placing my amendment on the code, I in no way want to indicate that I didn't think that the Judiciary Committee didn't do one very good job in coming up with the revisions with the criminal code itself. There are going to be problems with it, anything that is new they are going to have problems with. However, I firmly believe that the people of this state want to retain the mandatory provisions of sentencing they currently have. In fact, mine is not as strong as they are currently on the books.

Mr. Gray's amendment for no suspension on the second time an individual is convicted for burglary is an excellent one. The committee did a good job; let's get the whole works.

Mr. Morton mentioned a change in deadly force. The criminal code currently, as written without amendments, is the same language which was stated here on the floor of the House when we were debating the criminal code. It is the same statute that is in the current code. There would be no change. The revision that we passed put more strength to the code.

As for Senate Amendment "A" to House Amendment "E", if that is necessary, it can be added to the Errors and Inconsistencies bill, so the red herring of that shouldn't concern us too much.

After what I have experienced this morning by talking with some individuals from the other end of the hall, if we go to a Committee of Conference, we are going to almost guarantee you that we can swallow our 115 to 14 votes or kill the bill. That is the only way out.

Let's wrap this package up, tie it with a great big red ribbon and send it back to the other end of the hall. I would like to see the red light light up, vote no.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Anson, Mr. Burns, that the House reconsider its action of earlier whereby it voted to adhere. All in favor of reconsideration will vote yes; those opposed will vote no.

YEA — Bagley, Bennett, Boudreau, Call, Connolly, Cox, Dow, Dudley, Farnham, Flanagan, Gauthier, Hinds, Hughes, Ingegneri, Jacques, Jalbert, Jensen, Joyce, Kauffman, LaPointe, Leonard, Lewis, Mills, Miskavage, Morton, Pelosi, Perkins, S.; Peterson, T.; Powell, Quinn, Snow, Spencer, Talbot, Tierney, Usher, Wilfong.

NAY — Albert, Ault, Bachrach, Berry, G.; W.; Berry, P. P.; Berube, Birt, Blodgett, Bowie, Burns, Bustin, Byers, Carey, Carpenter, Carroll, Carter, Chonko, Churchill, Clark, Connors, Cooney, Cote, Curran, P.; Curran, R.; Curtis, Dam, Davies, Doak, Drigotas, Durgin, Dyer, Farley, Faucher, Fenlason, Finemore, Fraser, Garsoe, Goodwin, H.; Goodwin, K.; Gould, Gray, Greenlaw, Hall, Henderson, Hennessey, Higgins, Hunter, Hutchings, Jackson, Kany, Kelleher, Kelley, Kennedy, Laffin, Laverty, LeBlanc, Lewin, Littlefield, Lizotte, Lovell, Lunt, Lynch, MacEachern, Mackel, MacLeod, Mahany, Martin, A.; Martin, R.; Maxwell, McBrearty, McMahon, Mitchell, Morin, Mulkern, Nadeau, Najarian, Norris, Palmer, Peakes, Pearson, Perkins, T.; Peterson, P.; Pierce, Post, Raymond, Rideout, Rolde, Rollins, Saunders, Shute, Silverman, Smith, Snowe, Sprowl, Strout, Stubbs, Susi, Tarr, Teague, Theriault, Torrey, Tozier, Truman, Twitchell, Tyndale, Wagner, Walker, Webber, Winship.

ABSENT — DeVane, Hewes, Hobbins, Immonen, McKernan.

Yes, 36; No, 109; Absent, 5.

The SPEAKER: Thirty-six having voted in the affirmative and one hundred and nine in the negative, with five being absent, the motion does not prevail.

Mr. Morton of Farmington presented the following Joint Order and moved its passage: (H. P. 2276) (Cosponsor: Mr. Rollins of Dixfield)

WHEREAS, The Legislature has learned of the Outstanding Achievement and Exceptional Accomplishment of Jill Pingree — Temple, Maine Mt. Blue High School Junior National Winner — Discus Throw Intermediate Division AAU

WE the Members of the House of Representatives and Senate do hereby Order that our congratulations and acknowledgement be extended; and further

Order and direct, while duly assembled in session at the Capitol in Augusta, under the Constitution and Laws of the State of Maine, that this official expression of pride be sent forthwith on behalf of the Legislature and the people of the State of Maine.

The Order was read and passed and sent up for concurrence.

Mr. Stubbs of Hallowell presented the following Joint Order and moved its passage: (H. P. 2279)

WHEREAS, The Legislature has learned of the Outstanding Achievement and Exceptional Accomplishment of Hilda Jacob Administrative Secretary Of The State Law Library Who is

Retiring After 43 Years Of Service To The State

WE the Members of the House of Representatives and Senate do hereby Order that our congratulations and acknowledgement be extended; and further

ORDER and direct, while duly assembled in session at the Capitol in Augusta, under the Constitution and Laws of the State of Maine, that this official expression of pride be sent forthwith on behalf of the Legislature and the people of the State of Maine.

The Order was read and passed and sent up for concurrence

Mr. McKernan of Bangor presented the following Joint Order and moved its passage: (H. P. 2280) (Cosponsor: Mr. Martin of Eagle Lake)

WHEREAS, the present compact between Maine and the University of Vermont College of Medicine for the medical education of Maine residents is scheduled to terminate with the admission of a final group of students in the fall of 1976; and

WHEREAS, the compact has proven of value both to the students and to the State of Maine in meeting its need for medical education and health care; and

WHEREAS, the University of Vermont and Tufts University have recommended to Maine a new compact which would increase the number of Maine residents receiving medical education at the University of Vermont College of Medicine and would make such medical education available at Tufts University, as well as at Vermont; and

WHEREAS, the Committee to Improve Medical Manpower and Education approved in principle the further development of contractual opportunities for medical education of Maine residents at the University of Vermont and Tufts University, while reserving its right to consider and recommend alternatives in the future; and

WHEREAS, The proposal for a new compact would increase the opportunity for Maine students to receive a medical education and would also require as a condition for graduation that a portion of the clinic education of Maine residents take place in Maine; and

WHEREAS, both universities need to have an indication from the State of Maine as to its intentions and attitude toward the compact for the medical education of Maine residents; now, therefore, be it

ORDERED, the Senate concurring, that the 107th Maine Legislature, while realizing that final decisions on a new compact and the appropriation of funds for students starting the 1977-78 academic year must be made by the 108th Maine Legislature, nevertheless, recognizes the value of the compact and indicates its approval of the State starting negotiations to enter into a contract with both Tufts University and the University of Vermont which will increase the number of Maine residents receiving medical education; and be it further

ORDERED, upon final passage, that suitable copies of this Order be forwarded to the Deans of Tufts University and the University of Vermont.

The Order was read and passed and sent up for concurrence.

On Motion of Mr. Albert of Limestone, it was ORDERED, that James MacLeod of Bar Harbor be excused April 5th, 6th, 7th, 8th, 9th, and 10th for personal reasons.

House Reports of Committees

Ought to Pass in New Draft New Draft Printed Tabled and Assigned

Mr. Garsoe from the Committee on Ap-

propriations and Financial Affairs on Bill "An Act to Establish the Contract Review Committee to Oversee the Bureau of Purchases" (H. P. 1980) (L. D. 2172) reporting "Ought to Pass" in New Draft under New Title Bill "An Act to Reorganize the Standardization Committee" (H. P. 2278) (L. D. 2239)

Report was read and accepted and the New Draft read once. Under suspension of the rules, the New Draft was read the second time.

On motion of Mr. Talbot of Portland, tabled pending passage to be engrossed and tomorrow assigned.

Orders of the Day

The Chair laid before the House the first tabled and today assigned matter:

An Act Concerning Transit District Buses Used for Elementary Pupil Transportation (H. P. 1996) (L. D. 2177) (S "A" S-439 to C "A" H-980)

Tabled — April 1 by Mr. Rolde of York.

Pending — Reconsideration (Returned by the Governor without his approval)

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

Mr. JENSEN: Mr. Speaker, Ladies and Gentlemen of the House: You have before you today L.D. 2177, An Act Concerning the Transit District Buses Used for Elementary Pupil Transportation. This act has been vetoed and I am asking you to override this brash action by the Governor.

Let me start by reading the Statement of Fact on the original bill. "The purpose of this act is to enhance people's safety by allowing flexibility in transit district bus seating capacity for small children where the loading factor is unstable. Strict adherence to the 13 inch requirement of the present law often results in small children being left at bus stops or at school, where they could be accompanied safely by amending the law."

Let's start off by looking at why this bill was vetoed. If I could quote from the veto message — "I am returning this bill because it would grant the transit districts powers generally delegated by Maine law to superintendents of schools and school committees." Governor Longley ought to take the time to read the bill. The fact of the matter is that my bill does not take any power away from school superintendents nor from school committees. They never had any power over school bus seating capacity. They never had any authority whatsoever in this area. Even if it had been the case, the fact is, I put this bill in at the request of both the Portland school superintendent and the school committee. If they had the power, this bill never would have come up. They would have handled the problem administratively. The fact is, they couldn't do this. Nor does the bill grant power to Maine's only transit district. The power is, the power always has been, with the Legislature itself. That is the reason we are discussing it today.

The veto message goes on to say, and I quote, "I do not approve of legislation that amends our school bus safety laws for the convenience and profit of a transit district to the potential detriment of the safety and health of the elementary school children." Again it is very clear that the Governor does not understand the bill.

The Greater Portland Transit District is not a private company, it is a publicly owned and operated regional district providing public transportation in the Portland area. It is losing nearly \$750,000 during the current fiscal year. This situation is not expected to improve in the future.

Furthermore, this bill is not going to provide any more revenue of any significant amount, even if it should pass. At most, it might add a grand total of \$200 a year in a multi-million dollar operation. If the bill fails, the transit dis-