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question through the Chair to anyone who may answer if they so desire.

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

Mr. McKERNAN: Mr. Speaker, Ladies and Gentlemen of the House: I understand that seasonal golf clubs, seasonal recreational facilities, can in fact have liquor licenses without the food requirement. If anyone would like to correct me on that, I would stand corrected.

Furthermore, I think the ski industry, for instance, would also come under this because that is a seasonal activity. So, all we are asking for really is equal treatment for somebody who is going to be in business all year round.

A lot of statements have been made there this morning that I am not sure really get to the point of this bill, talking about we have done enough for the industry already, well, I don't know what industry they are referring to, but this bill talks about the recreational industry. I don't think you should deny one segment of industry in this state a right that people have just because you think you have done enough with the liquor laws already.

One final thing I would like to mention, that is how these facilities can have a liquor license right now if they want to become private clubs and this is what they don't want to do. I talked about tennis being an elitist sport and how it should be available to members of the public. Well, I would like to read a portion of a letter from Richard Anderson, who is President of the Maine Recreation and Park Association. In support of this bill, he says: "As I am sure you are well aware, some municipalities and towns throughout the state take advantage of the services offered by these indoor recreational facilities and were such facilities to go out of business, it could place a burden on recreation programs in those areas." He said, "We realize that such increased revenues wouldn't necessaryily be a panacea for commercial indoor recreational facilities. It does not appear that this legislation would infringe on other enterprises established solely for the purposes of the sale of food and alcoholic beverages and for this reason, we go on record as supporting the bill."

I think, as I said, it is important, these facilities throughout the state are being utilized by our towns, utilized by all municipalities for different groups. I think it is important that we try to keep these enterprises in business. It has nothing to do with bailing out the Maine Recreation Authority, it has to do with bailing or helping to make these people stay in business that have invested their money. We are doing it now for the seasonal recreational facilities and I don't see why we shouldn't do it for people who are in business all year round. This will make them able tocompeteeconomically. I think it is something we should be encouraging and I hope that you would vote to recede and concur.

The SPEAKER: The Chair recognizes the gentleman from Island Falls, Mr. Walker.

Mr. WALKER: Mr. Speaker, Ladies and Gentlemen of the House: Perhaps I have a conflict of interest here where I own a golf course. Can I speak?

The SPEAKER: The Chair is in no position to rule on whether the gentleman would be in conflict, it is entirely up to him.

Mr. WALKER: Mr. Speaker, Ladies and Gentlemen of the House: I will say this, that my son is now running the golf course, I am semi-retired, and he would like to keep the business open year round. As it is now, all he can buy is a six months license. The town has approved it all and I won't say anymore.

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

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: Listening to all this debate here, I see it in a much different light, being a lot older than most of you. This takes me back to the days of prohibition, when after the first four months of no booze around, why, if you came up the street half-loaded, you were a hero. So, this evolved around and it developed into having clubs, associations and what have you, where if you brought the booze in, you could have a setup served to you and you could have your fun and frolics and everything else.

I think it is about time we got away from those prohibition days, brought this thing out in the open where it belongs, so instead of hiding the thing, let the general public see what is going on.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion to recede and concur. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Berube, Birt, Boudreau, Bustin, Byers, Carey, Carter, Connolly, Curran, P.; Curtis, Davies, DeVane, Drigotas, Dudley, Dyer, Farley, Fenlason, Frazer, Garsoe, Gauthier, Goodwin, H.; Gould, Gray, Hall, Henderson, Hennessey, Hewes, Higgins, Hinds, Hobbins, Hughes, Hutchings, Ingegneri, Jacques, Jensen, Kany, Kelleher, LaPointe, LeBlanc, Lewis, Lizotte, Lovell, MacEachern, Mackel, Martin, R.; Maxwell, McKernan, Mills, Mitchell, Morin, Najarian, Norris, Pelosi, Perkins, S.; Perkins, T.; Peterson, P.; Peterson, T.; Pierce, Powell, Quinn, Raymond, Snowe, Susi, Tarr, Tierney, Truman, Twitchell, Usher, Wagner, Walker.

NAY — Albert, Ault, Bachrach, Bagley, Bennett, Berry, G. W.; Berry, P. P.; Burns, Call, Carpenter, Carroll, Chonko, Churchill, Clark, Conners, Cote, Cox, Curran, R.; Dam, Doak, Dow, Durgin, Farnham, Faucher, Finemore, Flanagan, Goodwin, K.; Hunter, Immonen, Jackson, Joyce, Kelley, Kennedy, Laffin, Lewin, Littlefield, Lunt, Lynch, MacLeod, Mahany, Martin, A.; McMahon, Miskavage, Mulkern, Nadeau, Pearson, Post, Rideout, Rolde, Rollins, Saunders, Shute, Silverman, Sprowl, Strout, Stubbs, Talbot, Teague, Theriault, Torrey, Tozier, Tyndale, Webber, Wilfong.

ABSENT — Blodgett, Bowie, Cooney, Greenlaw, Jalbert, Kauffman, Laverty, Leonard, McBreairty, Morton, Palmer, Peakes, Smith, Snow, Spencer, Winship.

Yes, 70; No, 64; Absent, 17.

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

The Chair recognizes the gentleman from Cumberland, Mr. Garsoe.

Mr. GARSOE: Mr. Speaker, having voted on the prevailing side, I now move that we reconsider and hope that you all vote against me.

The SPEAKER: The gentleman from Cumberland, Mr. Garsoe, having voted on the prevailing side now moves that we reconsider our action whereby the House voted to recede and concur. Those in favor will say yes; those opposed will say no.

A viva voce vote being taken, the motion did not prevail.

An Act Creating the Maine Criminal Code (S.P. 113) (L. D. 314) (H. "A" H 688, C. "A" S-264, C. "B" S-265)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

The SPEAKER: The Chair recognizes the gentleman from Winslow, Mr. Carter.

Mr. CARTER: May I have this tabled until later in today's session?

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

Mr. ROLDE: Mr. Speaker, I would ask for a division.

The SPEAKER: The gentleman from York, Mr. Rolde, has requested a division on the tabling motion. Those in favor of tabling until later will vote yes; those opposed will vote no.

A vote of the House was taken.

19 having voted in the affirmative and 93 in the negative, the motion did not prevail.

The SPEAKER: The Chair recognizes the gentleman from Winslow, Mr. Carter.

Mr. CARTER: Mr. Speaker, Ladies and Gentlemen of the House: First of all, let me say at the outset that I am not a lawyer, and when it comes to bills of this nature, I have to rely on good judgment and in this case, I called on a close and dearly trusted friend of mine and asked for his opinion on this bill.

I could go on and speak for quite awhile on it but I will not. I don't know if my imparting with the information that I have to you will make any difference in your vote but I am deeply troubled by this bill. First of all, let me tell you why as briefly as I can.

Many years ago, there was all kinds of oppression in this world and it came mainly from those in power, more specifically, I can go back to King John, back to 1215. The people then were subject to the whims of those in power, when King John said, off goes the head, off went the head, there was no recourse. So, people were on the verge of a revolution and they petitioned the king for redress. They petitioned specifically to ask for a committee to oversee the judges. This, of course, was denied and in lieu of that came the Magna Carta. The Magna Carta was essentially the first document given by King John that granted the people civil rights. Now before this occurred, a lot of misery transpired because of boundless and limitless discretion by the king. The bill that we have before us does away with case law and common law which has been building up since that time. By passing this bill, we are going to grant more and more authority to the courts and to the lawyers.

I would just say at this point that although I have many friends who are lawyers, this is truly, if I have ever run across one, a lawyers bill and does not deserve passage.

I would call your attention, for example, specifically to Page 32, Section C2, which reads "A person is justified in using deadly force upon another person when he reasonably believes that such other person is about to use unlawful, deadly force against the action of a third person or is likely to use in any unlawful force against a person present in a dwelling while committing or attempting to commit a burglary of such dwelling or is committing or is about to commit kidnapping or a

forcible sex offense, however, a person is not justified in using deadly force on another to defend himself or a third person from deadly force by the other." What this really means, actually, is that more and more we are protecting the felon and the innocent people are going to be on the receiving end of what we call so-called justice and believe you me, that it is not really justice.

Let me give you an example of what can transpire under this section. A person breaks into my home in the dark, what am I supposed to do, turn the lights on or put a flashlight on him to see if the person is armed or has a gun or likely to use unlawful force? When retreating in an encounter with such a character, you can't shoot or defend your property, you must leave the premises if you can safely do so or surrender property. Now under the stress of this sort of emergency, who is going to think of all the sections in this law? Actually, when such a case is in court, no lawyer would think of all this unless he takes the little booklet out or this one here, which has 156 pages, read through it, read to the judge and jury and say, here is what the law says. He is going to read it all and then they are going to argue about it, about what it means. Yet, if you put the victim of the criminal who is in his own home or is in his own automobile minding his own business, anywhere, you are putting him on the spot to determine the extent of the aggressive intent of the criminal, and upon his judgment and his guess, talking about victims now, he stands or falls either to be exonerated if he shoots the guy or he goes to prison for several years.

He didn't start the whole thing; it is the criminal who came in through the window. This is really terrible, we are, in fact, protecting the criminal. A criminal should not have an advantage over the victim who is going to have to prove that if the criminal enters a home, that he was about to commit a burglary or kidnapping or a sexual offense.

More and more down through the ages, and this is a proven fact, the justice that is being administered in this country belongs to the ones who can afford it, the low-income, the under-privileged, the colored, either who cannot afford to defend themselves or hire legal counsel and end up in jail. By coincidence, there is a good example of the cost of justice on this morning's front page of the Bangor paper. For those of you haven't seen it, let me read briefly; John Mitchell "Successful Defense in the Vesco Security Case was Reportedly Near the $500,000 Mark. Vice President Spiro Agnew was reported to have spent more than $200,000 just to negotiate his nolo plea. John Dean's lecture tour, undertaken to pay his fee, he is expected to get somewhere between $300,000 to $600,000" depending upon which one you read, which column you read and on and on. This is not really justice.

I know that there has been a lot of work put into this code and the people who worked on it, I am sure, have the right things in mind, but I think much more study should be done to come up with something that we really would provide justice for the people. One way, I would think, if we really want to provide justice, we should come up with a system of fines based on restitutions and restitutions should be geared on a fraction of a person's income.

To give you a quick example, if a person is earning $4,000 a year and goes through a stop sign and he is fined $25.00, it is really going to hurt that person, but if a person is earning half a million dollars a year and he goes through a stop sign, what is the $25.00 fine? The man should be charged a hundred times $25.00; this would be meaningful, this would be a deterrent and this would be justice.

I move that this bill and all its accompanying papers be indefinitely postponed and I hope that you will go along with me and I ask for a roll call.

The SPEAKER: The Chair recognizes the gentleman from East Millinocket, Mr. Birt.

Mr. BIRT: Mr. Speaker, Ladies and Gentlemen of the House: There has been a great deal of work go into this bill over a period of several years. I think the original proposal came about through an order that was introduced by the previous Attorney General at a time that he was a member of this body.

This may not be 100 percent perfect, I am not sure that it is or not but I think one of the most interesting aspects of this bill to permit me to vote for it this morning is that it does not take effect until March 1, 1976. This will give people all over the State of Maine, law enforcement people, judges, members of the judiciary, lawyers, all a chance to take a good look at it after it is enacted into law and if there are needs for some changes, they can be made at the special session.

I think the codification of the Criminal Code in bringing into line is a worthwhile move and I hope that you won't vote for the indefinite postponement.

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

Mr. LAFFIN: Mr. Speaker, Ladies and Gentlemen of the House: I went over the Criminal Code, and as many of you know, I was not too satisfied with certain sections in it. I do not believe in decriminalizing marijuana and I wanted the capital death penalty, but those were defeated. But personally, I believe there were good intentions on the part of the people who put those in to not help the criminal. I am against marijuana 100 percent. I didn't speak on it that day because I was speaking on capital punishment. I am for capital punishment. Those two things are not in the bill, but I feel that the committee worked hard. It may not be just as we want it but nothing is just as we want it. There are several things in there that I disapprove of, but to throw the bill out because one or two things in there we may not like, would be an injustice of this legislature.

It was part of our job to come in here and debate the issues that we did not like. I certainly do not want to help one criminal. I certainly know that if a person came into my home at night, I would shoot him, I would rather have a hard time getting out of it than having him kill me and having him go to prison for 12 years. I do believe that they have worked hard and they deserve the consideration of this legislature to pass this bill. It is not just as I want it but I can live with it and maybe next time we could do better.

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

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: I am very, very much surprised at the gentleman who made the motion because I never expected it from him and I will tell you why.

The commission who worked on this revision worked for two years and they really put a lot of time into it. The Committee on Judiciary worked on it for two months and we gave it, every one of us, everything they had. We are not saying that the bill is perfect, it is not perfect, we agree, but we say that this is as good a bill as you can possibly come out with by a committee without being perfect.

We had two months that we worked on this, we had two weeks of hearings every day, you heard me announce it in the House. Where was my good friend, Mr. Carter, he never showed up, we've never seen him. I saw him a couple of weeks ago on Labor Day when he left for Canada, came to see me about a bill, he had a bill similar to our committee member, Mr. Perkins. He said to me "well, I don't think mine will go by, your committee member will probably have a chance to put his by." I said "I'm going to see to it that the bill comes out with the best one that we've got, if your's is better than the others, I'm sure Mr. Perkins and the committee will give you justice and they will be fair to you. Go upstairs and see my Co-chairman, Mr. Collins". He said to me "I'm leaving for Canada". I said "give me your material, I'll take care of it, I'll speak to Mr. Perkins, I'll see what we can do for you". I went upstairs, we had a committee hearing and this bill was to help someone who was assaulted, you've heard here in the House last week or the week before sometime. In case that his bill first came out with a cost of $300,000 but he cut it down. Mr. Perkins had much less than that but there was something in the bill that the committee honestly, as we did, deal all the way through since the first of January that we have done. I have been in the legislature for 12 years, and ladies and gentlemen, if we have ever worked hard, the 13 members of that committee and myself, this is one year, one term that I've worked hard and the rest of the committee did the same thing and I'm very much surprised, I don't say that this bill is perfect, there are a few things that might not be but like you heard a few minutes ago, this bill takes into effect March 1st.

There's no reason why Mr. Carter couldn't come in when I asked on many occasions in the House here, for any one of you to come upstairs and straighten them out. We had Rep. Joyce from Portland who is very much against marijuana that didn't like what we put in. We had the gentleman from Westbrook, Mr. Laffin, he had something he didn't like in the bill, he came upstairs as a gentleman and looking for the best interest of the people in the state, like he felt and he put in his amendments, came here and fought it out like a gentleman. Why didn't this gentleman do the same thing? He had the opportunity, not to wait until the last thing that we enact this bill? I think that's a dishonor to the people of this state to do anything like that and to the committee and the members of the legislature, to come in here at this time at the last minute and to do a thing like that.

Ladies and gentlemen, I hope that you don't kill this, there has been too much work that went into this, honest work and if there are some things that are not right, I will honestly tell you today that the committee at the special session will do everything they can to change it.

The SPEAKER: The Chair recognizes the gentleman from Houlton, Mr. Carpenter.

Mr. CARPENTER: Mr. Speaker, Ladies and Gentlemen of the House: I am in

somewhat a same bind as the gentleman from Westbrook, Mr. Laffin. I cannot in all good conscience vote to indefinitely postpone this bill as much as I disagree with the section decriminalizing marijuana and some of the other sections.

One thing I would just like to throw out for the thought of the members here for future legislation. This is a monstrous bill and it rolled through this House and the only sections that were even questioned were 20 minutes worth of debate on the marijuana issue and a few minutes of debate on an amendment presented by the gentleman from Westbrook, Mr. Laffin and the gentleman from Kennebunk, Mr. MacMahon.

I guess, I would applaud the Judiciary Committee and the commission that drew this bill up for the amount of tremendously hard work that they did on this bill but I think it's just too big. I would rather have seen this bill, if it's possible and I'm not an attorney, I don't know, I'd rather have seen this bill and any future bills of this nature, come out in Sections or little pieces or medium-sized pieces that we could chew on for a while rather than have it all come out as a big glob and it just kind of rolls through the House, based on the amount of time and work that has been put into this. That's one of the main arguments going toward this bill at this time, nobody is applauding any individual section of this bill so much as they are saying "well, we put so much time in it, it was not fair or I disagree with this philosophy of legislation".. I would, together with the gentleman from Portland, Mr. Joyce, and myself lead the fight to prevent the decriminalization of marijuana, I feel very strongly about it, I'm not doing it just to please my constituents as has been suggested by some people because I could sit here today and I could vote for indefinite postponement and the feeling of my constituents. This is a personal thing, I'm against the decriminalization of marijuana and I think everybody here knows that but I cannot, in all good conscience, vote to kill this entire bill. As it has been mentioned, this won't go into effect and I will guarantee you that after doing a little research over the summer, I will be back with an amendment to it, specifically dealing with the marijuana issue in the special session next spring, so I would urge you not to vote for the indefinite postponement of this bill, it's basically, a good piece of legislation, a piece of legislation that has been a long time coming and a long time needed and I think if each individual in this House, went through this bill, with a fine tooth comb, we would all find at least one thing and probably a lot more that we disagree with but as the gentleman from Sanford, Mr. Gauthier just said, there's time to amend it.

When I presented my amendments in reference to marijuana, perhaps they weren't that well thought out, perhaps I could have gotten it through if the expungement of pardoning amendment never was offered, was written a little better so maybe I'll try that route again.

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

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen: There are two things that I forgot to mention. One thing is that we didn't put this thing through without looking at it or studying it or doing our duty. If you notice and I think you did last week, when we came up with 67 amendments, that our committee came out with, that we changed from the original commission, when you come out with 67 amendments with a big bill like this code is, you may rest assured that we did work, we worked day and night, ladies and gentlemen. Number I, I don't if I mentioned the bill that I brought out that Mr. Carter had but Mr. Perkins was nice enough about letting Mr. Carter copy some of his things that he had in his bill to put in with Mr. Carter's to make it better and also.

The SPEAKER: The Chair recognizes the gentleman from Winslow and asks for what purpose does he rise?

Mr. CARTER: I'd like to ask the Chair if this bill that is now being discussed, is this relative to the issue.

The SPEAKER: The Chair announces that since we are dealing with the Maine Criminal Code, almost anything is relevant to the issue.

Mr. GAUTHIER: Ladies and gentlemen, it wasn't Mr. Perkins' name that appeared on that bill, it was Mr. Carter's name so the committee, I think was very honest.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: The Maine Criminal Code has had its full and fair hearing. I urge the adoption of the code and am opposed to the motion before the House. I would however, like to ask one question and would it be permitted off the record -- on the record, I'm a little concerned about the fine and I'm concerned because I don't want to make this state a laughing stock and it's Page 143, Section 1301 and the way I read Paragraph D in Chapter 53 "a prostitute being arrested will be fined under one of the classifications of the fine or she would come under Section D which states "that regardless of the classification of a crime, any higher amount which does not exceed twice the pecuniary gain derived from the crime by the defendant", I'm interested in that do we need to have something in here that applies to the woman on the street, that she would almost have to get into posting her price. This particular section and this is the thing we could get a national play on and I've heard a lot of bills here and I'm still a freshman and it almost makes it a therapeutic treatment that's being sold and requiring the display of price. I would like somebody on the Judiciary to see if I'm right on that or wrong?

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

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: The purpose of the provision which says that the fine may be upped to twice the gain received from the crime is so that the fine will actually be a deterrent in a wide-range of situations and the one that I think that the provision was probably written for, was the bribery situation where if someone accepts a bribe of say up to $5,000, a fine of $500, is obviously not going to be a deterrent so that this provision would provide that the fine could go up to $10,000 in that situation.

I think as a practical matter that the concern expressed by Mr. Joyce will not be a real problem because the maximum fine for prostitution, I believe, under this bill is $250 and I don't think we will actually get into the situation where the courts are applying the twice-the-pecuniary gain standard, in those situations which Mr. Joyce refers to, and I think if it is a problem, I think it's a small one that could be dealt with at the special session.

The SPEAKER: The Chair recognizes the gentleman from Winslow, Mr. Carter.

Mr. CARTER: Mr. Speaker, Ladies and Gentlemen of the House: My good friend, Rep. Gauthier from Sanford is surprised, he shouldn't be, he shouldn't take this as a personal attack nor should any members of the committee take it as a personal attack on their integrity. I for one, have already stated that an awful lot of work went into this and I think if Mr. Gauthier would stop and think for a bit, he would realize we have close to 200 bills before us in the session and out of 300 items I don't believe there is any one in this legislature that can sit down and pick out one bill and say "now, I'm going to work on this particular bill". I spent a whole weekend working on this bill, and believe you me, it's a very complicated piece of legislation. I'm not a lawyer, I don't know all the answers but I can tell you this much, you put this piece of legislation on the books and if you think you had troubles with 1994 or the Consumer Credit Code, you haven't seen anything yet. This is a bad piece of legislation and does not deserve to become law. Much more work is needed. Now you have already read in the papers over the weekend where the Supreme Court has declared one section already unconstitutional. Let me cite you another section, specifically, Page 73, Chapter 21, Section 501 "a person is guilty of disorderly conduct if in a public place he intentionally or recklessly causes annoyance to others by intentionally" Now it simply means that if I go into a hall and I choose to disrupt the speaker and I insist that I don't agree with him, I'm in violation of this code. Now there could be that the lot of the minority will agree with the dissenter and not agree with the majority speaker, now this runs smack against the first amendment. Nobody will ever be convicted under this Section, it will be all kinds of litigation, it will end up on appeal, it's going to be thrown out as unconstitutional.

Let me go on and show you another Section that is very complicated, Page 52, Chapter 15, theft. The sections run from Sections 353, Theft by Unauthorized Taking or Transfer, Section 354 Theft by Disception, Section 355, Theft by Extortion, Section 356, Theft of Loss, Mislaid or Mistakenly Delivered Property, Section 357, Theft of Services, Section 358, Theft by Misapplication of Property, Section 359, Reviewing Stolen Property, Section 360, Unauthorized Use of Property, Section 361, Claim of Right Presumption, Etc.

Ladies and gentlemen of the House, the lawyers are going to have a field day with this thing. Many guilty people are going to get away with it because it's too complicated, it has too many definitions, it's worse than what we have now on the books but at least what we now have, has been tried through hundreds of years through common law and case law. Common law is much better than the mess that we have before us here although common law is not the answer either. As I said before, the lawyers are going to have a field day with this and so will the judges, they're going to have much too much discretion.

Now here is a suggestion on how it could be handled and I quote "the acquisition or exercise of control over any property of

interest in property, legal or equitable without first obtaining the true and free consent of the owner thereof, shall be ordered to make restitution to said owner in three times the value of said property or interest therein, unless (A) a judicial judgment has been procured so authorizing or confirming said acquisition or control or (B) has made complete restitution to the owner before judgments against him or (C) that the whole incident is the result of a misconception or misinformation or misadventure in which event the judgment shall be for the value thereof only." Now that's much more simple, much more to the point and this is justice, ladies and gentlemen, but this code, no matter how much work has gone into it, well intentioned, is going to create nothing but injustices throughout our system and I would hope that you go along with the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the gentlewoman from Augusta, Mrs. Miskavage.

Mrs. MISKAVAGE: Mr. Speaker and Ladies and Gentlemen of the House: This summer the Attorney General's Office is going to instruct its staff in the implementation of this code and if there are any errors that are found this summer, they will be able to correct them and I would suggest that if any member of this House finds anything wrong with the code, if they talk to people in the Attorney General's Office, I am sure it can be straightened out so that when it goes into effect next March, it will be right.

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

Mr. PERKINS: Mr. Speaker and Members of the House: I think that it is truly unfortunate that Rep. Carter hadn't raised these questions that he has today to some member of the committee or the commission which studied it, as has already been pointed out. I would like to take an opportunity though to answer the questions that he has raised because when you raise questions, it creates doubt and I can see certain doubts which are suddenly appearing when, in fact, I don't think there need be any. I suspect that Rep. Carter's primary concern is one of dealing with the problem of crime and restitution and he's mentioned it several times, and I would submit the present law does not require that the court, in any form, direct that restitution be made but we have talked about restitution before and we must realize that restitution is not always feasible at all possibly in certain criminal cases. Unfortunately so. The Criminal Code has attempted to deal with the problem of restitution and, in fact, directed the court in those instances where possible, to require that the criminal make restitution. That is not the present law and it is a step forward in the direction of providing for restitution. Unfortunately again, if we could gauge all criminal activity and make all penalties dependent upon restitution that would be fine, unfortunately again, the criminal more often than not has no means of restitution, many instances is uneducated, will never be able to acquire any form of wealth even to take care of his own needs, say nothing of taking care of the needs of his victim.

Rep. Carter referred to Section 108 dealing with force. The force section of the statute as it is enacted or as it may be enacted by the code is a little more clear than the present law. The present law is not clear as to how much force may be used when you are a victim of a criminal burglary. This does say where you have reason to believe that you are in danger of your life or about to be injured, you may use deadly force to repel that, it goes on to suggest and say that "deadly force against the criminal may not be used in those instances where you can reasonably extricate yourself from the situation or you do not have reason to believe that you are going to be injured, assaulted or criminally harmed". I submit that if I am in my own home, and it does say that, in my own home, I may use deadly force against a criminal and if somebody is coming through that door, I would suggest that this law now says that I now can, in fact, and if it is in the nighttime and I have reason to believe he is going to harm me, I can shoot him dead and he is dead and there isn't a court in the land I believe, that is going to require of me to spend any time in prison.

Insofar as the section dealing with theft, there are many different sections dealing with theft, because, ladies and gentlemen, our criminal law over the years has developed many different categories of theft and it has all come about as a result of case laws based upon common fact situations so that we have tried to take a given common fact situation because it is common, define it and understand and know that this is a crime. It is a form of theft, it is a form of embezzlement, if you will, it's a form of taking proeprty without the owner's consent but it is a separate type of category and we have attempted by virtue of this code to be exact, as exact as possible so that the criminal, as well as you and I, ladies and gentlemen, will know that if that fact situation actually occurs, that this is a type of crime it is, this is the type of penalty it will provide for. So yes, it is a voluminous document, it is a very in depth type of instrument, but criminal law, by itself, its nature is a very weighty subject and, therefore, I can only say that it is again unfortunate that Rep. Carter or any others who may have doubts have not been able to get to the document before and to have come to us with their questions in an effort for us to try to answer them because at this point it is difficult to know whether we actually satisfy the individual or we don't. We can only say we are at a critical point in time where we have to act on the document and, therefore, we don't have any additional time to sit down with the members and say, this is what it does. I hope that we can satisfy it.

The question was raised by Rep. Joyce about prostitution. Prostitution is a Class E crime. Under the code, it says, in the section he referred to, that it provides for a $250 fine, however, it goes on to say that the type of offense may be, that is, the individual may be fined twice the monetary consideration higher than the $250. In other words, yes it is true, but if the lady of the night, if you will, charges $175, then in fact, she can be fined twice that amount which is higher than the fine provided for under Class E which is $250. I hope that answers those questions and I trust that we will enact this.

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

Mr. KELLEHER: Mr. Speaker, I'd like to pose two questions if I may through the Chair to any member of the Judiciary Committee. Is it not a fact that the court itself has ruled a portion of the Criminal Code unconstitutional and if that is a true fact, then why hasn't the Judiciary Committee amended it out of the document? It seems to me if the statement that Mr. Carter made to be, is true, that they have ruled a portion of it unconstitutional, then wouldn't we look rather ridiculous as members of the legislative body passing out a bill knowing full well that a portion of that bill is unconstitutional?

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

Mr. PERKINS: Mr. Speaker, Members of the House: In an effort to answer that question also, no, the court has not specifically ruled the Criminal Code to be unconstitutional. You have to understand that it is not law, therefore, it is not unconstitutional. However, it has ruled on the question of manslaughter. The offense of murder which is the present law we are presently under it now and we because this came about last week, it is relatively new in its interpretation of the burden of proof insofar as question of, who must show if the crime was committed in the heat of passion? Maine law, in the past, has required that the defendant so prove that. The Supreme Court of the United States has said, no, the prosecution, or the state must prove that. We will have to deal with that in the code because that interpretation will have to be taken care, that was done last week, it is still being studied and we can correct the issue.

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

Mr. HENDERSON: Mr. Speaker and Members of the House: Just briefly, about the complicated mess of this, if you think this Criminal Code is complicated, I suppose you've looked at our current Criminal Code or maybe you haven't because we don't have it in any one place, in fact, it is in four separate volumes of those big red annotated law books, not that they are all filled with that but if you wanted to carry them around, you could carry those four big, red books or you could try to put all those different kinds of things together in one place and this bill primarily tries to get all the various offenses and the various penalties systemized and organized and put in one single place where people can look at it and get a chance to find out what is and what isn't the law. In the process we have made some substantive changes which we have debated in the past but I would just like to emphasize if you think this is complicated, you ought to just try to find the Maine Criminal Code now, it is not in any one particular place. The other point is that the effective date of this legislation is well along into next year and that any particular problems that come up in the meantime can be dealt with.

The SPEAKER: The pending question is the motion to indefinitely postpone. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

The SPEAKER: Mr. Carter of Winslow requested a roll call. In order 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 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 the gentleman from Winslow, Mr. Carter, that

this Bill and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Berry, G. W.; Call, Carter, Churchill, Conners, Curran, R.; Dow, Dudley, Fraser, Hunter, Kelleher, Kelley, Lizotte, Rideout, Shute, Silverman, Twitchell, Walker.

NAY — Albert, Ault, Bachrach, Bagley, Bennett, Berry, P. P.; Berube, Birt, Blodgett, Boudreau, Burns, Bustin, Byers, Carey, Carpenter, Carroll, Chonko, Clark, Connolly, Cooney, Cote, Cox, Curran, P.; Curtis, Dam, Davies, DeVane, Doak, Drigotas, Durgin, Dyer, Farley, Farnham, Faucher, Fenlason, Finemore, Flanagan, Garsoe, Gauthier, Goodwin, H.; Goodwin, K.; Gould, Gray, Greenlaw, Hall, Henderson, Hennessey, Hewes, Higgins, Hinds, Hobbins, Hughes, Hutchings, Immonen, Ingegneri, Jackson, Jacques, Jalbert, Jensen, Joyce, Kany, Kennedy, Laffin, LaPointe, LeBlanc, Leonard, Lewin, Lewis, Lovell, Lunt, Lynch, MacEachern, Mackel, MacLeod, Mahany, Martin, A.; Martin, R.; Maxwell, McBreairty, McKernan, McMahon, Mills, Miskavage, Mitchell, Morin, Morton, Mulkern, Nadeau, Najarian, Norris, Pearson, Pelosi, Perkins, S.; Perkins, T.; Peterson, P.; Peterson, T.; Pierce, Post, Powell, Raymond, Rolde, Rollins, Saunders, Snow, Snowe, Spencer, Sprowl, Strout, Stubbs, Susi, Talbot, Tarr, Teague, Theriault, Tierney, Torrey, Tozier, Truman, Tyndale, Usher, Wagner, Webber, Wilfong.

ABSENT — Bowie, Kauffman, Laverty, Littlefield, Palmer, Peakes, Quinn, Smith, Winship.

Yes, 18; No, 123; Absent, 10.

The SPEAKER: Eighteen having voted in the affirmative and one hundred and twenty-three in the negative with ten being absent, the motion did not prevail.

Thereupon, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to revise the Laws Relating to Financial Institutions (H. P. 831) (L. D. 1134) (C. "A" H-706)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

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

Mr. LYNCH: Mr. Speaker, and Ladies and Gentlemen of the House: This was debated at some length the other day but I wonder if the members of this legislature understand the full significance of this revision of the laws relating to financial institutions.

Maine is a largely rural area. We have a relatively stagnant population. We have very slow economic growth and to move into a revision of the financial laws governing banks and financial institutions in this state with the relative ease with which we are doing it in the State of Maine, I think, ought to tell us something. This is an area in which, on the federal level, for more years than the committee has had months to study this, there has been complete disagreement, disagreements within the savings institutions who are not unified on what they want. I would suggest that on the federal level, the expertise available to members of Congress far exceeds anything that is available in the State of Maine.

The Bank Study Commission and the Business Legislation Committee, I am sure, felt that this bill was good for the State of Maine, it was good for the people of Maine because it would bring more competition into banking. Looked at from a short range point of view it will bring competition but the long range implications of this revision are not good for the State of Maine and are not good for the people of Maine.

The savings account and interest areas were debated the other day. There is no question. I speak as a director of a commercial bank, there is no question that this does present a problem to some commercial banks. Traditionally, they have offered checking accounts and, as you may well remember, for many years, your checking account had a fee, there was a charge, because checking accounts are an expense to a bank. Competition has forced the change, now there are some truly free checking accounts, there are checking accounts that are deceptively free of charges, indirect as they may be. What does this mean to the savings institutions? They are going to have to consider the adoption of checking accounts, it is going to be an expense to the savings institution. There is no doubt about it, they can't do it without an expense.

Now, what are the long range implications? I will tell you what they are, the commercial banking in this state has shrunk to 80 percent of it being handled by half a dozen large banking units. They are now dangling before the thrift institutions they carry to entice them to move into the commercial areas by the checking account route. They are going to expose them to more competition.

The bankers association had a meeting last week at New Hampshire. This is what one bank president had to say. "This measure could spell the end of the small independent bank in Maine." He says, "The provision in the new law which allows savings banks and savings and loan associations to branch out are tricking provisions." I see the time coming when savings banks will have branches all over Maine and will start merging with the smaller commercial banks. We will have nothing but large finance institutions here.

This is what I told you last week, they are dangling the carrot in front of the small thrift institution to entice them to venture into commercial activities entirely alien from the traditional savings bank function. Now, why are they doing that? Because the large commercial bank units in the state are not going to grow anymore at the expense of the small independent banks because the few remaining are strongly locally, community oriented with stock ownership opposed to a merger or sale. Where can they grow? They can grow only at the expense of the savings institutions. How are they going to grow? They are going to entice them to move into the commercial ventures. Look at what the chairman of one of the largest bank holding units in the state has to say. "The United States Justice Department for all practical purposes has stopped Maine bank-holding companies from expanding much more because of decreased competition. If the savings banks and savings and loans have the same general power as commercial banks, then the bank holding companies may be able to expand some more. The Justice Department may then consider savings banks are now included in our competition after the new bill goes into effect." Don't you see what that means? Get the savings institutions into the commercial field and then expose them to the same persuasion, friendly or otherwise, that the small independent banks in the state have been exposed to over the years. The long range implications of this bill in its present form means the demise of many, many small thrift institutions in the State of Maine. If they are swallowed up by larger savings institutions or commercial banks, where is your competition? If you have several drug stores in your city, you are going to have competition. When you are left with only one, what happens to your prices? If you are left with just several commercial and savings institutions in the State of Maine, what happens to competition? Your local commercial bank, your local savings institution is no longer going to be controlled locally, you are going to lose that community orientation that it has had over the years, you are going to have your local deposits controlled by a corporation with headquarters miles away from your community who could care less about what the needs are of your community but can see only the advantages of draining the resources of your formerly local bank into another area where it can make a little more money.

This, to me, indicates that the State of Maine is not going to benefit from this bill. It is not going to bring competition except for short range, it is going to diminish the number of banking institutions in the State of Maine and because I see this, down the road, I would like to be recorded in opposition to this bill. I ask for a roll call on the enactment.

The SPEAKER: The Chair recognizes the gentleman from Durham, Mr. Tierney.

Mr. TIERNEY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to speak very briefly in partial response at least made by my good friend from Livermore Falls. In doing so, I hope, would hasten the enactment of this bill.

In the last session, the 106th I joined with the good gentleman from Livermore Falls in a series of bills he introduced at the request of the small organized commercial bankers in the State of Maine.

Specifically, Mr. Lynch and I worked together to achieve the following three bills. The first was to stop the current practice of allowing the Banking Commissions Advisory Committee to veto any regulation which might be promulgated. We have been successful in L.D. 1134 in securing that end. The second goal which we sought was a State Bank Holding Company Act, to give our state banking commissioner some authority in regulating our state bank holding companies. Again, although we failed last session, we have succeeded in L.D. 1134. On these two primary goals the small commercial bank goals of last session have been met. Now it is the third goal however, the question of concentration of economic power and the question of whether or not a small commercial bank, their demise will be hastened under this bill.

Here, I am afraid, the good gentleman from Livermore Falls and I must disagree. Although I am not a banker, I have spent at least the last two years studying this issue very closely and spent a long time talking with members of the entire banking community. I guess the first point to say would be to emphasize, as Mr. Lynch said, the short term gains from this bill is increased competition and that is good, so we are in agreement there. The only question we have, therefore, is the long term. I would make several, several