

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Eighth  
Legislature***

OF THE

STATE OF MAINE

**Volume II**

**May 26, 1977 to July 25, 1977**

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**Senate Confirmation Session  
September 16, 1977**

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KJ PRINTING  
AUGUSTA, MAINE

Mr. COLLINS: Mr. President, the Amendment simply puts in a Section inadvertently omitted concerning escapes from the Maine Youth Center.

I would like to say just a few more words about this Criminal Code Amendment Bill. An important feature of this Bill is that it redefines the homicide laws. When we adopted the Criminal Code a couple of years ago, the scheme was that homicide was divided into several different degrees. In actual practice, these several different degrees have been found to be confusing to Juries, and because we are very anxious that the prosecution in this area be clear, and that Juries understand the material with which they must deal, the interim Commission which was to review the workings of the Code, struggled with wording and eventually came to the idea that we would do better to go back to certain older terminology, but to carefully define it within the Code, so that we have adopted the language of murder, of felony murder, and manslaughter, carefully defined it, and we believe that this material will be more effective in helping our Judges to correctly charge Juries.

There is another item in this Bill having to do with intoxication as a defense in criminal matters. Section 58 A of the original Code dealt with this. In one or two cases Judges have said that they are a little concerned about charging Juries on this point. We have slightly changed the wording on it, after consulting with several Judges, as well as the prosecutors and defense lawyers, and people in the Attorney General's Office who specialize in this material.

There are a few other odds and ends of definitions that are not as much interest to the average person. A couple of questions have surfaced here in the Legislature since this new draft was printed. One of these questions relates to firearms. I will not give you detail, but I think we have not changed the law about firearms. We have redefined certain parts of the law about dangerous weapons. Our Staff has met today during the recess with certain Members of the Legislature who had a particular concern over the right to bear arms, and I think we have satisfied their questions.

There has been a further question surface concerning the sentencing of criminals who have committed murder. When the original Criminal Code came to the Floor, there was a House Amendment put on it which made a mandatory sentence in the worst type of murder situation. We have not changed the effect of that, although we have reordered the Sections and the definitions and a life sentence now means that. It means a life sentence. There was a time when a life sentence meant with all of the good time provisions and so forth something more nearly like 11 years and a few months. But this new draft correction does make some small change in that area.

I am hoping that the Senate this afternoon will want to adopt this simple Amendment that I have offered, and probably I will then ask that the matter be Tabled so that if there are other questions that arise or concerns, that they may be brought to the Judiciary Committee. We welcome these inquiries. We do have the services of good draftsmen, if there are those who want to have Amendments. In many cases it is simply a matter of explaining the relationship of one Section to another in a very complicated area.

Thank you, Mr. President.

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

Mr. CONLEY: Mr. President and Members of the Senate, I would like to pose one question to the good Senator from Knox, Senator Collins. I note that in the last Session of the Legislature, and I am not sure if it was dealing with the Criminal Code or not, but we gave the right to any one to shoot any one on their property, and

is that still part of this Bill. I notice there are several sections in here that are repealed, and I do not know just what part of the law they are repealing, and I wonder if the good Senator might be able to respond to that.

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

Mr. COLLINS: Mr. President, we did not change the Sections about shooting people. We had a separate Bill that would have permitted the use of deadly force in the protection of property other than the residence, but the Committee rejected that Bill, and the Legislature went along with your rejection, so those areas have not been changed in effect. You may protect your residence with deadly force under many circumstances, not all circumstances. I will not try to get into a technical lecture here, but substantially I think the answer is that we have not changed that area, and the Legislature went along with your rejection, so those areas have not been changed in effect. You may protect your residence with deadly force under many circumstances, not all circumstances. I will not try to get into a technical lecture here, but substantially I think the answer is that we have not changed that area.

Senate Amendment "A" Adopted.

On Motion of Mr. Speers of Kennebec,

Tabled for One Legislative Day, Pending passage to be engrossed.

(Off Record Remarks)

#### Enactors

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

"An Act Providing for Changes in the Laws Relating to Property Taxation." (S. P. 479) (L. D. 1742)

"An Act to Increase Payments to Foster Homes for Children and to Small Boarding Homes for Adults." (H. P. 1358) (L. D. 1602)

On motion of Mr. Huber of Cumberland, Placed on Special Appropriations Table, Pending Enactment.

"An Act Relating to Residency Requirements of Municipal Employees." (S. P. 192) (L. D. 589)

"An Act to Provide Home Health Care Coverage in all Health Care Policies and Contracts." (S. P. 341) (L. D. 1125)

"An Act Requiring Immunization of Children Prior to Entering Grade School" (H. P. 1072) (L. D. 1264)

"An Act Relating to Campaign Reports and Finances." (H. P. 1739) (L. D. 1888)

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

"An Act to Provide for no Smoking Areas in All State Offices." (H. P. 818) (L. D. 991)

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Troitzky.

Mr. TROTZKY: Mr. President and Members of the Senate: L. D. 991 says that no person shall smoke in the office of any Department, Agency or Commission of the Executive, Legislative or Judicial Branches of the Government of this State, or any office of the University of Maine, except in designated smoking areas.

The Governor of our State, James B. Longley, sent down an Executive Order on July 12, 1976, which states: "I, James B. Longley, Governor of the State of Maine, direct all Agency heads to identify non-smoking areas for employees who choose to work in a smoke-free environment."

I would, therefore, suggest that this legislation is unnecessary, and I also believe that people who are working in the offices in State Government, who do smoke, should have that privilege, if they are not infringing upon the rights of others. I think this Executive Order takes care of that. I think it is overkill.

I hope that the Senate would not enact this bill.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Danton.

Mr. DANTON: Mr. President and Members of the Senate: It is a pleasure to get up and support the good Senator from Penobscot, Senator Troitzky.

You have to remember one thing here, that when we say no smoking, it is difficult enough now to get into the cafeteria to get a cup of coffee or a sandwich, or whatever we may want, now as you go through some of these offices here, especially in the Educational Building, which I am sure the good Senator from Kennebec, Senator Katz, is very familiar with, some of those have just one little office. Now where would that person designate an area. What we are asking that person to do is to leave that office, leave his work where he works all alone, step out of the office, have his cigarette. Meanwhile, John or Jane comes along. They join them and they have another cigarette. Now we are talking about man hours. Thousands and thousands and thousands of dollars that this one little bill is going to cost us.

So I would hope after the Chief Executive of the State, the Governor, and I admire him for that Order that he sent out, and send the Order out and we kill this bill.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President, a parliamentary inquiry. What is the pending motion at this time.

The PRESIDENT: The pending motion is passage to be enacted of L. D. 991.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President, I move the indefinite postponement of this bill and all its accompanying papers.

The PRESIDENT: The Senator from Penobscot, Senator Pray, now moves that this bill and all its accompanying papers be indefinitely postponed.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President and Members of the Senate: I rise to oppose the motion made by the good Senator from Penobscot, Senator Pray.

With respect to my dear seatmate, who has taken thousands of hours off my life over the last several months by blowing into my lungs, the smoke from his cigarettes of every brand that you can think of, it is Camels one day, Marlboros the next, right down the line, and I am getting fed up with it. He has even threatened to bring in those Italian cigars, Parodees. That is the one, and that is the killer of them all.

Apparently the Senator from York has not visited the cafeteria recently, but there are designated areas in the cafeteria for non-smokers, and I enjoy going there. The only problem is when I visit the cafeteria, I visit it with my friend from York, who drags me into that area that is infiltrated with all of the soot and smoke that can be expounded from his mouth into mine.

I think there are a lot of people who would like to see this law passed, and the only people that I know who are against it primarily are those who unfortunately cannot quit smoking and those people in the tobacco industry.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Danton.

Mr. DANTON: I would like to remind my Honorable Leader that when I first came to the Maine Senate as a very young man, that I was a non-smoker, and he would get me into these smoke-filled political caucuses of his, and blow smoke into my face, and that is how I started smoking. Now there is nothing worse than a reformed alcoholic, or someone that used to

smoke and has decided after he has blackened his lungs for years

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

Mr. CONLEY: Mr. President, I rise on a point of personal privilege, and I wish that the Chair would warn the Gentleman to watch his remarks.

The PRESIDENT: The Chair would ask the Gentleman to keep his remarks more in line.

The Chair recognizes the Senator from York, Senator Danton.

Mr. DANTON: Mr. President, I apologize, and I apologize to my Honorable Leader.

But it is true, Mr. President and Members of the Senate, after some individuals have smoked for years and have blackened their lungs, and finally have decided that they should not smoke, and I can guarantee you most of those people go back to smoking. I would almost be willing to make a wager that before we adjourn tonight that one individual might be smoking right in this Chamber that is not presently smoking.

But when we talk about the cafeteria, I agree. They should have an area set aside and have no smoking, and I would like to go and sit in that area when I can find a seat. Now if I cannot find a seat now, when we ask all these employes to go there, hour after hour, we will never be able to find a seat, and I would hope we would kill this Bill. I am quite sure that the Department heads are very, very capable, and they can handle it within their own Department.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President and Members of the Senate: I would just like to point out to the good Senator from Cumberland, Senator Conley, Rule 30, Rules of the Senate. "Members of the Senate may exchange seats on consulting the President and obtaining his permission."

If the Senator from Cumberland has a problem because of his assistant smoking, I would perhaps maybe he follow the rules and get away from those individuals that smoke.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President, I do not know how long it has been since the good Majority Leader from Cumberland has been in the cafeteria, but it was shortly after the Governor's decision we had signs in one portion of the cafeteria which said no-smoking area. About two months after that the signs were taken down, and I asked the operator of the cafeteria why. He said nobody pays attention to them, so we decided we might as well take them down.

I have not seen any signs in the cafeteria which says no-smoking area all this 108th Session so far, and it is sort of obnoxious sometimes to sit down and have your dinner with smoke permeating the food that you are trying to eat, but if I can find a no-smoking area in the cafeteria — it is not there, that is all.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, I would like to point out to the good Senator from York, Senator Hichens, that that is Majority, spelled M-I-N-O-R-I-T-Y.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Mr. TROTZKY: Mr. President, if I am not mistaken, this Bill would prohibit smoking in this Chamber.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Danton.

Mr. DANTON: Mr. President, I would like to ask a question through the Chair.

The PRESIDENT: The Senator may state his question.

Mr. DANTON: Mr. President, I wonder if this Bill violates Joint Rule 28. There must be a fiscal note on this Bill, Mr. President.

The PRESIDENT: The Senator from York, Senator Danton, has posed a question through

the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, the fiscal note would come to me, I am afraid, if I get the disease that I think I am going to get.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the Motion by the Senator from Penobscot, Senator Pray, that this Bill, L. D. 991, be indefinitely postponed.

The Chair recognizes the Senator from Somerset, Senator Redmond.

Mr. REDMOND: Mr. President, I ask for a Roll Call.

The PRESIDENT: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators present in favor of a Roll Call, please rise in their places to be counted.

Obviously, more than one-fifth having arisen, a Roll Call is ordered.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, this is a serious Bill. I am afraid of the Constitutional implications of this Bill. The First Amendment of the Constitution is one of free speech, so I have serious reservations whether we will get any further coverage of our proceedings from the Associated Press if this Bill passes.

The PRESIDENT: The pending question before the Senate is the Motion by the Senator from Penobscot, Senator Pray, that L. D. 991 be indefinitely postponed.

A yes vote will be in favor of indefinite postponement. A nay vote will be opposed.

The Doorkeepers will secure the Chamber. The Secretary will call the Roll.

#### ROLL CALL

YEA — Carpenter, Collins, D.; Cummings, Danton, Farley, Huber, Katz, Levine, Lovell, Mangan, Martin, Merrill, Morrell, O'Leary, Pierce, Pray, Snowe, Trotzky, Usher, Wyman, Sewall.

NAY — Chapman, Collins, S.; Conley, Curtis, Greeley, Hewes, Hichens, McNally, Minkowsky, Redmond, Speers.

ABSENT — Jackson.

21 Senators having voted in the affirmative, and 11 Senators in the negative, with 1 Senator being absent, the motion to indefinitely postpone L. D. 991 does prevail.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Danton.

Mr. DANTON: Mr. President, having voted on the prevailing side, I now move reconsideration, and I would hope that you would all vote against me.

The PRESIDENT: The Senator from York, Senator Danton, now moves that the Senate reconsider its action whereby it indefinitely postponed L. D. 991.

A viva voce vote being had.

The motion to reconsider does not prevail.

Sent down for concurrence.

RESOLVE, to Require the Department of Human Services to Provide the Legislature with Information Relating to the Determination of Need under the Aid to Families with Dependent Children Program. (H. P. 1124) (L. D. 1342)

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

#### Emergency

"An Act to Eliminate Tax on Marine Worms and Replace it With a Fee for Inspection and to Specify Certain Offenses Concerning the Sale of Marine Worms and Other Commodities." (H. P. 913) (L. D. 1119)

On motion of Mr. Huber of Cumberland,

Placed on Special Appropriations Table. Pending Enactment.

#### Orders of the Day

The President laid before the Senate: Bill, "An Act to Revise the Judicial Retirement System." (S. P. 497) (L. D. 1776)  
Tabled — June 28, 1977 by Senator Speers of Kennebec

Pending — Passage to be Engrossed  
On motion of Mr. Speers of Kennebec,  
Retabled for One Legislative Day.

The President Laid before the Senate: RESOLUTION Proposing an Amendment to the Constitution to Mandate the Appropriation of Funds for State Employee and Teacher Retirement Costs. (H. P. 2) (L. D. 2)

Tabled — June 29, 1977 by Senator Speers of Kennebec

Pending — Final Passage  
On motion of Mr. Merrill of Cumberland,  
Retabled for One Legislative Day.

The President laid before the Senate: Bill, "An Act to Clarify Actual Notice Under the Recording Laws in Regard to Exceptions and Reservations." (H. P. 1119) (L. D. 1337)  
Tabled — June 29, 1977 by Senator Collins of Knox

Pending — Consideration  
On motion of Mr. Collins of Knox, The Bill Substituted for the Report, in concurrence.

The Bill Read Once. House Amendment "A" Read, and on further motion of the same Senator, House Amendment "A" Adopted in concurrence. Under further suspension of the rules, the Bill, as amended, Read a Second Time.

On motion of Mr. Speers of Kennebec,  
Tabled for One Legislative Day. Pending passage to be engrossed.

The President laid before the Senate: House Reports — from the Committee on Business Legislation — Bill, "An Act to Require Filing and Prior Approval of all Rates for Use by Nonprofit Hospital or Medical Organizations." (H. P. 1539) (L. D. 1769) (Emergency) Majority Report — Ought to Pass as Amended by Committee Amendment "A" (H-752); Minority Report — Ought to Pass as Amended by Committee Amendment "B" (H-753)

Tabled — June 29, 1977 by Senator Pierce of Kennebec

Pending — Motion of Senator Jackson of Cumberland to Reconsider Acceptance of Majority Report.

The PRESIDENT: Is it now the pleasure of the Senate to reconsider its action whereby it failed to accept the Majority Ought to Pass as amended by Committee Amendment "A" Report of the Committee.

The Chair will order a Division.  
Will all those Senators in favor of that motion, please rise in their places to be counted.

Will all those Senators opposed to that motion, please rise in their places to be counted.

27 Senators having voted in the affirmative, and none in the negative, the motion to reconsider does prevail.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Pierce.

Mr. PIERCE: Mr. President, I would now move that we accept the Majority Ought to Pass Report.

The PRESIDENT: The Senator from Kennebec, Senator Pierce, now moves that the Senate accept the Majority Ought to Pass as amended by Committee Amendment "A" Report.

The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Mr. CARPENTER: Mr. President and Ladies and Gentlemen of the Senate, I urge adoption of