

MAINE STATE LEGISLATURE

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Legislative Record
House of Representatives
One Hundred and Twenty-Second Legislature
State of Maine

Volume II

First Special Session

May 26, 2005 – June 17, 2005

Second Special Session

July 29, 2005

Second Regular Session

January 4, 2006 - April 6, 2006

Pages 737-1487

ABSENT - Berube, Bierman, Crosby, Fitts, Jackson.
Yes, 74; No, 72; Absent, 5; Excused, 0.

74 having voted in the affirmative and 72 voted in the negative, with 5 being absent, and accordingly the Resolve was **PASSED TO BE ENGROSSED as Amended** and sent for concurrence.

Bill "An Act To Amend the Maine Tort Claims Act"
(H.P. 655) (L.D. 936)
(C. "A" H-657)

Was reported by the Committee on **Bills in the Second Reading** and **READ** the second time.

On motion of Representative CARR of Lincoln, was **SET ASIDE**.

On further motion of the same Representative, **TABLED** pending **PASSAGE TO BE ENGROSSED as Amended** and later today assigned.

REPORTS OF COMMITTEE
Divided Report

Majority Report of the Committee on **JUDICIARY** reporting **Ought Not to Pass** on Bill "An Act To Protect Unborn Children from Acts of Violence"

(H.P. 201) (L.D. 262)

Signed:

Senators:

HOBBS of York

BROMLEY of Cumberland

Representatives:

PELLETIER-SIMPSON of Auburn

FAIRCLOTH of Bangor

GERZOSKY of Brunswick

CANAVAN of Waterville

BRYANT of Windham

DUNN of Bangor

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A"** (H-647) on same Bill.

Signed:

Senator:

HASTINGS of Oxford

Representatives:

SHERMAN of Hodgdon

CARR of Lincoln

BRYANT-DESCHENES of Turner

NASS of Acton

READ.

Representative PELLETIER-SIMPSON of Auburn moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

Representative HALL of Holden **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The **SPEAKER**: The Chair recognizes the Representative from Holden, Representative Hall.

Representative **HALL**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I rise today in opposition to this motion. This piece of legislation is one that is very near and dear to my heart. First of all, my constituent who resides in Dedham had a very, very tragic instance where her aunt, who was eight months pregnant was brutally murdered at the hands of her husband because she had chosen to leave and get away from an abusive relationship and he could not stand the

fact that she was leaving with his child so he decided to murder them both. She has been following this legislation and she urges me everyday to keep fighting for little Jonah. His mother was eight months along when she was brutally murdered.

You have received an awful lot of information and I am sure that many of you have been grabbed at the door and you have been bombarded with arguments why this bill should not receive passage. You have been told that this is going to lead to a woman being charged with some kind of crime that is absolutely a falsehood. When you read the bill and it says in Section 221, it says that a person under this chapter does not include the pregnant woman whose unborn child was killed. That means that we are saying that a person is guilty of murder of another person that that does not include the pregnant woman. We just saw a recent handout where they acknowledged that. That is absolutely not true. The death of a pregnant woman cannot be charged anywhere under this bill.

The second argument that you have heard is that we passed the Motherhood Act, that it is beautiful and that it protects pregnant women and that this bill is not necessary. While we all know the kind of games that get played around here, look at the number, it is LD 262. Anybody that doesn't remember, the Motherhood bill was 884. Somehow we discussed the Motherhood bill a month ago and LD 262 has been stuck hanging around and couldn't get to the floor of the House first even though it was 600 bills ahead of it. I don't think that we need any explanation of how that happened.

You are going to hear that this is a bill about abortion. Well friends, if you read the bill, it clearly acknowledges in here that a woman has a right to an abortion. Many of you feel that the bills sponsor is out to take away a woman's right to abortion and to otherwise somehow restrict a woman's right to an abortion. This bill is a pro-choice bill. I stand here proudly and tell you that I am a pro-choice legislator. The purpose of this bill is clear. The committee had the Committee Amendment "A". If you take that out and read it it clearly says, without question, that the purpose of this chapter is to provide appropriate criminal justice consequences for crimes committed against an unborn child. By establishing crimes against an unborn child the Legislature does not intend that an unborn child be given status.

The **SPEAKER**: The Chair recognizes the Representative from Bangor, Representative Faircloth.

Representative **FAIRCLOTH**: Mr. Speaker, point of order.

The **SPEAKER**: The Representative may proceed.

Representative **FAIRCLOTH**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Is discussing the amendment appropriate at this time when we are considering the Majority Ought Not to Pass Report.

On **POINT OF ORDER**, Representative **FAIRCLOTH** of Bangor asked the Chair if the remarks of Representative **HALL** of Holden were germane to the pending question.

The **SPEAKER**: What is germane or relevant to the discussion today is the question of the merits of why or why not the bill should go forward. We are not quite yet to the Committee Amendment "A" report, but it is fair and relevant to discuss the reasons for or against the merits of this bill. The Representative may proceed.

The Chair **RULED** that the remarks of Representative **HALL** of Holden were germane to the pending question.

Representative **HALL**: Thank you Mr. Speaker. Let me pick up where I left off. By establishing crimes against an unborn child the Legislature does not intend that an unborn child be given status as a person beyond that necessary to define, prosecute and provide punishment for the crimes established in this chapter. This chapter may not be construed to affect the

state's policies or the rights of a pregnant woman concerning abortion as provided in Title 22, Chapter 263-B.

Having read the statute, I am sure that the good Representative from Auburn is going to stand up and say that the purpose of this bill is not what it says and that it is some other purpose. I don't know how that can be, but that was the reasoning given in committee as to why this bill could not be passed as amended. We already have federal law in place, which very closely mirrors what this bill is. This bill is actually mirrored after the federal law. What that means is that a pregnant woman goes to Dunkin Donuts and gets attacked, beaten and the child that she is carrying is lost. It is simple assault. You can't be charged with murder. Yet, if she is in the parking lot of the post office you can be charged with murder. It makes no sense. You are hearing that and you are hearing out there that this is somehow infringing upon the right of a woman to have an abortion. It is giving special status to a fetus that we don't want to give.

I want to ask a simple question and I would really request that anybody answer this. If a woman who is imprisoned on death row and is scheduled to be executed happens to become pregnant and she is eight and half months pregnant on the date that she is supposed to be executed, do we execute her? I want to know how many people believe that she should be executed. When I finish I would invite anybody to stand up and answer that question by saying that she does need to be executed. The argument from your side has got to be that that is not a life, that that is not a child and that we can't give any special rights to that child so we should go ahead and execute that woman.

We already recognize unborn children where it suits our purpose. A pregnant woman who would otherwise not qualify for MaineCare can receive MaineCare by virtue of the fact that she is now a family of two from the moment that she is found to be pregnant. A pregnant woman can receive food stamps for her unborn child, but yet that unborn child does not deserve protection from a brutal act of violence.

The good Representative from Bangor asked you earlier. He talked about all of the wasted energy and I agree. There is an awful lot of stuff that goes on. There is legislation that is brought forward down here that is an absolute waste of time. But, what I want to know is, as he said, where is the passion for these children. I would ask where is your passion now for these children?

The good Representative from Waterville, Representative Canavan said that we are just playing on people's fears and that, Ladies and Gentlemen of the House, is what these people out in the hallway have been doing. They are playing on your fears. They are telling you that that is an inclined plain with a low co-efficiency of friction or a slippery slope for those of you who have never taken an engineering course. It just does not hold water.

Currently, we have on the calendar a sentiment that says that October 15th of every year is Pregnancy and Infant Loss Remembrance Day to recognize the grief of families involved in pregnancies where the infant was lost and to comfort families and give them hope for the future. We encourage that information on this subject be made available to the public and we also encourage all of society to respond with compassion and to help heal the pain of these families. Where is your compassion now?

I was asked a question and it was brought up in committee. Why do we only protect the women from viability? Why do we only protect the child from viability forward? Why not the whole pregnancy like the motherhood bill does. I have a very good answer for that. Many of you know, and maybe some don't, that I have a wife at home who is currently seven months pregnant and I can tell you, from personal experience, having had a wife have

a miscarriage at two months that loosing a child at seven months, eight months, eight and a half months would be substantially different than loosing one at two months. Any of you out here who are parents and who were closely involved during the pregnancy will hopefully agree with me that as that pregnancy goes forward and you get closer and closer and closer to your due date that that becomes more and more of a child, at least in your mind, if not in anyone else's.

I have a little boy whose name is Dawson. He is going to be born August 13 or thereabouts and there is not a person in here that can tell me that he is not a human being. He is my little boy, and for anybody to say that it would be okay for somebody to beat my wife to the point where he died I cannot accept. I can't and I won't.

My wife is listening at home I hope. Laurie I love you and I am doing the best I can. I urge you to please vote no.

The SPEAKER: The Chair recognizes the Representative from Gorham, Representative Barstow.

Representative **BARSTOW**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I feel that I bear the same heavy heart that we all do regardless of where we stand on this issue. Further, I think that we all bear with that different philosophy the passion that the good Representative from Holden talks about for the good people of the State of Maine. I do rise on the opposite side of the good Representative in support of the Majority Ought Not to Pass Report. The Representative alluded to passage of an Act to Protect Motherhood and we did pass that and I supported that and support this report with the understanding that that did give the severity and the increased punishment that we wanted to add to the justice system for these types of crimes that we talk about today. They have publicized nationally domestic violence that has occurred locally, in our state and in our own backyards. It is very tough for all of us in the districts that we represent knowing that there are people that we know and that there are people that are affected, people that this could happen to tomorrow and in the future.

I supported an Act to Protect Motherhood for that reason. Knowing that it was a compromise between the status quo that we had before the session began and the bill that we are facing now and where I am supporting the Ought Not to Pass Report on it.

We can ensure the justice system and we can ensure that those victims. Those who have family members that are left behind that dealt with this sad situation have that justice now. However, I think, looking at the situation and being a parent with a young daughter and knowing the joy that the good Representative from Holden is experiencing right now as he anticipates the birth of his son and the pride that he has shown here today and the passion that he has brought forth that it is with that hope and understanding that we can look perceptively at the issue of domestic violence.

The item that really brings forward what causes the majority of these cases that we speak about today and the justice that we are looking to bring to the system by discussing this bill. I would feel better, Mr. Speaker and Ladies and Gentlemen of the House that if we were to continue to support, bipartisanly, legislation that helps to prevent domestic violence and helps give support at the home front to make sure that we don't have to deal with laws like this and to make sure that the justice system does not have to step in and a live or two lives, whatever your philosophy claims, is lost. We can feel good about the extra punishment that we have given, whether it be through this bill if the Ought not to Pass Report does prevail, or through the Act to Protect Motherhood that we have implemented here and passed into law. But, when

push comes to shove, and with all of the emotions that are tied into it there is nothing that we can do in this body and there is nothing that we can do in this building to bring the life or lives back. As much authority and responsibility as we have, that would be the best justice of all.

I understand that there are going to be differences and it is my hope that what we have passed already and the work that we are going to continue to do to prevent this domestic violence and this violence in general in our state, is going to continue. I urge my colleagues to support the Majority Ought Not to Pass Report. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Monmouth, Representative Smith.

Representative SMITH: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. This is a horrific subject. It is heart breaking and it is well worth the time that we are putting into the debate. I do feel the need to clarify something though. The good Representative from Holden, Representative Hall made reference to a sentiment that is currently under unfinished business in the calendar. One of the concerns I have in bringing this effort forward for the Pregnancy and Infant Loss Remembrance Day is that it would get pulled into these sort of debates and I feel that it is incredibly inappropriate.

The Representative from Holden did read parts of it and let me read it again. What the sentiment is referring to is "to recognize the grief of the families involved and to remember infants and pregnancies lost." Then it deals with the healing of the families and I hope that we can schedule this so that my constituent can come in and we can talk directly to this sentiment. Having it brought up now is completely irrelevant. There is nothing in the sentiment relevant to the pregnancy as a second being in the discussion of the abuse of women. It is unfortunate that it was brought up and I think that it diminishes what I am trying to do for people who loose a child in pregnancy, still life miscarriage and in the first year of life and I felt the need to rise and clarify that. Thank you.

The SPEAKER: The Chair recognizes the Representative from Frenchville, Representative Paradis.

Representative PARADIS: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I am a proud cosponsor of LD 262 because I feel that it is the right thing to do. Last week I was lobbied intensely by two young pro-choice women from the Bangor area and both were related to Heather Fliegelmen and her unborn son Jonah. They told me that they had made a promise at the funeral of this 20 year old woman that they would do all that they could to change the laws of Maine to recognize a double tragedy of people like the slain 20-year old woman and her much wanted and anticipated baby boy Jonah. In turn, I promised them that I would do my part to see LD 262 passed. It is the least I can do as a person that values life in all its forms and stages. I have supported bills that protect animals because I believe in that. We had one today that protects dogs that are left outside and that is fine. I support that. That is the right thing to do. Why not extend it to human beings in the making, especially in the later stages?

In the past few years I have been talking to legislators on both sides of this issue hoping to form a group similar to one that exists in Massachusetts to go beyond the polarized and often acrimonious debate and to identify common ground. Although the group has not yet materialized I hope that we can do it in the near future. We have in front of us in LD 262 a genuine common ground issue. Many states, including liberal California and its left leaning US Senators endorse legislation such as the Lacey Peterson bill and her unborn child Conner, seeing there is a common ground area that does not threaten Roe v. Wade or the

basic beliefs of the pro choice lobby. This is a very good bill and is worthy of our serious consideration.

As of March 31, 2004 twenty-nine states have made laws that allow a homicide charge to be brought for the unlawful killing of an unborn child or fetus in a state crime. If these, 16 provide this protection throughout the period of in utero development while the other 13 provide protection during certain specified stages of development, which varies from state to state. These laws are sometimes referred to as fetal homicide laws and my good friend from Holden has spelled out the difference between the federal law and the state law and I think that in this case the federal law is ahead of the non-existent law in the state of Maine and I would encourage you to vote red for life.

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Davis.

Representative DAVIS: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I agree with my friend from Frenchville absolutely and to attack a woman in domestic violence is indeed a very bad act. To attack a woman who is caring for another human being is not only a tragic happening, but also a heinous and despicable crime as old as the bible and part of the mosaic code. I urge you to think this through. A crime against a woman and her unborn child is a very, very evil deed and it is as old as our civilization is old.

My wife and I are expecting our ninth grandchild. It is not a fetus, it is a baby and it is going to be born momentarily and I pray that everything is alright, but this is what life is about to me, family and immortality with our grandchildren. I really urge you to vote for this. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Pelletier-Simpson.

Representative PELLETIER-SIMPSON: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I agree with my good colleague that it is a heinous thing to attack a pregnant woman. Unfortunately, this bill before us makes absolutely no mention of a crime against a pregnant woman. It is all about the unborn child. I want to read to you a letter from the director of the Maine Coalition to End Domestic Violence.

There has been a lot of conversation here about how there is language in here that is going to protect women from being prosecuted for choices that they make. LD 262 will not lead to healthy mothers or healthy children. Instead the law will likely lead to the prosecution of pregnant women. Even though on its face the law exempts conduct by pregnant women, states across the country where similar laws have been passed have seen prosecutors direct their energies and their enforcement powers against pregnant women rather than against people who commit assaults against them.

The Motherhood Protection Act, which they strongly supported, and that was recently signed into law is an appropriate measure for addressing the problem of violence against women. LD 262 on the other hand could lead to unintended and disfavored consequences. The most instructive story about unintended consequences comes from Texas. In 2003 the Texas Legislature passes Senate bill 319, which defined a fetus as an individual for the narrow purpose of defining the scope of liability in the event of a criminal act resulting in the termination of pregnancy. Like LD 262, the Texas law clearly states that the intent is not to criminalize abortions or conduct by pregnant women. Like the debate here the Texas legislative record was full of clear and unambiguous statements that the purpose of the law was not to go after pregnant women. It was to go after people who attack pregnant women. Nonetheless, the District Attorney in Potter County, Texas read that law to mean that doctors are required to report pregnant women who have

used narcotics to the district attorney's office so that they might be prosecuted for assault on themselves. One woman was indeed prosecuted and made a conditional plea of guilty and appealed the charge. The attorney general of Texas wrote a letter specifically explaining that the law does not cover actions by pregnant women that may be unhealthy, but the case is going forward and it is not clear what the result will be.

Unfortunately, the Texas case is by no means an isolated incident. Similar cases have occurred in Kentucky, Florida, North Carolina, Wyoming, South Carolina, California and Illinois. The story is one of many from across the country that show, whatever the intent that laws like this are being used to prosecute pregnant women. The law would introduce an inconsistency into our laws that is not welcomed and not needed and would likely put battered women at risk from the very system that purports to protect them. This body should be proud of the work that it has done in passing the Motherhood Protection Act and should not undermine the effort by supporting this law. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Faircloth.

Representative FAIRCLOTH: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. Every single one of us agrees that an assault on a pregnant woman that induces a miscarriage is a horrific act deserving of strong punishment. Representative Smith earlier stated that this is an uncomfortable subject and she is right. But, there is something that we can be proud of. Together we passed the Motherhood Protection Act. I respect Representative Hall's views on these issues but I am particularly proud of the Motherhood Protection Act because it is broader in response to these types of assaults than that bill before us. We passed that so overwhelmingly that I think sometimes we may have not noted how it works. It mandates that a judge must consider the assault of a woman when she is pregnant as an enhancement factor and in the horrific case in the Bangor area where that criminal received 50 years, I can guarantee you that if that crime had occurred when the Motherhood Protection Act was effective you would see an even longer sentence and I know that is true because we have this mandate enhancement factor already on the books with regards to other enhancement factors and it has worked. It has increased the penalty range when we have applied it and it will work in this instance, but as I said the Motherhood Protection Act is even broader than the bill here. Specifically, if there is a case in which, for example - I hate to talk about horrific circumstances, but that is what they are - if there is a stabbing incident in which the fetus is carried to term but is injured that is covered by the enhancement of the Motherhood Protection Act. If there is a situation where a woman is assaulted and she miscarries, but it happens before the viability - however that is defined - that would not be covered by this bill, but is covered by the Motherhood Protection Act.

While I agree with what Representative Hall said about the passion for punishing people who commit these horrific crimes I think they should receive the enhanced punishment at one month and two months if that perpetrator knows that that woman was pregnant and he should get a tough punishment and we do it with the Motherhood Protection Act. So I think we can be very proud and I think that is the only reason that I can discern for why there are these exceptions in 262 that have to do with, as the bill talks about, the unborn child. I think that it is best stated not by me, but by Mr. Samuel Casey of the Christian Legal Society, which is associated with the Christian Coalition and he said, to the Los Angeles Times, that "In as many areas as we can we want to put on the books that a fetus is a person, that this has to do with those goals of incremental steps with those who are in the anti-

choice movement." That is their right. They are free to go out and petition the government for any kind of laws they want, but if the goal is to enhance punishment for people who assault women and induce the termination of pregnancies then we have already covered it with the Motherhood Protection Act. I thank the Men and Women of the House.

The SPEAKER: The Chair recognizes the Representative from Hodgdon, Representative Sherman.

Representative SHERMAN: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. The hour draws late, but I rise to make a couple of points, but I guess that since we are on Judiciary we have some different interpretation of what this bills stands for. It is my understanding that under this particular bill the penalty would only exist when the child has reached the stage of development where it can survive independently outside of the mother and I don't think that would be covered by the bill that was talked about. We have also had cases cited here like the Florida case and the Kentucky case and the cite that I heard was different then the one that I am reading here and there is an Illinois case that held that a child injured in the womb cannot sue the mother. The statute was not involved in the case at all. In Kentucky I heard in the prosecution of a mother whose drug addiction affected her unborn child was held by the court to set forth that the crime of child abuse was not intended to be applied to the actions of the mother when the child is in vitro. In the Florida case that was cited for us it did not involve an unborn child in any of the testimony and the case involved what happened to the child after delivery. That is some of the testimony that we have had that has turned out to not be true.

I would like to end by noting that we also had some testimony that involved President Clinton on his third day in office nullifying various anti-abortion policies that were adopted by earlier presidents and there is a gentleman by the name of Walter Delanger who is the former Solicitor General in the Clinton Administration. He was Acting Solicitor General of the United States and is now teaching at Duke University. Although he is a strong advocate for a woman's right to choose abortion he sees no major problem with the fetal homicide laws. The legislatures can decide which fetuses are deserving of protection without having to make any judgment that the entity being protected has free standing constitutional rights, in other words protecting the fetus without making that decision. I think that proposals like this ought to be considered on their own merit. This bill explicitly excludes abortion, medical treatment and any other action of the mother herself with respect to her unborn child and they have a quote, which I assume to be correct. I didn't call Barbara Boxer, but California Senator Barbara Boxer said in a telephone call, when asked about California's Fetal Rights Law that helped convict Scott Peterson on two counts of homicide with a sentence of death and whether it was a threat to woman's rights, she responded, "No." When asked if the limit in the California Fetal Rights Law about seven to eight weeks was an issue she responded, "No, that is when a woman usually finds out she is pregnant and makes a choice to be a mother or have an abortion." I think that some of those things need to be put on the record. Some of the cases that are cited may be cited in dicta, but not the holding. Thank you.

The SPEAKER: The Chair recognizes the Representative from Woolwich, Representative Grose.

Representative GROSE: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I am a domestic violence advocate. I work with battered women and abused children. I passed out this lavender piece of paper with information and I am just going to shortly repeat a couple of

points that I would like to really make known to you all. Not a single provision of this bill addresses the underlying problem of violence against women. In fact, at the federal level, at the National Coalition Against Domestic Violence, Senator Olympia Snowe a pro choice Republican and Congressman Mike Michaud, a pro-life Democrat all oppose the Unborn Victims of Violence Act because it does nothing to help women who are victims of violence and it still emphasizes the fetus over the woman and diverts attention away from violence against women and fails to recognize that the best way to protect the unborn is to protect women from violence. If the supporters of this bill were truly concerned with protecting pregnant women from violence they would focus their entire energy on legislation that would help fight domestic violence.

While LD 262 specifically exempts a pregnant woman from prosecution, a battered woman can be intimidated or pressured by her batterer not to reveal the cause of her miscarriage and if she is financially or emotionally reliant on her batterer, which is normally the case, she may be less likely to seek the appropriate medical assistance if doing so could result in the prosecution of her batterer for an offence as serious as murder. I urge you not to pass this report and to oppose it. Thank you.

The SPEAKER: The Chair recognizes the Representative from Farmington, Representative Mills.

Representative MILLS: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I have just read this bill this evening for the first time and cross referenced it with the amendment and have tried to determine what the exact scope of this bill is. I understand the tragedy of the Sergeant homicide case, but I am trying to look at this from the point of view of a person who was a career prosecutor for 19 years and who has practiced law in the state for nearly 30 years and almost all of that in the criminal law. Looking at the terms that are included in this bill, it is not difficult to look at the Sergeant case and think that it was unjust what happened. He got 50 years and maybe he should have gotten a longer term and maybe it should have been more important that she was so far along in her pregnancy and he did this deliberately and that he did this in a tragic and vicious manner. That is the easy case.

This bill encompasses a lot of other cases and, in fact, while they are not so easy and when you look at the criminal law and are dealing in the criminal law you are looking at burdens of proof beyond a reasonable doubt and you are looking at presumptions of innocence and you are looking at definitions that have to be workable within the context of our court system and not some symbolic gesture but something that juries can apply.

I look at the definition of unborn child in this bill that proposes to become law and it says that it means any individual of the human species from the state of fetal development when the life of the fetus may be continued indefinitely outside the womb by natural or artificial life supportive systems until birth. Ladies and Gentlemen, if I were prosecuting a case under this law I wouldn't know how to apply that definition. That is a definition that involves medical testimony that would require an after the fact determination of whether or not a fetus whose life was terminated through some act of a third party could have survived with or without artificial life support systems had it not died.

Look at it from the point of view of the third party. Intentionally or knowingly causing the death of an unborn child. This bill would require the state to prove that the person charged intended or knew that the woman was pregnant and knew that the unborn child could have continued indefinitely outside of the womb by natural or artificial life supported systems until birth. I don't think that that is a workable standard. I don't think that that is something that the jury can really apply. Look at the definition

of manslaughter under this bill, which proposes to become law in our state. A person is guilty of manslaughter of an unborn child if a person recklessly or with criminal negligence causes the death of an unborn child. I ask you, if you are driving down the street on a snowy day and another car is approaching you and your car slides on the ice or you slide through a stop sign and you tragically hit another vehicle in which a woman is a passenger or the driver, a woman between the age of 15 and 45, are you negligently driving with respect to that unborn fetus and should you anticipate in every case that a woman of that age might be pregnant? Should you be held criminally liable and sent to prison for up to five years for a class C crime or for up to 30 years for a class A crime of criminal negligence or recklessly causing the death of a fetus? How would you know whether or not the woman was pregnant? How would you be held to know, if she were pregnant that that fetus had a life that would be continued indefinitely outside the womb by natural or artificial life supporting systems until birth? I ask you from a professional standpoint to vote against this bill because it is simply unworkable as a matter of public policy and criminal law under our constitutional standards. Thank you.

The SPEAKER: The Chair recognizes the Representative from Frenchville, Representative Paradis.

Representative PARADIS: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. There is a false assumption here that LD 262 favors the unborn child and disregards the mother. That is totally false. We are talking about double murder and it does not disregard the mother that would be battered or would be killed, it is far from that. If you had asked Heather Flieglemen if she favored the child and if she wanted the child to live she would most likely have said that she would have. Most mothers would say that about their children, born or near birth. That is clear. Polls have been taken on that by the way. The general public says that an unborn child should be recognized as a victim if they were injured or killed during a crime against the baby's mother. Three polls were very close in their results. For one victim, 10%. For two victims, 79%. Another one for one victim 9% and two victims, 84%. The last one, 7% one victim and two victims, 84%.

We are getting entangled in legalese here and what are we doing? What have we wrought here when we can't even protect our unborn children in the last stage of pregnancy? Come on, we can do a lot better than that.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Canavan.

Representative CANAVAN: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. Not only do I know a bit about marriage I know something about pregnancy having been pregnant five times. I know something about the pain and the joy of bringing a child into the world and I know something about the joy that children bring to families. My heart truly went out to the family who testified before our committee but I would offer this concerning the bill before you. During the past few days we have received several letters from lobbying groups containing impassioned pleas to support this bill. The author of one letter asserted that when a violent crime against a mother is committed and the act results in the death of an unborn child two crimes have been committed. However, just a few weeks before the same lobbying group chose not to take a position with respect to the Motherhood Protection Act that addresses the issue of violent crimes against pregnant women. Apparently, the rationale of that group is that when violence involves a pregnant woman only strengthening the law to protect her is not warranted, but when a violent crime against a mother and an unborn fetus occurs the perpetrator must be punished for two crimes.

Men and Women of the House I would ask you to consider the inconsistency of that rationale. Violence against women, especially pregnant women, is unacceptable and such a task must be vigorously prosecuted and severely punished and the motherhood act seeks to ensure that the court has discretion to do just that. As it stands now we know that many women are fearful of reporting domestic violence. This bill will simply render victims of domestic violence less likely to seek appropriate medical assistance if doing so could result in the prosecution of her batterer for an offense as serious as murder. This bill is unnecessary and I would submit to you, I am sorry to say, the bill is simply a way of laying the groundwork for a challenge to the foundation of *Roe v. Wade*. Thank you.

The SPEAKER: The Chair recognizes the Representative from Holden, Representative Hall.

Representative HALL: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. First I would like to apologize. Earlier I was very emotional having followed this bill through the entire process. I have been upset with decisions that have been made. To the good chair of the committee, Representative Pelletier-Simpson, the Representative from Bangor, Representative Faircloth I understand that both of them are doing their job and doing what they feel to be correct and I did not mean in anyway to make a personal attack against them. I disagree vehemently with their positions, but I did not mean to attack them personally and I apologize if I did.

The Representative from Monmouth, Representative Smith and I spoke earlier today regarding her legislative sentiment. She actually invited me to speak on her legislative sentiment and I said that I did not want to because I did not want to, in front of her constituents here, say anything and I knew that I probably would not be able to control myself and stop from saying anything so I respectfully decline to speak on her sentiment, but I did want to bring it up tonight just to show the fact that I feel we are being very hypocritical when we pass one piece and do not pass another piece of legislation that is equally as good.

My one problem that I will bring up is that everyone keeps talking about the motherhood bill, which is a great piece of legislation, but it does not go far enough in a situation where a woman is assaulted. The good Representative from Bangor, Representative Faircloth said that if the motherhood bill had already been passed into law when Roscoe Hicks committed this crime he would have gotten a much worse sentence than fifty years, but I would pose two questions to Representative Faircloth if he would be willing to answer them, or to anyone else who could answer, especially some of the attorneys in the House. What punishment would Roscoe Hicks have received if Heather Fliegelman had not died and the child did? Is the most that he could have received for the maximum penalty assault? I am sure that that is not more than 50 years? I guess that it is a lot less than 50 years and that it is a lot less than 25 years. Hopefully somebody can answer that question for me? My second question is to anyone who wishes to answer. Do you agree that a woman who is eight months pregnant on death row who is scheduled for execution should be scheduled for execution as scheduled? If not then why?

The SPEAKER: The Representative from Holden, Representative Hall has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Bangor, Representative Faircloth.

Representative FAIRCLOTH: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I think in committee, because of the wisdom of our good Chair Representative Pelletier-Simpson, we applied the Motherhood Protection Act not only to the situation where the mother is killed but also to

assaults. That was something we thought was important to apply across the board, so the legislation that became law does apply. Secondly, with regard to the death row situation, and of course Maine doesn't have the death penalty, but I think that the mother should be able to bring the child to term but that would never arise in the State of Maine.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Pelletier-Simpson.

Representative PELLETIER-SIMPSON: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I don't want to belabor the point. There is nothing in this bill that makes any mention of the pregnant woman. I just wanted to repeat that. This is all about offenses against an unborn child. I don't think that people actually commit crimes against unborn children with that sort of intent. The crime is against the pregnant woman who is never mentioned.

The SPEAKER: The Chair recognizes the Representative from Holden, Representative Hall.

Representative HALL: Mr. Speaker, Point of order.

The SPEAKER: The Representative may proceed.

Representative HALL: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. The Representative is using props.

On POINT OF ORDER, Representative HALL of Holden asked the Chair if the use of props by Representative PELLETIER-SIMPSON of Auburn were allowed during the floor debate.

The SPEAKER: I understand that there is paper moving back and forth. What is, in fact objectionable may be the manner in which the papers are being used. The Representative may proceed.

The Chair reminded Representative PELLETIER-SIMPSON of Auburn that no props were allowed during the floor debate.

Representative PELLETIER-SIMPSON: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I apologize if it was interpreted to be a prop. This is an offense against an unborn child, the murder of an unborn child, felony murder of an unborn child, manslaughter of an unborn child. That is it. As I said it never mentions a pregnant woman. I don't believe that anyone in this House thinks that people commit crimes against unborn children devoid of an intention to commit crime against the pregnant woman.

I want to read something from the YWCA, "The YWCA fully supports efforts to punish acts of violence against pregnant women. We believe that LD 262 is the wrong approach because it seeks to separate a pregnant woman from her fetus in the eyes of the law. LD 262 is part of a national strategy to use a criminal code to overturn *Roe v. Wade* by defining a fetus in any stage of development as a person. Such a broad definition would divert the focus and attention of criminal proceedings from the woman who is a victim of the crime and would likely compel courts to address a woman's right to choose in the context of the law and could even have legal implications for certain forms of birth control. The Maine Legislature should promote measures that focus on the harm to the woman rather than enact a bill that threatens a woman's rights." I urge you all to please join me in supporting the Majority Ought Not to Pass Report.

The SPEAKER: The Chair recognizes the Representative from Boothbay, Representative Bishop.

Representative BISHOP: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I support the law of the land, *Roe v. Wade*. My position is somewhere in the middle in terms of whether I am pro-choice or pro life. I have already received calls today from people who have said that they feel that this is an insidious attack on *Roe v. Wade*. I confronted

the author of this bill and asked him a question and I watched very closely how he reacted to what I asked him and he told me that this is federal law and is in thirty other states also. I watched him closely and I can see that this is not that attack. This is a very narrowly defined bill. So, I came back to why we are doing this and I thought about it and I think that we can all agree that laws are designed not only to delineate what is criminal behavior, and to prescribe punishment for that behavior, but also to act as a possible deterrent to abhorrent and violent behavior. The law can be an aid. This particular law can be an aid in our ongoing effort to stop domestic violence. It raises the bar. It could become an even greater deterrent to anyone cruel enough to attack a pregnant woman. I too am worried about the especially insidious effects of domestic violence on our society and I too want to dearly protect those children and women who are most often its victims, but that is different legislation. That is different legislation for another time. Today this legislation is for those victims of violence who have no voice and no vote.

The SPEAKER: The Chair recognizes the Representative from Turner, Representative Bryant-Deschenes.

Representative BRYANT-DESCHENES: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I only want to rise for a moment tonight because I want to speak for Jonah. When I saw the pictures of him in the Judiciary Committee and I heard the story of the last moments of the time that he lived I had decided that I wanted to speak for him tonight if no one else did.

Earlier Representative Mills spoke about LD 936 and about the fact that the victims of that terrible accident were never allowed a day in court and were never allowed to make their case. Jonah has never been allowed to make his case either and he has been sort of forgotten here. The fact of the matter is that Jonah was a baby that was wanted. His mother made a choice to have Jonah and someone took that choice away from her. That is the kind of choice that we are talking about tonight. There is the pregnant woman who wants to have a baby and is trying to carry that baby and someone interferes with that process. Whether it is violence, whether it is a robber, an intruder or anybody else and to me this bill is about Jonah and what happened with him. His mother was stabbed 47 times and the baby was unharmed. In fact, I am not so sure that she didn't give here life to try to protect him and defend him. Maybe if she had tried to defend herself and not worry about her abdomen she would have been able to repel the attack on herself. I just think that this bill is about Jonah and that we should remember him. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is Acceptance of the Majority Ought Not to Pass Report. All those in favor will vote yes, those opposed will vote no

ROLL CALL NO. 286

YEA - Adams, Ash, Babbidge, Barstow, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Campbell, Canavan, Craven, Cummings, Driscoll, Duchesne, Dudley, Dunn, Duplessie, Eberle, Eder, Faircloth, Fisher, Gerzofsky, Goldman, Grose, Harlow, Hutton, Jacobsen, Jennings, Kaelin, Koffman, Lerman, Makas, Marley, Marraché, McCormick, Merrill, Miller, Mills, Muse, Norton, O'Brien, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Plummer, Richardson D, Rines, Sampson, Schatz, Smith N, Smith W, Thompson, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Beaudette, Bishop, Blanchard, Bowen, Bowles, Brown R, Browne W, Bryant-Deschenes, Carr, Cebra, Churchill, Clark, Clough, Collins, Cressey, Crosthwaite, Curley,

Curtis, Daigle, Davis G, Davis K, Dugay, Duprey, Edgecomb, Emery, Farrington, Finch, Fischer, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Hanley S, Hogan, Hotham, Jodrey, Joy, Lansley, Lewin, Lindell, Lundeen, Marean, Mazurek, McFadden, McKane, McKenney, McLeod, Millett, Moody, Moulton, Nass, Nutting, Ott, Paradis, Pinkham, Rector, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Saviello, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Tuttle, Vaughan.

ABSENT - Berube, Bierman, Crosby, Fitts, Jackson, Moore G.

Yes, 68; No, 77; Absent, 6; Excused, 0.

68 having voted in the affirmative and 77 voted in the negative, with 6 being absent, and accordingly the Majority Ought Not to Pass Report was NOT ACCEPTED.

Subsequently, the Minority Ought to Pass as Amended Report was ACCEPTED.

The Bill was READ ONCE. Committee Amendment "A" (H-647) was READ by the Clerk and ADOPTED. The Bill was assigned for SECOND READING Wednesday, June 8, 2005.

BILLS IN THE SECOND READING House as Amended

Resolve, Directing the Bureau of Health To Study the Effectiveness and Quality of Reproductive Counseling

(H.P. 1057) (L.D. 1512)

(C. "A" H-664)

Reported by the Committee on Bills in the Second Reading, read the second time, the House Paper was PASSED TO BE ENGROSSED AS AMENDED and sent for concurrence.

By unanimous consent, all matters having been acted upon were ORDERED SENT FORTHWITH.

On motion of Representative CLARK of Millinocket, the House adjourned at 9:04 p.m., until 9:00 a.m., Wednesday, June 8, 2005.