

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*One Hundred and Seventh
Legislature*

OF THE

STATE OF MAINE

1975

KENNEBEC JOURNAL
AUGUSTA, MAINE

HOUSE

Wednesday, April 9, 1975

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

Prayer by His Excellency Bishop Frederick B. Wolf, Episcopal Diocese of Maine, Portland.

The journal of yesterday was read and approved.

(Off Record Remarks)

At this point, the Chair appointed Mr. Albert of Limestone as Chairman of the Committee on Leaves of Absence.

Papers from the Senate

Bills, Resolve and Resolution from the Senate requiring reference were disposed of in concurrence.

Reports of Committees**Leave to Withdraw**

Committee on Judiciary reporting Leave to Withdraw on Bill "An Act Relating to Election of Jury Trials in Misdemeanor Proceedings" (S. P. 35) (L. D. 92)

Committee on Judiciary reporting same on Bill "An Act Relating to Immunity of State Officers and Employees from Personal Liability" (S. P. 130) (L. D. 416)

Committee on Judiciary reporting same on Bill "An Act Concerning Credit for Confinement within a County Jail after Sentencing" (S. P. 370) (L. D. 1197)

Came from the Senate read and accepted.

In the House, the Reports were read and accepted in concurrence.

Orders

On Motion of Mr. Albert of Limestone, it was

ORDERED, that Olympia Snowe of Auburn be excused April 14 and 15 for Personal reasons.

House Reports of Committees**Ought Not to Pass**

Mr. Spencer from the Committee on Judiciary on Bill "An Act to Permit Controlling Hitchhiking" (H. P. 89) (L. D. 108) reporting "Ought Not to Pass"

Mr. Littlefield from the Committee on Public Utilities on Bill "An Act to Authorize Special Rates by Public Utilities for Older Citizens" (H. P. 561) (L. D. 690) reporting same.

Mr. Berry from the Committee on Public Utilities on Bill "An Act Amending the Charter of the Augusta Sanitary District" (Emergency) (H. P. 677) (L. D. 866) reporting same.

Were placed in the Legislative Files without further action pursuant to Joint Rule 17-A.

Leave to Withdraw

Mr. Henderson from the Committee on Judiciary on Bill "An Act Relating to Irreconcilable Marital Differences" (H. P. 72) (L. D. 84) reporting Leave to Withdraw

Report was read and accepted and sent up for concurrence.

Ought to Pass in New Draft**New Drafts Printed**

Mr. Hewes from the Committee on Judiciary on Bill "An Act Relating to the Prohibition Against Hitchhiking" (H. P. 35) (L. D. 46) reporting "Ought to Pass" in New Draft (H. P. 1474) (L. D. 1564)

Mr. Shute from the Committee on

Election Laws on Bill "An Act to Clarify the Requirements for Voting in Municipal Elections" (H. P. 8) (L. D. 13) reporting "Ought to Pass" in New Draft (H. P. 1475) (L. D. 1565)

Mrs. Boudreau from the Committee on Election Laws on Bill "An Act to Provide Accessible Polling Places for the Physically Handicapped and the Elderly" (H. P. 96) (L. D. 107) reporting "Ought to Pass" in New Draft (H. P. 1476) (L. D. 1566)

Reports were read and accepted, the New Drafts read once, and assigned for second reading tomorrow.

Divided Report

Majority Report of the Committee on Judiciary reporting "Ought Not to Pass" on Bill "An Act Concerning Employment in the Department of Mental Health and Corrections" (H. P. 476) (L. D. 596)

Report was signed by the following members:

Messrs. CLIFFORD of Androscoggin
COLLINS of Knox
MERRILL of Cumberland
— of the Senate.

Messrs. HENDERSON of Bangor
PERKINS of South Portland
SPENCER of Standish
HUGHES of Auburn
BENNETT of Caribou
HOBBS of Saco.
— of the House.

Minority Report of the same Committee reporting "Ought to Pass" on same Bill.

Report was signed by the following members:

Messrs. GAUTHIER of Sanford
McMAHON of Kennebunk
HEWES of Cape Elizabeth
Mrs. MISKAVAGE of Augusta
of the House.

Reports were read.
Mr. Hobbins of Saco moved the House accept the Majority "Ought not to pass" Report.

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

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: The intent of this bill is to protect residents at state institutions administered by the Department of Mental Health and Corrections from abuse by state employees. I don't think I have to say any more on this, and I hope that you do not accept the "ought not to pass" report and that you will accept the "ought to pass" report.

Thereupon, Mr. LaPointe of Portland requested a division.

The SPEAKER: The pending question is on the motion of the gentleman from Saco, Mr. Hobbins, that the House accept Majority "Ought not to pass" Report. All in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.
Thereupon, Mr. Spencer of Standish requested a roll call vote.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

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

Mrs. NAJARIAN: Mr. Speaker, I would like to pose a question through the Chair to any member of the committee, and I wonder if they might explain to the House what this bill is all about.

The SPEAKER: The gentlewoman from Portland, Mrs. Najarian, poses a question through the Chair to any member of the Judiciary Committee, who may answer if they so desire.

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

Mr. PERKINS: Mr. Speaker and Members of the House: This bill was introduced as a result of the present publicity that is being had in respect to abuse of individuals in state institutions by staff people, and the intent of the bill is all well and good. However, presently, if one is found guilty or convicted of abusing a patient in a mental institution or an institution within the department, before he would be considered for employment in another section of that department, they would consider his previous conviction and he would not be hired. Therefore, while the intent of this bill would be to put something down in black and white that we could settle on and say there it is and like it, the bill by itself doesn't do any more than what is already being done. In fact, the bill is poorly written in that it suggests that if one is found civilly guilty, if you read it, you will notice it says civilly or criminally guilty of mental or physical abuse of an individual in an institution, then he will not be rehired within any department within the Department of Mental Health and Corrections.

I suggested at the time of the hearing on this bill that we have such a situation as civilly guilty of abuse in terms of negligent action, and if an individual within an institution brought a civil suit for negligence in respect to what a staff member had done, he would allege mental abuse in the form of pain and suffering. This is a standard allegation in a negligence action. It has nothing to do with abuse of the patient as such, it merely relates to a negligent type of action.

If we pass this bill, if, as an example, I as an employer or as a staff member in a mental institution or in a correction institution, in some manner committed a negligent act as to one of the inmates or patients and they sued me and I was found liable as a negligent act, then I could never go to work in any other department within the Mental Health and Corrections, which is entirely wrong, again, because that is a standard allegation that would be brought in any negligent suit which you or I might bring to anyone else.

The bill by itself is poorly written, and I would hope we didn't pass it.

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

Mr. GAUTHIER: Mr. Speaker and Members of the House: I have to disagree with Mr. Perkins — we do once in a while. This is an act concerning employment in the Department of Mental Health and Corrections. The bill reads as follows: Any person found civilly or criminally guilty of mental, physical or sexual abuse of any individual residing in or confined to any health care facility, mental health institution or penal institution shall be ineligible for employment in any state institution administered by the Department of Mental Health and Corrections.

It is my understanding that the law, as it is at the present time, all this does is

transfer these people into other departments. And as you probably have read in the paper recently, you have had five or six people who have had these abuses, and one has had a conviction.

The bill says right here, "shall be ineligible for employment in any state institution." So there is a difference between what they are doing at the present time, transferring them to another institution and instead the bill calls for "ineligible for employment in any institution." There is quite a difference. So I would hope you would not go along and you would not accept the "ought not to pass" report.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker and Members of the House: It seems to me that if anybody has been found guilty, either civilly or criminally, of tormenting a prisoner or abusing sexually or physically a patient in an institution, that person ought not to be rehired to work in one of our institutions. I certainly hope you defeat the pending "ought not to pass" motion.

The SPEAKER: The Chair recognizes the gentleman from Saco, Mr. Hobbins.

Mr. HOBBS: Mr. Speaker, Ladies and Gentlemen of the House: This bill was the one that tormented the members of the committee and in our deliberations we thought of many different examples of how this bill as written could be abused and could deprive a person from employment.

If I may give you an example of an individual who works let's say at Pineland Hospital, who is driving his car up to the parking lot and there is a patient who is walking on the side of the road, this person who is driving the car has been an excellent worker, a person who has been counseling, a person who has been very dedicated to his job, but in driving up to the parking lot, he negligently hits a person walking across the street. This is in a civil violation and would go to court. This patient would sue the individual driver for pain and suffering, mental pain and suffering, and as you can see from the wording of this bill, that instance right there would be included, and if convicted of that negligence in a civil court, he would be prohibited from working in the job that he did so well.

I do agree with the gentleman from Sanford and the gentleman from Cape Elizabeth, individuals who sexually or physically abuse a patient should not work in any type of institution dealing with these people, but I don't think this is the right vehicle to take.

We have heard testimony in the committee that our personnel system would never allow a person who has been convicted and sentenced to a crime of sexual or mental abuse to work in an institution. The way the bill is written now, I think an individual, as I described, who happens to be driving his car, could be deprived the right of earning a living and also helping these individuals that he did in the past. I think this bill is the wrong vehicle to take. I do sympathize with the intent of the legislation and of the bill which was presented by the gentlewoman from Madison, Mrs. Berry, but I don't think this is the right vehicle to take to protect the patients of our mental institutions.

The SPEAKER: The Chair recognizes the gentleman from South Berwick, Mr. Goodwin.

Mr. GOODWIN: Mr. Speaker, Ladies

and Gentlemen of the House: The Health and Institutional Services Committee heard this bill originally and we referred it to Judiciary because we felt that it was a judicial matter. I had one question on this bill which still bothers me and this is why I am going to support the "ought not to pass" report and that is, I always assumed that under our judicial system, maybe I am wrong, but if a person is convicted, found guilty of a crime and serves a sentence, that he has served his sentence. Granted, I would hope and trust that the Mental Health and Corrections Bureau would never rehire this person to work with patients and everything, but if we pass this bill, it would seem as if we are convicting him for life. This is what bothers me. I just have always been under the assumption that if a person is convicted and serves his sentence that he starts out all over again.

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

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: I would like to disagree with both the gentlemen who have spoken because Mr. Hobbins mentioned to you that in case of an automobile accident, I think any judge would have enough experience that he would know the difference between an automobile accident, I think any judge civilly or criminally guilty of mental, physical and sexual abuse. I think in this case here physical means any bodily injury by any of the workers in the mental hospital.

As far as Mr. Goodwin is concerned, I think that any that would abuse people should never be rehired in the first place.

The SPEAKER: The Chair recognizes the gentlewoman from Madison, Mrs. Berry.

Mrs. BERRY: Mr. Speaker and Members of the House: I could say as other people have — this is my bill. I am the sponsor of it.

I think the example of an automobile accident is a poor excuse here. The other speaker who said that I would hope they wouldn't be rehired, let's have something on the books so they won't be rehired. If the committee didn't like the civil phrase in there, it could be easily amended, and I would hope you would keep it alive so it could be amended.

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

Mr. CARPENTER: Mr. Speaker, Ladies and Gentlemen of the House: Getting back to the example we were shown just a few minutes ago about a car accident, I am not an attorney, but I question, if I was the driver of the car in this case, I might be found guilty of criminal negligence, but could I be found guilty of physical abuse? I think the key here is abuse. I think there is a big difference between what might happen if you are driving a car or you happen to work for the Department of Mental Health and Corrections, and I would like to have somebody define for me what in legal terms the word abuse means.

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

Mr. PERKINS: Mr. Speaker and Members of the House: The key word is 'mental' abuse, not physical abuse, although physical abuse could come into play in terms of negligent action. The one I am concerned about is that one all encompassing category of mental abuse

when we allege pain and suffering in a civil negligent suit.

The example posed by Representative Hobbins is a good one. If while driving in the yard of the Pineland Hospital or the State Prison, whether it is accidental or not will depend upon how the court rules, but if through some casual negligent action an employee is injured, he will sue for the special damages, meaning his medical costs and pain and suffering. And these huge verdicts that you hear about that are creeping up higher and higher all the time are not for the medical costs, they are for the pain and suffering; the so-called mental abuse. That is the key word that I am interested in.

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

Mr. TALBOT: Mr. Speaker, Ladies and Gentlemen of the House: I too go along with the assumption that our institutionalized persons cannot be abused in any way and that those people accused of that shouldn't be allowed to work in our institutions, but I think listening to this bill, I think there are a lot of questions that need to be answered and haven't been answered. I would assume that we will use our best judgment.

I just want to say to you that I have a bill that is going to be coming down before you before long that deals with all of the human rights of all institutionalized persons, from the food they eat to the room they live in. So I would ask you to vote for the indefinite postponement of this.

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

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to point out the thinking of the majority of the committee. The term abuse is not defined in the bill. It is very vague in the law as a whole. It is unclear what the bill would do. There is no indication whatsoever that the department would rehire any of these people, in fact, it is almost impossible to believe that that would occur, and we felt that the legislation was not sufficiently carefully drafted, that it was unnecessary and that with the workload that the Judiciary Committee has, that we ought not to get into a complicated exercise of trying to rewrite the bill, and I would support the motion for indefinite postponement.

The SPEAKER: The Chair recognizes the gentlewoman from Madison, Mrs. Berry.

Mrs. BERRY: Mr. Speaker, Ladies and Gentlemen of the House: The department was at these hearings, and surprisingly enough they supported this bill and offered to draft some amendments. So I don't think it would be too much of a hardship on the committee, where the department offered to make the amendments for them.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Call.

Mr. CALL: Mr. Speaker and Members of the House: I have never cared much for bills which are introduced in a hurry, without enough study and contemplation, after some sort of incident which is of great concern to the citizens. This looks to me like a so-called "guilty per se" bill, to use a legal expression. Despite the fact that I have profound respect for my good friend from Sanford, Mr. Gauthier, and my equally good friend from Cape Elizabeth, Mr. Hewes, I feel that I must support the motion for indefinite postponement.

The SPEAKER: A roll call has been

ordered. The pending question is on the motion of the gentleman from Saco, Mr. Hobbins, that the House accept the Majority "Ought not to pass" Report on Bill "An Act Concerning Employment in the Department of Mental Health and Corrections." House Paper 476, L. D. 596. All in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL

YEA — Bagley, Bennett, Berry, P. P.; Burns, Call, Chonko, Clark, Connolly, Cooney, Cote, Cox, Curran, P.; Davies, Doak, Dow, Farley, Farnham, Fenlason, Goodwin, H.; Greenlaw, Hall, Henderson, Higgins, Hinds, Hobbins, Hughes, Ingegneri, Jackson, Jalbert, Jensen, Kany, Kennedy, Laverty, LeBlanc, Mahany, Martin, R.; McKernan, Mills, Mitchell, Mulkern, Nadeau, Najarian, Peakes, Pelosi, Perkins, S.; Peterson, T.; Post, Powell, Quinn, Raymond, Rolde, Saunders, Smith, Snow, Snowe, Spencer, Sprowl, Talbot, Teague, Tierney, Torrey, Tozier, Truman, Twitchell, Tyndale, Usher, Wagner, Wilfong, The Speaker.

NAY — Albert, Ault, Bachrach, Berry, G. W.; Berube, Birt, Boudreau, Bowie, Bustin, Carey, Carpenter, Carroll, Carter, Churchill, Conners, Curran, R.; Curtis, Dam, DeVane, Drigotas, Dudley, Durgin, Dyer, Faucher, Finemore, Flanagan, Fraser, Garsoe, Gauthier, Goodwin, K.; Gould, Gray, Hennessey, Hewes, Hunter, Hutchings, Immonen, Joyce, Kauffman, Kelleher, Kelley, Laffin, LaPointe, Leonard, Lewin, Lewis, Littlefield, Lizotte, Lovell, Lunt, Lynch, MacEachern, MacLeod, Martin, A.; Maxwell, McBreaarty, McMahon, Morin, Morton, Norris, Palmer, Perkins, T.; Peterson, P.; Pierce, Rideout, Rollins, Shute, Silverman, Strout, Stubbs, Susi, Tarr, Theriault, Walker, Webber, Winship.

NAY — Blodgett, Byers, Jacques, Mackel, Miskavage.

Yes, 69; No, 76; Absent, 5.

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

Thereupon, the Minority "Ought to pass" Report was accepted, the Bill read once and assigned for second reading tomorrow.

(Off Record Remarks)

Consent Calendar

First Day

In accordance with House Rule 49-A, the following items appear on the Consent Calendar for the First Day:

Bill "An Act Amending the Charter of the Paris Utility District" (Emergency) Committee on Public Utilities reporting "Ought to Pass" (H. P. 587) (L. D. 726)

No objections being noted, the above items were ordered to appear on the Consent Calendar of April 10, under listing of Second Day.

Consent Calendar

Second Day

In accordance with House Rule 49-A, the following items appear on the Consent Calendar for the Second Day:

Bill "An Act to Abolish Certain Filing Requirements for Out-of-State Nurserymen and Dealers Doing Business with this State" (S. P. 262) (L. D. 859)

Bill "An Act Relating to Voter Registration of Persons Born United States Citizens in a Foreign Country" (H. P. 13) (L. D. 21)

No objections having been noted at the end of the Second Legislative Day, the

Senate Paper was passed to be engrossed in concurrence, and the House Paper was passed to be engrossed and sent to the Senate for concurrence.

Passed to Be Engrossed

Bill "An Act to Extend Date for Closing of Open Burning Dumps" (Emergency) (H. P. 1464) (L. D. 1502)

Bill "An Act to Exempt Scouting Supplies and Equipment from State Sales Tax" (H. P. 521) (L. D. 638)

Bill "An Act to Provide Excise Tax Refund for Construction and Operation of Breweries within the State" (H. P. 369) (L. D. 463)

Were reported by the Committee on Bills in the Second Reading, read the second time, passed to be engrossed and sent up for concurrence.

Passed to Be Enacted

Emergency Measure

An Act to Amend the Charter of the Van Buren Light and Power District (H. P. 740) (L. D. 921)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary a total was taken. 119 voted in favor of same and one against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Reorganize the State Personnel Board (H. P. 1238) (L. D. 1264)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary a total was taken. 114 voted in favor of same and one against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act Relating to Expenditures of the Town Road Improvement Fund (H. P. 1247) (L. D. 1266)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary a total was taken. 117 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Passed to Be Enacted

An Act Relating to Definition of Out-of-State Service under State Retirement System (H. P. 73) (L. D. 85)

An Act Relating to Subsidized Adoptions (H. P. 203) (L. D. 248)

An Act to Protect Recipients of Certain Benefits Against Discrimination in Rental Housing (H. P. 273) (L. D. 327)

An Act Creating Uniform Standards for Disqualification of Applicants with Prior Criminal Convictions for a License or Permit to Practice a Trade or Occupation Regulated by the State (H. P. 330) (L. D. 402)

An Act to Protect the Rights of Persons Seeking Benefits under Maine's Workmen's Compensation Law (H. P. 1222) (L. D. 1210)

Were reported by the Committee on

Engrossed Bills, as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

Orders of the Day

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

Bill "An Act to Create the Office of Environmental Ombudsman to Advise Applicants of Project and Environmental Requirements under State Law" (H. P. 1463) (Committee on Reference of Bills suggested the Committee on State Government)

Tabled — April 8 by Mr. Cooney of Sabattus

Pending — Reference.

Thereupon, the Bill was referred to the Committee on State Government, ordered printed and sent up for concurrence.

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

Bill "An Act to Fund Public School Education" (Emergency) (H. P. 1437) (L. D. 1452)

Tabled — April 8 by Mr. Rolde of York

Pending — Passage to be engrossed

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

Mr. ROLDE: Mr. Speaker and Members of the House: We had hoped at this point we would be ready to run this bill and that we would have a recess at this particular point and have a joint caucus. However, there are some materials that are being prepared by the Department of Education, some printouts that are quite important to the arguments that would be presented concerning this bill. We don't know if those are going to be ready today. We may have to table this bill for another day, but I would hope that somebody might table this until later in today's session, and we would have a better reading on whether this material was available for us.

Thereupon, on motion of Mr. Palmer of Nobleboro, retabled pending passage to be engrossed and later today assigned.

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

Bill "An Act Relating to Liability of Natural Gas Distributors" (S. P. 419) (L. D. 1267) — In Senate, passed to be engrossed.

Tabled — April 8 by Mr. Rolde of York

Pending — Motion of Mr. Spencer of Standish to adopt House Amendment "A" (H-125)

Thereupon, House Amendment "A" (H-125) was adopted.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: I move the indefinite postponement of this bill and all its accompanying papers.

We debated this quite thoroughly the other day and some material has been circulated to you over my name. It seems to me that there is adequate law presently to enforce liability, impose liability on natural gas distributors. I don't think we ought to be taking deviation from the present law that is proposed here. For example, the last sentence provides absolute comparative negligence, which is something which we do not have anywhere else in the state, although other states do have that particular law. It just seems to me that this a change away from the present law that eventually will pass any expenses on to the ultimate consumer and it is not in the best interest of the people.

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

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I would urge you to vote against indefinite postponement of this bill and I would affirm the statement of Mr. Hewes that the purpose of this bill is to pass on to the users of natural gas the cost of the insurance necessary to provide adequate protection to those people who may be personally injured or whose property may be destroyed as a result of explosions of natural gas.

The bill has been carefully drafted to avoid a lot of the problems that existed with this legislation in the past. If the gas company can show that the explosion is due to a third party or a natural disaster, the verdict is appropriately reduced. It does require the gas company to show that the natural gas did not escape from the portion of the system under its control, and the purpose of this provision is to require the gas company to bear the cost of doing the study to determine where the leak actually occurred. I think that it is protection which is needed by the people who may be adversely affected by these explosions, and I would urge you to oppose the indefinite postponement of the bill.

The SPEAKER: The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker, Ladies and Gentlemen of the House: I support the motion to indefinite postpone. This bill and one similar to it has been before this legislature on many occasions and it attempts to do what I think is impossible — make a man or a company liable for something that they have absolutely no control over.

I will try to make a simple illustration, as I see it and it is true. We did have a couple of years or so ago a couple of explosions in Lewiston; that is what started this whole thing trying to pin it down and maybe those two cases were and that is one thing, but what we are trying to do with this bill, we are trying to make the company liable for something they have no control over to this extent. Here is the way I see it. Some drunk comes home and leaves his gas stove on, if someone doesn't smell it and get it shut off, it explodes, and it is quite a job to prove after the explosion what caused it. A lot of people move their gas stoves and make the pipe lead to something. Under this bill, and if you read it carefully, there is no way around it, the gas company is liable. They are liable to prove that they are innocent. Obviously, if it blew up in the street, but most of the cases are caused by negligence of people, not the gas companies, by moving their stoves or a new family moving in or a lot of times some drunk coming home turning the oven on and forgetting to light it. Now, most of the gas problems are caused in this area.

Naturally, anyone doing business in this state, as I do, and I am not in the gas business, by the way, but it is like any other business, they are in business to make a profit. If we pass the expense to them, they are certainly going to pass it on to the consumer. I represent consumers that resent paying any more for gas or anything else at this point. They are opposed to any further increase in anything, whether it be gas or electricity or what have you. They are intelligent enough to know, these people that I represent, that if you put costs on the people that they are buying from that it is

going to be passed onto them. I think most of the people you represent are intelligent enough to understand that too.

I hope that you are intelligent enough this morning to understand what you are doing and will go along with indefinite postponement. It certainly would do nothing except make gas to the consumer cost more in the long run, and it certainly has to be passed onto them, and I don't believe that we should ever pass legislation to try to make a man prove that he is innocent when we know and history proves that most of these cases are caused by individuals. After the explosion, it is a very expensive thing to go into great detail for these people to find out who is responsible.

We have lived in this country and had gas long before I was born and we got along without this legislation, and I think we can continue to do so without passing any further expense along to the people.

The SPEAKER: The Chair recognizes the gentleman from Wayne, Mr. Ault.

Mr. AULT: Mr. Speaker, Ladies and Gentlemen of the House: I support Mr. Hewes' motion and I would request a roll call.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Call.

Mr. CALL: Mr. Speaker, Ladies and Gentlemen of the House: This time I am with my good friend from Cape Elizabeth. We had on our desks yesterday reproductions of an Associated Press item which tells of the hiring of lobbyists by a natural gas concern. It points out that the bill's sponsor was the mayor of Lewiston when two natural gas explosions killed four people and injured two others. I was president of the city council while that man was having his second term as mayor. I, too, was very unhappy over the explosions. The first two victims were friends of mine. They were also friends of the sponsor and clients of his law firm. However, although I have not always practiced my preachings, I believe in abstaining from impulsive behavior.

As a result of my philosophy, I would not go along with the idea that, following the explosions, the utilities should be forced to replace all their gas lines everywhere. One reason was that the cost would be passed on to the consumer, just as the gentleman from Enfield, Mr. Dudley, has just said. That utility, however, has been doing many things since those two tragedies to remedy faulty situations. There was a time in the past, after those explosions, that practically every street in Lewiston, particularly in the business district was all torn up and we had chaos.

One of the two lobbyists says the legislation is unnecessary because present law already protects the public. He added that the reasons for the bill are emotional and political. I do not disagree with him. If utilities and other firms could be found negligent automatically, which does not make sense to me, there would be an awful lot of people running scared and being overcautious to the point of the ridiculous.

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

Mr. TIERNEY: Mr. Speaker, Ladies and Gentlemen of the House: Although I heard this bill debated both last session and this, I have never had occasion to stand before this House and speak on it. I feel that the principles are fairly clear and they lie within the realm of insurance, as has been aptly described by previous speakers. I think it would be good if we stopped a minute and ask ourselves, what

is the purpose of insurance anyway? I think the principle is obvious, it is not too different from the insurance you have on your car. The purpose of insurance is to spread out the risk, spread the risk among those who are capable of foreseeing the possible danger of their actions. That is why we insure our automobiles. We know we drive, we know we could be in an accident, we know we could be responsible, so we insure ourselves against that possibility.

I would like to apply that general principle of insurance to the incident case. What happens, as happened in the City of Lewiston, when nongas users were killed because of leaks in a natural gas system, who was in the best position to foresee this danger and insure themselves against it? Well, certainly not the property insurance you have on the house because the people who live in the house weren't even using the gas, so they couldn't anticipate it, certainly not the individual's health insurance because, again, they didn't know they were going to be blown up, they didn't even use gas in their home and yet they were killed. Well, how about the gas company? I think here the question is simple. They sell the gas, they make a profit off the gas, it is clear that they should be able to insure themselves against the potential dangers that the use of their product engendered into the community to users and non-users alike. Now, this was the principle that our Judiciary Committee followed when they voted 9 to 3 "ought to pass" on this particular piece of legislation and I see no reason why we should reject that type of overwhelming support.

I would like to make one last point and sit down. The good gentleman from Lewiston, Mr. Call, just stated that he sees no reason why the gas companies should be automatically liable, and to that point I completely agree, because this bill does not make the gas companies automatically liable. The gas company can come forward and show that they were not at fault, that there was an intervening cause, that some construction company had dug up the gas main, it wasn't their fault, that some drunk, as Mr. Dudley pointed out, that left the gas stove on, they can point out all these facts before the court and they will be absolved of any liability. So there is no automatic responsibility.

I ask this House to remember the basic principles of insurance and to keep this bill going.

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

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: I would like to rise and support the motion made by Mr. Hewes, and I would like to explain to you the reason why I voted "ought not to pass" on this measure.

It seems to me that when a person has to defend himself when he is not responsible for an accident that happens to them, a 100 percent, he is going to be blamed when he is not to blame. I think if the bill had called that when they thought they were to blame, then they could have sued them for being to blame, but in cases like Mr. Dudley mentioned to you, if they are not to blame, I can't see why even the insurance company; which they have to pay a premium for, that they should be called on to pay for something that they are not to blame for in the first place.

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

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

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I would urge you to vote against indefinite postponement of this bill and I would affirm the statement of Mr. Hewes that the purpose of this bill is to pass on to the users of natural gas the cost of the insurance necessary to provide adequate protection to those people who may be personally injured or whose property may be destroyed as a result of explosions of natural gas.

The bill has been carefully drafted to avoid a lot of the problems that existed with this legislation in the past. If the gas company can show that the explosion is due to a third party or a natural disaster, the verdict is appropriately reduced. It does require the gas company to show that the natural gas did not escape from the portion of the system under its control, and the purpose of this provision is to require the gas company to bear the cost of doing the study to determine where the leak actually occurred. I think that it is protection which is needed by the people who may be adversely affected by these explosions, and I would urge you to oppose the indefinite postponement of the bill.

The SPEAKER: The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker, Ladies and Gentlemen of the House: I support the motion to indefinite postpone. This bill and one similar to it has been before this legislature on many occasions and it attempts to do what I think is impossible—make a man or a company liable for something that they have absolutely no control over.

I will try to make a simple illustration, as I see it and it is true. We did have a couple of years or so ago a couple of explosions in Lewiston; that is what started this whole thing trying to pin it down and maybe those two cases were and that is one thing, but what we are trying to do with this bill, we are trying to make the company liable for something they have no control over to this extent. Here is the way I see it. Some drunk comes home and leaves his gas stove on, if someone doesn't smell it and get it shut off, it explodes, and it is quite a job to prove after the explosion what caused it. A lot of people move their gas stoves and make the pipe lead to something. Under this bill, and if you read it carefully, there is no way around it, the gas company is liable. They are liable to prove that they are innocent. Obviously, if it blew up in the street, but most of the cases are caused by negligence of people, not the gas companies, by moving their stoves or a new family moving in or a lot of times some drunk coming home turning the oven on and forgetting to light it. Now, most of the gas problems are caused in this area.

Naturally, anyone doing business in this state, as I do, and I am not in the gas business, by the way, but it is like any other business, they are in business to make a profit. If we pass the expense to them, they are certainly going to pass it on to the consumer. I represent consumers that resent paying any more for gas or anything else at this point. They are opposed to any further increase in anything, whether it be gas or electricity or what have you. They are intelligent enough to know, these people that I represent, that if you put costs on the people that they are buying from that it is

going to be passed onto them. I think most of the people you represent are intelligent enough to understand that too.

I hope that you are intelligent enough this morning to understand what you are doing and will go along with indefinite postponement. It certainly would do nothing except make gas to the consumer cost more in the long run, and it certainly has to be passed onto them, and I don't believe that we should ever pass legislation to try to make a man prove that he is innocent when we know and history proves that most of these cases are caused by individuals. After the explosion, it is a very expensive thing to go into great detail for these people to find out who is responsible.

We have lived in this country and had gas long before I was born and we got along without this legislation, and I think we can continue to do so without passing any further expense along to the people.

The SPEAKER: The Chair recognizes the gentleman from Wayne, Mr. Ault.

Mr. AULT: Mr. Speaker, Ladies and Gentlemen of the House: I support Mr. Hewes' motion and I would request a roll call.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Call.

Mr. CALL: Mr. Speaker, Ladies and Gentlemen of the House: This time I am with my good friend from Cape Elizabeth. We had on our desks yesterday reproductions of an Associated Press item which tells of the hiring of lobbyists by a natural gas concern. It points out that the bill's sponsor was the mayor of Lewiston when two natural gas explosions killed four people and injured two others. I was president of the city council while that man was having his second term as mayor. I, too, was very unhappy over the explosions. The first two victims were friends of mine. They were also friends of the sponsor and clients of his law firm. However, although I have not always practiced my preachings, I believe in abstaining from impulsive behavior.

As a result of my philosophy, I would not go along with the idea that, following the explosions, the utilities should be forced to replace all their gas lines everywhere. One reason was that the cost would be passed on to the consumer, just as the gentleman from Enfield, Mr. Dudley, has just said. That utility, however, has been doing many things since those two tragedies to remedy faulty situations. There was a time in the past, after those explosions, that practically every street in Lewiston, particularly in the business district was all torn up and we had chaos.

One of the two lobbyists says the legislation is unnecessary because present law already protects the public. He added that the reasons for the bill are emotional and political. I do not disagree with him. If utilities and other firms could be found negligent automatically, which does not make sense to me, there would be an awful lot of people running scared and being overcautious to the point of the ridiculous.

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

Mr. TIERNEY: Mr. Speaker, Ladies and Gentlemen of the House: Although I heard this bill debated both last session and this, I have never had occasion to stand before this House and speak on it. I feel that the principles are fairly clear and they lie with in the realm of insurance, as has been aptly described by previous speakers. I think it would be good if we stopped a minute and ask ourselves, what

is the purpose of insurance anyway? I think the principle is obvious, it is not too different from the insurance you have on your car. The purpose of insurance is to spread out the risk, spread the risk among those who are capable of foreseeing the possible danger of their actions. That is why we insure our automobiles. We know we drive, we know we could be in an accident, we know we could be responsible, so we insure ourselves against that possibility.

I would like to apply that general principle of insurance to the incident case. What happens, as happened in the City of Lewiston, when nongas users were killed because of leaks in a natural gas system, who was in the best position to foresee this danger and insure themselves against it? Well, certainly not the property insurance you have on the house because the people who live in the house weren't even using the gas, so they couldn't anticipate it, certainly not the individual's health insurance because, again, they didn't know they were going to be blown up, they didn't even use gas in their home and yet they were killed. Well, how about the gas company? I think here the question is simple. They sell the gas, they make a profit off the gas, it is clear that they should be able to insure themselves against the potential dangers that the use of their product engendered into the community to users and non-users alike. Now, this was the principle that our Judiciary Committee followed when they voted 9 to 3 "ought to pass" on this particular piece of legislation and I see no reason why we should reject that type of overwhelming support.

I would like to make one last point and sit down. The good gentleman from Lewiston, Mr. Call, just stated that he sees no reason why the gas companies should be automatically liable, and to that point I completely agree, because this bill does not make the gas companies automatically liable. The gas company can come forward and show that they were not at fault, that there was an intervening cause, that some construction company had dug up the gas main, it wasn't their fault, that some drunk, as Mr. Dudley pointed out, that left the gas stove on, they can point out all these facts before the court and they will be absolved of any liability. So there is no automatic responsibility.

I ask this House to remember the basic principles of insurance and to keep this bill going.

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

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: I would like to rise and support the motion made by Mr. Hewes, and I would like to explain to you the reason why I voted "ought not to pass" on this measure.

It seems to me that when a person has to defend himself when he is not responsible for an accident that happens to them, a 100 percent, he is going to be blamed when he is not to blame. I think if the bill had called that when they thought they were to blame, then they could have sued them for being to blame, but in cases like Mr. Dudley mentioned to you, if they are not to blame, I can't see why even the insurance company, which they have to pay a premium for, that they should be called on to pay for something that they are not to blame for in the first place.

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

Mr. CARTER: Mr. Speaker, Ladies and Gentlemen of the House: My good friend Mr. Tierney brings out the point about insurance and he tells us that the reason behind insurance is to spread the risk. I agree with him, and I would like to ask him how many gas companies do we have in the State of Maine that he should spread the risk among? Is there not only one company?

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

Mr. TIERNEY: Mr. Speaker, Ladies and Gentlemen of the House: My good friend from Waterville knows full well that there is only one gas company in the state and I assume that is why he asked the question. The point I was giving, spreading the risk among the people who are responsible for brining this into the state. They are making a profit on it, they are regulated by the Public Utilities Commission and they are best able to absolve any loss in this case. All they have to do is make sure that nobody gets blown up and then they won't have to worry about any increase in their insurance costs.

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

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: Just briefly, the good gentleman from Sanford, Mr. Gauthier, indicated that people who are not to blame ought not to bear the burden of making the defense and I think that is exactly the point, in that the poor homeowner who is not even subscribing to the gas service at all would, under current conditions, have to bear that burden of proving that he was not to blame. The point is that if there is a third cause, it ought to be the people with the expertise, mainly the gas distributors and those who originated the substance in the first place to at least show where the blame lays. If we don't pass this, the person who had nothing to do with it, the individual homeowner who is probably under some anguish because of the destruction to his house and his family also has to bear the burden of proving that he was not to blame.

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

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: In reply to my good friend Mr. Henderson, I would like to say to him that when this happens to the house of the person that buys the gas is responsible for the blow up, this is what I am talking about, why should the company be 100 percent liable for something that they are not liable if the people in such cases?

The SPEAKER: The Chair recognizes the gentleman from Saco, Mr. Hobbins.

Mr. HOBBS: Mr. Speaker, Ladies and Gentlemen of the House: I am going to try to give you another example. The first example I used in the last bill didn't work too well, but I will try to give you another one.

Last year, I went hunting for the first time. I was out in the woods and I was thinking to myself, what if two people shoot a gun at the same time and I am hurt, unintentionally and negligently shoot a gun at a person? I said to myself, if the plaintiff has to prove which one of those people shot that gun and which bullet hit

me, it would be awfully hard for me to prove. I was fortunate enough to take an education course in law and in this field of negligence and torts, and I asked the professor that and he said, well, he said, in common law, both people who shoot the gun at you would be held liable and what you do then is that first the two people, either one of them would have to prove that they were not negligent, because he said, as you can see, it would be pretty difficult if two people were firing unintentionally and negligently at a person, it would be pretty hard to prove which bullet or which, if they were using the same type of gun, hit you. Here is an example, I am trying to prove that how you are shifting the burden away from the plaintiff, who is very difficult to prove that the other party was negligent onto the defendant, onto those two people. Take those two hunters, each one would have to prove that they were not negligent. I think this is the basic premise behind this bill, just placing the burden upon the person who can easily or better prove that that person wasn't negligent.

As we have seen in committee and we heard examples before judiciary at this hearing of how hard it is to prove liability. We have seen it in different bills and it is very, very difficult for a plaintiff, especially using all about, maybe some of these lawyers do, about how difficult it is to prove negligence. So, this bill does only one thing — it just shifts the burden of proof upon the defendant.

I will give you another example of how, you know, we are singling out one company, well unfortunately we only have one gas company in the State of Maine, but I don't think that that should be the reason behind not supporting this bill, calling for discrimination. It is unfortunate maybe that we do only have one company but to deprive these individuals of at least the right to have an easier time of proving negligence, I don't think we should defeat this bill just because one company is involved.

I will give you another example, I am good at examples this morning. Right now we have a lot of tankers coming into the Port of Portland, as you probably know, and all of a sudden what happens, sometimes an oil tanker discharges a lot of oil, and under the law before the old conveyance law, which this body passed about five or six years ago, that company, if they just proved that that boat — if they said that that oil came from that boat so you are going to have to pay for the cleanup and it is one of those things where there was no negligence involved, they were just trying to show that that boat right there was the cause of the damage. That, you know, is an example of how you are talking about one industry and that is one industry, granted not many people are in the oil business, but we do pass laws to protect society in general and we do take into consideration individual companies, but we shouldn't just defeat a bill because we are talking about one company. We should support the bill because we think it is a good bill.

The SPEAKER: The Chair recognizes the gentlewoman from Lewiston, Mrs. Berube.

Mrs. BERUBE: Mr. Speaker, Ladies and Gentlemen of the House: I think that we should look at the positive reasons for the necessity of this legislation; namely, that it will simply serve notice on the distributor of natural gas to implement the needed safeguards on their system, and when this system is made safe, then there

should be no need to fear the loss of liability insurance nor increased costs of premiums.

The SPEAKER: The Chair recognizes the gentleman from Rangeley, Mr. Doak.

Mr. DOAK: Mr. Speaker, Ladies and Gentlemen of the House: If I am incorrect I would hope that somebody will correct me, but it seems that we are approaching the public safety from the wrong position. We are seeking retribution rather than preventive measures. I would suggest to you that where the gas companies do have to make application to the Public Utilities in order to operate, there is a great possibility that somewhere along the way our lawmakers at this level have neglected to make stringent enough requirements before they are licensed or certified to operate such a system to protect the people. I would be much more in favor of more stringent measures at that level rather than to have retribution. I would rather save a life by putting in preventative measures.

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

Mr. HUGHES: Mr. Speaker, Men and Women of the House: The gentleman from Rangeley is correct. We could take another approach. We could try to draw regulations so specifically that we could maintain safety in the system, and I hope that will be attempted. But this bill takes a more conservative approach. It says that the companies which do business in a way that is inherently dangerous to the community ought to bear the burden of doing that business, and if they have to bear the burden, bear the responsibility of doing the business, they will themselves take the measure to provide that they will conduct their business safely. It is a more conservative way to go and yet I think it is a reasonable one.

We are talking about blame today, and blame is perhaps not the best word we ought to use because that confuses us with the criminal system and the criminal idea of guilt. We are talking about civil matters and we are talking about liability. But if you want to talk blame, you have to ask yourself about Dr. and Mrs. Wiseman, whose house was blown up at three o'clock in the morning on a January evening. You might have to be with us, to live in Lewiston or Auburn, and who visited the next morning the site of that blown up house. You could tell by looking at that hole in the ground full of rubble, and that is what it was, that that explosion came from some very powerful source, and I think any layman would have said it looks like gas. But of course we were surprised to find that the Wisemans were not customers of the gas company, and there was a lot of confusion for a few days. But thankfully our Public Utilities Commission, at the request of a number of legislators in this body, stepped in, spent \$20,000 to find that it was indeed the fault of the gas company, that the lines in the twin cities were so old and so rotten that there were leaks all over town. They forced the gas company to do what they should have done, to clean up and repair those breaks. Anyone driving through Lewiston for the next two years would have realized the construction that was going on is they did what they should have done previously. So perhaps the problem is better now, it was solved, except we had another explosion some time later, more people were killed, others were injured.

The first case, the case of Dr. Wiseman, was settled fairly quickly, because they

had the results of the PUC investigation to go on. But the second case is still in the courts four years later, as people try to get some kind of damages for suffering that they suffered, injuries caused to them, loss of their property. What we are trying to do is provide that in those cases, close cases, not the easy case where the evidence was very clear which party is responsible, but in the close cases, that the burden of proof will shift from now to the plaintiff to the defendant, and we are talking about gas company cases, we are talking about cases where the explosion is obviously caused by gas and where it is caused by gas escaping from a part of a system under the control of the gas company, which only goes up to the house, not in the house. But in those cases where the evidence has been destroyed, where it is too expensive for the average plaintiff to get, in those cases the burden should be on the gas companies who have the expertise to either disprove their burden or pay the cost of suffering for that family.

I ask that you support this bill.

The SPEAKER: The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker and Members of the House: I was reluctant to say a few words a second time, but when this man speaks about a conservative approach, this is certainly not the case; this is a very liberal approach that he is proposing.

Now about insurance, I have insurance, and I suppose most of you do, but I am not made by law to buy it. I am glad that this country has enough liberty so that I can choose, that I can choose what company I want to be insured with, I can choose whether I want to be insured, but this leaves this one company with no choice.

Now you could take this a step further — you could say the utility companies, we have had people electrocuted in their homes. We had one electrocuted in my town last year mowing his lawn, and we could say that these people have to have insurance too, because people are getting killed with electricity and they are serving the public, but you could go on and on with this type of thing, this very liberal philosophy, which I call it, and do this to even you or I, say that we have to be insured, we have to have homeowners insurance and we have to have automobile insurance. This is the beginning of a new era about insurance that I don't subscribe to, and it certainly is not a conservative viewpoint. If this man is dreaming that this is a conservative viewpoint, I want you to know that I am not dreaming. I know a liberal approach from a conservative approach.

I hope this gas company, whoever it may be, is treated like you and like myself and all other businesses in this state, that they are not singled out as one company and made to buy insurance and pass it on to the consumer. Of course, it is good business for the insurance companies and probably good business if we went to the utility companies and said they have got to buy insurance because people are getting electrocuted. We could always trump up some kind of a case against any industry once you start trumping up cases. We have got people in this state that haven't anything to do but trump up cases against people, and I am sure they could find a case to trump up so you would be forced to buy insurance.

The SPEAKER: The Chair recognizes the gentleman from Dexter, Mr. Peakes.

Mr. PEAKES: Mr. Speaker, Ladies and

Gentlemen of the House: I rose the other day to oppose this because of the possibility of the natural disaster, and under the new amendment I now support this bill. I feel it is a matter of responsibility. If a person was driving by your house with a load of dynamite and the truck exploded destroying your house, it would be incumbent upon you to try to find the pieces to prove how this dynamite exploded. I think you are unleashing a dangerous instrumentality into the area, pumping this gas near houses and homes, possibly non-users, and moneywise and from a practical standpoint, it would be impossible to prove that the gas company was liable, since they would have control of the various pipelines and so forth in order to prove that they were negligent in some way.

This bill just switches the responsibility and the cause and burden on the responsible person, the gas company, who has introduced this dangerous substance into the area. I urge you to support this bill.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question is on the motion of the gentleman from Cape Elizabeth, Mr. Hewes, that this Bill and all of its accompanying papers be indefinitely postponed. If you are in favor of indefinite postponement you will vote yes; those opposed will vote no.

ROLL CALL

YEA — Ault, Bagley, Berry, G. W.; Birt, Burns, Call, Carter, Churchill, Connors, Curran, R.; Doak, Dow, Dudley, Durgin, Fenlason, Fraser, Garsoe, Gauthier, Gould, Hewes, Hinds, Hunter, Hutchings, Immonen, Jackson, Kauffman, Kelley, Laverty, Lewin, MacEachern, MacLeod, Maxwell, McBearity, Morton, Norris, Palmer, Perkins, S.; Perkins, T.; Peterson, P.; Rollins, Shute, Silverman, Sprowl, Strout, Teague, Tozier.

NAY — Albert, Bachrach, Bennett, Berry, P. P.; Berube, Blodgett, Boudreau, Bowie, Bustin, Carey, Carpenter, Carroll, Chonko, Clark, Connolly, Cooney, Cote, Cox, Curran, P.; Curtis, Dam, Davies, DeVane, Drigotas, Dyer, Farley, Farnham, Faucher, Finemore, Flanagan, Goodwin, H.; Goodwin, K.; Gray, Greenlaw, Hall, Henderson, Higgins, Hobbins, Hughes, Ingegneri, Jensen, Joyce, Kany, Kelleher, Kennedy, Laffin, LaPointe, LeBlanc, Leonard, Lewis, Lizotte, Lovell, Lunt, Lynch, Martin, A.; Martin, R.; McKernan, McMahon, Mills, Mitchell, Morin, Mulker, Nadeau, Najarian, Peakes, Pelosi, Peterson, T.; Pierce, Post, Powell, Quinn, Raymond, Rideout, Rolde, Saunders, Smith, Snow, Snowe, Spencer, Stubbs, Susi, Talbot, Tarr, Theriault, Tierney, Torrey, Truman, Twitchell, Tyndale, Usher, Wagner, Walker, Webber, Wilfong, Winship, The Speaker.

ABSENT — Byers, Hennessey, Jacques, Jalbert, Littlefield, Mackel, Mahany, Miskavage.

Yes, 46; No, 96; Absent, 8.

The SPEAKER: Forty-six having voted in the affirmative and ninety-six in the negative, with eight being absent, the motion does not prevail.

Thereupon, the Bill was passed to be engrossed as amended and sent up for concurrence.

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

Senate Divided Report — Majority (12) "Ought to Pass" Minority (1) "Ought Not to Pass" — Committee on Judiciary on Bill "An Act Increasing the Number of Associate Justices of the Supreme Judicial Court" (S. P. 147) (L. D. 510)

Tabled — April 8 by Mr. Gauthier of Sanford

Pending — Acceptance of Either Report.

On motion of Mr. Hewes of Cape Elizabeth, retabled pending acceptance of either Report and specially assigned for Friday, April 11.

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

An Act to Prohibit the Department of Inland Fisheries and Game from Issuing Licenses to Persons Convicted of Certain Offenses. (H. P. 1139) (L. D. 1139)

Tabled — April 7 by Mr. MacEachern of Lincoln

Pending — Passage to be Enacted.

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

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

Bill "An Act Establishing the Civil Rights of Hemophiliacs" (H. P. 840) (L. D. 986)

Tabled — April 7 by Mr. Rolde of York

Pending — Motion of Mr. Talbot of Portland to indefinitely postpone House Amendment "A" (H-118)

The SPEAKER: The Chair recognizes the gentlewoman from Machias, Mrs. Kelley.

Mrs. KELLEY: Mr. Speaker, ladies and Gentlemen of the House: I rise to oppose the motion of Mr. Talbot to indefinitely postpone this amendment. If you accept this amendment, all you are doing is giving these hemophiliac people a chance to go to the school of their choice if they are qualified. This does not mean that a girl will try to get into an all boys school or that a boy will try to get into an all girls school. It simply will give them a chance to get an education, to keep off the welfare rolls and to get out and get jobs.

I don't know how many hemophiliacs there are in the state, but I understand from talking to some of the hemophiliacs that there are probably a lot that we don't know about, because they have not been recognized, they have not been able to get into these schools. These people know their limitations and their doctors know their limitations. If the doctors feel that they are qualified to go to the school of their choice, then I feel that they should be allowed to go. This only gives them a chance to take private action if they are refused. As I understand it, if they have a good case, the Human Rights Commission will pay their lawyer's fee if they need a lawyer. This is all you are doing if you would accept this.

I urge you to accept amendment number 118, and I would appreciate your support and I ask for a division.

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

Mr. CONNOLLY: Mr. Speaker, a point of information. The other day, Monday, when we debated this bill, there was a question about the germaneness of the

amendment. I wonder if the Chair is going to rule on that.

The SPEAKER: The Chair would rule that the amendment is germane. The pending question is on the motion of the gentleman from Portland, Mr. Talbot, that House Amendment "A" be indefinitely postponed. All those in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

21 having voted in the affirmative and 95 having voted in the negative, the motion did not prevail.

Thereupon, House Amendment "A" was adopted.

The Bill was passed to be engrossed as amended and sent up for concurrence.

The Chair laid before the House the seventh tabled and today assigned matter: An Act to Permit Furloughs for Prisoners of County Jails. (H. P. 427) (L. D. 521)

Tabled — April 7 by Mrs. Najarian of Portland

Pending — Motion of Mr. MacEachern of Lincoln to Indefinitely Postpone the Bill and all its accompanying papers.

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

Mr. LaPOINTE: Mr. Speaker, a parliamentary inquiry. There is a proposed amendment to this bill on our desks, drafted by the gentleman from Standish, Mr. Spencer, the parliamentary inquiry is, does this proposed amendment have priority over the motion to indefinitely postpone?

The SPEAKER: The Chair would inform the gentleman that the pending motion prior to this postponement motion was passage to be enacted. As a result of that, in order to go back to that point, the rules would have to be suspended and then the motion to amend would be in order. If the motion to indefinitely postpone were to be withdrawn, the gentleman from Standish could then offer his amendment by suspending the rules and then offering his amendment.

The Chair recognizes the gentleman from Portland, Mr. LaPointe.

Mr. LaPOINTE: Mr. Speaker, I would like to request a division and speak to the motion.

I would hope that you would vote against the motion to indefinitely postpone this bill so that we would be in a posture to reconsider the bill whereby Mr. Spencer could offer the amendment.

I would like to address myself to the acceptability of the amendment, and I hope the House will bear with me for a moment. The amendment is under filing H-133, and what it would do in essence is reduce the amount of days of the proposed furlough from 5 to 3 days. And I would point out to the members of the House that the original bill was a furlough for 10 days. In addition to that, it specifies the conditions under which a furlough could be offered, and I would hope the members of the House would take an opportunity to look at H-133, in that it tightens up the circumstances surrounding a furlough. I also point out to the members of the House that it is discretionary at the hands of an elected public official who is elected every two years, according to our Constitution, the sheriff.

One of the conditions, as I pointed out to some members of the House is that it would allow for a furlough to be offered to those people who are confined, under sentence in a county jail, for the purposes

of receiving medical attention in a hospital. Under the current statute, the sheriff has to post a 24-hour guard at the medical facility and under the provisions of this amendment and the bill itself, this cost would not have to be borne by the taxpayers.

The SPEAKER: The Chair recognizes the gentleman from Lincoln, Mr. MacEachern.

Mr. MacEACHERN: Mr. Speaker and Members of the House: This bill is a bad bill. This would permit people who are under sentence in county jails, at the discretion of the sheriffs, to go out and go back to society. Most of these people who are put in the county jails are sent there after formally having probated several times by a court. Now, our judges in our courts are intelligent and sensible people. They don't indiscriminately send somebody to jail. When a person reaches the point where he enters the iron door, he is sent there because the judge felt that he should be there for a period of time. These are temporary sentences, averaging possibly 30 days. The courts have seen fit to send them there, and I feel if they have been sent there for 30 days they should serve for 30 days. I urge you to indefinitely postpone this bill.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: I urge this House this morning to support the gentleman from Lincoln's motion, and I won't attempt to talk about an amendment that is not before us. I think the gentleman from Lincoln explained well the processes that we have now on sending individuals to a county jail for a period of 30 days or 50 days and 60 days. And if there is one thing in my area — and I don't want to sound like Representative Dudley when he says this — but in the city of Bangor, the people up there are somewhat sick and tired of the way we are coddling, bowing to, helping out, working our way around these individuals sent to county jails for breaking the law. It seems to me if we want to keep coming down here to the legislature and continually pass out these do-good types of legislation that my fine friend from Portland has got, then perhaps we ought to eliminate the court system completely.

You know, if my old seatmate, God rest his soul, was in here this morning, Joe Binnette, I think probably he would have been right on his feet fighting against this bill, because he was one coming from an area, he was sick and tired of us passing our palms and our hands out to individuals who were duly processed by the law, found guilty by their peers and sent to jail because of breaking the law. There is no reason why we should this morning continue along with this bill. I think the fine gentleman from Lincoln expressed his point well, and let us indefinitely postpone it.

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

Mr. BURNS: Mr. Speaker, Ladies and gentlemen of the House: I was first against this bill because I hadn't properly read it. I now rise for the bill. This would allow the county sheriffs to allow the prisoners to leave for specific reasons, to search for employment, hospitalization, medical care, illness or a funeral in the family.

Currently, under the law, if a sheriff allows a prisoner to go, he must send a guard along with him. This guard is costing the taxpayer, the property

taxpayer of the counties, \$21 a day to transport and to stay with these prisoners.

Let me point out to you that there is already on the statutes that the prisoners in the Maine State Prison are allowed furloughs and they are allowed furloughs of good time etc. It would be mainly up to the sheriff as to whether or not these individuals would be allowed to go out and conduct their business, and it is for conducting business only. I urge you to defeat the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker and Members of the House: I probably wouldn't have been before you this many times this morning, but I was very close to our departed colleague, and I noticed in clearing his desk that he had some very choice remarks to make in opposition to this bill. I felt as though in respect to him that I at least should try and say a few words about this bill. I will try to make an illustration.

It says it saves costs, the man said, sending someone with these prisoners when they let them. Well, it cost a lot to get them in there, and the people that I represent want to keep them in there, at least for the 30 days that they are in there, not be out in society.

At the present time they are allowed to go to funerals but a deputy has to go with them. I think when a criminal is out of jail, he should be accompanied by a deputy or a guy with two guns on his hips at least, and Mr. Binnette felt the same way.

I can tell you a little illustration as I see it back in the country perhaps it is getting the same down here in these cities. My people that are working, and there are only a few now, work shift work eight hours a day. They go in at three o'clock in the afternoon and they go in at eleven o'clock at night if they are working the night shift, now this is on Saturday and this is on Sunday. Some of these boys are single boys but they still work that shift to survive. If we pass this bill while the man that is trying to pay the bills is working his eight hour shift in the evening on Saturday night and on Sunday, these fellows will be free to come home and take his girl friend out for the evening; he is free on Saturday, on weekends — that is the way they intend to do it. We intend to make it easy for the criminals but the poor son of a gun that lugs a dinner pail, he has got to work eight hours on Saturday night and again eight hours on Sunday in order to survive, and I just don't think this is fair to the man that is lugging the dinner pail. I wouldn't feel fair if I got opposition from that source and I hope you will consider this very carefully.

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

Mr. GRAY: Mr. Speaker, Ladies and Gentlemen of the House: Once again I rise in opposition to this bill which allows furloughs to persons sentenced to a county jail.

Our criminal justice system has come a long way in terms of leniency, but I don't think we are ready yet to sentence persons to a furlough, which could very well come about when you take into consideration the average term of those sentenced to a county jail, because furloughs granted at the State Prison is not justification for extending it to the county level. Persons sentenced to prison are for one year or more; county jail sentences average out to 30 days or less.

Many of these bills become law because

the sponsors appeal to our humanitarian instincts and the plea is, let's try it. Let it not be said that it hasn't been tried. It has been tried; it is continually being tried and we in Knox County find it very trying.

This legislature should bear in mind that when these schemes such as this go afoot it is at the expense of the county and not the state. Expenses include prosecution, juries, even defense lawyers. I don't have to remind you that county tax is derived from property owners, not the income tax, not the sales tax, but property tax. It is little wonder that county government is under fire.

It is not as if this is a new and yet untried reform in our criminal justice system. You have been experimenting with furloughs and other so-called reforms at considerable expense to the taxpayers in Knox County.

These reforms might be more palatable if the Department of Mental Health and Corrections paid for their own mistakes, but it doesn't work that way. It is presently costing Knox County \$15,000 a year. If the success of these schemes can be measured by their costs, I can assure you that they leave a lot to be desired. Our costs in Knox County seem to keep pace with the degree of leniency at the prison. I would support the motion to indefinitely postpone.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: This is not a "Mother's bill," although I would not oppose sending these people back home to visit mother for three days. Who are these people in the county jails? They are the revolving door prisoner, the prisoner who has a psychological dependency on the jail and considers it a home.

The county jail, to my knowledge, has not rehabilitated one person. They provide only custodial care. In Cumberland County, we had many prisoners from the Maine State Prison. The sheriffs cook, pack them a lunch in the morning and they go out on their work release program and return at night.

I have dealt with many of these people over the years. How long are their sentences? Many of them in there have sentences as long as they want them. I would report to work in the morning to meet some of my friends and they would ask, can you get me in the county jail, would you tell the judge I want some time. I would say, I will go over and get you 30 days with no trouble, to which sometimes they would reply, come on, John, can't you make it 60, get me through the winter. This is a common thing, no other place for them. I think we are getting into progressive legislation when we do this sort of thing for the person that is harbored in county jails. We look to the south of us in Mexico and South America and see the prison reforms that we are trying to adapt here in this country in that they send the prisoners to jail at night, let them out and work in the day time under control to cut out the expense of keeping them in jail. I support this bill.

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

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: You probably all know, I had about 30 years' experience with these situations, but I will bring you right down into my own county where we have a county jail down there. About two months ago I was over there in Machias at eleven o'clock at night and there is a barroom down on the causeway. — I call it

a barroom, they have a fancy name for it. I was quite amazed to see the fellow in back of the bar go to the phone and call the Machias jail to send the paddy wagon down with a deputy sheriff to take six of the inmates back because they were unable to navigate on their own. Now, if this is what you want to do, have the judge, which the previous session we had a lot of dispute over what a judge should do with the cases before him where there was sufficient evidence to warrant conviction, and this is a frustration to the law enforcement forces. They are saying that the judges do not merit or pass out a sentence in conjunction with the evidence that is given in a case. Well, this is true, we had this rhubarb here in the last session and three of those things were put under a mandatory clause by the judge to enact on sufficient evidence. Now you have the same thing going around here.

You heard a former police officer testify here this morning that some of these people that are in there for drunkenness, they are not what you would call a really confirmed hard alcoholic, they have got too far over the bay and they are in a pretty shaky condition. They get sent in for 30 days to get dried out. Some of them would like 60 days to get through the winter, as he says. Well, that isn't the alcoholic, that is your down and out bum.

When you come down to this situation here on a 30 day deal, a good many times this 30 day sentence is going to save some of our young people from getting any further along on the road to crime. If they go in and they do 30 days and get time off on good behavior, which is what the purpose is all about, then you are saving that person instead of criticizing or incarcerating him. This is something that should be indefinitely postponed; there is no question about it.

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

Mr. LAFFIN: Mr. Speaker, Ladies and Gentlemen of the House: I support my good friend from Lincoln on the theory that if the members of this House could see what I saw in the South, they don't have chain gangs anymore but they have road gangs. Put them to work and they won't want to go back. But you give them furloughs and you put them out loose and they don't mind going back, but you put these people to work like I used to see in South Carolina and Georgia when I umpired down there, and they work from the time the sun got up till at night. I am telling you, they don't want to go back. Put them to work and not put them loose.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Call.

Mr. CALL: Mr. Speaker, Ladies and Gentlemen of the House: This is a bad bill. I spoke against it the other day and I want all and sundry to know that I still oppose L.D. 521. Any sheriff is usually one of the leading politicians in his county, and we can assume that it won't take much of an excuse to persuade the sheriff to grant a so-called furlough. As to the granting of state prison furloughs, I recite the old adage, to wit: "Two wrongs don't make a right."

Mr. Burns of Anson requested a roll call vote.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

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

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I was not on the floor of the House a minute ago, and I rise just to make it clear that it is my intent to back this bill up and offer an amendment which would limit the furloughs that could be granted from county jail to three days and would also limit them to specific situations, to contact a prospective employer, to visit a dying relative or to attend a funeral of a relative or for other personal or family emergencies. It will be a very limited bill with this amendment, and I would urge you to vote against indefinite postponement.

The SPEAKER: The Chair recognizes the gentleman from Lincoln, Mr. MacEachern.

Mr. MacEACHERN: Mr. Speaker and Members of the House: Just a couple of words in answer to the last gentleman. It is possible under the present setup for these people to go to funerals and family emergencies and so forth. The only difference is, they have to be under guard and I say they should be.

Mr. LaPOINTE: Mr. Speaker, Ladies and Gentlemen of the House: I would like to point out to the members of the House that most of the people who are under sentence to county jails are on misdemeanor, so it would appear to me that Mr. Dudley's characterization of the need for folks to carry six guns on both their left and right hips might be somewhat of an over exaggeration of the need for protection in this case. But I would like to point out, as Mr. MacEachern has pointed out, that, yes, these folks are accompanied, and as I pointed out a moment ago, they are accompanied and under guard when they are at the hospital. The question is, is it really that necessary to guard a person with six guns on both your left and right hip when he is or she is under sentence of a misdemeanor?

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Lincoln, Mr. MacEachern, that the House indefinitely postpone Bill, "An Act to Permit Furloughs for Prisoners of County Jails," House Paper 427, L. D. 521 and all accompanying papers. All in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL

YEA — Albert, Ault, Bagley, Berry, G. W.; Berry, P. P.; Berube, Birt, Blodgett, Bowie, Bustin, Byers, Call, Carey, Carpenter, Carroll, Carter, Chonko, Churchill, Conners, Curran, R.; Curtis, Dam, DeVane, Doak, Dudley, Durgin, Dyer, Farley, Farnham, Faucher, Fenlason, Finemore, Fraser, Gauthier, Gould, Gray, Greenlaw, Hennessey, Higgins, Hinds, Hunter, Hutchings, Immonen, Jackson, Jalbert, Kauffman, Kelleher, Kelley, Laffin, Laverty, LeBlanc, Leonard, Lewin, Lewis, Lizotte, Lovell, Lunt, Lynch, MacEachern, MacLeod, Mahany, Martin, A.; Maxwell, McBrearty, McMahon, Mills, Morin, Morton, Nadeau, Najarian, Norris, Palmer, Perkins, T.; Peterson, P.; Pierce, Raymond, Rideout, Rollins, Saunders, Shute, Silverman, Snowe, Strout, Stubbs,

Susi, Tarr, Teague, Theriault, Torrey, Tozier, Truman, Twitchell, Tyndale, Usher, Walker, Webber, Wilfong.

NAY — Bachrach, Bennett, Boudreau, Burns, Clark, Connolly, Cox, Curran, P.; Davies, Drigotas, Flanagan, Garsoe, Goodwin, H.; Goodwin, K.; Hall, Henderson, Hewes, Hobbins, Hughes, Ingegneri, Jensen, Joyce, Kany, Kennedy, LaPointe, McKernan, Miskavage, Mitchell, Mulkern, Peakes, Pelosi, Perkins, S.; Peterson, T.; Post, Powell, Quinn, Rolde, Smith, Snow, Spencer, Sprowl, Talbot, Tierney, Wagner, Winship.

ABSENT — Cooney, Cote, Dow, Jacques, Littlefield, Mackel, Martin, R.

Yes, 97; No, 45; Absent, 7.

The SPEAKER: Ninety-seven having voted in the affirmative and forty-five in the negative, with seven being absent, the motion does prevail.

Sent up for concurrence.

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

House Divided Report — Majority (8) "Ought Not to Pass" Minority (5) "Ought to Pass" as Amended by Committee Amendment "A" (H-115) — Committee on Education on Bill "An Act to Prohibit Corporal Punishment of Pupils" (H. P. 275) (L. D. 417)

Tabled — April 7 by Mrs. Najarian of Portland.

Pending — Acceptance of either Report.

The SPEAKER: The Chair recognizes the gentleman from Kennebunkport, Mr. Tyndale.

Mr. TYNDALE: Mr. Speaker and Members of the House: I would appreciate the courtesy of having the Clerk read the Committee Report.

Thereupon, the Report was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Kennebunkport, Mr. Tyndale.

Mr. TYNDALE: Mr. Speaker and Members of the House: Through an error, I was reported in favor of the "ought not to pass" report. However, for the record, it was my intention to be in favor of the "ought to pass" report and wish to be so recorded on the record.

If you will refer back to the 106th session, I was one of the leading opponents to legislation favoring corporal punishment in schools. I have not changed my position since then.

The SPEAKER: The Chair recognizes the gentleman from Winthrop, Mr. Bagley.

Mr. BAGLEY: Mr. Speaker, I move that we accept the majority "ought not to pass" report.

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

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: I would speak in opposition to the pending motion so that we might pass the committee amendment that is recommended and the bill in that form.

I would like to call the members attention to the fact that Committee Amendment "A" is, in effect, a redrafting of the bill, and many of the problems that arose from the original draft have been dealt with in the amendment.

I think the basic intention of this legislation is to prohibit the use of corporal punishment, that is physical punishment, of children in school but also to clearly outline when physical restraint can be used by teachers in school. I would like to call your attention to the statement of fact.

which indicates my philosophy behind this proposal. Physical restraint should be available as a means of protecting persons and property and to preserve a degree of order necessary to conduct the educational process. It should not be a part of that process that pupils learn by example of school officials, that the use of force is an acceptable method of settling disputes.

The general principle is this, that students learn the role of violence and the role of using physical force from a lot of places, including the classroom. They should learn that they cannot get away with using force on other people. They should be strictly controlled in that respect, as far as disruption is concerned, they should be ejected from a classroom, they should not damage property, they should not interfere with other people.

On the other hand, when people, as part of the learning process, are slapped or rapped in some way to try to get their attention, to try to teach them something, to try to keep them from "fooling around", they get to learn that that is the way you get people's attention and that is the way things get done in this society.

Some people felt that this was another example of coddling people who are disruptive and another example of permissiveness in the school. Well, I don't think it is; I think that we do need strict guidance for students; we do need discipline in the schools. The question is, how do we go about doing that and what are the consequences for the society in general later on? We should have discipline, people should be deprived of liberties, in a sense, or privileges in those schools that they disrupt if they don't go by the rules. They should not be allowed to disrupt classrooms, but we can't do it just by a physical reaction.

Too many teachers, I feel, are in an untenable circumstance. They are trying to teach a lot of students but they also have some problem children in that classroom. Those children shouldn't be there, but the teacher is faced with it. They are faced with this disruptive situation and the very natural reaction of the teacher is to strike out at it. By doing that very many times, the student is subdued. The student will sit there. They won't make a lot of fuss, but they haven't dealt with the problem of that child. They have dealt with the problem of order in the classroom, but that child, when he is outside of the classroom, probably is going to take his frustrations out on somebody else. The teacher is on clear notice that that is not the way to deal with that problem; that this person ought to be taken to the guidance counselor, to whoever else might be able to deal with that problem, then they can get a handle on it before we have to pay for it in society and people are going to end up in the county jail or state prison or any place else. The way to solve the problem is not to just beat them into submission but rather to recognize those problems and deal with them.

Some people who are in favor of this bill have gone maybe a bit too far in dramatizing some of the real abusive circumstances that do occur from time to time in the schools. This is not my basic intention. If there is a gross abuse of a child in the school, I think we already have laws to protect them, so I am not going to argue on that basis. There are people who are really, really severely physically harmed. There is a recourse. The problem is in those gray areas where traditionally

teachers have been given the right to physically spank, slap, you name it, the child; that is currently all right in our school system and at that point it gets to be a little marginal about when that responsibility ends and when some abuse really takes place.

As of now, there are no guidelines on when teachers may use restraint. Some have gotten into trouble on this. This particular proposal will indicate exactly when they can use restraint, so it clarifies the situation rather than muddies it as it is now and as people have gotten into problems.

The National Education Association, the NEA, a national teacher's representation group, a group which represents the teachers, did a study to consider the questions involved and have recommended a law similar to this. I don't want to imply by that that all teachers in this state agree with it; they don't. They have flexibility now that they would like to keep, and I guess what I am saying is that they ought not to have that degree of leeway.

I would just like to point out one other thing and then I will rest for a bit, I guess. The State of Maine Constitution, Article 14, I think it is, or Section 14 of the First Article, prohibits corporal punishment in the military services, in the militia, the National Guard. We cannot have corporal punishment in a military, we cannot have corporal punishment in our mental health and corrections institutions, but we do allow it in our educational institutions. It seems to me that there is some kind of a conflict here.

The SPEAKER: The Chair recognizes the gentleman from Winthrop, Mr. Bagley.

Mr. BAGLEY: Mr. Speaker, Ladies and Gentlemen of the House: I don't want to belabor this thing but I have been in this business of education for 46 years and I used to have occasions when I would take my belt off, I always wore pants tight enough so they would stay up, I would double my belt over, make the pupil reach down and grasp his ankles, and I would apply the belt, not viciously but fairly firmly. I found that it had good results. I found that very seldom did I have to do the same thing a second time and those people, years afterwards, came to me and admitted that that had been the best thing that happened to them.

Now if some of you remember, over the last several years Dr. Spock has been quoted frequently as advocating permissiveness, and recently Dr. Spock has admitted publicly that he went too far with his permissiveness, that there probably should be some physical punishment in some cases.

All we are asking in this case is to continue this thing as it is now with the teachers having some rights. One of my big fears in regard to this thing is that if it is publicized the State Legislature has said, no more corporal punishment, the kids are promptly going to say, well, you can't do anything to me anyway. I think the psychological effect would be bad. I don't think the children in Maine are abused.

As I say, I had 46 years in the business. I saw no children abused. I saw examples of physical punishment. I think perhaps some of you will agree with me that possibly the old fashioned spanking in the wood shed at home might not be entirely amiss and the present regulation by the courts has always been that any physical

punishment that is suitable to be applied by parents may be applied by teachers. That is all we say; we are not going beyond that. We don't want any beating up or anything of the kind. We don't have it. There are plenty of laws to cover that. We have had teachers hauled into court for assault and battery and they should be if they have anything of that sort. All we are asking is to keep the present law so that the teachers may, if the occasion seems to demand it, apply a reasonable amount of physical punishment.

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

Mr. NORRIS: Mr. Speaker, Ladies and Gentlemen of the House: Very briefly, I have to agree with my old friend Mr. Bagley, because at one time I was a pupil of his and what he says is exactly true.

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

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: It is correct, we do have laws to take care of people who break the law and assault and battery. The teaching profession today is very cognizant of the problems involved with corporal punishment, but we have gone far enough with the deterioration of discipline in our school systems. I feel as though this is a very bad bill. It was a bad bill the last time we had it, and I would like to move for its indefinite postponement with all its accompanying papers.

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

Mr. CARPENTER: Mr. Speaker, Ladies and Gentlemen of the House: not to belabor this point, I arise to support the motion for indefinite postponement. I am sure that if this had been a year ago, if this was last year that I was standing here speaking, I would have been supporting the position of my good friend from Bangor, Mr. Henderson. However, last year I had the occasion to teach at the high school in Houlton for the last nine weeks of the year and I found that, in my opinion, if you take what little teeth there in the corporal punishment laws, if you remove them, that you are going to be in big trouble. I agree with Mr. Bagley that we are not having children abused or beaten up or attacked, or this sort of thing, but as he said, if it is publicized that this has been passed to prohibit corporal punishment of all sorts, then the teaching profession in the State of Maine is going to be in big trouble. I support the motion for indefinite postponement.

The SPEAKER: The Chair recognizes the gentleman from Danforth, Mr. Fenlason.

Mr. FENLASON: Mr. Speaker, Ladies and Gentlemen of the House: I, too, have had quite a few years in the field of education. I don't want to repeat any of the things that my good friend Mr. Bagley, has said. I want to point out a few other things.

I trust that the members of this House would have faith in the good people we have in our classrooms in the State of Maine. You don't have to look very far to see some of them, because they are sitting in front of you, at one side or the other side, or possibly behind you, they are fine young people in this House. They are well trained. The classroom teacher now not only is required to have a Bachelor's Degree, the teacher must have student teaching. He has courses in child psychology. He has courses in his own particular field and he knows his business.

He is backed up by a principal, who also knows his business, and that system is backed up by a superintendent of schools, who not only has to have a Bachelor and a Master's Degree but a certificate of advanced study degree and he is an expert in education and it is his job to keep track of it. So, we have that much going for us.

Now, let's go to the other side of it. Every school system, whether it is a local school union or a school administrative district has a local school board or board of directors. These are people chosen by the citizens and who normally are very much interested in schools, who are competent people and who oversee the operation of the schools.

We will go one step further. The local school board is backed up by the state organization of school boards, the State School Board Association, and that further is backed up by the Maine School Management Association. So in the realm of the school boards, you can see that we have plenty of supervision there.

Now I would like to go in the other direction. We have the State Board of Education and Cultural Services. We have the State Board of Education. We have the State Superintendent's Association. We have the State Principal's Association. We have the teacher's own association, the Maine Teacher's Association, and the National Education Association. Here are many groups that are all interested in the welfare of children and they are good groups. I submit to you that our educational system is a good one.

I will get back to the corporal punishment thing. We need the right to use it and it is used very, very rarely, but when that time comes, it is entirely necessary, and if you take that right away from your teachers, you are going to, at some time, create a chaos in your schools.

I suggest very strongly that you follow the recommendation that this bill "ought not to pass".

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Cote.

Mr. COTE: Mr. Speaker, Ladies and Gentlemen of the House: I go along with the indefinite postponement of this bill. I have received more spankings in this House than I ever had when I went to school.

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

Mr. MULKERN: Mr. Speaker, I have a couple of questions that I would like to ask through the Chair to any member of the committee who may care to answer. This is concerning Committee Amendment "A". I have a little bit of concern with the definition of corporal punishment in here, and I would like to ask a question about it. It says that corporal punishment shall be considered to have taken place whenever the punisher imposes physical pain or discomfort on a pupil in response to behavior that the punisher finds unacceptable. It seems to me that by definition that a teacher could merely, if a pupil was creating a disturbance to the room and that the teacher could not control, and the teacher told the pupil to leave the classroom or some such thing, and the pupil refused to leave, and the teacher had to grab the pupil by the arm and escort him out the door, it seems like the pupil could say that some kind of discomfort was being administered to him, I mean even in the mere grabbing of his arm. I don't know, this is a pretty broad definition of corporal punishment.

My second question is, I notice in the original bill civil liability has been taken out, and I am wondering if the parent or the guardian, under present law already, can make a teacher civilly liable for any corporal punishment administered to a pupil in a classroom? I would like to have those two questions answered.

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

Mr. INGEGNERI: Mr. Speaker, Ladies and Gentlemen of the House: In the first place, what you are talking about when you are mentioning physical restraint, you are not talking about punishment. The bill very clearly states that physical restraint or force is justified in using a reasonable degree of force against any such person who creates a disturbance when and to the extent that he reasonably believes it necessary to control the disturbing behavior, or to remove such persons from scenes of such disturbance. That has no reference to the first paragraph. The bill permits physical force or restraint when there is a disturbance about to occur or disturbance is in the process, and if a teacher were to try to quell a disturbance or to remove the pupil or to escort him to the principal's office, that teacher would be justified under the guarantees of this bill to place a hand on that child and to remove him.

I think while I am on my feet, I would like to speak in favor of this bill. I would like to point out that all of the homily we have heard completely missed the point of this bill. We are talking about removing all physical force or the use of restraint from a teacher.

According to the interpretation of a study of Ohio, corporal punishment is administered after the unacceptable behavior, whereas a physical restraint would be before an action occurs or while an action was in process. The Ohio report on corporal punishment said that the application of sufficient force or restraint of a violent pupil or a potentially violent pupil from physically harming himself or other people or property, it takes place before or during the threatening situation.

We have heard homily of the old school masters of 46 years experience and the Representative from Lewiston, has said he received many, many punishments, obviously it didn't affect him very much physically, I can see that. But who knows what harm has been done to his psyche, perhaps he is not aware of that himself.

When I think of a teacher, after a pupil has done something which annoys her, and this teacher as a Pontius Pilate can walk down the aisle and slap that child in the face, on the buttocks or whatever, I say that is a deprivation of a human right, that is a deprivation of a natural right. I often wonder what teacher would walk down the aisle and strike the child of the prominent physician in town or the prominent lawyer. We had at our committee hearing a superintendent who spoke against this bill, and during the course of his testimony I heard an astounding statement, he said that any parent who says to me don't you dare strike my child, we will have his wishes acceded to, that child will not be struck. I said that means that any parent, who is in awe of your authority, who feels, he can't cope with your intelligence, who feels himself inferior, that parent who does, not come to you because of those reasons, and asks you not to strike his child, that child will be struck if that teacher is frustrated or that teacher loses his or her temper.

We have come a long way in this world; we have preserved the rights, we have extended the rights of prisoners, mental patients, people in armed services, and it is a very good thing. We have seen sexual discrimination on the basis of sex practically eliminated. There is one area, there is one part of our population that is way down at the end of the line, and who is that minority or what is that group composed of? That group is composed of our finest natural resource. That group is composed of the children. That group is composed of those persons who we should hold in sacred trust. We, the adult, have for centuries assumed to speak and think and act for the children and yet when it comes to a violation of the most sacred thing a person has, his body, we have not taken away the right of any person to violate the body of a child. And when a child is struck by a teacher in anger, that child is humiliated. Don't tell me that it has no effect on you, that the effects are only beneficial. Maybe I was a very sensitive child but when I was chastized or I was slapped by a teacher, I was mortified. I walked home with tears coming down my cheeks, and I say, why should the teachers have that right? Perhaps they are finely trained, perhaps they are wonderful teachers, I am not concerned about them. I am concerned about that one person who does not act rationally. I am concerned about the children having the same rights as all the other segments of this population. I urge you to reject the "ought not to pass" report.

The SPEAKER: The Chair recognizes the gentleman from Dexter, Mr. Peakes.

MR. PEAKES: Mr. Speaker, Ladies and Gentlemen of the House: As I recall, many years ago I was faced with a situation where they had — it was a control situation, however, where they had the assistant principal and football coach administer corporal punishment. It wasn't done in an emotional way. The teachers, I think, could get involved in a situation where they would be reacting out of their emotions. As I recall, there was a paddle that had holes drilled in it, which left a definite impression on me and caused me not to do this thing again. But I really feel that in other situations the teachers have come along the aisles, saw somebody making a moustache on their current reader, pulled the child's ear, pulled his hair, I think the humiliation is the greatest thing I can see and also the possible reaction of the child to strike out at the teacher. I have seen this happen. I think this should be in a controlled situation and we shouldn't give this carte blanche to all the teachers to act out their emotions against the children.

The SPEAKER: The Chair recognizes the gentleman from Jay, Mr. Maxwell.

MR. MAXWELL: Mr. Speaker, Ladies and Gentlemen of the House: Two years ago I introduced a measure very similar to this one. I liked it, I thought it was a good measure, I still think so, and I think that we should certainly vote against the "ought not to pass" report and hope that the bill can finally pass. This protects the teacher. It does as much for protecting the teacher as it does the child.

I can remember back when I was a little fellow — that was quite a few years back — there was one particular teacher that lived in my house with my folks, ate her meals with us, and on the last day of school, the last term, she said, "Well, Sidney, I didn't have to take you out and give you a

strapping today." My father said, "What do you mean?" She said, "Well, this is the first day this term that I haven't given Sidney a strapping." You know, I got a worse strapping that night than I ever got before in my life but that was from my own father, and I never felt bad about this teacher doing this, I probably deserved it. But on the other hand, perhaps that is why I was bashful all my life, I don't know.

I do have a letter here. I would like to take a minute to read parts of it.

"In May of 1972, a resolution against corporal punishment was passed at a conference sponsored by the American Civil Liberties Union, the American Orthopsychiatric Association, and the National Education Task Force on Corporal Punishment. The resolution states, "The use of physical violence on school children is an affront to democratic values and an infringement of individual rights. It is a degrading, dehumanizing, and counter productive approach to the maintenance of discipline in the classroom and should be outlawed from educational institutions as it has already been outlawed from other institutions in American society.

"An 1886 Maine court decision upholding corporal punishment has been used to defend teachers taken to court for physically punishing students. However, Judge Shepley, the judge of this case, eloquently urged that corporal punishment is a "relic of barbarism", that it has been abolished in the army and navy, and has been forbidden in many schools by school boards. He urges that the greater humanity and tenderness of this age should not tolerate it in any schools and that the courts of this day should not recognize it as a proper mode of school punishment.

"The most effective way to insure public school children of their right to be free of physical abuse is through state legislation. The state has the responsibility to protect all persons from physical abuse, regardless of size or age, and whether or not they are under the jurisdiction of public supported institutions. Such legislation would assure that children would receive the same protection against physical attack as the law provides for adult members of society."

Lincoln said, "How can slavery be a good thing when we do not want it for ourselves?" How can corporal punishment be good for children when we do not want it for ourselves and have outlawed it?

I hope you will vote against the motion on the floor, and I hope you will then turn around and vote to pass this bill.

The SPEAKER: The Chair recognizes the gentleman from Orland, Mr. Churchill.

MR. CHURCHILL: Mr. Speaker, Ladies and Gentlemen of the House: I would like to ask a question through the Chair to anyone that might answer. This appears at a quick glance that this only applies to public schools and if it is going to pass, it should apply to private schools as well.

The SPEAKER: The gentleman from Orland, Mr. Churchill, poses a question through the Chair to any member who cares to answer.

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

MR. HENDERSON: Mr. Speaker and Members of the House: This does apply to only public schools, as I understand it. I think one of the thoughts involved with public or private schools is, I guess, the question in my own mind is whether my tax money, my involuntary tax money,

ought to go to support a public policy which allows corporal punishment.

If some people feel they have special needs, special children, that they want their child to go to a private school which has different kinds of rules, then maybe they ought to have that opportunity. I did not want to intrude into the private sector on this, but I did feel that the public schools are an expression of the public policy and for that reason this should be outlawed in that case.

While I am on my feet and not seeing anyone else rise, I would like to make just a few rebuttal remarks. One is that maybe we have placed the wrong amendment on this bill and we should have had one that read this way: "Any person found civilly or criminally guilty of mental, physical or sexual abuse of an individual in a public school shall never be allowed to teach again in a public school in the State of Maine." We just passed that principle with respect to mental institutions; maybe that is what should be suggested here.

I would also like to say with respect to those who talked about the old fashioned ways to keep it as it is, that is what has produced the kind of disrespect for law, the kind of disrespect for adults that is currently in our society today. That is why we have a lot of people that are breaking laws that we have to deal with time and time again by people who are concerned about rural crime and concerned about filling up our jails, because we have been using this kind of system consistently. The question is, has that been productive? My answer is, no it hasn't. We have been teaching people that this is the way to get things done and that maybe we ought to reconsider the way we are going about it.

One of the problems in school and in many cases is the disrespect that the older generation seems to be getting from the younger people. Again, the question is why and the question is why is it that somebody has to say if we don't have this possibly, then our schools will be in an uproar. The teachers need this kind of thing. Where the heck have we been or where have we been going that we have come to a situation where the only way we can keep order in the schools, the only way we can teach our children is by the threat or the use of physical force. This is not the kind of way the people ought to be learning. This is not the kind of circumstance that teachers ought to be faced with.

I realize that some of these problems, many of them, were not generated by the school system per se, generated by the nature of the society in which we live, but the fact is that is the condition in our schools and the way to deal with that problem it seems to me, is not to offer force as a reaction to it.

The SPEAKER: The Chair recognizes the gentlewoman from Vassalboro, Mrs. Mitchell.

Mrs. MITCHELL: Mr. Speaker and Members of the House: I rise to oppose the indefinite postponement motion. I think the real issue here, and sometimes we get carried away with rhetoric, is not child abuse. We are talking about simply substituting constructive methods of discipline for destructive methods of discipline. I think the gentleman from Dexter touched upon this point, that corporal punishment is not constructive, as verified by two findings of that very organization that my colleague on the Education Committee referred to, the National Education Association. They do not support corporal punishment. They

have conducted extensive studies and this is what they have found and these two things seem most pertinent to me.

One, that corporal punishment is not effective. It is used most often on the same child and this is verified, this same child continues to repeat what he was spanked for or abused for in the first place. The second is that corporal punishment is most often used when a teacher or a student or a principal is very highly frustrated and they give into those feelings rather than trying to solve the problems, to solve those things that caused the behavioral problems in the first place.

As a teacher and a parent, I have confidence in the teaching profession. I am confident that our teachers don't need the privilege or whatever we want to call it of corporal punishment. They can control their classrooms without this device. They can use constructive methods and they can encourage traits like self control rather than destructive methods and encourage negative traits like hostility and violence.

I think we should encourage our teachers. I think we should encourage them to pursue this positive direction and show them that we do have confidence in them.

The other argument I hear most frequently is, corporal punishment is not used very much in the State of Maine. To that argument I say, a little of a useless and an often harmful thing is no more justifiable than a great deal of it. I urge you to oppose the indefinite postponement.

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

Mr. MULKERN: Mr. Speaker, Ladies and Gentlemen of the House: I wouldn't want the members of the House to interpret my inquiries as to Committee Amendment "A" a few moments ago on this bill to mean that I am necessarily opposed to this bill. As a matter of fact, I am not opposed to the principle of prohibiting corporal punishment of pupils. I merely asked the question to perhaps solicit some response from some teachers who might be considered about their problems with their rights under this bill, but apparently there doesn't seem to be any problem with Committee Amendment "A". I didn't hear any concern from any of the teachers that are going to have to live under this.

I support the idea of what this bill tries to do. As a matter of fact, I have a bill that is going to be coming in a very few days cosponsored by the good lady from Portland, Representative Boudreau, dealing with the whole problem of reporting child abuse in the State of Maine, and I do consider corporal punishment by teachers, when it is carried to extreme degrees, as a form of abuse of children. I think they are more or less in the same category. I hope that many of the people that support this bill today will support my bill on child abuse when it comes up before the House too.

Again, I concur with many of the remarks of the speakers. I spent a couple of years as a teacher in a school up in Kingfield and I had my problems. I decided the teaching profession was not for me and it wasn't easy for me as a beginning teacher, but I can well understand. I don't think a teacher should have to resort to physical force and physical abuse as a form of trying to educate pupils. I think if they have to go that far, then they probably ought to be looking at themselves, there is probably

something wrong with their method of teaching or their approach to the problem.

I think Committee Amendment "A" amply takes care of situations which might arise where a teacher would have to use a reasonable degree of force to take care of this, and for this reason I would like to see the House support this Committee Amendment today.

The SPEAKER: The Chair recognizes the gentleman from Wallagrass Pt., Mr. Powell.

Mr. POWELL: Mr. Speaker, Ladies and Gentlemen of the House: I would like to mention for Mr. Henderson's benefit this bill does cover public and private schools both.

Second, remember the old law puts the teacher in the place of the parent, and most of you are parents I think. We also have a law in the books now that requires all children up to 17 years of age to attend school. We get all kinds in that case. I would urge you not to put the teacher in the straitjacket. I think the law as it is is not that bad.

The SPEAKER: The Chair recognizes the gentleman from Winthrop, Mr. Bagley.

Mr. BAGLEY: Mr. Speaker, Ladies and Gentlemen of the House: I just want to reply very briefly to two statements. One was in regard to the superintendent who said if a parent asks that the pupil not be punished physically he won't be. Now, I have had more parents tell me that if their child needed it they should be punished than people who asked me not to touch them. I am sure that is true.

One other statement was made that we are in the situation we are in in spite of having physical punishment, corporal punishment, in the school, and my reply to that is that in most cases the situation we are in has come about since this permissive society developed to the stage where we didn't have much punishment at home or in the school, and I suspect rather than blaming corporal punishment in the school for the place we are in we ought to blame lack of punishment both at home and in the school for the place we are in.

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

Mr. WILFONG: Mr. Speaker and Members of the House: I support this bill because it would eliminate flogging. We don't need public flogging anymore. I went to a one-room school house, eight grades, there was a big club in the corner, and I will tell you, that little gray haired old lady that was my teacher would have been in big trouble if she tried to wield it against half of the students in that school. We have some boys up around where I live called the Perry boys that could have fed that club to her. My brothers, not what you would call small either, were all about six-foot four in the third grade. The Perry boys were very close to being about the same height, a little wider. My father is six-six, weighs about 230, and he is pretty intimidating, still is, and he told the teacher that he didn't really feel that club would be necessary, that he would prefer that she did not use that club on us, that if she had a problem, she could contact him and he would use the club on us.

I don't think that the place to punish children by physical abuse is in the school. I don't think that it is totally the place in the home either, but that is another subject. I think that we could do very well by supporting this bill today and eliminating flogging of children.

The SPEAKER: The Chair recognizes the gentleman from Limerick, Mr. Carroll.

Mr. CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: I am going to make it very short. This perennial chestnut of here two years ago is here again today. Now, I want you all to do a good job on killing it so it won't be here two years from today.

The SPEAKER: The Chair recognizes the gentleman from Kittery, Mr. Kauffman.

Mr. KAUFFMAN: Mr. Speaker, Ladies and Gentlemen of the House: We have heard the proponents of this bill say that the school teachers are going to take our children, our grandchildren, down to some remote part of the school room, chain them, flog them, beat them, for some misdemeanor that they have done.

I had the honor and privilege of serving six years on the school board in the town of Kittery and we had our problems. We had one which I very distinctly remember out on the playground, and there are some big boys in the town of Kittery too, and the teacher grabbed one by the shoulder and said, come on, get in line. He went home and told his father, that the teacher beat him. The father showed up, I was called in as chairman of the board at the meeting, and the father stated to the principal, I want to tell you one thing right now, if any of the teachers lay a hand on my children, they want to be prepared because I have taught them how to use their mitts. Now, I am sure today, with all this permissiveness in the schools, that children take that attitude and I think the teachers should have some means of restraining them from disrupting classes and running around. I had an instance last week with my own grandson. He is 12 years old and he got a detention slip, he got his studies running up and down the corridor. Now, I think if the teacher had had the right to snap him back into his seat, he would have learned a lesson. Consequently, his father has campused him right in his own yard. However, I urge you to support the "ought not to pass" bill.

The SPEAKER: The Chair recognizes the gentlewoman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker, Ladies and Gentlemen of the House: After hearing some of the last comments that have been made, I just wanted to call your attention once again to the amendment which is before us, which says that a teacher would be justified in using a reasonable degree of force against any such person including for the purpose of self defense, and I urge you to look at this amendment again, because it does not totally limit a teacher.

The SPEAKER: The Chair recognizes the gentleman from Danforth, Mr. Fenlason.

Mr. FENLASON: Mr. Speaker, Ladies and Gentlemen of the House: I don't want to belabor this thing forever but there are one or two points which I think should be made. I am positive that there is no public flogging or no physical abuse in our school systems. I will just stop that one there.

Another point that I would like to make is that there was a reference that we had unfit teachers in the classrooms. There is a system of certification of teachers, and this is done by the State Department of Education and Cultural Services and those people are experts. They send out questions to people who know these teachers, who have worked with them and ask for recommendations. They go particularly to superintendents of schools. In serving as a superintendent of schools, I have answered many of these inquiries

and I have answered them honestly and fairly, and if I felt that there was a single thing that should be said against a teacher, his character, his methods, his ability, his relationship with school or with community, I said it as I saw it, and I am sure that most of our people in education do the same thing.

I have just one other short point to make. The United States, I believe there are about three states that do have a bill or a law passed similar to the one we are talking about today, and in at least one of those states we have a condition where there are police in the corridors all day long and when the teachers move from one room to another, they move only in pairs.

I have one little quickie before I stop. This bill was mentioned to one of our fine elderly lady teachers. She is very kindly, a very fine lady. I am sure she never abused a child, I doubt if she ever touched a child, but when she heard of this bill, she merely said, oh my, no, I am almost ready to retire and if this ever passes, I will have to resign. Please don't pick on that little old lady.

Mrs. Clark of Freeport requested a roll call vote.

The SPEAKER: A roll call had been requested. For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. If you are in favor of a roll call you will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

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

Mr. CONNOLLY: Mr. Speaker, Ladies and Gentlemen of the House: First of all, I am one of the members of the committee that signed this bill "ought to pass" so I would hope from the outset you will understand my position and would vote against the pending motion to indefinitely postpone.

Very briefly, I think there are two main arguments that the opponents of this bill are using, and I think you have to deal with them and you have to look at them and examine them to see why they are wrong. The first argument that is made about this bill is that it would outlaw corporal punishment, and that simply is not true. If you have taken the time, as Representative Kany has pointed out and other speakers have pointed out, to read the amendment, to read the redraft of the bills, it specifically allows teachers to use a reasonable degree of force in three cases — when a student has a weapon or is within reach of a dangerous weapon, for the purpose of self defense, or when there is a disturbance in the classroom that cannot be handled in any other fashion. So it doesn't outlaw corporal punishment. In my opinion, this bill is a weak bill. I would like to see it a lot stronger, but I think it represents a compromise.

The second objection and one I think most of you have responded to is the argument that said, well, a good whack never hurt anybody. I got one when I was in school and look at me now, I am okay. I never got a whack in school, and maybe, I am not okay, but it seems to me from my experience in grammar school that when I saw a teacher hit somebody, the reaction it produced in me was one of fear. I was afraid and the other kids in that classroom were afraid of certain teachers too because they knew what would happen to

them, and that seems to me to be the wrong reason to be in school. Education should be an enjoyable experience. It should be a rewarding experience. We should go to school because we want to go to school, not because it is a day care center or a baby sitting clinic, not because we are told we have to be there regardless of how we feel about things.

I think that this bill is not a dangerous thing, it would not prohibit law and order in the classroom, if you want to use those terms, and those are the terms being used by some people here today, there is really nothing wrong with it. It is a good piece of legislation and I would hope that you would vote against the motion.

The SPEAKER: The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker, Ladies and Gentlemen of the House: I do hope that we indefinite postpone this but there is one word that bothers me there and it says reasonable. My wife and I have had some discussion about this same word, what is reasonable? This is the thing that bothers me, reasonable. Reasonable in my mind is one thing, and reasonable with her mind is something and reasonable in your mind is something, so bear in mind this bill here says reasonable, and it is a word that I don't comprehend.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Ingegneri.

Mr. INGEGNERI: Mr. Speaker, Ladies and Gentlemen of the House: I might point out to the gentleman from Enfield that I worked on this redraft with one of the assistant attorneys general and I brought up the business of reasonable, and he said, you know, you can't have in any bill every single little bit of an accidental ambiguity eliminated, that is impossible. Those are the things for the courts to decide. Reasonableness is something that we all have a feel for but I don't believe anybody can actually define it in specific words.

While I am on my feet, I would like to point out to you that the proposed revised criminal code says under Section 106, subparagraph 2, a teacher or person otherwise entrusted with the care or supervision of a person under the age of 17 for special and limited purposes is justified in using a reasonable degree of force against any such person who creates a disturbance when and to the extent that he reasonably believes it necessary to control the disturbing behavior or to remove such persons from the scene of such disturbance. Under comments it says, teachers, however, are not granted authority to use force in order to punish by subsection 2, which thereby changes the present law. It is necessary for a teacher to have order so that he may teach and subsection 2 gives him the authority to maintain order when a child is creating a disturbance. I think that that is what the redraft of the bill is all about. It says that that cold calculating decision to strike a child because that child got under the skin of the teacher is removed, is prohibited, or it prohibits that teacher from becoming so frustrated that she or he temporarily becomes irrational and strikes the child.

We are talking about superintendents of schools and educational bodies. Let me read what the head of the educational service in Cook County, Illinois said: "This is not to say (he is talking about abolishing corporal punishment) that we seek to lessen discipline. On the contrary, we must and can tighten discipline. We must use our other resources, parent conferences, detention, extra work, assignments,

guidance counseling and school suspension and even more harsher courses of suspension, expulsion, court referral and arrest." This doesn't sound like permissiveness. The thing that is prohibited or he would like to have prohibited is that physical force being used as a punishment.

In Dallas, they had a lot of trouble. Every time corporal punishment was used, for some strange reason, in 99 percent of the cases it was used against the blacks, and this was in a school that had recently been desegregated and the teachers were probably under strain, could not accept the decision of the courts or whatever, and this is the outlet of their latent bigotry or intolerance or their inability to accept a court decision. The Dallas school board found that it had to promulgate very stiff regulations against the teachers just for that reason, because there had been several court cases and in every court case the school system was slapped down and slapped down hard.

I say that we ought to reject the motion of Mr. Morton because it is time that the State of Maine, which is enlightened in many areas, far more enlightened than some of the big metropolitan states, it is time that in this particular respect we come out of the 19th Century and into the 20th Century.

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

Mr. CURRAN: Mr. Speaker, Ladies and Gentlemen of the House: One of the Representatives earlier posed a question as to why perhaps some of the teachers hadn't gotten to the floor. One reason is that I have been getting a fantastic education for the past hour about all of the child beaters we have in our classrooms in this state. I have been teaching for seven years and I have never used corporal punishment. I have used force in disarming when a child had a weapon. I have used it in breaking up fights.

I think Mr. Ingegneri, in referring to the new criminal code, has pointed out that we do have something that is going to take care of it and what we have here is a piece of needless legislation. There are only two words in it that I would like to question at this point and those are the last two, mental distress and humiliation. How do you measure it? How far do you carry it? I would submit to you that every time I give a homework assignment, there is mental distress and when they show up the next day without it and I say, you are staying this afternoon, there is humiliation.

The SPEAKER: The pending question before the House is on the motion of the gentleman from Farmington, Mr. Morton, that this bill and all its accompanying papers be indefinitely postponed. A roll call was ordered. If you are in favor of indefinite postponement, you will vote yes; those opposed, you will vote no.

ROLL CALL

YEA — Albert, Ault, Bagley, Bennett, Berry, G. W.; Berry; P. P.; Berube, Blodgett, Boudreau, Bowie, Burns, Byers, Call, Carey, Carpenter, Carroll, Carter, Chonko, Churchill, Clark, Connors, Curran, P.; Curran, R.; Dam, DeVane, Doak, Dow, Drigotas, Dudley, Durgin, Dyer, Farnham, Fenlason, Finemore, Flanagan, Fraser, Garsoc, Gould, Gray, Hall, Hewes, Higgins, Hinds, Hunter, Hutchings, Immonen, Jackson, Jalbert, Jensen, Joyce, Kauffman, Kelleher, Kelley, Kennedy, Laffin, Laverty,

LeBlanc, Leonard, Lewin, Lewis, Lizotte, Lovell, Lunt, Lynch, MacEachern, Mackel, MacLeod, Mahany, Martin, A.; Martin, R.; McBreairty, McMahon, Mills, Miskavage, Morin, Morton, Norris, Palmer, Perkins, S.; Perkins, T.; Peterson, P.; Pierce, Powell, Raymond, Rideout, Rollins, Saunders, Shute, Silverman, Snow, Snowe, Spencer, Sprowl, Strout, Stubbs, Susi, Tarr, Teague, Theriault, Torrey, Tozier, Twitchell, Usher, Walker, Webber.

YAY — Bachrach, Birt, Bustin, Connolly, Cooney, Cox, Curtis, Davies, Farley, Goodwin, H.; Goodwin, K.; Greenlaw, Henderson, Hennessey, Hobbins, Hughes, Ingegneri, Kany, LaPointe, Maxwell, McKernan, Mitchell, Mulhern, Nadeau, Najarian, Peakes, Pelosi, Peterson, T.; Post, Quinn, Rolde, Smith, Talbot, Tierney, Truman, Tyndale, Wagner, Wilfong, Winship, The Speaker.

ABSENT — Cote, Faucher, Gauthier, Jacques, Littlefield.

Yes, 105; No, 40; Absent, 5.

The **SPEAKER**: One hundred and five having voted in the affirmative and forty in the negative, with five being absent, the motion to indefinitely postpone this Bill and all its accompanying papers does prevail.

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

Mr. **MORTON**: Mr. Speaker, I move that we reconsider our action whereby we indefinitely postpone this bill and I hope that you will all vote against me.

The **SPEAKER**: The gentleman from Farmington, Mr. Morton, having voted on the prevailing side, moves that we reconsider our action whereby this bill was indefinitely postponed. All in favor will say yes; those opposed will say no.

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

Sent up for concurrence.

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

Bill "An Act to Amend the General Assistance Laws" (H. P. 1032) (L. D. 1320)

— In Senate, referred to the Committee on Appropriations and Financial Affairs in non-concurrence. In House — Receded and Concurred.

Tabled — April 7 by Mrs. Najarian of Portland

Pending — Motion of Mrs. Berube of Lewiston to reconsider whereby House receded and concurred.

Thereupon, the House reconsidered its action whereby it voted to recede and concur.

The **SPEAKER**: The pending question now before the House is to recede and concur. All in favor of receding and concurring will say yes; those opposed will say no.

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

The **SPEAKER**: The Chair recognizes the gentleman from Dover-Foxcroft, Mr. Smith.

Mr. **SMITH**: Mr. Speaker and Members of the House: The gentleman who was supposed to handle this is not in his seat. I agreed to allow this to go to Performance Audit, as far as I was concerned. There is another bill coming in on general assistance that we definitely want to go to the Committee on Appropriations, and since it was so closely related to the one that we had agreed earlier would go to Performance Audit, we thought they both ought to go to Appropriations this morning, and everybody sitting in their

seats is just allowing this to happen. There is going to be difficulty. Maybe we ought to table it for one more day and have another day to work it out.

On motion of Mr. LaPointe of Portland, tabled pending further consideration and tomorrow assigned.

The **SPEAKER**: In reference to L.D. 521, which we earlier disposed of, that was item 7 on tabled matters, An Act to Permit Furloughs for Prisoners of County Jails, there were a number of errors that resulted on the voting machine. The roll calls have been corrected. The vote should have been 97 yeas, 45 nays and 8 absences. That will total up to the 150. What has transpired is that a couple of switches released and the gentleman from Lincoln, Mr. MacEachern, and the gentleman from Perham, Mr. McBreairty were not recorded but who, in fact, voted. That has been taken care of.

The **SPEAKER**: The Chair recognizes the gentleman from Lincoln, Mr. MacEachern.

Mr. **MacEACHERN**: Mr. Speaker, is the House in possession of House Paper 427, which is the bill you were just talking about?

The **SPEAKER**: The Chair would answer in the affirmative. An Act to Permit Furloughs for Prisoners of County Jails, House Paper 427, L.D. 521, is in the possession of the House.

Mr. **MacEACHERN**: Mr. Speaker, I would request that we reconsider our action on that bill and request that the House vote against me.

The **SPEAKER**: The gentleman from Lincoln, Mr. MacEachern, moves that the House reconsider its action whereby L.D. 521 was indefinitely postponed. All those in favor of reconsideration will say yes; those opposed will say no.

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

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

Bill "An Act to Fund Public School Education," (Emergency) H. P. 1437, L. D. 1452, which was tabled by the gentleman from Nobleboro, Mr. Palmer, pending passage to be engrossed.

On motion of Mr. Palmer of Nobleboro, retabled pending passage to be engrossed and tomorrow assigned.

(Off Record Remarks)

Mr. Henderson of Bangor was granted unanimous consent to address the House.

Mr. **HENDERSON**: Mr. Speaker and Members of the House: I would just like to apologize to the gentleman who inquired about this corporal punishment bill and whether it applied to public or private schools. I am very sorry that I misled him, because my original intention was that it did not apply to private schools and I noticed the amendment did, and I wasn't concentrating on that item.

(Off Record Remarks)

On motion of Mr. Cox of Brewer, Adjourned until nine-thirty tomorrow morning.