

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eleventh
Legislature***

OF THE

STATE OF MAINE

Volume I

FIRST REGULAR SESSION

December 1, 1982 to May 13, 1983

HOUSE

Thursday, March 3, 1983

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

Prayer by the Reverend Winthrop E. Jackson, retired from St. Andrew's Episcopal Church, Winthrop.

The journal of yesterday was read and approved.

At this point, a message came from the Senate, borne by the Majority Floor Leader, Senator Pray of Penobscot, proposing a Convention of both branches of the Legislature to be held at 10:45 a.m. in the Hall of the House for the purpose of extending to Chief Justice Vincent L. McKusick and the Supreme Judicial Court an invitation to attend the Convention and to make such communication as they may be pleased to make.

Thereupon, the House voted to concur in the proposal for a Joint Convention to be held at 10:45 a.m., and the Speaker appointed Mrs. Mitchell of Vassalboro to convey this message to the Senate.

Subsequently, Mrs. Mitchell reported that she had delivered the message with which she was charged.

Papers from the Senate

Bill "An Act to Require Manufacturers Selling Warranted Products in Maine to Maintain In-state Repair Facilities" (S. P. 293) (L. D. 898) Came from the Senate referred to the Committee on Business Legislation and ordered printed.

In the House, was referred to the Committee on Business Legislation in concurrence.

Bill "An Act to Remove the Bureau of Alcoholic Beverages from Under the Department of Finance and Administration" (S. P. 294) (L. D. 899)

Came from the Senate referred to the Committee on State Government and ordered In the House, was referred to the Committee on State Government in concurrence.

Reports of Committees**Unanimous Leave to Withdraw**

Report of the Committee on Health and Institutional Services reporting "Leave to Withdraw" on Bill "An Act to Permit the Use of the Drug Dimethyl Sulfoxide for Human Consumption" (S. P. 211) (L. D. 632)

Report of the Committee on Education reporting "Leave to Withdraw" on Bill "An Act to Include the Municipalities of Gilead and Upton within Northern Oxford County Vocational Region 9" (Emergency) (S. P. 227) (L. D. 671)

Were placed in the Legislative Files without further action pursuant to Joint Rule 15 in concurrence.

Non-Concurrent Matter

Bill "An Act to Require the Use of Generic Drugs in the Low-Cost Drug Program for the Elderly" (H. P. 157) (L. D. 182) on which the Majority "Ought Not to Pass" Report of the Committee on Health and Institutional Services was read and accepted in the House on February 28, 1983.

Came from the Senate with the Minority "Ought to Pass" as amended by Committee Amendment "A" (H-23) Report of the Committee on Health and Institutional Services read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-23) in non-concurrence.

In the House:

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

Mrs. NELSON: Mr. Speaker, Men and Women of the House: I ask you this morning to adhere to your original position to accept the Majority "Ought Not to Pass" Report for the reasons that

I stated before.

At the hearing, the Committee on Aging was against the bill, the department said they were already doing it, we were told that they were indeed doing it. Everything that this bill asks to be done is already being done now; therefore, it is unneeded.

Although, the sponsor, and with all due regard to him and to his need to have this done, under the right circumstances it would have been fine. We are already doing it, we don't need, and I ask for a division on the motion to adhere.

The SPEAKER: The gentlewoman from Portland, Mrs. Nelson, moves that the House adhere.

The Chair recognizes the gentleman from Island Falls, Mr. Smith.

Mr. SMITH: Mr. Speaker, Ladies and Gentlemen of the House: I don't want to delay this this morning. You heard the debate on Monday. I move we recede and concur and I request a division.

The SPEAKER: The pending question is on the motion of the gentleman from Island Falls, Mr. Smith, that the House recede and concur. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

74 having voted in the affirmative and 36 having voted in the negative, the motion did prevail.

Messages and Documents

The following Communication:

State of Maine
Department of Human Services
Augusta, Maine 04333

March 1, 1983

The Honorable John Martin, Speaker
Maine House of Representatives
State House

Augusta, Maine 04333

Dear Mr. Speaker:

Please find enclosed a copy of the 1st Annual Fee Review prepared by the Department's Bureau of Medical Services staff in compliance with 22 MRSA §3173. The primary objectives of the review were to consider, in consultation with providers and their representative associations, the cost of providing specific services, the effect of various economic factors on the adequacy of existing fee schedules, and the Department's obligation to ensure sufficient provider participation in the Medical Assistance Program.

As indicated in the attached document, copies of the review are also being shared with representative health care provider associations and, upon request, individual providers.

Any questions or concerns you may have regarding this matter, or which might be brought to your attention, may be directed to Donee Wyke, Director, Division of Cost Containment, Bureau of Medical Services, or to me.

Sincerely,

S/FRANCIS G. MCGINTY
Deputy Commissioner

Office of Health and Medical Services

Enclosure

cc: Michael R. Petit, Commissioner
Thomas R. LaPointe, Director, Office of Public Affairs & Communications, Department of Human Services

The Communication was read and with accompanying Report ordered placed on file.

The following Communication: (H. P. 785)

State of Maine
House of Representatives
Speaker's Office
Augusta, Maine 04333

March 2, 1983

Hon. Edwin H. Pert
Clerk of the House
Hon. Joy J. O'Brien
Secretary of the Senate
State House

Augusta, Maine 04333

Dear Clerk Pert and Secretary O'Brien:

This is to notify you that pursuant to Chapter 660 of the Public Laws of 1982, we have today appointed the following members to serve on the Joint Select Committee on Natural Gas.

Rep. Patrick K. McGowan, Chairman
Sen. Judy E. Kany
Rep. Harlan Baker
Rep. Zachary E. Matthews
Rep. Harriet B. Lewis
Rep. Eugene J. Paradis
Rep. Roger N. Roderick

Sincerely,

S/JOHN L. MARTIN
Speaker of the House
S/GERARD P. CONLEY
President of the Senate

The Communication was read and ordered placed on file and sent up for concurrence.

**Petitions, Bills and Resolves
Requiring Reference**

The following Bills and Resolves were received and, upon recommendation of the Committee on Reference of Bills, were referred to the following Committees:

Aging, Retirement and Veterans

Bill "An Act to Clarify the Definition of Child or Children and to Delete Restrictions on Death Benefits to Spouses in the Retirement System Statutes" (H. P. 766) (Presented by Representative Mayo of Thomaston) (Cosponsor: Representative Ainsworth of Yarmouth) (Ordered Printed)
Sent up for concurrence.

Agriculture

Bill "An Act to Change the Method of Taxing Potatoes" (H. P. 767) (Presented by Representative Lisnik of Presque Isle) (Cosponsors: Senator McBrearty of Aroostook, Representatives Crouse of Washburn, and Smith of Mars Hill) (Ordered Printed)
Sent up for concurrence.

Appropriations and Financial Affairs

Bill "An Act to Abolish County Subsidies to the Superior Court System" (H. P. 752) (Presented by Representative Connors of Franklin)
Bill "An Act Making Appropriations and Allocations for the Expenditures of State Government to Insure that Maine Courts are Accessible to the Handicapped" (H. P. 753) (Presented by Representative Andrews of Portland) (Ordered Printed)
Sent up for concurrence.

Business Legislation

Bill "An Act to Amend the Used Car Information Law" (H. P. 754) (Presented by Representative Brannigan of Portland) (Cosponsors: Speaker Martin of Eagle Lake, Representatives Michael of Auburn and Tuttle of Sanford)
Bill "An Act to Regulate Interstate Bank Ownership" (H. P. 768) (Presented by Representative Brannigan of Portland) (Cosponsors: Senator Collins of Knox, Charette of Andros-coggin, and Representative Gwadosky of Fairfield) (Submitted by the Department of Business Regulation pursuant to Joint Rule 24) (Ordered Printed)
Sent up for concurrence.

Education

Bill "An Act to End the School Year by June 15th" (H. P. 755) (Presented by Representative Mitchell of Freeport) (Cosponsors: Senators Diamond of Cumberland and Clark of Cumberland)

Bill "An Act to Remove the Superintendent of the Governor Baxter School for the Deaf from Classified Service and Clarify the Law Relating to State Educational Personnel" (Emer-

gency) (H. P. 769) (Presented by Representative Andrews of Portland) (Cosponsors: Representatives Ketover of Portland, Murphy of Kennebunk, and Senator Hayes of Penobscot) (Submitted by the Department of Educational and Cultural Services pursuant to Joint Rule 24)

Bill "An Act to Allow State Championship Athletic Teams and Athletes the Right to Participate in New England Championship Events in Competition" (Emergency) (H. P. 770) (Presented by Representative Tuttle of Sanford) (Cosponsors: Senator Hayes of Penobscot, Representatives Murphy of Kennebunk, and Locke of Sebec)

Bill "An Act to Clarify the Use of Vocational-technical Institutes' Facilities by Others" (H. P. 771) (Presented by Representative Lisnik of Presque Isle) (Cosponsors: Representative Murray of Bangor and Senator Brown of Washington) (Submitted by the Department of Educational and Cultural Services pursuant to Joint Rule 24)

Bill "An Act to Allow the Department of Educational and Cultural Services to Administer the Child Nutrition Program in Private, Non-profit Schools" (H. P. 772) (Presented by Representative Brodeur of Auburn) (Cosponsors: Representative Small of Bath and Senator Hayes of Penobscot) (Submitted by the Department of Educational and Cultural Services pursuant to Joint Rule 24)

(Ordered Printed)

Sent up for concurrence.

Fisheries and Wildlife

Bill "An Act to Require the Purchase of a Bear Stamp to Hunt Bear" (H. P. 773) (Presented by Representative Tuttle of Sanford) (Cosponsors: Representatives Paul of Sanford, Kelly of Camden, and Smith of Island Falls)

(Ordered Printed)

Sent up for concurrence.

Health and Institutional Services

Bill "An Act to Promote Consistency in the Funding Authority Granted to the Department of Mental Health and Mental Retardation" (H. P. 756) (Presented by Representative Carroll of Gray) (Cosponsors: Representatives Richard of Madison, Melendy of Rockland, and Pines of Limestone) (Submitted by the Department of Mental Health and Mental Retardation pursuant to Joint Rule 24)

(Ordered Printed)

Sent up for concurrence.

Judiciary

Bill "An Act Relating to Juvenile Offenders" (H. P. 757) (Presented by Representative Michael of Auburn) (Cosponsors: Representative Joyce of Portland and Senator Violette of Aroostook)

Bill "An Act Relating to Sentences for Operating Under the Influence" (H. P. 758) (Presented by Representative Higgins of Scarborough) (Cosponsor: Representative Davis of Monmouth)

Bill "An Act to Discourage Frivolous Court Cases" (H. P. 759) (Presented by Representative Higgins of Scarborough) (Cosponsor: Senator Dutremble of York)

Bill "An Act Concerning the Exclusion of Children in Apartment Buildings" (H. P. 760) (Presented by Representative Erwin of Rumford) (Cosponsor: Senator Bustin of Kennebec)

RESOLVE, To Reimburse David James McDaniel for Damages Suffered as a Result of Wrongful Imprisonment" (H. P. 761) (Presented by Speaker Martin of Eagle Lake)

(Ordered Printed)

Sent up for concurrence.

Labor

Bill "An Act to Increase the Compensation Benefits for Employees Formerly Working for a Bankrupt Employer" (H. P. 762) (Presented by

Representative Hickey of Augusta) (Cosponsors: Representative Paradis of Augusta, Tammaro of Baileyville and Senator Hayes of Penobscot) (Submitted by the Department of Labor pursuant to Joint Rule 24)

Bill "An Act to Encourage Small Businesses to Participate in Apprenticeship Programs" (H. P. 763) (Presented by Representative Tuttle of Sanford) (Cosponsors: Representatives Zirkilton of Mount Desert, Norton of Biddeford and Senator Dutremble of York)

(Ordered Printed)

Sent up for concurrence.

Legal Affairs

Bill "An Act Concerning the Value of Prizes that may be Awarded on Beano" (H. P. 774) (Presented by Representative Tuttle of Sanford) (Cosponsors: Representatives Ridley of Shapleigh, Paul of Sanford, and Senator Charette of Androscoggin)

Bill "An Act to Amend the Laws Relating to Fees for Private Investigator and Security Guard Licenses" (H. P. 775) (Presented by Representative Swazey of Bucksport) (Cosponsors: Representatives Cote of Auburn and Stover of West Bath) (Submitted by the Department of Public Safety pursuant to Joint Rule 24)

(Ordered Printed)

Sent up for concurrence.

Marine Resources

Bill "An Act to Amend the Wholesale Seafood License Law" (H. P. 776) (Presented by Representative Benoit of South Portland) (Cosponsors: Representatives Vose of Eastport, Manning of Portland, and Senator Dutremble of York) (Submitted by the Department of Marine Resources pursuant to Joint Rule 24)

Bill "An Act to Prohibit the Possession or Landing of Plugged Lobsters" (H. P. 777) (Presented by Representative Crowley of Stockton Springs) (Cosponsors: Representative Melendy of Rockland, Holloway of Edgecomb, and Senator Dutremble of York) (Submitted by the Department of Marine Resources pursuant to Joint Rule 24)

(Ordered Printed)

Sent up for concurrence.

Tabled and Assigned

Bill "An Act to Create a Revolving Fund for Publications of the Department of Marine Resources" (H. P. 778) (Presented by Representative Ainsworth of Yarmouth) (Cosponsors: Senator Shute of Waldo, Representatives Manning of Portland, and Melendy of Rockland) (Submitted by the Department of Marine Resources pursuant to Joint Rule 24)

Committee on Marine Resources was suggested.

On motion of Mr. Crowley of Stockton Springs, tabled pending reference and tomorrow assigned.

Public Utilities

Bill "An Act to Authorize the Public Utilities Commission to Conduct a Study on the Costs of Electrical Space Heating in Residential Units" (H. P. 779) (Presented by Representative Gauvreau of Lewiston) (Cosponsors: Representatives Michaud of East Millinocket and Hayden of Durham) (Submitted by the Office of Public Advocate pursuant to Joint Rule 24)

Bill "An Act to Allow Consumer Groups to Solicit Funding through Utility Bills" (H. P. 780) (Presented by Representative Connolly of Portland)

(Ordered Printed)

Sent up for concurrence.

Transportation

Bill "An Act to Regulate the Use of Child Restraint in Motor Vehicles" (H. P. 764) (Presented by Representative MacBride of Presque Isle)

Bill "An Act to Deregulate Motor Carriers of Passengers for Hire" (H. P. 781) (Presented by Representative Theriault of Fort Kent) (Cosponsors: Representatives Macomber of South Portland, McPherson of Eliot, and Nadeau of Lewiston) (Submitted by the Department of Transportation pursuant to Joint Rule 24)

Bill "An Act to Provide for Alternate Financing for Displaced Homeowners" (H. P. 782) (Presented by Representative Theriault of Fort Kent) (Cosponsors: Representatives Reeves of Pittston, Foster of Ellsworth, and Senator Twitchell of Oxford) (Submitted by the Department of Transportation pursuant to Joint Rule 24)

Bill "An Act to Provide for a Sign on Interstate 95 South Indicating the Location of Togus" (H. P. 783) (Presented by Representative Michaud of East Millinocket) (Cosponsors: Representatives Smith of Island Falls, Theriault of Fort Kent, and Senator Carpenter of Aroostook)

Bill "An Act to Improve Motor Vehicle Laws Regarding Pedestrian Safety" (H. P. 784) (Presented by Representative Connolly of Portland) (Cosponsors: Representative Reeves of Pittston and Senator Bustin of Kennebec)

(Ordered Printed)

Sent up for concurrence.

Orders

On motion of Representative McSweeney of Old Orchard Beach, it was

ORDERED, that Representative Alfred L. Brodeur of Auburn be excused March 2 and March 3 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative John M. Michael of Auburn be excused March 4 for personal reasons.

House Reports of Committees Unanimous Leave to Withdraw

Representative Gwadosky from the Committee on State Government on Bill "An Act Concerning Display of the State Flag at Customs Offices within the State" (H. P. 462) (L. D. 564) reporting "Leave to Withdraw"

Was placed in the Legislative Files without further action pursuant to Joint Rule 15 and sent up for concurrence.

Consent Calendar

First Day

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

(H. P. 383) (L. D. 466) Bill "An Act to Require any State Mandated School Program to Include the Necessary Funds of Implementation" — Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (H-37)

(H. P. 100) (L. D. 107) Bill "An Act Concerning Part-Time Licenses under the Liquor Statutes" — Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-39)

No objections being noted, the above items were ordered to appear on the Consent Calendar of March 4, under the listing of the Second Day.

Passed to Be Enacted Amended Bill

Bill "An Act to Require Training for Certain Part-time Law Enforcement Officers" (S. P. 295) (L. D. 881) (S. "A" S-12)

Was reported by the Committee on Bills in the Second Reading, read the second time, and the Senate Paper was passed to be engrossed as amended in concurrence.

Passed to Be Engrossed Emergency Measure

An Act Relating to Liquor Licenses for Incorporated Civic Organizations (H. P. 174) (L. D. 204)

Was reported by the Committee on Engrossed

Bills as truly and strictly engrossed.

The SPEAKER: The Chair recognizes the gentleman from West Bath, Mr. Stover.

Mr. STOVER: Mr. Speaker, Ladies and Gentlemen of the House: When the vote is taken, I would ask for a roll call.

This bill, L. D. 204, is a bill regarding issuance of temporary licenses to civic organizations. At the present time, any civic organizations, for special events, can apply for and can be granted a three-day license, a limitation of three days only, to serve alcoholic beverages. This bill would extend that three-day period to seven days.

I reported this bill out "ought not to pass" because I feel that this is another case of where we are liberalizing the controls, or easing the controls that we have over this product known as alcohol.

I read an article in the Maine Sunday Telegram, I am sure many of you read the same one, it had to do with the terrible accident we had down in Arundel recently where four people were killed, three were critically injured and one of those critically injured was the wife of one of the victims, who was pregnant at the time and has now lost her baby, and it was all caused by a teenager who was drunk and going a hundred miles an hour in the passing lane and met another car head on. One of the people who viewed that accident was a man by the name of Gene Libby, he lives in Saco and is the York County District Attorney. He was one of the people who was called out in the middle of the night to view this carnage. These are some of the thoughts and some of the feelings he had when he returned home. I am not going to read the whole article because it is too long, but I would like to read you just one paragraph.

He said, "Is the answer more police, more prosecutors, more courts, harsher sentences? No, the answer is not in law but in our community, which accepts such conduct and fails to enforce the social values it so heartily endorses. Law is important and it must be and will be fairly vigorously enforced, but this is not the answer. Law is but a reflection of any society's morality. If code of conduct and rules of order bestowed with the formality of black robes, blue lights and sophisticated crime detecting equipment is not accepted by the community which it is designed to regulate, if it is routinely flouted so that only those who are caught are punished, the problem will persist because drinking and driving is accepted by the community."

Many of us will read the newspaper, sip our morning coffee and read those cold, objective reports about death, and forget. To me, it doesn't seem to make much difference whether you buy a drink at a local barroom or you buy it at some event sponsored by a civic organization. We are not asking for you to roll back the law, we are just asking you not to liberalize it any further. That is the reason why I am voting no on this particular L.D.

The SPEAKER: The Chair recognizes the gentleman from Cumberland, Mr. Dillenback.

Mr. DILLENBACK: Mr. Speaker, Ladies and Gentlemen of the House: This is a simple little bill that just avoids confusion and a device for getting around the law. When they have their seven-day affair, one part of the organization can get a three-day license, another part of the organization can get another three-day license, and somebody else could get another three-day license, so they could spread that over nine days if they so desire.

What they have been doing, basically, this has been going on in Lewiston, as I understand it, for many years, they have a caterer come in and they have been using the caterer's license, and sometimes the caterer isn't even there, which is illegal. So this just makes an organization go through the process and be inspected by the proper authorities to run a legal seven-day event, and it is run in an organized manner under a specific area which the state liquor

enforcement officers inspect.

I see nothing wrong with this, it just clarifies the law and allows these people not to have to go around the law to accomplish their purpose. I see no problem with this.

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 passage to be enacted. This being an emergency measure, it requires a two-thirds vote of all the members elected to the House. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Allen, Baker, Beaulieu, Bell, Benoit, Bonney, Bott, Brannigan, Brown, A.K.; Brown, D.N.; Brown, K.L.; Cahill, Carroll, D.P.; Carroll, G.A.; Chonko, Connors, Cooper, Cote, Cox, Crouse, Crowley, Diamond, Dillenback, Erwin, Gauvreau, Greenlaw, Gwadnosky, Hall, Handy, Hayden, Hickey, Higgins, H.C.; Holloway, Ingraham, Jackson, Jacques, Joseph, Joyce, Kane, Kelly, Ketover, Kiesman, Kilcoyne, LaPlante, Lebowitz, Lehoux, Lewis, Lisnik, Livesay, Locke, MacEachern, Macomber, Manning, Martin, A.C.; Martin, H.C.; Masterton, Mayo, McCollister, McGowan, McHenry, McPherson, Melendy, Michael, Michaud, Mitchell, E.H.; Moholland, Murray, Nadeau, Norton, Paradis, E.J.; Paradis, P.E.; Paul, Perkins, Perry, Pines, Pouliot, Racine, Reeves, P.; Richard, Ridley, Roberts, Rolde, Rotondi, Salsbury, Seavey, Smith, C.B.; Soucy, Soule, Sproul, Stevens, Studley, Swazey, Tammara, Telow, Theriault, Tuttle, Vose, Walker, Willey, Zirnklilton, The Speaker.

NAY—Anderson, Armstrong, Callahan, Carrier, Clark, Curtis, Daggett, Davis, Day, Drinkwater, Foster, Higgins, L.M.; Kelleher, MacBride, Masterman, Matthews, K.L.; Maybury, McSweeney, Mitchell, J.; Murphy, Parent, Randall, Reeves, J.W.; Scarpino, Smith, C.W.; Stevenson, Stover, Wentworth, Weymouth.

ABSENT—Andrews, Bost, Brodeur, Carter, Cashman, Conary, Connolly, Dexter, Dudley, Hobbins, Jalbert, Mahany, Matthews, Z.E.; Nelson, Roderick, Sherburne, Small, Strout, Thompson, Vose, Webster.

Yes, 101; No, 29; Absent, 21.

The SPEAKER: One hundred and one having voted in the affirmative, and twenty-nine in the negative, with twenty-one being absent, the bill is passed to be enacted.

Signed by the Speaker and sent to the Senate.

Passed to Be Enacted

An Act Amending the Charter of the Aroostook Prestile Treatment District and the Charter of the Presque Isle Sewer District to Authorize the Withdrawal of Municipalities from the Aroostook Prestile Treatment District (H. P. 129) (L. D. 137) (S. "A" S-10 and H. "A" H-19 to C. "A" H-15)

An Act to Amend Maine's Laws Relating to Credit Unions (H. P. 261) (L. D. 321) (C. "A" H-20)

An Act to Provide for a Reduced Fee for Lobster Fishing Licenses for Persons 70 years of Age and Older (H. P. 662) (L. D. 825)

An Act to Amend the Corporation Laws and Laws Pertaining to Limited Partnerships (H. P. 680) (L. D. 834) (H. "A" H-27)

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:

HOUSE DIVIDED REPORT — Majority (10) "Ought Not to Pass" — Minority (3) "Ought to Pass" in New Draft (H. P. 742) (L. D. 929) Committee on Judiciary on Bill "An Act to Require Mandatory Jail Sentences for Trafficking or Furnishing Drugs" (H. P. 122) (L. D. 130)

Tabled—March 2, 1983 by Representative Joyce of Portland.

Pending—Motion of Representative Soule of Westport to accept the Majority "Ought Not to Pass" Report.

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

Mr. SMITH: Mr. Speaker, Ladies and Gentlemen of the House: I should apologize for getting up again this morning but this is my bill and I feel that I must defend it.

Are we concerned about drugs in our schools? Are we concerned about our young people getting drugs? If so, what are we doing to discourage the sale of these drugs? We all know a fine is easy for those who sell. It takes time and money for law enforcement officers to catch someone selling these drugs and the process of getting a conviction with all the plea bargaining, the court expenses and then to get a fine they can earn back in a few hours.

This does nothing to discourage the selling of drugs. I believe that we can do better by our students than this. A person gets a jail sentence for selling deer meat or moose meat, and it seems to me that the selling of drugs is a much more serious offense than that, so I would urge you to vote against the motion so we may pass this bill and get a little teeth into this law to prevent the sale of drugs.

The SPEAKER: The Chair recognizes the gentleman from Westport, Mr. Soule.

Mr. SOULE: Mr. Speaker, Ladies and Gentlemen of the House: Just by way of explanation for the Majority Report, which is "Ought Not to Pass," I think the committee in general felt that the purpose of the bill certainly can't be argued with. The methods of accomplishing the enforcement of the drug laws, however, is another matter. The concern the majority of the committee has is that it provides for a mandatory sentence. It provides for no discretion on the part of the judge to look at each individual case and exercise justice in that particular case. I think very simply, that is the difference between the two reports and I urge you to join us in the "Ought Not to Pass."

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: It looks like we have returned to the wars. The lines are clearly drawn. The apostles that fought perhaps will have to listen in pain to my few words this morning.

Mr. Speaker, I would ask for the yeas and nays on this bill.

This will be a bill that your constituents will always want to look at. Back two years ago, four years ago, a statement was made when we debated this issue and I remember so well a man serving his first term, he was even fortunate enough to get in the back row. He stood up and supported basically the same bill and the fine gentleman arose immediately with the fatherly advice: "If you support this bill, you will serve just two terms in this House, your first and your last."

Mandatory sentencing, I am an opponent of this usually for a drug pusher, they deserve no less. How bad is the problem out there? Many of the writers would never agree with us, you can read all kinds of statistics. The Department of Human Services, the Drug and Alcohol Unit, sent me their most recent statistics, they don't show that the problem is backing down. Among public high school students in Maine 61 percent or 45,800 persons have tried pot and 45.5 percent use it regularly.

I am not going to bore you with these other statistics, only to remind you of the figures as I

find on Page 1 of this report and its reference of "do we have a problem in the schools?" In the group, age 13 to 15, only 56 percent of that group are using pot. I don't know, maybe they consider me a hardliner, but 56 percent could never be an acceptable figure to me. We have got a problem. We are concerned with that problem and that is what I hope the roll call will show today.

The problem is not only in Maine but it is very popular in Maine. I know many of you can recall that postcard, and some of you, you visited the spot, where you see the sign post on that Maine road that tells you 20 miles to Camden, 30 miles to Paris, 20 miles to Mexico. I suggested two years ago that we change that, that we mark it Marijuana Cove or the Pot Circle and many of these similar names.

How bad is the problem? This will be my last statement for about 30 minutes. At what age do most children come up against drugs? That is the question that Nancy Reagan was asked and she works these drug educational programs. Our first lady replied, "a lot earlier than most parents think."

For instance, I recently visited a third grade class on drug prevention. I asked the class this question, and they were eight and nine year olds — how many of you have been offered pot or other drugs? Almost every hand went up and in some places they are doing drugs at eight and nine.

Federally funded drug abuse treatment centers — one-third of those admitted used pot before the age of thirteen. A mandatory sentence for the pushers, I could find no room in my heart to give them any sympathy on this, not after what they are doing to our children.

I ask that you defeat the motion before us so that we can pass this and stand straight as far as our standards are.

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

Mr. GAUVREAU: Mr. Speaker, Men and Women of the House: I am in full support of the principle by which the proponent of this bill has brought the issue of mandatory sentencing to this body today. We certainly do not want to be on record in any way condoning or tolerating the illicit trafficking or furnishing of contraband or drug matters in this state, but I have a basic fundamental concern with the means by which the bill would seek to reach a desirable goal.

This bill seeks to impose a legislative straight jacket upon our judiciary by requiring a ten day minimum mandatory sentence for offenses involving trafficking or furnishing of drugs. This body should be aware that in a great majority of cases the offenses are classed as either Class B or Class C offenses; in other words, they are serious felonies. As such, the matters are dealt with in our Superior Courts and the sentences are very strong, six months, one year, two years or more, so we are talking about a fairly small percentage of cases when persons will be given ten days or less.

I can conjure up some possibilities. This law would ignore the problems imposed or that would arrive by accessory liability. In other words, a person might actually have a very small role to play, or no role at all, in the planning or execution of an offense — maybe it is a relative, maybe it is a friend but, nevertheless, under the way our courts have interpreted the statutes that person will be fully as liable as the principal who planned and executed the offense involved. By adopting this measure today, we would be according no discretion whatsoever to the justice who heard this case to devise an appropriate sentence for the accessory who might not have actually been involved to any great extent in the offense.

I feel it somewhat ironic that today, as we prepare to receive the Chief Justice and honor the third branch of our government, the judiciary, we, at the same time, impugn the integrity of that body by saying to them, we don't

believe that you have the savvy, the competency or the wisdom to devise appropriate sentences based on the facts before you. It is of that concern, that it would impugn the integrity of our judiciary and basically repose no trust in them for the job which they are charged to do, that I would ask you to defeat this measure today.

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

Mrs. BEAULIEU: Mr. Speaker, Ladies and Gentlemen of the House: There is no doubt about it, this is the kind of bill that I am in favor of supporting; however, I do have some concerns and I would like to pose a couple of questions through the Chair to the chair of the committee or member of the committee and see if they can answer them to my satisfaction.

I would like to have a more detailed explanation of what furnishing drugs means. Does that mean a young man or a young woman passing over two joints, for example, to another member of their peers? That is the first question.

The other question is, I would like to know if the committee entertained the thought of amending this bill to make the mandatory sentencing come on the second offense? I believe that there is a rationale for the judicial system to use some discretion if someone is picked up for the first time. However, I feel very strongly that if that same party is picked up for the second time, that they should, indeed, be the recipient of a mandatory sentence.

The SPEAKER: The gentleman from Portland, Mrs. Beaulieu, has posed a series of questions through the Chair to members of the Judiciary Committee who may respond if they so desire.

The Chair recognizes the gentleman from Westport, Mr. Soule.

Mr. SOULE: Mr. Speaker, Ladies and Gentlemen of the House: To answer the good lady's question concerning what is trafficking and what is furnishing, I will just read briefly from the Criminal Code. Furnishing is the lesser offense. Basically, it means to furnish, to give, to dispense, administer, prescribe, deliver or otherwise transfer to another. That would include the scenario that the good lady posed concerning the gift of whatever quantity of marijuana from one party to another. Furnishing also includes possession of marijuana with the intent to give to another or furnish to another in an amount over one and one half ounces, so if a person, for instance, is in possession of two ounces of marijuana, there is an immediate presumption that they intended to furnish it and they could very well be convicted of furnishing without actually transferring the substance to another person.

Secondly, a presumption of trafficking is created if the person is in possession of more than two pounds of marijuana. The definition of trafficking is to make, create, manufacture, to grow or cultivate, to sell, barter, trade, exchange or otherwise furnish if the amount exceeded two pounds.

I believe the second question asked by the good lady concerned any proposed amendments within the committee, and I am unaware of any that were made — there is a technical amendment which I believe is on your desks.

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

Mrs. BEAULIEU: Mr. Speaker, this may not be the appropriate time, but I will take a chance anyway. I cannot vote for the bill as it is right now; however, I feel very strongly that we must address the issue of the drug trafficking. I am particularly sensitive to it in my own district and the city that I come from. I would like to have the opportunity to offer an amendment that would make it a mandatory jail sentence on a second offense, so I would ask if somebody would table the bill so that I might have the opportunity to do that.

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

Mr. MICHAUD: Mr. Speaker, I move that we table this bill for one legislative day.

Whereupon, Mr. Joyce of Portland requested a vote.

SPEAKER: The pending question is on the motion of the gentleman from East Millinocket, Mr. Michaud that this be tabled for one day. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Mr. Tuttle of Sanford requested a roll call vote.

The SPEAKER: 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 East Millinocket, Mr. Michaud, that this be tabled for one legislative day pending the motion of Mr. Soule of Westport to accept the Majority "Ought Not to Pass" Report. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Allen, Armstrong, Baker, Beaulieu, Callahan, Carroll, D.P.; Carroll, G.A.; Carter, Chonko, Connors, Cote, Cox, Crouse, Daggett, Davis, Diamond, Erwin, Gauvreau, Gwadosky, Hall, Hayden, Hickey, Higgins, H.C.; Ingraham, Jacques, Joseph, Kane, Kelleher, Kelly, Ketover, Kilcoyne, LaPlante, Lebowitz, Lisnik, Locke, MacBride, MacEachern, Martin, H.C.; Matthews, K.L.; Matthews, Z.E.; Maybury, Mayo, McColister, McGowan, Melendy, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Murphy, Murray, Nadeau, Nelson, Paul, Perkins, Perry, Pouliot, Randall, Reeves, J.W.; Reeves, P.; Richard, Ridley, Rolde, Rotondi, Small, Smith, C.B.; Soucy, Studley, Swazey, Tammara, Telow, Theriault, Vose, Walker, Webster, Wentworth, Weymouth.

NAY—Anderson, Bell, Benoit, Bonney, Bott, Brannigan, Brown, A.K.; Brown, D.N.; Brown, K.L.; Cahill, Clark, Cooper, Crowley, Curtis, Day, Dillenback, Drinkwater, Foster, Greenlaw, Handy, Higgins, L.M.; Holloway, Jackson, Joyce, Kiesman, Lehoux, Lewis, Livesay, Macomber, Manning, Martin, A.C.; Masterman, Masterton, McHenry, McPherson, McSweeney, Moholland, Norton, Paradis, E.J.; Paradis, P.E.; Parent, Pines, Racine, Roberts, Salsbury, Scarpino, Seavey, Smith, C.W.; Soule, Sproul, Stevenson, Stover, Tuttle, Willey, Zirkilton.

ABSENT—Andrews, Bost, Brodeur, Carrier, Cashman, Conary, Connolly, Dexter, Dudley, Hobbins, Jalbert, Mahany, Roderick, Sherburne, Stevens, Strout, Thompson, The Speaker.

Yes, 78; No, 55; Absent, 18.

The SPEAKER: Seventy-eight having voted in the affirmative and fifty-five in the negative, with eighteen being absent, the motion does prevail.

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

HOUSE DIVIDED REPORT—Majority (10) "Ought Not to Pass" — Minority (3) "Ought to Pass" as amended by Committee Amendment "A" (H-34) — Committee on Judiciary on Bill "An Act to Make Possession of Marijuana a Criminal Offense" (H. P. 140) (L. D. 148)

Tabled—March 2, 1983 by Representative Joyce of Portland.

Pending—Motion of Representative Soule of Westport to accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Miss Lewis.

Miss LEWIS: Mr. Speaker, Ladies and Gentlemen of the House: I was the sponsor of this bill with cosponsors from both parties, and it seems to be a bipartisan concern that drug

abuse is certainly a problem in our communities here in Maine.

I would like to begin my remarks by briefly mentioning the history of decriminalization of marijuana. Maine decriminalized marijuana when it enacted the new Criminal Code and there was not a separate vote taken on the matter at that time, and this new Criminal Code was passed at about the same time, that is in the seventies, that there was a push to decriminalize marijuana around the country. However, during the push to decriminalize marijuana, only eleven states took this step, and Maine was one of them. I really think we should re-think our own state's position on marijuana when we vote on this particular bill.

The message that we seem to be getting from the media, from the medical profession and from our government is that it is okay to use drugs; in fact, it is even desirable to do so. The current decriminalization philosophy seems to do just that, it tells our young people that it is all right to use marijuana, that it is the same as getting a parking ticket.

Although the jury is still out on the long-term effects of marijuana use, there is mounting evidence of the harmful results of prolonged use. I really think the time has come to foster an anti-pot psychology. I feel that the present law of decriminalization sends the wrong message to our youth, and that if we make it a criminal penalty without substantially raising the fine, we would be sending the right message to our society.

For that reason, I hope that you will vote against the Majority "Ought Not to Pass" Report, so that we can pass this good bill to be enacted.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, Men and Women of the House: This kind of bill is always difficult to speak on or to debate. It tends to put you in the wrong light, I guess, is my feeling. However, I would ask those of you who have children, grandchildren, younger brothers or sisters or younger relatives to consider this issue seriously.

Presently, the possession of one and one half ounces of marijuana, or less, is classified as a civil offense and the punishment is a fine. I realize that for some of you apparently that is not enough of a punishment; it has been the law, however, since 1977.

Mr. Joyce has just given you some statistics on the previous bill, and if I could quote: 56 percent of 13 to 15 year old children have either tried or used marijuana. I have an 11-year-old daughter, and I hope that I have taught her enough about the use of marijuana and other drugs so that she will not be tempted to indulge. However, I would never be so foolhardy to believe that that will necessarily be the case.

Having just finished teaching school for ten years and gone on to a new job, I certainly know the pressures that younger people have on them to try new things. I am not in favor of that but it happens, and I as one parent do not want my child to be branded as a criminal because she possessed perhaps one joint, perhaps once in her life tried marijuana. I think we are going a little bit too far with this.

I understand the fears that Representative Lewis has, and I have those too, but I don't think this is the way to solve those fears. We do that through education, whether it is in the schools or as parents, but we don't do it by making our 13-year-olds or 12-year-olds criminals.

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

Mr. CARRIER: Mr. Speaker, Ladies and Gentlemen of the House: This bill, in comparison to the one that you just heard, is a little less harsh. You make it a criminal offense, yes, but actually it is how much it costs you to get out of it. The purpose of this is to deter and not so

much to punish the people that have done this. The fact is, either we start doing something right, or we don't start doing anything at all.

The other bill, which has been tabled for a day, it is just a matter of delay. Most of you know that either you want it or you don't. Do we want to stop this foolishness of making marijuana available to everybody of any age? If you don't want that, why did you vote against the other bill? It is very clear, either you go one way or the other, don't just stand up here and say this is no good — suggest something. This is what we are looking for. We are looking for some suggestions as to what should be done.

The criminal offense part of it is very small. Actually, I think it would hurt people more with the fines than anything else, because what happens is, if you do have a teenager that gets caught, probably the parents will have to pay. I think if the parents pay, or if I had to pay, I can tell you that I wouldn't pay a second time, and this is what it does. It sets it up for the second and third convictions. How many laws do we have on the books today that have first, second and even third convictions before you do something about it?

If you look at the bill, you will see that it is a reasonable bill because the first conviction is anywhere from \$50 to \$200. So the judge can go \$50 if he wants to.

The situation is, as you know, and probably some of you know more than I do about this, and I am sure you do, but the thing is that marijuana is bad, it is not what you want your kids to have. Everybody that speaks against the bill says, well, we don't want the kids to get hold of marijuana, but what did they do about it? We are in the position to do something about it.

I think this is a good bill, and I hope you vote against the motion of "ought not to pass."

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

Mr. HAYDEN: Mr. Speaker and Members of the House: I would like to explain why it is that I am voting in favor of the Majority "Ought Not to Pass" Report on this bill and in opposition to the Majority Report of "Ought Not to Pass" on the previous bill that made trafficking and furnishing a prisonable offense.

I think what we are facing here is a problem of what to do with the burgeoning traffic in drugs. We are having to ask ourselves, are we willing to make a decision? Is there anything we can do as a legislature to fight this if we think it is a serious problem?

I have to disagree with Representative Carrier, I don't think this is an issue of black and white. It is a problem; I think we all agree with that, but what do you do about it? Do you make it a crime for a minor to have a marijuana cigarette? Does that answer the problem? In my mind, it doesn't. On the other hand, do you take a situation that is now a crime, where someone is selling, is furnishing or trafficking in drugs, and recognize the fact that this is a high profit business. If you are making a lot of money selling drugs, whether it is marijuana or more serious drugs, a fine constitutes nothing more than a slap on the wrist. But if you have a mandatory jail sentence, something like you had with our OUI law—again, we took a mandatory sentence there and it seems to have had an effect, the message gets out to the public, and we didn't pass that OUI law because we object to judges' authorities, we passed it because we wanted to have a stand taken, the State of Maine, how it reacted to that problem. I think that is what the previous bill is doing. It is saying that a fine isn't a rational sentence for somebody that is making high profits from furnishing and trafficking in drugs.

I think we have an alternative here where we can choose to do something affirmative about this problem without taking a whole blanket that is going to take in kids, that is going to take in people who have admittedly done something that is in violation of our law but haven't done something that is so serious that we want

to constitute it as a crime. I think we have a choice here to be moderate and rational or to be emotional in reacting to the problem, and because of that, I would urge you to again consider the bill that will come up again, that we have just voted on, and to vote in favor of the Majority "Ought Not to Pass" Report on this bill which seeks to recriminalize the use of marijuana.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Miss Lewis.

Miss LEWIS: Mr. Speaker, Ladies and Gentlemen of the House: I would like to request a roll call, and I would also like to point out to the members of this body that if a child does possess marijuana and does have a criminal offense against him, that offense would be expunged when that child became of legal age, because certainly we are not planning on branding an 11 year old as a criminal for the rest of his or her life, and that would not happen.

This bill is in as a deterrent.

The SPEAKER: The Chair recognizes the gentleman from Westport, Mr. Soule.

Mr. SOULE: Mr. Speaker, Ladies and Gentlemen of the House: I think that one of the underlying questions that we all have to ask ourselves when we are discussing any kinds of amendments to the Criminal Code, and a problem that we face as a legislature, is defining what is truly anti-social. What we are talking about here is a bill that would criminalize the possession of less than one and a half ounces of marijuana, which back in 1977 was arbitrarily, certainly, used as a guideline in determining what a person might be using for their own use and what they might be possessing with intent to sell.

I think when we are codifying the criminal laws, we have to seek to distinguish conduct which is truly anti-social and set that apart from that type of conduct which we as a society, as we grow and we expand our views, view with less moral turpitude. I think that is the issue that confronts us here today.

We talk about juveniles. We also must recognize that this is a problem which confronts a great part of society, not only juveniles, and the question really is, is this a behavior which has to be classed in the same grouping as using alcohol and other drugs, which is certainly harmful to our body, but isn't that the choice of the individual?

I urge you to accept the "Ought Not to Pass" Report.

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. Those in favor will vote yes; those opposed will vote no.

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

The SPEAKER: The pending question before the House is on the motion of the gentleman from Westport, Mr. Soule, that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Allen, Armstrong, Baker, Beaulieu, Bell, Benoit, Bott, Brannigan, Brown, D.N.; Brown, K.L.; Cahill, Carroll, D.P.; Chonko, Cooper, Cote, Cox, Crouse, Daggett, Diamond, Erwin, Foster, Gauvreau, Gwadosky, Hall, Handy, Hayden, Hickey, Higgins, H.C.; Hobbins, Holloway, Ingraham, Jackson, Joseph, Kane, Kelly, Ketover, Kiesman, Kilcoyne, LaPlante, Lisnik, Livesay, Locke, MacBride, MacEachern, Macomber, Manning, Martin, H.C.; Masterton, Matthews, K.L.; Matthews, Z.E.; Maybury, Mayo, McGowan, McHenry, McPherson, Melendy, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Moholland, Murray, Nadeau, Nelson, Norton, Paradis, P.E.; Perkins, Pines, Pouliot, Racine, Randall, Reeves, J.W.; Reeves, P.; Rich-

ard, Rolde, Rotondi, Salisbury, Scarpino, Seavey, Small, Smith, C.B.; Soule, Stevens, Swazey, Tammaro, Telow, Theriault, Tuttle, Vose, Walker, Zirkilton, The Speaker.

NAY—Anderson, Bonney, Brown, A.K.; Calahan, Carrier, Carroll, G.A.; Carter, Clark, Connors, Crowley, Curtis, Davis, Day, Dillenback, Drinkwater, Greenlaw, Higgins, L.M.; Jacques, Joyce, Kelleher, Lebowitz, Lehoux, Lewis, Martin, A.C.; Masterman, McCollister, McSweeney, Murphy, Paradis, E.J.; Parent, Paul, Perry, Ridley, Roberts, Smith, C.W.; Soucy, Sproul, Stevenson, Stover, Studley, Webster, Wentworth, Weymouth, Willey.

ABSENT—Andrews, Bost, Brodeur, Cashman, Conary, Connolly, Dexter, Dudley, Jalbent, Mahany, Roderick, Sherburne, Strout, Thompson.

Yes, 93; No, 44; Absent, 14.

The **SPEAKER**: Ninety-three having voted in the affirmative and forty-four in the negative, with fourteen being absent, the motion does prevail.

Sent up for concurrence.

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

An Act to Authorize Licensees Under the Liquor Laws to Serve as a Law Enforcement Officer (H. P. 339) (L. D. 398)

Tabled—March 2, 1983 by Representative Jacques of Waterville.

Pending—Motion of same gentleman to Reconsider Passage to be Enacted.

Thereupon, the House reconsidered its action whereby the Bill was passed to be enacted.

On motion of Mr. Cox of Brewer, the Bill was recommitted to the Committee on Legal Affairs in non-concurrence and sent up for concurrence.

On motion of Mr. Hickey of Augusta,
Recessed until the sound of the gong.

After Recess 10:50 a.m.

The House was called to order by the Speaker.

At this point, the Senate entered the Hall of the House and a Joint Convention was formed.

In Convention

The President of the Senate, Gerard P. Conley, in the Chair.

On motion of Senator Pray of Penobscot, it was

ORDERED, that a Committee be appointed to wait upon the Honorable Vincent L. McKusick, Chief Justice of the Supreme Judicial Court, and the Justices of the Supreme Judicial Court, and inform them that the two branches of the Legislature are in Convention assembled ready to receive such communication as pleases them.

The Chairman appointed:
Senators:

TRAFTON of Androscoggin
VIOLETTE of Aroostook
COLLINS of Knox

Representatives:

HOBBINS of Saco
JOYCE of Portland
CARRIER of Westbrook
BENOIT of South Portland
SOULE of Westport
HAYDEN of Durham
DRINKWATER of Belfast
REEVES of Newport
LIVESAY of Brunswick
FOSTER of Ellsworth

Subsequently, Senator Trafton, for the Committee, reported that the Committee had delivered the message with which it was charged and that the Honorable Chief Justice and Associate Justices of the Supreme Judicial Court were pleased to say that they would forthwith attend the Convention.

At this point, the Honorable Chief Justice and Justices of the Supreme Judicial Court entered the Convention Hall amid applause, the audience rising.

The **CHAIRMAN**: The Chair is very pleased at this time, on behalf of the Joint Convention, to welcome the Chief Justice, accompanied by the Associate Justices, and I would ask the Associate Justices to be recognized as I call their names: Justice Edward Godfrey, Justice David Nichols, Justice Daniel Wathen, Justice Gene Carter, Active Retired Chief Justice, Armand Dufresne; Active Retired Justice Thomas Delahanty. Ladies and gentlemen, the Chief Justice of the Maine Supreme Court, Justice Vincent L. McKusick. (Applause)

Chief Justice McKusick then addressed the Convention as follows:

President Conley, Speaker Martin, and Ladies and Gentlemen of the 111th Legislature: I want first of all to express the great regrets on behalf of my colleague, Justice Elmer H. Violette, for being unable to be here. The weather caught him in northern Aroostook. He is going to be here later in the day but he couldn't make it in time for this occasion.

My colleagues and I are grateful for your invitation to meet with you today. As head of the Judicial Branch, I come to report to you of the Legislative Branch on the work of the courts. I also want to talk with you about the responsibilities that you and we share for the fair and the efficient administration of justice in the State of Maine.

You know that civics textbooks, or whatever they are called these days, tell us that the three great branches are separate and independent, and that the powers of government are constitutionally divided among them. Our Maine Constitution expressly declares that one branch may not encroach upon the powers of the others. Yet, the three branches are critically interdependent and, if the public is to be served, those separate and co-equal branches must support and complement each other.

Specifically, although we judges in our adjudicative function must be independent of the legislative branch, the results of your deliberations here in these halls are felt directly in the courtrooms all around the state. You enact substantive law that we apply in deciding both civil and criminal cases. You by statute decide court structure, court jurisdiction and venue, court facilities, court operating budgets, the number of judges and their salaries. To discharge your legislative duties, you must be kept informed about the courts, and I willingly accept the responsibility of reporting to you from time to time, at your invitation. In my view, the oath that both you legislators and we judges have taken to support the constitution requires each of us not merely to avoid trespassing upon the constitutional domain of the other two branches, but also to cooperate with those other branches in all areas of overlapping concern.

As perhaps you have already noticed, Mr. President and Mr. Speaker, these preliminary thoughts are a repeat of the opening remarks that I made in first reporting to the Legislature five years ago, but they continue to be just as true today as then.

Five years ago, in reporting to the Legislature as a newly appointed judge, I went over my observations of the status of the judicial system at that time. Today, let's review what has happened in the courts in the five years since that report, and then let us look forward to the next five years and to the challenges that we jointly must meet if we are to bring about further improvements to the administration of justice in Maine.

If anything has been accomplished in the past five years, much credit is due to the hard work of my fellow judges and of the 270 other men and women all around the state who keep our courts operating at those 50 court locations. I am also struck by the extent to which

court improvements in these five years have come about through the coordinated efforts of the three branches. The continuing problems of the courts demand that we redouble those coordinated efforts.

I. The Past

Let me quickly review some principal events in the courts since 1977. First, the Law Court — Maine's court of last resort. The new filings each year in the Law Court increased 60 percent between 1977 and 1981, from about 325 to over 500. That tremendous increase has been largely in civil appeals, and among those civil cases a growing number involve public issues of considerable complexity—the **Bath Iron Works** case is merely one recent and much publicized example.

The last Legislature did take one step to help keep the Law Court's caseload under control. It created an Appellate Division within the Workers' Compensation Commission to hear in the first instance all appeals from decisions of single commissioners. The subsequent appeals to the Law Court are then discretionary with the Court. This new law beneficially enables the Appellate Division at the administrative level to mold a uniform policy on workers' comp questions, and it relieves the Law Court from hearing appeals that do not involve any important question of law. This change has produced, however, only a temporary easing of the increase of the Law Court's case filings; appeals in all other categories continue to grow. This month, the Law Court is back to hearing more than 60 appeals.

The Law Court has established a tradition of holding its May and November terms in Bangor, a change apparently welcomed in that part of the state. Starting last April 1st, the Court has permitted the media to use television and still cameras during oral argument.

The past five years have perhaps seen the greatest increase in the work of the Supreme Judicial Court in its statutory role as what I call the board of directors of the Judicial System. The Supreme Judicial Court has responded fully to the legislative charge that it exercise general administrative and supervisory authority over the "Judicial Department." It is the policymaking body of the Courts. The Court has, with the advisory committees, carried out with dispatch its responsibilities for promulgating and keeping up to date rules of procedure for all the courts, and rules for governance of the bar. Four complete sets of rules have been newly promulgated, three of them pursuant to specific legislative authority:

Administrative Court Rules

Maine Bar Rules, including the Maine Code of Professional Responsibility

Maine Probate Rules

Small Claims Rules (eff. Nov. 1, 1982)

The Court's annual review of all existing rules has also resulted in substantial additions and revisions. These new rules and amendments streamline court operation and they promote our constant goal of assuring the fair and efficient operation of the courts.

To discharge its responsibility for supervision of the legal profession, the Supreme Judicial Court has created the Board of Overseers of the Bar. That board annually registers all lawyers practicing in Maine, investigates complaints against lawyers and, when appropriate, makes presentments to the Court for public bar discipline proceedings against lawyers. A commission of the Board also will arbitrate a fee dispute at the request of any dissatisfied client. One-third of the members of the Board of Bar Overseers and of each of its sub-bodies are lay persons; its chair for the past two years was Madeleine Freeman, a distinguished civic leader of Orono.

Finally, under specific legislative authorization, the Court in 1978 created the Committee on Judicial Responsibility and Disability, a watchdog of judicial conduct. It was previously chaired by President Colin Hampton of

Union Mutual Life Insurance Company and is now chaired by President Hedley Reynolds of Bates College. Of its seven members, three are lay persons and two are lawyers, a majority of five, nominated by the Governor and appointed by the Supreme Judicial Court. The Committee's mission is very similar to that of a grand jury in investigating complaints to determine whether any are of sufficient seriousness to justify presentment to the Supreme Judicial Court for a public disciplinary proceeding. Of course, the proceeding becomes completely public once the Committee presents the matter to the Court. The Supreme Judicial Court is examining the confidentiality rules that applies in earlier stages of committee matters, with a view particularly of assuring that the Governor and the Judiciary Committee have available all relevant information when they are considering any sitting judge for reappointment.

Let us now move to our trial courts.

The Superior Court is our court of general trial jurisdiction; almost any criminal or civil case may be heard in the Superior Court, and it is the only court that can give our citizens their constitutional right to a jury trial. With the authorization of the last legislature, we have substantially improved our method of selecting jurors. Instead of using voter registration lists as the source, we now use the computerized list of names of persons holding drivers licenses, supplemented by the names of holders of identification cards issued by the Secretary of State and names of other persons who specifically ask to be included in the master list. The state computer takes the place of the costly and burdensome manual handling of the voter lists in the 16 county clerks' offices; and, what is most important, our jurors are drawn from a more up-to-date list and one that includes a larger proportion of the population over 18. We have also instituted a telephone system by which jurors can call in to find out if they are needed that day; this service works to the convenience of our citizens and helps to reduce jury expenses.

The Superior Court, with its fourteen justices, has about 17,000 new cases filed each year, well over half of them criminal cases. The past five years have seen those criminal filings grow by nearly one quarter. Of course, that has happened all over the country. Although civil cases filed in the Superior Court have stayed about the same in total number, they have become increasingly complex and demanding upon judge time. For example, there has been a marked increase in complex administrative appeals from state and local governmental agencies.

Now the District Court. The Legislature, since it created the District Court in 1962, has steadily increased the scope and complexity of the District Court's work. For example, it can now hear civil cases of \$20,000 and can foreclose real estate mortgages and do various other things that have technically been the work of an equity court. As of last November 1st, the District Court has proved the great usefulness of having mediation available in court as an alternative to adjudication, particularly in the handling of small claims cases. The success of mediation here in Maine has been hailed all over the country. We are now taking steps to make court mediation available in family law cases at all court locations of the District and Superior Courts across the state.

The District Court, and I am most proud to report this, has successfully implemented, at least so far, the Single Trial Law enacted by the Legislature effective January 1st a year ago. That law at last eliminated the anomaly that had existed since 1820, by which a criminal defendant, tried and found guilty of a misdemeanor, once in the District Court has the right to appeal to Superior Court and have a complete new trial, a trial de novo. Operating under rules promulgated by the Supreme

Judicial Court, the District Court has accorded full respect to the right of criminal defendants to elect a jury trial in the Superior Court, while at the same time, it has avoided the transfer of an unmanageable flood of cases to the Superior Court.

The new law and rule have imposed substantial burdens upon the District Court judges and upon District Court recording personnel. We are indebted to them for making the single trial law work.

The past five years have seen the Administrative Court become a full member of the Judicial Department. That Court is charged with hearing and deciding petitions for the revocation of most state licenses. By assignment, its two judges also carry a substantial caseload in the District Court.

The big news for the probate courts in the last five years was the adoption of the Maine Probate Code and the Maine Rules of Probate Procedure, both effective January 1, 1981. Our 16 county probate judges are Maine's only elected judges and only part-time judges. Under the new system, a probate court's decision is no longer appealable to the Superior Court for a de novo trial; all appeals are taken directly to the Law Court and are on questions of law only. Thus, the probate judges have heightened trial responsibilities under the new code. The same Probate Law Revision Commission that drafted the Maine Probate Code was also charged by the Legislature with studying the structure of the Probate Court. The ongoing memory of the Legislature should not overlook the Commission's final recommendation in 1980 to the effect that the probate court functions be transferred to the Superior Court. That was the choice of the Commission at the time. In the preceding decade or so, the probate court structure had been thoroughly studied on two other occasions, also with recommendations for shift to a full-time appointed judiciary, but in at least one instance suggesting another way of doing it.

Starting in 1975, all courts of the state, except the county probate courts, have come together under unified state administration and financing. The Administrative Office of the Courts, under our State Court Administrator, Dana Baggett, performs fiscal, personnel, procurements, statistical, and other business-type functions. Our trial court administrators directly work with the judges who are out there on the firing line around the state and responsible for the management of the Superior and District Courts at 50 trial court locations. The courts are operating in good coordination with one another. Chief Judge Devine and his deputy, Judge Pease, are responsible for the District Court. Three Regional Presiding Justices, MacInnes, Scolnik, and McKinley, share responsibility for the management of the Superior Court. You have before you a bill, L.D. 437, that would create for the Superior Court the position of a chief justice, who would take over the functions of the three present regional presiding justices. The Chief Justice of the Superior Court would, under my supervision, be responsible for the operations of the Superior Court in the same way the Chief Judge of the District Court is responsible for that court. The new set-up, proposed by the Superior Court Justices themselves, and fully supported by the Supreme Judicial Court, would streamline the judicial management of the Superior Court and would give it a single voice.

II. The Future

Let's now look at the future of the Maine courts, at least for five years into the future. I want to identify for you the most pressing present needs of the courts. Those needs are principally financial, and I well realize that insistent demands for funds come at you from every quarter and that perhaps your budgeting problems at this session seem particularly acute, but I would make two initial

points. First, the total appropriations, total gross appropriations, for the courts have never been more than about one percent of the total budget; last year about \$12 million, and of that amount, the courts themselves turn into the General Fund from fines and fees a good 80 percent, so even with a great increase in the court's budget, the net financial burden on the General Fund is very small, indeed. If we do not meet all the court's pressing financial needs at this session, we can and must, I urge upon you, get on track towards meeting them within the near-term future.

What are those needs? First, a shortage of courtrooms and of other physical facilities remains the foremost problem of the Maine Courts, just as it was when I reported to the Legislature the first time five years ago. Those needs have been fully studied, restudied and reviewed, so now action is necessarily the next step for us. The 1978 judges committee, headed by Justice Archibald, and the 1979 gubernatorial commission, headed by banker John Grant, were not interested in building public monuments. They determined essential court building needs, and those needs have become even more apparent with the passage of time. At many locations our courts simply lack the courtrooms and other working space needed to handle their growing caseloads; and at many locations our courts lack the facilities to assure that jurors, litigants, witnesses, attorneys, and other citizens with business at the courthouse can conduct it without unreasonable delay, discomfort, or embarrassment. For example, a shortage of jury courtrooms in the Cumberland County courthouse has already contributed to a disturbing increase in the civil backlog in that county. As a further example, in Brunswick, the District Court lacks even minimal working space for essential clerical personnel, and the citizens using that court are sorely inconvenienced.

Solution of our court facilities problem, as quickly as our resources permit, demands the best of coordination among the three branches. We are receiving good cooperation from the Executive Branch in getting court facilities into the state budgeting process for both current funding and bonding and that, we were told repeatedly in prior sessions, is necessary to accomplish something and I emphasize the need for coordination among the great branches.

I applaud the start that Governor Brennan proposed last week in his State of the State address, by including in his capital program, funds for the new court buildings for Brunswick-Bath and Skowhegan and for building planning in Portland. In the months ahead we have a lot of work to do on our court facilities and I hope we can get about it.

Second, we need, and you are probably expecting this, to improve judicial salaries. You know that we stand last among the 50 states in what we pay our judges; the 49th state, Vermont, which we have been compared with before, pays a Supreme Court Associated Justice nearly \$5,000 more than does Maine. The immediate salary increase suggested last week by the Governor is well deserved by my fellow judges. Also, as a longer range solution, I heartily endorse L.D. 662 that proposes to bring judicial salaries within the jurisdiction of the State Compensation Commission created by statute two years ago to make recommendations to you on legislators' salaries. It makes sense to subject judicial salaries automatically to that same kind of objective review at regular intervals.

Third, very soon we will need additional judges. Maine has a remarkably small judiciary, only 44 active judges—outside the 16 part-time county probate judges. In the last ten years, since 1973, the Superior Court has had no increase in its 14 justices, and the district court has had only one added judge-at-large, who, incidentally, has only quite recently come aboard. Our trial courts have been able

to keep up as well as they have with their burgeoning caseloads by extra hard work and through the help of our active retired judges, and through the help of court administrators relieving them of many non-judicial burdens. The time has now arrived when our active retired judges, by reasons of health, cannot be expected to carry the same heavy loads they have carried so well in the past. Furthermore, trial caseloads have outrun what can be absorbed through increased judicial productivity; for example, our Superior Court justices already handle an average of over 1100 cases a year, the American Bar Association accepts as a norm for a court of general trial jurisdiction 1,000 cases. The consequence of having too few judges is similar to the consequence of a shortage of courtrooms and support facilities. Cases awaiting trial pile up, particularly on the civil side, because we have to give priority to criminal cases. In addition, one must be concerned about the quality of judging if judges are overpressed; judges are not automatons that can be cranked up to ever increasing speeds without adversely affecting the deliberative process. We are studying our judge-power needs carefully, and I assure you that we will, before the convening of your second regular session, quantify those needs statewide as precisely as the nature of the question permits.

Finally, we need to give our courts the modern tools, such as computers and word processors, that are commonplace in comparable operations in the private sector. For example, the repetitive tasks of docketing, information retrieval, scheduling and bookkeeping involved in the clerks' offices are a natural application for computers. I would like to convey to you some idea of the size of the business that is done in clerks' offices; in the district court clerk's offices in Portland, there is something of the order of a million and a half dollars collected each year; it is substantial business and needs to be operated like a business would be operated in the private sector. Those modern tools are the only way to keep some degree of control over rising personnel costs of handling our growing caseloads. They are also essential for the courts to give good service to the public.

These, then, are four specific areas of pressing court needs. They must be met if we are to carry out the commitment that you of the Legislature, I know, share with us to maintain in every court of the state the fair and efficient administration of justice. We in the Judicial Branch desperately need your help in promptly addressing these financial problems.

Conclusion

The safety of our persons and property depends upon the prompt enforcement of the criminal laws. Those laws will have a maximum deterrent effect only to the extent that just punishment under them is swift and sure. For that reason, the courts must give priority to criminal cases. Yet, the rising crescendo of our criminal caseloads in the trial courts should not deafen us to the rousing declaration of the Maine Constitution. It guarantees every citizen ready access to the civil side of the courts also. Section 19 of the Maine Declaration of Rights announces the following and I would like to read it to you:

"Every person, for the injury done him in his person, reputation, property or immunities, shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay."

That, my friends of the Legislature, is the high goal to which our Maine Courts willingly dedicate themselves — not merely for the next five years, but for as long as our Constitution shall stand.

Thank you very much indeed. (Prolonged applause).

The CHAIRMAN: First, on behalf of the Speaker and Members of the Joint Convention,

I want to express our deep thanks to the Chief Justice and his Associates for coming here today and delivering to us what I believe was an extremely profound message, one that we could all pay a great deal of attention to.

Secondly and most importantly, as President, and it proves once again that I am not perfect and I have never claimed to be, I wish to introduce to the Joint Convention one of the Associate Justices that I overlooked. It is my pleasure to introduce Associate Justice David Roberts. (applause)

The Chief Justice and Associate Justices of the Supreme Judicial Court withdrew amid the applause of the Convention, the audience rising.

The purpose for which the Convention was assembled having been accomplished, the Chairman declared the same dissolved.

The Senate then retired to its Chamber, amid applause of the House, the members rising.

In The House

The House was called to order by the Speaker.

(Off Record Remarks)

On motion of Mr. Michaud of East Millinocket, Adjourned until twelve o'clock noon tomorrow.