

JOURNAL OF THE HOUSE.

Tuesday, October 9, 2001.

Met according to adjournment, at eleven o'clock A.M., with Mr. DiMasi of Boston in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

Gracious God, standing in Your presence, we proclaim our belief in You and in Your personal concern for each one of us. In a spirit of humility, we ask for Your assistance as we try to cope conscientiously with the stress and uncertainty of these difficult times and with the legislative needs and expectations of the people. Let our minds be open to both Your guidance and grace in our struggle to make thoughtful decisions and balanced judgements. In addressing legislative and public policy issues, often controversial, inspire us to exercise patience, when needed, courage when called for, and new ideas when creativity is demanded. Help us to utilize fully the great reservoir of goodwill, generosity, courage and patriotism which have been manifested in the past few weeks by people all over this land.

Bestow Your blessings on the Speaker, the members and employees of this House and and their families. Amen.

At the request of the Chair (Mr. DiMasi), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Message from the Acting Governor.

A message from Her Honor the Lieutenant-Governor, Acting Governor, recommending legislation relative to ensuring the environmental protection of the northern 15,000 acres of the Massachusetts Military Reservation (House, No. 4640) was filed in the office of the Clerk on Friday, October 5.

The message was read; and it was referred, under Rule 30, with the accompanying draft of a bill, to the committee on Natural Resources and Agriculture. Sent to the Senate for concurrence.

Appointments to House and Joint Standing Committees.

The Minority Leader announced the following changes in House and Joint Standing Committees:

That Representative Hargraves of Groton had been relieved of duty (at his own request) from the committee on Ways and Means, and that Representative deMacedo of Plymouth had been appointed to the thirty-second position on said committee to fill the existing vacancy;

That Representative Hargraves of Groton had been appointed to the tenth position on the committee on Education, Arts and Humanities to fill the existing vacancy.

Statement Concerning Representative Ayers of Quincy.

A statement of Mr. DiMasi of Boston concerning Mr. Ayers of Quincy was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Ayers of Quincy, will not be present in the House Chamber for today's sitting due to his attendance at a family wedding in Ireland. Any roll calls that he may miss today is due entirely to the reason stated.

Statement Concerning Representative Caron of Springfield.

A statement of Mr. DiMasi of Boston concerning Mr. Caron of Springfield was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Caron of Springfield, will not be present in the House Chamber for today's sitting due to a previously scheduled commitment in the city of Springfield. Any roll calls that he may miss today is due entirely to the reason stated.

Statement Concerning Representative Cleven of Chelmsford.

A statement of Mr. Jones of North Reading concerning Mrs. Cleven of Chelmsford was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Cleven of Chelmsford, will not be present in the House Chamber for the remainder of today's sitting due to an urgent personal family matter. Any roll calls that she may miss today is due entirely to the reason stated.

Statement Concerning Representative Kennedy of Brockton.

A statement of Mr. DiMasi of Boston concerning Mr. Kennedy of Brockton was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Kennedy of Brockton, will not be present in the House Chamber for today's sitting due to illness. Any roll calls that he may miss today is due entirely to the reason stated.

Statement Concerning Representative Pope of Wayland.

A statement of Ms. Rogeness of Longmeadow concerning Mrs. Pope of Wayland was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Pope of Wayland, will not be present in the House Chamber for today's sitting due to a previously scheduled family commitment. Any roll calls that she may

miss today is due entirely to the reason stated.

Guests of the House.

During consideration of the Orders of the Day, the Chair (Mr. DiMasi of Boston) declared a brief recess; and introduced the Coro Presanella Choir from Pinzola, Italy, the guests of Representative Murphy of Burlington. The choir then entertained the members and the staff with the singing of two renditions, which they dedicated to the memory of those who lost their lives as a result of the terrorist acts of September 11, 2001.

Resolutions.

The following resolutions (filed with the Clerk) were referred, under Rule 85, to the committee on Rules:

Resolutions (filed by Mr. Finneran of Boston and other members of the House) commending Senator Edward M. Kennedy on his efforts to reinstate federal food stamps for legal immigrants;

Resolutions (filed by Messrs. Brown of Wrentham, Rogers of Norwood and Scaccia of Boston) congratulating Mayor Thomas M. Menino on being named the 2001 recipient of the “Man of the Year” award by the Friends of Christopher Columbus;

Resolutions (filed by Representatives Ciampa of Somerville, Toomey of Cambridge and Jehlen of Somerville) honoring Al Rubio of Somerville on his many years of dedicated service to the Massachusetts Silver-Haired Legislature;

Resolutions (filed by Representatives Fox of Boston, Owens-Hicks of Boston, Swan of Springfield, Barrios of Cambridge and St. Fleur of Boston) honoring the Reverend Doctor Zan W. Holmes, Jr.; and

Resolutions (filed by Mr. Linsky of Natick) congratulating Virginia L. Lyster upon being selected as a recipient of the Harriet F. Siegel Shining Light Award;

Mr. Scaccia, for the committee on Rules, reported, in each instance, that the resolutions ought to be adopted. Under suspension of the rules, in each instance, on motion of the same member, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Communications.

Communications

From the Office of the Attorney General (under the provisions of Section 93 of Chapter 236 of the Acts of 2000) submitting a report on open accessibility in the health care delivery systems in the city of Springfield;

From the Division of Energy Resources (under the provisions of Section 332 of Chapter 164 of the Acts of 1997) submitting a report of the feasibility of creating a process for awarding

certified renewable energy credits to renewable energy generators or retail suppliers;

From the Commissioner of Insurance (under the provisions of Paragraph (2) of Clause F of Section 117F of Chapter 175 of the General Laws) relative to a summary of insurance claims experience and loss ratio data on credit life insurance and credit accident and health insurance; and

From the Public Employee Retirement Administration Commission (PERAC) (under the provisions of Section 22C of Chapter 32 of the General Laws) submitting an actuarial valuation of the Commonwealth's Total Pension Obligation;

Severally were placed on file.

Petitions.

Petitions severally were presented and referred as follows:

By Mr. Atsalis of Barnstable, petition (accompanied by bill, House, No. 4622) of Demetrius J. Atsalis and Robert A. O'Leary (by vote of the town) that the town of Barnstable be authorized to convey a certain parcel of land to H&K Properties, LP; and

By Mr. Straus of Mattapoisett, petition (accompanied by bill, House, No. 4623) of William M. Straus and Marc R. Pacheco (by vote of the town) for legislation to establish a capital investment fund in the town of Rochester;

Severally to the committee on Local Affairs.

By Mr. Buoniconti of West Springfield, petition (accompanied by bill, House, No. 4624) of Stephen J. Buoniconti (by vote of the town) for legislation to certify provisional employees within the town of West Springfield as permanent employees;

By the same member, petition (accompanied by bill, House, No. 4625) of Stephen J. Buoniconti (by vote of the town) that the town of West Springfield be authorized to grant retirement benefits to the widow and children of Steven F. Greene; and

By Mr. Walsh of Boston, petition (accompanied by bill, House, No. 4626) of Martin J. Walsh (with the approval of the mayor and city council) that the city of Boston be authorized to pay certain medical expenses to Charles J. Kelly, a retired Boston firefighter;

Severally to the committee on Public Service.

Severally sent to the Senate for concurrence.

Petitions severally were presented and referred as follows:

By Mr. Atsalis of Barnstable, petition (subject to Joint Rule 12) of Demetrius J. Atsalis that the Division of Medical Assistance be directed to pay certain ambulance services to the Centerville-Osterville-Marstons Mills Fire.

By Mr. Casey of Winchester, petition (subject to Joint Rule 12) of Paul C. Casey and other members of the General Court for an investigation by a special commission (including members of the General Court) of crosswalks in the Commonwealth.

By Mrs. Cleven of Chelmsford, petition (subject to Joint Rule 12) of Carol C. Cleven and other members of the General Court that the Registrar of Motor Vehicle be directed to issue distinctive license plates for a police and fire disaster fund.

By Mr. Finegold of Andover, petition (subject to Joint Rule 12) of Barry R. Finegold relative to designating a certain bridge in the town of Andover as the Joseph A. Horan and Corrigidor Veterans Memorial Bridge.

By Ms. Khan of Newton, petition (subject to Joint Rule 12) of Kay Khan and Cynthia Stone Creem that the Teachers' Retirement Board be authorized to grant creditable service to Janet Brandwein for retirement purposes.

By Mr. Petrolati of Ludlow, petition (subject to Joint Rule 12) of Thomas M. Petrolati relative to authorizing the teachers retirement system to reinstate Diantha G. Ferrier.

By Miss Reinstein of Revere, petition (subject to Joint Rule 12) of Kathi-Anne Reinstein and Edward G. Connolly relative to the penalty for removing flags from graves.

By Mr. Smizik of Brookline, petition (subject to Joint Rule 12) of Frank I. Smizik relative to earning limitations for Thomas Manning, a retired fire fighter from the town of Brookline.

Severally, under Rule 24, to the committee on Rules.

Papers from the Senate.

Reports of the Department of Public Health (under the provisions of Sections 5 and 20 of Chapter 111 of the General Laws) relative to inspections of certain correctional facilities, as follows:

Of the Berkshire County House of Correction and Jail, in the city of Pittsfield;

Of the Franklin County Jail and House of Correction, in the town of Greenfield;

Of the Hampshire County Jail and House of Correction, in the city of Northampton;

Of the Western Massachusetts Correctional Alcohol Center, in the city of Springfield; and

Of the Women in Transition Facility, in the town of Salisbury;

Severally were read for the information of the House; and returned to the Senate.

A petition (accompanied by bill, Senate, No. 2135) of Richard T. Moore, Paul K. Frost and Mark J. Carron (by vote of the town) for legislation to provide for the appointment of the

Oxford Development and Industrial Commission, was referred, in concurrence, to the committee on Local Affairs.

Reports of Committees.

By Mr. Greene of Billerica, for the committee on Commerce and Labor, on House, No. 4491, an Order relative to authorizing the committee on Commerce and Labor to make an investigation and study of a certain House document concerning parental leave benefit programs (House, No. 4627).

By Mr. Larkin of Pittsfield, for the committee on Education, Arts and Humanities, on House, Nos. 968, 1548, 1550, 1570, 1734, 3269, 4059 and 4061, an Order relative to authorizing the committee on Education, Arts and Humanities to make an investigation and study of certain House documents concerning public school attendance and other related matters (House, No. 4628).

By the same member, for the same committee, on House, No. 4403, an Order relative to authorizing the committee on Education, Arts and Humanities to make an investigation and study of a certain House document concerning reimbursement to municipalities for the cost of education of certain students (House, No. 4629).

By Mr. Wagner of Chicopee, for the committee on Election Laws, on House, No. 4286, an Order relative to authorizing the committee on Election Laws to make an investigation and study of a certain House document concerning a non-binding advisory ballot question in the city of Newton (House, No. 4630).

By Mr. Cahill of Beverly, for the committee on Housing and Urban Development, on House, No. 2328, an Order relative to authorizing the committee on Housing and Urban Development to make an investigation and study of a certain House document concerning the Ware River Watershed Advisory Committee (House, No. 4631).

By Mr. Cabral of New Bedford, for the committee on Human Services and Elderly Affairs, on Senate, Nos. 691 and 720 and House, Nos. 624, 1202, 1957, 2343, 2344 and 2715, an Order relative to authorizing the committee on Human Services and Elderly affairs to make an investigation and study of certain Senate and House documents concerning elder and Medicaid services (House, No. 4632).

Severally referred, under Joint Rule 29, to the committees on Rules of the two branches, acting concurrently.

Subsequently Mr. Scaccia of Boston, for said committees, reported, in each instance, asking to be discharged from further consideration of said orders; and recommending that the same severally be referred to the House committee on Rules.

Under Rule 42, the reports severally were considered forthwith; and they were accepted.

By Mr. Cabral of New Bedford, for the committee on Human Services and Elderly Affairs, on a petition, a Bill relative to the health care needs of adolescents in the juvenile justice systems of

the Commonwealth (House, No. 495).

By the same member, for the same committee, on a petition, a Bill relative to the health care needs of adolescents in the juvenile justice systems of the Commonwealth (House, No. 3405).

By the same member, for the same committee, on a petition, a Bill relative to information to be provided to foster children by the Department of Social Services (House, No. 4184).

By the same member, for the same committee, on a petition, a Bill requiring distribution of the policy and procedure manual of the Department of Social Services (House, No. 4185).

By the same member, for the same committee, on a petition, a Bill authorizing reimbursement to the town of Easton for veterans' benefits expended in past years (House, No. 4253) [Local Approval Received].

Severally read; and referred, under Rule 33, to the committee on Ways and Means.

By Mr. Quinn of Dartmouth, for the committee on Banks and Banking, on a petition, a Bill relative to the operations and governance of credit unions (House, No. 3481, changed by striking out section 1).

By the same member, for the same committee, on House, No. 1721, a Bill establishing a limited access deposit account (House, No. 4633).

By Mr. Larkin of Pittsfield, for the committee on Education, Arts and Humanities, on House, No. 243, a Bill authorizing self-monitoring and treatment of students with diabetes (House, No. 4634).

By Mr. Cahill of Beverly, for the committee on Housing and Urban Development, on a petition, a Bill relative to Mini-Fenway Park, Inc. (House, No. 4362).

By the same member, for the same committee, on House, No. 1766, a Bill providing for the installation of certain traffic devices in the city of Medford (House, No. 4635).

By Mr. Cabral of New Bedford, for the committee on Human Services and Elderly Affairs, on House, Nos. 205 and 208, a Bill affecting jurisdiction for the purpose of care and protection petitions (House, No. 208).

By Mr. Mariano of Quincy, for the committee on Insurance, on House, Nos. 8 and 29, a Bill making certain corrective changes in the General Laws (House, No. 29).

By the same member, for the same committee, on a petition, a Bill relative to the safe installation of auto glass (House, No. 1965, changed in line 4, by striking out the words: "Prior to the expiration of thirty-six months after" and inserting in place thereof the word "After", and in line 7, by inserting after the word "insured" the following: ", provided that the vehicle has been driven no more than 15,000 miles").

By the same member, for the same committee, on a recommitted petition, a Bill relative to

payment of auto damage claims (House, No. 1968, changed in lines 5 and 6, and also in line 8, by striking out, in each instance, the words “agent, broker or”).

By the same member, for the same committee, on a petition, a Bill further requiring the timely resolution of certain insurance claims (House, No. 3351).

By the same member, for the same committee, on a petition, a Bill relative to arbitration for automobile insurance property damage (House, No. 3547).

By the same member, for the same committee, on a petition, a Bill further regulating motor vehicle insurance (House, No. 3746).

By the same member, for the same committee, on a petition, a Bill relative to identification of aftermarket parts (House, No. 3939).

By the same member, for the same committee, on House, No. 3748, a Bill further regulating the sale of insurance by motor vehicle rental companies (House, No. 4636).

By Mrs. Parente of Milford, for the committee on Local Affairs, on House, No. 4399, a Bill relative to commercial area revitalization districts (House, No. 4637).

By Mr. Casey of Winchester, for the committee on Taxation, on House, Nos. 935, 944 and 1323, a Bill relative to the time for the payment of real property taxes (House, No. 4638).

By Mr. Sullivan of Braintree, for the committee on Transportation, on a petition, a Bill relative to the sounding of train whistles in the town of Tewksbury (House, No. 765).

By the same member, for the same committee, on a petition, a Bill designating a certain portion of state highway Route 169 as the Leonide J. Lemire V.F.W. Post 6055 Memorial Highway (House, No. 3227, changed in line 1, by striking out the following: “15 miles” and inserting in place thereof the words “state-owned portion”).

By the same member, for the same committee, on House, No. 2821, a Bill providing for the use of the breakdown lanes on Route 3 (House, No. 4639).

Severally read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Engrossed Bills.

Engrossed bills

Providing for an executive director of city services in the city of Everett (see House, No. 4289);
and

Authorizing the town of Westport to establish a preservation trust fund (see House, No. 4542);

(Which severally originated in the House);

Severally having been certified by the Clerk to be rightly and truly prepared for final passage, were passed to be enacted; and they were signed by the acting Speaker and sent to the Senate.

Orders of the Day.

The House Bill providing for the filling of vacancies in the city known as the town of Agawam (House, No. 4273), reported by the committee on Bills in the Third Reading to be correctly drawn, was read a third time; and it was passed to be engrossed. Sent to the Senate for concurrence.

House bills

To protect the rights of persons subject to guardianship proceedings (House, No. 73);

Relative to gift certificates (House, No. 216);

Designating a certain bridge in Hyde Park as the Joseph M. Kearney Bridge (House, No. 391);

Designating a certain bridge in Hyde Park as the Thomas J. Geraghty Bridge (House, No. 392);

Designating the Beale Street Bridge spanning the Massachusetts Bay Transportation Authority railway corridor as the United States Marshal William Degan Memorial Overpass (House, No. 763);

Concerning the orientation of school committee members (House, No. 783, changed);

Establishing a sick leave bank for a certain employee of the Trial Court of the Commonwealth (House, No. 852);

Establishing a sick leave bank for a certain employee of the Trial Court of the Commonwealth (House, No. 1218);

Further regulating annual meetings of condominiums (House, No. 1397);

Proclaiming April as Armenian-American Heritage Month (House, No. 1501);

Concerning conflict of interest (House, No. 1682);

Relative to the open meeting law (House, No. 1689);

Relative to appellate review (House, No. 1808);

Requiring pilots for certain vessels (House, No. 4380);

Authorizing certain terms for borrowing by the town of Norfolk for constructing a golf course (House, No. 4423); and

To protect the privacy of elders (House, No. 4562);

Severally were read a second time; and they were ordered to a third reading.

The House Bill relative to the employment of certain minors (House, No. 4310) (its title having been changed by the committee on Bills in the Third Reading), reported by said committee to be correctly drawn, was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Bosley of North Adams moved that it be amended by adding at the end thereof the following section:

“SECTION 2. Said section 62 of chapter 149, as so appearing, is hereby further amendment by adding the following sentence:— For the purposes of this section, ‘golf course’ shall be defined as all property owned by said course, excluding all public or private parking areas and all public or private ways which may be located at said course.”.

The amendment was adopted; and the bill (House, No. 4310, amended) was passed to be engrossed. Sent to the Senate for concurrence.

At twenty-five minutes after eleven o’clock A.M., on motion of Mr. Scaccia of Boston (Mr. DiMasi of Boston being in the Chair), the House recessed until one o’clock P.M.; and at that time the House was called to order with Mr. DiMasi in the Chair.

The House Bill establishing new sentencing guidelines (House, No. 4596, amended) (its title having been changed by the committee on Bills in the Third Reading), reported by said committee to be correctly drawn, was read a third time.

Pending the question on passing the bill, as amended, to be engrossed, Mr. Linsky of Natick and other members of the House moved that it be amended in section 1 (as printed), in lines 520 and 521, by striking out the paragraph contained therein and inserting in place thereof the following paragraph:

“6. The defendant is not charged with an offense which includes as an element of the offense the sale or distribution of a controlled substance to a minor or the intent to sell or distribute a controlled substance to a minor.”.

The amendment was rejected.

The same members then moved that the bill be amended in section 1 (as printed) by inserting after line 407 the following paragraph:

“7. The defendant has provided significant cooperation or information to law enforcement authorities in the investigation or prosecution of this offense or other criminal offenses.”.

The amendment was rejected.

After debate, Mr. Marini of Hanson asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. DiMasi of Boston), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 142 members were recorded as being in attendance.

[See Yea and Nay No. 119 in Supplement.]

Therefore a quorum was present.

Mr. Linsky of Natick and other members of the House then moved that the bill be amended in section 1 (as printed), in lines 424 to 458, inclusive, by striking out the 3 paragraphs contained therein and inserting in place thereof the following 3 paragraphs:

“(c) Concurrent or consecutive sentencing. When a defendant is convicted of multiple offenses arising out of the same criminal conduct, the judge may impose concurrent or consecutive sentences, subject to the following provisions. The judge shall impose a consecutive sentence when the imposition of a consecutive sentence is required by the terms of the statute pertaining to a particular offense. The judge may impose concurrent or consecutive sentences of incarceration in the house of correction or the state prison for each offense where such incarceration is permitted by law, subject to the following limitation. The judge may impose consecutive sentences to the state prison or the house of correction by selecting a sentence from the guidelines range in the applicable grid cell for each offense to be sentenced consecutively. Any sentence imposed as concurrent or consecutive to a governing offense may be for a period of incarceration, or for a period of probation, which is less than the lower limit of the sentencing guidelines range contained in the applicable grid cell or for any level of intermediate sanction, without constituting a departure from the sentencing guidelines.

When a defendant is convicted of multiple offenses which arise out of the same criminal conduct and there is a single or no victim, the total of the consecutive sentence imposed may not exceed the upper limit range of the sentencing guidelines range in the grid cell of the governing offense. Where the total exceeds the upper limit, it shall be considered a departure from the guidelines and the judge is required to provide written reasons.

When a defendant is convicted of multiple offenses which arise out of the same criminal conduct and there are multiple victims, the total of the consecutive sentence imposed may not exceed one and a half times the upper limit of the sentencing guidelines range in the grid cell of the governing offense. Where the total exceeds one and a half times the upper limit, it shall be considered a departure from the guidelines and the judge is required to provide written reasons.”.

The amendment was adopted.

Representatives Jehlen of Somerville and Rushing of Boston then moved that the bill be amended in section 8 (as printed), in line 11, by striking out the words “achieved lower levels of security,”. The amendment was adopted.

Mr. Festa of Melrose and other members of the House then moved that the bill be amended in section 1 (as printed), in lines 518 and 519, by striking out the paragraph contained therein; and the amendment was rejected.

Mrs. Paulsen of Belmont then moved that the bill be amended in section 1 (as printed), in lines 537, 538 and 539, by striking out the sentence contained therein.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays, at the request of the same member; and on the roll call 37 members voted in the affirmative and 110 in the negative.

[See Yea and Nay No. 120 in Supplement.]

Therefore the amendment was rejected.

Mr. Tobin of Quincy then moved that the bill be amended in section 1 (as printed), in line 626, by striking out the following: “21-hour” and inserting in place thereof the following: “24-hour”; and the amendment was adopted.

Mr. Marini of Hanson and other members of the House then moved that the bill be amended in section 1 (as printed), on page 37, in line 8, in column 2, by striking out the figure “4” and inserting in place thereof the figure “5”; in line 18, in column 2, by striking out the figure “3” and inserting in place thereof the figure “5”; in line 19, in column 2, by striking out the figure “4” and inserting in place thereof the figure “5”; in line 20, in column 2, by striking out the figure “3” and inserting in place thereof the figure “5”; in line 21, in column 2, by striking out the figure “4” and inserting in place thereof the figure “5”; in line 22, in column 2, by striking out the figure “6” and inserting in place thereof the figure “7”; in line 23, in column 2, by striking out the figure “4” and inserting in place thereof the figure “5”; and in line 24, in column 2, by striking out the figure “6” and inserting in place thereof the figure “7”; on page 47, in line 4, in column 2, by striking out the figure “6” and inserting in place thereof the figure “7”; in line 8, in column 2, by striking out the figure “3” and inserting in place thereof the figure “4”, and in line 9, in column 2, by striking out the figure “5” and inserting in place thereof the figure “6”; on page 48, in line 1, in column 2, by striking out the figure “4” and inserting in place thereof the figure “6”, in line 2, in column 2, by striking out the figure “5” and inserting in place thereof the figure “7”, in line 3, in column 2, by striking out the figure “7” and inserting in place thereof the figure “8”, in line 4, in column 2, by striking out the figure “3” and inserting in place thereof the figure “5”, in line 5, in column 2, by striking out the figure “4” and inserting in place thereof the figure “6”, in line 7, in column 2, by striking out the figure “3” and inserting in place thereof the figure “4”, and in line 8, in column 2, by striking out the figure “4” and inserting in place thereof the figure “5”; on page 51, in line 10, in column 2, by striking out the figure “5” and inserting in place thereof the figure “6”; on page 52, in lines 4, 7 and 11, in column 2, by striking out the figure “4” and inserting in place thereof, in each instance, the figure “5”; on page 61, in line 30, in column 2, by striking out the figure “5” and inserting in place thereof the figure “6”; and on page 62, in lines 3 and 5, in column 2, by striking out the figure “4” and inserting in place thereof, in each instance, the figure “6”.

After debate the amendments were adopted.

Mr. Marini of Hanson and other members of the House then moved that the bill be amended in section 1 (as printed), in lines 531 and 532, by inserting after the word “evidence.” the following sentence: “The sentencing judge must find any proven factors constitute a substantial reason to

depart from a mandatory minimum sentence.”; and the amendment was adopted.

Mr. Marini and other members of the House then moved that the bill be amended in section 1 (as printed) by inserting after line 421 the following paragraph:

“7. The defendant has committed the offense: (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by assassination or kidnapping.”.

The amendment was adopted.

Mr. Linsky of Natick and other members of the House then moved that the bill be amended in section 2 (as printed), in lines 518 and 519, by striking out the paragraph contained therein; and inserting in place thereof the following paragraph:

“5. The defendant is a minor participant in the manufacture, distribution or sale of controlled substances; and”; and in lines 522 to 529, inclusive, by striking out the paragraph contained therein and by inserting before line 422 the following paragraph:

“7. Not later than the time of the sentencing hearing, the defendant has truthfully provided to the prosecution all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the prosecution is already aware of the information shall not preclude a determination by the court that this constitutes a mitigating circumstance.”.

The amendments were adopted.

Mr. Marini of Hanson and other members of the House then moved that the bill be amended by adding at the end thereof the following section:

“SECTION 11. Section 129D of chapter 127 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting the following paragraph:-

No prisoner’s sentence shall be reduced below the level of two-thirds of the prisoner’s maximum term including both the prisoner’s good time credit under this section and the prisoner’s eligibility for parole under chapter 211G.”.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays, at the request of Mr. Marini; and on the roll call 23 members voted in the affirmative and 122 in the negative.

[See Yea and Nay No. 121 in Supplement.]

Therefore the amendment was rejected.

Mr. Marini of Hanson and other members of the House then moved that the bill be amended in section 1 (as printed), in line 589, by striking out the word “not”; and in line 591, by inserting

after the word “offense” the following: “; provided the sentence does not exceed the guidelines range. Notwithstanding any other provision of law, it shall not constitute a departure for a judge to impose the statutory maximum sentence on any defendant in Criminal History Group E.”.

The amendments were adopted.

Mr. Naughton of Clinton then moved that the bill be amended in section 1 (as printed), in lines 563 to 573, inclusive, by striking out the paragraph contained therein and inserting in place thereof the following paragraph:

“The minimum term of incarceration shall be no less than the mandatory minimum sentence provided in the statutes enumerated in this paragraph. The sentencing judge is required to impose a minimum and a maximum sentence, but the minimum sentence need not be two-thirds of the maximum.”.

The amendment was adopted.

The same member then moved that the bill be amended in section 2 (as printed) by inserting after line 550 the following paragraph:

“Where the judge does not depart below the mandatory minimum sentence the minimum sentence need not be two-thirds of the maximum.”.

The amendment was adopted.

Mr. Donnelly of Boston then moved that the bill be amended in section 7 (as printed) by adding at the end thereof the following 2 paragraphs:

“Any court which accepts a plea of guilty or an admission to sufficient facts, to a criminal offense, and the term of incarceration for that offense is subject to a period of post-incarceration supervision pursuant to section seventeen of Chapter 211G, shall inform the defendant who is offering the plea, prior to acceptance, that such plea may result in the defendant being subject to post-conviction supervision under the provisions of that section.

Failure to so inform the defendant that his plea may result in his being subject to post-conviction supervision under the provisions of that section shall not be grounds to vacate or invalidate the plea.”.

The amendment was adopted.

Mr. Rushing of Boston then moved that the bill be amended by adding at the end of section 1 the following sentence: “If an appeal or application is taken by the Commonwealth, the court, upon written motion of the defendant supported by affidavit, shall determine and approve the payment to the defendant of his or her costs of appeal together with reasonable attorney’s fees to be paid on the order of the court upon the entry of the appellate decision in favor of the defendant.”.

The amendment was adopted.

Mr. Marini of Hanson and other members of the House then moved that the bill be amended in section 1 (as printed), on page 52, in line 8, in column 2, by striking out the figure “4” and inserting in place thereof the figure “5”, in line 9, in column 2, by striking out the figure “5” and inserting in place thereof the figure “6”, in line 12, in column 2, by striking out the figure “4” and inserting in place thereof the figure “5”, in line 13, in column 2, by striking out the figure “5” and inserting in place thereof the figure “6”, in line 15, in column 2, by striking out the figure “5” and inserting in place thereof the figure “6”, in line 235, by striking out the word “five” and inserting in place thereof the word “six”, and in line 237, by striking out the word “four” and inserting in place thereof the word “five”.

The amendments were adopted.

Mr. Donnelly of Boston then moved that the bill be amended by striking out section 7 (as printed) and inserting in place thereof the following section:

“SECTION 16. Post-Incarceration Supervision. For all sentences to incarceration for a period of twelve months or more which are imposed in accordance with the sentencing guidelines as established in this chapter, there shall be imposed a period of post-incarceration supervision. The period of post-incarceration supervision shall be imposed as follows: a period of six months for a sentence with a maximum term greater than or equal to twelve months but less than thirty months; a period of twelve months for a sentence with a maximum greater than or equal to thirty months but less than sixty months. The total term or incarceration for the offense plus any additional commitment for a violation of a condition of post-incarceration supervision that does not otherwise constitute a new offense, shall not be greater than the maximum term fixed by statute for the governing offense. During the period of post-incarceration supervision, the prisoner shall be subject to the supervision of the Parole Board under such terms and conditions as established by the Board.

The post-incarceration supervision period shall be deemed completed if the prisoner completes the sentence to incarceration while on parole, if the prisoner is granted a certificate of termination of sentence pursuant to G.L. c 127, §130A, if the prisoner is subject upon release from custody to lifetime parole pursuant to section 133C of chapter 127, or if upon completion of the sentence the prisoner is immediately committed to a sentence of incarceration, to the custody of any other state or federal authority, or to the custody of immigration authorities. The post-incarceration supervision shall be stayed for any period the prisoner is in custody pursuant to any order of custody under Chapter 123A. The post-incarceration supervision period shall be deemed completed upon commitment pursuant to section 14 of chapter 123A. In all other circumstances, the period of post-incarceration supervision shall commence upon discharge from the sentence.

During the period of post-incarceration supervision, the prisoner shall be subject to the jurisdiction of the parole board in accordance with section 130 of chapter 127. The prisoner may be supervised in another jurisdiction in accordance with section 151A through 151L of chapter 127 and shall be considered on parole for the purposes of such supervision. By a majority vote of a panel of the parole board after a hearing and for good cause, the parole board may terminate

the period of post-incarceration supervision at any time before completion.

Any individual who violates a condition of post-incarceration supervision shall be subject to the provisions of section 149 of chapter 127. Upon a first violation, the prisoner may be incarcerated for a period no greater than two months on the maximum remaining period of post-incarceration supervision, whichever is less, if such violation does not otherwise constitute a criminal offense. Upon a second violation, the prisoner may be incarcerated for a period no greater than six months or the maximum remaining period of post-incarceration supervision, whichever is less, if such violation does not otherwise constitute a criminal offense. Upon a third or subsequent violation the prisoner may be incarcerated for a period no greater than twelve months or the maximum remaining period of post-incarceration supervision, whichever is less, if such violation does not otherwise constitute a criminal offense. If such violation otherwise constitutes a criminal offense, said period of incarceration shall be served on and after any sentence received for commission of the new offense. In the event that the prisoner has been convicted of more than one offense, post-incarceration supervision may be imposed if the maximum sentence on all offenses has not been served.

Notwithstanding Section 23 of Chapter 279, where the defendant is sentenced to the house of correction, the total term of incarceration for any offense plus any additional commitment for violation of a condition or conditions of post-incarceration supervision pursuant to section 17 of chapter 211G shall not exceed the longest term fixed by law for the punishment of the crime of which the prisoner has been convicted or if the defendant is serving a sentence after being convicted of only one offense, two and one half years, whichever is less.”.

The amendment was adopted.

After debate on the question on passing the bill, as amended, to be engrossed, the sense of the House was taken by yeas and nays, at the request of Mr. Tobin of Quincy; and on the roll call 126 members voted in the affirmative and 19 in the negative.

[See Yea and Nay No. 122 in Supplement.]

Therefore the bill, as amended, was passed to be engrossed.

The same member moved that this vote be reconsidered; and the motion to reconsider was negatived.

The bill (House, No. 4642, printed as amended) then was sent to the Senate for concurrence.

House bills

Further regulating the open meeting law (House, No. 1504); and

Relative to liquor liability insurance (House, No. 1787);

Severally were read a second time; and they were ordered to a third reading.

Order.

On motion of Mr. Finneran of Boston,—

Ordered, That when the House adjourns today, it adjourn to meet on Thursday next at eleven o'clock A.M.

Accordingly, without further consideration of the remaining matters in the Orders of the Day, at four minutes after six o'clock P.M., on motion of Mr. Tobin of Quincy (Mr. DiMasi of Boston being in the Chair), the House adjourned, to meet on Thursday next at eleven o'clock A.M., in an Informal Session.