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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



Tuesday, May 14, 2002.

Met at two minutes past two o'clock P.M.

Distinguished Guests.

There being no objection, during the consideration of the Orders of the Day, the Chair (Mr. Rosenberg) introduced, seated in the rear of the Chamber, Waltham City Councillor Robert Logan. He was the guest of Senator Fargo.

There being no objection, during the consideration of the Orders of the Day, the Chair (Mr. Rosenberg) introduced Miss Massachusetts, Abbie Lynn Rabine. Ms. Rabine then took the rostrum where she sang the National Anthem.

This past September, Ms. Rabine was selected First Runner-Up in the Miss America Pageant, which is the best finish for the Commonwealth in the history of the 81-year event. Ms. Rabine, a senior at Gordon College in Wenham where she is an education major, plans to pursue a Masters Degree in education upon her graduation. Ms. Rabine signed the guest book and withdrew from the Chamber. She was the guest of Senators Montigny and Tarr.

Committee Discharged.

Ms. Menard, for the committee on Rules, to whom was referred the Senate Order relative to authorizing the joint committee on Public Safety to make an investigation and study of certain current Senate documents relative to public safety issues (Senate, No. 2304), reported, on the residue, asking to be discharged from further consideration of the Senate petition (accompanied by bill, Senate, No. 2274) of Stephen M. Brewer, Michael J. Rodrigues, George N. Peterson, Jr., and other members of the General Court for

legislation to further define loaded shotgun and loaded rifle,— **and recommending that the same be recommitted to the committee on Public Safety.**

PAPERS FROM THE HOUSE.

Messages were referred, in concurrence, as follows:

A message from Her Honor the Lieutenant-Governor, Acting Governor, recommending legislation relative to providing for a study of the impact of local rent control regulation of manufactured housing communities (House, No. 5066);

To the committee on Housing and Urban Development.

A message from Her Honor the Lieutenant-Governor, Acting Governor (under the provisions of Section 8 of Article LXXXIX of the Amendments to the Constitution) recommending legislation relative to clarifying a special act affecting the town of Hopedale (House, No. 5067);

To the committee on Public Service.

A message from Her Honor the Lieutenant-Governor, Acting Governor, recommending legislation relative to the Massachusetts Bay Transportation Authority forward funding (House, No. 5068);

To the committee on Transportation.

Orders of the Day.

The Orders of the Day were considered, as follows:

Bills

Relative to promoting safety by making gas gate boxes easily accessible to gas company service employees and emergency public service personnel (Senate, No. 467);

Relative to betterment assessments for sewerage facilities in the town of Millbury (House, No. 1507); and

Establishing an open space real property acquisition fund in the city known as the town of Franklin (House, No. 4851);

Were severally read a second time and ordered to a third reading.

The Senate Bill relative to the retirement benefits of emergency medical technicians (Senate, No. 2348),— **was read a third time and passed to be engrossed.**

Sent to the House for concurrence.

The Senate Bill relative to municipal light plants' residential conservation service (Senate, No. 367),— was read a second time.

Pending the main question on ordering the bill to a third reading, on motion of Mr. Berry, the bill was recommitted to the committee on Government Regulations.

Bills

Relative to municipal light plants (Senate, No. 413);

Directing the Secretary of the Commonwealth to place a certain nonbinding question on the biennial state election ballot in the city of Holyoke in the current year (Senate, No. 2320, changed); and

Relative to the privacy of municipal employees (House, No. 853);

Were severally read a second time and ordered to a third reading.

The Senate Bill relative to the crime of engaging in legal or medical running (Senate, No. 2181),— was read a second time and was amended, on motion of Ms. Creem, by striking out section 1.

After remarks, the bill (Senate, No. 2181, amended) was then ordered to a third reading.

The Senate Bill protecting children from physical and sexual abuse (Senate, No. 2266),— was read a second time and was amended, on motion of Ms. Walsh, substituting a new draft entitled “An Act creating the crime of reckless endangerment to children” (Senate, No. 2340).

The bill (Senate, No. 2340) was then ordered to a third reading.

Bills

Relative to the assessment of local taxes (House, No. 376, amended); and

Relative to child passenger safety (House, No. 4199, amended);

Were severally read a second time and, after remarks, were ordered to a third reading.

The Senate Bill relative to emergency telecommunications (Senate, No. 412) (its title having been changed by the committee on Bills in the Third Reading),— was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Morrissey moved that the bill be amended by adding the following three sentences:— “The emergency 911 communications shall be monitored in a manner that prevents any broadcast of them to the general public. The secure location used for monitoring emergency 911 communications shall be restricted to trained fire department personnel when such communications are being monitored. No such modification or change in a municipality’s

telephone company equipment or enhanced 911 system shall cause any degradation of the state's 911 system.”.

This amendment was adopted.

The bill (Senate, No. 2349, printed as amended) was then passed to be engrossed.

Sent to the House for concurrence.

The Senate Bill relative to crimes against the elderly and disabled persons (Senate, No. 201) (its title having been changed by the committee on Bills in the Third Reading),— was read a third time.

Pending the question on passing the bill to be engrossed, Ms. Melconian moved that the bill be amended by striking out section 1 and inserting in place thereof the following section:—

“SECTION 1. Chapter 111 of the General Laws is hereby amended by striking out section 72K, as appearing in the 2000 Official Edition, and inserting in place thereof the following section:—

Section 72K. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

'Bodily injury', substantial impairment of the physical condition including, but not limited to, any burn, fracture of any bone, subdural hematoma, injury to any internal organ, or any injury which occurs as the result of repeated harm to any bodily function or organ, including human skin.

'Serious bodily injury', bodily injury which results in a permanent disfigurement, protracted loss or impairment of a bodily function, limb or organ, or substantial risk of death.

'Sexual assault', a violation or attempt to commit a violation of section 13F, section 13H, section 22 or section 24 of chapter 265 or section 3 of chapter 272.

(b) The attorney general may file a civil action against a person who commits abuse, mistreatment or neglect of a patient or resident or who misappropriates patient or resident property, or against a person who negligently permits or causes another to commit abuse, mistreatment or neglect of a patient or resident or who misappropriates patient or resident property. The civil penalty for such abuse, mistreatment, neglect or misappropriation shall not exceed: \$5,000 if no bodily injury results; \$10,000 if bodily injury results; \$20,000 if sexual assault or serious bodily injury results; and \$50,000 if death results. Section 60B of chapter 231 shall not apply to an action brought by the attorney general pursuant to this section. Nothing in this section shall preclude the filing of any action brought by the attorney general or a private party pursuant to chapter 93A or any action by the department pursuant to this chapter.”; and in section 2 (as printed), by striking out the definition of “Mistreatment” and inserting in place thereof the following definition:—

“ ‘Mistreatment’, the use of medications or treatments, isolation, or physical or chemical restraints which harm or are likely to harm the patient or resident.”

This amendment was adopted.

Mr. Rosenberg in the Chair (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair), after remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at twenty-seven minutes before three o’clock P.M., on motion of Ms. Melconian, as follows, to wit (yeas 39 — nays 0):

YEAS.

Antonioni, Robert A.	Montigny, Mark C.
Baddour, Steven A.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O’Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Hedlund, Robert L.	Sprague, Jo Ann
Jacques, Cheryl A.	Tarr, Bruce E.
Joyce, Brian A.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Steven A.
Lees, Brian P.	Travaglini, Robert E.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne — 39.
Menard, Joan M.	

NAYS — 0.

The yeas and nays having been completed at twenty-four minutes before three o’clock P.M., the bill (Senate, No. 2350, printed as amended) was passed to be engrossed.

Sent to the House for concurrence.

The House Bill relative to gun ranges (House, No. 313, changed) (its title having been changed by the committee on Bills in the Third Reading),— was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Glodis moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following text:—

“Section 7B of chapter 214 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after the second paragraph the following paragraph:—

The exemptions from liability and the immunities from prosecution provided in this section shall also extend to any owner who, in order to satisfy a requirement of law, regulation or by-law, relocates his range within the same parcel of land or a contiguous parcel of land, owned by him at the time that the commonwealth or its political subdivision commences enforcement of such a requirement or that the owner voluntarily complies with such a requirement. In order to maintain these exemptions from liability and immunities from prosecution, owners who relocate their ranges pursuant to the preceding sentence shall remain reasonably in compliance with the applicable noise control laws, ordinances or by-laws in existence at the time of the construction of the original range described in the first paragraph.”.

After remarks, this amendment was adopted.

The bill was then passed to be engrossed, in concurrence, with the amendment.

Sent to the House for concurrence in the amendment.

The Senate Bill creating a municipal police training committee (Senate, No. 1274, changed and amended),— was read a third time.

After remarks, the question on passing it to be engrossed was determined by a call of the yeas and nays, at seventeen minutes before three o’clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 39 — nays 0):

YEAS.

Antonioni, Robert A.	Montigny, Mark C.
Baddour, Steven A.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O’Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Hedlund, Robert L.	Sprague, Jo Ann
Jacques, Cheryl A.	Tarr, Bruce E.
Joyce, Brian A.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Steven A.
Lees, Brian P.	Travaglini, Robert E.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne — 39.
Menard, Joan M.	

NAYS — 0.

The yeas and nays having been completed at thirteen minutes before three o'clock P.M., the bill was passed to be engrossed.

Sent to the House for concurrence.

The Senate Bill relative to the retirement options of certain educational support personnel (Senate, No. 2344),— was read a third time.

Pending the main question on passing the bill to be engrossed, on motion of Mr. Joyce, the further consideration thereof was postponed until the next session.

The Senate Bill relative to limited liability companies (Senate, No. 2345),— was read a third time.

After remarks, the question on passing it to be engrossed was determined by a call of the yeas and nays, at nine minutes before three o'clock P.M., on motion of Mr. Magnani, as follows, to wit (yeas 39 — nays 0):

YEAS.

Antonioni, Robert A.	Montigny, Mark C.
Baddour, Steven A.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O'Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Hedlund, Robert L.	Sprague, Jo Ann
Jacques, Cheryl A.	Tarr, Bruce E.
Joyce, Brian A.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Steven A.
Lees, Brian P.	Travaglini, Robert E.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne — 39.
Menard, Joan M.	

NAYS — 0.

The yeas and nays having been completed at five minutes before three o'clock P.M., the bill was passed to be engrossed.

Sent to the House for concurrence.

The House Bill relative to liquor liability insurance (House, No. 1787, amended),— **was read a third time and passed to be engrossed, in concurrence, with the amendment previously adopted by the Senate.**

Sent to the House for concurrence in the amendment previously adopted by the Senate.

The House Bill relative to a certain employee of the Division of Industrial Accidents (House, No. 4418),— **was read a third time and, after remarks, was passed to be engrossed, in concurrence, with the amendment previously adopted by the Senate. Sent to the House for concurrence in the amendment previously adopted by the Senate.**

The recommitted Senate Bill regulating the use of paint ball guns (Senate, No. 1261),— was considered, the main question being on passing it to be engrossed.

After remarks, the Senate adopted the amendment, previously recommended by the committee on Public Safety substituting a new draft entitled “An Act further regulating the use of paint ball guns” (Senate, No. 2308).

The bill (Senate, No. 2308) was then passed to be engrossed.

Sent to the House for concurrence.

The Senate Bill relative to the issuance of firearm licenses to environmental police officers (Senate, No. 1222) ,— was considered, the main question being on passing it to be engrossed.

Ms. Jacques moved that the bill be amended by adding the following 3 sections:—

“SECTION 2. Section 129B of chapter 140 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out paragraph (12) and inserting in place thereof the following paragraph:—

(12)(a) Notwithstanding section 10 of chapter 269, any law enforcement officer who discovers a person to be in possession of a non-large capacity rifle or shotgun after such person’s firearm identification card has expired shall cite the violator pursuant to this paragraph if the violator is eligible for such non-criminal disposition. A violator shall not be eligible for such a disposition if: (i) the violator’s firearms identification card expired more than 1 year before the date of the violation; (ii) the violator is disqualified from renewal under this section; (iii) the violator’s firearm identification card has been revoked or suspended, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (iv) revocation or suspension of

such violator's firearm identification card is pending, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (v) an application for renewal of such violator's firearm identification card has been denied; or (vi) the violator has previously received a disposition pursuant to this paragraph. Any law enforcement officer who discovers a person to be in possession of a non-large capacity rifle or shotgun after such person's firearm identification card has expired, or has been revoked or suspended solely for failure to give notice of a change of address, shall confiscate any rifle or shotgun and the expired or suspended card then in possession and such officer shall forward such card to the licensing authority by whom it was issued as soon as practicable. Any confiscated weapon shall be returned to the owner upon the renewal or reinstatement of such expired or suspended card within 1 year of such confiscation or may be otherwise disposed of in accordance with section 129D. Pending the issuance of a renewed firearm identification card, a receipt for the fee paid, after 5 days following issuance, shall serve as a valid substitute and any rifle or shotgun so confiscated shall be returned, unless the applicant is disqualified. This paragraph shall not apply if such person has a valid license to carry firearms issued under section 131 or 131F.

(b) Any officer issuing a citation under this paragraph shall provide to the violator a written notice, in the form of a citation. The citation shall notify the violator that within 20 days of the date of the issuance of the citation the violator must either pay the assessment or contest responsibility for the violation by requesting a noncriminal hearing before a clerk of the district court having jurisdiction over the violation. Four copies of such citation shall be made and each shall contain: the name and address of the violator; the specific offense charged; the time and place of the violation; whether or not the violator is then eligible for a noncriminal disposition; and a warning that failure to pay the assessment or request and appear for a hearing may result in the issuance of a criminal complaint. Such citation shall be signed by the officer and signed by the violator whenever practical, in acknowledgment that such has been received. The officer shall deliver to the offender a copy of the citation at the time and place of violation, if possible. If it is not possible to deliver a copy of the citation at the time and place of the violation, the copy shall be mailed or delivered by the police officer, or by his commanding officer or the head of his department or by a person authorized by such commanding officer or department head to the violator's last known address, not later than 15 days after the violation. The mailed citation shall be deemed sufficient notice, and a certificate of the person so mailing the citation that it has been mailed in accordance with this paragraph shall be prima facie evidence thereof. At or before the completion of each tour of duty, or at the beginning of the first subsequent tour of duty, the police officer shall give to his commanding officer or department head the remaining copies of citations. The commanding officer or department head shall retain 1 copy, mail 1 copy to the Firearms Record Bureau, and shall, at a time not later than the next court day after delivery or mailing to the violator, deliver 1 copy to the clerk-magistrate of the district court having jurisdiction over the violation. The clerk-magistrate of each district court shall maintain a separate docket of such citations.

(c) A violator may appear before the magistrate of the district court and admit responsibility for the noncriminal violation charged, either personally or through a duly

authorized agent or by mailing to the clerk-magistrate, an assessment of \$500. Such payment may be made only by cash, postal note, money order or certified check. Payment of this assessment shall operate as a final disposition of the case. Such disposition shall not be deemed criminal, and the violator shall not be required to report to any probation officer. The assessment shall be entered in the probation records for the sole purpose of recording this disposition, which shall cause such person to be ineligible for a second disposition pursuant to this paragraph.

(d)(i) A violator may contest responsibility for the violation by making a signed request for a non-criminal hearing on the back of the citation, and mailing such citation to the clerk-magistrate at the address indicated on the citation within 20 days of the date of the issuance of the citation.

(ii) A violator who does not, within 20 days of the date of the citation, request a noncriminal hearing shall not thereafter be given such a hearing, unless the clerk-magistrate shall determine that the failure to make such a request timely was for good cause that was not within the control of the violator. The clerk-magistrate's determination of such issue shall be final.

(iii) The clerk-magistrate shall notify the police agency concerned and the violator of the date and time of the hearing before a magistrate of the court. Such notice shall also warn the violator that failure to appear for such hearing may result in the issuance of a criminal complaint.

(iv) If a magistrate other than a justice conducts the hearing, either the violator or the police agency concerned may appeal the decision of the magistrate to a justice, who shall hear the case de novo. There shall be no right of jury trial for such an appeal.

(v) In any such hearing before a magistrate or justice, compulsory process for witnesses may be had by either party in the same manner as in criminal cases. On a showing of need in advance of such hearing, the magistrate or justice may direct that the violator be permitted to inspect specific written documents or materials in the possession of the police officer or agency concerned that are essential to the violator's defense.

(vi) At the conclusion of the hearing, the magistrate or justice shall announce a finding of responsible or not responsible. The magistrate or justice shall enter a finding of responsible if it was shown by a preponderance of the credible evidence that the violator committed the violation alleged; otherwise the magistrate or justice shall enter a finding of not responsible. No other disposition shall be permitted, and such matters shall not be continued without a finding, dismissed or filed. If the violator is found responsible after a noncriminal hearing, the magistrate or justice shall require the violator to pay to the court a \$500 assessment. Payment of the assessment shall operate as a final disposition of the matter. The violator shall not be required to report to any probation officer, and the assessment shall be entered in the probation records for the sole purpose of recording this disposition, which shall cause such person to be ineligible for a second such disposition pursuant to this paragraph.

(e) The violator shall pay to the court the assessment within 20 days of the date the violator is personally notified or is mailed notice of the decision of the magistrate or justice, unless for good cause the magistrate or justice allows the violator a longer time to pay the assessment.

The violator's obligation to pay the assessment shall automatically be stayed during the pendency of any timely appeal to the appellate division or any subsequent appeal to an appellate court. The violator shall be required to pay such imposed assessment to the court within 20 days of the date the appellate division or the appellate court renders a decision that is adverse to the violator and that has not been further appealed.

(f) Questions of law arising during noncriminal proceedings before a justice pursuant to this paragraph shall be appealed to the appellate division. Such appeals shall be governed by the method of appeal established for the appeal of civil motor vehicle infractions. Claims of appeal shall be accompanied by an entry fee in an amount established by the chief justice for administration and management of the trial court. Proceedings under this paragraph shall not be reviewable by a civil action in the nature of certiorari.

(g) If a violator:

(i) fails either to pay the full amount of the assessment to the court or to request a noncriminal hearing within 20 days of the date of the citation plus such grace period as the clerk-magistrate shall allow; or

(ii) fails to appear for a noncriminal hearing before a magistrate or a justice at the time required after having been given notice of such hearing either personally or by first class mail directed to such violator's mail address as reported to the clerk-magistrate; or

(iii) is ineligible for a noncriminal disposition pursuant to subparagraph (a),

the clerk shall notify the officer concerned, who shall forthwith make a criminal complaint alleging a violation of subsection (a) of section 10 of chapter 269. The citation shall serve as the application for criminal complaint, supplemented if necessary with such additional information as shall be required by the administrative justice of the district court department. If a criminal complaint is issued, the procedure established for criminal cases shall then be followed. If any person fails to appear in accordance with a summons issued upon such complaint, the clerk shall send to such person by certified mail, return receipt requested, a notice that the complaint is pending and that if such person fails to appear within 21 days from the sending of such notice, the court shall issue a warrant for his arrest.

(h) Nothing in this paragraph shall limit the availability to the court of other enforcement mechanisms in addition to the issuance of additional written notices, summonses or warrants or proceedings for civil or criminal contempt. Civil contempt actions shall be prosecuted by the district attorney or police prosecutor and heard by a justice pursuant to rules of court. Any officer authorized to serve criminal process may serve any summons or warrant issued pursuant to this paragraph.

If at any time the court finds that the interests of justice so require, it may cause a warrant to be issued as provided in section 32 of chapter 218.

(i) All fines, penalties and forfeitures in actions under this paragraph shall be paid to the commonwealth.

(j) The secretary of public safety shall cause noncriminal citation forms for use in implementing this paragraph to be issued to state and municipal police departments.

SECTION 3. Section 131 of said chapter 140, as so appearing, is hereby amended by striking out paragraph (m) and inserting in place thereof the following paragraph:—

(m)(1) Notwithstanding section 10 of chapter 269, any law enforcement officer who discovers a person to be in possession of a firearm, rifle or shotgun after such person's license issued under this section has expired shall cite the violator pursuant to this paragraph if the violator is eligible for such noncriminal disposition. A violator shall not be eligible for such noncriminal disposition if: (i) the violator's license expired more than 1 year before the date of the violation; (ii) the violator is disqualified from renewal under this section; (iii) the violator's license has been revoked or suspended, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (iv) revocation or suspension of such violator's license is pending, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (v) an application for renewal of such violator's license has been denied; or (vi) the violator has previously received a disposition pursuant to this paragraph. Any law enforcement officer who discovers a person to be in possession of a firearm, rifle or shotgun after such person's license has expired or has been revoked or suspended solely for failure to give notice of a change of address, shall confiscate such firearm, rifle or shotgun and the expired or suspended license then in possession and such officer shall forward such license to the licensing authority by whom it was issued as soon as practicable. Any confiscated weapon shall be returned to the owner upon the renewal or reinstatement of such expired or suspended license within 1 year of such confiscation or may be otherwise disposed of in accordance with section 129D. The provisions of this paragraph shall not apply if such person has a valid license to carry firearms issued under section 131F.

(2) Any officer issuing a citation under this paragraph shall provide to the violator a written notice, in the form of a citation. The citation shall notify the violator that within 20 days of the date of the issuance of the citation the violator must either pay the assessment or contest responsibility for the violation by requesting a noncriminal hearing before a clerk of the district court having jurisdiction over the violation. Four copies of such citation shall be made and each shall contain: the name and address of the violator; the specific offense charged; the time and place of the violation; whether or not the violator is then eligible for a noncriminal disposition; and a warning that failure to pay the assessment or request and appear for a hearing may result in the issuance of a criminal complaint. Such citation shall be signed by the officer and signed by the violator whenever practical, in acknowledgment that such has been received. The officer shall deliver to the offender a copy of the citation at the time and place of violation, if possible.

If it is not possible to deliver a copy of the citation at the time and place of the violation, the copy shall be mailed or delivered by the police officer, or by his commanding officer or the head of his department or by a person authorized by such commanding officer of department head to the violator's last known address, not later than 15 days after the violation. The mailed citation shall be deemed sufficient notice, and a certificate of the person so mailing the citation that it has been mailed in accordance with this paragraph shall be prima facie evidence thereof. At or before the completion of each tour of duty, or at the beginning of the first subsequent tour of duty, the police officer shall give to his commanding officer or department head the remaining copies of citations. The commanding officer or department head shall retain 1 copy, mail 1 copy to the Firearms Record Bureau, and shall, at a time not later than the next court day after delivery or mailing to the violator, deliver 1 copy to the clerk-magistrate of the court having jurisdiction over the violation. The clerk-magistrate of each district court shall maintain a separate docket of such citations.

(3) A violator may appear before a clerk of the district court and admit responsibility for the non-criminal violation charged, either personally or through a duly authorized agent or by mailing to the clerk-magistrate, an assessment of \$500. Such payment may be made only by cash, postal note, money order or certified check. Payment of this assessment shall operate as a final disposition of the case. Such disposition shall not be deemed criminal, and the violator shall not be required to report to any probation officer. The assessment shall be entered in the probation records for the sole purpose of recording this disposition, which shall cause such person to be ineligible for a second disposition pursuant to this paragraph.

(4)(i) A violator may contest responsibility for the violation by making a signed request for a noncriminal hearing on the back of the citation, and mailing such citation to the clerk-magistrate at the address indicated on the citation within 20 days of the date of the issuance of the citation.

(ii) A violator who does not, within 20 days of the date of the citation, request a noncriminal hearing shall not thereafter be given such a hearing, unless the clerk-magistrate shall determine that the failure to make such a request timely was for good cause that was not within the control of the violator. The clerk-magistrate's determination of such issue shall be final.

(iii) The clerk-magistrate shall notify the police agency concerned and the violator of the date and time of the hearing before a magistrate of the court. Such notice shall also warn the violator that failure to appear for such hearing may result in the issuance of a criminal complaint.

(iv) If a magistrate other than a justice conducts the hearing, either the violator or the police agency concerned may appeal the decision of the magistrate to a justice, who shall hear the case de novo. There shall be no right of jury trial for such an appeal.

(v) In any such hearing before a magistrate or justice, compulsory process for witnesses may be had by either party in the same manner as in criminal cases. On a showing of

need in advance of such hearing, the magistrate or justice may direct that the violator be permitted to inspect specific written documents or materials in the possession of the police officer or agency concerned that are essential to the violator's defense.

(vi) At the conclusion of the hearing, the magistrate or justice shall announce a finding of responsible or not responsible. The magistrate or justice shall enter a finding of responsible if it was shown by a preponderance of the credible evidence that the violator committed the violation alleged; otherwise the magistrate or justice shall enter a finding of not responsible. No other disposition shall be permitted, and such matters shall not be continued without a finding, dismissed or filed. If the violator is found responsible after a noncriminal hearing, the magistrate or justice shall require the violator to pay to the court a \$500 assessment. Payment of the assessment shall operate as a final disposition of the matter. The violator shall not be required to report to any probation officer, and the assessment shall be entered in the probation records for the sole purpose of recording this disposition, which shall cause such person to be ineligible for a second such disposition pursuant to this paragraph.

(5) The violator shall pay to the court the assessment within 20 days of the date the violator is personally notified or is mailed notice of the decision of the magistrate or justice, unless for good cause the magistrate or justice allows the violator a longer time to pay the assessment.

The violator's obligation to pay the assessment shall automatically be stayed during the pendency of any timely appeal to the appellate division or any subsequent appeal to an appellate court. The violator shall be required to pay such imposed assessment to the court within 20 days of the date the appellate division or the appellate court renders a decision that is adverse to the violator and that has not been further appealed.

(6) Questions of law arising during noncriminal proceedings before a justice pursuant to this paragraph shall be appealed to the appellate division. Such appeals shall be governed by the method of appeal established for the appeal of civil motor vehicle infractions. Claims of appeal shall be accompanied by an entry fee in an amount established by the chief justice for administration and management of the trial court. Proceedings under this paragraph shall not be reviewable by a civil action in the nature of certiorari.

(7) If a violator:

(i) fails either to pay the full amount of the assessment to the court or to request a noncriminal hearing within 20 days of the date of the citation plus such grace period as the clerk-magistrate shall allow; or

(ii) fails to appear for a noncriminal hearing before a magistrate or a justice at the time required after having been given notice of such hearing either personally or by first class mail directed to such violator's mail address as reported to the clerk-magistrate; or

(iii) is ineligible for a noncriminal disposition pursuant to subparagraph (1),

the clerk shall notify the officer concerned, who shall forthwith make a criminal complaint alleging a violation of subsection (a) of section 10 of chapter 269. The citation shall serve as the application for criminal complaint, supplemented if necessary with such additional information as shall be required by the administrative justice of the district court department. If a criminal complaint is issued, the procedure established for criminal cases shall then be followed. If any person fails to appear in accordance with a summons issued upon such complaint, the clerk shall send to such person by certified mail, return receipt requested, a notice that the complaint is pending and that if such person fails to appear within 21 days from the sending of such notice, the court shall issue a warrant for his arrest.

(8) Nothing in this paragraph shall limit the availability to the court of other enforcement mechanisms in addition to the issuance of additional written notices, summonses or warrants or proceedings for civil or criminal contempt. Civil contempt actions shall be prosecuted by the district attorney or police prosecutor and heard by a justice pursuant to rules of court. Any officer authorized to serve criminal process may serve any summons or warrant issued pursuant to this paragraph.

If at any time the court finds that the interests of justice so require, it may cause a warrant to be issued as provided in section 32 of chapter 218.

(9) All fines, penalties and forfeitures in actions under this paragraph shall be paid to the commonwealth.

(10) The secretary of public safety shall cause noncriminal citation forms for use in implementing this paragraph to be issued to state and municipal police departments.

SECTION 4. Subsection (a) of section 10 of chapter 269 of the General Laws, as so appearing, is hereby amended by inserting after the first paragraph the following paragraph:—

If a person is alleged to be in possession of a firearm, rifle or shotgun in violation of this subsection and presents to the court proof that he had a license or firearms identification card, whichever would be required to legally possess the weapon or weapons in his possession, that was expired at the time of the violation and if such person is eligible for a noncriminal disposition pursuant to this subsection, the court shall, with such person's consent, impose an assessment of \$500. Payment of such fine shall operate as a final disposition of the complaint. Such assessment shall not be deemed criminal and the recipient of such assessment shall not be required to report to any probation officer. The assessment shall be entered in the probation records for the sole purpose of recording this disposition, which shall cause such person to be ineligible for a second disposition pursuant to this subsection. No one shall be eligible for disposition pursuant to this subsection if: (i) the defendant's firearms identification card or license expired more than 1 year before the date of the violation; (ii) the defendant is disqualified from renewal of either a firearm identification card pursuant to section 129B of chapter 140 or a license pursuant to section 131 of said chapter 140, whichever would be required to legally possess the weapon or weapons that had been in the defendant's possession; (iii) the

defendant's firearm identification card or license has been revoked or suspended, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (iv) revocation or suspension of such defendant's firearms identification card or license is pending, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (v) an application for renewal of such defendant's firearms identification card or license has been denied; or (vi) the defendant has previously received a disposition pursuant to this paragraph."

After debate, this amendment was adopted.

The bill (Senate, No. 2351, printed as amended) was then passed to be engrossed.

Sent to the House for concurrence.

The Senate Bill further regulating the registration of pharmacists (Senate, No. 2268),— was considered, the main question being on passing it to be engrossed.

The pending amendment, previously moved by Ms. Jacques Mr. Moore and Ms. Walsh, substituting a new draft with the same title (Senate, No. 2336),— was considered.

Mr. Lees moved that the pending amendment be amended by substituting a new draft with the same title (Senate, No. 2352).

At the request of Senators Lees and Knapik, the bill was laid over until the next session, under the provisions of Senate Rule 31, with the amendments pending.

Report of a Committee.

Ms. Resor, for the committee on Steering and Policy, reported that the following matter be placed in the Orders of the Day for the next session:

The House Bill designating a certain square in the town of Dracut as the Captain John Ogonowski Memorial Square (House, No. 4749).

There being no objection, the rules were suspended, on motion of Ms. Tucker, and the bill was read a second time.

After remarks, the question on ordering the bill to a third reading was determined by a call of the yeas and nays, at nineteen minutes past three o'clock P.M., on motion of Ms. Tucker, as follows, to wit (yeas 38 — nays 0):

YEAS.

Antonioni, Robert A. Menard, Joan M.
Baddour, Steven A. Montigny, Mark C.
Berry, Frederick E. Moore, Richard T.
Brewer, Stephen M. Morrissey, Michael W.
Chandler, Harriette L. Murray, Therese
Creedon, Robert S., Jr. Nuciforo, Andrea F., Jr.

Creem, Cynthia Stone	O’Leary, Robert A.
Fargo, Susan C.	Pacheco, Marc R.
Glodis, Guy W.	Panagiotakos, Steven C.
Hart, John A., Jr.	Resor, Pamela
Havern, Robert A.	Rosenberg, Stanley C.
Hedlund, Robert L.	Sprague, Jo Ann
Jacques, Cheryl A.	Tarr, Bruce E.
Joyce, Brian A.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Steven A.
Lees, Brian P.	Travaglini, Robert E.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne — 38.

NAYS — 0.

ABSENT OR NOT VOTING.

Shannon, Charles E. — 1.

The yeas and nays having been completed at twenty-five minutes past three o’clock P.M., the bill was ordered to a third reading.

The bill was then read a third time and passed to be engrossed, in concurrence, its title having been changed by the committee on Bills in the Third Reading to read as follows: “An Act designating a certain square in the town of Dracut as the Captain John Ogonowski Memorial Square and a certain trail in the town of Cheshire as the Sergeant Daniel H. Petithory Memorial Trail.”

PAPERS FROM THE HOUSE.

Engrossed Bills — Land Takings for Conservation, Etc.

An engrossed Bill authorizing the Division of Capital Asset Management and Maintenance to convey certain land in the town of West Boylston (see House, No. 4494, amended) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at twenty-six minutes past three o’clock P.M., as follows, to wit (yeas 38 — nays 0):

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Berry, Frederick E.	Moore, Richard T.

Brewer, Stephen M. Morrissey, Michael W.
Chandler, Harriette L. Murray, Therese
Creedon, Robert S., Jr. Nuciforo, Andrea F., Jr.
Creem, Cynthia Stone O'Leary, Robert A.
Fargo, Susan C. Pacheco, Marc R.
Glodis, Guy W. Panagiotakos, Steven C.
Hart, John A., Jr. Resor, Pamela
Havern, Robert A. Rosenberg, Stanley C.
Hedlund, Robert L. Sprague, Jo Ann
Jacques, Cheryl A. Tarr, Bruce E.
Joyce, Brian A. Tisei, Richard R.
Knapik, Michael R. Tolman, Steven A.
Lees, Brian P. Travaglini, Robert E.
Magnani, David P. Tucker, Susan C.
McGee, Thomas M. Walsh, Marian
Melconian, Linda J. Wilkerson, Dianne —
38.

NAYS — 0.

ABSENT OR NOT VOTING.

Shannon, Charles E. — 1.

The yeas and nays having been completed at twenty-nine minutes past three o'clock P.M., the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the Acting President and laid before the Acting Governor for her approbation.

An engrossed Bill authorizing the town of Amherst to acquire easements for the construction of sewerage pumping stations and related facilities (see House, No. 4462) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at a half past three o'clock P.M., as follows, to wit (yeas 38 — nays 0):

YEAS.

Antonioni, Robert A. Menard, Joan M.
Baddour, Steven A. Montigny, Mark C.
Berry, Frederick E. Moore, Richard T.
Brewer, Stephen M. Morrissey, Michael W.
Chandler, Harriette L. Murray, Therese
Creedon, Robert S., Jr. Nuciforo, Andrea F., Jr.
Creem, Cynthia Stone O'Leary, Robert A.

Fargo, Susan C.	Pacheco, Marc R.
Glodis, Guy W.	Panagiotakos, Steven C.
Hart, John A., Jr.	Resor, Pamela
Havern, Robert A.	Rosenberg, Stanley C.
Hedlund, Robert L.	Sprague, Jo Ann
Jacques, Cheryl A.	Tarr, Bruce E.
Joyce, Brian A.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Steven A.
Lees, Brian P.	Travaglini, Robert E.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne — 38.

NAYS — 0.

ABSENT OR NOT VOTING.

Shannon, Charles E. — 1.

The yeas and nays having been completed at twenty-eight minutes before four o'clock P.M., the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the Acting President and laid before the Acting Governor for her approbation.

Resolutions.

The following resolutions (having been filed with the Clerk) were considered forthwith and adopted, as follows:—

Resolutions (filed by Mr. Pacheco) “congratulating Jessica Elizabeth Merry Roberts on attaining her Girl Scout Gold Award.”

Report of Committees.

By Ms. Menard, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Steven A. Tolman, Timothy J. Toomey, Jr., Paul C. Demakis, Robert E. Travaglini, Alice K. Wolf, Jarrett T. Barrios and others (with the approval of the mayor and city council) for legislation to allow citizens of Cambridge who are seventeen years of age or older to vote in local elections. **Senate Rule 36 was suspended, on motion of Mr. Tolman, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Election Laws.**

Sent to the House for concurrence.

PAPERS FROM THE HOUSE.

A petition (accompanied by bill, House, No. 5073) of Robert Correia and Joan M. Menard for legislation to authorize the Department of Social Services to establish a sick leave bank for Natalia Arrance,— **was referred, in concurrence, under suspension of Joint Rule 12, to the committee on Public Service.**

Engrossed Bill.

An engrossed Bill relative to zoning in the town of Kingston (see House, No. 4847) (which originated in the House), **having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and was signed by the Acting President and laid before the Acting Governor for her approbation.**

A Bill relative to certain property tax assessments in the town of Windsor (printed in House, No. 4955,— being a message from Her Honor the Lieutenant-Governor, Acting Governor),— was read.

There being no objection, the rules were suspended, on motion of Mr. Nuciforo, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

Order Adopted.

On motion of Mr. Knapik,—

Ordered, That when the Senate adjourns today, it adjourn to meet again on Thursday next at eleven o'clock A.M., and that the Clerk be directed to dispense with the printing of a calendar.

On motion of Mr. Lees, at twenty-four minutes before four o'clock P.M., the Senate adjourned to meet on the following Thursday at eleven o'clock A.M.
