

HB8852 (PA639) 1973

Hg: 0

Sen. Consent p. 4102

Hse. 6738-6789

53p

S-98

CONNECTICUT  
GEN.ASSEMBLY  
SENATE

PROCEEDINGS  
1973  
SPEC. SESS.  
JUNE-JULY

VOL.16  
PART 9  
4004-4434

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C.G.C.

transmittal to the House.

THE CHAIR:

Hearing no objection, so ordered.

SENATOR ROME:

Continuing, Calendar No. 1217, Substitute for House Bill No. 8852, an act amending the Penal Code amended by House Amendment Schedule A and C on Page 11, Calendar No. 1221, an act concerning House Bill No. 9399, an act concerning termination of work on violation of agreement to pay prevailing rate of wages in listing contractors violating prevailing wage rate provisions. Is there an amendment? Is there an amendment? 1221, House Bill 9399.

THE CLERK:

Mr. President, the Clerk does not have an amendment.

SENATOR ROME:

Fine.

THE CHAIR:

There's no amendment.

SENATOR ROME:

Fine. 1223, House Joint Resolution No. 224, a resolution memorializing the Insurance and Real Estate Committee of this General Assembly--of this Assembly, excuse me. Page 12, Calendar No. 1225, House Joint Resolution No. 225, a resolution providing for study by the Joint Standing Committee on Transportation in the environment of pilots and pilotage. 1232, excuse me, Calendar 1232, Substitute for House Bill No. 9280, an act

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HOUSE

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DEPUTY SPEAKER:

The machine will be opened. The machine will be closed  
and the Clerk will take a tally.

THE CLERK:

Total Number Voting.....	132
Necessary for Passage.....	67
Those voting Yea.....	132
Those voting Nay.....	0
Absent and Not Voting.....	19

DEPUTY SPEAKER:

The Joint Committee's Favorable Report is accepted and  
the bill is PASSED as amended by House Amendments A and B.

THE CLERK:

Returning to your Calendar, Page 4. Page 4 of your Cal-  
endar, Calendar No. 800, File 854, Substitute House Bill 8852,  
An Act Amending the Penal Code. Favorable Report of the Com-  
mittee on Judiciary.

DEPUTY SPEAKER:

The plain country lawyer from the 147th.

REP. BINGHAM(147th):

Mr. Speaker, I move acceptance and passage of the Joint

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Committee's Favorable Report.

DEPUTY SPEAKER:

Question's on acceptance and passage. Will you remark, please.

REP. BINGHAM:

Yes, Mr. Speaker, the Clerk has three amendments.

DEPUTY SPEAKER:

Will the Clerk please read Amendment A.

THE CLERK:

House Amendment Schedule A to House Bill 8852. Does the gentleman have any particular order of LCO number that he wants these amendments taken up.

REP. BINGHAM:

Any way the Clerk wishes to take them up.

THE CLERK:

All right. This will be House Amendment A. It's LCO Number 8816.

REP. BINGHAM:

Mr. Speaker, may I be permitted to summarize.

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DEPUTY SPEAKER:

The gentleman--if there is no objection, the gentleman from the 147th will summarize Amendment A.

REP. BINGHAM:

Yes, Mr. Speaker. This refers to Section 12 of the Technical Amendments to the Penal Code and concerns itself with escape from a correctional institution. The original bill refers to escape from a work detail. The Commissioner of Corrections and the State's Attorney from Hartford County requested that we amend that to read escape from a work detail or school. This is a valuable addition. I urge its passage.

DEPUTY SPEAKER:

Question's on the adoption of Amendment A. Are there any further remarks. If not, all those in favor of the adoption of Amendment A signify by saying "aye". Opposed. Amendment A is ADOPTED. The gentleman from the 147th.

REP. BINGHAM:

Amendment B, Mr. Speaker.

THE CLERK:

The Clerk is in possession of House Amendment Schedule B,

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which is LCO Number 8789.

DEPUTY SPEAKER:

The Chair will rule the Amendment A technical. The gentleman from the 147th.

REP. BINGHAM:

Mr. Speaker, this amendment concerns itself with shoplifting and the people in the House may recall that there was an editorial in the Waterbury Republican whereby when people are arrested for shoplifting very often there will be a nolle or there will be a disposition other than a conviction. Many merchants face the danger of being sued on various counts in their efforts to catch shoplifters. There is a New York State Law which protects the merchants from suits in cases where a reasonable investigation of potential shoplifting is conducted by the firm. As we know, shoplifting is a major crime. And, as I understand it, there was a store that filed bankruptcy because of the amount of shoplifting in the store. With that history in mind, the amendment provides that it shall be a defense for any action for false arrest that the person was reasonably detained, the employees had reasonable grounds to believe

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that the person had shoplifted and they had reasonable grounds to believe that the person concealed in his or her possession goods from the store and that the person was that there was a reasonable time to detain the person. And that person either made or refused to make a statement. Mr. Speaker, this protects the shopowners from people who are suspected of shoplifting and have been detained for reasonable investigation. It protects the shopowner from being later sued in the event that the case is nolleed or dismissed. I urge its passage.

DEPUTY SPEAKER:

Gentleman from the 70th.

REP. AVCOLLIE(70th):

Mr. Speaker, I have no doubt that this amendment protects the store owner. And that's about the only one that this amendment protects. I don't know if those of you who have not been involved in this type of situation can appreciate the fact that this amendment to the Penal Code really subjects every consumer that goes into the store to an unreasonable search and unreasonable delay and unreasonable false imprisonment so to

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speak. Now the best proof of whether or not the store owner is reasonable in detaining an individual is when he finds the goods on him. And, if in fact, he finds goods on the person and that person later gets a nolle for any one of a number of reasons, that store owner has absolutely no fear on the suit of false imprisonment. But if he detains someone that has no goods, that has not, in fact, attempted to shoplift and has, in fact, been innocent, then that store owner ought to be sued. Unless we expect to live in a Fascist State, I don't think we can give this kind of protection to a store owner on a false imprisonment situation. And that's just what this does. The amendment is fraught with the use of the word reasonable. Mr. Bingham knows and every lawyer in this House knows that that's very difficult to define in this situation. And I can tell you that I've had situations, as a matter of fact, two weeks ago my associate in my law office was in the store trying to get a propane gas tank filled. He brought his own tank in to see if he could get a filler. It was down around Saybrook. And he was detained and almost arrested because he was being accused of walking out with a propane tank which he had brought

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in the store by himself. Now maybe in that situation it was reasonable because he had something in his hand. But I've had situations where the individual had absolutely nothing. The store owner or the security force just thought that he had something and he could get detained for a half hour or an hour or more and embarrassed. I've had women in stores that have been in a pregnant condition that have been stopped for absolutely no reason. The store owners in this State have a very bad problem. Some of the retail merchants are losing more through shoplifting than they are getting in profits. There is no question about it. The result of that situation has been that they're panicing and they're grabbing everyone. Now the place to stop the shoplifter is in the Court, in the Judiciary. The place to stop the shoplifter is in the Court with the Judges and the Prosecutors that Mr. Bingham's Committee reports out to this floor. If they're not doing their job we should hear about it when they're nominated. If they're all receiving nollies, it's no wonder people continue to shoplift. But I don't think the rest of us citizens of the State of Connecticut that are not, in fact, shoplifting have to be

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jeopardized by this kind of a carte blanche. They're giving them a blank check and telling them they can all be policemen and have powers and, in fact, immunity over and above what a policeman has. I think this is a very, very bad amendment. You should look at it very carefully and vote against it.

DEPUTY SPEAKER:

The gentleman from the 147th.

REP. BINGHAM(147th):

Mr. Speaker, I urge passage of the amendment. And I disagree with Representative Avcollie. I, too, have represented many people in a shoplifting situation. Most store owners do not wish to testify in Court. If they did, they probably would spend all of their time in Court. What they want is to be to get the goods back or to be paid for the goods that were stolen without having to go to Court. So they will recommend to the prosecution that they either nolle or dismiss the case so long as they are made whole. But they have this fear. That if they do recommend this, that they will be sued. This amendment merely protects them in a reasonable way and I urge its passage.

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DEPUTY SPEAKER:

Are there any further remarks. The gentleman from the 70th.

REP. AVCOLLIE:

Mr. Speaker, when the vote is taken on this amendment, may it be by roll.

DEPUTY SPEAKER:

The question's on a roll call vote. All those in favor of a roll call vote signify by saying "aye". In the opinion of the Chair, the necessary 20% has answered in the affirmative. The Clerk will please announce a roll call vote outside the Chamber. Will all members please take their seats. Will the aisles be cleared. And all staff members return to the well of the House. The gentleman from the 70th,

REP. AVCOLLIE:

Speaking for the second time, Mr. Speaker. Now that everyone or most of the people are back in the House, this amendment to the Penal Code offered by the Honorable Mr. Bingham in effect has the intention of protecting the store owner in the situation where he has detained one of his customers or an individual in the store because, as the amendment says, he has reason to be-

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lieve as a reasonable man that that the individual in the store has been guilty of shoplifting. The situation we have as Mr. Bingham has described it that on many occasions people who are apprehended for shoplifting, and in some cases actually are found with the goods on them, do go to Court and get nolles and dismissals. Many situations, of course, nolles and dismissals on shoplifting because the individual might be under psychiatric care. We have obviously individuals in that situation that are kleptomaniacs. But in many other cases it's simply because they had good representation or because someone in the Courts not doing their job. Be that as it may, the store owner does have a problem because he's losing a lot of money in shoplifting. But this amendment goes much, much too far. I had a situation where the woman was in the lines at a supermarket. She was seven and a half months pregnant. She was waiting to check out. She had had absolutely nothing to do with shoplifting. In front of probably three dozen people in the local market, her friends, her neighbors, she was apprehended, brought into the back room in that condition, kept there for an hour and a half, questioned, interrogated,

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arrested, subsequently found to have absolutely nothing to do with any shoplifting. She had nothing on her person. She had nothing concealed. Now that person under this bill would have no recourse. And I ask you, if you were in this situation, if your wife were in this situation, or your husband, would you think a store owner should have this right. Now store owners are doing this now because they're panicked at the fact that they're losing profits and I don't blame them. But with this bill they would have practically absolute authority to do what they please. If they felt they saw one person removing something and they weren't sure who it was they could grab the whole store. It goes too far. I sympathize with the store owner. I know that they're losing profits. But I think that the solution should be they should number one have better security people. They hire people off the street with absolutely no experience, put a uniform on them and call them a security officer. They don't spend the money to train them. This is one of the problems. And the Courts is another one of the problems. And yet the lawyers that go in with the clients are part of the problem. There's no doubt about it.

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But I don't think you solve a problem like this by expsoing every person in the State of Connecticut to a false arrest. I don't think you solve the problem by, in fact, deputizing every store owner and every store owner's employee to do as he wishes in the store with the citizens of the State of Connecticut with impunity and say after I'm sorry, I made a mistake. You haven't the right to sue me for false imprisonment because of a law the Legislature passed. I would implore you. You're dealing now with the reputation and the rights of every citizen of this State. And this amendment is much much too far reaching. If adopted, would be the worst thing that's ever happened to the Penal Code. I certainly urge your rejection of this amendment.

DEPUTY SPEAKER:

The gentleman from the 147th.

REP. BINGHAM:

Mr. Speaker. Mr. Speaker, that innocent person---

REP. AVCOLLIE:

Mr. Speaker, this is the third time.

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REP. BINGHAM:

And Mr. Avcollie spoke for the third time.

REP. AVCOLLIE:

Mr. Speaker, point of order.

DEPUTY SPEAKER:

The gentleman from the 147th. Is there any objection to the gentleman from the 147th speaking for the third time.

REP. AVCOLLIE:

None whatsoever.

DEPUTY SPEAKER:

If there are no objections, the gentleman from the 147th may continue.

REP. BINGHAM:

Through you, Mr. Speaker, then Representative Avcollie, thank you. That innocent person that Mr. Avcollie speaks about has nothing to fear on this amendment. I have here an editorial in the Waterbury Republican which says that speedy action must be taken by the General Assembly to ease the plight of merchants--

DEPUTY SPEAKER:

Let's hear the editorial from the Waterbury paper.

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REP. BINGHAM:

Beset by shoplifters. The problem was set forth graphically to the members of the Judiciary Committee at a public hearing in Waterbury by Donald Leibskin representing the Connecticut Retail Merchants Association. Leibskin cited the problem of one chain store which had to file bankruptcy because of pilferage equalling ten per cent of their sales. Merchants face the danger of being sued on various counts in their efforts to catch shoplifting. Legislative action has been delayed too long. This is a legislative action, Mr. Speaker. Innocent people have nothing to fear over this amendment. I know of stores that lose three and four hundred dollars a day because of shoplifting. Now there's something that must be done about this and this amendment is a way to solve the problem. Innocent people have nothing to fear. I urge the amendment.

DEPUTY SPEAKER:

The gentleman from the 104th.

REP. AJELLO:

Mr. Speaker, what the distinguished Chairman has just said

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is off with their heads. Innocent people have nothing to fear, but we'll get the guilty and we'll decide who they are before. And in that way we can do what we want. Mr. Speaker, any of us who have handled this kind of case for people who were involved in these things know what the dangers of this kind of an amendment are. You can use physical force against these people. Would you believe, ladies and gentlemen, that people, women, young women, older women, have been literally dragged physically into the office of a store, the name of which I can furnish to you privately if you like, physically dragged and physically restrained. They have been told they must sign a statement that they had committed shoplifting or they would not be allowed to return to their waiting children who were out in the store standing by an empty cart. This is the kind that they are talking about. It's a simplistic approach. We're going to solve all the problems with this amendment will allow. Store employees decide in advance that somebody is about to commit a crime. I always get leery of that. How do you decide when somebody is about to commit a crime. Do they look funny to you. Because that's the next step. It's just as

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logical. I don't care what the newspaper has to say. I've disagreed with them before, I guess. However, be that as it may. All of us have seen these tragic incidents, Mr. Speaker, where somebody who didn't look quite right to some store employee who's untrained in the art of detecting crime, being physically dragged, as I said, detained, roughed up, and I've got the files to prove it. And if you'd like to come to my office I'll show them to you. These things are happening. If we legalize this, God knows what will happen to some of these people when some of these cuckoos working in some of these stores get hold of them. They'll be beaten, they'll be forced to confess to things they haven't done. You say that won't happen. It has happened. And I've got a file that I can prove it. Mr. Speaker, this kind of thing is dangerous. It's a bad idea. It's a bad amendment and a bad precedent. I object to the amendment.

DEPUTY SPEAKER:

The gentleman from the 49th.

REP. MAZZOLA(49th):

A question to Mr. Avcollie. How---

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DEPUTY SPEAKER:

Please state your question.

REP. MAZZOLA:

Through you, sir, how is the store owner supposed to determine whether someone in his store is walking out with goods if he cannot detain that person until he's checked by a policeman.

DEPUTY SPEAKER:

The gentleman from the 70th care to respond.

REP. AVCOLLIE:

Yes. We're not in this situation we're not concerned about a man or woman walking out with goods. If a man or woman is seen walking out with goods and he's apprehended then he's obviously shoplifting. We're concerned about the situation where in many of these stores because they've had popular items removed they practically in some instances take random picks. They don't see the man with anything or the woman with anything. They suspect they might have it. Maybe he has an unusual bulge under his coat. I don't know. But I've had--that might be one of the more reasonable means of

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determining if he's shoplifting. What Representative Ajello has indicated is positively correct. The situation where the innocent people are being stopped. The measure is if he's arrested apprehended and, in fact, he does have goods on his person then that store owner has nothing to fear whether there's a dismissal or a nolle later or not. It has absolutely nothing to do with any subsequent civil determination if someone sues the party for false arrest. I don't think any lawyer can stand here and say, as Representative Bingham has, unfortunately, that an individual because he's nolle or dismissed can later turn around and sue for false arrest and succeed. That's not so. If the record of the store and the record of the Court state that he was, in fact, found with goods on his person that were not paid for or he was attempting to conceal goods, then in a civil suit there certainly would not be any case for false arrest.

DEPUTY SPEAKER:

The gentleman from the 111th. Excuse me, the gentleman from the 49th still has the floor.

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REP. MAZZOLA:

Let me try the question again, Mr. Avcollie, through you, sir. This store owner has no way to tell whether a person has something concealed--some of his merchandise--unless this person can be detained. If this amendment isn't adopted this person could walk out with anything under his coat and can't be detained to be checked.

REP. AVCOLLIE:

We're talking about a hypothetical person that you refer to as this person, through you, Mr. Speaker. This can apply to every individual in the store. And if you extend that theory and you extend it to this bill then that means that every individual in the store on the way out is susceptible to search. And that just doesn't have to be our system. If he has a security force that's working and has been trained then you can watch it. I've had experience where some of the stores have glass platforms above the ceiling. They're doing it right. When they apprehend someone, they know and they don't just watch the customers, they watch the employees with this type of concealment. If they want to put some of their profits

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into apprehending them properly and in training the security men they'll know who has the material. If they have a reasonable cause to think that someone picked something up they can stop them, but under this amendment it just it doesn't just close the door. It slams it shut. And the individual has no protection whatsoever.

DEPUTY SPEAKER:

The gentleman from the 111th. Excuse me. The gentleman from the 49th still has the floor. Has he answered your question.

REP. MAZZOLA:

Yes, he has. Thank you.

DEPUTY SPEAKER:

The gentleman from the 111th has the floor.

REP. CAMP(111th):

Mr. Speaker, thank you. But I have the same problem hearing that I had a few moments ago. Could we ask for order in the chamber.

DEPUTY SPEAKER:

The gentleman from the 111th has difficulty hearing.

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Please give him your full attention.

REP. CAMP:

Thank you very kindly, Mr. Speaker. While I sympathize with the arguments made by Mr. Avcollie and Mr. Ajello, it doesn't seem to me that they've read the amendment. The amendment doesn't give any license to hold people. It doesn't give any license to drag people off in chains. All it says is what I think the common law is now, and that it will apply a standard of reasonableness. You'll notice that the person has to act under reasonable manner for a reasonable time, and he must have reasonable grounds to believe this person should be stopped. It would then be up to the trier of facts, the jury or the judge, to determine on the basis of the standard of reasonableness. And I'm sure if the Court were shocked or upset about the manner in which a person was detained or the time that he was detained, it's for the Court to determine. It's precisely the way it should be. After all, people don't walk out of shops with canoes most of the time. They walk out with things that are concealed. And it's quite reasonable to stop a person if you think that he has some grounds. You're still

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liable for suit. You're still liable for suit under this bill. I concur with what Mr. Avcollie said if the amendment were not so carefully drawn. But I think that his overzealousness for civil rights and his concern are just--it's as if he hadn't read the amendment.

DEPUTY SPEAKER:

The gentleman from the 89th.

REP. DICE(89th):

Mr. Speaker, I would agree with Mr. Camp. I think the gentlemen who are making the most noise about this have really not read the amendment. Because the amendment is very clear and says and that such police officer or owner or employer or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit larceny on such premises with such merchandise, then proceeds to define premises of such merchandise. Then it proceeds to define and give one indication of what reasonable grounds is. Reasonable grounds shall include but not be limited to knowledge that the person has concealed possession of unpurchased merchandise on of a retail merchandise establishment. It seems to me that this

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amendment is carefully drawn. It does exactly what we intend it to do. And it may be great to talk about these things. But it does seem to me the amendment itself is very clear in restricts it exactly where we want to restrict it, to reasonable grounds. Thank you.

DEPUTY SPEAKER:

Gentleman from the 1st.

REP. KENNELLY(1st):

Mr. Speaker, quote but not be limited to end of quote. If that's specific language, then God help the State of Connecticut. This amendment in effect, Mr. Speaker, ladies and gentlemen, let's be clear about what---this amendment, in effect, sanctions illegal search and seizure. This amendment sanctions preventative detention. This amendment is a trespass on the civil liberties of any individual in any store in the State of Connecticut. This amendment is repressive. I cannot believe the Judiciary Committee of this House of Representatives, this State Legislature, would seriously advance such a proposition. I vigorously oppose this amendment.

DEPUTY SPEAKER:

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The gentleman from the 90th.

REP. VARIS(90th):

It seems to me that the opponents of this amendment has far overblown the case. I think they lose sight of the fact that merchants want to keep their customers. There'll be no wholesale detentions or arrests. It would ruin their business. Not only would they not return to the store for this type of action that the opponents speak about, their neighbors wouldn't, their friends wouldn't, their relatives wouldn't. I think they've far overblown the case.

DEPUTY SPEAKER:

The gentleman from the 70th. Is there any objection to the gentleman from the 70th speaking for the third time. If not, the gentleman from the 70th.

REP. AVCOLLIE:

Mr. Speaker, when they argue on this floor on the merits, but I for one resent anyone on the other side saying that either I or Representative Ajello haven't read this amendment. And I think both Mr. Dice and Mr. Camp know better. They know better because on many of the bills that we've read you on

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the other side have had to pass water and change. So I think that we've established anything in this session, we've established the fact that we can take your bills and read them and that we know how to read them and that we've found some very poor draftsmanship to be kind. Now I respect the fact that both Mr. Camp and Mr. Dice have said that we haven't read the amendment are eminent lawyers. At a conference committee recently Representative Dice advised me that he practices primarily corporate law. I believe my research of Mr. Camp indicates he is involved primarily in trusts and some corporate work. I don't think either one of them have a criminal practice. Now both Representative Ajello and I and others who have spoken on this matter are familiar with this kind of a case. With this kind of a situation. This law, this amendment, is not drafted well. It does have the language but not limited to. It opens Pandora's box. And in that box is the consumers of the State of Connecticut. People that you've been trying to protect through consumer legislation. You're now exposing to a type of law enforcement by not fighting police officers, but by store owners that's going to that certainly going to startle

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the public in the State of Connecticut when it begins to feel its effects. The store owners in this State are panicked. They have got problems, and I can tell you that this law is simply going to open the door. If, as Representative Camp says, this law only codifies the Common Law then we wouldn't need the statute. He knows that. So does Representative Dice. One further comment. Representative Bingham, who I have a great deal of respect for, has done a wonderful job in the Judiciary, has during this session quoted many experts in many things. Most of them have been good experts. And I respect him for using them. But when he stands on the floor of this House and quotes the Waterbury Republican as an expert he's going too far. The editorial staff of the Waterbury Republican is expert only in setting type as far as I've been able to see. I recently had an experience, as you well know, where they tried to castigate a public official of some thirty-two years. And the result of their castigation was that he won the election. Now I don't think the Waterbury Republican are experts. As a matter of fact, on several occasions they've

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condemned every member of this House for the actions of a few because they are never specific. They are general. The whole Legislature's incompetent by the Waterbury Republican standards. I don't think we're all incompetent. We--half of us may be, but not all.

REP. CAMP:

Mr. Speaker, may I ask a point of order. The point that I had made before was just that we're talking about a specific amendment. Now we're talking about the Waterbury Republican. We're talking about the qualifications of the General Assembly and a lot of other nonsense. The point here is whether or not this amendment is a good amendment or a bad amendment. And if we get to the amendment's language I think we'll get through the debate.

DEPUTY SPEAKER:

The gentleman from the 70th.

REP. AVCOLLIE:

Yes, Mr. Speaker.

DEPUTY SPEAKER:

I would caution the gentleman to limit his remarks

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since the reporter from the Waterbury Republican is not here. I ask him please confine his remarks to the amendment and his experience in this field.

REP. AVCOLLIE:

I'm remarking, Mr. Speaker, on an expert which was quoted by Mr. Bingham. But we've said enough about the Waterbury Republican. The amendment is a bad amendment. Mr. Camp, you know it. You all know it and I would certainly hope that shoplifting is not a partisan subject. And we can defeat this amendment and get on to the bill.

DEPUTY SPEAKER:

The gentleman from the 124th, Representative Sullivan.

REP. SULLIVAN(124th):

Mr. Speaker, I think it's immaterial whether or not Mr. Dice what type of law Mr. Avcollie says they practice. They are attorneys admitted to practice on this State. As Mr. Avcollie undoubtedly has been involved in many of these cases, so have I. And what Mr. Dice and Mr. Camp have said is absolutely correct. That this is a codification of the Common

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Law as it exists today. And in situations such as this, the store owner does, in fact, act at his peril---

DEPUTY SPEAKER:

Please give your attention to the gentleman from the 124th.

REP. SULLIVAN:

And if someone is accused of shoplifting then the store owner in a law suit is entitled to raise as his defense the reasonableness of the store owner's conduct. And it then becomes a question of fact for the jury or the judge, if it is a Court case, to determine. And it is as simple as that. I think that this amendment is a good codification of the Common Law and it is an attempt to attack a very difficult problem in the State. Many times what we have in shoplifting cases are rings that go in and pass the items to three or four persons before they leave a particular store. Now the question is whether or not it's reasonable when trying to track down a ring such as that to try and detain some of them. But this does not in any way infringe on anybody's civil rights and it does, in fact, attempt to solve what is a very, very difficult problem for the retail merchants of this State. I support

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the amendment.

DEPUTY SPEAKER:

The gentleman from the 92nd.

REP. WEBBER(92nd):

Very briefly, those of us who are non-lawyers are thrilled to see that we have the lawyers fighting amongst themselves. We hope that they continue.

DEPUTY SPEAKER:

The gentleman from the 116th.

REP. ANTONETTI(116th):

Mr. Speaker, I rise in opposition to this amendment.

DEPUTY SPEAKER:

The Chair has difficulty hearing the gentleman from the 116th.

REP. ANTONETTI:

Mr. Speaker, I rise in opposition to this amendment. I feel it's a bad amendment on a good bill. The amendment can hurt the innocent, the average man who cannot spend his time in Court. Laws like this would advocate that we would probably need pre-paid legal insurance, which we were concerned with

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yesterday. We cannot as Mr. Camp advocates go to the judge and the Court to ask for a decision. The average man does not have the time to spend in Court. And definitely by this particular amendment it will hurt the average man because generally there will be some misjudgement on the part of various store security. Thank you, Mr. Speaker.

DEPUTY SPEAKER:

The gentleman from the 124th speaking for the second time.

REP. SULLIVAN(124th):

Mr. Speaker, this amendment only applies when someone goes to Court. It says it shall be a defense to any action for false arrest. So the only time this amendment would apply is when someone went to Court and claimed he had been illegally detained.

DEPUTY SPEAKER:

The gentleman from the 97th.

REP. CANALI(97th):

Mr. Speaker, a question through you to the Chairman of the Judiciary.

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Please state your question. The gentleman from the 147th is about to be asked a question.

REP. CANALI:

Mr. Bingham, for those of us who are not attorneys, could you define the term shoplifting as it is shown in the Statutes.

DEPUTY SPEAKER:

The gentleman from the 147th.

REP. BINGHAM:

It's defined in the Penal Code. The term shoplifting is defined in the Penal Code.

REP. CANALI:

My concern is at what point is a person considered to be shoplifting.

DEPUTY SPEAKER:

Gentleman from the 147th.

REP. BINGHAM:

It's a good question. It's defined in the Penal Code and I don't think there's any question about the definition of shoplifting.

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REP. CANALI:

My concern---I have been advised previously a person is usually detained after they have left the premises. Is that correct.

REP. BINGHAM:

That's incorrect.

REP. CANALI:

Through you, Mr. Speaker, then I think it would help those of us who are not attorneys to have the definition of shoplifting as it's constituted in the Penal Code.

DEPUTY SPEAKER:

I believe the gentleman from the 97th has posed a question to the gentleman from the 147th who is now--he now indicates he has the answer. Gentleman from the 147th.

REP. BINGHAM:

Mr. Speaker, shoplifting under larceny 53A119. A person is guilty of shoplifting who intentionally takes possession of any goods, wares, or merchandise offered or exposed for sale by any store or other mercantile establishment with the intention

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of converting the same to his own use without paying the purchase price, therefore, a person intentionally concealing unpurchased goods or merchandise of any store or other mercantile establishment either on the premises or outside the premises of such store shall be prima facie presumed to have concealed such article with the intention of converting the same to his own use without paying the purchase price. That's the definition of shoplifting.

DEPUTY SPEAKER:

The gentleman from the 97th. Gentleman from the 111th.

REP. CAMP:

Mr. Speaker, thank you. I just want to make it perfectly clear that I in no way intend to impinge anything on Mr. Avcollie's ability nor his dedication to his service. His job has been one in many instances outstanding and, much as I disagree with him very frequently, I most often listen very carefully to what he has to say because what he has to say is often extremely intelligent and extremely to the point. My point in this regard was that the remarks he was making, and also of the

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Majory Leader, seemed to me did not relate to the particular amendment. And that's the end of it. The way this amendment was written. But both of these gentlemen are certainly among the ablest people. They're here and they're people that we listen to. We want to listen to because they add something to the debate.

DEPUTY SPEAKER:

The gentleman from the 104th.

REP. AJELLO:

Mr. Speaker, Bernie wanted me to say thank you to Mr. Camp which I'll do. Mr. Speaker, I had read the amendment the last time that I spoke. I got a copy of it before I spoke because I wanted to see what it said. And I think the question asked about the definition of shoplifting is significant to this extent. This amendment doesn't speak of whether or not a person is guilty of shoplifting. We're not concerned with the apprehension and punishment or the assistance of apprehending and punishing those who are actually guilty. We're concerned about several aspects of the dangers that are in-

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volved in persons determining on their own that someone else is about to commit a crime or has reasonable grounds as the statute or the amendment says---

DEPUTY SPEAKER:

Please give your attention to the gentleman from the 104th.

REP. AJELLO:

Thank you, sir. Has reasonable grounds to believe that the person was attempting to commit. Mr. Speaker, I said earlier that I have seen instances where people, particularly in the large stores which have the largest problems, were physically dragged to an office, were threatened, were forced to sign both confessions and in other instances waivers of prosecution or suit in order to obtain their liberty to go on their way. These included people who were guilty. Unfortunately, they included people who were not guilty, Mr. Speaker. That is the danger with allowing people to act to restrain another's liberty on mere suspicion. Now, what this amendment does is to cut across a vast variety of traditional actions which are the means under our system of law of getting back at somebody who does you harm.

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DEPUTY SPEAKER:

Please give your attention to the speaker.

REP. AJELLO:

This removes the right of the individual who might be falsely accused or detained or assaulted of having any protection or any reaction to the person who's done it. It takes away false arrest, false imprisonment, unlawful detention, defamation, assault. This means if you adopt this amendment that someone who is assaulted and perhaps injured erroneously by an employee of a mercantile establishment has no redress under our system. Mr. Speaker, our basic liberties, our system of redress of grievances. If I punch you in the mouth, you have a right to do certain things back to me. One of which is being to punch, the other is to have me arrested or to sue me. When we begin to remove these from people's rights we're doing some very dangerous things. And that's what this amendment attempts to do and that's why we object to it. Nobody here has suggested that it's not proper to apprehend and punish those who are stealing in these stores. I'm quite aware of that this happens and as I say, some of the experiences that

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I have had have been with people who were guilty as well as people who were innocent. Obviously more of them were guilty than were not, as a matter of fact. However, the danger is in allowing people to assault, re<sup>s</sup>train, threaten, and do all of these other things without any restraint whatsoever. And that's what this amendment does. It is bad, and those of us who are concerned about it know that this is what will happen if it's allowed to go ahead unchecked. It's a very bad idea in the name of a very good cause perhaps.

DEPUTY SPEAKER:

Gentleman from the 89th.

REP. DICE:

I would again have to duly defer and say to the Minority speaker that I do not see in this bill anywhere where it says anybody who is about to commit a crime referred to in this amendment whatsoever. And in turn remind him that what we're doing here is balancing the equity between that we do in all particular matters that involve the law, balance the equities between the parties involved, indicating that in this amendment

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again there has to be reasonable grounds to believe that the person so detained was committing or attempting to commit larceny. It seems to me that's all we're talking about. And in turn what we're saying is that instead of having a rash of suits for false arrests, false detention, which a store now can have if they detain anyone and then have the person come back. And, frankly, most stores do not do this. And they're very careful before they have anyone detained because of the cost and the expense of the problems of having the suit back do not warrant one piece of merchandise going out the store. And, as a result of the law the way it presently stands, we are having such things as reported here where stores are going out of business because of shoplifting. As a matter of fact, I've had the experience on both sides of the fence, both representing the store owners and having advised them and in turn representing people who have been arrested for shoplifting or who have been detained. And I also think it's a shame the way some of the stores and some of the people have been detained and I do not, however, think that this

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amendment in any way affects that because those people who are reasonably detained still bring the law suit and can still get their redress. All this amendment does is indicate that a rash of suits against the store because they reasonably detained somebody to find out--not to find out--reasonably detained him indicating that they do have grounds to believe they're shoplifting, they will not be sued, they will not have a rash of suits against them. It seems to me this amendment is reasonable and is balancing the equities which are now out of balance as a result of the many shoplifting that's going on. Thank you, Mr. Speaker.

DEPUTY SPEAKER:

The gentleman from the 147th would like to ask permission for the fourth time.

REP. BINGHAM:

Yes, Mr. Speaker.

DEPUTY SPEAKER:

Is there any objection. If not, please proceed.

REP. BINGHAM:

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Through you, Mr. Speaker, a question to the Minority Leader.

DEPUTY SPEAKER:

Please state your question if you can find the Minority Leader. The Minority Leader's here. Please state your question.

REP. BINGHAM:

Through you, Mr. Speaker, does the Minority believe that it is possible to draft an amendment to the Penal Code which will satisfy his objections to this amendment and protect the shop owner.

DEPUTY SPEAKER:

The gentleman from the 104th care to respond.

REP. AJELLO:

Well, Mr. Speaker, I would say that the first thing that ought to be done is to take out the fact that it's a defense to any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, invasion of civil rights. That would eliminate the problem of the person who is falsely or wrongly detained or accused of not

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having any redress. The other problem that I find with it, and if it's an attempt to reach a common ground, is the question of reasonable grounds to believe that the person was attempting to commit. That's what I referred to earlier. It seems to me allows somebody--now this isn't going to happen in every case. But it only needs to happen in one to make this statute a vehicle for injustice, it seems to me, to allow anybody to make a judgement that someone is attempting to commit a crime. Because you can't decide under that kind of language when the attempt begins. If he's just kind of standing there eyeing it, in some instances somebody's going to grab this fellow and take him into the office. This is the way they do it. They are so jittery in some of these big stores that they have overreacted and a number of people have been taken into custody under these circumstances. It's that that I'm interested in preventing. So I think those changes would certainly make a reasonable compromise and I would have no objection to it if it said that.

DEPUTY SPEAKER:

Gentleman from the 147th.

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REP. BINGHAM:

I take it the answer is yes.

REP. AJELLO:

Yes. It's very early in the morning for me to be talking at all, sir.

REP. BINGHAM:

And if I had thought more I would have said less. Through you, Mr. Speaker, will the Majority Leader and Mr. Avcollie join with me in attempting to draft an amendment which will protect civil rights and protect the merchants.

DEPUTY SPEAKER:

The gentleman from the 104th or the 70th care to respond.

REP. AJELLO:

Absolutely. I don't know whether Representative Stevens wants to join, but I assume that Mr. Bingham meant brother Avcollie and I. He says yes and so do I, of course.

REP. BINGHAM:

I withdraw the amendment.

DEPUTY SPEAKER:

The amendment's withdrawn. The roll call vote for the same

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is withdrawn. I hope. The gentleman from the 70th agrees and we'll withdraw his motion for a roll call vote.

THE CLERK:

The Clerk is in possession of House Amendment Schedule C offered by Representative Stolberg of the 93rd.

DEPUTY SPEAKER:

The gentleman from the 147th.

REP. BINGHAM:

Mr. Speaker, as I did yesterday to the Minority, Mr. Stolberg furnished me with an amendment and I noticed that Mr. Stolberg is not in the Chamber. We discussed this amendment, and I stated that I would not oppose him in this amendment, and I consider it I consider honor bound to support it and I, therefore, move the amendment.

DEPUTY SPEAKER:

Will the Clerk please care to read the amendment and then we'll move the adoption.

REP. BINGHAM:

May I be permitted to summarize.

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DEPUTY SPEAKER:

If there's no objection, the gentleman from the 147th will summarize Amendment C.

REP. BINGHAM:

The amendment provides that any person who is guilty of illegal possession, sale, or distribution of electronic surveillance equipment for use in violation of the wire tap statutes shall be guilty of a class B felony. I urge passage of the amendment.

DEPUTY SPEAKER:

Are there any further remarks on the amendment. If not, all those--the gentleman from the 11th.

REP. WILLARD(11th):

Mr. Speaker, a question to Mr. Bingham, please.

DEPUTY SPEAKER:

Please state your question.

REP. WILLARD:

I saw a copy--I don't have a copy of the amendment. Is that the same amendment that Representative Stolberg---

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REP. BINGHAM:

Representative Stolberg and Representative Dooley and I don't know whether you did. And I had a caucus on it. We discussed it. And I agreed to support the amendment.

REP. WILLARD:

I'm concerned, Mr. Speaker.

DEPUTY SPEAKER:

The gentleman from the 11th.

REP. WILLARD:

Not having seen the amendment, and I could stand corrected from Mr. Bingham, but my first impression of the amendment was that it made a crime out of possession of certain items that were defined under the statute as electronic surveillance. In checking the statute, I thought that there was a very definite possibility that the standard type telephone intercepters that some people have and by statute by advising people. And I wonder if that was cleared up. That's all Mr. Bingham.

REP. BINGHAM:

Yes, Representative Willard. I asked the same question

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and it's possession for use in violation of the wire tap laws.  
And I think it's proper.

DEPUTY SPEAKER:

Any further remarks. Question's on the adoption of House Amendment C. All those in favor of adoption of House Amendment C signify by saying "aye". Opposed. House Amendment C is adopted. The gentleman from the 147th.

REP. BINGHAM:

House Amendment C ruled technical, Mr. Speaker.

DEPUTY SPEAKER:

I will rule the same technical.

REP. BINGHAM:

Now, Mr. Speaker, I urge passage of the bill. The bill is an attempt to correct some vague language in the Penal Code. The first sub-division refers to the use of a deadly weapon. State's attorneys have had difficulty in proving that a weapon is loaded, especially in the case of an armed robbery or in a burglary. When a person uses a loaded or an unloaded gun. They wish to change the definition of a deadly weapon to loaded

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or unloaded. Secondly, Mr. Speaker, on the question of sentencing, very often a judge, and this is in Section three and four, a judge will have difficulty in a minimum sentence. The judge may wish to sentence a one to three and really if he has two or more crimes, wish to put a high ceiling for probation and parole purposes, but the probation department has found difficulty in interpreting this. Very often a judge will say one to three on a first count, two to five on a second, and that's interpreted as meaning a three on the floor. So what we are doing here is permitting the judge to sentence singly on the minimum count and sentence multipally on the maximum count. In Section five, Mr. Speaker, we add the crim of negligent homicide with a motor vehicle. In Section six, I'm sorry, Five b, Mr. Speaker, we add a correction to the section on arson which includes the burning of your own building. In Section six, we have changed the penalty for larceny from larceny in the first degree to from a Class B to a Class C to a Class B felony. We have corrected Section 53a123, larceny in the second degree to reduce the amount the value of the

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property taken. We have attacked the question of bribery. And, essentially, it increases the penalties for the crime of bribery of a juror, interference with a juror, bribes received by a juror. The Corrections Department has consulted us on the problem of escape. We've amended the statute to include that any inmate who fails to return from furlough shall be guilty of the crime of escape. With the present posture of the Corrections Department, many more people are on furlough, on work details, and in school. And the Corrections Department feels that it's necessary to have this protection if you're going to trust a prisoner to go to school, to go on furlough. We need this in the Penal Code. Section sixteen adds the definition dangerous instrument. There have been riots in prisons and the State's attorneys and the Corrections Department urge that we add to the definition introduced into prison any firearm, weapon or dangerous instrument. The crime of theft of a motor vehicle has been added. The crime of assault on a police officer has been added, as the previous Penal Code did not exactly define it. And the crime of conversion of a motor vehicle

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has been redefined and penalized as a Class C penalty under 53a122. These pretty generally are technical amendments to the Penal Code and I urge their passage.

DEPUTY SPEAKER:

Are there any further remarks. The lady from the 16th.

REP. CONNOLLY(16th):

A question, Mr. Speaker, through you.

DEPUTY SPEAKER:

Please state your question.

REP. CONNOLLY:

Representative Bingham, is it my impression that you will delay the discussion on shoplifting for the moment.

REP. BINGHAM:

Well, we may do it--through you, Mr. Speaker,

DEPUTY SPEAKER:

The gentleman from the 147th.

REP. BINGHAM:

To Representative Connolly, we could do it one of three ways. We could we may add it to the final bill which is tech-

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nical corrections. We may ask for emergency certification or ask the Senate to amend the bill. There are many ways that we could add this. I intend to press the defense for the shoplifters that shoplift.

REP. CONNOLLY:

Thank you, because I had a bill previously on this and I think it more properly belongs here and I hope you will press it. Thank you.

DEPUTY SPEAKER:

The gentleman from the 147th. Will all members then please take your seats. The aisles be cleared. All staff members please return to the well of the House. The Clerk will announce a roll call vote outside the Chamber. The machine will be opened. The machine will be close and the Clerk will please take a tally. The Clerk will announce the tally.

THE CLERK:

Total Number Voting.....	138
Necessary for Passage.....	70
Those voting Yea.....	137
Those voting Nay.....	1
Absent and Not Voting.....	13

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DEPUTY SPEAKER:

The Joint Committee's Favorable Report is accepted and the bill is passed as amended by House Amendment A and House Amendment C. Gentleman from the 63rd.

REP. GROPP(63rd):

Mr. Speaker, I'd like to move for reconsideration of a bill that was placed and passed on the Consent Calendar this morning. And I was on the prevailing side.

THE SPEAKER:

Will the gentleman please call the Calendar number so that the--

REP. GROPP(63rd):

Mr. Speaker, the bill is on Page 4, Calendar No. 804, House Bill 9221, File 862, An Act Concerning the Licensing of Locksmiths.

THE SPEAKER:

The gentleman was on the prevailing side?

REP. GROPP(63rd):

Yes, I was, Mr. Speaker.