

COMMITTEE ON LAND AND PERSONAL RIGHTS

REPORT NO. 1: ARTICLE I, PERSONAL RIGHTS

The Committee met on Wednesday, June 21, 1995, Monday, June 26, 1995, and Wednesday, July 5, 1995 to consider proposed amendments to Article I: Personal Rights. The Committee considered proposals 11, 37, 51, 53, 155, 221, 222, 321, 332, 333, 397, 400, and 401. In addition the Committee heard testimony from Cheryl Gill, former Commonwealth prosecutor who is currently assigned to revise the Commonwealth Criminal Code, and considered an opinion from the Attorney General and legislative materials.

Article I contains 12 sections. The Committee recommends amendments with respect to 4 of the 12 sections. Each of the proposed amendments is described below.

Section 7: Quartering soldiers

The Committee recommends that the term "soldiers" be updated to refer to armed forces so that it will cover every kind of government armed force, even if not specifically called "soldiers." The Governor has the responsibility to execute Commonwealth laws and, in time of war or civil emergency, the Legislature may authorized armed police, militia, or other temporary forces to be used to maintain order or to protect the Commonwealth. The expanded language would update this provision to cover all these contingencies.

The right to refuse occupancy is confined to the owner of the property. Tenants or other occupants are not covered by this section.

Section 9: Clean and healthful environment

The 1976 constitution provided that: "Each person has the right to a clean and healthful environment." No limitations or qualifications encumbered this right.

The 1985 amendments permitted the Legislature to pass legislation accepting nuclear waste or dumping of other radioactive materials within the Commonwealth or its waters. There is potentially a large amount of money that will be paid to any jurisdiction that will permit the dumping of these wastes from sources around the world. The Committee believes that such funds should not be accepted by the Commonwealth without a constitutional amendment.

The Committee believes that the 1985 amendments were ill-advised and recommends that they be deleted. In their place, to make clear the determination of the people not to become a dumping ground for nuclear wastes, the Committee recommends a prohibition on the Legislature from taking any action to permit such dumping.

Federal law prohibits the dumping of any nuclear waste in any state (or the Commonwealth) without the consent of the state. The states have all expressed a strong interest in not becoming dumping grounds for nuclear wastes without their consent and the Committee believes it is in the interest of the Commonwealth to be sure this vital question is put before the people if there is any proposal to permit nuclear waste dumping here.

The right to a clean and healthful public environment is a protection against enactment of legislation by the Legislature. It does not create a private right of action.

Section 11: Victims of crime

The Committee recommends that Section 11 be deleted. The 1985 amendments added Section 11 which provides that restitution to the crime victim shall be a condition of probation and parole in criminal cases except upon a showing of compelling interest. At the time that Section 11 was added Article I, the Legislature had already acted to provide the same protection (6 CMC § 4109).

At the present time, the prosecutor's office routinely requests restitution for all out-of-pocket losses by victims, and the court generally accepts the prosecutor's recommendation in whole or part. Victims who sustain other damages, such as pain and suffering, have available a civil action in which they can seek money damages for these losses. Because these claims usually require extensive proof, the Legislature has made the judgment that they should be left for individual lawsuits rather than being included in the statutory coverage. The Committee has no reason to differ with that judgment.

As circumstances change in the future, the Legislature is in the best position to deal with this general subject.

For example, the Legislature is currently considering a bill to establish a victim's compensation fund that could be supported by revenues from fees and fines. Under this plan, if the person who committed the crime could not pay, the victim would be compensated by the Commonwealth for bodily harm in certain kinds of cases. The compensation would be capped at \$10,000.

In addition, the Committee considered the inherent power of the Commonwealth courts to order restitution in cases that merit this action. The courts can tailor restitution to fit the circumstances of a particular case. This flexibility is important to the fairness of the outcome to both victims and persons convicted of crimes.

This is a matter for the Legislature and the courts. There is no reason to think that they will not act properly in this area, and there are no constitutional principles to be declared.

Section 12: Abortion

Section 12 has been declared by the Commonwealth Attorney General to be unconstitutional and, on that basis, the Committee recommends that it be deleted. It cannot be enforced, and it will be a hinderance to the Legislature in exercising the full range of its legislative power to prohibit abortion in an effective fashion.

Abortion is strongly disfavored and disapproved by all of the members of the Committee. A resolution has been prepared for transmission to the Legislature expressing this view and including a unanimous recommendation that comprehensive and detailed legislation be enacted promptly.

In response to the Attorney General's opinion, the Legislature has begun considering legislation prohibiting abortion. The Legislature can accomplish this objective by statute in way that will be enforceable under the U.S. Constitution. The Committee commends the Legislature for its direct response to the determination that the current constitutional provision is unconstitutional, and supports the Legislature in its work on this subject.

Legal counsel advised the Committee that the only effective way to prohibit abortion is by comprehensive and detailed laws passed by the Legislature. The Committee favors a strong prohibition on abortion, and therefore recommends to the Convention that the current ineffective constitutional provision be deleted, and that a resolution be sent to the Legislature providing the Convention's strong support for their current work, already underway, to remedy the situation.

The constitutional language reflecting the Committee's decisions is attached. The Committee recommends the language to the Convention.

Respectfully submitted,

Delegate Jose R. Lifoifoi
Chair

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Vice Chair

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ARTICLE I: PERSONAL RIGHTS

Section 7: Quartering Armed Forces

No member of any armed force in time of peace may be quartered in any house without the consent of the owner, nor in time of war except as provided by law.

Section 9: Clean and Healthful Environment

Each person has the right to a clean and healthful public environment. The legislature shall enact no law infringing this right or permitting the storage or dumping of any nuclear or radioactive material in the lands or waters of the Commonwealth.

Section 11: Deleted

Section 12: Deleted