ALBANY, NEW YORK

January 30, 1996

3:01 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. Would everyone please rise and join with me in the Pledge of Allegiance.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

The invocation today will be given by the Reverend Peter Young of the Blessed Sacrament Church in Bolton Landing.

REVEREND PETER YOUNG: Let us pray. Dear God, we come before You scarcely knowing when and how to ask Your guidance on our charge to bring to our New York State industries and labor coalitions a fresh touch of Your life-giving spirit. We pray for those whose skill and training and talents are used, that they may obtain the dignity of work. Grant us what is required for the life to which You call us, not because we ask wisely Your will, but because we have the boundless compassion -- know of Your boundless compassion that You have made known to us by Your good work. We ask You this now and forever in Your name. Amen.

THE PRESIDENT: The reading of

the Journal.

THE SECRETARY: In Senate, Monday, January 29th. The Senate met pursuant to adjournment. The Journal of Friday, January 26th, was read and approved. On motion, the Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers up the following nomination: Member and Chairman of the New York State Thruway Authority, Howard Steinberg of Kings Point.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Thank you, Madam President.

It's a pleasure for me to report first that it was so good for some of us who

have been here awhile to have someone exhort the name of Thomas E. Dewey. We don't hear that very often anymore around here, but some of us remember well, but Senator Steinberg was reported out of our committee unanimously today, and I yield to Senator Tully.

THE PRESIDENT: Senator Tully.

SENATOR TULLY: Thank you, Madam President.

I rise to support the nomination of Howard Steinberg as member and chairman of the New York State Thruway Authority. Mr. Steinberg is a constituent of mine. I'm not so certain, although I have seen his birthdate on his resume, as to whether or not he really remembers Dewey/Truman in 1948 or not, but I can tell you that whatever he's found in the lovely area of the town of North Hempstead -- which is part of my constituency, in particular, Kings Point -- I wish he could bottle it because there are many of us who would like to utilize it because he epitomizes what we used to call the Fountain of Youth. Yet with that youthful

appearance comes a great deal of experience in the area in which he's going into.

He is a partner in a New York law firm which specializes in corporate and securi ties law. He's also had extensive experience in public finance. He's been active in the Bar Association of the city of New York, in their Committees on Corporation Law, Securities Regulations and the Committee on Federal Legislation. He is eminently qualified by both academic and professional experience, and I'm privileged to move his nomination as a member and chairman of the New York State Thruway Authority, and I would ask you, Mr. President, if you would also welcome his lovely wife and daughter who are in the gallery with him.

ACTING PRESIDENT MAZIARZ: Thank you, Senator.

Is there anyone else wishing to speak on the nomination?

Senator Farley.

SENATOR FARLEY: Yes. Thank you, Mr. President.

I would like to rise to second the nomination of Mr. Steinberg. Having the Thruway district, my counties that I represent go right along the Thruway through the Mohawk Valley, and what an important part of the state and it is the artery of economic opportunity for New York State and, of course, it's the way that so many of my constituents from Schenectady get to work every day coming over here to Albany. I wish more were going the other way, but they seem to be coming this way, but let me just say to the new chairman of the Thruway Authority, that is a very, very important artery for our state.

Mr. Steinberg, we wish you well. I know that this house and the entire Legislature is going to cooperate with you to support what you're trying to do with this. You have also taken on the canals, which are a very large part of my district and yours also, John, and we're anxious to see some progress being made there, and we wish you well in your appointment, and I'm have pleased to support your nomination.

ACTING PRESIDENT MAZIARZ: Thank you, Senator Farley.

On the nomination, Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I rise in support of this nominee as well, with exemplary credentials for this position, and I simply want to explain that during the Committee on Finance discussion, Senator Leichter and I both brought up an issue relating to the fund-raising that might be associated with this. This nominee has given us an answer that I think is on point, and when he said that he hadn't engaged in that in the past, he wasn't waiving anything in the future, he would conform his conduct to that expected under the Public Officers Law, and I think this is a good, high quality nominee. I think our concern as evidenced in that committee remains present, but certainly none of the questions that I asked, nor from Senator Leichter, should be in any way any impugning of the integrity and skill

and character of this nominee.

I wish him well and I wish him the best in success in working with Bill Warren, who is Rochester's nominee on the Thruway Authority as well.

ACTING PRESIDENT MAZIARZ: The - I'm sorry.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes. I would like to add my support to the nominee. Although we've never met, I've read his resume and his credentials. It's always good to have a lawyer on our boards to make sure it's done properly, but most importantly, being chairman of the Tourism Committee, I think it's extremely important to have someone with his capabilities and his background to understand how important it is to develop these tourist destinations along the canal and to bring this resource to bring people to the state of New York, and we'll be having many discussions about that. I'm just pleased that we have this high caliber of a candidate in order to lead this very, very

important agency, and I urge unanimous approval.

ACTING PRESIDENT MAZIARZ: Thank you.

The question is on the confirmation of Howard Steinberg as member and chairman of the New York State Thruway Authority. All in favor signifying by saying aye.

(Response of "Aye".)

Opposed?

(There was no response.)

Howard Steinberg is hereby confirmed as a member and chairman of the New York State Thruway Authority. Mr. Steinberg is joined in the chambers with his wife, Judy Steinberg and his daughter, Kathy.

Mr. Steinberg.

(Applause)

We have reports of select committees.

Communications and reports from state officers.

The Chair recognizes Senator

Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Racing, Gaming and Wagering Committee in Room 332 of the Capitol.

ACTING PRESIDENT MAZIARZ: There's an immediate meeting of the Racing, Gaming and Wagering Committee in Room 332.

Return to the reports of standing committees. The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers up the following bill directly for third reading:

Senate Print 3978, by Senator Volker, an act amending the Executive Law, in relation to the organization of the New York State Police.

Senator Lack, from the Committee on Judiciary, hands up the following bills directly for third reading: Senate Print 397, by Senator Skelos, an act to amend the Real Property Law, in relation to the priority of the lien of a reverse mortgage;

1296, by Senator Lack, concurrent resolution of the Senate and Assembly, proposing amendments to Article VI of the Constitution;

1743-A, by Senator Skelos, an act to amend the General Obligations Law, in relation to certain crime victims;

2109, by Senator Saland, an act to amend the Surrogate's Procedure Court Act and the Domestic Relations Law;

5489-A, by Senator Marcellino, an act to amend the Municipal Law;

5757, by Senator Saland, an act to confirm the existence and boundaries of the Craryville fire department;

Senator Cook, from the Committee on Education, offers up the following bills directly for third reading:

Senate Print 2345-A, by Senator Cook, an act to amend the Education Law, in relation to the district funds;

2453, by Senator Cook, an act to amend the Education Law, in relation to procedures for the submission of propositions;

2902-A, by Senator Cook, an act to amend the Education Law, in relation to authorizing electronic funds;

3913, by Senator Cook, an act to amend the Education Law, in relation to the transportation of pupils.

Senator Marcellino, from the Committee on Conservation, offers up the following bills:

3644, by Senator Tully, an act to amend the Public Authorities Law;

4423, by Senator Tully, an act to amend the Environmental Conservation Law;

4533, by Senator Marchi, an act to amend the Environmental Conservation Law, in relation to the general powers of the New York State Environmental Facilities Corporation.

Senator Goodman, from the Committee on Investigations, Taxation and Government Operations, offers up the following bills:

267-A, by Senator Farley, an act to amend the Arts and Cultural Affairs Law;

628, by Senator Stafford, an act to amend the Tax Law, in relation to the distribution of additional mortgage recording tax;

By Senator Cook, 2964, an act to amend the Tax Law, in relation to imposing a sales and compensating use tax.

All bills reported directly for third reading.

ACTING PRESIDENT MAZIARZ: Without objection, all bills directly to third reading.

Motions and resolutions.

Senator Tully.

SENATOR TULLY: Yes, Mr. President.

On behalf of Senator Lack, on page 4, I offer the following amendments to Calendar Number 10, Senate Print Number 1621-A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MAZIARZ: The amendments are received.

The Chair recognizes Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Saland, would you star his bill, Calendar Number 137, Senate 3501.

ACTING PRESIDENT MAZIARZ: The bill is starred at the request of the sponsor.

SENATOR SKELOS: Mr. President, at this time if we could adopt the Resolution Calendar.

ACTING PRESIDENT MAZIARZ: All in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye".)

Opposed?

(There was no response.)

The Resolution Calendar is adopted.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MAZIARZ: The Chair recognizes -

SENATOR GOLD: I understand that Senator Maltese's resolution on the Queens

Tribune, he would not mind opening it up to the Queens members, and I know -- oh, okay.

ACTING PRESIDENT MAZIARZ: The Chair recognizes Senator Maltese.

SENATOR MALTESE: Thank you.

With respect to Resolution JR2286, that is open to any members that would wish to be on, commemorating the 25th anniversary of the Queens Tribune.

Thank you, Mr. -

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: Mr. President, we just adopted Senator Bruno's Resolution 2289 which expresses sorrow upon the occasion of the death of Major General John C. Baker. If any individual would like to co-sponsor it, if they could inform the desk, Senator Bruno has consented to that.

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: All right. At this time, if we could take up the non

controversial calendar.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 29, by Senator Skelos, an act to amend the Executive Law, in relation to the search of criminal history records.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 88, by Senator Marchi, Senate Print -

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MAZIARZ: The

bill is laid aside for the day.

THE SECRETARY: Calendar Number 93, by Senator Farley, Senate Print 2674, an act to amend the Personal Property Law and the General Municipal Law and Business Law, in relation to the taking of a purchase money security interest.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside.

THE SECRETARY: Calendar 100, by Senator Seward, Senate Print 3432-A, an act to amend the Public Service Law, in relation to increasing the statutory ceiling for non-major changes.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar 103, by Senator Cook, Senate Print 4864-B, an act to amend the Public Authorities Law, in relation to the defense of members.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar 106, by Senator Farley, Senate Print 1290, an act to amend the Public Authorities Law, in relation to annual commuter car pool permits.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the 60th day.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar 111, by Senator Volker, Senate Print 197 -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside.

THE SECRETARY: Calendar 113, by Senator Present, Senate Print 503, an act to amend the Penal Law, in relation to lawful possession of weapons by persons 11 years of age.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of November.

ACTING PRESIDENT MAZIARZ: The

Chair recognizes Senator Paterson.

SENATOR PATERSON: I just vote no, Mr. President.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of November.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 113, Senator Connor and Paterson. Ayes 47, nays 2.

ACTING PRESIDENT MAZIARZ: Senator Connor is to be recorded -- the bill is passed.

THE SECRETARY: Calendar 114, by Senator Cook -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT MAZIARZ: The bill is laid aside.

THE SECRETARY: Calendar 115, by

Senator Volker, Senate Print 587, an act to amend the Penal Law, in relation to the theft of telecommunication services.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 1st day of November.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar 116, by Senator DiCarlo, Senate Print 637-A, an act to amend the Penal Law, in relation to unlawful possession of a box cutter.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 1st day of November.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar 119, by Senator Saland, Senate Print 692-A, an act to amend the Penal Law, in relation to the minimum period of imprisonment.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar 120, by Senator Spano, Senate Print 1088-A, an act to

amend the Penal Law, in relation to the crime of criminal employment of a minor.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Skelos, that completes the non-controversial.

SENATOR SKELOS: Take up the controversial calendar, Mr. President.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 93, by Senator Farley, Senate Print 2674, an act to amend the Personal Property Law and the General Business Law, in relation to the taking

of a purchase money security interest.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT MAZIARZ: The Senate will stand at ease for a minute.

The Chair recognizes Senator Skelos.

SENATOR SKELOS: Mr. President, if we could at this time bring up Senator Cook's bill, Calendar Number 114, I believe Senator Volker is at a committee meeting right now.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

SENATOR SKELOS: Senator Farley, rather.

THE SECRETARY: Calendar Number 114, by Senator Cook, Senate Print 561, an act to amend the Criminal Procedure Law, in relation to denial of bail.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MAZIARZ: Senator Paterson has requested an explanation.

Senator Cook.

SENATOR COOK: Mr. President, this bill would change the basis for granting of bail in the state of New York so that it would include a consideration of the potential danger to society if the person were released on bail.

There are those who contend that this is already done. I think that's highly questionable, particularly in light of at least one Supreme Court decision in New York State which found that setting bail inordinately high was a violation of the law which said that the only reason for bail in New York was to ensure that the person would appear at the time it was set for trial.

I think that there's another reason, and I think that there ought to be another reason, and I think that reason is that we have a responsibility to protect people on the streets from individuals who have a record which indicates that they have a particularly high potential for being an endangerment to society, and that is based upon an established record where these folks had been involved in

serious crimes against the person of individuals previously. So this bill makes it real clear to a judge that it's his responsibility in the decision as to whether to grant bail, that he consider not only -- he or she consider not only the question of whether the individual is apt to show up for trial but that, indeed, to consider the potential endangerment to society.

I will say, I found it kind of interesting as -- during the years since this bill was originally proposed, and there was a great hue and cry on the part of some of the people that we've heard the concept now being repeated and suggested by other people in our context through the years and, indeed, it's something that seems to me is gaining an increasing acceptance by -- by folks who are concerned about protecting the safety of people on our streets. I think it's time for New York to put this into statute so that our citizens have the same protections.

ACTING PRESIDENT MAZIARZ: The Chair recognizes Senator Paterson.

SENATOR PATERSON: Thank you very much, Mr. President.

If the Senator would yield for a question.

SENATOR COOK: Yes.

ACTING PRESIDENT MAZIARZ: Senator Cook, would you yield?

SENATOR COOK: Yes.

SENATOR PATERSON: Thank you, Mr. President.

My question to Senator Cook involves the issue of judicial discretion. Is it not true, Senator Cook, that even in the federal system where the restrictions are very similar to what you're proposing in this bill, that the federal judge can still evaluate the dangerousness of the perpetrator, or the accused in the case, whereas in your legislation, all of that is set forth in statute?

SENATOR COOK: Mr. President, Senator, that is correct up to a point, so long as you realize that it's in the area of presumption, refutable presumption, if you will,

because the defense has an opportunity to, in effect, present reasons to the judge why the individual ought to be -- ought to be granted the bail. So it's not an open or closed automatic decision. It's a decision that stands, assuming it's not challenged, by the defense.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

My fear is that we are actually turning the presumption of innocence on its head and now making it, as Senator Cook just stated, really the burden of the defense to now prove that it is not the case, even if it's a rebuttable presumption, but it's not the case that this defendant should be held for bail. If the Senator would continue to yield, then my question at that point, Senator Cook, involves just the determination itself that's made by the judge. Isn't it really set forth more in statute? I mean, once you've established a

criteria that there should not be any bail, then there isn't going to be anything the judge has to do other than just fill in the blanks in the form as to whether or not there is either a previous conviction or a -- another charge that is existing at the time of the actual -- that the bail hearing is held; is that not correct?

SENATOR COOK: Senator, it's true that the presumption is there. In other words, if somebody has a record of violent crimes against people, the judge certainly is -- is predisposed by virtue of the statute not to grant the bill, but as I indicated before, as in the federal court, there is a -- an ability on the part of the defense to argue that, due to some circumstance, the individual ought to be released. So it's not -- not an automatic, and I really argue it's not a presumption of guilt, because this is a case where we are -- where we know the individual is, in one case, either out on bail, due to a previous charge, or that there is somebody who has a record where they have, in fact, been convicted of these types of crimes in

the past and, therefore, it's a reasonable concern that if they are released on the street, that they may well constitute an endangerment to folks who are out there.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. Through you to Senator Cook.

Senator, I appreciate your recognition in this legislation, that you do not believe that it establishes a presumption of guilt, because then I think we have a basis that we can perhaps reach some kind of an agreement here and that is that, if there is no presump tion of guilt, then we would turn ourselves to the answer of the question as to what is bail for, and I think the Eighth Amendment states pretty clearly that bail is not really for preventive detention. It really is there to ensure the presence of the defendant during trial. The preventive detention comes in when we believe the defendant will not be present. So I maintain that in a case of a previous

conviction, even if we were to accept that in your legislation, how can we come to the point of view that we have to have preventive detention when all we have, in some cases, is the accusation of another crime which could even be related to the crime that the individual is being held for bail in this instance?

So my question to you is how can there be a presumption of innocence and at the same time, use this procedure to establish bail?

SENATOR COOK: Mr. President, I think that there are cases in -- in our history, and we know that there are cases that have been upheld by the courts because this very type of statute has been upheld by the courts, where the concern that society be protected has been considered to be more important, if you will, than the procedural issue.

Now, recognizing the bill also provides for speedy trial -- which is, of course, an important part of it, but one of the cases when we were having hearings on this was

in Buffalo when the accused person who eventually ended up killing a police officer had a string of 11 con... I'm sorry, 11 indictments for violent attacks on people, and he had been repeatedly released on the street on the assumption that he would show up for trial, because that was and, indeed, as you stated, is the presumption that's in the law books of the state of New York today, but that the judge had, in each case said, "Look, I know this guy is a violent person and that there is, indeed, the danger of that person being out on the street, that we're going to have more attacks, but I am powerless to do anything about it because the statute, the presumption in the state of New York is and has been that the only basis for denied bail is a presumption that the person might not appear at the time of the trial.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

I think that in the case that

Senator Cook describes, there certainly has got to be some sobriety that one derives from hearing of a situation where an individual who had been charged 11 times previously and now out on bail, murdered a police officer. It's a heinous crime and it's something that, unfortunately, could also have happened any time after the tenth indictment because, unfortun ately, we were not able to convict this person who we'll concede apparently was a violent felon who, for some reason, managed not to be convicted.

So the flaw, as I see it, Senator Cook, was not so much in the bail proceeding, but the fact that somehow we just weren't able to convict this person, and I'm wondering if we haven't legislated a tough case here. We've legislated a case in which our hearts must go out to the families of the victim, and it does seem like a cruel irony on society that this kind of thing could happen, but my concern is that under our Constitution, in this country, that we provide a presumption of innocence and

we also provide mechanisms through the Sixth and Eighth Amendments to allow for a speedy trial and bail, and that what we're going to have is a presumption made against what you might call the "usual suspects", the people who will get a certain amount of attention paid to them every time there is a crime but, in fact, have not been convicted and may, indeed, actually be innocent of the crimes; and so my fear about passing this kind of legislation lies in the difference between Senator Cook's interpretation of the previous case law and my own.

I think the previous case law does establish that Senator Cook is right with the respect that you can, for purposes of protection of society, require stricter bail, but where I don't think the courts go along with Senator Cook, most respectfully, is that I don't think that they have made an interpretation that there should be no judicial expression, no judicial discretion and no judicial action that demonstrates the individual case, vis-a-vis all the cases, and that the real meaning of the

Eighth Amendment then becomes lost to guarantee the defendant's presence during the trial but rather the bail hearing becomes more of a test of the -- of the previous crimes or accusations made against the defendant.

And so for that reason, I cannot support this bill, even though the intent certainly is to protect members of the society. I think that our form of government is really one that guarantees the accused at least the opportunity to come to trial without a stigma being attached.

ACTING PRESIDENT DiCARLO: Senator Cook.

SENATOR COOK: I'm going to violate the rule of quitting while you're ahead and make one more statement, and it really is kind of unrelated, but I think it is related intellectually, and that is in the area of mental health, we made findings that certain individuals may be an endangerment to themselves or to society or to others and that, for that reason, there is justification for keeping them,

if not incarcerated, at least keeping them under guard. It seems to me that it is not unreasonable for that same test to be applied to people who either have histories of violent crimes for which they have been convicted or who have been repeatedly arrested for crimes which are crimes of the person and which are violent in nature.

ACTING PRESIDENT DiCARLO: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

I certainly am not quitting while I'm ahead. I would respond exactly, I'm losing, as usual, but what I would like to say in response to what Senator Cook has asserted here is that we have a procedure for the treatment of mental health cases in the criminal justice system, the first of which is we examine them for -- on the basis of their fitness to proceed to trial. We want to know with a reasonable degree of certainty whether or not a physician can determine that the defendant understands the

nature of the charges against him and can assist in his own defense, and we hold that under Section 730 of the Criminal Procedure Law.

Now, there are also orders of retention that we have in the mental health system under Section 330-20 of the Criminal Procedure Law where we've determined that this individual is a danger to society, and we've even made mental health determinations in the Civil Law under Sections 9.31 and 9.35 of the Mental Health Law where we will detain a person up to 15 days prior to two physicians signing a statement. We can keep them longer, but these are procedures that we establish where there is a determination by doctors that the person is dangerous that, if they're not treated with certain types of medications, that they can be certainly an -- individuals who could be harmful to society if allowed back out to the streets or into society, but in the case of criminal defendants, we are making that determination based on, in one case, charges, not even conduct. I'll accept that the previous

convictions do examine conduct, but a previous indictment is really just a charge. In other words, a person is being held on one crime, they get arrested for another and, therefore, they can't receive any bail because there's a determination that since the two incidents occurred so close together, in a way, there's a chance that they might be guilty and might do it again. I don't know that that coincides with the actions that we take with respect to mental health patients or the examination of whether or not an individual is fit to go to trial. We detain them based on a reasonable degree of medical certainty. Here we're doing it based on really an assumption even more than a presumption that we're making about these individuals.

ACTING PRESIDENT DiCARLO: Read the last section.

THE SECRETARY: Section 11. This act shall take effect on the 1st day of January.

ACTING PRESIDENT DiCARLO: Call

the roll.

(The Secretary called the roll.)

SENATOR WALDON: Explain my vote.

ACTING PRESIDENT DiCARLO: Senator Waldon to explain his vote.

SENATOR WALDON: Thank you very much, Mr. President.

I apologize for being out of the chamber, but we were called out by the chairman of the committee I sit upon. I would have welcomed the opportunity to be here. I was advised that Senator Paterson, in his eloquence, touched on the issues that I would have raised, and I appreciate that very much, Senator Paterson.

I would just like to say to my colleagues, any time that there is an interference with judicial discretion, I think that we are skating on very thin ice, and are we going to accomplish more by removing judges from the positions that they've trained for and worked so hard at all of their lives which brings a sense of balance in a social sense to

the state, or are we going to allow them to do their job? I would encourage us to allow judges to do their job, and I most respectfully vote no on this bill.

Thank you, Mr. President.

ACTING PRESIDENT DiCARLO: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 114 are Senators Abate, Connor, Gold, Paterson, Santiago, Waldon. Ayes 50, nays 6. Also, Senator Leichter; also, Senator Montgomery, Senator Leichter. Ayes 48, nays 8.

ACTING PRESIDENT DiCARLO: The bill is passed.

The Secretary will read.

Senator Skelos, would you like to go back to Calendar 93 at this time?

SENATOR SKELOS: Yes.

ACTING PRESIDENT DiCARLO: The Secretary will read.

THE SECRETARY: Calendar Number 93, by Senator Farley, Senate Print 2674, an act

to amend the Personal Property Law and the General Business Law, in relation to the taking of a purchase money security interest.

ACTING PRESIDENT DiCARLO: Senator Farley, an explanation has been asked for.

SENATOR FARLEY: Thank you, Mr. President.

This is a bill that passed rather overwhelmingly last year. It's -- it got lost in the last few days of negotiations. It's sponsored in the Assembly by Assemblymen Feldman, Farrell, Lafayette, Green, Kaufman, Ramirez and almost became law, expected to become law this year.

Actually, what this does is it enables the retail merchants of this state to take a security interest in high value merchandize sold under a revolving credit agreement. 49 states out of 50 allow this revolving credit agreement, and it allows people with limited resources to be able to buy a high value piece of merchandise. It's based,

incidentally, on the premise that somebody that buys a high priced piece of merchandise is expected that it will be paid for, and this is a very, very important bill to the retail industry, which is one of the largest industries in this state, and incidentally, this bill contains consumer protection provisions far in excess of any other state. They have been described by a committee of the State Bar Association as landmark in nature.

It's essentially the same bill that passed both houses in 1992 and was vetoed. The veto referenced the overall interest rate deregulation issue, and that issue was resolved in the state of New York by the adoption of Chapters 1 and 2 of 1994, so the objection of the particular bill has been taken care of.

ACTING PRESIDENT DiCARLO: Excuse me, Senator.

Senator Skelos, why do you rise?

SENATOR SKELOS: Yeah. If I could just interrupt, Senator Farley. There'll be an immediate meeting of the Insurance

Committee in Room 332 of the Capitol.

Thank you, Senator Farley.

ACTING PRESIDENT DiCARLO: Senator Farley.

SENATOR FARLEY: You know, not only has there become an immediate decline in the retail industry as a result of serious job losses and a broader loss to the overall state's economy, but a sense that New York is no longer the center of the nation's retail trade, which may lead other stores to leave the state.

Now, there's a number of factors that go into that, we know that, tax on clothing and a few other things, but the New York Times has characterized the situation as the plight among the area's traditional merchants which was reaching a crisis and damaging New York as the capital of the global retail industry. I think this would help merchants; it would help the consumer, and it's a good piece of legislation. I urge its passage.

ACTING PRESIDENT DiCARLO: Senator Paterson.

SENATOR PATERSON: Mr. President, I really dislike having to interrupt Senator Farley, but might we read the last section for Senator Onorato who has to go to a meeting?

SENATOR SKELOS: No objection.

ACTING PRESIDENT DiCARLO: Without objection, read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

ACTING PRESIDENT DiCARLO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT DiCARLO: Senator Onorato, how do you vote?

(Indication of "No".)

Withdraw the roll call.

Senator Markowitz -

SENATOR MARKOWITZ: Thank you very much, if I may.

ACTING PRESIDENT DiCARLO: -- why do you rise?

SENATOR MARKOWITZ: Because of our policy of calling committee meetings off the

floor, forgive me that I had two in a row. May I vote in the negative on Calendar Number 115. Voting negative, even though I know Senator Farley, I love you and respect you, I still respectfully vote no on your bill, 93, and I have a hunch the committee meeting will be on for a bit, so 111, if I may also vote in the negative as well.

SENATOR SKELOS: Senator Markowitz, we will give you unanimous consent to be recorded in the negative on Calendar Number 114. Certainly you can vote in the negative on Calendar Number 93, but the other bill has not been called up.

SENATOR MARKOWITZ: Okay, fine. Thank you very much.

ACTING PRESIDENT DiCARLO: Without objection.

Senator Farley.

SENATOR FARLEY: Well, I think I already urged its passage, and you can see I got two negative votes in a row on that one. I think I better sit down. (Laughter)

ACTING PRESIDENT DiCARLO:

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President. I haven't made up my mind, Senator Farley. I'm going to stay here, and if you would yield for a couple of questions.

ACTING PRESIDENT DiCARLO:

Senator Farley, do you yield?

(Senator Farley nods head.)

Senator Farley yields.

SENATOR FARLEY: Very encouraging, Senator Paterson.

SENATOR PATERSON: Thank you.

Senator Farley, there is notification, am I not correct, at the time the consumer signs the purchase money security interest, is that correct?

SENATOR FARLEY: Yes.

SENATOR PATERSON: Senator Farley, is there any notification -- through you, Mr. President -- at the time that the actual repossession is going to occur?

SENATOR FARLEY: I presume -

well, just give me a second. I've got about five pages of notes on this.

SENATOR PATERSON: Mr. President.

SENATOR FARLEY: I can't answer that at this point, whether the -- I would presume that the person knows very well that this is a security interest where the goods, if you will, may be repossessed. I'm sure that they would be aware of the fact that it's going to be repossessed. You're talking about notification that they're going to repossess it? I think that would be done in the normal, ordinary course of business, but I don't think there's -- to my knowledge, I don't think there's anything in the legislation as far as that.

ACTING PRESIDENT DiCARLO: Senator Paterson.

SENATOR PATERSON: I agree with you, Senator Farley. Let me cite an example of how I think it could become an issue. Since you have a revolving agreement -

SENATOR FARLEY: M-m h-m-m.

SENATOR PATERSON: -- you have an individual signing at the time of the purchase money security interest, say a few years down the road they purchase a refrigerator and let's say the refrigerator costs $1,000, so they pay back the thousand dollars in the 60-day requirement, but they neglect to remember that they actually have a couple hundred dollars that they owe on other items, and so unbeknownst to them, they are in violation of the security interest as we've defined it, and the next thing they know, somebody's at their door to pick up the refrigerator.

SENATOR FARLEY: Let me try to answer that. I might be able to answer that, because I just found something that addresses this question. The seller must obtain a court order to repossess, and no repossession may be made without the written consent of the buyer.

SENATOR PATERSON: So, in other words, Senator Farley, the buyer knows that the court order is coming very much like an eviction?

SENATOR FARLEY: I would think so, yes.

SENATOR PATERSON: Thank you very much, Senator Farley.

A question in terms of how this is going to affect the interest rates. In other words, we were hoping this would bring the interest rates down. Is there anything to know that, and is there anything in the legislation that helps to bring the interest rates down, because that is the greatest concern that the consumers have.

SENATOR FARLEY: Your point is well taken. As you know, as I said earlier, the reason that this bill did not become law was that Governor Cuomo was anxious, and I think supportive because he signed the legislation to deregulate interest rates, and what this will do -- of course, we know that the retail industry -- and we certainly have one of the most competitive in the nation -- is very competitive, and I think that the interest rates that will be charged on a security interest will

be highly advertised and competitive from the point of view of -- unless the merchant has a competitive interest rate, he's not going to get that security.

SENATOR PATERSON: In the legislation as it stands right now, based on previous law that we have made right here in this chamber, there is no regulation. Isn't it possible the security interest rate will go up?

SENATOR FARLEY: Yes. In a deregulated industry, it could go up and it can go down, just like the stock market.

SENATOR PATERSON: Well, then, Senator Farley, my question to you is, is there anything tangible that you can tell me that is set forth in this bill that is going to benefit the consumer?

SENATOR FARLEY: Yes, I think there is because -- let me just say this: 49 other states have this legislation. No other state in the nation has put in the consumer protection factors that are in this legislation. No one has that. The New York

State Bar Association has lauded it. It's landmark legislation for the consumer, and what we're talking about, what benefits the consumer here has -- a consumer with particularly limited assets would live in a credit, and so forth - let's say troubled credit can now go out and buy a secure... merchandise costing more than $200 that he perhaps would never have access to, and I think that's an advantage, not only to the retailer, but it's an advantage to the consumer that they'll be able to buy a refrigerator, that they'll be able to buy a television set for - that they'll be able to buy a large ticket item that they would never have access to because of their -- maybe their credit problems, their financial situation, and so forth, and it gives the merchant who is selling it the security, generally speaking. In reality, the merchant is very reluctant to repossess the merchandise. It's only used as more or less a -- I would say a threat than it is a reality. I once worked in the retail business after -- after high school and seldom did I ever see that really happen,

repossessions.

ACTING PRESIDENT DiCARLO: Senator Paterson.

SENATOR FARLEY: I think there is that advantage. That was back in -- these guys are nasty over here.

SENATOR PATERSON: They weren't much better over here, Senator.

I want to thank Senator Farley, Mr. President, for the answers. They were very persuasive. However, I don't see anything in this legislation -- we're not preventing the retailer from selling the merchandise to the consumer. The retailer can still sell the merchandise to the consumer. What we're allowing for is for a money security interest to allow for repossession.

There are just a couple things I want to point out. Only the English language is used in the original requirements that the - that the consumer would sign. There's also the issue that if the consumer becomes bankrupt, that this jumps this particular retailer higher

up on the list, which I don't necessarily oppose, but it does change the order of the first meeting of creditors.

And finally, we just don't see any way that it benefits the consumer, and we certainly respect the 49 other states who do see it and also Senator Farley, but I'm going to vote against this bill and keep New York in the forefront -- in the forefront of consumer protection as the only state that recognizes the reasons why we wouldn't want to have the purchase money security.

ACTING PRESIDENT DiCARLO: Senator Abate.

SENATOR ABATE: Yes. Would Senator Farley yield to just a couple questions?

ACTING PRESIDENT DiCARLO: Senator Farley, do you yield?

SENATOR ABATE: I have a couple concerns and my questions will reflect that. This bill does not differentiate between a consumer who has -- or tell me otherwise -

between a consumer who over the course of many months has paid what he owes to the retailer, but by the second month because of very short term fiscal problems, let's say owes $10 on a large item. The bill does not differentiate from that individual and an individual who, from the get go, refuses to pay his or her debt month after month, and then the retailer has to recoup his losses. Here, an individual can owe -- only owe one dollar and after 60 days, the retailer can repossess that item. Is there a reason that the bill does not differentiate between the two consumers?

SENATOR FARLEY: I think it does in a number of ways. Let me just discuss -

SENATOR ABATE: And if it does, Senator, if you could explain how it does that.

SENATOR FARLEY: Let me just - let me just talk about the default things. Again, there are a number of consumer protection things in this legislation which currently does not exist in the law. "Extended notices of default and the ability to cure requirements

will make repossession by a merchant selling under a revolving credit agreement more difficult than is the case for goods sold with a security interest under the closed end contract in the current law. The account must be in default for 30 days before a notice is even sent and then the buyer must be given an additional 30 days in which to pay before any action may be taken. A court order -- the seller must obtain a court order in order to repossess. No repossessions may be made without the written consent of the buyer", and let me tell you, Senator Abate, I'm confident that no merchant is going to repossess for one dollar that is owed on merchandise, and incidentally, full disclosure is required of every merchant selling or taking a security interest, and I truly believe that this is a reasonable piece of legislation.

I understand that there's a memo against it, I believe it's by -- is it by NYPIRG or something, but I really don't think that their point is well taken. There's very little

opposition to this that I've heard of from many consumers. As I say, I think it opens up opportunity to a number of consumers that might not be able to buy a large ticket item otherwise.

SENATOR ABATE: Mr. President, would Senator Farley yield for a question?

ACTING PRESIDENT DiCARLO: Senator Farley, do you continue to yield?

SENATOR FARLEY: Sure.

ACTING PRESIDENT DiCARLO: Yes, he does, Senator.

SENATOR ABATE: By your explanation, is it the case then if an individual who has been paying month after month, let's say a large ticket item of over $1,000 month after month, in the eighth month, they default for 60 days and they pay -- make only partial payment, and that consumer has a good faith intention to live up to the agreement but there's a fiscal crisis in that family, there would be no situation then -- I mean, under the law, that a retailer could come in and

repossess that item, even though there was a long-term, good faith commitment; it was lived up to month after month, and there was a short term financial disability, that product would be dispossessed -- would be repossessed under this legislation?

SENATOR FARLEY: Let's -- I can't disagree with what you're saying. This could happen, but you have to realize that most merchants are interested in trying to keep their customers, and if there is a customer and there's been a communication between the two about the financial crisis and one that may - could be -- resolve itself, I'm confident that the merchant would -- would go along with that. That's what -- credit departments of different stores that would investigate this. It's really -- that's the whole point of it.

Now, I realize that there are - people come into financial crises all the time and, unfortunately, that's what happens when they repossess a car. That's what happens when they foreclose on a mortgage of a house, but do

we want to -- somebody to pay for a house for 20 years and in the 21st year they run into a financial crisis and they foreclose on the house? I mean, it's -- it's pretty terrible. We understand that, but that's -- that's the way business is done.

This is just moving such large ticket items back to the retail merchant, and it's done all over the nation. We haven't had problems in 49 other states. It's just that New Yorkers that are poor or New Yorkers that have troubled credit cannot participate in buying a large ticket item. I think this is reasonable. We've tried to do all that we can. Assemblyman Feldman has done all that he can to put in a number of consumer protections. I think it's a good piece of legislation. It's passed here rather overwhelmingly every time it's come before the Senate. I can understand your concerns.

ACTING PRESIDENT DiCARLO: Senator Abate.

SENATOR ABATE: Yes. Would the

Senator yield to a question?

ACTING PRESIDENT DiCARLO:

Senator Farley, do you continue to yield?

SENATOR ABATE: All of us are not unsympathetic to the plight of retailers. They have to run a business and make sure their products are quality products, if they're going to stay in business and that their prices are reasonable. My concern is that this bill would be a better bill if it had some mechanism for that individual who's suffering from temporary financial hardship, that they can go into a special procedure so they could protect their interests in the product they bought. There's nothing in this bill that has that kind of language, and I -- Senator Farley, is there a reason there was not inclusion for the kind of situation I'm talking about? This bill could be changed to reflect that consumer concern.

SENATOR FARLEY: I suppose that we could put in the bill if somebody does not meet their contractual obligations, that the contractual obligations do not apply. Is that

what you're saying?

SENATOR ABATE: That there are situations where a consumer, month after month, has been in compliance with the contract, is paying; they come forward to the retailer and say, "For two months, three months, I can't pay the full amount. I won't --"

SENATOR FARLEY: We just took two out of three of those things that you asked and put it in here. He's got two months before he has to start paying.

SENATOR ABATE: Well, two months is not a very long period of time given that there might be some financial disability during that short period of time, and then the retailer can come in even though -

SENATOR FARLEY: You know, he could make one payment after two months and he's good for another two months.

SENATOR ABATE: Right. They're in default after 30 days and after the other grace period of 30 days, the -- my understanding is -

SENATOR FARLEY: That's right.

SENATOR ABATE: -- the retailer could move in to repossess.

Let me go on to another area.

SENATOR FARLEY: The only thing I think that could satisfy your concern is that they can't repossess. They don't have the option. You're saying that they're not able to repossess.

SENATOR ABATE: May the Senator -- I'll ask the Senator to yield to -

ACTING PRESIDENT DiCARLO: Senator Farley, do you continue to yield?

SENATOR FARLEY: Sure.

ACTING PRESIDENT DiCARLO: The Senator yields.

SENATOR ABATE: My understanding -- and please correct me -- that the buyer - if the buyer consents, a judicial proceeding would be waived, so repossession would occur without a judicial proceeding only if the buyer consents.

SENATOR FARLEY: Yep.

SENATOR ABATE: Right. And the buyer would consent -

SENATOR FARLEY: That's to the advantage of the consumer, wouldn't you agree?

SENATOR ABATE: Absolutely. My concern is there's nothing written in the legislation that requires an oral explanation of what this means. There's nothing -- or correct me -- am I wrong? Is there anything in the legislation that says that this clause has to be in larger print, in multiple languages so, in fact, this provision is one that people can truly consent to because they understand the language, they understand the import of the provision?

My concern is that many buyers will sign on the bottom line and not know that they waived judicial proceedings -

ACTING PRESIDENT DiCARLO: Senator Farley.

SENATOR ABATE: -- before the repossession would take place.

SENATOR FARLEY: Okay. Let me

just say that the bill very clearly says -- or the law says, "Unless the seller obtains a court order to repossess, no repossession may be made without the written consent of the buyer." Now, if you're saying that the buyer was induced to sign something that he didn't understand he was signing, that's another matter. You know, I'm sure that -- Senator, that when it says -- when the law says that "without the written consent of the buyer", it means just that. Now, is there things that it has to be put in a special language or he's got to be orally told what it means? No, but if he hasn't given his consent to the repossession, the repossession is not valid.

SENATOR ABATE: Would the consent be the same if the individual signs the contract saying that he owes money over a period of time; would there have to be a separate signature and a separate document that says that the consumer understands the language and, therefore, waives his or her right to a judicial proceeding, or is it part and parcel of the same contract? If

it's contemporaneous but also part of the same document, it might be a likely scenario that the consumer would not understand the provision within the contract and, thereby, would be signing the contract without understanding they're giving up the right to a judicial proceeding.

SENATOR FARLEY: I think it's a separate signing, if I understand your question, which I'm having trouble following, but I think it's to the point that there's a separate signing. Again, unless the seller obtains a court order, no repossession can take place without the consent of the buyer. I think what you're asking, can they presuppose that somebody waives all rights to a court order? No, I don't see that in the law.

SENATOR ABATE: Is there somewhere in the legislation that says it's a separate document that has to be signed by the consumer?

SENATOR FARLEY: I think that's the legislative intent, so that's already made

part of the law. I say that as the sponsor.

SENATOR ABATE: That it is the legislative intent that there would be a separate document signed by the consumer?

SENATOR FARLEY: I don't know if it's a separate document. I think that he has to have written consent -- written consent of the buyer.

SENATOR ABATE: Okay. On the - on the bill. Thank you very much, Senator.

ACTING PRESIDENT DiCARLO: Senator Abate on the bill.

SENATOR ABATE: I won't go on and elaborate. I think I've raised, through my questioning, some of my concerns. I believe there has to be some balance reached to accommodate the needs of the retailers but not at the expense of the consumer. I'm very concerned about how broadly drafted this bill is, particularly concerned about the waiving of the judicial proceeding, under what circumstances, how the individual is advised, how the consent is reached, and unless that is

clarified in some detail in the statute, I believe that many consumers will unknowingly give their consent, will be faced -- after 30 days and then the additional 60 days, will be faced with repossession, even though, in fact, they have been paying what they owe over a long period of time, and it may be a minimal amount they owe, and I think what will be occurring will be anti-consumer actions, in many cases.

I think the bill could be strengthened in terms of consumer protection. If it does not pass this year, I hope Senator Farley will take into consideration some of the issues raised today.

Thank you very much.

ACTING PRESIDENT DiCARLO: Senator Leichter.

SENATOR LEICHTER: Yeah. Mr. President, if Senator Farley would yield.

ACTING PRESIDENT DiCARLO: Senator Farley, will you yield? Senator Farley yields.

SENATOR FARLEY: I'm pleased to

yield to a friend of the retail industry.

SENATOR LEICHTER: And of business in the state generally, Senator Farley, you might state, but -

SENATOR FARLEY: That's correct.

SENATOR LEICHTER: -- let me ask you one thing which concerns me. First, let me address something that Senator Abate addressed, and I think she makes a good point that you could certainly clarify that you should have a separate writing where the buyer consents to the repossession. Now, you try to deal with it, you say, "Well, it's got to be contemporaneous", so I assume if I signed a contract that has a provision in there that says, "I agree to repossession without judicial process" and then it's two years later, I think it's clear that that's not contemporaneous, but I'm somewhat troubled by the word "substantially" contemporaneous. I think that's a -- that invites all sorts of problems, all sorts of court involvement. Why not just say "contemporaneous"? What's "substantially

contemporaneous"? Is it 30 days, is it 60 days, is it 5 days? I think you're asking for a lot of trouble on that. I would urge that at least in that respect, you just say "contemporaneous" and say a separate writing other than a -- other than the contract.

SENATOR FARLEY: You don't like "substantially contemporaneous"?

SENATOR LEICHTER: Well, you tell me what's "substantial". How many days is "substantial"?

SENATOR FARLEY: Well, this debate is substantial.

SENATOR LEICHTER: Well, your bills, Senator, are substantial bills.

SENATOR FARLEY: Well, thank you.

SENATOR LEICHTER: They deserve substantial consideration.

SENATOR FARLEY: No, I hear what you're saying. It may be redundant of sorts.

SENATOR LEICHTER: Well, it's not redundant. I believe on the contrary, it isn't redundant. It makes -- when you say

"contemporaneous", contemporaneous means at the same time. Now you have something, it's - well, substantially at the same time, and I think that leads to a vagueness and ambiguity that doesn't do credit to the precise and clear way that we like to legislate.

SENATOR FARLEY: I see what you're saying. I don't fully agree, but I understand. I'll bring that up with Assemblyman Feldman.

SENATOR LEICHTER: Okay. Let me -- if you would be good enough to continue to -

ACTING PRESIDENT DiCARLO: Senator Leichter, do you -- Senator Farley, do you continue to yield?

SENATOR FARLEY: Yep.

ACTING PRESIDENT DiCARLO: Yes, he does.

SENATOR LEICHTER: Senator, you're very fair, you're very forthright, but let me ask you about some -

SENATOR FARLEY: I'm a great

admirer of yours also.

SENATOR LEICHTER: Thank you.

Senator, under our system where somebody has a security interest, we require a filing because we want to protect a purchaser in good faith. I'm concerned that the system that you set up does not protect the purchaser in good faith. Let's say somebody purchases or - a big expensive freezer or maybe a home entertainment system, quite a few thousand dollars, you know. College kids do this and after two years they sell it to someone. However, it turns out that the person hasn't paid the full amount. What happens to the repossession then? How do we protect the purchaser without notice in good faith?

SENATOR FARLEY: Wait a second. As I understand your question, you're telling me the buyer sold the merchandise.

SENATOR LEICHTER: Right.

SENATOR FARLEY: That's a no-no.

SENATOR LEICHTER: Senator, why is -

SENATOR FARLEY: And it would seem to me that the merch... the retailer is going to get an outstanding lawyer like yourself to find out where that merchandise went, and he's got an action -- incidentally, that will travel -- that security interest travels with the merchandise, if we can find it.

SENATOR LEICHTER: Senator -

SENATOR FARLEY: That's one of the risks that the retailer takes, to be very honest with you. The scenario that you're drawing, I think the retailer is stuck, don't you?

ACTING PRESIDENT DiCARLO: Senator Leichter.

SENATOR LEICHTER: Senator, if you'll continue to yield. I'm concerned that we're not protecting the buyer in good faith. In all other systems that I know of, Senator, where somebody retains a security interest, let's say it's a mortgage on real property -

SENATOR FARLEY: Or an automobile.

SENATOR LEICHTER: -- or an automobile, there's a filing so that the purchaser has a chance to determine whether or not there's a security interest in the property. Under your system, there's no protection at all, as I understand it, for the purchaser in good faith, although I don't know, it may not be clear. It may be that the court will say, "If you sold it, the retailer loses his interest." I'm not sure that your bill is totally clear on this, but I assume its intent is that the buyer, in good faith, is not protected.

SENATOR FARLEY: You know, I know that you check all these filings, and so forth, but the average guy that goes out and buys a car and he buys one that has an interest on it, needless to say, he's bought himself a bad car. I would say when we're talking about merchandise 2- and $300, or something like that, and the buyer sells that merchandise, has it stolen and then refuses to pay for it, just in my opinion, the retailer, unfortunately, is going to be

stuck, and the security interest that he had is going to be rather difficult to -- to repossess the item that he can't even find anywhere, but that's the chance that the retailer takes, and I guess they're willing to take that.

Now, is this a business that everybody wants to get into; no, but it's very important to the retail industry. They feel that they want to do this like they do it in 49 other states, and they feel that they can handle it and, by and large, having been in the retail industry at one time, I think that they - again, they don't really intend to repossess. I've seen that time and time again. It's more or less a convincing argument to the buyer that they'll repossess if they don't start paying, and they'll give them all kinds of latitude for mispayments or financial crises as long as they can keep them paying, and I really -- I think you're trying to really make more of this. Will this bill protect every bona fide purchaser or something? No. I can't take care of all the problems, the third-hand buyer, and so forth.

We -- nobody can take care of all of that, Franz.

ACTING PRESIDENT DiCARLO: Senator Leichter.

SENATOR LEICHTER: Mr. President, just one final question. I appreciate your answer, Senator, and it may be that on balance, you may decide that, obviously a system of filing for heavy property that's worth more than $200 would be so cumbersome, it might not be worthwhile, but I think it is a -- it is a problem, particularly when we're talking not of the -- let's say the small refrigerator that costs $250, but you're talking about, as I mentioned, a home entertainment system which goes for many thousands of dollars which are sold continuously, so it's a problem.

Let me ask you one other question, if you would be good enough to yield.

ACTING PRESIDENT DiCARLO: Senator Farley, do you continue to yield?

SENATOR FARLEY: I'm not going to keep loving you. Go ahead.

ACTING PRESIDENT DiCARLO: Yes, he does.

SENATOR FARLEY: I will. I'll yield.

SENATOR LEICHTER: Senator, who does the repossession? Now, I assume if you have a -

SENATOR FARLEY: The sheriff, I guess. I don't know.

SENATOR LEICHTER: It's clear the repossession, whereby -

SENATOR FARLEY: We have repossession -- I don't know. That's -- were you interested in becoming a repossessor or what?

SENATOR LEICHTER: Well, Senator -

SENATOR FARLEY: I think it's open to you. I would think that you -

SENATOR LEICHTER: Did you say you would give me a recommendation?

SENATOR FARLEY: I'll give - I'll give you a recommendation. (Laughter)

ACTING PRESIDENT DiCARLO:

Senator Leichter.

SENATOR LEICHTER: Well -- all right. It's clear, in other words, unless the buyer has agreed to the repossession, that it has to be as authorized by law, so we're not going to find, you know, some gun-toting cowboy type going in and trying to make a business out of these repossessions and creating more problems than we're ever going to solve in this bill.

SENATOR FARLEY: You know, Senator Leichter, you and I both live in the real world. If you think that the average retailer is going to go get a court order, go out and hire somebody to repossess for an item that originally costs $200; it might have a value of ten bucks or maybe it would even cost you that to get rid of it, I don't think you're going to see too many repossessions but, you know, I could be wrong. Again, I think it's a device that can be used to help a consumer who has rather troubled credit, a consumer who

doesn't have the cash to buy a large ticket item. I think it's a reasonable piece of legislation, and I think it's going to become the law of New York State.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT DiCARLO: Senator Leichter.

SENATOR LEICHTER: I thank Senator Farley, and I'm still struggling with it but, Senator, the one thing I think we need not do in describing the bill, as you just did, that this is to help the consumer. I mean, it doesn't help the consumer. Let's at least be honest about it.

Thank you.

ACTING PRESIDENT DiCARLO: Senator Padavan.

SENATOR PADAVAN: Senator Farley, would you yield to a question?

ACTING PRESIDENT DiCARLO: Senator Farley, do you yield?

SENATOR FARLEY: I'm delighted. You're here to help me, aren't you, Senator?

Senator Padavan, yes.

SENATOR PADAVAN: Well, I don't know if I'm here to help you. I'm not the repo' man, I'll tell you that much.

Senator, in the case of using some of the examples you've heard already of an appliance being bought that may have cost $1,000 with 12 payments, the last two payments are not made, the provisions you articulated in your bill are implemented, the 30-day notice, the conspicuous or substantially contemporaneous writing was signed and that product is repossessed, what compensation is there in the legislation, or perhaps in current law, that would relate to that buyer who no longer has the refrigerator and has paid 11 of the 12 payments, along with finance charges that are generally quite high?

SENATOR FARLEY: M-m h-m-m. I know -- I understand your question. In other words, what you're saying to me is if they -- in essence, I think what you're asking, if the merchant takes that item and sells the item and

gets his $2 that is owed on it, does the remainder go to the -

SENATOR PADAVAN: Senator, what you said earlier -- while you're trying to look that up, let me just elaborate for the reasons I asked the question.

SENATOR FARLEY: You have asked the one question I don't have an answer to. I don't think there's any -

SENATOR PADAVAN: Well, I think it's an important one. Just to give you -- put this in context -

SENATOR FARLEY: I don't see that.

SENATOR PADAVAN: Just to put the question in context, Senator -

SENATOR FARLEY: Go ahead.

SENATOR PADAVAN: -- while you talk about the average retailer -- and I would agree with you, the average retailer in this state is an honest, law-abiding person who tries to demonstrate good will and obviously tries to deal with people fairly, but unfortunately in

the city that I come from, we have an entirely different sort in some communities. They're usually communities that have people who perhaps are not versed in the English language, don't really know what they're signing, communities where people are just unsophisticated in these matters, and many of those retailers don't make their money on the product; they make their money on the finance charge and the finance charge, with some of these finance companies - which, in my view, shouldn't even be in business -- really are a drain on the consumer.

Now, you can't solve that problem, nor can I. Certainly, it seems to me if we're going to provide a mechanism to seize a refrigerator or a kitchen set or whatever that person may have purchased, there ought to be something in there that says if they paid for 90 percent of it, that they're going to get something back.

The Consumer Affairs Commission in the city of New York recently took action against a number of retailers who were

advertising appliances as new but they were all used. He had acquired them -- or they had acquired them in some fashion or another, perhaps through repossession, fixed them up, put them in the window in the showroom and sold them as new. So there is a market for this stuff and that, by the way, is illegal, but nevertheless, it happens. So that's why I'm asking you this question.

SENATOR FARLEY: No, I understand what you're saying. Generally speaking, I was going through what -- Assemblyman Feldman addressed that same question that most of the security interest would be on furniture and refrigerators, et cetera, and so forth, and the cost of repossessing that -- the cost of re possessing that and the very rapid depreciation of furniture -- and I'm just using his words - would make it -- there really would be very little value in it. Again, it goes back to the point that I think it's almost a persuasive way to get somebody to pay. I don't think you're going to see massive repossessions. Again,

that's the best that I can say on that issue that you're asking.

ACTING PRESIDENT DiCARLO: Senator Onorato.

SENATOR ONORATO: Senator Farley, would you yield to a question?

SENATOR FARLEY: Certainly.

SENATOR ONORATO: Senator Farley, is the -- is equipment such as orthopedic and prosthetics covered under this bill? What if I purchased an artificial leg or a pacemaker, how do you go about repossessing that? (Laughter) Is it covered under your legislation?

SENATOR FARLEY: You don't have a shred of decency.

SENATOR ONORATO: Or if I have a denture, you know, the one size that fits all.

SENATOR FARLEY: We would repossess that one leg at a time.

ACTING PRESIDENT WRIGHT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 93 are Senators Abate, Gold, Leichter, Markowitz, Mendez, Montgomery, Onorato, Padavan, Paterson, Santiago, Smith. Ayes 45, nays 11.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Excuse me. Also, Senator Waldon. Ayes 44, nays 12.

ACTING PRESIDENT WRIGHT: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 111, by Senator Volker, Senate Print 197, an act to amend the Penal Law, in relation to resisting arrest.

ACTING PRESIDENT WRIGHT: The Chair recognizes Senator Volker.

SENATOR VOLKER: Mr. President, this is a bill that has passed this house on

several occasions and I'm hoping that this will be the last time that it will pass this house, because we are in communication with the Assembly and I'm very hopeful that this bill will become law.

Very quickly, it came as a result of a number of cases involving law enforcement officers, chief -- chiefly in Long Island and in New York City, where judges have and continue, in fact, to determine that police officers, to maintain charges of assault, have to be substantially injured, in other words have to have a serious injury before you can maintain virtually any assault charge, and the resisting arrest presently, the maximum under any circumstances is a misdemeanor.

What this bill would do is to upgrade the penalty for resisting arrest. If physical force is used on a police officer or peace officer, it, in effect, takes the second degree charge, which is now the maximum charge, a Class A misdemeanor, and upgrades it to an E felony if physical force is used on a police

officer or a peace officer. That's basically what it does.

ACTING PRESIDENT WRIGHT: The Chair recognizes Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President.

Would Senator Volker engage in some dialogue?

ACTING PRESIDENT WRIGHT: Senator Volker, will you yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT WRIGHT: The Senator yields to the question.

SENATOR WALDON: Thank you very much, Mr. President.

Before I ask the question, Senator, as you know, we discussed this at committee and at that time, you raised a very valid concern as to how do we define physical force, and since that time, I must admit, we have not come up with a precise definition. However, in looking at this, I tried to imagine -- and I would ask you to respond to this -- if

someone merely went limp as the arrest was being made, could that be characterized as sufficient to warrant a Class E felony?

SENATOR VOLKER: No, absolutely not. That's passive and that, I think is the - is the problem with the present law, and that is that no matter what the person does in resisting arrest, it -- the maximum charge that can be laid is a Class A misdemeanor.

Traditionally, the resisting arrest -- the incident that you just identified is what sometimes happens and, in fact, traditionally, the only time a person gets charged with resisting arrest under those circumstances, very honestly, is where other charges would fall away or something of that nature because normally, where there isn't any real resistance, physical resistance the police officer generally won't make the charge anyway, but he could if the person falls limp and if they had to be carried away or whatever.

Let me just say -- and if I might, on the issue of physical force, we've

done some more work on it, as you know, and Ken Connolly went over it again and we've done about two years' worth of research on this -- on the issue of physical force, and we don't find any cases, by the way -- and physical force is listed in the Penal Law in several places where it's used as part of -- as part of the definitions.

For example, first degree rape, sodomy and sexual abuse all involve forcible compulsion which means to compel by the use of physical force. The courts have regularly examined defendants' conduct to determine whether physical force was used. There doesn't appear to be any place in the Penal Law or cases involving those definitions that have had - where the court has had any trouble, as a matter of fact, whether physical force was used or not. We have tried to find any place that we could where a case revolved on that issue. We haven't been able to find any, and we also find no place where a formal definition is used. Incidentally, in talking to the people that

delivered this bill to us initially, the law enforcement people, they told us that initially when they went to the Assembly with this bill, the language they used was "striking, shoving, pushing or kicking" to -- you know, to upgrade it. The Assembly staff people who researched this said, "Lookit. That's not sufficient. Go to physical force. It's the best way to do it. It's the cleanest way," and their research apparently showed that their feeling was at the time that that was the best way to do it.

Now, the Assembly -- in all candor, the Assembly has not passed this the way it is now, but that was apparently what was recommended to them when they came to us. So I just wanted to point that out to you. I didn't mean to -- because I know that was one of your main questions -- issues on physical force, but Ken did some more work on it and that's - Connolly, my counsel -- and that's what we found.

SENATOR WALDON: Would the learned Senator yield -

SENATOR VOLKER: I'll yield.

SENATOR WALDON: -- for another question?

ACTING PRESIDENT WRIGHT: The Senator continues to yield.

Senator Waldon.

SENATOR WALDON: I appreciate your sharing that information with us, Senator Volker. Mike Fallon on our staff apparently found a similar source in terms of the recommendations to me, and I was wondering if we were to -- let me say this: Did you just say that in your opinion, the Assembly would not pass it in any form except the one that we have before us?

SENATOR VOLKER: No, I didn't. The people that brought this bill to us, the law enforcement people, the Assembly people, staff people that reviewed the bill initially said that they thought it would be better to do this used as physical force rather than those other -- what I said -- the other definitions that we had before because the other definitions would

be too limiting and they thought "physical force" would be a better definition. I think, very honestly, if, as I suspect this year, there's going to be some changes in the assault statute, there's going to be some sort of upgrading, my guess is, from some information I have, the Assembly probably will look at this bill too and may well consider doing an upgrade in this one too, so we may be able to do something. I'm not saying it will be exactly what this is, but we probably will have a chance of doing it this year.

SENATOR WALDON: Would the Senator continue to yield, Mr. President?

SENATOR VOLKER: I'll continue to yield, yes.

SENATOR WALDON: Senator, in your opinion then, would -- someone who performs some form of active physical resistance but not striking or kicking the police officer, would that be a more severe situation than the first one we spoke about but less severe than when there is biting, punching, striking, kicking, et

cetera?

SENATOR VOLKER: I think what - as a practical matter, unless you have something -- physical force is physical force. You have to have some -- some -- some evidence of it and, of course, any police officer would know if you don't have something that you can -- you can testify to, the chances of maintaining it are very slim, and you and I know, by the way, whenever you go to a felony, the proof becomes more difficult anyway, and that has been one of the -- one of the real problems in a number of areas. So I think the answer is that you're going to have to have some substantial evidence of real force in order to maintain a Class E, anyway.

SENATOR WALDON: Mr. President, last question or last series of questions, if I may.

ACTING PRESIDENT WRIGHT: Senator Waldon, Senator Volker continues to yield.

SENATOR WALDON: Senator, I don't know if it's appropriate for us to do this now.

Maybe we need to pass this and then revisit it with your expectations in regard to what's going to come out of the Assembly, but I have looked at this as a result of careful analysis by staff, and they suggested to me and I will suggest to you, that we maintain a three-level action regarding this particular area, and that the first would still be a Class B misdemeanor, someone just lies limp, but when someone actively resists without upgrading their action to the point of kicking, biting, et cetera, et cetera, that becomes the Class A misdemeanor, but if, in fact, they kick, they bite, they strike, they punch, then it is unquestionably active resistance with physical force, and that becomes the Class E felony. Might we be able to consider that scenario?

SENATOR VOLKER: Yes, Senator. We'll look at that, but I think the problem is that there appears to be, in talking with people who have looked at this issue, that the more you try to define something which maybe is indefinable, the more difficult it becomes, and

the -- in a sense, the more you create a problem for yourself, because one of the reasons they add kicking and shoving and all of that stuff was that you don't define everything. In other words, if you don't use language that covers just about any kind of situation, it probably wouldn't apply, but we certainly can look at that. That may be one of the things that we can talk to the Assembly about. I honestly think that this definition is about -- at this point seems to be about the best that we can do at this point, but certainly we'll look at it, and I appreciate your suggestion. We'll take a look at it.

SENATOR WALDON: Mr. President, on the bill.

ACTING PRESIDENT WRIGHT: Senator Waldon on the bill.

SENATOR WALDON: First, Senator Volker, let me thank you for being divined by the same spirit that was divined on this side of the aisle in terms of coming up with your analysis, but to be very serious, I appreciate

your looking at the bill as a result of what we discussed in committee. It shows that you were sensitive to the dialogue that we experienced at that time. I further appreciate the fact that you might revisit it with our colleagues in the Assembly so that we can have a statute which will achieve the best ends for the people of the state of New York.

To be very candid, amongst those with whom I have discussed this issue, there was some fear that there wasn't sufficient delineation, so that the police officers could not become creative in a fictional sense as sometimes officers do; I'm not saying all officers. Certainly 99 percent of the people who do what they have to do do the right thing, hopefully, but I think that if you can revisit it, if our Assembly colleagues can become in sync' with the thoughts that we've shared here today, we'll end up with a statute that will really work on behalf of the people of the state of New York, and with that in mind, I will vote for this legislation and we can move forward on

it.

ACTING PRESIDENT WRIGHT: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Mr. President, I would like to know if the sponsor would yield for a question.

ACTING PRESIDENT WRIGHT: Senator Volker, will you yield to a question?

SENATOR VOLKER: Sure.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT WRIGHT: The Senator yields.

SENATOR MONTGOMERY: Senator, this -- your bill raises the crime from a misdemeanor to a felony. It's currently now a misdemeanor?

SENATOR VOLKER: With physical force. The maximum that any kind of resisting arrest can have at this point is -- is an A misdemeanor. What we are saying here is that you have the same circumstances as with an A misdemeanor, except that if physical force is added to it on the police officer, law

enforcement officer, then it would elevate it to a Class E felony.

SENATOR MONTGOMERY: Okay. If you'll yield to another question.

SENATOR VOLKER: Sure.

SENATOR MONTGOMERY: What is the relationship between this and the crime of an out-and-out assault of a police officer? Is there any difference?

SENATOR VOLKER: Assault on a police officer is a different crime, which is one of the difficulties because the courts have so -- so interpreted assault on a police officer that you have to have virtually a serious injury, a reasonably serious injury for the courts to even maintain any kind of an assault charge against a police officer. In New York City, that's especially true and it's on Long Island -- and I'm not saying just in New York City, but it appears to be throughout the state and most of the courts, just recently, I think a couple of them, so-called assault third cases, that is lesser assault, so to speak, on police

officers, have been thrown out because the interpretation was that the assault third statute was really not supposed to be for police officers. It was supposed to be for assaults on individuals and, therefore, even though it was considered to -- at least to the judges a lesser assault, they threw it out. That's one of the reasons why the -- the law enforcement people have looked to a resisting arrest because they're caught in that -- in that vacuum between the assault -- assault cases and the weak statute on resisting arrest, and that's what this is all about.

SENATOR MONTGOMERY: Okay. Mr. President, if he would just continue to yield.

SENATOR VOLKER: Sure.

ACTING PRESIDENT WRIGHT: The Chair recognizes Senator Montgomery. Senator Volker continues to yield.

SENATOR MONTGOMERY: Thank you.

It sounds, Senator Volker, then like you -- to get a charge of assault on a police officer, there has to be -- there is a

standard of proof -- of evidence of what the assault -- the results of the assault, wherein with resisting arrest, there is not the same level of proof.

SENATOR VOLKER: Well, first of all, assault second is a -- is a more serious felony.

SENATOR MONTGOMERY: Excuse me?

SENATOR VOLKER: Assault second is a more serious felony to start with. It's already a felony. In other words, resisting arrest is only a misdemeanor now. We're beefing it up to a Class E felony. Assault is a more serious charge -- assault second is a more serious felony. In fact, our proposal, as you know that's been around, is to -- is to move it up even in another grade, but the reason for the physical force is to show that you have to have some sort of active resistance so that person can be charged; a charge can be maintained of a resisting arrest, that's correct.

SENATOR MONTGOMERY: Okay.

SENATOR VOLKER: It's different,

as Senator Waldon said, if somebody falls limp or just doesn't want to go. In demonstrations, it happens all the time, people lie on the street or whatever, and they're dragged off. Generally, they're not charged with resisting arrest, but occasionally they are if they're particularly belligerent or whatever. This wouldn't change that. Those would still be Class A misdemeanors because the people just were passively resistant.

SENATOR MONTGOMERY: Does your bill place this particular resisting arrest charge at the same level as an assault? In other words, is an assault a Class E felony or is it a higher -

SENATOR VOLKER: It's a higher felony.

SENATOR MONTGOMERY: It's a higher felony.

SENATOR VOLKER: Assault second is a higher felony. That's -- I think the point is that, if you can maintain that assault charge, you don't need this at all, but the

assaults on police officers, in order to maintain them, you virtually have to have a serious injury. The interpretations of these cases have been that -- almost that the police officers get to expect to be assaulted, and unless he or she has a broken bone or -- or has severe lacerations or whatever, almost no courts will maintain an assault -- an assault second.

SENATOR MONTGOMERY: Thank you very much, Senator Volker.

Mr. -- Mr. President, on the bill, I just briefly want to express my opposition to this legislation, and the reason that I do is that I fear that it is another opportunity for people, particularly young people, many of whom in my -- my district are arrested and charged with some sort of -- some sort of resisting arrest charge, and oftentimes when I have pursued this charge or these kinds of arrests of young people, in particular, I have found that there is no evidence of the police officer having been assaulted, even though that it -- that they have placed that as

one of the charges, and it is a very, very frequently used charge just as an excuse to haul people in, particularly teenagers, particularly black males in my district, to haul them in and give them an arrest charge, and they then have to go to court, and so forth.

So this is the lowest level of arrest that I'm familiar with that is the first step into the door of the criminal justice system, particularly for young African-American males, and I think we have to be very careful. We have to be absolutely -- understand that the criminal justice system does not view every single person equally in the society. It's very unfortunate. We all don't like it, but it is the truth. I am not viewed on the New York State Thruway the same as Senator Volker is viewed on the New York State Thruway. I have been stopped by the New York State Police to examine my credentials because of the fact that I'm driving a car with those plates. So -- and that's just a fact of life.

So I'm just warning my colleagues

that this is a very serious issue. I deal with it frequently in my district as a problem that relates to how the police have a small handle to -- to have an excuse to arrest people, and we should not -- we should make sure that if, in fact, we are going to increase this to a felony -- because once it becomes a felony, it's much more difficult to deal with in terms of supporting a young person and trying to keep him out of the system, working with a D.A., with the local police department, and what have you, once it becomes a felony charge, it's more difficult.

So I think we have to be very careful, Senator Volker. I understand what you're trying to do. We want to protect the police officers, but I think we have protections for police officers. It requires a level of proof. I think that is appropriate, and if we are -- certainly if we're going to do this, we should at least require a level of proof so that it does not become a subjective charge that a police officer can make on a person without sufficient evidence that it, in fact, happened

and so that it can snare a person unnecessarily into the system.

Mr. President, I'm voting no on this legislation.

ACTING PRESIDENT WRIGHT: The Chair recognizes Senator Volker.

SENATOR VOLKER: Mr. President, let me just tell you, Velmanette, that I have been stopped on the Thruway a number of times too, I can assure you. Whether I was a former police officer or not, I have been stopped and -- for various reasons.

Senator Montgomery, I don't think you're completely aware of the way this works. If you cannot maintain another charge, another -- the charge here is resisting arrest. If the initial charge does not -- is not abided by, the resisting arrest will fall with it. We are not reducing any standards here as far as proof. You still have to prove it. Many young people are arrested, by the way, for disorderly conduct or something of that nature. Maybe it's true that some of them are arrested without total

cause, although I must tell you, in my years experience, almost half the people that I picked up were totally innocent; they never did anything. If you talk to them afterwards, you would think that they were -- they were cherubic, and so forth, but, unfortunately, if you were there, you would have found out there was some different -- little different facts than are very often used.

I think what you should also understand is once you do reach a felony -- and this is particularly true in New York City, and I don't necessarily say that it's necessarily bad -- it's very difficult to maintain a felony -- a low level felony case in New York City unless you've got a lot of proof because there are -- admittedly are a lot of them, and it's no secret that in some cases you can't get a D.A.'s attention unless you have a felony to start with, which is another reason why we have reasonably serious cases. It is a wise idea to make a penalty sufficient to cover the case involved but, Senator, keep in mind that this is

not something that stands or falls by itself. It depends on the initial arrest. In other words, you don't just charge somebody with a resisting arrest as the only charge. You can't really do that. You must have -- you must have another charge that starts out, and then you've got to prove it, and if you can't show any real physical force -- just the testimony of a police officer is very tough to maintain -- to maintain those kinds of charges, and the same thing is true in the assault cases, I must be honest with you. It is very difficult to do, and I understand your concern, and you have a right to be concerned and your -- with some of the problems, but it seems to me that I don't -- I guess where we fault and disagree is I don't think police officers do have sufficient protection. Unfortunately, what is happening is they've become targets, and it seems to me that we have to give them the best protection we can and make sure at the same time that there's a level of evidence sufficient so that people get their fair due in court, but I do think we've

got to give them protection they need, and I think this is one of the areas that will do that.

ACTING PRESIDENT WRIGHT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of November.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT WRIGHT: Senator Abate, why do you rise?

SENATOR ABATE: Yes, I would like to explain my vote.

ACTING PRESIDENT WRIGHT: Senator Abate to explain her vote.

SENATOR ABATE: I share with Senator Volker the concern that we need to protect officers and that, in the law, we have to ensure that, when individuals assault officers, they be appropriately punished. I believe this legislation puts the cart before

the horse. I would support, as I suggested last year, legislation that enhances the penalties and maybe facilitates the prosecution of assaults on officers. This, however, I believe, attacks the wrong conduct.

What we want to do is attack the heinous assault on officers. What this does is take a class A misdemeanor, where the scope of punishment is one year, and says to the Court that if you resist in some way, if it's a hip check -- and that's easy. If it's a hip check or a shoulder check or it's biting or punching or whatever, if it doesn't result in physical injury to that officer, all those variations, the broad definition of "physical force" will be the same whether it's a hip check or a punch - and they are really different gradations of conduct -- that they would be eligible for four years in prison.

I believe the scope of punishment is sufficient. It's a year in jail. We're talking about cases where the officer is not physically assaulted; because if they are

physically assaulted, two crimes are charged, resisting arrest and assault on the officer. If we have a problem in prosecuting the assault on the officer, let's deal with that problem in a separate part of legislation.

And, for these reasons, I vote no.

ACTING PRESIDENT WRIGHT: Senator Abate in the negative.

Results.

Senator Smith.

SENATOR SMITH: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 114.

ACTING PRESIDENT WRIGHT: Senator Smith, if you may, we want to finish this.

Results, please.

THE SECRETARY: Those recorded in the negative on Calendar 111 are Senators Abate, Connor, Espada, Leichter, Markowitz, Mendez, Montgomery, Paterson, Santiago and Smith.

Ayes 46, nays 10.

ACTING PRESIDENT WRIGHT: The

bill is passed.

Senator Smith.

SENATOR SMITH: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 114.

ACTING PRESIDENT WRIGHT: Without objection, Senator Smith will be recorded in the negative on Calendar 114.

Senator Oppenheimer.

SENATOR OPPENHEIMER: I would like unanimous consent also for Calendar Number 93.

ACTING PRESIDENT WRIGHT: Without objection, Senator Oppenheimer will be recorded in the negative on Calendar Number 93.

Senator Skelos, that completes the controversial reading of the calendar.

SENATOR SKELOS: Mr. President, if we can return to reports of standing committees, I believe there's a report from the Insurance Committee at the desk.

ACTING PRESIDENT WRIGHT: I believe, Senator Skelos, there's also a report

from the Social Services Committee.

Without objection, reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Holland, from the Committee on Social Services, hands up the following bills directly for third reading:

Senate Print 2478, by Senator Holland, an act to repeal Section 147 of the Social Services Law, relating to misuse of food stamps;

Senate Print 2999, by Senator Holland, an act to amend the Social Services Law, in relation to authorizing the Commissioner of Social services to enter into an agreement; and

5344A, by Senator Johnson, an act to amend the Social Services Law and the Criminal Procedure Law, in relation to recipients of public assistance.

Also, Senator Velella, from the Committee on Insurance, hands up the following bills directly for third reading:

Senate Print 5926, by Senator Velella, an act to amend the Insurance Law, in relation to determining the extent to which a preexisting condition limitation has been satisfied in certain contracts;

5925, by Senator Velella, an act to amend the Insurance Law, in relation to extending the expiration date for Article 54.

All bills directly for third reading.

ACTING PRESIDENT WRIGHT: Without objection, bills directly to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, I just want to remind the members of the Senate that the Senate picture will be taken this Monday, February 5th, promptly at 2:30, and we would like to have everybody on time. Dark suits. I forget whether it's white shirts or blue shirts.

SENATOR STACHOWSKI: Light shirts.

SENATOR SKELOS: Light shirts.

Light shirts. Thank you, Senator Stachowski. And if we can be on time -- the photographer is on a tight schedule.

Is there any housekeeping at the desk?

ACTING PRESIDENT WRIGHT: There is none.

SENATOR SKELOS: Then I -- Mr. President, I move we adjourn until tomorrow, Wednesday, January 31st, 1996, at 11:00 a.m. sharp.

ACTING PRESIDENT WRIGHT: Without objection, the Senate stands adjourned.

Excuse me. Senator Montgomery.

SENATOR MONTGOMERY: May I just correct the Majority Leader. The women don't wear dark suits. We wear our power color, and the women know what color that is.

ACTING PRESIDENT WRIGHT: Duly noted, Senator Montgomery. Thank you.

Without objection, the Senate stands adjourned until Wednesday, January 31st, at 11:00 a.m. sharp.

(Whereupon, at 4:55 p.m. the Senate adjourned.)