ALBANY, NEW YORK

February 24, 1997

3:01 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. All the members will find their places, staff will find their places. Ask all the members and everybody in the chamber to rise and join with me in saying the Pledge of Allegiance to the Flag.

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

I ask all of you to remain standing so the invocation can be delivered today by the Reverend Dr. Evelyn John, Pastor of the New Life Center of Truth of Brooklyn, New York.

DR. EVELYN JOHN: Everyone, let us just relax, let go and let God. Let us pray.

Loving Father, Almighty God, we give Thee thanks for this day. We give Thee thanks for the opportunity You have given us to serve You in spirit and in truth. We thank You, O God, for this Senate and for giving these, Your children, the opportunity to come together to build a wonderful nation. As I bear them up to You this day in prayers of thanksgiving in my heart, I ask that You take complete control of

their mind, body and affairs so as they go about the task that is before them, they will do it for the love of serving their country. So lovingly and trustingly I place this Senate and all who gather here into Your care and keeping nothing that your Holy Spirit is now guiding and directing them to do that which is right and is good that the country and the people they serve. Bless this nation in a special way and fill this nation with Your peace, Your love, Your power. In Jesus' precious name we pray. And together we say amen.

ACTING PRESIDENT KUHL: The reading of the Journal.

THE SECRETARY: In Senate, Friday, February 21st. The Senate met pursuant to adjournment. The Journal of Thursday, February 20th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT KUHL: Hearing no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on behalf of Senator Kuhl, on page number 11, I offer the following amendments to Calendar Number 167, Senate Print Number 545, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 167 are received and adopted. Bill will retain its place on the Third Reading Calendar.

Senator Holland.

SENATOR HOLLAND: Mr. President, I ask that you place a sponsor's star on my bill Calendar Number 146, S. 1548.

ACTING PRESIDENT KUHL: Calendar Number 146 is starred at the request of the sponsor.

Senator Holland.

SENATOR HOLLAND: Also for

Senator Volker, on page 8, I offer the following amendments to Calendar Number 136, Senate Print Number 396, and ask that the said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 136 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Bruno, I offer up his privileged resolution and ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT KUHL: Secretary will read the privileged resolution by Senator Bruno in its entirety.

THE SECRETARY: By Senator Bruno, Legislative Resolution commending the Montessori Schools upon the occasion of Montessori Education Week to be celebrated February 24 through 28, 1997.

WHEREAS, it is the sense of this legislative body to recognize and commend those institutions of commitment and high achievement

whose purpose and endeavor have been dedicated to the pursuit of excellence in education of the children of this noble Empire State; and

WHEREAS, this legislative body is justly proud to honor the Montessori Schools as they celebrate Montessori Education Week on February 24 through 28, 1997, and

WHEREAS, there are six Montessori Schools in the Albany area. These schools educate children 3 through 12 years of age;

Montessori is the original developmental approach to education employing research-based methods for maximizing each child's potential. Montessori School of Albany, the Montessori Magnet School, Blossom's, Montessori Children's Academy, Montesorri of Niskayuna and Pine Hills Montessori are six of 5,000 Montessori Schools nationwide;

Montessori Education Week is an annual event designated to promote increased awareness and respect for young children. During this week Montessori children in public and independent schools will discuss the life of Maria Montessori, the first woman physicist - physician/scientist in Italy who developed this

method almost one hundred years ago. The children will celebrate in many ways in each school including grandparents visit to Montessori class, cultural fair, alumni reunion, pizza lunch and a visit from La Doctoressa Montessori; and

WHEREAS, all schools, private and public, will join in a Peace Play-in at Corning Preserve;

Professionals and parents alike claim that the Montessori approach is on the cutting edge of today's school reform movement; multi-age grouping, a rich and extensive curriculum implemented with hands-on materials, cross-discipline learning and case of the global environment are some of the characteristics that make Montessori a special learning experience, and

WHEREAS, Montessori schools can be proud of the accomplishments of the educational mission that they have undertaken; the schools are inviting members of the Albany community to join them in taking a first-hand look at the Montessori approach.

NOW, THEREFORE, BE IT RESOLVED,

that this legislative body pause in its deliberations to commend the Montessori Schools upon the occasion of Montessori Education Week to be celebrated February 24 through 28, 1997, and

BE IT FURTHER RESOLVED that copies of this resolution, suitably engrossed, be transmitted to the Montessori School of Albany, the Montessori Magnet School, Blossom's, Montessori Children's Academy, Montessori of Niskayuna and Pine Hills Montessori.

ACTING PRESIDENT KUHL: Is there any Senator wishing to speak on the resolution?

Hearing none, the question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

The resolution is adopted.

Senator Skelos, that brings us to the calendar.

SENATOR SKELOS: Mr. President, at this time if we could take up the non-controversial calendar now that everybody is

well rested and in a happy mood.

ACTING PRESIDENT KUHL: Secretary will read the non-controversial calendar.

THE SECRETARY: Calendar Number 93, by Senator Seward, Senate Print 1182, an act to amend the County Law, in relation to establishing county communications systems.

SENATOR DOLLINGER: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 101, by Senator Saland, Senate Print 673, an act to amend the Criminal Procedure Law and the Family Court Act, in relation to access to records.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 106, by Senator Volker, Senate Print 888, an act to amend the Penal Law, in relation to resisting arrest.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 112, by Senator Present, Senate Print 535, an act authorizing the Commissioner of General Services to transfer and convey certain state lands.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 138, by Senator Cook, Senate Print 779, an act to amend the General Business Law, in relation to requiring certain notification to callers of contests.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This

act shall take effect 180 days.

THE SECRETARY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 139, by Senator Velella, Senate Print 1301, an act to amend the General Business Law, in relation to possession of equipment.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 140, by Senator Levy, Senate Print 45, an act to amend the Vehicle and Traffic Law, in relation to requiring school bus and other motor vehicle drivers.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 141, by Senator Skelos, Senate Print 338, an act to amend the Vehicle and Traffic Law, in relation to increasing the period of time during which a driver's license is suspended.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 152, by Senator Levy, Senate Print 597, an act to amend the Vehicle and Traffic Law, in relation to providing for the permanent revocation of a driver's license.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 160, by Senator Stafford, Senate Print 150, an act to amend the Environmental Conservation Law, in relation to county responsibility.

ACTING PRESIDENT KUHL: There's a local fiscal impact note at the desk. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR SKELOS: Mr. President, if we could take up the controversial calendar at this time.

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 93, by Senator Seward, Senate Print 1182, an act to amend the County Law, in relation to establishing county communications systems.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator Seward, an explanation of Calendar Number 93 has been requested by Senator Dollinger.

SENATOR SEWARD: Certainly, Mr. President.

This bill is one that passed this house last year. It provides the authorization for any county that chooses to -- it's a county-by-county home rule situation -- but it authorizes such counties as wish to pursue this to create a district within the county borders to finance the cost of new and improved county communications systems or communications involving other municipalities as well.

Basically, the bill sets up an agency to study the need for the improvements or a system. The agency makes recommendations to the county governing board. Public hearings are authorized and required under this legislation to create the district, and once the district is created, there are normal permissive referendum provisions included here that come into play as well.

What this bill would do, if a district is created under this bill, would be to have the expenses of these communications systems to be charged to all real property parcels within the district, the same as water and sewer and the other improvement districts that are currently authorized by law.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will the sponsor yield to just two questions?

ACTING PRESIDENT KUHL: Senator Seward, will you yield to two questions from Senator Dollinger?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Mr. President, is it the purpose of this bill for those within the scope who contribute to the 911 communications system -- I believe it's now financed by real property taxes which means tax exempt properties don't pay. Is it the intent of this bill to set up a system under which tax-exempt properties would make contributions?

SENATOR SEWARD: Well, Mr. President and Senator Dollinger, nothing in this bill -- there's nothing in this bill to alter the way that the 911 is currently financed. That's through the access lines on the telephones.

This bill is directed toward other forms of a communications system. It could very well involve the communications systems that are tagged to emergency services such as, you know, the radios and that kind of thing that personnel carry and all of those system-related; but to answer your question specifically, we're not looking to alter the means of financing 911. That's taken care of through the telephone access lines.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Again through you, Mr. President, just to clarify that. All of the costs that this bill is designed to cover, the emergency communications costs, are currently paid for by real property taxes or sales taxes or some revenue-based or wealth based proper financing system.

I'm just simply trying to get at the fact that will properties that are currently tax-exempt -- hospitals, schools, churches, will they be contributing to the cost of the maintenance of this under this system? They're now tax-exempt.

SENATOR SEWARD: Mr. President, it is true that all parcels within the district would contribute as they do with other special improvement districts that are in the law -- in addition to this one. So, in effect, it would expand the base in terms of those that are - would be contributing for -- toward these county communications systems.

SENATOR DOLLINGER: O.K. So again through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Seward, do you continue to yield?

SENATOR SEWARD: Yes, I do.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: Just so I understand it, the tax-exempt entities that would not have to pay property tax to finance this venture would now have to make contribu tions based on some kind of use-related formula or some type of calculation, and I'm just interested in how you calculate that.

SENATOR SEWARD: Well, Mr. President, that, in the event -- that is true. As they do with other special improvement

districts currently. There is no distinction between tax-exempt and non-exempt properties in those other improvement districts, nor would there be under this legislation in those counties that, after the public hearing and the permissive referendum, all those counties that choose to pursue this option.

We're merely trying to provide the counties with an additional option for financing in some cases fairly expensive communications systems which benefit all people in the county.

SENATOR DOLLINGER: Again through you, Mr. President: Just how under this bill or is it left to the counties to choose to exercise their prerogatives under this bill? How do you calculate what the users or the subscribers or the payors -- how much they pay into this pool of funds?

SENATOR SEWARD: Well, Mr. President, I -- we really didn't get into that kind of detail on a statewide basis. That would depend on local situations, local expenses, all of those -- all those local factors. I really couldn't respond to that type of question.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Again through you, Mr. President, so it's up to the local counties how they would apportion the cost between what would currently be tax-exempt entities and current entities that pay real property tax such as homeowners and others.

SENATOR SEWARD: That's -- that is basically true, yes.

SENATOR DOLLINGER: O.K. Just one other question, Mr. President.

ACTING PRESIDENT KUHL: Senator Seward, do you continue to yield?

SENATOR SEWARD: Yes, I do.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: As a practical consequence of going to a charge-back system or usage system as envisioned by this bill and relieving the real property taxpayer from it, aren't you in essence losing what could be the federal subsidy because his property taxes are deductible on your federal income tax return and charges that you pay for water and

other services like trash collection, for example, are not deductible? Does this bill intend that the federal government's contribution through tax deductions would be lost for this kind of service?

SENATOR SEWARD: Well, it's certainly not the intent of this piece of legislation, Senator and Mr. President. It's - it's the intent of this legislation simply to provide another option to the counties to meet the expenses of these communication systems. The type of questions you're raising or the pros and cons of -- that you are raising in this debate, I think, are very legitimate questions which should be raised at the county level in any county that wishes to pursue a countywide communication district under the -- under this legislation. We're merely attempting to provide that option.

SENATOR DOLLINGER: Thank you, Mr. President.

I -- just on the bill. I appreciate the -- (talking over).

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: -- Chairman of the Energy and Telecommunications Committee answering my questions.

I voted for this bill before. I'm going to vote for it today. (Background noise) It doesn't change the tax-exempt contributions to special districts. It provides an additional option. I agree with you, Senator, that in some of the negotiations with the Assembly on this, if we want to flesh these things out we may want to give the county greater direction as to those counties that are paying real property taxes to finance these and those that aren't. I understand the system of turning what is now a common charge raised by real property taxes into a user fee. How you proportion those, I think, those may be some real tough issues for our counties.

I'm also concerned that, as we shift them from tax base into user fees, we tend to lose the federal subsidy that comes through federal tax deductions, but I'll leave that to the counties, Mr. President.

I appreciate the answers to the questions. I'll be voting in favor.

ACTING PRESIDENT KUHL: Does any other Senator wish to speak on the bill? Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 101, by Senator Saland, Senate Print 673, an act to amend the Criminal Procedure Law and the Family Court Act, in relation to access to records.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT KUHL: Senator Saland, an explanation of Calendar Number 101 has been requested by Senator Montgomery.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this is a bill which we had the opportunity to entertain last year, and it passed unanimously at that time.

What this bill does is, it says in certain carefully proscribed cases where, under the Family Court Act or the CPL, the Criminal Procedure Law, there are certain types of records which would be sealed primarily for YOs, PINS or JDs, where the Crime Victims Board is in the midst of an investigation or commences an investigation and believes that it's relevant that they have access to those records for purposes of really determining whether, in fact, the victim -- the position of the victim can be verified so that the victim can be compensated, they would be able to access those records, access them with the idea that they'd be accessed only for purposes of their crime victims hearing, that the records would remain confidential and would be otherwise sealed.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Senator.

Mr. President, I wonder if the

sponsor would answer a question that I have?

SENATOR SALAND: Yes.

ACTING PRESIDENT KUHL: Senator Saland, do you yield?

SENATOR SALAND: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR MONTGOMERY: The purpose of sealing those records, especially in the Family Court proceedings, what is the purpose of that?

SENATOR SALAND: Well, the records are sealed as a matter of law because of the age of the assailant or the party who may have been charged -- who was charged with what would otherwise have been a crime.

Again, this is not in any way, shape or form intended somehow or other to further complicate the proceeding or to impose any additional burdens on the person who was the respondent or the defendant. What it attempts to do is to say that where someone has been a victim of a crime, can then make application to the Crime Victims Board and they're then seeking compensation and if there is the necessity of

that board in order to establish the veracity of the claim, they would be able to access records that would otherwise be sealed, things such as perhaps whether, in fact, the victim contributed to his or her own situation, things that might not be readily ascertainable unless there was some individual way of -- some other way of verifying the allegations of the person appearing before it, i.e., the victim, the Crime Victims Board.

This does not throw the records open to the public. It does not invite anybody else to look at the records. The language in the bill is clear that the records remain otherwise confidential and they would not be accessed by any other entity or agency.

SENATOR MONTGOMERY: I see. There -- Senator Saland, does the -- the person who is opening the records, there is no other - two questions. There is no other way for the Crime Victims Board to get the information that you are seeking here and, two, are those records then resealed under the same circumstances that they were sealed in the first place?

SENATOR SALAND: Yes, they would

be. To answer your second question first, the records would again be resealed and remain confidential, and this is not the intention of automatic -- this is not done automatically in each and every case involving a person who would otherwise be the beneficiary of a sealed record to invite the Crime Victims Board to immediately go to that record.

This is basically intended to deal with those cases where there has been someone who has been victimized, allegating that he or she has been victimized, and there has to be some way of corroborating and there is no other way of corroborating her story, they would then have the ability to access the -- the several categories of records that are listed in this bill and, again, at the point of being terribly redundant, for that limited purpose, and thereafter the records would again be sealed.

SENATOR MONTGOMERY: Would have no other way of accessing the information that you're seeking in this bill?

SENATOR SALAND: Correct.

SENATOR MONTGOMERY: Yes, Mr.

President, briefly on the bill.

Thank you, Senator Saland, for the explanation.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes. Obviously it's troublesome to have the records of particularly Family Court proceedings unsealed for this purpose. While I certainly agree with the idea that we want to protect as much as possible the rights of the crime victim, it's -- it's still a little troublesome that we are looking to unseal the records particularly of juveniles, young people, for any number of reasons, and that access is becoming more and more a part of all of the legislation that we're passing in this house in particular.

And so I'm going to be voting against this bill. I have not voted against it in the past, but based on the fact that we seem to be moving more and more in this direction, that where essentially any young person who has any infraction and goes to Family Court for whatever reason, is subject to have that incident follow that person throughout their

lives, and in many, many instances it's going to result in people who eventually mature to the age 30 or 40 and go out looking for other opportunities are going to be cut off at the pass, and so I'm going to just vote no on this piece of legislation.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the bill? Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 101 are Senators Montgomery and Sampson. Ayes 53, nays 2.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar number 106, by Senator Volker, Senate Print 888, an act to amend the Penal Law, in relation to resisting

arrest.

SENATOR MONTGOMERY:

Explanation.

ACTING PRESIDENT KUHL: Senator Volker, an explanation of Calendar Number 106 has been requested by Senator Montgomery.

SENATOR VOLKER: Mr. President, this is a bill or a type of this bill has been around for some years, and the reason I say "a type of this bill" is that it has been changed somewhat since last year, in fact partly because of the debate on this floor. Senator Waldon and I, last year, as some of you may or may not remember, and Senator Montgomery and I, by the way, had a long discussion about this bill, and it related to the genesis of the bill itself, and to the -- as to how it occurred.

Basically what this bill does, and as I said at the time, as I've said at the time, this bill, I think recognizes the real reality of what has been happening in our streets, and that is that the courts and, to a certain extent, the district attorneys have downgraded the penalties for assaults on police officers.

There was a little question, to the point now where in order to maintain any kind of assault on a police officer, you have to have a serious injury. You have to have some sort of really substantial injury. We did some records checking, by the way, on assaults on police officers. They're almost never maintained any more. In addition to that, resisting arrest charges are very rarely ever maintained because the initial charge usually is what -- what occurs.

What this bill does is, because at the present time any form of resisting arrest is a Class A misdemeanor, whether somebody kicks, punches, swings, runs down the street, whatever they do and hits the police officer, whatever they do, it is a Class A misdemeanor with a maximum of one year in jail.

This bill, I think, faces the reality of the streets today and as opposed to last year's bill -- by the way, last year's bill, on the advice of some people from the Assembly, very honestly, we had omitted some of the language that is presently in this bill with the idea that it might have a better chance of

passing the Assembly, and last year's bill basically said a person is guilty of assault in the first degree when he commits the crime of assault in the second degree using physical force against the police officer or peace officer.

Initially we had used the language which is in this bill by striking, shoving, pushing, kicking, otherwise imposition of physical force. It was told to us by some of the staff people in the Assembly that that would be harder to accept. As Senator Waldon pointed out, he thought that that language, in fact, would -- would be easier to deal with, and in fact would, frankly, enhance the bill.

After the bill passed this house last year and we made a yeoman attempt to get the Assembly to negotiate on this sort of bill, we found out that actually the language we had didn't do us any more good than the language we had before so, frankly, we amended the bill this last year and put back in the old language.

Basically, though, what it comes down to is that the old form of resisting arrest is still there and that is resisting arrest in

the -- in the second degree which means it's a Class A misdemeanor; but what this bill does is to provide that, when you do these things that are listed in the bill, in other words use physical force against a police officer, then the lowest form of felony which is a Class E felony could be put into place.

ACTING PRESIDENT KUHL: Senator Leichter? Senator Montgomery, did you have further questions?

SENATOR LEICHTER: I'm sorry.

SENATOR MONTGOMERY: No, I wanted to speak on the bill. I do not want to ask questions.

ACTING PRESIDENT KUHL: I recognized you before Senator Leichter, so if you'd like the floor, the floor is yours.

SENATOR MONTGOMERY: Thank you. Senator Volker, could you tell us who would be responsible for -- for making the judgment of the degree of resistance?

ACTING PRESIDENT KUHL: Senator Volker, do you yield to a question, number one; did you hear the question, number two?

SENATOR VOLKER: Number one, the

initial decision would be made by a police officer and, by the way, if it would become a felony. It would become a more serious crime and, therefore, the burden of proof would increase, by the way, and then move more fully to the district attorney's office which is one of the problems here.

In New York City, very honestly, misdemeanors are looked at as such a low profile offense as to be almost washed out the window. That's one of the difficulties today in dealing with some of these crimes. You really look at the -- at what's been happening is the protection against law enforcement people has declined dramatically over the last 10 to 15 years. In fact, it's my humble opinion it's why we're seeing some of the problems that we are seeing out there in the streets today with resisting arrest and having people seriously hurt because law enforcement officers are being attacked on a regular basis, and they realize that their chances of being protected, unfortunately, by the courts are very slim and in the sort of frustration that is occurring, people are getting hurt, and I think that you

know we've got to recognize that somehow we've to protect our law enforcement officers because, in a sense, we're not only protecting them, we're also protecting the people who they're dealing with.

I don't think people really understand what's been happening in the streets. We went through this period, by the way, years ago when we went through, back in the late '60s -- and I was -- happened to be out there in those times, and like my kids say, Don't start telling those war stories, but I was assaulted nine times in one year back in 1968.

Well, at that time, people didn't pay much attention to that sort of stuff. People hit me over the head with a chair and all sorts of things. I think only one charge ever stuck on any of those because it was considered, well, it was just part of doing business, just -- I heard that, Senator, by the way -- but at any rate, I think what we're trying to do here is that the answer is that these cases obviously would be taken on their merit and you have to prove them and you have to prove that the person did exert physical force and the person would

have to be as part of another lawful arrest.

SENATOR MONTGOMERY: All right. Thank you, Senator Volker.

On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I just want to make it, for the record -- want to make it very clear to you, Senator Volker, and to my other colleagues that I have what I consider a very good relationship with the police officers in my district. I meet with them regularly. They meet with community groups and with me. We talk about issues related to youth and youth crime and other kinds of issues, that they are concerned with and that we are mutually concerned about, and so I have every respect and regard for police officers, and they have been most responsive in trying to help solve some of the real difficult issues for my constituents.

However, this has not been something that they have zeroed in on, so I must ask them if they feel particularly assaulted by people so that they now want it to be a felony, but, as you know, I have had experience with

young people who have been charged with this particular crime, and it is the most common charge that occurs in an arrest, particularly when it's an African-American male. I've said this so many times I feel like a broken record, but it is the truth and it is not always that the police officer has, in fact, been assaulted. That also is the truth, and I think all of us in this room understand that, so I - I can not in good conscience support a measure which will give the police officers who want to use resisting arrest as one of the charges that they sort of routinely set out when they are making an arrest for any reason, to raise that to a Class E felony, whatever Class E felony is going to mean because ultimately they are looking to -- I think one of the bills that you also introduced or that Senator Volker introduced, Mr. President, was that he wants to make two strikes and you're out and two violent felonies and you're out, but all of these add up, and by the time it reaches a point where we're ready to send someone to prison, we have any number of these kinds of charges including this Class E felony where someone had been

accused of resisting arrest and that becomes part of the reason they spend 15 to 20 years in prison and, in addition, these civilian complaints against police have more than doubled since 1994 in New York City, and two-thirds of these allegations involve force or abuse of authority, and more than half of the complaints against the police are African-American males.

So I think we have to be very, very careful about escalating these kinds of charges. We hope in New York City to begin to deal with the issue of attacks on police but, in addition to that, we want to deal with the flip side of the coin and that is attacks by the police on the people that they are supposed to be protecting, and I don't see this as addressing that; and so, Mr. President, I must continue along with at least ten of my other colleagues who have, year in and year out, voted against this measure. I'm going to join them again this year and vote against this particular bill, and those of my colleagues who have consistently voted against this, I'm just reminding us now, Senator Abate, Senator Connor, Senator Leichter, Senator Markowitz, Senator

Mendez, Senator Paterson, Senator Santiago and Senator Smith. We have traditionally voted against that, and my assumption is that we will all be voting against it again this year.

Thank you.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President. If Senator Volker will yield.

ACTING PRESIDENT KUHL: Senator Volker, will you yield? Senator yields.

SENATOR LEICHTER: We've obviously debated this bill before, but since we're in this phase of the session, we're regurgitating these bills, and we don't seem to have much else to do today, and it does raise, I think, important issues.

Frankly, I'm somewhat puzzled by the bill. I'm puzzled also by your explanation, but the one thing that I just want to clarify is if now somebody goes and punches a police officer, whether in the course of an arrest or otherwise it takes place, that can constitute an assault, can it not?

SENATOR VOLKER: Sure.

SENATOR LEICHTER: And it could be a felony, is it not? It could be?

SENATOR VOLKER: Punching? No. It would essentially be assault third.

SENATOR LEICHTER: Well, it depends how it's done, whether it can be a serious felony.

SENATOR VOLKER: Well, you have to have a serious injury. If you punch somebody today, you have to have a serious injury, for assault third. If you're going to ask me if that constitutes resisting arrest, the answer is no.

SENATOR LEICHTER: Well, I wasn't going to say it constitutes resisting arrest. Just it constitutes a crime; it constitutes a crime.

SENATOR VOLKER: That's right.

SENATOR LEICHTER: I think all of us on either side of the aisle are committed to defending police officers when they're carrying out their duties, and we want to facilitate them in carrying out their duties. We want to make sure that we have a bill that, first of all, is tailored to a real crime and, secondly, one that

appropriately has in mind the problems that could arise, and that's what I'm really concerned about in this bill.

Senator, I understood you to say when you gave the explanation of the bill, you used this word that says it's very rare to have any charge for resisting arrest maintained.

SENATOR VOLKER: Absolutely.

SENATOR LEICHTER: Right. I'm not so sure that that's the experience in the city of New York.

SENATOR VOLKER: It is precisely, it is. You'll find out it is. If you look at the record, what she -- what Senator Montgomery said about maybe some charges being laid, they're almost never maintained. What law enforcement officers tend to do, and it was like -- I'll tell you, when we would chase somebody in a high speed chase, you'd charge them with a dozen red lights and stop signs, and so forth, Senator. It would all get boiled down to the one charge which was reckless driving, and what happens in these cases is traditionally, when they're all pled out which is traditionally what happens, usually only the one charge ends up,

and I'm very, very frank with you; this is the way the system works.

SENATOR LEICHTER: But, Senator, that's not going to change necessarily as a result of -- (Talking over).

ACTING PRESIDENT KUHL: Senator Leichter, excuse me. Are you asking Senator Volker to continue to yield?

SENATOR LEICHTER: Yes, I am, through you.

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield?

SENATOR LEICHTER: Exactly, Senator, the charges are made. The charges certainly are being made, but in the context of disposing of the case, and there are obviously more serious crimes involved and that's just as likely to happen if you make that a Class E felony.

SENATOR VOLKER: You asking me that question?

SENATOR LEICHTER: Yes.

SENATOR VOLKER: The answer is not exactly, and the reason is we're differen tiating. We're differentiating. That's the

Avis answer "not exactly". Hertz -- I'm sorry. You're better at that stuff than I am.

What I'm saying to you is, in all honesty, it's kind of almost a shame that we have got to the point where what we're trying to show here is the difference between mere passive resisting arrest, which is -- which is the traditional misdemeanor, and the active physical force against a police officer that would be used in what is -- what would be traditionally known as a real resisting arrest which today would still be a Class A misdemeanor and which, frankly, for the most part has been passed over as nothing that has to be paid much attention to. When you go to a Class E felony, then at least it's something that has to get the attention of the prosecutor and has to be dealt with in a bit of a different manner and at least puts a different light on the individual who has been charged. That doesn't necessarily mean it can be maintained because it has to, as you know, Senator, and as I know, that once you do get to a felony status, the proof that must be maintained is very honestly greater than in a misdemeanor, and I think that's correct and

that's the way it should be.

SENATOR LEICHTER: Senator, I don't believe that's the law.

SENATOR VOLKER: Well, it is.

SENATOR LEICHTER: A misdemeanor or felony, you still have to find the person guilty beyond a reasonable doubt. I think the standard of proof for misdemeanor and felony are exactly the same under the law. Now, whether juries and prosecutors are going to look a little differently at it, that may well be but the test is still beyond a reasonable doubt. I think you would agree to that.

SENATOR VOLKER: Correct. O.K.

SENATOR LEICHTER: I think you're probably correct that insofar as the disposition is concerned that somebody, in addition to whatever the underlying crime is, is charged with a Class E felony, then there may be more chance that either that will be maintained as a separate crime or that in the overall resolution, that will be factored in and that's why I think the definitions are so terribly important, and that's why I'm concerned, because it's in -- in this resurrected version of the

original bill, where you say shoving, pushing, kicking.

Now, if, let's say, in the course of an arrest, a police officer in the case, let's say, of a civil disobedience, somebody is lying down and the officer picks them up and the person I know strikes out with his leg. Isn't that kicking; is that not kicking?

SENATOR VOLKER: Yes.

SENATOR LEICHTER: And would that now be a Class E felony under your bill?

SENATOR VOLKER: Senator, I mean you know, I think you know what the answer is, and that's why initially we were a little concerned but we're talking about physical force here and, in order to maintain a felony -- and we went through this before -- you obviously know that you have to prove something more substantial, but we're trying to -- Senator, and you know very well that passive versus active is passive versus active, and if a person is lying there flat on the ground and doing nothing and does nothing to disturb the police officer other than -- than say sit there, if they start kicking and shoving and pushing, then that's

physical force and, therefore, that could maintain a felony, that's true.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: All right, on the bill.

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: Mr. President, first of all, I don't believe -- I'm sorry. There was one other question I wanted to ask you.

ACTING PRESIDENT KUHL: Senator Volker, do you yield to one more question?

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: Senator, you said you were having a real problem with assaults on police officers. In the city of New York -- I don't have the statistics -- there are no problems at all, that there have been very, very few incidents. There may have been a couple of incidents this year where people threw bottles at police officers, so on. I'm not even

sure -- well, that wouldn't be covered because yours is -- yours is in the context of resisting arrest.

SENATOR VOLKER: Right.

SENATOR LEICHTER: And that's probably already a crime, but I know really of no case where there's been the sort of notorious act against a police officer either by a group or by an individual, just not a problem in the city of New York. May have been in the '60s, I think there was more of a problem. Is there a problem in Buffalo?

SENATOR VOLKER: Senator, I'll bet you there is an assault on a police officer every single night in New York City but because you don't hear about them, because, Senator, it's become so normal and so part of the police officer's every day agenda unfortunately, that you don't even hear about it.

I have heard prosecutors and I've heard judges say to me, Well, Senator, come on, hitting a police officer has become part of our culture. I mean it -- this is true. I have - this is what they have to expect as part of the system, getting a little beat up. You didn't

get hurt too bad; he didn't show any real scars.

I mean, Senator, it goes on, on a regular basis and it's no secret that maintaining an assault charge today -- and this is - this bill didn't come out of Buffalo; it came out of law enforcement people. Primarily it came out of Long Island people who were talking about rather gross cases of police officers that were kicked, on the ground, lying on the ground, ended up in an assault third plea, and one of the things that was said at the time is, well, you couldn't really charge them with resisting arrest because you never really arrested them. You were beat up and you were there, but you never really arrested them.

So I think, Senator, I must say to you in that, I understand and I'm not telling you that law enforcement officers are perfect. I'm not telling you the system is perfect but, Senator, let's not -- let's not kid ourselves, it is still darned tough out there on the streets. It is a tough time.

SENATOR LEICHTER: Mr. President, Senator Volker, if you would yield, I never

really got an answer to my last question. Do you have any statistics, I mean other than these anecdotal stories that you're telling us?

SENATOR VOLKER: Senator, the problem is that we have a lot of statistics. We can reach back into assault charges, if you want to really look 'em up. How many convictions? Very, very, very few, and that's my point.

SENATOR LEICHTER: How many - you said it -- how many instances where the police in the courts, on arrest, said, "I was assaulted?"

SENATOR VOLKER: We have -- they are so frequent we really have -- we really do not know for sure, but we know it happens very, very frequently.

SENATOR LEICHTER: But you have no statistics.

SENATOR VOLKER: Senator, there are no regular statistics.

SENATOR LEICHTER: Mr. President, thank you. Thank you, Senator Volker.

I must say I have difficulty seeing the need and reason for this bill. I'm sorry, Senator Volker. I know you believe what

you're saying, but I believe you're wrong, and I believe what's telling is that you have no statistics.

I don't believe it's a problem that police officers are getting assaulted in the course of making an arrest, and I will further say that, if that happens, my experience, my knowledge, police officers will record that, and charges will be made. Records will be kept. If it's a problem, the statistics must be there. If the statistics are not there, it's because as I maintain there is really no problem that would -- that we have.

Furthermore, if, as you gave a case for somebody in Long Island, you said that they were being assaulted, but they were never charged because there was no arrest. Well, that would have been the same thing, would hold true under your bill, but I can't believe, Senator, that people were being assaulted in this fashion and that no charges were made and, if there was no conviction, it may be that there was some reason that the jury or the jury found that a crime had not been committed, but that's not going to be solved by your bill because your

bill, of course, requires an arrest.

I think the difficulty with this bill is, if you take a look at the language, it opens up, I think, a great deal of false charges or people being charged with a felony that really what they did was very moderate and can be treated under the current law which is a misdemeanor.

Police officer puts his hand on somebody, maybe perfectly proper, and says, "You're under arrest," the person pushes his hand away, you're going to make that a class E felony? That's what it would be under your bill.

Somebody is lying down in a civil disobedience, police officers come to pick him up, take his legs, he kicks out his legs, one of those kicks lands in the police officer. You want to make that a class E felony? I think that's unreasonable.

So I don't see, one, that we have a need for this bill. If the police officer is assaulted, it's already a crime and it should be a crime. If somebody interferes with an arrest, it's a crime already. It's a misdemeanor, but

to make a felony out of some of the things that Senator Volker lists here, which is pushing - you want to make that a Class E felony? Kicking, shoving -- shoving is going to become a Class E felony? I think it's unreasonable.

I would hope, Senator Volker, that -- I didn't vote for last year's bill but at least I think it was directed and in a way so at least we were dealing with some serious acts of force against a police officer. These acts, as you have enumerated them, are not serious acts of force that ought to be considered a felony.

ACTING PRESIDENT KUHL: Senator Abate, did you wish to be recognized?

SENATOR ABATE: Yes, on the bill.

ACTING PRESIDENT KUHL: Senator Abate, on the bill.

SENATOR ABATE: I agree with Senator Volker, and I agree with Senator Leichter for different reasons. I do think that officers are being assaulted every day, and we need to take seriously the assault on the officers, and we should look at the assault

language to find out whether we talked about it last year with domestic violence and whether it applies with officers. We need to look at whether the threshold is too high to charge simple assault, and look at what is needed for a serious physical injury in terms of defining that. We should do it as we discussed last year, from the angle of domestic violence and maybe look at assault on police officers. Let's do that because that's what we really need to punish individuals is when they assault officers.

My concern, and why I opposed this bill last year is that definition. This bill does not do that. This bill talks about the difference between passive and aggressive resisting arrest, and I suggest there are very few occasions where there'll be passive resisting arrest. I mean it's -- it's against the definition of resisting arrest. If you resist, there's some part of your body, whether it's the shoving or the pushing, that does not equal physical injury that will be involved, so just about every crime of resisting arrest will become a felony, and I do not believe that

that's what's intended.

We want to prosecute defendants vigorously and strongly when they assault officers. Let's make it easier for prosecutors to meet that burden. Let's draft that legislation. That's not what is before us.

This is legislation that says wholesale, although I know Senator Volker says he doesn't interpret the bill that way, I interpret this bill as saying that all resisting arrests will become a felony. If the courts aren't doing their job, we should get the courts to do it.

The scope of punishment for resisting arrest is a year in jail. That is not something we should take lightly. If they assault as well as resist arrest, they're going to be faced with a felony as well as a misdemeanor, and they should be doing substantial time.

So our focus, I believe, is misplaced. Let's amend the assault law. Let's prosecute vigorously assaults on police officers and there's enough scope of punishment within resisting arrest. I believe the language in

this bill is much too broad, and I think it would be leading to abuse of discretion.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Mr. President, first of all, just to answer something that my distinguished colleague from Brooklyn said, and when she said that's why there are people in there for 15 and 20 years.

Senator, I think one of the incidents which upset everybody last year was when there was an arrest in Queens in a murder case and we found out the person had 15 priors, and we got ahold of that record to try to figure out how you get 15 priors and, as I pointed out on the floor, that wasn't a liberal or conservative issue. That's something that should have outraged everybody; but that has nothing to do with this case.

There was a gentleman playing football in the city of New York and the football hit a car and the next thing you know we had a dead young man, and that has nothing to

do with this case. The officer has now lost his pension, et cetera, et cetera, and that should have happened, and that was a terrible situation, and that's not this case.

It seems to me that there are balances that we deal with all of the time, and I have stood up here proudly with Senator Leichter and Senator Abate and others to fight for a fair trial, for fair treatment of people, for the civil rights of everybody, but when you finish with that, if somebody is convicted you go to jail. That's not conservative, that's not liberal, you go to jail.

And there's another concept. There are police who, on certain -- in certain situations, may be wrong in making an arrest, but under our law, if you're getting arrested you get arrested and you're not supposed to inflict damage on a police officer and you're not supposed to resist arrest. You're just not supposed to do it.

Now, when Senator Abate says that if you assault a police officer, that's a crime and you can be punished for that and we're taking care of it, that's a different message

than saying, in my opinion anyway, in plain English you don't resist arrest and if you do resist arrest and you're punching and kicking or you take the opportunity to do something which could hurt a police officer, you're complicating a felony, that's a different message and I don't see anything wrong with that.

When we talk about people who are being civilly disobedient and the image that is around this chamber is that these are not quite your typical criminal, but that in resisting they kick an officer, well, the answer is there aren't any special rules. You may be part of a peaceful demonstration. The minute you kick a police officer, you're doing something wrong. You're not supposed to kick police officers, and I don't think you kick a police officer. If you are a minority child or youngster who committed a robbery, you don't kick a police officer or if you're somebody else who, in every other way, may consider themselves a, quote, "decent citizen", unquote, but you're doing something you think is right so you kick a police officer.

So the bottom line of it, I'm not

offended by this legislation at all. I'm going to vote for the legislation. I think that if somebody is being arrested, you get arrested, and then I hope all of the rights that I have voted for fall into place and, God willing, the system works, they get acquitted or they get convicted and if they get convicted and they go to jail, they go to jail, and I think that's what makes the system work.

I can't understand, to tell you the truth, when I read in the paper of disturbances where you have police officers and undercover officers who get things thrown down on them from building tops in parts of areas in New York City and, if I was in that community and realized that I was now becoming less safe because police officers might not want to be in my community, the community ought to be up in outrage over that.

Shouldn't be a question of worrying about the poor misunderstood indi viduals involved. I mean the fact is, I think it was Senator Waldon but I may be wrong, somebody brought up at one of our hearings recently that 7 Assembly Districts in this state

suffer 80 percent of juvenile crime. Well, if crime is pretty local -- no, one second. Yeah, I yield.

ACTING PRESIDENT KUHL: Senator Leichter, why do you rise?

SENATOR LEICHTER: You start off by telling -- (talking over).

ACTING PRESIDENT KUHL: Senator Leichter, are you asking Senator Gold to yield to a question.

SENATOR LEICHTER: Yes, I am.

ACTING PRESIDENT KUHL: Does the Senator yield?

SENATOR GOLD: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: Senator, you start off by saying -- and I agree with you - that what this bill is about and what it's not about, and I agree with you it's not about people throwing bottles down from roof tops, and it has nothing to do with this bill.

My question to you is -

SENATOR GOLD: I don't agree with you.

SENATOR LEICHTER: My question to you is, I agree with you that resisting arrest ought to be a crime and you know what? It is a crime. The question is whether in those instances where, whether you're a kid who has been arrested for a robbery or you're a bishop who's been arrested in a civil disobedience, if you push a policeman's hand away, do you want to make that a Class E felony? That's the only issue.

We all agree that you can't and you shouldn't resist arrest, so my question to you is, would you, in effect, I think as Senator Abate very correctly pointed out, every instance where there's a resisting arrest make it a Class E felony? Is that your intent?

SENATOR GOLD: Maybe, and the answer is to the first part of your question, Senator, where you answered it for yourself and you said throwing bottles down is not part of it. The answer is it is.

This bill deals with respect. That's what it deals with. It deals with an issue, in my opinion, as to whether or not a cop should have to walk the streets with an Uzi to

get respect or whether the community-at-large ought to respect the fact that we have police officers out there doing a tough job and they need some kind of support, and some things are deterrents, Senator Leichter, some things aren't, and you and I probably agree probably 99 percent of the time on what is deterrence and what is nonsense, but I think word gets around and I think that the word in the street ought to be that you do not assault police officers. If a police officer approaches you and you think the policeman is wrong, that's what the court system should be able to help you with, but you don't take it into your own hands. You don't assault police, and you don't resist arrest.

Now, I also believe, Senator Leichter, and I say this from someone who has in fact spent a good deal of time in the criminal courts as a lawyer, that the system works its way out.

Now, we as legislators don't always like that; so, for example, if you do certain conduct, it's a felony at this level, well, you try to get a conviction at that level. Also, geography plays a part in this.

It plays a part in this.

I remember a few years back there were two cases I knew about. One was a quantity of marijuana, more than just a cigarette, in the city of New York and one of the judges was furious with the district attorney's office for wasting time, and the other was a single marijuana cigarette in Westchester County, and some judge there was ready to throw the key away for this kid. Now, that's differences within communities in the way things operate.

In the criminal justice system in the city of New York, if it was just an arrest, Senator Leichter, you'd be surprised what you can't get a conviction for and what is un fortunately accepted as normal conduct. You wouldn't if you were a judge and I wouldn't, but it's done and all I'm saying is, is this the best piece of legislation I've ever seen on this issue? Who knows? Whoever wrote that legislation, except you and I, got it passed.

But, Senator, what it does is, it makes a social statement and that social statement is a simple one. That is that the bill of rights is terrific. People ought to

have their rights and be protected, but if you have a police officer on the street and he says, "You're under arrest," by God, you're under arrest and you don't have a right to kick the cop or shove the cop or do any of those things because, Senator, you create a chain and it's not just a question of somebody touches the cop. That is not what happens and you know it's not what happens.

If you have the opening, one thing leads to another, and what this bill says is we don't want one thing to lead to another. It's got to stop, and I can support that.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

ACTING PRESIDENT KUHL: Announce the results when tabulated.

Senator Abate?

SENATOR ABATE: I would like to

explain my vote after.

ACTING PRESIDENT KUHL: Senator Abate to explain her vote.

SENATOR ABATE: The issue is absolutely we should not condone resisting arrest. It should be taken seriously. Many instances defendants should be given a full year in jail, and we should take more seriously than we are assaults on police officers and make it easier for district attorneys to prosecute.

This bill doesn't do that. If this bill were to bifurcate, and I hope Senator Volker would look at this -- Senator Volker, I know this is not asking him to yield to a question, but if I could get Senator Volker's ear -- if Senator Volker would look at resisting arrest when it occurs and results in physical injury to a police officer, even though a separate charge of an assault could be brought, if that could be a felony then you know you're taking very serious resisting arrest charges. Make that a felony, and not make all resisting arrests a felony and maybe that would be something that would get broader support. But without those changes, I have to remain

opposed.

ACTING PRESIDENT KUHL: Senator Abate will be recorded in the negative.

Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, briefly.

I reiterate again to my colleagues I think that certainly we want to protect the safety of police officers, and they do a valuable -- let's be very clear that the police -- the police are viewed very differently in the African-American community than they are in the white community. They are viewed as the protectors of the rights of white people. In the black community they are often viewed as occupying the community, and therefore, as the enemy.

We are trying desperately, the police themselves and people who live in the black community, are trying to get beyond that perception. We're looking for solutions as to ways in which we can more positively receive and anticipate a relationship between police and the black community.

This does not do that. This only arms them with one more level of crime to -- one more type of crime that they can charge a person who is arrested and escalate the level of the possible punishment of that crime, and we know that this is a problem. The police know it, and we know it.

We know that in no place in this nation is justice meted out equally to everybody. If you don't have money, if you're a person of color, you are not going to receive the exact same level of justice as you do, and treatment by the justice system, the criminal justice system, as you do if you have money or power and/or if you are not a person of color. So anybody who believes that is totally misinformed, and I can give you reams and reams of stories and examples of people and instances where this is proven to be true, including a report that was done by the New York State Department of Criminal Justice Services.

So I am adamantly opposed to this, and I think that we are not targeting people who, in fact, assault police. We are targeting a whole 'nother group of people who

are not the violent criminals that we want to certainly deal with appropriately, but this - this targets young people particularly, African American males particularly, who may lash out in an instant of anger.

The police understand that, but it's not because they are, in fact, assaulting a policeman. It is not because the policeman is, in fact, injured. It is just because this is a charge that we can level against you and we will punish you. If we can't do a chokehold, we can do an assault charge, and you can still go to prison.

So I am adamantly opposed to it. No, no, no, no, no. I hope it never comes back again.

Thank you.

ACTING PRESIDENT KUHL: Senator Montgomery will be recorded in the negative.

Senator Gold, to explain his vote.

SENATOR GOLD: Yeah, Mr. President.

I don't like to disagree with Senator Montgomery because I have an extra

ordinary amount of respect for her, and I do not say that lightly in any respect.

But when Senator Leichter asked me a question, I was in the middle of a thought and I didn't finish it and you brought it back to mind. You said to me that in the Afro American community the perception is that the police are occupying the community, and, Senator, I want to spend time and talk to you about that, because I want to figure this thing out.

The comment that was made at the hearing was that 80 percent of juvenile crime happens in seven Assembly Districts. Senator, I believe, if you talk about those districts and we talk about a crime bill, you have more of your constituents being victimized by crime than I do, because the constituents in these seven Assembly Districts aren't running into my Assembly District and committing all of that crime, and you and I know the facts on that. They're committing crimes against their own neighbors and in their own communities, and I say to myself, even though they've got all of this crime, the overwhelming number of people in

these communities are decent people who need protection, and why are -- why can't we focus or get the communities to understand that the police are there for those people? They're not there to condone the crime; they're there to protect the overwhelming number of people, and minority people, very -- mostly, who are being victimized.

Now, every police officer in the city of New York is not a Liboti who kills or is responsible for the death of an Afro-American or a minority. We have a huge amount of the Police Department in the city of New York who are minorities and who work in the minority communities, and I don't know why the minority communities don't accept them as part of the community or that he's being there for a proper purpose and, Senator, if I can help understand it, I want to understand that. I tell you that I have to understand it, but the attitude that they are "occupying" and that they are "the enemy" is exactly what I think this bill tries to relate to, because it's a tough job. I wouldn't want the job, but a police officer ought to be able to do his or her job without an

Uzi, without a cannon and to be able to walk around with respect, and I'm going to support the bill.

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 106 are Senators Abate, Connor, Leichter, Markowitz, Montgomery, Paterson, Rosado, Sampson, Santiago, Seabrook and Smith. Ayes 47, nays 11.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Meier?

SENATOR MEIER: Is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: We have a report of the Housing Committee. We'd like to take it up, Senator Meier, if we could at this time; so return to the order of reports of standing committees. I'll ask the Secretary to read.

THE SECRETARY: Senator Leibell, from the Committee on Housing and Community Development, reports the following bills:

Senate Print 2227, by Senator

Leibell, an act to amend the Private Housing Finance Law; and

Senate Print 2228, by Senator Leibell, an act to amend the Public Housing Law.

All bills ordered directly for third reading.

ACTING PRESIDENT KUHL: Without objection, all bills are ordered directly to third reading.

Senator Meier.

SENATOR MEIER: Mr. President, there being no further business, I move we adjourn until Tuesday, February 25th, at 3:00 p.m.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senate stands adjourned until tomorrow, February 25th, at 3:00 p.m.

(Whereupon at 4:15 p.m., the Senate adjourned. )