ALBANY, NEW YORK

April 15, 1997

3:05 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.)

May we bow our heads in a moment of silence.

(A moment of silence was observed.)

The reading of the Journal, please.

THE SECRETARY: In Senate, Monday, April 14th. The Senate met pursuant to adjournment. The Journal of Sunday, April 13th, 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 nominations: Member of the Workers' Compensation Board: Robert J. Madigan, Jr., of Binghamton.

SENATOR SKELOS: Madam President, move the nomination.

Would you please recognize Senator Libous.

THE PRESIDENT: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

I want to rise today, Madam President, to support the nomination of Bob Madigan to the Workers' Compensation Board.

Bob and his wife Jill are with us today up in the gallery, and I would like to say that I've known Bob Madigan for a number of years and his family and our family have been friends.

As a matter of fact, his father who is also a very distinguished attorney in our community for a number of years and my uncle were friends and fishing mates when my uncle was mayor of the city of Binghamton and also an advisor and counsel to him, and I had first met

Bob a number of years ago.

Today Bob is before us. He was moved from Finance to be a member of this board and he's a graduate from Albany Law School and works as a partner in the firm of Madigan & Madigan but he's really more than just a lawyer. He brings a fair and balanced background to the board. He served both Democrat and Republican mayors as chairman of the Binghamton Civil Service Commission and earned the respect of all those who served before him. He also brings a sensitive background to the board.

He's been a member of labor unions like the Painters and Iron Workers and he's also represented individual claimants before the Workers' Compensation Board.

I'm completely convinced that Bob Madigan will do a great job working with Chairman Snashall. I can tell you that his commitment, dedication and respect that he has in our local community will be a tremendous asset to him as he serves on this board.

Mr. President, I am so very proud today to second the nomination of Bob Madigan.

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

Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, I too would like to rise and congratulate -- second the nomination of Mr. Madigan and congratulate him on his appointment, congratulate the Governor on a fine selection.

Senator Libous had brought Mr. Madigan to my office as the ranking member of the Labor Committee before we had the meeting and we got to chat a little bit and seemed like a very nice gentleman and then we found out that all the mayors in Binghamton had supported him, both Democrats and Republicans, and everything was going smoothly and I got this strange letter from Bob Bergen, and I was worried then because Bob Bergen was wholeheartedly supporting him and that made me concerned because Bob Bergen has always been our advisor on our side and I was wondering why he was supporting this man. So Bob called Manny and he called Marty and he had so many nice things to say that I had to get up and say that we on this side also are glad to

have the opportunity to second the nomination and we think that he will be a great addition and we wish him well in his future.

Thank you.

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

(There was no response.)

Hearing none, the question is on the nomination of Robert J. Madigan, Jr. of Binghamton, New York to become a member of the Workers' Compensation Board. All those in favor of the nomination signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is unanimously confirmed.

We're very pleased to have Mr. Madigan and his wife Jill with us today. They're seated in the balcony to the members' left. Congratulations. Good luck. Godspeed.

(Applause)

The Secretary will read.

THE SECRETARY: Member of the

state Board of Real Property Services: John M. Bacheller, of Latham.

SENATOR JOHNSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Johnson, on the nomination.

SENATOR JOHNSON: Move the nomination.

ACTING PRESIDENT KUHL: The question is on the nomination of John Bacheller of Latham, New York to become a member of the state Board of Real Property Services. All those in favor of the nomination signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee confirmed.

The Secretary will continue to read.

THE SECRETARY: Members of the New York State Bridge Authority: Edmund A. Fares, of Monroe, Morton Marshak, of Monroe.

ACTING PRESIDENT KUHL: Senator Johnson.

SENATOR JOHNSON: Mr. President,

move the nominations.

ACTING PRESIDENT KUHL: The question is on the nomination of Edmund Fares and Morton Marshak to become members of the New York Bridge Authority. All those in favor of the nominees signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominees are confirmed.

The Secretary will read the report of the Finance Committee.

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

By Senator Trunzo, Senate Print 4421, an act to provide a retirement incentive for certain public employees.

ACTING PRESIDENT KUHL: Without objection, the bill is ordered directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time may we please adopt the Resolution Calendar with the exception of Resolutions 983 and 985.

ACTING PRESIDENT KUHL: The motion is to adopt the Resolution Calendar with the exception of Resolutions Number 983 and 985. All those in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, may we please take up Privileged Resolution 983 sponsored by Senator Connor. May we please have it read in its entirety and move for its immediate adoption.

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

THE SECRETARY: By Senator

Connor, Legislative Resolution proclaiming April 15th, 1997 as United States Naval Armed Guard Day in New York State;

WHEREAS, it is the sense of this legislative body to commend those men and women from the state of New York whose focus and intent have made a substantial impact on the quality of life in this state and for our country; and

WHEREAS, attendant to such concern and in full accord with its long standing traditions, it is the sense of this legislative body to join together on April 15th, 1997 for a very special kind of commemoration.

It was 56 years ago this day that the members of the United States Naval Armed Guard served so valiantly and honorably during World War II to protect this country's freedom and, in full accord of the dangers ahead, voluntarily served to preserve our nation's interests.

On April 15th, 1941, the members of the United States Naval Armed Guard began preliminary training as gun crews to serve aboard merchant ships, known as the "other

Navy". The Naval Armed Guard crews manned the guns of merchant ships in order to safely deliver soldiers and supplies to Europe and the Pacific.

Of the many accounts history may disclose, the epic of the Battle of the Atlantic is a little known legend, evincing true heroism, sacrifice and cruelty by an unforgiving sea and of the ruthless loss of lives from enemy torpedoes, gun fire and bombs.

The Naval Armed Guards sailed the globe aboard the slow-moving merchant ships backed with explosives or on tankers with their unstable cargos of aviation fuel with minimal and often antiquated firepower, our crews were pitted against the superior gunfire of surface submarines, hostile vessels and attacking aircraft.

In this particular battle, one in nine of all merchant ships were lost, resulting in the death of 11,810 aboard. The fortunate were forced to abandon flaming and sinking ships in the sub-freezing temperatures of the Arctic, struggling for survival in open lifeboats as they floated amidst the ice floe.

Official accounts of this great tragedy are only now coming to the forefront of Navy chronicles, detailing the feats, suffering and gallantry achieved against overwhelming odds. The state of New York honorably salutes our 746 surviving residents; now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations to proclaim April 15th, 1997 as United States Naval Armed Guard Day as a tribute to the members of the United States Navy who served as gun crews aboard merchant ships during World War II; and be it further

RESOLVED, that copies of this resolution, suitably engrossed, be transmitted to Mr. Charles A. Lloyd, National Chairman and Secretary, United States Navy Armed Guard World War II veterans, Mr. Henry M. Carringi, Chairman, New York State Chapter, U.S. Navy Armed Guard and Mr. Lyle E. Dupra, historian, U.S. Army -- U.S. Navy Armed Guard World War II veterans.

ACTING PRESIDENT KUHL: Senator Connor, on the resolution.

SENATOR CONNOR: Thank you, Mr. President.

Let me say I invite all the members of the Senate to co-sponsor this resolution, recognizing these genuine heroes.

The U.S. Naval Armed Guard was perhaps a little known or a little recognized years later, a component of the heroic effort to win freedom -- to preserve freedom and win World War II.

The total number of personnel who served in the naval -- Navy Armed Guard was 144,970. They served on 6,230 different merchant ships, serving in theatres in Normandy, the South Pacific, the Mediterranean the North Atlantic, the Indian Oceans and in frigid Murmansk.

The number of members of the Navy Armed Guards killed was 1,810. Of the surviving members, 740 we know of live in New York. The average age of the survivors is a youthful 74. The original guard bases included, I'm proud to say, Brooklyn, New York, Treasure Island, California and New Orleans, Louisiana. They were the three bases. 710 ships on which the

Navy Armed Guard served were sunk. That's one in nine and 58,186 commendations were earned by members of the U.S. Navy Armed Guard.

Mr. President, these indeed were heroes of our century. These indeed were people who served, who sacrificed, who fought, some of whom died, that we can all enjoy the freedoms that we have in this great country today.

We are certainly honored that in attendance here today, we have veterans of the U.S. Navy Armed Guard, Mr. Lyle Dupra, Mr. Henry Carringi, Mr. Jimmy Whitbeck, Mr. Arnold Leo and Mr. Bob Weaver, and I would ask you, Mr. President, after we adopt this resolution, if you would recognize these gentlemen who are present here today.

Thank you, Mr. President.

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

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I rise today in support of this resolution to thank our Leader for bringing it

to the floor. The celebration of the Armed National Guard or the Navy Armed Guard is really a celebration of men who gave a tremendous contribution in the Second World War.

I have had the opportunity to, in the preparation of the history of this organization, hear a lot of the stories that these men were involved in the Second World War. Wonderful stories and stories of courage, stories of heroism, stories that really are at the foundation of what it means to be an American and, Lyle, I know the book is going to be out shortly. I congratulate you on it. It's really been a tremendous effort.

This is a wonderful history, something that we shouldn't forget and I, again, commend Senator Connor for bringing it to the floor.

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

(There was no response.)

Would those Senators who wish to be added as co-sponsors of the resolution raise their hands.

Senator Skelos, I see most of the members would like to. Should we take the opposite tack and approach -

SENATOR SKELOS: Mr. President, why don't we put everybody on the resolution and if somebody wishes not to co-sponsor the resolution, they should let the desk know.

ACTING PRESIDENT KUHL: I'll direct the Secretary to add all the members as co-sponsors of the resolution except for those people who indicate to the desk that they do not wish to be co-sponsors of the resolution.

The question is on Resolution Number 983 by Senator Connor. All those in favor of the resolution signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is unanimously adopted.

As Senator Connor indicated, there are several members of the Army -- Armed Guard with us. I would like them to rise and be recognized by the body.

(Applause)

Gentlemen, thank you for joining us today. Enjoy your stay in Albany.

Senator Skelos.

SENATOR SKELOS: Mr. President, may we please take up Privileged Resolution 985 sponsored by Senator Marcellino. May we please have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT KUHL: The Secretary will read Resolution Number 985, by Senator Marcellino, in its entirety.

THE SECRETARY: By Senator Marcellino, Legislative Resolution commemorating the 27th Anniversary of Earth Day, April 22nd, 1997;

WHEREAS, it is the sense of this legislative body to recognize and pay tribute to those organizations dedicating their purposeful work to increasing public awareness of and appreciation for the natural resources of New York, recognizing the role all citizens have in protecting the environment and the quality of life in this Empire State.

On April 22nd, 1970, approximately 25 million Americans participated

in the first Earth Day demonstration to express their concerns over the environment and the fate of the planet.

In the 27 years that have passed since the original Earth Day, the planet has been subjected to the continuing burdens of world population growth, increasing commercial and residential development, ocean pollution, increasing stores of toxic and nuclear waste and other similar assaults which have exacerbated the growing dangers of global climate change, ozone depletion, toxic poisoning, deforestation and mass species extinctions.

Following the first Earth Day and the demonstrations of concern of over 20 million Americans, a collective national action has resulted in the passage of sweeping new laws to protect the invaluable resources of air, land and water.

April 22nd, 1997 marks the 27th Anniversary of Earth Day, a day set aside to celebrate the beauty and bounty of our environment and to revitalize the efforts required to protect and maintain respect for the environment and its resources.

Earth Day 1997 activities and events will educate all citizens on the importance of acting in an environmentally sensitive fashion by recycling, conserving energy and water, using efficient transportation and adopting sound life styles.

Earth Day 1997 activities and events will educate all citizens on the importance of supporting the passage of legislation that will help protect the environment and will highlight the importance of a heightened awareness of environmental concerns amongst our state leaders;

WHEREAS, the goal of Earth Day 1997 is not to plan only one day of events and activities but to continue worldwide efforts to protect all aspects of the environment; now, therefore be it

RESOLVED, that this legislative body pause in its deliberations to commemorate the 27th Anniversary of Earth Day on April 22nd, 1997.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Marcellino on the resolution.

SENATOR MARCELLINO: Thank you,

Mr. President.

I rise to offer this amendment to everyone in the chamber who wishes to be a co-sponsor on it. Perhaps we could follow the same procedures as the last one and put everyone on it unless they so ask not to be.

Mr. Chairman, I think most of us can remember way back when talking about the environment was something done by very few people, if anyone at all. Most people didn't consider it or were certainly unconcerned about it. Most municipalities, most governments never thought about it. These days, however, there's a total distinction and totally different attitude.

We celebrate Earth Day but the key to the celebration is that it should not be only one day a year. We should practice the policies of protecting and preserving our environment, our natural resources 365 days a year forever.

Our earth is a limited resource. We have only one planet on which to exist and if we don't take care of that planet now, it won't be here for our children and our grandchildren,

and I think it is most imperative that we follow those procedures and practices that continue the educational process in all of our schools at whatever level, to teach our citizens and our young children and our adults whatever and wherever they may be, that protection of our environment is nothing to be ashamed of. It's something to be proud of and something to stand up for whenever possible.

So, Mr. Chairman, this resolution I'm proud to sponsor, and I appreciate your consideration in allowing me to speak.

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

(There was no response.)

Would the members who would like to be co-sponsors please raise their hands.

Senator Skelos, I see most everybody in the chamber. Would you like to have everybody put on?

SENATOR SKELOS: Mr. President, with the consent of the Minority, we'll put everybody on. Anybody that does not wish to sponsor the resolution, they should indicate at

the desk.

ACTING PRESIDENT KUHL: The Secretary will put all of the members as co-sponsors on the resolution except those who indicate to the desk that they don't wish to be a sponsor of Resolution Number 985 by Senator Marcellino.

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.

SENATOR SKELOS: Mr. President, I believe resolution 934 is at the desk sponsored by Senator Maziarz. May we please have the title read and then recognize Senator Maziarz.

ACTING PRESIDENT KUHL: The Secretary will read the title to Resolution Number 934 which was previously adopted.

THE SECRETARY: By Senator Maziarz, Legislative Resolution honoring Ryan Rimmer of Charles A. Upson Elementary School

upon the occasion of his designation as the New York State's First Place Winner in the U.S. Savings Bonds 1997 National Student Poster Contest.

ACTING PRESIDENT KUHL: Senator Maziarz.

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

Mr. President, each year the Department of the Treasury, the United States Savings Bond Division annually conducts a National Student Poster Contest to increase public awareness of the advantages of U.S. savings bonds and to promote the ethic of saving among our nation's youth.

Each year thousands of young students across the country take part in this poster contest, Mr. President, and there is always a winner from each state which the posters are sent to Washington, D.C. and they are competing for a $5,000 savings bond annually.

Mr. President, I am extremely proud this year to introduce to my colleagues here on the Senate floor the first place

winner.

Lockport, New York, Mr. President, is a small city of about a population of 30,000. It's located in the northwestern corner of New York State, and I very often on the floor of this chamber, Mr. President, hear accolades about heroes and winners from the five boroughs of the city of New York and I hear accolades about winners from Long Island, all well deserved, Mr. President, but, Mr. President, a young man by the name of Ryan Rimmer who attends Charles Upson School in Lockport, New York, won first place in the New York State poster contest and as the first place winner, Mr. President, is going to receive a savings bond in the amount of $1,000 and we are also going to recognize the second and third place winners who hail from, you guessed it, Long Island and Brooklyn, Mr. President.

Now, it is not very often that Lockport beats Brooklyn and Long Island and, as I told Ryan and his parents earlier, it is not very often in this city that Lockport wins out over Long Island or the city of New York.

And so, therefore, Mr. President,

I am extremely proud and I am joined by Assemblyman David Seaman from the 139th Assembly District representing Lockport to congratulate the first place winner of the savings bond national poster contest, Mr. Ryan Rimmer, who joins us in the gallery with his parents.

Ryan, why don't you stand up there with your mom and dad. Congratulations.

(Applause)

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Can we adopt the resolution.

ACTING PRESIDENT KUHL: The resolution was previously adopted on April 8th.

SENATOR SKELOS: There's another privileged resolution at the desk that I've sponsored, 935, if we could have the title read, please.

ACTING PRESIDENT KUHL: The Secretary will read the title of Resolution Number 935 which was previously adopted on April 8th.

THE SECRETARY: By Senator Skelos, Legislative Resolution honoring David

Spinks of Lindell School upon the occasion of his designation as New York State's Second Place Winner in the U.S. Savings Bonds 1997 National Student Poster Contest.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Would it be appropriate at this time to reconsider the vote by which Senator Maziarz' bill -- resolution passed?

I do want to congratulate all the winners because these young men have achieved something, whether it's first, second or third place and certainly all the individuals throughout the state -- I understand 24,000 young students participated in this program, and I'm very proud of David Spinks, a fourth grader from my district, the Lindell School in Long Beach, for having come in second place. He's here with his family, individuals from the Lindell School. He's won a $500 bond and he indicated to me before that he was buying dinner tonight, right, David?

No, I don't think so. That's

going to go to his college education but, David, we're very proud of you for your accomplishments and congratulations, and I know we're going to see a lot more from you in the future.

Congratulations, David.

(Applause)

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, I believe Resolution 941 is at the desk sponsored by Senator Gentile. May we please have the title read.

ACTING PRESIDENT KUHL: The Secretary will read the title to Resolution Number 941, by Senator Gentile, which was previously adopted on April 8th.

THE SECRETARY: By Senator Gentile, Legislative Resolution honoring Joseph Lew of Intermediate School 239, the Mark Twain School, upon the occasion of his designation as New York State's Third Place Winner in the U.S. Savings Bonds 1997 National Student Poster Contest.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gentile to speak to the

resolution.

SENATOR GENTILE: Thank you, Mr. President.

I too want to be the first to congratulate all the winners, especially Senator Maziarz and, Senator, I must say, you did - your student did take first place this year but I am told -- I am told from the art teacher at Mark Twain Intermediate School that Joseph Lew is one of a long list of Brooklynites that have won in this contest consistently over the years. So we did take third place this year and Joseph is here.

So, Joseph, you continue the great tradition of Brooklynites. So we are very proud of you. You not only make Brooklyn proud. You make your school proud, your principal, your teacher, your parents and you make me proud. You're the winner of a $250 bond and you did a great poster and we're very, very proud of you.

So I think you're here with your parents. So if you'll stand up, we will congratulate you also. Congratulations.

(Applause)

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Crime Victims Committee in Room 332 of the Capitol.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Crime Victims Committee, immediate meeting of the Crime Victims Committee in the Majority Conference Room, Room 332.

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

ACTING PRESIDENT KUHL: Senator Skelos, we have a couple of motions, if we could do that.

SENATOR SKELOS: Fine. Go back to motions.

ACTING PRESIDENT KUHL: Senator Trunzo.

SENATOR TRUNZO: Mr. President, I offer the following amendment to Calendar Number 592, Senate Print 4421, and ask that the said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The

amendments to Calendar Number 592 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Lack.

SENATOR LACK: Mr. President, on behalf of Senator Saland, I wish to call up Print Number 816, recalled from the Assembly, now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: By Senator Saland, Senate Print 816, an act to amend the Penal Law.

ACTING PRESIDENT KUHL: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT KUHL: The Secretary will call the roll.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: Senator

Lack.

SENATOR LACK: I would like to offer up the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

SENATOR LACK: Mr. President.

ACTING PRESIDENT KUHL: Senator Lack.

SENATOR LACK: I wish to call up my bill, Print Number 3511, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: By Senator Lack, Senate Print 3511, an act authorizing the State University of New York.

ACTING PRESIDENT KUHL: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT KUHL: The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: Senator Lack.

SENATOR LACK: I offer up the following amendments, Mr. President.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

The chair recognizes Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

On behalf of Senator Marchi, on page number 21, I offer the following amendments to Calendar Number 484, Senate Print Number 3691, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 484 are received and adopted and the bill will retain its place on the Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on behalf of Senator Skelos, I wish

to call up his bill, Print Number 179, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: By Senator Skelos, Senate Print 179, an act to authorize the payment of transportation aid.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT KUHL: The motion is to reconsider the vote by which the bill passed the house.

The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT KUHL: The

amendments are received and adopted.

Senator Skelos, we have a couple substitutions that we would like to read at this time.

The Secretary will read the substitutions.

THE SECRETARY: Senator Spano moves to discharge from the Committee on Civil Service and Pensions Assembly Bill Number 2958 and substitute it for the identical Senate Bill Third Reading 336.

Senator Maziarz moves to discharge from the Committee on Crime Victims, Crime and Correction Assembly Bill Number 60 and substitute it for the identical Senate Bill Third Reading 472.

Senator LaValle moves to discharge from the Committee on Local Government Assembly Bill Number 5360 and substitute it for the identical Senate Bill Third Reading 524.

Senator Marchi moves to discharge from the Committee on Corporations, Authorities and Commissions Assembly Bill Number 4052 and substitute it for the identical Senate Bill Third Reading 484.

ACTING PRESIDENT KUHL: The substitutions are ordered.

That brings us to the calendar, Senator Skelos.

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

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

THE SECRETARY: Calendar Number 378, by Senator Nozzolio, Senate Print 387, an act to amend the Executive Law, in relation to making available to their victims the proceeds of civil recoveries attained by prisoners.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 407, by Senator Leibell, Senate Print 3304, concurrent resolution of the Senate and Assembly, proposing an amendment to Section 1, Article VI of the Constitution.

ACTING PRESIDENT KUHL: The Secretary will read the last -- excuse me. The

Secretary will call the roll on the resolution.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The resolution is adopted.

THE SECRETARY: Calendar Number 444, by Senator Holland, Senate Print 1957, an act to amend the Penal Law, in relation to fixing sentences for persons committing crimes while on parole.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 6. 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 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 445, by Senator Kuhl, Senate Print 1977, an act to amend the Penal Law, in relation to criminal possession of a weapon in the third degree.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 471, by Senator Johnson, Senate Print 246, an act to amend the Executive Law, the Civil Practice Law and Rules and the Tax Law, in relation to personal injury awards.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 4. 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 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 473, by Senator Volker, Senate Print 1587, an act to amend the Executive Law, in relation to the written statement of the crime victim in making the parole release decision.

ACTING PRESIDENT KUHL: 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 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 486, by Senator Skelos, Senate Print 331, an act to amend the Executive Law, the Tax Law and the State Finance Law, in relation to missing children.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 5. 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 57.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 523, by Senator LaValle, Senate Print 3135, an act to amend the General Municipal Law, in relation to point systems for service award programs.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 527, by Senator Rath, Senate Print 3640, an act to amend the General Municipal Law, in relation to procedures for the issuance of administrative search warrants.

ACTING PRESIDENT KUHL: The 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.)

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

SENATOR PATERSON: Mr. President, has Calendar Number 444 left the house at this

point? We're on the vote. Let me wait until after the vote, Mr. President.

ACTING PRESIDENT KUHL: Record the negatives. Announce the results.

THE SECRETARY: In relation to Calendar Number 527, ayes 56, nays 1, Senator Cook recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Paterson.

SENATOR PATERSON: My apology, Mr. President.

ACTING PRESIDENT KUHL: No problem.

SENATOR PATERSON: Relating to Calendar Number 444, I want to know if it's still in the house.

ACTING PRESIDENT KUHL: 444, I'm informed by the Secretary, has left the house.

SENATOR PATERSON: Thank you, Mr. President.

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

THE SECRETARY: Calendar Number

533, by Senator Levy, Senate Print 75, an act to amend the Public Authorities Law and the Railroad Law, in relation to operating a self propelled railroad passenger car or locomotive while under the influence.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 5. 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 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 550, by Senator Rath, Senate Print 3671, an act to amend the Vehicle and Traffic Law, in relation to mandatory suspension of licenses.

ACTING PRESIDENT KUHL: The 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 57.

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.

ACTING PRESIDENT KUHL: The Secretary will read the controversial calendar, beginning on page 15, Calendar Number 378, by Senator Nozzolio.

SENATOR WALDON: Explanation.

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

SENATOR MONTGOMERY: Mr. President, before we take up the next calendar, I would like unanimous consent to be recorded in the negative on Calendar 444.

ACTING PRESIDENT KUHL: Without objection.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT KUHL: Hearing

no objection, Senator Montgomery will be recorded in the negative on Calendar Number 444.

The Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 378, by Senator Nozzolio, Senate Print 387, an act to amend the Executive Law, in relation to making available to their victims the proceeds of civil recoveries obtained by prisoners.

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: Read the last section.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR PATERSON: Explanation.

SENATOR SKELOS: Could we lay that aside temporarily. I believe Senator Nozzolio is chairing a committee meeting. If we could take up Calendar Number 445.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 445, by Senator Kuhl, Senate Print 1977, an act to amend the Penal Law, in relation to criminal

possession of a weapon in the third degree.

SENATOR WALDON: Explanation.

ACTING PRESIDENT MAZIARZ: Senator Kuhl, an explanation has been requested of Calendar Number 445 by Senator Waldon.

SENATOR SKELOS: Lay that aside temporarily.

ACTING PRESIDENT MAZIARZ: The bill is laid aside temporarily.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: May we take up Senator LaValle's bill, Calendar Number 523.

ACTING PRESIDENT MAZIARZ: Calendar Number 523.

The Secretary will read.

THE SECRETARY: Calendar Number 523, by Senator LaValle, Senate Print 3135, an act to amend the General Municipal Law, in relation to point systems for service award programs.

ACTING PRESIDENT MAZIARZ: Senator Stavisky, why do you rise?

SENATOR STAVISKY: Will the

sponsor of the legislation yield for a question or two?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MAZIARZ: Senator LaValle, will you yield to Senator Stavisky for a question?

SENATOR LAVALLE: I would be delighted to.

ACTING PRESIDENT MAZIARZ: Senator Stavisky.

SENATOR STAVISKY: Senator LaValle, what are the service award benefits?

SENATOR LAVALLE: Pardon me?

SENATOR STAVISKY: What are the service award program benefits?

SENATOR LAVALLE: Service award benefits are each person, depending -- each volunteer fireman, depending on the length of service, receives a benefit based on, for want of a better term, pension for the length of service.

You see, Senator Stavisky, a number of years ago we had a very, very difficult time both retaining and attracting members of the volunteer fire service which we

are dependent upon. Volunteer members save our taxpayers somewhere in excess of $1 billion a year because of their service and so we established in this body -- and you were a member of this body and voted for the service award system -- that allows members who accumulate 50 points a year, depending on how many fires they attend, training sessions and other criteria, attendance in parades, et cetera, to receive recognition or credit for that year of service. The fire district can choose -- what they do is they take out a policy for their members and so at the end of a number of years, they can, upon retirement from the volunteer fire service, receive a monthly benefit. That benefit depends on years of service by the individual, the points that they have accumulated and the kind of policy that the fire district has taken out.

SENATOR STAVISKY: Senator LaValle, does the volunteer fire organization, in some cases, provide volunteer ambulance rescue service?

ACTING PRESIDENT MAZIARZ: Senator LaValle, would you yield for a question

from Senator Stavisky?

SENATOR LAVALLE: Senator Stavisky, in the suburban and rural areas, there is a patchwork of how we address the ambulance delivery system. In some cases, it is done by volunteer fire departments and in some communities, we have set up by statute volunteer ambulance districts that are very much like and parallel volunteer fire districts and we also have a system of service awards for our ambulance districts in the same way that we had established in law for the volunteer fire service awards.

So the answer is, yes, for some fire districts, if they choose to continue that service.

SENATOR STAVISKY: Senator LaValle.

ACTING PRESIDENT MAZIARZ: Senator Stavisky.

SENATOR STAVISKY: I am not opposed to your legislation. I simply wish to ask why are the volunteer ambulance corps in the city of New York not covered by a similar service award program that would enable the

volunteer ambulance corps members in the city of New York and in other districts to be eligible for the kind of benefits that you have here in your legislation?

ACTING PRESIDENT MAZIARZ: Senator LaValle, do you yield for a question?

SENATOR LAVALLE: Yes, I will.

Senator, the bill that we have before us deals with the fire districts. It does not deal with the -- as I had indicated to you, we have two different systems that are parallel in suburban and rural areas.

The city of New York has a paid fire system and so today what we're dealing with here in the bill before us deals with volunteer fire personnel and does not deal exclusively with ambulance personnel.

Now, my answer to you, Senator, is that if you have -- and I am not aware, but if you do have volunteer ambulance people, then I would say you might look at similar laws that we have sponsored for suburban and rural areas, you might look at that and see whether you would want to follow the same route for the city of New York.

SENATOR STAVISKY: Thank you, Senator LaValle. On the bill.

ACTING PRESIDENT MAZIARZ: Senator Stavisky, on the bill.

SENATOR STAVISKY: Mr. President, there is such a bill in this house. It is Senate 4311, which I have sponsored and it provides the same benefits to the volunteer ambulance service people that this bill provides for the volunteer firefighters. Their functions are identical, and I would ask you, Senator, would you be willing to amend your bill to include the volunteer ambulance corps which are districts that are represented by Senator Maltese, Senator Padavan and members of the Minority in this house and which would provide the same benefits? Would you be willing to consider an amendment to your bill to grant to the volunteer firefighters outside of the rural and suburban areas that are covered by your piece of legislation; would you be willing to consider and recommend the adoption of a similar bill for the benefit of the volunteer ambulance corps?

ACTING PRESIDENT MAZIARZ:

Senator LaValle, would you yield for a question from Senator Stavisky?

SENATOR LAVALLE: Senator, your question was would I amend this bill? What I am saying to you in my remarks is that this bill is, if we make an analogy, an apple. The bill you're talking about is an orange and so we're not talking about like matters here. This is an entirely different bill.

If you look at this bill, Senator, this bill merely says that a fire district that has already voted for -- by referendum of the people of the fire district to institute and constitute a service award system that they do not every time they change the nature of the point system in how you arrive at your 50 points. That means that maybe they have changed attending a parade as being two points. They now change that to be one point, that they now do not have to go back and hold a referendum again with the voters of the fire district and it merely says that as long as the Board of Fire Commissioners or the village or the municipality that is the sponsor of the service award system, that they -- as long as they vote by 60 percent

of the board, that they can change the point system. That's all we're doing, Senator.

We're not doing what you're trying to do by your legislation and the answer, I think you know, is that if you have a bill in, that just as I, with this bill, I went before the Committee, requested it out. There was a discussion of the bill. Here it is on the floor and we're discussing it again even though the discussion is about apples and oranges.

SENATOR STAVISKY: Senator LaValle, we're not talking about apples and oranges.

SENATOR LAVALLE: Yes, we are, Senator.

SENATOR STAVISKY: We're not talking about grapefruit. We're not talking about bananas.

ACTING PRESIDENT MAZIARZ: Senator Stavisky, are you asking Senator LaValle to yield for a question or are you speaking on the bill?

SENATOR STAVISKY: No. I'm through with Senator LaValle and I hope he's through with me. What I'm saying, in effect,

is -

ACTING PRESIDENT MAZIARZ: Senator Stavisky, on the bill.

SENATOR STAVISKY: -- that there is no major distinction between a body of volunteers performing ambulance rescue missions in one part of the state versus a body of volunteers in another part of the state, and I do not wish to see you do a disservice to the members from the city of New York, including, I believe Senator Maltese and Senator Padavan, in finding that there is no right on the part of the volunteer ambulance corps in the city of New York to be treated in the same manner as your bill and the existing law provides.

I want equity. I want comparability of benefits. Yes, there is an emergency medical service but there are places in New York City where constituents will die were it not for the presence of a volunteer ambulance corps to provide emergency rescue services, the same emergency rescue services that are rendered by the volunteer firefighters of the state.

I am not going to oppose your

bill. I am simply asking for comparable consideration for our constituents who are donating their time, their energy, their effort without any monetary compensation in New York City under the aegis of a volunteer ambulance service.

So I'm going to vote for your bill, but I want to point out that there ought to be some comparability in the benefits that are available for the volunteer ambulance corps.

I see Senator Marchi nodding in agreement. I think he has in his district volunteer ambulance corps that render this life-saving service in Staten Island, and I believe that there ought to be comparability. I have no pride of authorship, Senator LaValle. It may be a LaValle bill. It could be a Marchi bill, so long as the benefits are extended to the volunteer ambulance corps in the city of New York and that's the point of my questioning. It's not apples and oranges. It's not bananas and pears. It's equity.

Thank you.

ACTING PRESIDENT MAZIARZ: Senator Oppenheimer, Senator Volker was -

SENATOR VOLKER: Go ahead.

ACTING PRESIDENT MAZIARZ: Senator Oppenheimer.

SENATOR OPPENHEIMER: Well, I agree with both sides today.

Let me say that we are having problems attracting volunteers to -- I'm now speaking in my other hat many years ago of being a mayor and we were having difficulty attracting volunteers to our fire department and our rescue.

Anything that we can do that makes additional benefits like the service award is something that will be very important to those communities that rely on the volunteer services for both fire and ambulance.

In answer to Leonard's question about was it within the fire department? We in my community had a rescue squad. Rescue was part of our fire department. However, we found it difficult to keep our rescue fully staffed as we -- they also had to qualify as firefighters and many of the women who are interested in rescue to work on the ambulance corps could not -- did not want to participate in the fire

training part of it and they did not want to be firemen.

Therefore, our community went to a VAC, volunteer ambulance corps, and I would be happy to see these kind of additional benefits for people who volunteer at unbelievable hours of the night and day for the volunteer ambulance corps, and if I could structure a bill with Senator Stavisky or with Senator LaValle, I would be happy to do so because I think we really have to recognize the contribution of these volunteers who get nothing back in return except for doing good for their community.

Thank you.

ACTING PRESIDENT MAZIARZ: Senator Volker.

SENATOR VOLKER: Mr. President, I just want to clarify something and, Senator LaValle, it's not just his legislation because I know a little bit about the -- you could not possibly do what Senator -- what was asked here to do to combine. It really is apples and oranges. In fact, probably you should be asking the city of New York to do this.

These ambulance districts and

fire districts are creatures of the state of New York. We created them by legislation, most of them. The decision, however, to do things like service points, and so forth, has been at the local level. The problem in the city of New York is that your people are not -- at least not by the state of New York. They may be by some city ordinance or something -- they're not created by anything in the state of New York.

Therefore, for the state of New York to make a declaration that we're allowing service points for ambulance corps and volunteer firemen in the city of New York, I think is constitutionally not possible. I think you should be -- it seems to me -- it would seem to me that you should be going to the city of New York since, as far as I know, these ambulance corps, and so forth, if they're regulated at all would be regulated under city statutes and not under the state of New York.

ACTING PRESIDENT MAZIARZ: Senator Stavisky.

SENATOR STAVISKY: Senator LaValle -- Senator Volker, I want to mention the fact that both houses of the Legislature did

recognize volunteer ambulance corps by statute. One of these recognitions is known as the Good Samaritan Law, which I sponsored when I was a member of the Assembly and it provided, at the request of the then Governor Rockefeller, for certain training, certain hours of training that would be available in the event that the volunteer ambulance corps desired to be exempt from punitive action during the time that the volunteers were responding to an emergency.

Yes, we have recognized them in the city of New York and elsewhere. Yes, we should have comparability. Yes, I think that this is a fine concept. I have not criticized it, except to mention the glaring omission.

So if we have a statute called the Good Samaritan Law that applies specifically to the volunteer ambulance services and it was approved by both houses, signed into law by Governor Rockefeller, I think that that should answer the question.

We are not asking for a special benefit. We are asking for fairness and equity, and that's all I wanted to say on this issue.

ACTING PRESIDENT MAZIARZ: Thank

you, Senator Stavisky.

SENATOR COOK: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Cook.

SENATOR COOK: Mr. President, there probably isn't a lot of purpose in having this go on but, Senator Stavisky, you appreciate that the way a service award program is developed is that the sponsoring organization, that is, the fire district buys a policy which gives the awards.

In the city of New York, therefore, I think what Senator Volker was trying to say would be incumbent presumably upon the city of New York, in some manner, to first say we are prepared to buy this kind of policy for volunteer ambulance personnel who are in the city and then there might be some manner in which they could be engrossed into the system, but the point is that there has to be a sponsoring governmental entity in order to have the program in the first place and that doesn't exist so far as I know in the city of New York.

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 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you take up Calendar Number 445, by Senator Kuhl.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 445, by Senator Kuhl, Senate Print 1977, an act to amend the Penal Law, in relation to criminal possession of a weapon in the third degree.

ACTING PRESIDENT MAZIARZ: Senator Kuhl, an explanation has been requested of Calendar Number 445 by Senator Waldon.

Senator Kuhl.

SENATOR KUHL: Mr. President, I would be happy to explain the bill. This is a bill that increases the severity of criminal

possession of a weapon by a convicted felon.

Currently in the state of New York, the law exists that says that if a convicted felon is caught possessing a rifle or a shotgun, then that person is guilty of a Class A misdemeanor.

This bill would provide for an increased penalty for a second conviction, much like the driving while intoxicated laws. We give people a break the first time and as they continue to convict or possess certain things and break the law, we make the penalties more severe.

This particular proposal would, on the second conviction of possession of a rifle or a shotgun, change that Class A misdemeanor crime to a Class D felony which carries with it an indeterminate sentence up to seven years in the state penitentiary.

SENATOR WALDON: Would the gentleman yield to a question or two, Mr. President?

ACTING PRESIDENT MAZIARZ: Senator Kuhl, would you yield to a question or two from Senator Waldon?

SENATOR KUHL: I would be happy to.

ACTING PRESIDENT MAZIARZ: Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

Senator Kuhl, is there a requirement in upstate New York if someone purchases a rifle or shotgun to register same similar to the requirement in the city of New York?

SENATOR KUHL: A shotgun or a rifle? No. Licensing in upstate New York outside of the city is only required for handguns at this current time, Senator Waldon.

ACTING PRESIDENT MAZIARZ: Senator Waldon.

SENATOR WALDON: Would the gentleman yield again, Mr. President?

ACTING PRESIDENT MAZIARZ: Senator Kuhl, would you yield for a question from Senator Waldon?

SENATOR KUHL: Certainly.

SENATOR WALDON: Does a person who desires to purchase a rifle or shotgun have

to apply in any form or fashion for a license to possess same?

SENATOR KUHL: No.

SENATOR WALDON: Mr. President, would the gentleman continue to yield?

ACTING PRESIDENT MAZIARZ: Senator Kuhl, would you continue to yield for a question from Senator Waldon?

SENATOR KUHL: Yes, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Waldon.

SENATOR WALDON: To your knowledge, Senator Kuhl, is there any restriction for those who wish to hunt in terms of making application for licenses to hunt in upstate New York if they have been convicted of a felony and are, in fact, out many, many years but not to the concluding year; for example, if they still owed time to the state in regard to parole two or three years, is there any restriction on those persons applying for a license to hunt?

SENATOR KUHL: For a license to hunt, I believe they forfeit that when they're

convicted of a felony, Senator Waldon, but that's not -- that particular area is not one of my expertise. So I say that not absolutely certain, but I believe they forfeit the civil rights upon the conviction of a felony and that would preclude them from a hunting license.

SENATOR WALDON: Mr. President, one more question, if I may.

ACTING PRESIDENT MAZIARZ: Senator Kuhl, would you yield to one more question from Senator Waldon?

SENATOR KUHL: Certainly.

ACTING PRESIDENT MAZIARZ: Senator Waldon.

SENATOR WALDON: Creating a hypothetical, Senator Kuhl -- because I don't know the answer to the question as well and if someone in the chamber does know, if they would edify Senator Kuhl and I, I would be greatly appreciative, but creating a hypothetical situation, someone committed a crime, was convicted, served his time, is out on parole, has not made application for any release from that obligation and he and his friends decide to go hunting in upstate New York. He purchases

lawfully a rifle or shotgun to go hunting and is, in fact, on his way to hunt, is stopped inadvertently by a state trooper and the trooper sees the rifle and somehow makes -- a shotgun and makes a connection from personal knowledge that this person is, in fact, someone who owes time to the state and arrests him for that crime.

In the bill that we passed earlier in committee to report out from Senator Rath which -- maybe it was here. I'm confused about it -- which would allow the maximum - require that the maximum time be served, would that not negatively impact this person who otherwise is leading a lawful existence?

SENATOR KUHL: Senator Waldon, perhaps you overlooked what I said, that this bill only deals with a second conviction for possession of a firearm by a convicted felon. So whether or not that circumstance -- that hypothetical that you have outlined -- and I had a hard time listening -- hearing it, I should say, but the noise in the chamber, so I may have not heard all the detail, but what I'm saying is there currently is law in this state that

provides that if, in fact, a convicted felon is found in his possession to have a rifle or a shotgun, then they are guilty of a crime, a crime which is a Class A misdemeanor for which they can be sentenced, as you know, to a penal institution, county jail for up to a year. This particular proposal would say if you are convicted of possession a second time within a ten-year period, then, in fact, you would not be guilty of a Class A misdemeanor but you would be guilty of a Class D felony.

SENATOR WALDON: Thank you very much, Senator Kuhl.

On the bill, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Waldon, on the bill.

SENATOR WALDON: I'm not sure if I am even happy with the misdemeanor penalty because I believe in that mix of people who would love to hunt in this state and who are otherwise law-abiding citizens, the mere possession of a rifle or shotgun should burden someone with up to one year in prison, but the proposal that Senator Kuhl has presented to us for consideration does not say if the person is

using the rifle or shotgun to commit a crime and under the scenario I shared with you, I believe it's within the realm of possibility that a person could inadvertently come into contact with law enforcement personnel and, in fact, be arrested and, in fact, be found guilty of mere possession and then owe the state seven years.

In my world, that doesn't make any kind of sense. It really doesn't make any kind of sense. The person has paid his dues, is now on parole, happens to go hunting -- or whatever the situation is -- with some friends and inadvertently runs into the law, I think that's a mistake. I think it's overly broad and far, far too punitive, and I would encourage us to reconsider our votes on this issue because bills like this, we cavalierly vote yes for and have done so, even myself, over the years because we don't really look at the human side of what's being proposed.

Why are we looking to just hold everybody in terms of rights to do things that are of no danger or threat to the rest of society? The mere possession of the rifle is not a threat to society. You've heard many

times, I'm sure in TV shows or movies that it's not -- and even here on this floor, some of my colleagues have said it is not the gun that kills. It is the man holding the gun that kills. So why would a rifle being held by someone in these circumstances or a shotgun be the kind of threat which would warrant seven years?

I suggest it is not, and I would encourage all of us to do as I'm going to do and vote no on this proposal.

ACTING PRESIDENT MAZIARZ: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President.

Would the sponsor yield for a question of clarification?

ACTING PRESIDENT MAZIARZ: Senator Kuhl, would you yield for a question from Senator Montgomery?

SENATOR KUHL: I would be happy to.

ACTING PRESIDENT MAZIARZ: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Thank

you, Senator Kuhl.

I note in the bill that was passed by this house, Senate Bill 444 sponsored by Senator Holland, would require that anyone who committed a felony while on parole -- and I'm not sure what the felony is. I'm not an attorney and I don't see the class of felony defined in the bill, but it says anyone who commits a felony while on parole will have to serve their original sentence and their original maximum sentence and the first -- on the first sentence "and the minimum on any subsequent sentence", and your legislation says essentially, as I understand it, that a person who is -- who is convicted on this criminal possession of a rifle would be -- receive a felony-- fourth degree felony, a Class D felony, which means that putting these two bills together, you now have a situation where a person who possesses a rifle, even if it's for hunting or other recreational purposes, would fall into the category of both your legislation as well as Senator Holland's bill which precedes it.

SENATOR KUHL: Senator, would you

like me to comment on that? I think there's one thing that you're missing. If, in fact -- let's take the scenario that Senator Holland's bill deals with. If, in fact, you have someone who is on parole, which means they have been convicted of a crime, probably a felony, and then if they are then convicted -- found to violate that parole, then they're going to serve their full maximum sentence, is that correct? That's the way you understand the bill? All right.

Now, if that individual, after having served that sentence, goes out and is found to be in possession of a firearm, there is a provision -- if you note in the language of the bill, it talks about -- at least the proposal deals with a person who has previously been convicted of a violation of this section which means that there is another precedent to getting to having this particular proposal influence that person's life.

So, if an individual who was convicted of a felony, who's now violated parole, gone out and served their entire sentence, now comes out and decides to go

hunting, knowing that they're a felon, they lost all their civil rights, number one, they don't have a license so that they're violating the gaming laws already. They also are violating a provision of this section which says that they are not to have in their possession a rifle or a shotgun. If they are found to have that possession of a rifle or shotgun, they are now then going to be convicted of a misdemeanor. This proposal that I have doesn't even touch them yet.

So now they're learning that, in fact, they are a felon. They've had their lesson. They're being convicted of a misdemeanor. Now they're going to, under Senator Holland's proposal, as I understand it, serve the minimum of whatever that sentence is, which would be up to a year in jail, okay? If it's an indeterminate sentence, it's generally one-third of what that maximum penalty is, four months.

Now they have been told simply because they have been convicted, either they sat through a jury trial or whatever, or else they pled, understanding what they have done.

Now, for them to get to having an impact - having their lives being impacted by this proposal, they then for a second time would have to decide, I'm going hunting again, forget the fact that I don't have a license, I haven't gotten a certificate of disability -- relief so that I can do that application. Now they're going to do the same thing over again.

Now, this proposal says if they are found to have a rifle or a shotgun in their possession, that they are, in fact, going to be convicted of a Class D felony which then would subject them to up to two and one-third to seven years in the state penitentiary.

So an individual under the prior proposal that we adopted, Senator Holland's proposal, would have to go through an intermediary step, which I perceive to be a learning step. It's much like, as I said to Senator Waldon in explaining the bill, I associate this to dealing with subsequent offenses for people who have already committed the same crime. No, no. You did this wrong once. Now, if you do it wrong again, we're going to make the penalty more severe.

As I said, I equate this to the DWI legislation where we say that, Fine. If you're convicted once, it's going to be a misdemeanor. You're going to have your license revoked. You're going to be sentenced up to six months in jail and your license is going to be revoked for six months. The second time we make it a felony.

So this is, I think, consistent with that type of legislation and it sends a signal that we don't want violent felons, people convicted of felonies, walking around with firearms that they can kill people with.

SENATOR MONTGOMERY: Thank you, Senator Kuhl.

SENATOR WALDON: Senator Marcellino, would Senator Montgomery yield for a question?

SENATOR MONTGOMERY: I will yield.

ACTING PRESIDENT MARCELLINO: Senator Montgomery.

SENATOR WALDON: Senator, there is new language this year, and I want to ask you to look at it because I want to ask you a

question. This bill, line five, he commits a crime of criminal possession of a weapon and has previously been convicted of violating such subdivision within the preceding ten years.

Are you aware that that can mean that he had possession of a weapon crime as his conviction in the previous ten years? Are you sensitive to that?

ACTING PRESIDENT MARCELLINO: Senator Waldon, if you're reading and being sensitive to the record, would you please cite where you're reading from, so that the stenographer can get it?

SENATOR WALDON: I'm reading from the bill, Senator -- Mr. President. I'm sorry for that. I'm reading from the bill and I'm reading from line three through line six of the bill.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

SENATOR MONTGOMERY: I have read it, yes.

SENATOR WALDON: If I may direct to the learned lady a question or two.

ACTING PRESIDENT MARCELLINO: Do

you continue to yield?

SENATOR MONTGOMERY: Yes.

ACTING PRESIDENT MARCELLINO: She continues to yield.

SENATOR WALDON: Senator Montgomery, if you understand that the first conviction is for a weapons felony then you understand that someone under the scenario I discussed earlier, and I believe the scenario you were trying to raise with Senator Kuhl would merely have to have in his or her possession a rifle or shotgun and if discovered to have same by the police would actually trigger all of the things you were talking about in connection with Senator Holland's bill? Are you clear on that?

SENATOR MONTGOMERY: Yes.

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

SENATOR MONTGOMERY: Mr. President, just briefly on the bill.

ACTING PRESIDENT MARCELLINO: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I just want to remind my colleagues that when I look at

Senate Bill 444, I don't -- indeed I believe that these two pieces of legislation are very closely connected and we already have on the books a law which requires that the judge sentence to state prison any person convicted on the second felony, so that what we seem to be looking at here are attempts to extend that particular law rather than giving more discretion at the level of the courts to tighten it so that not only does the second felony law continue, but it is indeed strengthened by virtue of Senator Holland's bill, to say that that person now must serve in addition to the maximum of the original sentence, must now serve any additional minimum sentence on any subsequent violation, and since the large majority of the inmates now in state prison are there because of drug-related arrests for which we have no alternatives in terms of treatment and diversion, it occurs to me that the results of these two bills, if they were passed, would be that we're looking at a major problem of overcrowding in the prison system without really addressing either the problem of crime on the streets or addressing the problem of

rehabilitation through the appropriate intervention of inmates who are already there in prison.

So, Mr. President, I'm going to oppose -- I voted no on Calendar Number 444 because I believe that it is an unnecessary bill. It does not address the problem of crime, and I think that it's only going to exacerbate our already overcrowded system, and I'm going to also oppose 445 because I think that this is just essentially an addendum to 444 and again, I don't think despite I believe Senator Kuhl has every intention of trying to address crime, I certainly, based on my experiences in my district and with the criminal justice system as I know it, this does not help to reduce crime in the streets of the borough and the district I represent.

Thank you.

ACTING PRESIDENT MARCELLINO: Any other Senator wish to be heard?

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 445 are Senators Montgomery, Sampson and Waldon. Ayes 56, nays 3.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Volker, we have one more bill left, Senate Bill Number 3 -- Calendar Number 378, Senate 387. Can we call that now?

SENATOR VOLKER: Go ahead.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: Calendar Number 378, by Senator Nozzolio, Senate Print Number 387, an act to amend the Executive Law, in relation to making available to their victims the proceeds of civil recoveries obtained by prisoners.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Nozzolio, an explanation has been called

for.

SENATOR NOZZOLIO: Mr. President, my colleagues, today this Senate recognized and honored crime victims and crime victims' rights in measures previously passed sponsored by Senator Leibell, Johnson and Senator Volker.

Before I begin explanation of this bill, I'd like to indulge the house in just a moment in praising the courage of many of the crime victims across our state, and this house is blessed today because it is graced by a visitor who is himself just this last year within the last few months literally the victim of a very, very serious crime.

Seated in the gallery is a young man by the name of Nathan Downes. Nathan is a young man from Rochester, really a man that the community of Rochester has been proud of, an Eagle Scout, one who has performed very admirably in -- throughout his very young life. On his way home from school this year Nathan was accosted by an attacker younger than he, an attacker who tried to rob him at gunpoint.

ACTING PRESIDENT MARCELLINO: Senator Nozzolio, can you hold on for a minute.

Will the members, please, if you have conversations, take them out of the chamber. Staff, take your seats so we can hear the Senator speak.

Senator?

SENATOR NOZZOLIO: Thank you, Mr. President.

On his way home from school, Nathan was accosted and robbed at gunpoint. Fortunately for he and for all of us, the wound, less than an inch from his heart, was one that because of good care and strong body, Nathan recovered from after some very, very serious convalescence.

Nathan Downes is a man of courage, is one that as we talk about crime victims, we need not talk about them in the abstract. The tragedy that occurred to this young man is a tragedy that we all regret. But it's a tragedy that we must work hard to prevent never happens again, and we must do all possible to pass legislation in this house and in this Legislature that does as much as possible to prevent this type of action from occurring again.

We must also seek legislation that ensures justice to crime victims regardless of what their injury occurs, that the measures before us today take great steps in ensuring that the victims of crime have their day in court, that the victims' rights are recognized, that the victims have an opportunity to present their case before tribunals and that the victims are considered when there's the issue of compensation that needs to be provided.

The Crime Victims Board, as we all know, is very, very shortchanged in its ability to give victims of crime monetary compensation. There have been measures passed in this house, passed just recently in a non-partisan, bipartisan fashion, that provide the victims of crimes "Son of Sam" protections, building upon what this Legislature had done over the last decade in ensuring that those who commit crime are not allowed to profit from their crime. That's the measure that we have before us today, builds upon the "Son of Sam" protections that those who are committing very serious crimes are not sent to prison and then allowed to profit from those crimes.

What the measure before us does as we get to its explanation, is to provide those who sue in civil court litigation while they are in prison the proceeds of their recovery to be dedicated to the Crime Victims Compensation Fund so that, if they were sent to prison for any other action similar to their reason for incarceration and wrote a book, that book fee would be given to the Crime Victims Compensation Fund as is the law of the state.

But what this measure does - excuse me. What this measure does is provide equity so that when an individual, criminal, sues the taxpayers of this state that the recovery from that lawsuit, if any, be dedicated to those victims of crime throughout the state.

Thank you, Mr. President.

SENATOR WALDON: Will the gentleman yield to a question or two?

ACTING PRESIDENT MARCELLINO: Senator Nozzolio, do you yield to Senator Waldon? Senator Waldon, he yields to you.

SENATOR WALDON: Thank you very much, Mr. President. I apologize for that side bar, Senator Nozzolio.

Can you give us an example, Senator Nozzolio, of two or three types of crimes that would qualify for the victim to recover from someone who sues later while incarcerated?

SENATOR NOZZOLIO: Certainly, Mr. President. Rape, robbery, murder, those types of crimes sending an individual to prison would surely qualify.

SENATOR WALDON: Would burglary qualify under your scenario?

SENATOR NOZZOLIO: Yes.

SENATOR WALDON: Would embezzle ment of a major nature qualify?

SENATOR NOZZOLIO: Just to make it clear -- easier for you, Senator, Mr. President, the bill allows recovery for any felony or misdemeanor defined in the Penal Law.

SENATOR WALDON: Any and all.

SENATOR NOZZOLIO: That's correct. So anyone, just to further explain, if someone is incarcerated for a misdemeanor, which is unlikely in this state, that that would still provide the ability to then pursue civil litigation during that period of time, would be

able to recover any funds received from subsequent litigation.

SENATOR WALDON: Would the gentleman continue to yield?

ACTING PRESIDENT MARCELLINO: Do you continue to yield, Senator?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR WALDON: To your knowledge, under current law, Senator Nozzolio, are there any exceptions whereby the victim could not recover for any monies inuring to the benefit of the person incarcerated while incarcerated?

SENATOR NOZZOLIO: I'm not aware of any, Mr. President.

SENATOR WALDON: May I continue, Mr. President, if the gentleman continues to yield?

ACTING PRESIDENT MARCELLINO: You continue to yield, Senator?

SENATOR NOZZOLIO: I'm sorry. I did not hear the question, Senator.

SENATOR WALDON: I didn't pose it.

ACTING PRESIDENT MARCELLINO: He was asking if you continue to yield.

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He continues, Senator.

SENATOR WALDON: Thank you very much, Mr. President, and thank you, Senator, for your patience.

May I create a hypothetical and ask you to give me your thoughts on the hypothetical. Somebody commits a crime major felony, but not a violent felony, but someone suffered a loss as a result of that, pecuniary loss. This person is in jail and has need of an operation while incarcerated, not in jail but in prison, and most regrettably, a doctor commits gross negligence during the operation, and causes irreparable harm of a permanent and lasting nature to the person, and the person sues and recovers, and let's create for my hypothetical that the person recovers a million dollars. The crime which was committed by this

person may have caused damage in a financial sense to the victim of only $500,000.

Are you saying to us that, under your proposal that, one, the $500,000 would be recoverable and, two, the remaining $500,000 would go to the Crime Victims Board?

SENATOR NOZZOLIO: Mr. President, the measure is designed to provide justice to those that need to be compensated for injuries received as a result of a crime. The bill models the federal Prisoners' Litigation Reform Act of 1995, which requires reasonable efforts be made to notify crime victims that monetary damages are about to be paid to an inmate.

In this case that Senator Walton -- Waldon presents -- pardon me, Senator - Senator Al -

SENATOR WALDON: Which I like.

SENATOR NOZZOLIO: As Senator Waldon presents, that what the measure does in this hypothetical would delay that medical malpractice recovery for 60 days. Creates - creating a three-year statute of limitations so that the crime victim would have to have -- to sue the previously indigent, assuming the

prisoner was an indigent, could get no recovery from him.

Now, you have the crime victim had an opportunity over a three-year period to attach those additional benefits that the - were brought about from the malpractice case. The same would be true if it was an inmate winning the lottery or sometimes even medical malpractice cases are described, an inmate winning some major inheritance.

Those types of circumstances would now be akin to an inmate winning a civil litigation.

SENATOR WALDON: Last question, if I -- or last two- or three-part question.

ACTING PRESIDENT MARCELLINO: Senator, do you continue to yield, to the last two or three questions?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR WALDON: Senator Nozzolio, suppose -- suppose this person who moved to recover the judgment -- strike that.

The person recovers $500,000 within the time frame scheduled here in your proposal, and the remaining $500,000 is there. What happens to that remaining 500,000? I wasn't clear on your previous response.

SENATOR NOZZOLIO: That the crime victim shall have the right to bring a civil action in court of competent jurisdiction to recover money, so that the right of a victim to bring a civil action for right of recovery, Mr. President, is provided for in this legislation, that if -- that that recovery could be obtained from the medical malpractice judgment obtained by the criminal, the prisoner, so this just simply allows the victims to seek out those potentially significant awards from previously indigent -- previously indigent prisoners.

SENATOR WALDON: Mr. President, I apologize to my colleagues because obviously I wasn't clear in my question. What I thought I had said, and I apologize to you, Senator Nozzolio, was that the victim recovered the $500,000 which was originally lost and there is a remaining amount of $500,000. What would happen with that? He's already brought a suit

and he's recovered his 500,000, the victim, and there's a remainder of 500,000. What happens to that?

SENATOR NOZZOLIO: Still the courts of equity would be able to now, if this measure was passed into law, provide that victim with a three-year statute of limitations window that says that that victim can continue to fulfill, or I guess in your hypothetical you'd have to say whether or not the victim was foreclosed. Was there a final judgment, was it a judgment that he just simply had a final judgment, but only a 50 percent recovery, that a court of equity then would be -- because of this law that we are debating today, would be able to allow a crime victim a three-year window to say to that window, your previously indigent prisoner is now -- has a largesse of $500,000 of which you could fulfill your judgment by going after.

A court of equity then could decide justice in this situation and say, Is this a situation that should be compensated? Simply now we have -- we don't have that type of opportunity for victims to be able to go into

court. They are foreclosed. This opens the door for potential recovery.

SENATOR WALDON: Again, I apologize, Mr. President, but I won't belabor that and I'll explain that piece momentarily in regard to the $500,000 remaining, but last question, if I may, Mr. President, to Senator Nozzolio and I appreciate your patience, Senator.

ACTING PRESIDENT MARCELLINO: Senator, you continue to yield?

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR WALDON: Senator, I grew up in Brooklyn and in Brooklyn we knew that if someone was going to benefit from what we might do and leave no benefit for us, then we just wouldn't do it, so if I had an opportunity to sue and have a recovery as the prisoner, even for a medical malpractice situation, but I knew that if I sued every penny of it was going to someone else, I might not bring the suit.

So my question is, do you think that there will be a great motivation for those

who you are incarcerated to sue a municipality or the state of New York to recover knowing that the money is all going to someone else?

SENATOR NOZZOLIO: Mr. President, I'd like to say I've never thought of that, but frankly, it's obvious. Yes, take away the monetary award, the monetary motivation out of bringing this type of litigation, and I think that you'd have some -- some very thoughtful processes before the dice was rolled although you could say the same thing about an individual who may not want to work because they don't want to have to have their wages garnished by their child support obligations.

That type of logic is -- I'm sure, governs some people's conduct, but I think here what we're trying to do above all the speculation and above all the hypotheticals, Senator, is to establish a process so that if there is a successful prisoner litigation, that the victim of the crime is thought of first, not last, that the victim of the crime has an opportunity to pursue monetary compensation, to be righted.

I don't care about the inmate or

the prisoner who is there for a very serious offense. I care about the victim who was given that offense in the first place, and that's really what I'd like the focus of this to be about. It's what the focus is about, that if it has a secondary benefit of retarding the gross amount of prison litigation that we see in this state every year, terrific, but our primary motivation is to compensate those victims who heretofore are being left out in the cold, and let me just provide you, not with a hypothetical in answering your question, provide you with a hypothetical that's a very real circumstance and that's a situation, of an inmate named Joey Lawrence who was a convicted rapist, who was a rapist in New York City who was sent to prison and then received a $157,000 award by the courts, I should say by the federal District Courts of the Southern District. That $157,000 judgment, not one penny went to the victim of that serious and heinous crime. That's wrong, and that's the wrong that we're trying to prevent.

SENATOR WALDON: Mr. President, if I may. Thank you very much, Senator

Nozzolio. On the bill.

ACTING PRESIDENT MARCELLINO: Senator Waldon, on the bill.

SENATOR WALDON: Senator Nozzolio, I tried to elicit a response and it probably was the manner in which I posed the question that did not elicit the response I had hoped for. I thought I had said that, if there's a $500,000 final judgment, final judgment, what would happen to the remaining $500,000 if there's a final judgment and the court has said that's it, Plaintiff, that's it, you got your money, then what happens to the remaining $500,000? I wanted to know, would it go to the Crime Victims Board or could the prisoner keep the money?

The thing that I found troubling in what you said, though, in all of this, was when you said you don't care about the prisoners. Your concern is only about the victims. I'm concerned about the victims and the prisons, and I think that's what all of us should be about, because the prisoners are people from our community who've made for whatever reason, some bad judgments. 80 percent

of them in our prisons, the first mistake they made was to do drugs or to get drunk, and while in this euphoric state they went out and did something which caused them to run afoul of the law which resulted in their being in the criminal justice system.

But they come home. They eventually come home, and that's where this state has failed most miserably in the sense that we do not have an attitude which says let's do something to create people who will have served their time, they have dealt with their drug problem, they have dealt with their alcoholism problem. We have some support services of whatever psychological, sociological, method applied to them and they come back better than when they left.

I go into the prisons. Perhaps you do as well, Senator Nozzolio. You have a great reputation in terms of dealing with criminal justice issues, and I respect that. But I go into the prisons, and I see stacked like cordwood, like cordwood, young black and Latino men. I've even been to the female prisons, and I think it's a mistake to allow

70,000 people to fester and to fester and to fester, and then to return them to a society where we live in our communities and the festering which has occurred over those many years erupts in additional violence and havoc and pain and suffering for the community.

So my real concern is not with what you propose today. I feel for the prisoner. I feel for the victim. I feel more for the victim than the prisoner in the sense that it is unfair for someone to be violated when they've done nothing to cause or precipi tate that violation. However, I feel that we are remiss as a government because we are creating our own downfall by not recognizing that, despite the fact that these people have run afoul of the law, we do nothing to preclude the second time, the third time, the fourth time.

When I have conversations with these young men in the prisons, many of them say they're going to be badder when they get out than they were when they got in. They've learned to be cleverer as a criminal which is a mistake. You don't learn to be cleverer. You

just learn a faster way to get back into prison.

But I think we ought to begin to focus on something that's called rehabilitation, something that's called true treatment for the drug problem, something that's called true sensitivity to the English as a second language needs or whatever other needs of the prisoners are because if we don't focus on it while they're in prison, then our lives when they're outside of prison will be just as miserable as they are now and I believe more miserable as we come to the turn of the century.

I would recommend everybody who has sensitivity for both sides, the victim and the prisoner, to recognize this is not going to help us and vote it down.

I thank you very much, Mr. President. I appreciate your patience, Senator Nozzolio.

ACTING PRESIDENT MARCELLINO: The Chair thanks his colleague from western Long Island.

Senator Abate.

SENATOR ABATE: Would Senator

Nozzolio yield to a question?

ACTING PRESIDENT MARCELLINO: Senator, do you yield to a question?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR ABATE: Senator, we have had discussions. I support this bill, but I'd like some clarification around the bill.

It's my reading of the bill that this is not a confiscation bill, that if the proceeds that the prisoner gets are frozen and no crime victim comes forward the money is not taken from the prisoner; is that correct?

SENATOR NOZZOLIO: Correct, Senator. The process, and just let me respond to what that process is for a second. It's a freezing for 60 days, of those awards, and a notice during that period of time to the crime victim that an award was received, a three-year statute of limitations window allowing the victim to pursue in the courts of equity compensation for their damages.

SENATOR ABATE: And so if no

crime victim comes forward or no crime victim gets a judgment, let's say it's a frivolous action, the prisoner is allowed to keep all of their monies that they recover?

SENATOR NOZZOLIO: That's correct.

SENATOR ABATE: Would the Senator yield to just one more question?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR ABATE: And the example around, if a prisoner recovers a million dollars for instance, that does not mean that the million dollars will be handed over to a crime victim, because doesn't the crime victim have to first of all file, win a civil action, have damages assessed and awarded in the amount of $1 million. They might be successful in civil litigation and win $50,000. That's all they would have a right to is the amount of the award rendered by that court. They would not be able to obtain monies from the prisoner beyond the amount litigated and awarded to the victim in a

court of law.

SENATOR NOZZOLIO: Mr. President, Senator Abate is correct that this provides a process. It provides certain provisional remedies, but the bottom line is that any decision in terms of amount of award to the crime victim is one that must be decided on its merits.

SENATOR ABATE: Thank you.

SENATOR NOZZOLIO: Thank you.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I'm going to vote in favor of this bill, but I really would like to make just two brief points. First of all -

ACTING PRESIDENT MARCELLINO: Senator Dollinger, you speaking on the bill?

SENATOR DOLLINGER: I am, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: First of all, I thought that the point that Senator Waldon

made should not be lost and, Senator Waldon, I don't know what this means but I saw "Tiger" Woods do it this week end, you go like this.

I think that's one of the best questions, one of the most interesting points we've made about any bill we've done in this chamber. What Senator Waldon said is, if what we do is give a disincentive to the prisoner to bring the action because he's not going to get the money, then the prisoner won't bring the action in the first place, so the victim won't get anything, the prisoner won't get anything, and what's unfortunate then, Senator, the consequence of that will be that the deterrent impact of prisoner litigation especially with respect to personal injuries will be lost and unfortunately our prisons and the workshops in our prisons and the care of our prisoners, suddenly they will no longer have to fear for prisoners' lawsuits based on personal injuries or I assume, and I haven't asked Senator Nozzolio this question, but I assume this also applies in cases of civil rights deprivation. If a prisoner's civil rights are violated in the course of a prison as unfortunately occasionally

happens even in the best of prison systems, that those inmates won't bring those actions because they know they won't get any proceeds.

As a consequence, the deterrent impact of civil litigation, which has had some beneficial impacts in this state in improving the quality of our prisons may be lost completely, and I just worry about that. Again, I commend Senator Waldon for thinking that through, because it seems to me that's something we should be aware of as we pass this bill.

The second thought is even simpler. I appreciate Senator Nozzolio bringing up Nathan's name. Nathan is a crime victim. As my understanding is, he was accosted, as Senator Nozzolio properly pointed out, by two or three much younger kids who happened to have in their hands a gun, and it seems to me that the one lesson that we should learn about that is that the one way to make fewer victims is to have fewer guns out on our streets.

One of the things that I've brought to this chamber before, things like ban on assault weapons, there are other bills languishing in committees in this chamber that

would decrease the amount of guns. There is a Gun Safety Act, all kinds of things that would decrease the amount of weapons that could end up in the hands of 12- and 13-year-olds that 18 year-olds walking home from school wouldn't have to become victims, and I would suggest that it's very simple.

There are victims' rights, there are gun owners' rights, and it seems to me that sometimes we pay lots of attention to victims' rights. We pay lots of attention to gun owners' rights, and unfortunately the consequence of paying too much attention to the latter is we have too many of the former, and I would just counsel everyone in this chamber that there is some linkage there. It's demonstrated in the example that Senator Nozzolio brought up.

One way to go about making fewer victims would be to finally let's deal sensibly with the problem of too many guns.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57, nays 2, Senators Sampson and Waldon recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Volker, that completes the controversial calendar.

SENATOR VOLKER: Is there any housekeeping at the desk?

ACTING PRESIDENT MARCELLINO: I believe the house is clean, sir.

SENATOR VOLKER: I'm glad you clean it up real well. Very good.

There being no further business, I -

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer, I'm sorry. Why do you rise?

SENATOR OPPENHEIMER: Thank you, Mr. President.

There was a bill that, if I had been in the chamber, this was several days ago,

I would have been recorded as no, and that bill was S. 548, Calendar Number 387. I would like the record just to show that, if I had been in the chamber that day, I would have voted no.

ACTING PRESIDENT MARCELLINO: The record will so show.

SENATOR OPPENHEIMER: Thank you so much.

SENATOR VOLKER: Anybody else? No?

There being no further business, I move we adjourn until Wednesday, April 16th, at 11:00 a.m.

ACTING PRESIDENT MARCELLINO: The Senate stands adjourned until Wednesday, April 16th at 11:00 a.m. sharp.

(Whereupon at 4:54 p.m., the Senate adjourned.)