ALBANY, NEW YORK

March 10, 1998

3:10 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEVEN M. BOGGESS, 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, March 9th. The Senate met pursuant to adjournment. The Journal of Friday, March 6th, 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 Wright,

from the Committee on Alcoholism and Drug Abuse, reports:

Senate Print 338, by Senator Skelos, an act to amend the Vehicle and Traffic Law;

404, by Senator Maziarz, an act to amend the Vehicle and Traffic Law;

2083, by Senator Cook, an act to amend the Insurance Law;

3088, by Senator Padavan, an act to amend the General Business Law.

Senator Padavan, from the Committee on Cities, reports:

Senate Print 4597-A, by Senator Velella, an act to amend the Real Property Tax Law;

4880, by Senator Maltese, an act to amend the Real Property Tax Law;

6110, by Senator Volker, an act to amend the Local Finance Law.

Senator Spano, from the Committee on Labor, reports:

Senate Print 1384-A, by Senator Spano, an act to amend the Labor Law and the Public Health Law;

4255, by Senator Spano, an act to amend the Workers' Compensation Law;

6328, with amendments, by Senator Spano, an act to amend the Labor Law and the Civil Service Law.

Senator Volker, from the Committee on Codes, reports:

Senate Print 87-A, by Senator Volker, an act to amend the Penal Law;

501, by Senator Johnson, an act to amend the Criminal Procedure Law;

665, by Senator Saland, an act to amend the Criminal Procedure Law;

673, by Senator Saland, an act to amend the Criminal Procedure Law;

4047, by Senator Padavan, an act to amend the Penal Law;

4084-A, by Senator Nozzolio, an act to amend the Civil Practice Law and Rules;

4306, by Senator Volker, an act to amend the Penal Law;

4307, by Senator Volker, an act to amend the Penal Law and the Criminal Procedure Law;

4412, by Senator Rath, an act to

amend the Civil Practice Law and Rules;

4583-A, by Senator Meier, an act to amend the Penal Law;

5218-A, by Senator Volker, an act to amend the Penal Law;

5710-A, by Senator Velella, an act to amend the Penal Law.

All bills directly for third reading.

ACTING PRESIDENT KUHL: All bills are ordered directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Velella.

SENATOR VELELLA: Mr. President, at this time may we please adopt the Resolution Calendar with the exception of Resolutions 2811, 2847 and may we recommit 2854.

ACTING PRESIDENT KUHL: Resolution 2854, which is on the Resolution Calendar, is recommitted. The motion is to adopt the Resolution Calendar on the members' desks with the exception of Resolutions 2811 and 2847. All

those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Velella.

SENATOR VELELLA: Mr. President, may we please take up Resolution 2811 by Senator Seward. I ask that it be read in its entirety and move its immediate adoption.

ACTING PRESIDENT KUHL: The Secretary will read Resolution 2811 in its entirety.

THE SECRETARY: By Senator Seward, Legislative Resolution mourning the death of former New York State Senator Leighton A. Hope, distinguished citizen;

WHEREAS, it is the custom of this legislative body to publicly mourn the death of prominent citizens of the New York whose life, work and civic endeavor serve to enhance the reputation of the state.

Senator Leighton A. Hope of Cortland, New York, died on February 14th, 1998.

Senator Leighton A. Hope distinguished himself by his sincere dedication and substantial contribution to the welfare of his community and the New York State Senate.

Senator Leighton A. Hope's spirit of humanity, of devotion to the good of all, carried over into all of his endeavors, including charitable and philanthropic work.

Born December 9th, 1921 in Washington, D.C., he attended Taft School in Connecticut and Yale University. He was a graduate of DePauw University.

He served as a first lieutenant in the Army Air Corps for three years in World War II, flying 35 bomber missions over Europe and was shot down twice.

Leighton A. Hope served two terms in the state Senate and was the last Senator to come from Cortland. He ran for and was elected to the state Senate in 1962 and was re-elected in 1964. In office he served on Joint Legislative Committees on Environmental Conservation and Firearms.

After his Senate terms, Leighton A. Hope was appointed secretary to the state

Conservation Department in 1966. He became deputy commissioner of the Department in 1967 where he served until 1974, when he was appointed executive assistant to the state Parks Commissioner;

WHEREAS, he is survived by his wife Lorene and three sons, Leighton Hope, Jr., Peter Hope and Steven Hope; now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations to mourn the death of former state Senator, Leighton A. Hope, distinguished citizen; and be it further

RESOLVED, that a copy of this legislation, suitably engrossed, be transmitted to Mrs. Lorene Hope.

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

(There was no response.)

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

(Response of "Aye".)

Oppose, nay.

(There was no response.)

The resolution is adopted.

Senator Velella.

SENATOR VELELLA: Mr. President, may we please take up Resolution 2847 by Senator Volker. I ask that the title be read and move its immediate adoption.

ACTING PRESIDENT KUHL: The Secretary will read Resolution 2847, the title only.

THE SECRETARY: By Senator Volker, Legislative Resolution honoring St. Patrick and all persons of Irish descent upon the occasion of the 1998 celebration of St. Patrick's Day.

ACTING PRESIDENT KUHL: Senator Velella on the resolution.

SENATOR VELELLA: Mr. President, on behalf of Senator Volker, that resolution is open for all members to go on and will remain at the desk, any member that wishes to go on it.

SENATOR PATERSON: Mr. President, might I suggest to the Acting Majority Leader, perhaps we put everyone on the resolution and let those who don't want to be on it, indicate, because I would certainly like to be on the resolution. Wouldn't you, Senator Velella?

SENATOR VELELLA: That's

acceptable.

ACTING PRESIDENT KUHL: With your permission, Senator Velella, we'll place all the members as co-sponsors on Resolution Number 24... excuse me, 2847, excepting those members who indicate to the desk they do not wish to be on the resolution.

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 Stachowski, why do you rise?

SENATOR STACHOWSKI: Mr. President, on Resolution 2820, I would like to open it up to everybody in the chamber. It's the resolution honoring Dominik Hasek, and I know Mary Lou and Dale and George Maziarz and Nanula wanted to be on it, so if anybody else would like to join in on sponsorship.

ACTING PRESIDENT KUHL: If anybody else wishes to be on that resolution, please

indicate to the desk.

Senator Velella, we have some substitutions at the desk. Would you like to take those up at the moment?

SENATOR VELELLA: We'll take those up now.

ACTING PRESIDENT KUHL: The Secretary will read the substitutions.

THE SECRETARY: On page 13, Senator Meier moves to discharge from the Committee on Aging, Assembly Print 4277-A and substitute it for the identical Senate Bill 2588-A.

On page 13, Senator Farley moves to discharge from the Committee on Labor, Assembly Print 76 and substitute it for the identical Senate Bill 1689.

On page 19, Senator Cook moves to discharge from the Committee on Racing, Gaming and Wagering, Assembly Print 8888 and substitute it for the identical Senate Bill 6077.

ACTING PRESIDENT KUHL: The substitutions are ordered.

Senator Velella, that brings us to the calendar.

SENATOR VELELLA: Mr. President, before we proceed to the calendar, there will be an immediate meeting of the Local Governments Committee in Room 332.

ACTING PRESIDENT KUHL: Immediate meeting -- immediate meeting of the Local Governments Committee in the Majority Conference Room, Room 332. Immediate meeting of the Local Governments Committee in the Majority Conference Room, Room 332.

Senator Velella.

SENATOR VELELLA: Mr. President, at this time can we proceed to the reading of the non-controversial calendar.

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

THE SECRETARY: Calendar Number 88, by Senator Volker, Senate Print 887, an act to amend the Criminal Procedure Law.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 140, by Senator Spano, Senate Print 882-A, an act

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

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 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 144, by Senator Libous, Senate Print 1914-A, an act to amend the Penal Law, in relation to the provision of large quantities.

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.)

ACTING PRESIDENT KUHL: Senator Libous to explain his vote.

SENATOR LIBOUS: Thank you, Mr. President.

I'm pleased that again this piece of legislation is passing this house and we have worked for a number of years in trying to pass this legislation to make the penalties stiffer for those adults who are purchasing large quantities of alcohol and providing it to those individuals who are minors and underage. It is a problem that exists in every corner of our state.

Earlier today at a press conference I talked about the 17-year-old girl from Long Island who drank 17 shots of Tequila. They took her home. She died the next morning from alcohol poisoning, or the young man in Sidney, New York, who went to a keg party, was 16 years old and was found frozen to death outside of his home.

These kinds of horror stories happen every weekend in New York State. We have pushed this bill through this house. It has passed in many cases unanimously, and I am asking

today that our colleagues in the Assembly give this a very, very serious look and urge them to do the same.

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 160, by Senator Hannon, Senate Print 1496, an act to amend the Public Health Law.

SENATOR VELELLA: Lay it aside for the day.

ACTING PRESIDENT KUHL: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 172, by Senator Trunzo, Senate Print 3368-A, an act to amend Chapter 769 of the Laws of 1975.

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

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 205, by Senator Maltese, Senate Print 1440, an act to amend the Election Law, in relation to political committees.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 257, by Senator Johnson, Senate Print 2684-B, an act to amend the Insurance Law, in relation to authorizing.

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.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

258, by Senator Velella, Senate Print 3883, an act to repeal Section 4227 of the Insurance Law.

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.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 259, by Senator Saland, Senate Print 4055, an act to repeal Section 334 of the Insurance Law.

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.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 282, by Senator Maziarz, Senate Print 402, an act to amend the Criminal Procedure Law, in relation to plea bargains.

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

THE SECRETARY: Section 4. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the -

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 291, by Senator Present, Senate Print 1773, an act to amend the Economic Development Law.

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

THE SECRETARY: Section 29. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 297, by Senator Holland, Senate Print 205, an act to authorize the Salvation Army Eastern Territory School for Officers.

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.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 300, by Senator Nozzolio, Senate Print 177-C, an act to amend the Executive Law, the Penal Law and the Correction Law.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 314, by Senator Volker, Senate Print 3358-A, an

act to amend the Alcoholic Beverage Control Law and the Mental Hygiene Law.

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

THE SECRETARY: Section 9. 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 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 318, by Senator Farley, Senate Print 1684, an act to amend the Executive Law, in relation to designation of August 7th as "Family Day".

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.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Velella, that completes the non-controversial reading.

SENATOR VELELLA: Proceed to the controversial calendar.

ACTING PRESIDENT KUHL: The Secretary will read the controversial calendar, beginning with Calendar Number 88, Senate 887, by Senator Volker.

THE SECRETARY: Calendar Number 88 -- Calendar Number 88, by Senator Volker, Senate Print 887, an act to amend the Criminal Procedure Law.

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

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

205, by Senator Maltese, Senate Print 1440, an act to amend the Election Law, in relation to political committees.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT KUHL: Senator Maltese, an explanation of Calendar Number 205 has been requested by Senator Leichter.

SENATOR MALTESE: Mr. President, this is an act to amend the Election Law in relation to political committees making no expenditures. It would not be necessary for them to file committee filings.

The purpose of the bill is to reduce the number of filings filed by certain political committees which do not make any expenditures during a campaign.

The present law requires that all committees which participate in an election cycle must make all the filings required for that cycle, including the 32-day pre-general filing, the 11-day pre-general filing and the 27-day post-general day filing.

Some committees which only make contributions and no expenditures on behalf of the candidates make their contributions early in

the year and do not participate in the election following that point.

In cases where these committees have reported their contributions during that year, there is no need for them to continue filing reports with the Boards of Election.

This law would allow the treasurer of that committee to file a form following the filing of their July 15th report indicating that all the contributions that such committee will be making in that year had been reported on the July 15th report and that they will be making no further contributions during that year.

This bill would help alleviate the large number of reports that are received by the Board of Election which slow down the process of both making it available to the public and auditing these reports to ensure compliance with the statutes.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Would Senator Maltese yield, please?

ACTING PRESIDENT KUHL: Senator Maltese, do you yield to a question? The Senator

yields.

SENATOR LEICHTER: Senator, let me ask you, in those instances where a political action committee makes no expenditures directly in aid of a candidate but may spend money on issue advertising, would they still be required to file with the Board of Election under your bill?

SENATOR MALTESE: Mr. President, under the terms of my bill, I believe they would not have to make any filing post their statement that they do not plan to aid or assist in -- a candidate in an election.

SENATOR LEICHTER: Senator Maltese, as you know, we're getting -- we're seeing more and more issue -

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

SENATOR LEICHTER: Yes, I am.

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: As you know, we're seeing more and more what's called issue advertising, which nevertheless is very much directly related to campaigns. I mean, candidate "X" who's, let's say taken a certain position on gun control and while you may not mention his name, if you want to support him, you may come out with an issue piece which mirrors his position on gun control. It may not be an expenditure directly in aid of a candidate but it's certainly something I think that the public ought to know the expenditure is being made, and my question to you is, is it wise, Senator, to limit filing, to limit disclosure, to make the process more closed as your bill inevitably does?

I mean, if it was -- I could see your bill, Senator, if it said -- if it makes no expenditures, period -- no expenditures, period, I think that's fine, but I think that where you would allow expenditures still to be made in political campaigns, although they're not directly related to a candidate but they affect the election, I think the public has a right to know.

SENATOR MALTESE: Mr. President, I'm aware of the set of facts as put forth by my good colleague, Senator Leichter.

The purpose of the bill was to eliminate any of the filings pertaining to contributions that would be made in the aid election or defeat of a candidate. Mentioning the defeat of a candidate, it would seem to me would preclude the type of expenditures that you're talking about.

The intent, of course, is to reduce the number of filings. Your -- Senator Leichter's statement as to no expenditures is something that I seriously think should also be passed, and I would expect that this is something that perhaps we can end up agreeing on.

In the meantime, this particular bill, the intent is clear. Aid or take part in the election or defeat of a candidate, and it would seem to me that an -- based on case law, it would only be those expenditures that would be within the purview of aiding or defeating a candidate.

The type of expenditure that the good Senator is speaking of, I guess would depend

on the content of the advertisements and how far they go toward aiding in the victory or defeat of a candidate.

SENATOR LEICHTER: Mr. President, if Senator Maltese would continue to yield, please.

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: Senator, the main reason you give for this bill is to lessen the burden on the Board of Election in taking in these financial filings and keeping the records.

Senator, isn't the easiest way to do it to have a computerized system, which unfortunately this house has not passed or certainly hasn't passed a bill that was similar to the one that was passed by the Assembly. Why don't we really deal with the problem, which is that we have an antiquated Board of Elections and a process that's totally dysfunctional? Why don't you deal with it by putting out the bill on computerizing the records of the Board of

Elections?

SENATOR MALTESE: Mr. President, I was wondering how long it would take in this discussion for Senator Leichter to come around to the computerization of the Boards of Election. I believe this house did, in fact, pass a bill which dealt with the computerization of the records of the Boards of Elections and certainly we -- with the technical progress that has been made, this is something that -- hopefully if the Assembly and the Governor and the Senate would agree, it's something that's going to be done expeditiously and in the near future.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Let me just thank my good friend for his answers which are candid and straightforward as always and let me speak on the bill.

ACTING PRESIDENT KUHL: Senator Leichter on the bill.

SENATOR LEICHTER: This is not a bill of any great moment which maybe is enough to damn it, because we're dealing in an area where there is such a crying need for legislation. Our

campaign finance reporting system is a disgrace. We're probably -- among all the states, we're the worst or we're near the bottom, and I look in vain for bills to come out of the Election Law Committee and when I see a bill, you know, I get all excited. Wait a second. Maybe this is going to deal with soft money. Maybe it's going to deal with computerization. Maybe it's going to deal with campaign contribution limitations, but all we get is something that charitably I couldn't even call a molehill in dealing with all of the problems that we have.

So, Senator Maltese -- and I realize it's an area where considering the make up of the Legislature and how we function, the committee chairman doesn't have as much latitude as I frankly wish you had because I think if you had the latitude, I think we would see some of the bills that I'm talking about, because you come from a party that was a minority party at one time and you know how the Election Law system is set up to discriminate against independence, insurgence. So I think that you have an understanding and a feel for the problems.

Unfortunately, you can't put out

some of the bills that I think are needed, but I just really call in this house to understand and appreciate the mess that our campaign finance system is in and next Monday I'm going to be moving some motions to discharge and give you the opportunity to let the public know whether you're for campaign finance reform or whether you want to keep this disgraceful, almost corrupt system in existence.

Having said that, I think there's reasons to vote against this bill on its own merits. As I pointed out in the debate with Senator Maltese, we're lessening the reporting requirement. Now, if a political action committee makes no expenditures whatsoever, there probably is no reason to require it to make a filing, but that's not how Senator Maltese has limited that bill.

This bill states "Political action committee that doesn't spend money in support of a candidate, no expenditure will be made on behalf of any candidate in that calendar year" and if that's the case, then no filing needs to be made, but I guess a filing could be made. In fact, as I read this, Senator Maltese -- I don't

know whether you directed it -- suppose you make a filing to defeat a candidate? Suppose you make an issue advertise, as I said, which is -- may have the purpose of helping a candidate, may have the purpose of defeating a candidate. It may not under the strict language of this bill fall within the purview of what action requires that you make a filing. I just think that's wrong. I think we ought to have as much sunshine as possible. I think the public has a right to know how monies are expended by political action committees.

So I would urge everyone to vote against this bill.

ACTING PRESIDENT KUHL: The Secretary will read -- Senator Cook on the bill.

SENATOR COOK: Mr. President, I'm going to support Senator Maltese's bill, but I think that Senator Leichter is flirting with a very real problem and the problem that I would cite are these phony educational committees that send mailings into our district and tell people that we have committed some awful crime by voting for some bill which we in good conscience have supported and they have no -- they don't have to

answer to anybody, and I think that frankly the thing that we really ought to do is get those people who are hiding behind that shield, making believe that they're providing information to the public and they're really trying to undermine members of the Legislature.

I think those are the ones that really ought to be brought out into the open, but that bill isn't before us and I'm going to support this bill.

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.)

ACTING PRESIDENT KUHL: Record the negative and announce the results.

THE SECRETARY: Ayes 57, nays 1, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Holland.

SENATOR HOLLAND: Mr. President, there will be an immediate meeting of the Education Committee in Room 332 of the Capitol.

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

Senator Gold, why do you rise?

SENATOR GOLD: To say hello, Mr. President.

Mr. President, I'm sorry, but I was distracted for a moment. Could I have unanimous consent to be recorded in the negative on the last bill so brilliantly debated by Senator Leichter?

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Gold will be recorded in the negative on Calendar Number 205.

The Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 282, by Senator Maziarz, Senate Print 402, an act to amend the Criminal Procedure Law, in relation

to plea bargains.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT KUHL: Senator Maziarz, an explanation has been requested by Senator Leichter on Calendar Number 282.

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

Mr. President, this act amends the Criminal Procedure Law to require defendants charged with a sex felony offense to enter into a plea bargain to plea to at least a sex felony.

One of the major problems with the criminal justice system, I believe, is that defendants charged with a sex felony offense are, for a variety of reasons, allowed to plead guilty to a non-sex offense. They are not treated as sex offenders. They are not required to undergo sex offender treatment or sex offender evaluations. They are released into the community without notification, although I believe there is a great likelihood that they will re-offend.

This law, if enacted, would place another protection on the books in favor of the victims of sexual offenses by not allowing the

perpetrator to cop a plea for something less than a sexual offense.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Mr. President, would Senator Maziarz yield, please?

SENATOR MAZIARZ: Surely, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LEICHTER: Senator, yesterday we passed a very similar bill that was sponsored by Senator Skelos. Could you tell us how your bill differs from his? Are you covering an area that his bill didn't cover or is this something of an overlap?

SENATOR MAZIARZ: I'm not as familiar with Senator Skelos' bill as I am with this one, Senator, but I know that this one was referred to my office by the -- I believe the Attorney General's office.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Well, Senator, yesterday we did pass a bill that I think covered

much of the ground that your bill has covered and that bill, I think had a provision in there which, I think made a lot of sense which is not in your bill, and I want to address that.

That provision is that in instances where the district attorney feels that he doesn't have sufficient evidence to proceed with an indictment based on a criminal offense - a sexual offense, that he can apply to the court and with the court's permission he can reduce the charges. I think I'm quoting it correctly.

My concern is -- and I want you to address that -- is that in many of these prosecutions for sexual crimes, the proof is very hard to come. In some instances the victims are unwilling or unable to testify because of the traumatic thing and district attorneys, knowing that they will have a very difficult time in proceeding to trial, have, therefore, entered into plea bargains in some instances where the offense charged will not involve a sexual crime because they know that unless they do that, that perpetrator is going to walk, and your bill, as I read it, really doesn't protect the public. It doesn't deal with those instances where a

district attorney feels that because of the evidence that's available to him or her, that it's necessary to reduce the charges.

Could you address that?

SENATOR MAZIARZ: I disagree, Senator Leichter. I think that it does give the leeway to the district attorney. I think it just doesn't give him as much leeway and that the defendant, whose attorney, I'm sure would do the best job possible for him, is only going to have available to him this -- to plead in the area of a sexual offense.

SENATOR LEICHTER: Senator, you know, you may say -- if you would continue to yield, please.

ACTING PRESIDENT KUHL: Senator Maziarz -

SENATOR MAZIARZ: Yes, I do.

ACTING PRESIDENT KUHL: -- do you continue to yield? The Senator continues to yield.

SENATOR LEICHTER: Senator, they may say it gives him the latitude, but show me where in the bill it gives him the latitude where it has a provision similar to the one that was in

Senator Skelos' bill. Can you show that to me?

SENATOR MAZIARZ: No, Senator, I don't have Senator Skelos' bill in front of me.

SENATOR LEICHTER: Because it doesn't exist. No, show it to me in your bill.

SENATOR MAZIARZ: Senator, I think it still gives the district attorney the latitude. It's just a more clearly defined area that they must plead to a sexual offense so that the evaluation that the defendant pleads to can -- he can be given the necessary treatment and also and most importantly for my reasoning, Senator, is that the community would be notified upon this individual's release from prison.

SENATOR LEICHTER: Senator -

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: -- if you would continue to yield.

SENATOR MAZIARZ: I do.

ACTING PRESIDENT KUHL: The community would only be advised if the person is convicted, but if you're forcing the district attorney to proceed under charges that the district attorney can't proof, you're not

protecting the community. You're endangering the community. Isn't that a fact?

SENATOR MAZIARZ: Well, no, that is not a fact.

SENATOR LEICHTER: Senator Maziarz, if you'll be so good as to continue to yield.

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

SENATOR MAZIARZ: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: Has the District Attorney's Association supported your bill?

SENATOR MAZIARZ: No, I don't believe that -- I don't believe that they've issued a memo in support or in opposition.

SENATOR LEICHTER: All right. Has any district attorney come and said to you, This is a good bill. This will strengthen my hand in dealing with sexual perpetrators?

SENATOR MAZIARZ: I did send this bill to two of the three district attorneys - two of the three counties that I represent, the

district attorneys who represent those counties and both of them indicated that they thought it was a good bill.

SENATOR LEICHTER: Well, then you've answered my question and I thank you.

SENATOR MAZIARZ: Thank you.

SENATOR LEICHTER: I believe, well intentioned as this bill is -- and all of us certainly very much are in support of efforts that would strengthen the hand of district attorneys in proceeding against people who have committed sexual crimes, but there are times when a plea bargain is of great benefit to the public.

I happen to think that most of our elected district attorneys, if not all of them, take their job seriously, try to protect the public and they're not going to plead down a sexual offense to a non-sexual offense unless they feel there's good grounds for it, namely that they cannot proceed to prove the sexual offense, and if you force them to go to trial on the sexual offense, when the district attorneys don't have the proof because maybe the victim is unwilling or incapable of testifying, then all

you're doing is forcing the D.A. to go to trial in what will result in an acquittal and that perpetrator is going to walk. It's of no benefit whatsoever. Plea bargaining is an important tool in effective law enforcement. It's effective in all sorts of crimes, including crimes of a sexual nature.

So much well intended as this bill is, I think it will have the opposite effect. It will actually lead to more sexual offenders being released because you're going to force the district attorney to go to trial in situations where the D.A. is not going to be able to prevail. I don't think you help law enforcement by tying the hands of the district attorneys in the way that you do it.

I had some other problems with the Skelos bill, but at least it recognized that problem and provided a process whereby the district attorney could go to court and say, I am changing this particular indictment and allowing -- or allowing the defendant to plead guilty to a crime that's a non-sexual crime and to put it on the record, and that makes sense. That protects the public.

Your bill, I think does the opposite. I'm sorry.

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

(There was no response.)

Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold to explain his vote.

SENATOR GOLD: Mr. President, - Mr. President, I am rising on a matter of justice. I don't think it's fair for Senator Leichter to always be in the boat alone. The fact of the matter is, Mr. President, that as usual, Senator Leichter makes sense and as usual, Senator Maziarz has the right intention and we

just shouldn't be bullying ahead all the time.

The fact of the matter is that there are some district attorneys who have let it be known they won't plea bargain anything and there was a big outrage in the city of New York when one district attorney said that they would do that and the bottom line is the furor went away and the D.A. runs his office. So there's nothing to stop district attorneys in these kinds of cases from refusing to plea bargain now past a certain point, but if this becomes law, you're going to have situations where district attorneys are going to have to resubmit cases to grand juries because, of course, it's the only way I guess you could get out of it and you're going to be doubling the work of the district attorneys.

So since yesterday we did vote yes for a bill similar to this, since I have to make a choice, I would rather see the bill which gives some discretion to the judge and on the advice - I want you to know aside from Senator Leichter, I have researched this with one of the great authorities in the state and Senator Masiello also tells me that I should vote no on this.

ACTING PRESIDENT KUHL: Senator

Gold will be recorded in the negative. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar 282 are Senators Gold, Kuhl and Leichter. Ayes 55, nays 3.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 300, by Senator Nozzolio, Senate Print 177-C, an act to amend the Executive Law, the Penal Law, the Correction Law and the Mental Hygiene Law.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT KUHL: Senator Nozzolio, an explanation of Calendar Number 300 has been requested by Senator Leichter.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, my colleagues, the measure before us is called the Sex Offender Community Safety Act which is intended to declare, first of all, that the heinous and violent crimes resulting in severe emotional and physical trauma are significant and that in certain perpetrators of those crimes, unfortunately we see too much recidivism. That

recidivism is something that needs to be recognized, monitored and what we achieve by this measure is lifetime supervision of those who have committed certain sex offenses and very violent criminal acts.

ACTING PRESIDENT KUHL: Senator Leichter.

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

ACTING PRESIDENT KUHL: Senator Nozzolio, do you yield to a question from Senator Leichter?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LEICHTER: Senator, I think it makes good sense to have lifetime parole for those people who commit heinous offenses. I have no problem with that. I want to ask you some questions about whether you're supplying the resources for it, but you and I are on the same page as far as that goes, but you've included among the offenses that are going to require

lifetime parole misdemeanors. Isn't that true?

SENATOR NOZZOLIO: The designated sexual offenses means any one or more of the felonies defined in Subdivision 1 of Section 3 of the bill and that the intentions here are to certainly ferret out those very serious offenses. We're talking felonies here, Senator. I'm not sure where you extrapolated a misdemeanor.

SENATOR LEICHTER: Well, one of the offenses that you've included is imprisonment, I think it's in the third degree, which is a misdemeanor. That would be locking up somebody or involuntarily detaining them if the person was under the age of 17 without in any other respects harming them, that's a crime; it's an offense, but it's a misdemeanor.

SENATOR NOZZOLIO: Kidnapping is a misdemeanor, Senator? I don't believe so.

SENATOR LEICHTER: If it's - yeah. Let me -- just bear with me.

SENATOR NOZZOLIO: Particularly kidnapping of a minor, Senator? I don't think so.

SENATOR LEICHTER: Senator, it's

-- let me -- let me -- it's in those instances -- one of the provisions -- and I will find it in a minute -- not kidnapping but unlawful detention, Senator, which happens to be a misdemeanor. Let me ask you this: Did you intend to include misdemeanors within the provision of this section?

SENATOR NOZZOLIO: Senator, this bill is designed to focus our Criminal Law upon victims and as such, stated on lines 12 and 13 of page 2, that when there are kidnapping offenses and the victim of such kidnapping or related offense is less than 17 years old, yes, Senator, that that very likely leads to an individual perpetrating a sexual offense and that, yes, particularly on someone as young as underage, that that is something that we believe is appropriate.

SENATOR LEICHTER: Senator, let's deal -- let's now deal with the specific section.

ACTING PRESIDENT KUHL: Senator Nozzolio -- excuse me, Senator Leichter.

Senator Nozzolio, would you continue to yield?

SENATOR LEICHTER: Would you

continue to yield, please?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: Now, if you take a look on page 2, line 11, one of the offenses which is included with your bill is Section 135.05. Is that correct?

SENATOR NOZZOLIO: Yes, sir.

SENATOR LEICHTER: Okay. Let me read to you Section 135.05. "A person is guilty of unlawful imprisonment in the second degree when he restrains another person. Unlawful imprisonment in the second degree is a Class A misdemeanor." That means if you lock up some 18-year-old playing around, lock a 17-year-old in a room in a school against her will, that's unlawful imprisonment in the second degree. It's a misdemeanor, and are you saying those offenders should then be subject to lifetime parole or lifetime -- yeah, lifetime parole?

SENATOR NOZZOLIO: Mr. President, I'll answer Senator Leichter this way. If the perpetrator of that hypothetical that Senator

Leichter lists for us was not 18 years old but 55 years old, was a male who was detaining a three-year-old or a five-year-old girl in a position of imprisonment, Senator, I think that certainly the circumstances would change dramatically in terms of the spirit provided behind your hypothetical.

As I say, Senator, we want to give prosecutors the tool and our correction system the tool to deal with those types of variables. I think it would be up to the courts, the district attorneys, to others to look at those particular instances that you reference, sir. That's what our justice system is all about. 18-year-old, 17-year-old, the facts will bear out whether or not this is appropriate for the individual convicted, sir, but I think that nonetheless, those hypotheticals that you put forward with a few age changes and a few facts changes could dramatically change the circumstance even though the conviction may only be under a statute describing a misdemeanor, that misdemeanor could very likely lead to a felony that creates a lifetime scar on the victim of that crime.

SENATOR LEICHTER: Senator, if you would be so good as to continue to yield.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: Your job and mine is to draft legislation, to make it precise, to cover the situations that we feel require certain law enforcement actions and we're not dealing here with giving any powers to the district attorneys or prosecutors because that bill doesn't deal with it.

We are identifying for the public and for law enforcement officials those crimes that we believe are so serious and so heinous that we are now going to subject the offender to lifetime parole, and as I said to you, there are certainly some crimes -- rape is one, certain sodomy, and so on, yes, and particularly if committed on a young person, subject that offender to lifetime parole, but maybe in your zeal to write an all-encompassing bill, I'm

trying to point out to you that you've included offenses are that are misdemeanors.

Now, they're still offenses. They ought to be punished, but I'm suggesting to you that it doesn't make sense to me to say that somebody who engaged in lawful imprisonment that's deemed to be a Class A misdemeanor under Section 135.05 of the Penal Law, the prosecutors determined this is a misdemeanor. It's not a significant crime. Now that person's going to be subject to lifetime parole and the state is going to be subject to the obligation, the expense of lifetime parole for somebody who was convicted of a misdemeanor? I'm just suggesting to you that you might want to change the bill and take out that provision because I don't think that's the nature of the crime that justice lifetime parole.

SENATOR NOZZOLIO: Mr. President, in final response to this concerned Senator, my reaction is certainly your comments are noted, but again, we're looking at the victim here and the victim, we're not saying someone convicted of this crime for an individual who is other than the victim, focuses on the victim and the victim

under 17 years old, certainly in the circumstance you have described, I think you could see how that conduct, dealing with an underage person, would, in fact, demonstrate certain characteristics of behavior that are not acceptable, are extremely dangerous and could very well exhibit the very tendencies that we're trying to prevent here.

SENATOR LEICHTER: Mr. President, on the bill. Thank you very much, Senator Nozzolio.

ACTING PRESIDENT KUHL: Senator Leichter on the bill.

SENATOR LEICHTER: I think if we're dealing with a serious crime, if we're dealing with those sort of character traits and that sort of offense and affront to societal standards, it's not going to be a Class A misdemeanor and I'm just suggesting that it doesn't make sense to subject somebody to Class -- who's been convicted of a Class A misdemeanor to lifetime parole. I mean, it's -- you know, it may be popular for us to say we're going to put sexual offenders under lifetime parole, but I think you've got to distinguish between serious

offenses and justify that lifetime parole and those that do not. Lifetime parole happens to be very expensive, but I think it's an expenditure worthwhile to deal with it or apply it to those instances where a serious offense has been committed where the character of the offense, the character of the defendant is such that there's going to be a societal benefit by having lifetime parole. If it's a misdemeanor, if it's locking somebody into a room for an hour which is wrong and may be a Class A misdemeanor, I wouldn't subject that person to lifetime parole and I wouldn't subject the taxpayers of the state of New York to having to pay for lifetime parole for that individual.

I'm going to vote against the bill just because I think it's -- it's just too broadly drawn but, Senator Nozzolio, if you want to limit it to really serious offenses, that's fine. I'll support that bill, but I'm not going to support something that I really don't think makes sense.

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

Senator Gold.

SENATOR GOLD: Mr. President. Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Thank you very much.

Would Senator Nozzolio yield to just one question?

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Senator, I'm looking at a memorandum from the New York State Parole Officers Association and if I can read - and it's a very graphic looking memo. It says "Keep parole strong. Be tough on crime, not just sound it" and then it says "The simple fact is New Yorkers cannot afford to risk public safety by allowing dangerous felons to be released unsupervised into our community" and then it lists Senator Maltese's bill and your bill.

Don't you think, Senator, that - and I'm somebody who appreciates your sincerity on this issue and I mean that very seriously, but don't you think that we have really lost the focus here? If the parole officers are concerned about dangerous felons unsupervised, and you are too, don't you think we could make that little itsy-bitsy amendment that Senator Leichter is talking about so that we are not talking about misdemeanors but we are focusing on these dangerous felons?

SENATOR NOZZOLIO: Mr. President, in response to Senator Gold's inquiry, I don't believe that Senator Gold or Senator Leichter appreciate the fact that maybe the level of the crime is a misdemeanor. When you discuss the unlawful imprisonment of a young child, that may exist for an hour or so in Senator Leichter's hypothetical, but I can think of countless hypotheticals where that crime would create a scar that lasts a lifetime on the victim, and I believe that this tool will help those who wish to provide the lifetime supervision that a perpetrator of a sex crime requires. I believe that taken in isolation, that sex perpetrator is

likely to be convicted of a number of different offenses of which the misdemeanor violation which Senator Leichter characterizes would be the lesser of all the offenses that a conviction would warrant.

Senator, I don't doubt your sincerity in raising this issue, but I believe the statute is appropriate as presented.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah. Will the gentleman yield to just one more question?

ACTING PRESIDENT KUHL: Senator Nozzolio?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Senator, there's no doubt that sexual offenses leave a mark no matter what level they're at, but wouldn't you agree that all offenses leaves some kind of a mark? There's some people whose homes are broken into and it leaves a mark. There's people whose purses get snatched and it leaves a mark. Don't

you think that every criminal act leaves some kind of a mark?

My question -- and this is what I'm getting at -- is that we have in the state of New York a sentencing structure. We do not say that if you commit a crime in New York, you get a death penalty. You commit a crime in New York, you get ten years. We have structures, because this Legislature is smart enough and the people in this room, including you and led by you, are smart enough to make distinctions and all Senator Leichter is saying is that -- and by the way, this bill has been before us before and it passed with a very large vote. Maybe one of the reasons it's not a law today is because the Assembly may be pointing out the same thing to you -- I don't know. I'm not in those negotiations, but all Senator Leichter is saying is that -- Senator Nozzolio, I don't know whether it's your Cornell education or not, but you're on the right idea here, but you're going too far and if we made one little cut, we would not be affecting the bad guys. The bad guys would still be covered by your bill, but we would be cleaning out some of the system which doesn't belong there, and all

I'm saying to you is, you know, as Senator Marcellino is probably telling you, accept the amendment and let's make it a better bill and go from there. It still is going to be a Nozzolio bill except maybe we can get it passed, question mark.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill?

(There was no response.)

Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 11. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

THE SECRETARY: Those recorded in the negative on Calendar Number 300 are Senators Leichter and Montgomery. Ayes 57, nays 2.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Holland.

SENATOR HOLLAND: Mr. President, can we return to reports of standing committees and consider reports of the Local Governments and Education Committees, please.

ACTING PRESIDENT KUHL: We'll return to the order of reports of standing committees.

The Secretary will read the reports of the Education and the Local Governments Committees.

THE SECRETARY: Senator Rath, from the Committee on Local Governments, reports:

Senate Print 461, by Senator Larkin, an act to amend the Real Property Tax Law;

528, by Senator Present, an act to amend the General Municipal Law;

2514-A, by Senator Johnson, an act to amend the Real Property Tax Law;

2848, by Senator Marcellino, an act to amend the General Municipal Law;

3095, by Senator Seward, an act to amend the Town Law;

3134, by Senator LaValle, an act to amend the General Municipal Law;

3479, by Senator Lack, an act to amend the General Municipal Law;

3638, with amendments, by Senator Rath, an act to amend the Town Law;

5125, by Senator LaValle, an act to amend the Town Law;

5269-A, by Senator Stafford, an act authorizing the town of Schroon;

6203, by Senator Leibell, an act to amend the Real Property Tax Law;

6207, by Senator Volker, an act in relation to authorizing.

Senator Cook, from the Education Committee, reports:

Senate Print 334, by Senator Skelos, an act to amend the Education Law;

366, by Senator Cook, an act to amend the Education Law;

2884-A, by Senator Johnson, an act to amend the Education Law.

3426-B, by Senator Cook, an act to amend the Education Law; and

5961, by Senator Saland, an act to authorize the payment of transportation.

All bills directly for third

reading.

ACTING PRESIDENT KUHL: All bills are ordered directly to third reading.

Senator Holland.

SENATOR HOLLAND: Is there any housekeeping, Mr. President?

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

SENATOR MONTGOMERY: Yes, Mr. President. I would like unanimous consent to be recorded in the negative on Calendar 314.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 314.

Senator Holland.

SENATOR HOLLAND: Any further housekeeping?

ACTING PRESIDENT KUHL: There is none.

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

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until

tomorrow, Wednesday, March 11th, at 11:00 a.m.

(Whereupon, at 4:10 p.m., the Senate adjourned.)