THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 8, 1999

3:04 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

I ask everyone present to rise and repeat with me the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

THE PRESIDENT: In the absence of clergy, may we bow our heads in a moment of silence, please.

(Whereupon, the assemblage respected a moment of silence.)

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Friday, February 5th. The Senate met pursuant to adjournment. The Journal of Thursday, February 4th, was read and approved. On motion, 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 Goodman, from the Committee on Investigations, Taxation and Government Operations, reports:

Senate Print 131, by Senator Maziarz, an act to amend the Alcoholic Beverage Control Law;

761, by Senator Johnson, an act to amend the Tax Law;

1015, by Senator Skelos, an act to amend the Executive Law.

Senator Nozzolio, from the Committee on Crime Victims, Crime and Correction, reports:

Senate Print 115, by Senator Skelos, an act to amend the Correction Law;

116, by Senator Skelos, an act to amend the Correction Law and the Vehicle and Traffic Law;

634, by Senator Nozzolio, an act to amend the Correction Law;

635, by Senator Nozzolio, an act to amend the Executive Law;

637, by Senator Nozzolio, an act to

amend the Correction Law and the Public Health Law;

642, by Senator Nozzolio, an act to amend the Correction Law; and

1480, by Senator Meier, an act to amend the Executive Law and the Social Services Law.

Senator Bonacic, from the Committee on Housing, Construction and Community Development, reports:

Senate Print 703, by Senator Nozzolio, an act to amend the Executive Law; and

Senate Print 1455, by Senator Volker, an act to amend the Private Housing Finance Law.

All bills ordered direct for third reading.

THE PRESIDENT: Without objection, all bills directed to third reading.

Reports of committees -- select committees.

Communications and reports from State officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Holland, on page 5, I offer the following amendments to Calendar Number 49, Senate Print 17, and I ask that that bill retain its place in the Third Reading Calendar.

THE PRESIDENT: The bill will retain it's place on the Third Reading Calendar.

The amendment received.

Senator Skelos.

SENATOR SKELOS: Madam President, I believe there's a privileged resolution at the desk sponsored by Senator Lack. May we please have the title read and I move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Lack, Legislative Resolution honoring Marcy Tublisky upon the occasion of her designation for special honor for 10 years of service to the

community of Hauppauge, New York and to the Hauppauge Industrial Association.

THE PRESIDENT: The question is on the resolution.

All in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, could we take up the non-controversial calendar, please?

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 13, by Senator DeFrancisco, Senate Print 537, an act to amend the Criminal Procedure Law in relation to access to sealed records.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number

66, by Senator Stafford, Senate Print 773, an act to amend the Environmental Conservation Law in relation to non-hazardous municipal landfill closure.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 71, by Senator Rath, Senate Print 120, an act on amend the Criminal Procedure Law in relation to prohibiting issuance of an order of recognizance or bail.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4, this act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 73, by Senator Volker, Senate Print 725, an act to amend the Penal Law in relation to endangering the welfare of a child in the first and second degrees.

SENATOR DUANE: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 75, by Senator Balboni, Senate Print 859, an act to amend the Penal Law in relation to increasing the criminal penalties for sexual performances by a child.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 12, this act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 76, by Senator Skelos, Senate Print 973, an act to amend the Penal Law in relation to sexual assault against a child by a person in a position of trust.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 81, by Senator Johnson, Senate Print 1589, an act to ament the Penal Law in relation to criminal contempt in the first degree.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 82, by Senator Volker, Senate Print 1592, an act to amend the Penal Law and others in relation to enacting the Sexual Assault Reform Act of 1999.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 101, by Senator Skelos, Senate Print 1018, an act to amend the Family Court Act and the Criminal Procedure Law in relation to the age of child witnesses.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3, this act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Madam President, if we could take up the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 13, by Senator DeFrancisco, Senate Print 537, an act on amend the Criminal Procedure Law in relation to access to sealed records.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: If we could just wait one mine.

THE PRESIDENT: Senator DeFrancisco, an explanation has been asked for on Senate 537.

SENATOR DeFRANCISCO: Yes.

This bill passed unanimously last year. And, basically, what it is, it

authorizes obtaining records of professionals if it's proven before the Supreme Court Justice upon application with notice to the professional that there are extraordinary circumstances that would require disclosure of sealed information.

The concept is basically this. If I'm an attorney and I'm investigated in a criminal case and those criminal cases are - case may very well have been dismissed, the fact of the matter is there is another branch that deals with criminal or non-criminal conduct; namely, the licensing agency and, namely, the Appellate Division. So as a result, it may not be enough to go through a criminal proceeding beyond a reasonable doubt but it may be information that's necessary to go, go into an investigation as on the ability of the attorney to practice. And under extraordinary circumstances, the Supreme Court Justice could open those records and have them available for that purpose also with notice of the -- to the individual whose records are sought to be reviewed.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, would the distinguished Senator from Syracuse yield for a question?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR PATERSON: Senator, there are five classes of professions, attorneys, doctors, dentists, pharmacists and nurses, that this legislation would apply to. And my question is, do you think that the distinction of these five professions -- when I think the Office of Professional Discipline supervises, I believe 32 different professions, then the legal and medical communities have their own method of supervision -- the question that I would have would be, doesn't that create a kind of arbitrariness to the law?

Why don't we just leave it open generally if the circumstances are as serious and as extraordinary as would merit unsealing the records?

SENATOR DeFRANCISCO: I think that's a valid point. It can be open up to all professions. I limited it, primarily, to,

hopefully, make it reach those professions that have an extreme impact on an individual, whether it be an attorney or a medical provider. So it seems to me that it could be open up to other professions as well.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Okay. Thank you. I'm sorry. Madam President, if the Senator would yield for one last question.

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Senator, do you yield?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Go ahead, Senator.

SENATOR PATERSON: Senator, I get a feeling from this type of legislation, and I voted for it last year, but then again I got paid last year so I thought if I was getting paid again this year I might think it over again. And I was wondering if it doesn't appear almost as if there's a notion that smacks of double jeopardy, where a person's case has already been disposed and there was a decision to seal the records, what would there

be that would be so important that even under an extraordinary circumstance we might want to investigate it?

And while I am going to vote for the bill, I would wish that you might alleviate some of my concerns on that issue.

SENATOR DeFRANCISCO: Well, if a person's criminal case is terminated, for whatever reason and records sealed, that does not double jeopardy in him being sued civilly for a lower standard of proof, the preponderance of the evidence rather than beyond a reasonable doubt. Similarly, whatever happens in a criminal case does not in any way have binding effect over licensing agencies and disciplinary agencies that monitor the profession. So I don't think double jeopardy applies in this particular case.

And what would be extraordinary circumstances, I think that if someone is under investigation and there is a question, hopefully, probable cause that this person has committed other acts of misconduct, they would want to review the entire record before making

a decision, and this particular, the aspect, the aspect of the criminal proceeding may give that weight one way or the other as to whether the person should be disciplined or, in the case of an attorney, disbarred or suspended.

SENATOR PATERSON: Thank you, Senator.

THE PRESIDENT: Senator Paterson. Senator Dollinger.

SENATOR DOLLINGER: Madam President, would the sponsor yield just to one question?

THE PRESIDENT: Senator, do you yield?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Go ahead, Senator.

SENATOR DOLLINGER: In many cases, my understanding, Senator, is that, as part of the resolution of these complaints, there's a pledge of confidentiality granted, which is all part of the bargaining in which these decisions are arrived at; that the professional is bargaining, trading off some, perhaps, greater penalty or greater financial

penalty in trade for a pledge of confidentiality.

My question is, is that in any way accommodated in this, if they're -- in other words, the party that's accused has, in essence, entered into a freely negotiated deal for a pledge of confidentiality, is that anywhere accommodated here, that -

SENATOR DeFRANCISCO: I really don't understand the question.

Where is this, where is this negotiated deal?

Can you give me an example? I'm not familiar with what you're talking about.

SENATOR DOLLINGER: Well, I assume that this deals with disciplinary records and other -- or this deals with criminal records and/or other records.

Maybe I'm missing the explanation, Madam President.

SENATOR DeFRANCISCO: Well, if you're saying that it was a negotiated deal to terminate the criminal proceeding, there could have been and there may not have been. It may be that the individual's given an adjournment

in contemplation of dismissal which seals the records after six months. It may not have been negotiated. So I don't think that the intent of this bill has really to address whether or not there was a negotiated deal or simply a dismissal or an adjournment in contemplation of dismissal, which may not have been negotiated. So I don't think the act of negotiation has anything to do with this particular event.

In any event, if it was a negotiation of a criminal proceeding, once again, it has nothing to do with the subsequent civil or disciplinary proceeding.

SENATOR DOLLINGER: Okay. Thank you, Madam.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53. Nays 1.

Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 73, by Senator Volker, Senate Print 725, an act to amend the Penal Law in relation to endangering the welfare of a child in the first and second degrees.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: You want an explanation?

Madam President -

THE PRESIDENT: Senator Paterson has asked for an explanation.

SENATOR VOLKER: Yes. Okay.

THE PRESIDENT: Please proceed, Senator. Go ahead.

SENATOR VOLKER: This is a bill that passed the Senate last year by a vote of 56 to nothing. And what it would do is to create, primarily to create a felony level crime of endangering the welfare of a child.

I think last year we discussed some of the, what I would consider, somewhat horror stories about some of the crimes that were committed against people under, under 17, 16

and under, by certain people and where the - because of the way the sentencing structure works, the maximum penalty, in most cases, is a class A misdemeanor, which means they could only be sentenced to up to a year in jail. Most often, what happens because of that and, particularly, that's I think so in New York City, where we all know anything under a felony is, frankly, not looked on as very much and usually ends up in probation or parole, in some cases. And so what this bill really does is create a felony level endangering the welfare of a child where a repeat offender could be charged with a D felony. The crime would apply to repeat offenders and also individuals who act in a manner which creates a substantial risk of serious fiscal - physical injury or prolonged impairment of mental and emotional condition of a child 16 or younger.

At the present, first offense would be still a class A misdemeanor but the second offense could be a class D felony, which I believe is three to eight. In other words, it could be an indeterminate sentence of three to

eight years, if I'm not mistaken.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Madam President, if the sponsor would yield to a question?

THE PRESIDENT: Senator, do you yield?

SENATOR VOLKER: I certainly do.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

The phrase "for prolonged impairment of the mental or emotional condition of a child less than 17 years old," is this already defined in the Penal Law or is it somewhere addressed in the statute or would it remain open to interpretation at some other point?

SENATOR VOLKER: Senator, there are some definitions of impairment, but this specific definition -- in fact, I think it may have come from a court case. And I think, as we discussed in the committee, you deal with what's called the mens rea the issue. Certain issues are not completely easily defined, and

I guess this is one of them, and the decision could be a jury decision or, in some cases, I guess could be a judge's decision, as we know. And you have to develop some sort of scenario or some sort of evidentiary scheme to determine what this constitutes. So the answer is, although there are some definitions in the Penal Law, this specific language is not defined, although it has been used in a number of court cases that helped to determine endangering, I believe on both the civil and on the criminal side, if I'm not mistaken.

SENATOR DUANE: If the sponsor would yield to one additional question?

SENATOR VOLKER: Sure. Yes.

THE PRESIDENT: Senator continues to yield.

SENATOR DUANE: Could you just tell me in which cases you believe that those have -- are they persons with mental impairment or -

SENATOR VOLKER: Oh, no. No. These are cases just involving young, young individuals who were put upon, for one reason or another, by individuals, most of the time

relatives, and who were over a period of time -- generally speaking, these cases come out, and as, frankly, somebody who investigated some of these cases many years ago, what usually happens is that you will find out about it from someone else and then the child will finally come forward. These are very difficult to prove because, generally speaking, if you have any dealing with these cases, you'll find out that usually the testimony of the young persons is not sufficient and you have to have some other evidence besides that or else you can't, you can't really get a conviction.

So if anyone thinks that the fact that we make this a D felony makes this an easy one to prove, I am the first to tell you that's not necessarily so. But what you're trying to do here is set up some sort of statute that allows a person who you can show this problem has occurred, that you can be able to accept the proof and once a person is convicted then they can receive a severe sentence, rather than have a young person go through an entire trial, for instance, in some

cases, and then end up having the person sentenced to virtually nothing because there was no penalty to back it up.

SENATOR DUANE: And, finally, through you, Madam President, I am very -

THE PRESIDENT: Senator, do you continue to yield?

SENATOR VOLKER: Yes. I'm sorry.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: I am very, very supportive of the spirit and absolutely see the need for this and plan on voting in the affirmative, but I will continue to have some concerns regarding the ultimate interpretation of that language but I think it's important that we get it moving so we can even get to that point.

Thank you, Senator.

SENATOR VOLKER: Thank you, Senator.

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: Thank you, Senators.

Read the last section.

THE SECRETARY: Section 6, this act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes. Thank you, Madam President.

I'm just -- I know that I must have voted in the affirmative last session when it was introduced, but I have some question in my mind now regarding this. And that is simply this: That there probably are a number of parents who may fall under this statute, and while, certainly, anyone who abuses a child should be dealt with appropriately, in many instances there are social issues, psychological issues, other issues related to family situations that may result in a parent hitting a child. And I certainly would not want to summarily have that parent be subjected to this statute without some attempt at intervention that would be helpful or that

would be an attempt to help resolve some of the, some of the causes of this kind of outcome.

So I'm going to vote no, although I certainly agree with the spirit of the legislation that Senator Volker has introduced, but I do have some very serious questions and I just don't want to go forward and be recorded in the affirmative on this at this time.

Thank you.

THE PRESIDENT: Announce the vote.

THE SECRETARY: Ayes 56. Nays 1.

Senator Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 82, by Senator Volker, Senate Print 1592, an act on to amend the Penal Law and others.

SENATOR WALDON: Explanation.

THE PRESIDENT: Senator Volker, Senator Waldon has requested an explanation.

SENATOR VOLKER: Madam President,

this, this bill is the Sexual Assault Reform Act of '99. And this is a Governor's Program Bill. One of the questions that was asked in our committee was how's this different from the Sexual Assault Reform Act of '97 and '98? And the major answer to that is it is the only real change in this bill, and I think there was some confusion in the Assembly about the DNA provisions in this bill. And I think it was primarily because they weren't stressed last year. But, in reality, after we went through this entire bill, there really isn't one change. The only change that this bill says '99 instead of '98. So that's the real change. In other words, there's no substantive change.

What the bill does is -- it's passed this House twice, by the way. Passed last year by a vote of 56 to nothing.

What the bill does is is really a, primarily it is a revision and a change of the sexual assault statutes in this state. And the public publicity on this bill says about 24 years. In reality, some of these statutes are older than that. There's pieces of this

bill I think are about 40 or 50 years old. It revises some statues that, frankly, we've been looking to revise for many, many years. Forget the issue of upgrading penalties, which is in this bill. We actually make some changes in definitions which court cases have done over the period of years.

There really are, I think, other than the upgrades in penalties, which I think are very important, and the upgrades in definitions, there's about four areas that, in all honesty, are, you know, the most important areas in this bill.

First of all, there are several areas that go beyond the issue -- and I want to put this right up front because that question came up last year. We might as well deal with it right up front. As you know, I'm a great believer in that. The prosecutor appeal provision in this bill, which means that a prosecutor can appeal a lenient sentence or bail, if you read it literally, it goes beyond the issue of just what's in the Sexual Assault Reform Bill. It actually would apply to other situations beyond this bill.

Just so that you're aware. In other words, this doesn't just apply to sexual assault and to the sexual assault provision of this bill. It would apply in general to other sentencing structures and so forth. So that prosecutor appeal provision is beyond just the issue of what's in this bill.

Of course, that provision was also, I believe, in one of the other Governor's bills, one of the other Governor's procedural bills, which we've passed for the last several years also. Just so that everyone understands.

Second thing is, this bill would set up a, what essentially is a new crime, although some would argue that the crime has always been there, of so-called date rape crime. It modernizes, as I call it, the provisions and makes it easier to deal with the so-called issue of date rape.

Somebody said just recently on a local program, that you don't like the word date rape because rape is rape. And I think that's true. But because of the nature of how these situations happen and the use of special

drugs, in many cases, and things like that, there are some provisions in this bill that would deal with, unfortunately, the changes that have occurred in society that make so-called date rape a problem.

Thirdly, there's an expansion in here of the use of DNA. It would allow for greater use of DNA evidence in sex crimes. It is something, by the way, that, as I said, some of the Assembly people said, "But that's an expansion from last year's bill." Actually, just I think some didn't realize last year that that was in this bill, but it was actually -- it's been in this bill for the last several years.

Another provision in here relates to the expansion of Senator Skelos's - Senator Skelos passed this bill called Megan's Law. And it provides the registry provisions, the community notification provisions as regards sexual assaults. That's a natural part of this bill in a way, since you're changing so many provisions involved in the sex laws, you'd almost have to do that to keep up with the changes.

And, finally, one of the things this does is somewhat controversial, although it shouldn't be really controversial since the courts have already thrown out, it eliminates the marital exemption, the so-called marital exemption, rape exemption, so forth, which the courts have said is illegal, anyways. Although, we've never actually eliminated it from the Penal Law, this bill would eliminate the so-called marital exemption from the Penal Law, which means, obviously, that a husband or wife could be charged with rape if the situation accorded itself. That is primarily the law now because, as I say, courts have said that it is the law, but we've never changed it.

That basically is the bill. It is a comprehensive bill. It has a lot of provisions in it, but it is primarily, I would think you'd have to characterize it as a major upgrading and enhancing of the entire sexual assault provisions in the Penal Law of this State.

SENATOR WALDON: Madam President, would the gentleman from Western New York

yield to a question or two?

THE PRESIDENT: Senator Volker, do you yield?

SENATOR VOLKER: Madam President, I yield to the Senator from New York City from Queens.

THE PRESIDENT: Go ahead, Senator Waldon. I assume he's referring to you.

SENATOR VOLKER: Yes.

SENATOR WALDON: We're not yet in step, but we're getting there.

Senator, one of the concerns I had regarding this proposal and we discussed it in committee and maybe it would be helpful to our colleagues if you were to speak to the issue of prior bad acts.

Traditionally, in this country and in this state, for a prior criminal behavior or propensity to be introduced, the rule has been or at lease the practice has been that there was a conviction attached to it. You don't necessarily, other than perhaps the Mollino (phonetically) situation, introduce evidence of prior acts without conviction.

One, in your explanation of prior

bad acts, would you tell us whether or not a conviction is required?

And, two, could you define it for us so that we'll all understand it?

SENATOR VOLKER: Well, I think, Senator, that there is a, there is a limited use of, as you know, in this bill, of the use of prior bad acts. Although, the way it's, the way it's couched, it does allow protections for somebody who would be in this kind of a situation. And as we discussed in committee, in many cases, this sort of thing occurs anyways in the sentencing process. But it is -- given the nature of sex crimes today, it seems as if this, this type of provision really can make sense in drawing a parallel or a -- in setting up an evidentiary trail. And I think the defendant has the right, as you know, all the way along the line to make objections and to bring in his or her own evidence. And it would -- what it does really is to, I think, of course, sort of modernize the way criminal justice statutes are couched pretty well in other states in the union. We're not, by any means, we're not breaking

new ground here. What this really is doing is, I think, putting New York law into a situation that is very similar to what most of the major states in the union already have, as I understand it.

SENATOR WALDON: Would the gentleman yield again, Madam President?

SENATOR VOLKER: Certainly.

THE PRESIDENT: Go ahead, Senator Waldon.

SENATOR WALDON: Senator, there's another area which you've already addressed which causes me some concern and you explained it to us, but I would like to ask, if you know, why the ability to appeal the lenient sentence component, the unduly lenient sentences was put here applicable to crimes other than a sex assault bill. Would it not have been better that it were placed in the particular area; i.e., a particular crime that the Governor wanted it applied to, as opposed to now having the ability to expand it from this crime to all other crimes?

SENATOR VOLKER: I can't say as I know, except that you and I are well aware

that the district attorneys have asked for the right to appeal lenient sentences and bail for many, many years.

And, as I said, this provision actually was also in the -- what is it called? The Procedural Reform Act of 19 -- well, it was '97 or '98, and now it's going to be '99 again, which the Governor, I believe, had sent to us.

I can't answer specifically why it's in here, but I think a major reason it's in here is that one of the areas I think that many of the prosecutors feel most strongly about is in the area of sex crimes and where they would like the ability at least to make, to make an appeal where, for one reason or another, they feel that the decision was improper. And under the present rules of evidence, of course, they can't do that.

So I guess the answer would be, and although I haven't been officially told this, I'm just speculating, that the reason I think it's in there is because of, specifically because this is a specific area where it's a problem and I think the Governor's people

probably felt that this was an appropriate place to make the changes.

SENATOR WALDON: The last question in this line of question, Madam President, would the gentleman yield again?

THE PRESIDENT: Senator Volker, do you continue to yield?

SENATOR VOLKER: Yes, I certainly will.

THE PRESIDENT: Go ahead, Senator Waldon.

SENATOR WALDON: Thank you, Madam President. Thank you, Senator.

Senator, will this proposal, that bill, if it becomes law, interfere with, severely, I should say, interfere with judicial discretion in terms of sentencing?

I'm speaking now about the sentencing appeal reform part of the proposal. Does it take away the judge's discretion to properly sentence an individual?

SENATOR VOLKER: This bill, I don't think, would really -- I suppose it would make some limitations, but you and I know the limitations, that many of the

limitations were already made by Jenna's Law. And there's proposal by the Governor this year to further provide definite sentencing. And I don't know if you could characterize it as limiting. You could, in a sense, limit the judge's discretion. Of course, when you do definite sentencing, the judge already knows that when he makes a sentence, he knows what's going to happen. In other words, it's going to be six, seven and so forth.

So I don't know if you could really say that this bill necessarily creates any more major limitations. What it will do, however, is give the judge the ability to give more severe sentences, and that's pretty clear.

SENATOR WALDON: Thank you Senator.

Madam President, on the bill.

THE PRESIDENT: Yes. Go ahead, Senator Waldon, on the bill.

SENATOR WALDON: Thank you very much, Madam President.

To my colleagues, when we were in committee, if you recall, I voted without

recommendation. I had some concerns about the bad acts phrase, prior bad acts. I had some concern about the sentencing component. I had some concern about the ability to appeal unduly lenient sentences.

And though I still have a smattering of those concerns, when I think of the type of crimes that we're addressing with this proposal, it becomes extremely difficult for me, from a conscience perspective and from a moral perspective, from a man who has a daughter, who has a wife of 37 years, soon to be 38 -- she still lives with me. I don't understand why, but she still is -- to know that they can be endangered by the predators in the street who commit these heinous acts, and, therefore, despite the shortcoming, as I see them, of this proposal, I must support this legislation. I think we need to send a signal and a message which says that there are certain acts, no matter what, you cannot permit them to be pervaded against the people of this great state. So I would encourage my colleagues to support this proposal and to vote up on it.

Thank you, Madam President.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President.

Would the sponsor yield to a question?

THE PRESIDENT: Senator, do you yield?

SENATOR VOLKER: Absolutely, Madam President.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Thank you.

I would just like to request a clarification that this bill would eliminate the consensual sodomy statute. That it's removed as a sex offense or a misconduct?

SENATOR VOLKER: Senator, you're right. I didn't specifically -- I had mentioned the marital exemption. That's one thing I forgot to mention.

You are right. It -- in fact, I said that that was the other side of the coin that I was going to mention.

As you know, the courts have

essentially -- well, they have already said that consensual sodomy statute is illegal, inoperative. This bill would eliminate that provision which has already declared inoperative from the Penal Law. That's true.

SENATOR DUANE: Thank you.

And one final question, Madam President.

THE PRESIDENT: Go ahead, Senator.

SENATOR DUANE: Is reform of serial rape, is that issue addressed in this bill?

SENATOR VOLKER: Not really. I think what you're -- I think what you're --I know what you're talking about.

You could argue that this would certainly improve the ability to deal with serial rape, but I think that there are some other legislation that will be coming forth that would more thoroughly deal with the issue of serial rape. But this would, in this sense, that we're toughening up the penalties and raising the penalties, so that you could actually, you could actually sentence a person

who is a serial rapist to much longer terms. But, in reality, there are still, I think, some things that need to be done in the area of serial rapists.

SENATOR DUANE: One final moment, Madam President.

THE PRESIDENT: On the bill, Senator?

SENATOR DUANE: Yes.

THE PRESIDENT: All right. You may proceed on the bill.

SENATOR DUANE: I'm intending on voting yes on this bill; however, I had made the comment when we voted on a serial rape bill last week that I thought that that would have been better addressed in this bill. And I continue to believe that. And I am disappointed that that was not, if, as it seems to be the case, it is not, and my reading of it says it is not part of this.

Thank you.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. I rise just to echo a few

sentiments that my colleague, Senator Waldon, mentioned and that were subject of discussion with respect to the bad acts language in this statute.

I agree with Senator Waldon that most of this bill does good things. I'm concerned about the bad acts provision because of the danger -- just let me rattle off a couple of them. The bad act that is used as the basis for evidence in a felony case is a bad act relating to a misdemeanor. The bad act that's used as evidence in an intentional case, is the bad acts of a non-intentional conduct. The bad act that is used in the case, potentially, could be the kind of bad act which results in a conviction which is later overturned on appeal. All of that bad acts information can come before trial, and the danger of bad act information is that it creates a mini trial within a trial. That is, it requires proof of the bad act and then a defense of the bad act before it can be considered by the jury on the substantive issue of the trial.

I would just suggest, Senator

Volker, I understand the experiment. It's been tried with the federal government. The federal government has done this, I believe, since 1994. I don't know that the jury is in, so to speak, on whether that has achieved the goal of a better administration of justice in the federal system. But what I would suggest is, because this provision really extends, especially, in the area of sexual assault, where intent and levels of crimes depend on all kinds of factors, age, intent, conduct, a wide gamut of conduct, I would just urge you to consider a sunset provision in this portion of the bill, so that at some point, five years from now, seven years from now, we'll force ourselves to go back and look and see whether the bad acts language has actually promoted justice, or, and it runs this risk whenever you allow unindicted acts to be a part of someone's trial, it runs a serious risk that other issues will affect the guilt or innocence of a perpetrator rather than the specific crime that he's charged with.

I understand this as an experiment and an extension, to some extent, of New York

law. But I think it's one that we owe ourselves the obligation and the prudent administration of justice at some point in the future to go back and take a look at, because it does run a serious risk of putting defendants in a situation where they are defending themselves for something other than the acts for which they are indicted. And it's an experiment. I understand, as Senator Waldon said, that it's in this specific area of sexual assault it may be justified.

I'm going to vote for this bill despite my concerns about this, but I just would like the sponsor to consider a sunset provision so we'll force ourselves to go back and look at whether this has done what we wanted it to do.

Thank you, Madam President.

THE PRESIDENT: Thank you, Senator.

Read the last section.

THE SECRETARY: Section 46, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is passed.

That completes the reading of the controversial calendar.

Senator Skelos -- Senator Bonacic. Excuse me.

SENATOR BONACIC: Madam President, is there any housekeeping at the desk?

THE PRESIDENT: No, there is not, Senator.

SENATOR BONACIC: Thank you.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: Madam President, I'd like to move to discharge from the Codes Committee Senate Bill 1147.

THE PRESIDENT: Motions and resolutions?

SENATOR OPPENHEIMER: No, this is a -- excuse me. This was a Senate -- this is a motion to discharge Senate Bill 1147 from Codes.

THE PRESIDENT: Secretary will

read.

THE SECRETARY: Calendar - Senate Print 1147, by Senator Oppenheimer, an act to amend the Penal Law, the Civil Rights Law and the Criminal Procedure Law.

SENATOR OPPENHEIMER: Thank you.

THE PRESIDENT: Senator Oppenheimer, go ahead.

SENATOR OPPENHEIMER: Thank you.

This is the Clinic Access Bill that has already passed in the Assembly and I believe we discussed it a bit last week.

This bill is, simply, it's an anti-violence bill. We hope to protect the doctors, the healthcare workers, the women who want to access the healthcare facilities. We're now seeing, in recent years, some really despicable things are happening. We are seeing bombings and murders. And it's really spread nationwide to healthcare facilities in many of our different states, in Oklahoma, Massachusetts, Florida, Alabama, and, of course, recently, right here in New York. And we see that the providers of reproductive healthcare are living and working in constant

fear of intimidation and even of death since Dr. Slepian's murder. And they've been forced to install metal detectors and security systems, not only in their offices but many have had to put it into their homes. And when they go to work a lot of these workers are going in bulletproof vests. This is a outrage.

This bill is also about freedom of access to reproductive healthcare. If you think of a woman trying to access her, her healthcare, and she is walking in in order to get a variety of services. It could be a prenatal care service. It could be cervical cancer screening. It could be a breast cancer screening. It could be HIV testing. It could be for an abortion. But the fact is she is merely, she is simply exercising her civil right to go to her, her doctor, to her healthcare provider. And the existing law is simply inadequate to protect the civil rights of these women and the people who are providing her with her healthcare.

And the senseless violence and the threatening atmosphere, they simply have to

end. And we have seen a growing public outrage over what has been happening in recent years. And I think this really has to move us.

This bill will prohibit harassment at clinics, at offices, and at homes. It will increase from misdemeanor to felonies certain criminal penalties, it will also establish certain civil remedies, it specifically protects First Amendment activity by anti-choice protestors and it provides for injunctive relief.

This bill, as you know, has passed many times in the Assembly and it is time that we pass it here in the Senate, because protecting speech should not require that healthcare providers go to work in bulletproof vests.

I have a couple of -- in the last couple of -- actually, today, we've received some support memos. And I'd like just to read a few lines from a couple of them.

The League of Women Voters of New York State has sent a memorandum in support. And this is an organization that very

carefully thinks through its positions and is well regarded by all for the thought that goes into their statements. "The League of Women Voters of New York State strongly supports this legislation. It would empower state and local officials to curb the escalating harassment, intimidation and violence of women seeking primary and preventive healthcare as well as reproductive healthcare." As I have mentioned earlier. "It also provides adequate safeguards for First Amendment free speech activities and for peaceful protests."

One of our grave concerns is that these peaceful protests sometimes escalate into violence and, often, people who are not stable emotionally, can bring from these peaceful protests, semi-peaceful protests, semi-violent protests, can bring from it a violence which erupts into the kind of thing that we saw with the murder of Dr. Barnet Slepian.

From Family Planning Advocates today we received: "No one questions the rights of anti-abortion activists to peacefully protest, but with free speech comes

the legal responsibility to refrain from infringing upon the Constitutional rights of others. When free speech grows into a campaign of terrorism and obstruction, with the goal of closing facilities and eliminating healthcare providers, it's time to examine the effectiveness of the legal system in protecting law abiding, innocent citizens." A very forceful statement.

And the last thing I want to bring to your attention is, yesterday, in my local paper, Westchester County, we had a letter to the editor, which is fairly brief and I'd like to read it because I think it makes the case beyond dispute. It comes from Francine Stein, who is the President and CEO of Planned Parenthood Hudson-Peconic, and it serves Suffolk, Westchester, Rockland and Putnam.

"The verdict issued February 2nd by an Oregon jury in Planned Parenthood vs. ACLA speaks for the American people, as a country we will not tolerate violence nor threats of violence."

I'm not sure if many of you know what happened a few days ago in Oregon. There

was a verdict in the Federal Court and the jury found in favor of Planned Parenthood and a group of doctors with a verdict that imposed the largest judgment, it's more than a hundred and seven million dollars to date, on militant abortion antagonists. That happened about less than a week ago.

"The Nuremberg Files web site and wanted posters" -- those are those posters that have the picture with "wanted" and the face and underneath it wanted -- "were death threats, plain and simple death threats. They clearly ventured beyond First Amendment protections into realms of violence, intimidation and domestic terrorism."

For those of you that are not aware of what I'm talking about, this web site used words such as Nuremberg Files and these wanted posters and lists of doctors with a line drawn through the name of a doctor after he or she was killed. And the jury said, in this Oregon case, that this amounted to a death, death threats.

To continue with Ms. Stein's letter. "We applaud the jury and turn to our

local legislators to maintain the momentum with legislation to protect our medical center staff and clients.

"At Planned Parenthood, we respect and defend everyone's rights to free expression. However, the lines that separate free speech from violent hateful, inflammatory language, personal attacks and direct intimidation cannot be clouded. The message must carry further that, as a society, we will not tolerate threatening behavior. We ask the New York State Senate to see beyond the thin vails of political and religious rhetoric. Clinic access laws are necessary to protect and defend both our rights to access medical services and our rights to peaceful free expression."

Now, this was written by the president of Planned Parenthood for much of the downstate area, a wonderful woman who has spent inordinate money to put up metal detectors and issue bulletproof vests. And that is not her goal in life. Her goal is to provide the best medical care she can for women. And to utilize money in this way is,

in itself, a crime.

And I was very pleased to read Frankie Stein's letter.

I urge that this be discharged from Committee.

Thank you.

THE PRESIDENT: Thank you, Senator.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

This is a problem we face for which there is a solution. And I think it is an opportunity for us, but it's also an obligation that we take on as members of a legislature. We know the scope of this problem. It has been documented. We also know the effect of clinic access laws at the federal level and in other states.

The problem, as we discussed last week and as Senator Oppenheimer has stated, is that we have a network of militant anti-abortion activists who are seeking to accomplish by violence what they have been unable to accomplish at

the ballot box or in the courts. They want to end abortion rights for all of the women of New York State.

The scope of the problem was set forth rather clearly, if not with the view that it was a problem, in Operation Rescue's January newsletter, which just came out, which detailed that in the last 10 years there are 579 fewer clinics providing abortion services in the United States, 500 clinics have closed in the past six years alone, 84 percent of the counties in America have no abortion provider, and the number of medical schools teaching abortion procedures has fallen 50 percent since 1987. The campaign of harassment has had an affect. It is a very serious problem, but we do have a solution, at least a partial solution, in the clinic access legislation we're seeking to have discharged today.

Since the face bill was passed at the federal level and 12 other states passed clinics access laws several years ago, clinic violence has dropped precipitously; 52 percent of clinics reported severe violence prior to face passing in 1997, the last year for which

we have accurate statistics. The number was just over 25 percent. However, in New York State we are not getting this benefit. And where we have a problem and we have a solution, I think it is our obligation as a legislature to take action.

In New York State, the campaign continues. There has been an announcement that on April 18th, Operation Rescue will descend in force in Rochester and Buffalo to close the clinics in those cities.

Over half the counties in New York State already do not have abortion providers and we have lost 23 providers in the last four years. This is a problem that has a solution.

The Assembly has overwhelmingly passed a clinic access bill. The Governor, since we were last here on this subject last week, has introduced and released a program bill substantially similar in all critical respects to the Assembly bill. And I believe it is our obligation as the Senate to take action on this important issue.

I would like to echo Senator Oppenheimer in her recognition of the League

of Women Voters. This is not an issue that is limited to pro-choice activists. This is an issue for all New Yorkers who believe in public safety and believe that doctors should be allowed to practice medicine, women should be allowed access to their doctors without threats, harassment or intimidation. And I'm very pleased and honored that we have the Legislative Director of the League of Women Voters in the gallery with us today, Barbara Bartoletti.

Others are coming forward with I think a very clear message. This is a problem we can solve this year, we should solve this year and that the Clinics Access Bill, which we have introduced, which I think has overwhelmingly support around the state should be passed.

I want to say one word about one provision that several of my Republican colleagues have asked me about since I spoke last week. And that's the necessity of having civil remedies in the bill. As recognized by the Governor when he put in his program bill, civil remedies are essential for two reasons:

One, you need to have a provision for injunctive relief if you're going to protect people's homes and clinics perspectively.

Second, and this is something that I've personally had experience with. People of good conscience in this state disagree on the issue of abortion rights. There are many local law enforcement officials who do not want to enforce laws, do not want to protect clinics, and it is a matter of conscience and I don't seek to judge them. But you have to provide people who live in a police precinct or in a county or in a state, if the attorney general is anti-choice, the ability to go to court on their own to seek relief.

And with those comments I look forward to speaking further with our Republican colleagues. This is a bill we must pass this session. I suggest that with all of the other heavy things on our agenda that we get it out of the way early, and I urge everyone to vote to discharge the bill today.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you very

much, Madam President.

I absolutely feel a sense of urgency and I believe very strongly that there is an urgent need for us to pass this legislation immediately. And I say that speaking as someone who many, many mornings got up when it was way past dark, in fact, at a time that when I was younger I probably would have been going to bed, to go and stand at clinics and escort women inside, past screaming protesters and people blocking entrances. I've stood at entrances to make sure that the path was clear so that women could go inside and get reproductive services.

The loss of reproductive services around the state is a terrible, terrible thing to have happen, and it continues to happen every day because providing reproductive services is now dangerous work. I believe that healthcare is a right. And reproductive services, including access to abortion, is healthcare, and healthcare is a right.

Clinic access has worked well in New York City but, unfortunately, that has made it so that the focus has been on other

parts of the state. Now, today is the time for us to make sure that all the New Yorkers and all people who provide healthcare in New York are provided the same level of safety that they are provided in New York City. And the time for that is now. The time for that is today.

Thank you.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, I would just rise to urge my colleagues to give us an opportunity to really fully address this legislation.

It is important because I think this is a legislation that speaks to the worst kind of bias that we have right now in our state, and that is that there is an attack on health services or access to health services by women. That means, every woman in this Chamber, as well as every other woman in the state.

Healthcare and health service for women involves every single aspect of our bodies, including our sexuality and including

our desires to make choices about what happens to us. So this is not just for women who are necessarily seeking an abortion. It's also for women, many of whom, like myself, attend clinics that are specifically designated as a women's clinic. It's because I feel comfortable there, it's because that that is how I choose to seek my own healthcare.

I do not -- I wish that my doctor not have her life jeopardized because she is the physician in a women's clinic. I don't know if other women may be seeking an abortion. I certainly am not. I'm seeking healthcare. But I have a right and every other woman that enters that clinic along with me has a right to be safe and to feel comfortable and to have access to every single type of healthcare that we need.

And so this is extremely important. It is important to every single woman in the State of New York that we should be able to go and get healthcare as every male in the State of New York. Males are not threatened in the same way. So this clearly is an anti-bias bill. It is anti-bias against us because of

our gender, purely and simple.

So we need to do this because this is really an important step in the direction of securing the right of every woman, no matter what income, no matter what station in life, no matter what age, no matter what color, no matter what our beliefs are. All of us should have equal right to access healthcare.

So, please, let's -- let's allow this legislation to come to the floor so that we can all vote on it, vote our consciences on it and pass it to protect women in this state.

Thank you.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I rise just to tell my colleagues a brief story about, not the exercise of Constitutional rights but the exercise of Constitutional duties.

The day we came over here for the State-of-the-State speech, I was walking through the concourse and I saw a man standing

there with a sign that, in my judgment, was totally offensive to my Jewish colleagues. And I looked at him and I thought, here's a man with an expression of hate but he has a Constitutional right to stand in the concourse and express that hate and I have a Constitutional duty to walk past him and come to this Chamber and do what the people of this state elected me to do.

And now, as I sit here and we debate that motion to discharge, I can't help but think what would happen if in order to get into this Chamber, the 61 people who come here to do the duty that the voters sent us here to do, had to walk through a group of people who stood there and told you that you were going to hell if you went into that Chamber, told you that you would be a victim of violence, told us that we know we're watching you, we now that something may happen to you? Wouldn't it be a terrible thing if your tires were slashed while you were over in the Chamber? Wouldn't it be a terrible thing if you got a letter at your house, hate mail, that said, "We know who you are. We know what

you're doing when you cast those votes in the Senate Chamber"? And what if they stood in a line and watched us go back and forth and whispered to us, "Oh, by the way, you better watch your backside" or "you easily could be shot at by a sniper," which is what happened when Senator Oppenheimer noted unfortunately and tragically in Buffalo.

Would it change our minds about what we do here today, if we had to walk that gauntlet of hate and intimidation to get into this building?

Is there any doubt in any of the 61 minds that are going to vote on this bill that, if we had to endure that to vote in this Chamber, that there would be a bill that would be out of the Codes Committee like that (snapping of fingers) that would guarantee, guarantee that we could walk safely from the LOB over here, that would make it a crime to harass and annoy and try to interfere with our Constitutional duty to exercise our voting power?

And is there any doubt in your minds that there would be instantaneously out

of the Codes Committee and on the floor of this Chamber a bill that would give the executive power, the attorney general or an individual senator the right to go into court and proceed through civil law and obtain the protection of injunctive relief to prevent someone from harassing or annoying or threatening us in the exercise of our Constitutional duty?

No doubt in my mind that that bill would be passed unanimously. It would join the list of the other eight bills that we've done today that have all passed without a single opposing vote.

Why, my colleagues, if we would protect our Constitutional right that way in this Chamber, we, who are people of influence and power, why won't we give women who live in Rochester, women who live in Buffalo, who live in Syracuse, who live in Oneonta, women who may be desperate, women who may be seeking healthcare that they can't find anyplace else, why would we leave them all by themselves to walk through that gauntlet without the protection of the criminal law and the civil

law respecting their Constitutional right?

Why would we have one standard for ourselves and another for poor, largely defenseless, largely all alone women seeking healthcare?

Explain to me how we, in this Chamber, would be so quick to protect ourselves and seemingly are so slow to protect them?

There's a way to give those women that protection, and the way is to take this bill offered by Senator Oppenheimer, vote to discharge it from the Codes Committee, a unanimous vote to discharge it and a unanimous vote to give this protection that we would always give ourselves, that protection from annoyance, that protection from threat, that protection from physical harm, what we would clearly do for ourselves.

Let's send a message to everyone in this state that we still believe that women who need healthcare have that same entitlement to protection. We shouldn't live in a world with a double standard. Let's create one standard in this state, if your Constitutional

rights are threatened in your attempts to access healthcare, let's make it a crime and let's give the message that we, in New York, respect that choice. It's that simple.

Vote to discharge this bill, put it on the floor, bring it up for debate. Let's make it law and send that message that we respect everyone's exercise of their Constitutional rights.

Thank you, Madam President.

THE PRESIDENT: Thank you, Senator.

All in favor of accepting the motion to discharge, signify by saying aye.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: I'd just like to thank Senator Oppenheimer for leading off the debate and really setting forth the necessity to pass legislation at this point to provide for effective clinic access in this state, and Senator Schneiderman, who told us last week that one of his first employment situations in life was to work as a health

services worker in a reproductive services clinic, and thank him for his tireless work on the subject for a number of years and through the past few months and to welcome that type of effort as a member of this Chamber.

Senator Duane told us about the effectiveness of clinic access in New York City and Senator Montgomery distinguished the issue of choice from the need for use of reproductive services clinics. And I think that we all were quite moved by the stirring remarks that Senator Dollinger made in giving us really the overview and in many senses the passion for why all of us should support this legislation.

We have two conferences here. We differ on many issues and, in many respects, much policy. But within our conferences, we have members who are referring to themselves as pro-choice and those who are not, we have members in both sides of the aisle who would consider themselves to be pro-life and those who are not. We have all a regard for First Amendment privileges and we certainly all would want the law enforced with respect to

those who would violate the rights of others and particularly to manifest it in violence. And so this is why at this particular time we in the Minority conference have brought the motion for discharge here today, this is why we brought what would be an addendum to the very positive legislation that Senator Balboni introduced last week. And speaking on behalf of leadership, I would just like to point out that we are going to continue to foster the wishes of those who want to come to Albany to lobby to persuade all of you who may vote against this motion today, that we have to pass some kind of access legislation that will make our clinics safe and give those who certainly go to them free choice. What we aim to do is to continue this fight until there is such a time that we have passed this legislation. And we will be back and we will continue to come back until we see that it's passed.

We're happy to see that the Governor and many others have offered pieces of legislation and have lent their voices to what would be the effort to try to provide

free access to clinics. But we will not be satisfied and there's no way that we can be satisfied until the legislation is actually passed.

It is difficult for all of us to reconcile what might be our ideological beliefs with the certainty of the crisis that often drives women to these clinics. Many of them go there actually identifying themselves as pro-life, but because of the situation they realize they might not be able to live up to what they thought they believed in the past. Many of those may have been pro-choice, but because of the reproductive services that are provided, they may not choose to go in that direction. Many of these women come to these clinics alone. Many of the women are sent by men who are actually saying that they're against choice, but when the situation came, struck into the reality of their lives, they urges their partner to do something different.

In many ways, the awareness of time is cylindrical. And this is why in a free society and in a democracy we have to give individuals the right to exercise their free

choice and we cannot allow that choice to be impeded in any way by those who are deliberately, because they haven't been effective in the courts and because they haven't been effective in the legislature, manifesting their anger in a way as to intimidate, deny or often physically force those into a position that they don't believe.

And so we will be supporting this motion as a party with a party vote, with no exceptions, in favor of the motion.

I certainly urge my colleagues on the other side of the aisle to support it. It is not a vote for ideology. It is a vote that is designed to stop the violence and to provide for free choice in the use of healthcare services.

THE PRESIDENT: All in favor of accepting the motion to discharge, signify by saying aye.

(Response of "Aye.")

SENATOR PATERSON: Party vote in the affirmative.

THE PRESIDENT: Senator Bonacic.

SENATOR BONACIC: Party vote in

the negative.

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 23. Nays 35. Party vote.

THE PRESIDENT: The motion is defeated.

Senator Bonacic.

SENATOR BONACIC: Madam President, there being no further business, I move we adjourn until Tuesday, February 9th, at 11 a.m.

THE PRESIDENT: On motion, the Senate now stands adjourned until Tuesday, February 9th, at 11 a.m.

(Whereupon, at 4:20 p.m., the Senate adjourned.)