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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 please rise and repeat the Pledge of Allegiance.

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

THE PRESIDENT: With us this morning is Reverend William Bazemore, Pastor, Emanuel Church of God in Christ in Brooklyn, who will give the invocation this morning.

REVEREND BAZEMORE: Father, in the name of Jesus, I come before You today as only as I know how, asking You to touch every heart in here today. Let them realize who You are. We all know that there's somebody sitting high and looking down low. We know there's nothing too hard for You to do. But, Father, I'm asking you, in the name of Jesus, look on our little one, never see the time in their life when the little children are killing us here. We know some time they kill us here, but it's, it's a hope from somewhere. If we just thank Lord there's a hope somewhere for them.

Please, take prayer back in the school. For this one thing, I'm asking now. We, the one thing we ought to demand, we ought to demand that our children, and the children, they don't know nothing about love. We ought to demand prayer. You got to feed them. Make them have prayer once a day. Let them pray for one another. Father, You're able to teach them how to pray, You're able to make way for minority.

I'm asking you to bless everyone today more abundant. Let them realize that You're real, nothing too hard for You to do. I'm asking You, Lord, take the day like You never take before, that they will come together. Forget about what party they are and let them become one, just as You and Your Father are one.

This we ask in the name of Jesus, I pray. Amen.

THE PRESIDENT: Thank you Reverend.

Reading of the Journal.

THE SECRETARY: In Senate, Monday, February 8th. The Senate met pursuant

to adjournment. The Journal of Friday, February 5th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Larkin, from the Committee on Racing, Gaming and Wagering, reports:

Senate Prints 1490, by Senator Larkin, an act to amend the General Municipal Law;

2105, by Senator Larkin, an act to amend the Racing, Paramutual Wagering and Breeding Law.

Senator Fuschillo, from the Committee on Consumer Protection, reports:

Senate Prints 11, by Senator Skelos, an act to amend the General Business Law;

96, by Senator Alesi, an act to

amend the General Business Law;

1556, by Senator Lack, an act to amend the General Business Law.

Senator Hannon, from the Committee on Health, reports:

Senate Prints 1524, by Senator Hannon, an act on amend the Public Health Law;

1527, by Senator Lack, an act to amend the Public Health Law;

1541, by Senator Farley, an act to amend the Public Health Law.

Senator Trunzo, from the Committee on Transportation, reports:

Senate Prints 84, by Senator Alesi, an act to amend the Vehicle and Traffic Law;

87, by Senator Alesi, an act to amend the Vehicle and Traffic Law;

547, by Senator DeFrancisco, an act to amend the Vehicle and Traffic Law;

821, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

1084, by Senator Holland, an act to amend the Vehicle and Traffic Law;

1448, by Senator Lack, an act to amend the Public Authorities Law.

Senator LaValle, from the Committee on Higher Education, reports:

Senate Prints 1293, by Senator Rath, an act to amend the Education Law;

1578, by Senator Larkin, an act to amend the Education Law;

1971, by Senator LaValle, an act to amend the Education Law.

All bills directly for third reading.

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

Reports of select committees.

Communications and reports from State officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time, may we please adopt the Resolution Calendar in its entirety?

THE PRESIDENT: All those in favor of adopting the Resolution Calendar, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Marchi.

SENATOR SKELOS: Madam President, if I could -

THE PRESIDENT: Excuse me, Senator.

SENATOR SKELOS: I know that two of the Senators want to comment on a resolution -

THE PRESIDENT: Yes.

SENATOR SKELOS: -- but there'll be an immediate meeting of the Rules Committee in the Majority Conference Room.

And now would you please recognize Senator Marchi.

THE PRESIDENT: All right. There will be an immediate meeting of the Rules Committee.

And, at this point, I recognize Senator Marchi.

SENATOR MARCHI: Thank you, Madam President.

I'm referring to Resolution Number 314, rendering our respect and homage to Bishop Ahern, Patrick V. Ahern, an individual who, had he elected to go to Hollywood, would have ousted Nelson Eddy in some of the classic -- with his rich tenor voice and majestic presence. But he dedicated himself to the spiritual life.

I can't help but note the invocation that was given to us, where you mentioned the subject of love, the importance of compassion and charity. And this has characterized this individual who is being honored by the Seton Foundation for Learning Parent Guild.

A graduate of St. Agnes School of Boys, St. Joseph's Seminary, Dunwoody (phonetically), the Gregorian University in Rome, honorary degrees from Manhattan, St. John's, St. Thomas Aquinas, Fordham and a host of other colleges and universities around the country, and a very distinguished career in his -- as a bishop.

He was vicar of several areas, including the area of Staten Island. So I

would expect Senator Gentile to join in on this, who I'm sure goes along with this.

He was -- received the first Elian Award (phonetically) from Cardinal Cooke and he is an Honorary member of the Carmelites and his book "Maurice and Therese.", the story of love again echoes the invocation that you've made, Reverend.

So this vision and spirit of enlightenment, which he exemplifies, continues to exemplify with great vigor, with great charm, with the saving sense of humor, makes him and endears him to everyone who knows him for the fine person that he is and the fine influence that he has exercised.

He was secretary to Cardinal Spellman. He held a number of -- vicar also in the Bronx and other areas where his beneficial participation enriched the lives of the people that he reached and he continues to reach in his ministry.

So I'm very happy to speak to this and to again emphasize the respect and the love and affection that we all have for Bishop Patrick Ahern.

THE PRESIDENT: Senator Lackman.

SENATOR LACKMAN: Yes, Madam President, with your indulgence, I ask permission to speak on Resolution Number 322, which mourns the passing of the late president, Leon Goldstein of Kingsboro Community College.

THE PRESIDENT: Senator, on the resolution.

SENATOR LACKMAN: Thank you kindly, Madam President.

The Senators from Brooklyn all have heard of Leon Goldstein and his outstanding administration of Kingsboro Community College. But Leon Goldstein's name and higher education goes beyond what he did for Kingsboro.

The French philosopher Henri Burkson once said that "A man should think as a man of action and act as a man of thought." Leon Goldstein throughout his professional life of almost 40 years in higher education not only thought as a man of action and acted as a man of thought but did both with a great deal of feeling and consideration for others. Just thinking of what he did at Kingsboro

Community College, which many people feel is probably one of the outstanding community colleges in CUNY and SUNY and the State of New York, he had a deep and abiding commitment in both access for everyone as well as standards for everyone. And he built a college to service the community, the people, the students of the community. He had a College Now Program that brought disadvantaged youngsters into the college. He had a senior citizen program that brought seniors into the college. He was the first president of the nation to start a family college, where parents could bring their children to satellite public schools and attend courses at Kingsboro Community College. And he developed in his last few years a very innovative Kingsboro Community College High School for the Sciences. He did remarkable things for Kingsboro.

The college was started by President Jacob Hartstein. He built on a good foundation and made it even stronger to become one of the preeminent two-year colleges in the city, state and nation.

But Leon Goldstein's influence went beyond the Borough of Brooklyn. Leon Goldstein also served as a Dean of New York City Community College before it became New York Tech. Leon Goldstein served as the acting chancellor and interim chancellor of the City University of New York almost a generation ago. And Leon Goldstein, and this is very unusual for the president of a two-year college, served as vice president of Middle States Association as well as chair of its committee on higher education.

Leon Goldstein was soft spoken, he was thoughtful, he was considerate, he was a conciliator. And it's interesting to note that, of all the presidents in CUNY, in the last years of his life, when members of the board of trustees -- and this was -- this is a very fractious board, with different opinions -- and when his colleagues wanted to have an opinion of substance, they approached a man of stature. And that was Leon Goldstein. And whether you agreed with him or disagreed with him, you always respected him and you knew that he had the best interests of

the City University of New York, of Kingsboro Community College, of higher education and of the young adults who attend the colleges in the City and the State of New York.

Our hearts go out to his widow, Dean Mary Rothline Goldstein of John Jay College, his children Michael and Lisa, at the sudden passing of their husband and their father. They, as we, know that there were no ordinary days in President Goldstein's life because all of his days were extraordinary days, servicing others, working with others, trying to improve our society, if through the area of education and the instrument of higher education.

Oliver Wendell Holmes, Jr. said that "no one has the right to say that he lived unless his life, unless his life was a life involved in passion and action." Until his dying day, Leon Goldstein's life was involved in the passions and actions of his time, of a very turbulent time, of a very difficult time for higher education, at an especially difficult time for the City University of New York. And his actions and

his passions were totally devoted to improvement of that which he loved most, and that is education for all the children in the City and the State of New York.

And I open up this resolution to every member of the Senate to join and participate, and the resolution will be handed to Mrs. Goldstein at an appropriate memorial service at Kingsboro Community College of the City University of New York.

Thank you, Madam President.

THE PRESIDENT: Senator Skelos. Excuse me, Senator Meier.

SENATOR MEIER: Thank you, Madam President.

At this time, there will be an immediate meeting of the Aging Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Aging Committee in the Majority conference Room.

SENATOR MEIER: Madam President.

THE PRESIDENT: Yes.

SENATOR MEIER: Madam President, I believe there's a privileged resolution at

the desk by Senator Paterson, and I would ask that the title only be read.

THE PRESIDENT: The Secretary will read the title only.

THE SECRETARY: By Senator Paterson, Legislative Resolution commemorating the celebration of Black History Month.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President and I thank the Acting Majority Leader, Senator Meier, and also to Senator DeFrancisco, who had a similar resolution last week which commemorates the event of African-American History.

Black History Month's origin comes from the fact that it was once known as Negro History Week because it appraised the actual birth and death of the great leader Frederick Douglas who was born in the month of -- on February 11th and died on February 16th at the age of 72 years of -- 72 years old.

In honor of this year's African-American History Month celebration, we would like to recognize the event and the location, which has probably added more

research and more information to the study of not only African-American History but of American history, and that was the finding of the African burial grounds in Lower Manhattan, near Wall Street at approximately the confluence of Broadway and Duane and Reade and Elk Street.

It's very interesting as to how the African burial grounds was found. There was a survey taken on an area that was a proposed site for the construction of a federal office building in which the -- in which the Congress put aside $275 million and were going to build a 35-story building. To accomplish this, there was an excavation which went over 35 feet into the soil in Lower Manhattan. The survey had shown that there had been a burial grounds in the 18th Century mostly populated by Africans. But it was thought that, since there had been a parking garage there and Dunn and Bradstreets had had an office building there and the site, the land site had been used for many other purposes, that there would probably be nothing left of this burial grounds. What those who were taking the

survey did not know is that in Lower Manhattan, in the early 1800s, there was, there were contours of a hilly region in which a great amount of soil was brought in to actually cover the area and to make the area flat. So actual -- so there was a 15-foot cushion created by the new landfill that actually protected the remains of those Africans who were buried in Lower Manhattan from approximately 1710 to 1795. This soil acted in a serendipitous way, such that, when people were able to unearth the remains of approximately 415 individuals who were buried there, their remains were kept just about as well as if they had actually been buried in caskets.

And so, at Howard University and also at Lehman College, extensive study has been done on the 415 remains that were found which revealed some very interesting issues that were not known before. For instance, of the remains, it was found that 72 percent of them were the remains of children, recasting and reidentifying the way in which Africans were brought to the United States. They were

putting -- they were transporting mostly children because they could get more of them into the boats, which were only approximately three feet six inches high.

Another interesting fact that came from the research of the remains of the African burial grounds were the indigenous areas on the West African Coast to which the remains belonged. No one had really been able to trace which of the African countries produced those who were brought here in chains as slaves, but it's now clear that a comparison of the burial patterns in the burial ground with the burial patterns in native Africa, reveal that Angola, Mozambique, Ghana, Nigeria and parts of Upper Volta were the actual indigenous areas were the actual homes of these individuals.

And so, as we look to the coming years and the information that is still coming out of the African burial grounds, there are two other pieces of information I'd like to share with you and all who are here, Madam President. One is the fact that there were five Africans in the burial grounds who were

born -- who were identified as wearing the uniforms of the British Navy, demonstrating that there was a dispute in the African community in New York City as to whether to support the American settlers who were rebelling against the British or to support the British who wanted to return to the indentured servitude that the Dutch had established when they first colonized New York in 1624.

In 1647, there was a major fire in New York and, because of that fire, the Africans who lived in the area were awarded their freedom after helping to put out the famous fire of 1647 that emanated from the St. Nicholas Church.

In 1697, Queen Ann decided that there would be no more burials of Africans with whites in Lower Manhattan, and so they took the northern-most point of Manhattan, which was at about where City Hall is now, and used that for the burial grounds.

Of the remains that were found, there was the remains of one white person in the African burial grounds. Now, I know that

my assistant, Mark Leinung, is sitting here wondering who was the white person that was found in the African burial grounds. No, Mark, it was not an old boyfriend of Shirley McClain. It was actually an individual who participated in the 1741 New York City riots to try to free the slaves. And as a punishment, this white person was buried in the African burial grounds along with the black people who were buried there.

Actually, what it demonstrates is that people in this country of all colors fought to free and release the slaves and we celebrate all of them when we celebrate Black History Month.

THE PRESIDENT: On the privileged resolution, all those in favor of adopting the privileged resolution, please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The privileged resolution is adopted.

Senator Meier.

SENATOR MEIER: Madam President, at this time, may we have the non-controversial reading of the calendar?

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 24, by Senator DeFrancisco, Senate Print 548, an act to amend the Criminal Procedure Law in relation to applications.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 25, by Senator Volker, Senate Print 728, an act to amend the Criminal Procedure Law in relation to fingerprinting.

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 54.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 29, by Senator Volker, Senate Print 809, an act to amend the Penal Law.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 65, by Senator Larkin, Senate Print 169, an act to the amend the Navigation Law in relation to liability of volunteer firefighters.

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 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

68, by Senator Marcellino, Senate Print 1128, an act to amend the Environmental Conservation Law in relation to allowing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 72, by Senator Nozzolio, Senate Print 137, an act to amend the Penal Law in relation to sexual performance by a child.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 83, by Senator Johnson, Senate Print 758, an act to amend the Real Property Tax Law in relation to making persons receiving a disability.

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 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 89, by Senator Alesi, Senate Print 89, an act to amend the Highway Law in relation to designating.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 94, by Senator Goodman, Senate Print 1102, an act to amend the Transportation Law in

relation to mandating.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

THE PRESIDENT: The bill is passed.

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

SENATOR MEIER: Thank you, Madam President. May we now have the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 24, by Senator DeFrancisco, Senate Print 548, an act to amend the Criminal Procedure Law in relation to applications.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator DeFrancisco, an explanation has been requested.

SENATOR DeFRANCISCO: Presently, under the Criminal Procedure Law, Section 510.30, a judge, in determining whether or not to set bail and what that bail would be, has to consider the character, reputation, habits and mental condition of the individual appearing before the Court.

The problem with it is is that the judge is not permitted to obtain additional information relevant to those factors nor obtain information concerning the medical condition from the defendant who's in court. As a result, the judge is really handcuffed in determining what that bail is going to be. So the result in many, many cases is the judge is going to take the safe route and basically set a higher bail than maybe he otherwise might have set.

In order to give a judge the tools in which to set a reasonable bail, this bill provides for the judge to be able to get information from the defendant, also order a mental examination. And the information that he obtains is usable only for the bail hearing and could not be used for the -- any other

part of the criminal proceeding against the defendant.

THE PRESIDENT: Senator Sampson.

SENATOR SAMPSON: Thank you, Madam President.

Through you, Madam President, would the Senator yield for a question or two?

THE PRESIDENT: Senator, do you yield?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Go ahead, Senator Sampson.

SENATOR SAMPSON: Senator, I just want to know, who is going to be paying for these examinations that are going to be ordered by the Court?

SENATOR DeFRANCISCO: Well, the same people that would be paying for any of the court proceedings in a criminal case. Generally, the county or the state, depending upon what the proceeding would be. My guess would be the county. But, in actuality, the beneficiary, I think, of this legislation is going to be the defendant, who is less likely to get a reasonable bail if the judge doesn't

have all of the factors that he needs to make a determination.

So in any case that we deal with in the criminal justice system, the system itself or the taxpayers ultimately pay.

SENATOR SAMPSON: Through you, Madam President, would the sponsor continue to yield for a few questions?

THE PRESIDENT: Do you continue to yield?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Go ahead, Senator Sampson.

SENATOR SAMPSON: And how long do you expect the, this timeframe as to when the Court, once the Court orders that examination is done, are we talking -

SENATOR DeFRANCISCO: I'm sorry. I can't hear you.

SENATOR SAMPSON: -- the timeframe in which the Court has to determine that one of these examinations is going to be done.

SENATOR DeFRANCISCO: Well, there's no specific statement in the

legislation that would set a specific time limit. It would be up to the discretion of the Court.

But, generally, the additional information that the Court would request would generally come from the defendant as he stands before the judge. With respect to a mental examination, there are provisions for mental examinations now in other circumstances, and I imagine the judge would want to get that information as quickly as possible.

Once again, I keep getting back to the alternative. The alternative is that the judge has some kind of conception that this individual has some mental problem in view of the nature of the case or in view of what the person is alleged to have done, the tendency is going to be set a high bail and play it safe. I think by having the opportunity for a mental examination, you would give the judge the opportunity to say, "Well, there is not a problem here. I thought there might have be, the nature of the case, so I'm going to set a bail much lower than I otherwise would have."

SENATOR SAMPSON: Through you,

Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator, would you speak up, please?

SENATOR SAMPSON: Through you, Madam President, would the sponsor continue to yield for questions?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Go ahead, Senator Sampson.

SENATOR SAMPSON: Senator, I just want to -- is this going to be crime specific or when -- it all depends upon the crime or what does it depend upon the judge to ask that you submit to one of these medical examinations?

SENATOR DeFRANCISCO: No, it's not crime specific nor is the underlying bail statute crime specific. It gives the judge the authority to set bail, depending upon the character, depending upon the mental condition, depending upon all the factors that are currently under the statute. And that applies across the board.

SENATOR SAMPSON: And this

wouldn't allow the D.A. to ask for any medical examinations?

SENATOR DeFRANCISCO: No, this is basically something that the judge could ask. And if he does request it, he or she, the judge requests this information, under those circumstances, the Court has to issue an order setting forth the reasons why the Court wants to go into these additional pieces of information, including a mental exam. So there has to be a reason given, not simply the whim of the Court on any particular day.

SENATOR SAMPSON: Thank you.

SENATOR DeFRANCISCO: Which reasons and which court order would be subject to review by a higher court.

SENATOR SAMPSON: Thank you.

THE PRESIDENT: Read the last section.

Excuse me. Senator Duane, why do you rise?

SENATOR DUANE: Thank you, Madam President, would the sponsor yield to another question?

THE PRESIDENT: Senator, do you

yield?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Are the people impacted by this, the defendants, will they be detained while the information is being gathered?

SENATOR DeFRANCISCO: It depends on the judge. Obviously, if the Court has concern over the mental stability of someone and the risk to the individual to himself and to the community, I imagine under certain circumstances they would, they would incarcerate the individual until bail is set.

But you always got to look at the alternative. The alternative, a Court can flippantly make a determination we're going to set the bail at $50,000, where the individual will never have a chance to raise anyway. So there may be a period of incarceration in those situations. But, on the other hand, if the judge doesn't have these tools, the high bail would probably remain anyway.

SENATOR DUANE: Thank you.

Madam President, just if the sponsor would yield to one more question?

THE PRESIDENT: Senator. Do you yield -

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: -- to one additional question?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Go ahead, one additional question, Senator Duane.

SENATOR DUANE: Senator Sampson very appropriately asked the question of how much time this could take, and that is also my, my concern for those people who are detained while the information is being obtained.

It's my understanding that there is nothing in the statute, and I saw nothing which gives a time limit on that. Is that then totally up to the judge's discretion?

SENATOR DeFRANCISCO: That's correct.

SENATOR DUANE: Thank you.

Thank you.

THE PRESIDENT: Read the last

section.

THE SECRETARY: Section 3, this act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 29, by Senator Volker, Senate Print 809, an act to amend the Penal Law in relation to aggravated harassment.

SENATOR VOLKER: Madam President, this bill -

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: -- this bill, Senate Print 809, is a bill that has passed the Senate for the last several years. In '96 or '97, I believe, we passed legislation, Senator Nozzolio and I think Senator Hoffmann and myself, I believe, passed legislation which related to creating an additional crime of aggravated harassment of an employee of an inmate facility, a parole facility or a mental health facility by throwing various bodily

fluids. And we have, in the last couple of years, a probation department pointed out that, of course, in various parts of the state, particularly New York City, that they frequent the correctional facilities also and that the same sort of situation has occurred to them.

So what this bill really does is amend the statute that's already been passed, which would increase the penalty to a class E felony. And, in fact, in certain cases because there's been some confusion, there was some confusion as to whether you could even charge a class A misdemeanor, which is what it would traditionally be thought to be -- there have been a number of prosecutions, by the way, on this issue. And there is a series of potential problems that could occur by this.

In fact, I was one of the targets of one inmate some years ago, and so I'm well aware of how this can happen.

THE PRESIDENT: Senator Duane, why do you rise?

SENATOR DUANE: Thank you. Would the sponsor of the leg -- Madam President,

would the sponsor of the legislation yield to a question?

SENATOR VOLKER: Yes, I will.

THE PRESIDENT: Senator Volker, you do yield?

SENATOR VOLKER: Yes, I will.

THE PRESIDENT: Senator Duane you may proceed with a question.

SENATOR DUANE: Are there statistics on the, on the level of this being a problem, Senator?

SENATOR VOLKER: Well, it's not -- I think some years ago we had -- there was a number of incidents and there has been a growing number of incidents. And, as I think you're well aware of the correctional facilities, both on the state and local level have been -- have had a lot of people in them and, of course, we have set up these -- many of these problems have come in areas that are in secure parts of the prison system, where you have disruptive inmates who, for one reason or another, are breaking rules and have been creating problems. But it has been, certainly it has been an increasing type of

thing over the last few years. I don't have the, certainly, the exact statistics, but there is no question it's been increasing.

SENATOR DUANE: Madam President, if my -

SENATOR VOLKER: I yield.

THE PRESIDENT: Do you yield?

Go ahead, Senator Duane.

SENATOR DUANE: I would, in fact, like to see the statistics on this. But I would ask the Senator if maybe a mental health component might not be more helpful for someone who is the perpetrator of this kind of activity as opposed to incarceration. I think that the throwing of bodily fluids, etcetera, actually indicates not so much a criminal mentality but more of a mental health problem. And I think that that might be the more appropriate way to look at this particular issue.

SENATOR VOLKER: The problem with that is, might I just say, these are not - these are all people that are in jail. Understand, these are incarcerated people. And many of them are under some observation,

they may be under some observation for mental health. But the problem is that, because of the nature of the situation, mental health, there's no penalty in mental health and they are there already under that kind of observation. The problem is that what you're trying to do here is to discourage this kind of conduct. And, as has been said, obviously, it's been a violation of rules forever. But the violation of rules has not done anything to improve this kind of situation. And the feeling is, and I think that given the dangerousness of the situation and the problem that's involved here, the feeling is that making this a felony, which would only probably be used in the most outrageous cases, because, if you know anything about prisons, the prosecutions are not made except on rare occasions, for obvious reasons. They're already there. But on some occasions, you have repetitive people that are repetitively doing this, and there's an attempt to stop this by giving enough of a penalty to make sure that they think twice before they do it.

SENATOR DUANE: And a final

question, Madam President.

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

SENATOR VOLKER: Sure.

THE PRESIDENT: -- for a final question?

Senator Duane, for a final question.

SENATOR DUANE: The -- a class E felony is a pretty big deal. I did hear the Senator say there was some lack of clarity regarding whether or not this was even a misdemeanor. But it just seems that a class E felony seems a little bit extreme for this kind of, you know, terrible circumstance. And I'm just finally wondering why it's been elevated to such a high level.

SENATOR VOLKER: Well, let me just say to you, it's the lowest level felony.

Most of these people that you're talking about here are in state prison. Misdemeanants generally don't go to state prison. They go to the local prisons. The problem is, if you make it a misdemeanor, that they're already in state prison, it's pretty

difficult to sentence them to anything because misdemeanants traditionally go to local prisons. So a D.A., frankly, in a, that has a correction facility, and that means both in New York City as well as in Upstate New York, frankly, doesn't pay much attention to any misdemeanors anyways, because they're not - since somebody is probably already in for a period of time, the D.A.s generally feel that they don't even want to prosecute a misdemeanor for someone in a prison system. So, frankly, that's another problem, and that's particularly true in New York City where misdemeanors traditionally now are - with the volume of, of crimes, if you don't have at least a bare misdemeanor -- a bare felony, usually, won't even get prosecuted.

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Would the gentleman yield?

THE PRESIDENT: Senator Volker, will you yield?

SENATOR VOLKER: Certainly.

THE PRESIDENT: Go ahead, Senator Waldon.

SENATOR WALDON: Senator Volker, we've discussed this and other issues similar to it ad nauseam in committee. And it seemed to me, if I recall correctly the gist of those discussions, that the major concern here is the health of the particular person against whom this activity occurs; meaning someone throws feces on the correction officer, it's just as dangerous to throw feces on the probation officer or other officer.

SENATOR VOLKER: That's right.

SENATOR WALDON: And, if I remember correctly, the concern in the committee was that we wanted to make sure that the health hazard that could result from throwing of these bodily fluids was precluded, intervened or somehow we dealt with it as best as we could under the law.

Is that not correct?

SENATOR VOLKER: That's absolutely correct, Senator. You're absolutely correct.

SENATOR WALDON: One more

question, Madam President.

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

SENATOR VOLKER: Absolutely. Yes.

THE PRESIDENT: Senator Waldon, go ahead.

SENATOR WALDON: And is that the self same driving force in this proposal?

SENATOR VOLKER: Absolutely. It's the self same driving force.

And, as you know, there are a series of potential problems that can occur when this sort of thing happens. And it relates to a whole series of potential diseases and things of that nature that could create serious problems.

SENATOR WALDON: Thank you, Senator.

Thank you, Madam President.

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 55. Nays 1.

Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 72, by Senator Nozzolio, Senate Print 137, an act to amend the Penal Law in relation to a sexual performance by a child.

SENATOR WALDON: Explanation.

THE PRESIDENT: Senator Nozzolio, an explanation has been requested.

SENATOR NOZZOLIO: Madam President, who requested the explanation?

THE PRESIDENT: Senator Waldon requested the explanation, Senator Nozzolio.

SENATOR NOZZOLIO: Thank you. Madam President, Senate colleagues, that this measure before us increases protections of those children under the ages of 18 for the consideration of those who perpetrate criminal activity upon them.

In the definitions used under our

Penal Law, the use of a child in a sexual performance, promoting an obscene sexual, possessing obscene sexual performance materials, promoting a sexual performance, in its sense giving a protections that heretofore were allowed for those individuals 16 years old or under. Now, those same protections will be afforded to children under the age of 18 and under.

SENATOR WALDON: Madam President, would the gentleman yield to a question?

THE PRESIDENT: Senator, do you yield to another -- to a question?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Waldon.

SENATOR WALDON: Senator, under our current Penal Law, is not the age of consent for females 17 for sexual activity?

SENATOR NOZZOLIO: Madam President, what we're trying to do here is to bring a consistency to the inconsistent statutes that exist between the age of consent, the age of majority, the age of

protection, the age of non-protection. That I believe that the statutory requests that Senator Waldon is asking is under the age of 17 for the, that particular crime.

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

THE PRESIDENT: Senator, do you continue to yield?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Waldon.

SENATOR WALDON: Senator, would you please tell me and our colleagues what is the age of consent under the Penal Law for young males to engage in sexual activity?

SENATOR NOZZOLIO: Madam President, I cannot answer that question because I do not know the answer.

SENATOR WALDON: Madam President, may I ask another question of the gentleman?

THE PRESIDENT: Of the gentleman, yes.

Senator Nozzolio, do you yield?

SENATOR NOZZOLIO: Yes, Madam

President.

THE PRESIDENT: Go ahead, Senator Waldon.

SENATOR WALDON: Senator, in your preparation to discuss this, did it come to your mind's eye that perhaps there is a conflict in what you're proposing and the law we already have on the book and, therefore, we should not propose this because of the inherent conflict?

SENATOR NOZZOLIO: Madam President, regardless of what other penal statutes say or don't say, regardless of protections that are afforded or not afforded, I believe that when you are talking about the promotion of the sexual performance of a child under the ages of 16 that, to me, providing additional protections for children under the age of 18, made all the sense in the world. That regardless of whether or not ages are different in other parts of the code, that's something that this Senate should look at, that my concerns are certainly concerns that are those who profit or exploit children should not be allowed to do so. That someone

between the ages of 16 and 18 is extremely vulnerable, that we should not allow their vulnerability to be exploited any further, and that's the point of this statute.

SENATOR WALDON: Madam President, on the bill.

THE PRESIDENT: Senator Waldon, on the bill.

SENATOR WALDON: Thank you Senator.

Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR WALDON: It would be very difficult -- let me rephrase that.

It is very difficult not to vote yes on this proposal simply because it falls under that zone of issues, one of which we discussed yesterday, which are so negative and aberrant in terms of the behavior to the whole of society that we wish to suppress them.

But I think that we're reinventing the wheel here. We have statutes on the book which cover these activities. People grow up and reach a certain age and are responsible under our law for making their decisions. I

think that it is taken care of under our current law and I think there's a redundancy in this proposal.

And because of this inherent conflict and because of the fact that I believe that we have to, at some point in time, say you are responsible for what you do, I am going to oppose this measure and I encourage my colleagues to also vote no on calendar 72.

Thank you, Madam President.

THE PRESIDENT: Thank you.

Senator Duane.

SENATOR DUANE: Madam President, on the bill.

THE PRESIDENT: On the bill, Senator Duane, go ahead.

SENATOR DUANE: There are -- the vast majority of this bill is commendable in spirit and what it is trying to accomplish. I am concerned, however, about the provision 263.11, which says about the person who possesses the obscene material, it says, "He knowingly has in his possession or control any obscene performance which includes sexual

performance by a child less than 18 years of age." And I'm concerned about the burden falling on the person who's viewing it who may not know the age of the person. Not everybody looks exactly what their age is. And I am concerned that someone may be caught in something unintentionally, when what they were viewing, they didn't understand that one of the people performing was of a young age.

The word knowingly is very difficult to define. And the preponderance of the bill is certainly something which I support, but I do remain concerned about someone who may be -- while may be guilty of looking at obscene material is, in fact, innocent of the knowledge that one of the performers is under age.

Thank you, Madam President.

THE PRESIDENT: All right. 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 55. Nays 1.

Senator Waldon recorded in the negative.

THE PRESIDENT: The bill is passed.

That completes the controversial reading of the calendar.

Senator Meier.

SENATOR MEIER: Madam President, may we please return to the order of reports of standing committees?

I believe there's -

THE PRESIDENT: The Secretary -

SENATOR MEIER: -- I believe there's a report of the Rules Committee at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill directly for third reading:

Senate Print 2346, by Senator Saland, an act to amend the Social Service Law, the Family Court Act and the Domestic Relations Law.

Directly for third reading.

THE PRESIDENT: Senator Meier.

SENATOR MEIER: Madam President, I move to accept the report of the Rules Committee.

THE PRESIDENT: All those in favor of accepting the report of the Rules Committee, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The report is accepted.

Senator Meier.

SENATOR MEIER: Madam President, may we please have the third reading of the Rules report at this time?

THE PRESIDENT: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 115, Senator Saland moves to discharge from the Committee on Rules, Assembly Print 962A and substitute it for the identical Senate Bill 2346.

THE PRESIDENT: Substitution

ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 115, by a member of the Assembly Greene, Assembly Print 962A, an act to amend the Social Service Law, the Family Court Act and the Domestic Relations Law.

SENATOR WALDON: May we have an explanation, Madam President?

THE PRESIDENT: Senator Waldon -

SENATOR WALDON: May we please have an explanation?

THE PRESIDENT: -- why do you rise, Senator.

SENATOR WALDON: I hadn't, but I will.

May we please have an explanation?

THE PRESIDENT: Thank you.

SENATOR WALDON: Thank you, Madam President.

THE PRESIDENT: Senator Meier, why do you rise?

Go ahead.

SENATOR MEIER: Thank you, Madam

President. Is there a message of necessity and appropriation at the desk?

THE PRESIDENT: Yes, there is, Senator Meier.

SENATOR MEIER: In that case, Madam President, I move to accept the message of necessity and appropriation.

THE PRESIDENT: All those in favor of accepting the message of necessity and appropriation, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The message is accepted.

Read the last section.

All right. Senator, an explanation has been requested.

SENATOR SALAND: Thank you, Madam President.

Madam President, this bill, which is the Governor's program bill, represents the culmination of some rather frantic negotiations and intense negotiations over the course of the past several weeks. It

effectively incorporates much of what this house had previously adopted or proposed to adopt when we passed in the special session a bill which attempted to comply with the federal Adoption and Safe Families Act. And that's what this is all about, compliance with the federal Adoption and Safe Families Act.

New York is the last state which has not complied. We have been warned that we must be in compliance, notwithstanding the fact that we've passed the cutoff date and there are some approximate $650 million in 4E money, which is foster care money, which is at risk if we are not in compliance.

And let me start off by calling your attention to the legislative intent portion of this bill. And I would suggest that you might want to take a look at page 9 of the bill, because there's some critical language there which I think basically says is that, while this state heretofore had basically -- has as its guiding principle the concept of family preservation, which effectively said at any and all expense you must reunited regardless of what danger the

child is in or however badly abused the child may have been. We start off by saying that "The legislature recognizes" -- and I'm reading at line 38 -- "recognizes that the health and safety of children is of paramount importance."

Now, that effectively, in part, complies us with ASFA, but we go on to do a lot more that helps us to comply with ASFA. For instance, there are fingerprinting requirements. Those fingerprinting requirements say that foster and adoptive parents will be subjected to fingerprinting, they -- adults within their household who are 18 years of age or older will similarly be subjected to fingerprinting. What we're attempting here is to not only insure the safety and health of children but the permanency planning of children. And that's really what this is about, trying to insure that children do not languish in foster care, in effect, ad infinitum, year after year after year.

If, in fact, a perspective applicant is, has a criminal record, certain

crimes dealing with children, certain crimes which are enumerated under the federal statute, including murder, including, I believe, certain assaults, that's, in effect, automatically a disqualification. Other crimes are discretionary. The agency has the ability to make the determination whether or not they're relevant to the suitability of an applicant either as a foster or adoptive parent.

But, in addition, there is, certainly well worth noting, that under Article 10, when issues have arisen with respect to the placement of children, the termination of parental rights, under the existing New York law, it's been virtually impossible to find severe abuse, it's been virtually impossible to make out a case for permanent neglect. What we have done here is to say that, under certain circumstances, you have effectively made out a case, which would do away with the reasonable efforts requirement of reunifying or preserving a family. And those circumstances are aggravated circumstances as defined in the

statute, which include felony sexual abuse of your child, involuntary termination of parental rights of a child, sibling or half-sibling, and if a parent was convicted of murder, manslaughter or violent felony assault where the victim was the child or the child's sibling. And there are consequences that flow from that, effectively, again, doing away with the efforts that are currently required of an agency to make diligent efforts to reunite the family.

And it's important to note that that becomes, once that initial finding is made, it becomes res judicata for all other purposes with respect to that particular child in that particular proceeding.

So these are landmark changes in New York's law, changes that are really long overdue and changes that really, more than anything else, bring a common sense approach to trying to deal with issues that in the past we've basically found ourselves tortuously dealing with. So it's a victory for common sense. And, hopefully, today it's a victory not merely for common sense but for children

who have far too long undergone the most horrid victimization. And we, in effect, found ourselves under the existing law being almost accomplices to that victimization.

SENATOR WALDON: Madam President, would the gentleman yield to a brief question or two?

THE PRESIDENT: Senator, will you yeld to a question or two?

SENATOR SALAND: Yes. Yes, Madam President.

THE PRESIDENT: Senator Waldon, you may proceed.

SENATOR WALDON: Thank you very much, Madam President.

Senator, before I ask the question or two, let me say that I recognize the importance of this passing for our state. I'm extremely sensitive to our children who are sometimes the forgotten class of people in this state but, especially, New York City where we've had heinous crimes perpetrated against them and front page newspaper stories surrounding children who have been left with the families far too long.

I'm concerned, though, about the decision making of the Social Service case worker, and it's the case worker or the supervisor of the case worker who is legend in terms of making the right or the wrong decision, removing the child too quickly or leaving the child or putting the child back in an extremely abusive situation where the child, oftentimes in New York City, has died under these circumstances.

So I want to know what in this bill is appropriated to train the point-of-execution person, the social case worker on the case, in terms of conforming to this law so that we will know that the money's being well spent, that the intent of the law is carried out from the federal perspective and, from what we're discussing here today, that the law will be applied as we wish it applied so that the children are in better hands?

SENATOR SALAND: Thank you, Senator.

Senator, this bill does not, nor is it intended to, deal with the issue of

training for people who are performing services for Social Service agencies. This basically deals with agency determinations and, particularly, judicial, more so judicial determinations. This basically is setting forth certain constructs that deal with permanency planning, which currently you will find under the ambit of either, I believe, Section 358 or 372 of the Social Service Law, makes certain provisions with respect to Section 1039 of the Family Court Act, all of which deal with what happens in court when a child or the petition for the permanency planning or, in turn, the termination of parental rights of the child or of the parent or parents of the child are before the Court.

This does not attempt -- your issue certainly is one of importance, but it's not the venue, this vehicle is not the venue to deal with that issue.

SENATOR WALDON: Okay. One last question, Madam President, if the gentleman would yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Waldon, one last question.

SENATOR WALDON: Thank you very much, Madam President.

Senator, if I remember correctly, when we were briefed on this bill, there's $3.5 million that the state had to put up in order to have this bill implemented.

Two prongs: One, could that not be used for training; and, two, can we not find some flexibility in all of these hundreds of millions of dollars to train? Because, if there's no training, then we'll come back here three or four years from now and the same mistakes being made last year, the year before and the year before that and this year will be made down the road three or four years from now.

SENATOR SALAND: The vast overwhelming amount of that $3.5, if not the entire amount, is to comply with the fingerprinting requirement. The bill provides, and could I give you the section,

that the responsibility for the payment for these fingerprint fees is not on the applicant but it's on, effectively, the State OCFS or in conjunction with DCJS. That money's there to make sure that there's an adequate amount of money for people to be fingerprinting, printed, and there's additional dollars that are part and parcel, some hundred thousand dollars that deals with a study with respect to domestic, domestic violence.

SENATOR WALDON: Madam President, on the bill.

THE PRESIDENT: Senator Waldon, you may proceed on the bill.

SENATOR WALDON: First, Senator Saland, let me thank you for your comprehensive explanation. I think some of us in the room may not have been up to speed on this before you so adequately informed us but now we are.

Number two, I am sincerely concerned about the absence of money to train the people at the municipality level. I think if there is to be success in our receiving this money and making it work on behalf of our

children, there must be a training component. So I would hope that somewhere later in the session we will revisit this issue and appropriate monies to insure the proper training and training which will be up to the standard that we want so that our children will not fall through the cracks as they have all too often in the past.

Thank you very much, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. Would the sponsor yield for a couple questions?

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: First of all, Senator, I too, with Senator Waldon, would just add a compliment to you. I know that these were difficult negotiations in the model

that the federal government sent down to us. And I understand the difficulty both in agreeing with the other house and with the Governor about how this should work.

Let me just ask a couple quick questions about, that really dovetail with the questions I asked in December when we dealt with this bill, through you, Madam President.

First, is there any evidence that you're aware of, a study by the Department of Social Services, either here or in the City of New York, that says that our presumption in favor of families is no longer working in this state?

SENATOR SALAND: The data that we have tells us that foster care placements in this state are averaging approximately four years. Now, as you know, the placements are intended to be short term, they're renewed or reconsidered by the Court on an annual basis. Effectively, what it says is that it's not - what we're currently doing is not working. And the focus of the federal legislation is to try and, basically, remedy the kinds of situations that New York finds itself in. And

I'm sure we're not the only state that finds itself in that situation. And that, in effect, is what has gotten us to this time and place right now.

SENATOR DOLLINGER: Okay.

Again, through you, Madam President, if the sponsor will continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: I appreciate your very good lawyer-like answer to my question. But I'm just trying to find out, is there any specific study that says that the reason why those foster care placements take too long is because of the presumption that we have in our law in favor of families, and the corollary, which you properly point out, which is the need to use diligent efforts to prove to a Court that there have been diligent efforts in an attempt to reunited the family?

SENATOR SALAND: Certainly, the federal legislative history of ASFA, I believe, is sort of replete with the kind of information that I've just offered to you and perhaps more anecdotal information. You may have heard in my earlier remarks, I said that this was at least in part a victory for common sense.

And I can only share with you my experience professionally, as an attorney who has handled these types of issues. Certainly, there are appropriate candidates for family reunification or family preservation. What this bill says is the converse of that is true as well, that there are very inappropriate times when family unification should be what's mandated or required. Quantifying, in terms of cases, I would hazard a guess we could be talking 10, 15 percent of the cases, perhaps, where the situation is such, presents such a great risk for the child or the children, vis-a-vis their health and safety, that we will not and should not return a child to the household from whence it came.

SENATOR DOLLINGER: Correct.

And again through you, Madam President, if I could follow up on that?

THE PRESIDENT: Senator, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: Under current law in this state, we have a mechanism for dealing with those severe cases. It does take some time because there's a requirement that there be diligent efforts used to attempt to reunite the family. But we do have a mechanism set up for the severe cases that you said where there's an imminent danger to the child, where there's abuse of the child. Under the current system, we have a way to deal with those children to make sure that, because we believe in the best interests of the child, that the family is not reunited at the expense of the child.

We do have that in current law; do we not?

SENATOR SALAND: Effectively,

what this does is it shifts the burden from the agency to the parent, because the burden upon the agency to show diligent efforts has been such a burdensome and overwhelming directive imposed upon the agency that there have been very few, notwithstanding the existence of the language providing for severe and abused children, there have been very few successful cases of that particular section of the law resulting in the removal of the child.

SENATOR DOLLINGER: Thank you.

Madam President, just on the bill, very briefly.

I -

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: I appreciate Senator Saland's candor and I appreciate his work on this bill. But I voted against it in December and I'm going to vote against it again.

And, Senator Saland, and I won't even assume that you're doing anything other than describing the law, but I couldn't disagree with that characterization of this

bill more. I couldn't disagree more with the notion that a family has to prove itself innocent in order to be able to stay united. Because it appears as though, and in this bill that's exactly what happened, that big government and big brother, with an enormous big heart, and big government and big brother always come with big hearts, and the big heart here says, "We're concerned about the best interests of the child and what we want to do is we want to put ourselves in a position where the parents of the child have to come in and, in essence, declare themselves to be innocent in order to continue the child to remain united."

And, Senator Saland, I agree that that may not be the full characterization of this bill, but when we eliminate the diligent efforts on government's part, on the part of big brother, we've said government must use diligent efforts before we dismantle families. I think that's only appropriate that government do that before we dismantle families.

It also seems to me -- and,

Senator, again, I don't mean to criticize you for this. This is not your doing. This is, in my judgement, the doing of our friends in Washington, the ultimate big brother, located 400 miles away, filled with people from Kansas and Oregon and Oklahoma who have decided that they know what's best for families in New York. I can't understand why this supposed conservative government that believes in families and that believes in government non-intervention has decided that they're going to intervene in families and they're going to make it easier to take families apart.

Did I miss something in this revolution that took Washington four years ago, this family value revolution, which is now saying, "We're going to make it easier to take families apart"?

What happened?

What went wrong between 1994 and 1997 when they passed this anti-family bill?

I'll conclude with one other thing. I'm astounded that we're at a point where we're going to fingerprint parents.

I remember, at the birth of my three children, one of the greatest things I got shortly after their birth was their footprint. You know, you get that little certificate that says your child's name and you have this big footprint right in the middle of it, little tiny, tiny foot. I've got all three of them locked away in my safe at home. Those are the footprints of my children. And here we are, big government, saying, when you take the footprint of your child, you better take the hand prints of their parents because, if they some day commit a crime, we want to know about that and we want to be able to some day use those fingerprints to decide whether or not they should continue to be parents.

I would submit that our friends in Washington have been overzealous. I think they're telling us to do something -- and, again, I'll go back to the first question I asked Senator Saland. We established a policy in favor of families. If there's a pro-family state in this country, you're living in it right now. We said unification of families,

if you believed in family values, put it into action, put it into your law, make families and preservation of families a preeminent concern, not to the detriment of the child, but make it a preeminent, at least an equally weighted concern as well. This is the pro-family state and this bill we pass today moves us a step back from being a pro-family state.

I know there have been terrible difficulties with foster care parent placements. I know there's terrible abuse that happens in homes. I know that children can be in imminent danger of death or serious physical injury in a home, and it shouldn't happen. And if we had the family courts working, if we had our Social Service system working and doing the right thing, we would drastically cut down on those instances of family deterioration and family danger.

Senator Waldon's absolutely correct, this is a problem that we need to solve by doing what we do now and doing it better and not going to a bill that, in my judgment, doesn't weigh with diligent efforts

to keep the families together. And, frankly, in a time when I thought we were moving to favor families and strengthen them and bring them back together, because we all understand that's where you learn your values, that's where you get your education, that's where you get your view on life. For all of those reasons, we should keep families together.

This bill, to the extent it moves in the opposite direction, without any evidence to support it, other than Senator Saland said there's episodic information, there's anecdotal information, there may be as many as 15 percent of the cases, I accept that, Senator. My anecdotal information, my episodic information is exactly the same, but I don't think we should change the policy of this state, this pro-family policy, on the basis of our gut reactions to a problem. Before we change it, we should do a better job than that.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, Madam President, on the bill.

THE PRESIDENT: On the bill. You may proceed.

SENATOR SCHNEIDERMAN: I've had discussions with some of my colleagues about this over the last few hours as we've been reviewing these materials, and I certainly consider myself to be as pro-family as anyone else. But in my view and in my district and, certainly, in the City of New York, there are a lot of families that are a grandparent caring for a child, that are adoptive parents caring for a child, that are a sibling caring for a child. And I intend to vote in favor of the bill because I know the difficulty with the presumption that the natural parents are the only people who can form a family with a child. And I think that is a detriment to moving children out of difficult situations.

So I certainly support my colleague's efforts to make us the most pro-family of pro-family states, but in my life and in my world, I think I lost the footprints to my children during the divorce. So I'm not as used to the functional family situation that prevails in the happy lands of

Monroe County, perhaps.

I know there are a lot of different family situations that can work if we will allow them to work. And based on my own experience with a case in family court in New York, I think the presumption, decades old, that the natural parents are the only people that can provide a family, is something we do need to revisit and I intend to support the bill.

THE PRESIDENT: Senator Saland.

SENATOR SALAND: Thank you, Madam President.

Senator Dollinger in his remarks, I jotted this down, said, "What have I missed?" And I assume that's a question. And notwithstanding his passion, I'd like to share with him what I think he may have missed.

Number one, he doesn't have to fear being fingerprinted or his child being fingerprinted if, in fact, he is expecting to become a parent. There's nothing in this bill that requires a parent to be fingerprinted. So if, for whatever reason, that troubles you, you do not have to do it and there's not a

parent anywhere that has to do it.

All that this bill requires is that a foster care or adoptive parent applicant be fingerprinted. Again, going to health and safety. Do you want to place a child with a person who has a criminal record of violence or who, in fact, is a danger to that child, reasonably expected to be based on that criminal record?

But you don't have to worry about being fingerprinted. So you missed that.

Let me suggest something else that you missed. You talked in terms of diligent efforts. Is it really an onerous change in the burden of proof when you have a parent who has sodomized or raped his three year old to say that the state should not be require - should be required or should no longer be required to go through diligent efforts to reunite that family? Because what we're talking about here are extreme cases. When you have a situation in which a parent has murdered the sibling of a child, should the state have to show that it must make diligent efforts to reunite and preserve that family?

Because that's what you're requiring here.

When the state finds itself in a situation where involuntarily, not voluntarily, involuntarily, the rights of a sibling or half-sibling have been terminated, should they then have to go through the whole exercise again? The parent will still have his or her right to be in court and to say why they should continue. But what we're doing is burden shifting. And burden shifting, in a way, again, that I would submit to you, makes common sense. Burden shifting, in a way that, given the particulars and given the limited examples that we're using here, and these are limited and defined in statute, we're not talking about the immediate world, we're not talking about each and every case, we're talking about the most egregious, the most offensive, the most heinous of cases in which a child, more often than not, has been brutalized. Should the state have to then go through, in the name of being pro-family, an exercise to show why that rapist, that sex offender, that murderer should have the right and should, in fact, be the subject of an

effort of diligent efforts by to the state to make sure that it stays together? They can still come into court, they could still have their day in court, should they want their day in court, but the state no longer has to prove diligent efforts. I don't consider that to be, nor do I think many people would consider that would be, given the way this has been framed, a horrible burden or a denial of anybody's rights. I think they would consider it to be, certainly, a very wise policy exercise on the part of this state and a wise policy exercise that effectively says the health and safety of children are paramount.

We still believe that there is appropriate places for family preservation and unification, but where the health and safety of a child is jeopardized, that comes first.

That's all we've done here.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 58, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55. Nays 1.

Senator Dollinger recorded in the negative.

THE PRESIDENT: Senator Bonacic.

SENATOR BONACIC: Madam President -

THE PRESIDENT: The bill is passed.

Go ahead.

SENATOR BONACIC: May we please return to the reports of the standing committees?

I believe there's a report of the Aging Committee at the desk.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Maziarz, from the Committee on Aging, reports:

Senate Prints 461, by Senator Holland, an act to amend the Vehicle and Traffic Law;

811, by Senator Maziarz, an act to amend the Real Property Law;

1836, by Senator Farley, an act to

amend the Education Law.

All bills directly for third reading.

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

Senator Bonacic.

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

THE PRESIDENT: No, there is not.

SENATOR BONACIC: There being no further business, I move we adjourn until Monday, February 22nd, at 3 p.m., intervening days being legislative days.

THE PRESIDENT: On motion, the Senate stands adjourned until Monday, February 22nd, at 3 p.m., intervening days being legislative days.

Have a good break.

(Whereupon, at 12:25, the Senate adjourned.)