NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:08 p.m.

REGULAR SESSION

SENATOR PATRICIA K. McGEE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: The Senate will come to order.

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

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

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

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

ACTING PRESIDENT McGEE: Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 6, the Senate met pursuant to adjournment. The Journal of Saturday, March 4, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT McGEE: 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.

SENATOR SKELOS: Madam President, if we can just hold up a second for Senator Lack.

Madam President, if we take up with reports of standing committees.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nominations.

As a Judge of the Family Court for the County of Chemung, David M. Brockway, of Horseheads.

ACTING PRESIDENT McGEE: Senator Lack.

SENATOR LACK: Thank you, Madam President. It's my pleasure to rise to move the nomination of David M. Brockway of Horseheads as a judge of the Family Court for the County of Chemung.

Judge Brockway appeared before the Judiciary Committee this morning. His

credentials have been vetted by the staff of the committee. They've been found eminently satisfactory. After questioning by the committee this morning, he was unanimously - unanimously with one negative vote, sorry - referred to the floor of the Senate for consideration this afternoon.

And it is my pleasure to be able to yield to -- where is Senator Kuhl? Well, to Senator Kuhl, if he was here.

But in the meantime, why don't I spend a moment and give you somewhat of the resume of Judge Brockway, who has been an assistant public defender, assignment to the city court judge, village court judge in Chemung County. He has been voted New York State's Magistrate of the Year. He also, in 1999, issued Brockway's Bench Book for Local Courts, and indeed is one of the most eminent local jurists in the state.

The Governor is certainly to be congratulated for sending his nomination to the Senate as a judge of the Family Court.

In addition, he has had a wide range of community activities, including being

president of the Kiwanis Club of Horseheads, involved with the Indian Guides and YMCA programs in his area. And he is indeed a welcome addition to the Family Court of the State of New York.

One moment.

Madam President, I would most respectfully yield to Senator Kuhl.

ACTING PRESIDENT McGEE: Senator Kuhl.

SENATOR KUHL: Thank you, Madam President.

ACTING PRESIDENT McGEE: You're welcome, Senator.

SENATOR KUHL: And thank you, Senator Lack. Thank you, colleagues, for indulging my delay.

As a matter of fact, I was not only working on school aid, but I was having a conversation with the Majority Leader. The Majority Leader was so enthralled and excited about the qualifications of this candidate that he said, "I'll be right into the chamber also." So I expect him to be following right along behind me.

So it's my great pleasure, as I indicated -- and here is the Majority Leader to also support this candidate and another candidate.

Anyway, it's my pleasure to stand up here on the floor of the Senate and recognize Dave Brockway. David Brockway is one of those individuals who has really known what he's wanted to do for a long time, and that was to work his way up the judicial ladder and provide service to our community.

He's done that in a variety of different ways. But most importantly, he has really toiled in the trenches. He's been a justice in a village justice court for the last 19 years and a practicing attorney at the same time. And certainly he's seen it all - not only family confrontations, but the actual criminal aspect.

And the Family Court judge in Chemung County really wears several hats. Not only do they deal with Family Court matters, but from time to time they sit as acting Supreme Court judges, the County Court judge. And they do it all.

So he comes probably as well qualified for this appointment to this position as any judge to any position ever has. It's my great privilege to be able to be here and support his nomination and ask that it be moved, Madam President.

Thank you.

ACTING PRESIDENT McGEE: The question is on the confirmation of -- Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. I rise to address the nominee and the Chairman of the Judiciary Committee.

During this morning's deliberations, I made a statement before the Judiciary Committee of why in committee I voted against this nominee and the other two.

I took to heart, frankly, the comments made by Senator DeFrancisco, Senator Kuhl, and Senator Lack, the chair of this committee. And even though, frankly, I'm still not happy with what happened in Rochester -- and I understand Senator Lack's comments about the reevaluation of the Family

Courts in this state -- and I'm still not happy with the Governor's veto of the two Family Court judges that Senator Alesi, Senator Nozzolio, Senator Maziarz and I worked so hard to put into effect, I'm convinced that my strong protest of what the Governor did shouldn't find its outlet in my voting against these nominees on the floor.

And so despite my vote in the committee against these nominees as a protest against the Governor's veto of the Family Court bill, and as a protest for the lack of a coordinated plan to deal with the Family Court problem we all acknowledge exists in this state -- one that I am still going to continue to pester the second floor, pester the members of this chamber to try to resolve, and one that I know the Chairman of the Judiciary Committee is both well aware of and on his way to a solution -- I believe it would be unfair to these nominees, despite my strong protest, to vote no. So I will be voting yes in favor of these nominees.

I continue to say, as I have said repeatedly on this floor, the nominees for the

Family Court, as the nominees for the other judgeships in this state, have been of top quality and have been topnotch. The three we have today continue that tradition. I want my colleagues to know that I was swayed by their words. I will not stop my advocacy for the Family Court judges and a solution to the Family Court problem in Monroe County, but I will vote in favor of all three of these nominees and wish them good luck.

ACTING PRESIDENT McGEE: Thank you, Senator Dollinger.

The question is on the confirmation of David M. Brockway, of Horseheads, as Judge of the Family Court for the County of Chemung. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: David M. Brockway, of Horseheads, is hereby confirmed as Judge of the Family Court of the County of Chemung.

The Honorable Judge Brockway is in

the gallery with us today and is joined by his wife, Barbara, and his children, Matthew and Kelly.

And on behalf of the Senate of the State of New York, we welcome you to our chambers for this very delightful occasion.

(Applause.)

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: As a Judge of the Family Court for the County of Onondaga, Martha Walsh Hood, of Marietta.

ACTING PRESIDENT McGEE: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise once again to move the nomination of Martha Walsh Hood, of Marietta, as a Judge of the Family Court for the County of Onondaga. We received the nomination from the Governor. Her credentials were found to be very satisfactory by the committee. She appeared before the members of the committee this morning and was moved to the floor for consideration at this time.

And I would most respectfully yield the floor for purposes of a second to Senator DeFrancisco.

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: I rise to second the nomination of Martha Walsh Hood.

And it's just wonderful that we will have a female Family Court judge in Onondaga County. It's wonderful that she happens to be a member of one of the most outstanding families in our community, that has years and years of public service. And she is following that outstanding tradition.

But it's not really because of either of those reasons that I rise, although they're very admirable and very important. Martha Walsh Hood is an excellent attorney who has served her clients well. She's been in the trenches handling the most difficult cases for indigent clients, and also for women and children in the Family Court, and she has done an outstanding job in that regard. She understands their problems, she understands the needs of attorneys who practice in Family

Court.

And, most importantly, she is a person of utmost integrity and a person of class.

And I really am very, very proud that she's a constituent of mine. And I'm very, very proud that she's going to serve all the people of Onondaga County, and she will serve as an outstanding Family Court judge.

ACTING PRESIDENT McGEE: The question is on the confirmation of Martha Walsh Hood, of Marietta -- I'm sorry, Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Madam President.

I too would like to rise to second the nomination of Martha Walsh Hood. She resides in the Senate district represented by Senator DeFrancisco, but it's within the County of Onondaga, and I have enjoyed the experience of watching this very talented young woman as a legislator, as a member of that very distinguished family that is known for its dedication to public service now for two generations.

And it would be inappropriate for me to let this moment go by without saying how happy I am to welcome her to this Capitol chamber today and to congratulate her and her family on this most distinguished position. I too know that she will serve with great, great vigor, and she will bring a most important and meaningful perspective to the Family Court of Onondaga County.

ACTING PRESIDENT McGEE: Thank you.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President.

Madam President, I rise to echo the comments of Senator DeFrancisco and Senator Hoffmann on this excellent appointment to the bench. That I certainly have been honored to be connected to the Walsh family, as one who was brought into politics by Bill Walsh and worked with the Walsh family.

And I know the entire Walsh clan is extremely proud of the wonderful accomplishments of this fine nominee. I add my support and congratulations on this

excellent appointment.

ACTING PRESIDENT McGEE: Thank you, Senator.

The question is on the confirmation of Martha Walsh Hood, of Marietta, as a Judge of the Family Court of the County of Onondaga. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: Martha Walsh Hood, of Marietta, is hereby confirmed as Judge of the Family Court of the County of Onondaga.

She is joined in the gallery by her husband, Paul, and her children, Allison and Sean.

May I take this opportunity to welcome you to the Senate chambers on this very joyous occasion, and to say congratulations to you on behalf of the Senate and the State of New York.

(Applause.)

ACTING PRESIDENT McGEE: The

Secretary will read.

THE SECRETARY: As a Judge of the Family Court for the County of Saratoga, Gilbert L. Abramson, of Halfmoon.

ACTING PRESIDENT McGEE: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise once again, this time most happily, to move the nomination of a member of the Senate's own family, Gilbert L. Abramson, of Halfmoon, as a judge of the Family Court for the County of Saratoga.

His credentials were examined very scrupulously by the staff of the committee, including his work for the past 12 years in the Senate, and found to be eminently satisfactory. He appeared before the committee this morning, and with the exception of saying some nice things about Senator Saland, was virtually very nicely approved by the committee and moved to the floor of the Senate for consideration this afternoon.

And it is with great pleasure and with a great deal of respect that I yield for

purposes of a second to the Majority Leader, Senator Bruno.

ACTING PRESIDENT McGEE: Senator Bruno.

SENATOR BRUNO: Thank you, Madam President. Thank you, Senator Lack.

I am very proud and honored that I can stand here and speak on behalf of a very distinguished constituent of the 43rd District, residing in Saratoga, the town of Clifton Park. And it's doubly a pleasure because we've heard about other qualified people to serve in the Family Court, which I think is one of the most sensitive and important courts in this state.

And Gil comes with a background that is second to none, having learned from his mentor, Steve Saland. And Steve, I think, when he stands up, will probably say the reverse, that he learned greatly. But together, they made a team. And there isn't any law in this state that has affected children or families that Gil has not been instrumental in helping to formulate.

And his wife, Beth, is here, and I

know she's very proud, and his son, Josh, other members of his family. And I am proud to rise and speak on behalf of Gil Abramson, one of our constituents and, again, a person that I am very proud to be here supporting.

ACTING PRESIDENT McGEE: Senator Saland.

SENATOR SALAND: Thank you, Madam President. I rise, perhaps with mixed emotions, but really with the greatest of pleasure.

Let me just tell you, Gil, that you almost blew this, because Senator Bruno said, "We're letting him go?" So let that be fair warning to you that what Senator Bruno had to say truly came from the heart and his knowledge of your performance.

What can I say about an extraordinarily fine and decent human being who has served not merely ably but extraordinarily well as counsel to the Senate Children and Families Committee -- a man who has been a source of strength and knowledge to me, as the chairman of that committee, and perhaps beyond that, a man who has just been a

wonderful friend.

I can think of nobody who brings to the bench a greater wealth of knowledge and background than does Gil Abramson. And that certainly is not to take anything away from the fine people whose nominations have been moved immediately before his. It's just that Gil has been so keenly and materially involved. Whether it be child support, child abuse, domestic violence, he's been at the table, he's been the one who has been part and parcel of negotiating the bills that ultimately were signed into law.

He's the one who, as he mentioned during the course of his comments a bit earlier, who on more than one occasion has been asked by a judge, when he has appeared in court in Saratoga County, "Well, what was the legislative intent?" And certainly nobody would know it any better than he.

But beyond his superb intellect, beyond his great ability -- and certainly those abilities will serve you well, as will your legislative experience here in the course of hammering out agreements from the bench -

the enormous wisdom and perhaps the judicious nature are something which he's been blessed with, something which I'm sure his parents are most proud of, and certainly his wife and son, Josh, are extraordinarily proud of.

I can only say, Gil, that in order to somehow or other puncture the specter of perfection, the bench will require you to be there in a timely fashion, and you will have to move your cases in a timely fashion, Gil. But I'm sure you will be up to that somewhat difficult task.

I will miss you and your counsel terribly, but it's for a far greater cause. I congratulate you, Beth, your parents, your family, your son, Josh. And may you be as capable and as exemplary of a judge as you have been a counsel. God bless you.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Thank you, Madam President.

I'm delighted to rise and support the confirmation of Gil Abramson as a judge of the Family Court. Throughout the years -

and, Steve, we agree: He taught you.

SENATOR SALAND: No question about it.

SENATOR SKELOS: But he's taught you well.

And you have taught many of us in this chamber that have dealt in the areas of, obviously, child abuse, orders of protection, adoption.

So much of the legislation in this state concerning families should be named after you, because you put your expertise, you put your everyday experience, and you put your love of the law behind the effort in making all the legislation that we pass concerning family offenses, family law on the books.

And we are going to miss you. I know that Steve, not only from a governmental point of view but also a personal point of view, is going to miss you on a daily basis. But your expertise, your institutional knowledge is going to be missed by the entire Senate chamber.

We salute the Governor on this appointment, and certainly the confirmation

which is to come, and certainly we look forward to wonderful decisions that will be directing or indicating to the Legislature that you should maybe do this, or you should maybe do that, or we were wrong in doing something. But we look forward to them because we know they will be well-reasoned and in the best interests of the people of the state of New York.

God bless you in your new endeavor, Gil.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Madam President, as you will appreciate, our time in the Assembly was a lot of fun. But possibly the best aspect of being in this house is the ability to stand up and talk about an appointment of a friend and a colleague.

The year was 1985, and Senator John Dunne took up the issue of surrogate parenting. And he said, "You know, we ought to go talk to Mary Goodhue. She's the chair of the Children and Families Committee, and I want to set up a meeting with her counsel."

So I'm young, enthusiastic, and know nothing -- some might argue that not much has changed in 15 years -- and I go over and I meet Harry Love, who to this day I think is probably the best-named advocate on behalf of children in this state, and Gil Abramson. And here comes this gentle, methodical -- not intense, but someone who, when he levels his gaze at you, you feel like, Uh-oh, I've done something really bad, or I've hit on something right.

We were charged with trying to draft a surrogate parenting bill to deal with this tremendously controversial issue. And I can remember one particular Sunday afternoon, Gil and I go and we hole up, I think it was in our conference room in John Dunne's office, and were there for five or six hours, going over the provisions that we wanted to draft for the bill.

And I, of course, am rushing and saying, "Well, why don't we do this?" And "Why don't we take this provision?" And he looks at me and he says, "Well, wait a minute. Have you checked this case?" And he pulls out

a tome of cases. Or, "Have you looked at this statute? How about this regulation?" After about five hours of this, I wanted to strangle him. And at that point in time he wouldn't have been a judge, and I wouldn't have been a Senator.

Gil and I continued our relationship through that process, and I came to understand that he also had -- he was also a practitioner. He practiced in this area.

And the most extraordinary thing about Gil Abramson is his effect on children and his understanding of the effect on children of divorce, of matrimonial difficulties, of the unrest in a family. It is amazing to me that with all the cynicism out there, that the process works.

Ladies and gentlemen, the person who we send to the Family Court, I cannot imagine anyone more qualified, better prepared, or with a better understanding of the human condition, particularly that of a child, than Gil Abramson. I've watched it countless times. It is such a privilege to be able to stand here as a member of this body

and to say, ladies and gentlemen, job well done, we have been well served.

And I know that you're going be very well received when you go to the bench. God bless you, Gil.

ACTING PRESIDENT McGEE: Senator LaValle.

SENATOR LAVALLE: Thank you, Madam President.

I think the tone has been right here, that we have, one, lost a very valued staff member in the Senate, one who has provided his expertise to the chair of the Committee on Children and Families, who has interacted with us individually on our pieces of legislation that have come before the committee.

But if there is ever clearly an individual who's going to the Family Court who has the right demeanor to be in that court, who has patience, knowledge, who has a good deal of heart and caring about the people that will be coming into that court -- and for those who have not been in Family Court, some of the toughest, most difficult cases come

into that court and require someone to really look at, very carefully, the issues of whether a parent who comes before the court who wants to give up custody of their child, whether that is indeed a right decision, a major decision -- or those that come in abused. Gil Abramson really will have all of those qualities.

There is something else, that we have made major changes to the Family Court Act that Gil has guided through as counsel. I'm just wondering, Senator Saland, how many times Judge Abramson will be penning a letter that maybe we moved a little bit too quick on this issue or that, and we need to do a little fine-tuning. But that's all right, because we will have had the input of someone who will be out there knowing what the legislative intent was and whether it's working right.

As everyone has said, Gil, a job well done. We know you're going to do a great job. And God bless you.

ACTING PRESIDENT McGEE: The question is on the confirmation of Gilbert L. Abramson, of Halfmoon, as a Judge of the

Family Court for the County of Saratoga. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: Gilbert L. Abramson, of Halfmoon, is hereby confirmed as a Judge of the Family Court for the County of Saratoga.

Judge Abramson is joined in the gallery by his wife, Betty; son, Joshua; parents, Sidney and Shirley Abramson; brother, Clifford; sister-in-law, Karen Messinger.

On behalf of the State of New York and the New York State Senate, we welcome you on this joyous occasion.

(Applause.)

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Senator McGee, from the Committee on Alcoholism and Drug Abuse, reports:

Senate Print 1093, by Senator Nozzolio, an act to amend the Vehicle and

Traffic Law;

2029, by Senator Fuschillo, an act to amend the Vehicle and Traffic Law;

2031, by Senator Fuschillo, an act to amend the Vehicle and Traffic Law;

2032, by Senator Fuschillo, an act to amend the Vehicle and Traffic Law;

2064, by Senator Nozzolio, an act to amend the Vehicle and Traffic Law;

And 4822, by Senator McGee, an act to amend the Vehicle and Traffic Law.

Senator Lack, from the Committee on Judiciary, reports:

Senate Print 6744, by Senator Lack, an act to amend the Judiciary Law and the Penal Law.

Senator Hannon, from the Committee on Health, reports:

Senate Print 1488A, by Senator Marchi, an act to amend the Public Health Law;

4765, by Senator Hannon, an act to amend the Public Health Law;

5088, by Senator Hannon, an act to amend the Public Health Law;

And 6729, by Senator Marcellino, an

act to amend the Public Health Law.

Senator Trunzo, from the Committee on Transportation, reports:

Senate Print 3588, by Senator Libous, an act to amend the Highway Law;

6484, by Senator Marchi, an act to amend the Vehicle and Traffic Law;

6673, by Senator Bonacic, an act to amend the Highway Law;

And 6724, by Senator Trunzo, an act to amend the Transportation Law and the Vehicle and Traffic Law.

Senator Morahan, from the Committee on Veterans and Military Affairs, reports:

Senate Print 913, by Senator Larkin, an act to amend the Education Law;

5838, by Senator Morahan, an act to amend the Military Law;

5861, with amendments, by Senator Morahan, an act to amend the Military Law;

5882, by Senator Farley, an act to amend the Vehicle and Traffic Law;

5885, by Senator Morahan, an act to amend the Military Law;

6310, by Senator McGee, an act to

amend the Highway Law;

6437, by Senator Morahan, an act to amend the Military Law;

6438, by Senator Morahan, an act to amend the Vehicle and Traffic Law;

And 6511, by Senator Morahan, an act to amend the Real Property Tax Law.

All bills ordered direct to third reading.

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

Reports of select committees.

Communications and reports from state officers.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Maltese, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Print Numbers 159, 714, 2161, 3700, and 5233.

ACTING PRESIDENT McGEE: So

ordered.

Senator Skelos.

SENATOR SKELOS: May we please adopt the Resolution Calendar, with the exception of Resolution 3252.

ACTING PRESIDENT McGEE: All in favor of adopting the Resolution Calendar, with the exception of Resolution 3252, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privilege resolution at the desk by Senator Trunzo. May we please have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Legislative resolution by Senators Trunzo and Bruno,

memorializing the New York Congressional Delegation to exhort the President of the United States to restore federal funding for highway and bridge projects in New York.

"WHEREAS, Congress in 1998 adopted the Transportation Equity Act for the 21st century for highway funding (TEA 21); and

"WHEREAS, the reauthorization legislation clearly stated that all gas tax revenues will be preserved for transportation improvements; and

"WHEREAS, The legislation provided that should tax revenues be higher than anticipated, each state would receive a proportional share of the surplus.

"The President, in releasing his fiscal budget proposal for 2001, has diverted from all fifty states $1.3 billion from the Highway Trust Fund, thereby reducing New York's share of highway funding by nearly $67 million, which is the third largest reduction among all states; and

"WHEREAS, The State of New York is expected to adopt a five-year Transportation Plan for highway improvements, the State of

New York is vitally concerned about the impact of losing nearly $67 million in highway funds; and

"WHEREAS, This Federal Highway Program was designed to assist states in maintaining safe and efficient highways; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to memorialize the New York Congressional Delegation to exhort the President of the United States to comply with the 1998 legislative formula for highway funding and to restore $67 million in funding for New York; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the New York Congressional Delegation, including United States Senator Daniel Patrick Moynihan and United States Senator Chuck Schumer."

ACTING PRESIDENT McGEE: The question is on the resolution.

SENATOR CONNOR: Madam President.

ACTING PRESIDENT McGEE: Senator Connor.

SENATOR CONNOR: On the resolution.

Madam President, I have several problems with this resolution, one of which is it just came out immediately, and I have had no way in the last ten minutes of ascertaining, number one, the accuracy of figures in here, the $1.3 billion and New York's share of $67 million.

I further object to this resolution on the grounds that, frankly, I think some of its language is inappropriate and misconstrues what was proposed. We're talking about the President proposing his budget. Ostensibly, it would result in this cut of TEA 21 money. Now, number one, I think the resolution is not accurate when it says that the 1998 legislation said that the excess gas tax would go into the Highway Fund.

In fact, my learned counsel points out that with respect to the Highway Trust Fund, it provides that at that time any excess amounts more than $8 billion cash balance in the Highway Account will be transferred to the General Fund; i.e., once you get over that

amount in excess receipts of gas tax, there is no requirement that it go into the TEA program.

Be that as it may. I think it may be a good idea to put it there. The fact is that language in this resolution talks about the President's failure to comply with an old law. Well, he's no more in failure of compliance in making a budget proposal than Governor Pataki is when he proposes a budget that cuts TAP. That doesn't mean he's out of compliance with last year's law. Part of the process is the Executive proposes and the Legislature disposes.

And I think the thrust of this resolution is really wrong. The President is presenting his budget proposal. To memorialize the Congressional delegation to exhort the President to do something is misdirected. We ought to be directing this resolution toward memorializing our Congressional delegation to get the Speaker of the House of Representatives and the Majority Leader of the U.S. Senate, such big spenders as they are, to restore the money and reject

the President's proposal.

Even as I certainly trust -- and let me say, Madam President, we know, we know in New York we have a serious crisis with respect to bridges and highways. A study in 1999 by the University of North Carolina, Professor Harkin, indicated New York's highway and bridge needs are among the highest in the nation. His study found that 9.3 percent of state-owned roads were in very poor condition and that New York -- that New York State's 17,388 highway bridges were ranked 43rd in the nation in deficiencies and would require $10.7 billion in order to make the necessary repairs. And, by the way, our traffic grew 13 percent in the last -- between 1990 and 1997, in preparation for that study.

So no one doubts that we have a grave need here. The disappointment is, frankly, that Governor Pataki has made essentially a flat budget proposal with respect to bridges and highways. This year it totals $1.6 billion, basically things that were already authorized and now are coming on line. Woefully inadequate. Indeed, there are

estimates that -- and, by the way, the Governor's proposed five-year program is $14.3 billion. But every expert that's looked at it says we have a need more on the order of $26 billion.

That's why all those folks were up here about two or three weeks ago criticizing the fact that the Governor won't put enough money into bridges and highways to meet New York's infrastructure needs and, indeed, to prepare New York for economic recovery and growth in the future.

So yes, there's a problem with bridges and tunnels. A big part of the problem is here right here in this Capitol, Madam President, right here in this Capitol with this Governor's proposal. And I'm not happy if there will be a $60 million cut in TEA 21 funds. We don't know that to be true, since we haven't had time to make necessary inquiries in Washington, and this just came out.

But, secondly, let's do something effective in Washington. Let the Majority here call Speaker Hastert and Trent Lott and

say, Put that money back in. That's how the budget process -- even as I'm saying to the Majority here, put that money back in New York State's budget.

This is just press-release rhetoric, exhorting the President to somehow or other modify the budget he's already proposed. Let's go to Congress and say, Do something about it yourselves. Get the leadership in both houses down there to put more money into bridges and tunnels, rather than decry that the President's made a proposal.

Frankly, I think it's mischaracterized it to say it doesn't comply with existing law. Everybody's budget proposal this year doesn't comply with last year's provisions. That's what a budget process is about.

So I'm going to vote no on this under the circumstances, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator.

Any other Senator wishing to speak on the resolution?

The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Velella.

SENATOR VELELLA: Madam President, may we now go to Senate Resolution 3252, by Senator Smith, and have the resolution read.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Smith, Legislative Resolution Number 3252, memorializing Governor George E. Pataki to proclaim March 16, 2000, as "Hunger Awareness Day" in the State of New York.

ACTING PRESIDENT McGEE: Senator Smith.

SENATOR SMITH: Thank you, Madam President.

I would like to give everyone in

the chamber the opportunity to be a cosponsor on this resolution.

ACTING PRESIDENT McGEE: Senator Velella, Senator Smith would like to open this resolution up for cosponsorship. Could we please put everybody on the resolution. Anyone who does not wish to do so should notify the desk.

The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

The resolution is open for cosponsorship. Everyone will be put on the resolution. If you do not wish to be put on it, please notify the desk.

Senator Velella.

SENATOR VELELLA: Madam President, may we now go to the noncontroversial calendar.

ACTING PRESIDENT McGEE: The

Secretary will read.

THE SECRETARY: Calendar Number 83, by Senator McGee, Senate Print 4314A, an act to amend the Town Law, in relation to the settlement of claims by certain towns.

ACTING PRESIDENT McGEE: Read the last section -

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT McGEE: Lay it aside.

THE SECRETARY: Calendar Number 90, by Senator McGee, Senate Print 6276A, an act in relation to the dates during which a public hearing may be held.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number

96, by Senator Trunzo, Senate Print 1708, an act to amend the Public Health Law, in relation to public notification.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 135, by Senator Nozzolio, Senate Print 4464A, an act to amend the Vehicle and Traffic Law, in relation to reporting of motor vehicle accidents.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 60 days.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 175, by Senator Padavan, Senate Print 1803 -

SENATOR SMITH: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 188, by Senator Libous -

SENATOR PATERSON: Lay it aside.

THE SECRETARY: -- Senate Print 2088, an act to amend the Real Property Tax Law, in relation to including cooperatively owned dwellings.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 191, by Senator Seward, Senate Print 6171, an act to amend the Real Property Tax Law, in relation to interest on late installment payments.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date and in the same manner as Chapter 447 of the Laws of 1999.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 198, by Senator Farley, Senate Print 1541, an act to amend the Public Health Law, in relation to expanding the definition.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number

266, by Senator Volker, Senate Print 745, an act to amend the Real Property Tax Law, in relation to a taxing district's obtaining.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 278, by Senator Lack, Senate Print 3103, an act authorizing the State University of New York to lease and contract.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 279, by Senator Rath, Senate Print 126, an act to amend the Public Health Law, in relation to expanding the network.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 285, by Senator Stafford, Senate Print 6357, an act to amend the Environmental Conservation Law, in relation to county responsibility.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 347, by Senator Saland, Senate Print 2752, an act to authorize the City School District of the City of Poughkeepsie.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 350, by Senator Kuhl, Senate Print 6681, an act to amend the Education Law and the Penal Law, in relation to violent and disruptive incidents on school grounds.

ACTING PRESIDENT McGEE: Read the

last section.

THE SECRETARY: Section 3. This act shall take effect July 1.

ACTING PRESIDENT McGEE: Call the roll.

SENATOR MONTGOMERY: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

Senator Velella, that completes the reading of the noncontroversial calendar.

SENATOR VELELLA: Madam President, can we have the reading of the controversial calendar now.

ACTING PRESIDENT McGEE: The Secretary will read.

SENATOR VELELLA: Can we go to Calendar Number 188.

ACTING PRESIDENT McGEE: The Secretary will read, beginning with Calendar 188.

THE SECRETARY: Calendar Number 188, by Senator Libous, Senate Print 2088, an act to amend the Real Property Tax Law, in relation to including cooperatively owned

dwellings.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

Calendar 175. The Secretary will read.

THE SECRETARY: Calendar Number 175, by Senator Padavan, Senate Print 1803, an act to amend the Criminal Procedure Law, in relation to defense of guilty but mentally ill.

SENATOR ONORATO: Explanation.

ACTING PRESIDENT McGEE: An explanation is asked for, please, Senator Padavan.

SENATOR PADAVAN: Thank you, Madam President.

This is the eighth time this body

has considered this legislation -

Senator Paterson has his hand up.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Senator Padavan, would you yield for a question?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: I guess it's the eighth time it hasn't -

SENATOR PADAVAN: I think we need a little order up here, Mr. President. Senator Paterson is right in front of me, and I can't hear him.

ACTING PRESIDENT MEIER: That's because he's not talking, Senator.

(Laughter.)

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

SENATOR PATERSON: Mr. President, if Senator Padavan would yield for a question.

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: Senator Padavan yields.

SENATOR PATERSON: I thought that in Senator Padavan's first sentence I could have an objection to this bill. And he says that this is the eighth time we've discussed it. Well, Senator Padavan, isn't it true that this is the eighth time it hasn't become law?

SENATOR PADAVAN: That's true. We passed it on seven previous occasions, the first being 1978. However, the other house has declined to consider it, either in committee or on the floor.

In any event, Mr. President, I think an explanation was asked for. And while most of you, if not all of you in this chamber, you've heard it probably several times, what we provide for in this proposal is an alternative to what now are two options in the law.

One is if someone who has been arrested, having committed a terrible act, a violent act, in pretrial, and before reaching any point in the trial, it is determined that there is some level of insanity, a mental defect, a decision can be made currently by a defendant's attorney to plead acquittal by

reason of insanity.

If that fails in any trial, a judge or jury trial, then that person is found guilty. And in those circumstances, one of two things will happen. In the first instance, the person will be remanded to a psychiatric facility, hopefully in a secure ward. And at some point in time -- and this has happened in many, many instances over the years -- that person will be deemed cured by psychiatrists, usually as a result of drug therapy, and released.

And tragically, there have been instances thereafter where that very same person, not taking his or her medication, committed another violent act. In that instance, in my judgment, justice wasn't served, but certainly the public safety was not served.

Now, on the other side of the coin, if the insanity defense is rejected, then that person goes to a state prison, is treated like any other criminal.

Now, what we're doing here is providing, in fact, a third alternative.

Impairment is acknowledged, and a determination can be made that while that individual knew the consequences of his act when he pushed that person off the platform in the subway, he knew that person was going to be hit by a train and probably killed. But at the same time, he has some level of mental instability. And so guilty but mentally ill can be either pleaded for or determined in the course of a trial.

Now, what happens thereafter if that person is found guilty but mentally ill? First, he goes to a prison -- after some period, perhaps, in a psychiatric facility - and psychiatric care is mandated, mandated. If that individual at some future date is paroled, or early release or whatever, a requirement would be in the law that that individual continue to take his medication, continue to visit a psychiatrist, if that's required, whatever the regimen that is determined by professionals is. Should he or she fail to do that, then incarceration can take place again.

I believe in this instance we serve

justice and we also serve the needs of the individual involved. Certainly the situation today doesn't do either of those things well, in certain instances. I believe this corrects that deficiency.

Nineteen other states, the last time we checked, have this statute on their books, the oldest being Michigan, going back to the mid-seventies. And we have records of some cases that they have tried and dealt with where it was applied and where it worked.

It's supported by not only the Governor's office but the Office of Mental Health. It's supported by the New York State Law Enforcement Council, by the Criminal Justice Board of the City of New York, by the Citizens' Crime Commission, and others.

That briefly is an explanation of the proposed statute.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Padavan would yield for a question.

ACTING PRESIDENT MEIER: Senator Padavan, do you continue to yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Mr. President, as you may or may not know, I was actually a supporter of Senator Padavan's bill nearly twenty years ago when I worked in the forensic unit of the Queens district attorney's office, and have changed my point of view over the years to opposition.

But I think that Senator Padavan is certainly on the right track, because we have had these situations where individuals were found, under the technical definition of our law, as not responsible due to mental disease or disability and were converted to civil status, at times placed in psychiatric care. And it did not become as clear what danger the individual might pose to society, and they would inevitably be released after a certain period of time, and that there were these further acts of violence which perhaps could have been avoided.

And I think that that's what Senator Padavan is really trying to address in

this legislation.

Since we have performed two hours of debate and disagreement in the past, I'm actually going to show that I really do have a heart and spare Senator Padavan of that today. But I would only let him know at this time to force him to be as prepared as he usually is.

But I do have this question. Senator, in your statement you really went to the core of what I think is my disagreement with this bill when you cited the example of the individual who would, as you put it, have knowingly pushed someone in front of the train. If they knowingly pushed someone off the subway platform onto the tracks, knowing that a train would hit them, then they definitely knew the difference between right and wrong and, as I would see it, should not be found to be not responsible by reason of mental disease or defect, but should just be found guilty.

But what I thought you mean by guilty but mentally ill is not to address really the state of mind of the defendant but really to address the state of the

circumstances. Meaning that this person is guilty of committing the act, but because they are mentally ill we will treat this in a completely different way, since they may not have really -- since we're not really going to be able to determine whether or not they knew the difference between right or wrong, we're going to treat them until such time that we think that they actually not only would understand that but would also take the medication.

So I was just wondering if you would clarify for us what the actual meaning of the legislation is.

SENATOR PADAVAN: Well, thank you, Senator.

The meaning is quite clear, actually, in the reading of the bill. And let me share it with you directly, and so we can all hear it together.

Guilty but mentally ill. If a defendant asserts a defense of not guilty by reason of mental disease or defect, in accordance with Section 40.15 of the Penal Law, the defendant may be found guilty but

mentally ill. If, after trial, the trier of facts finds all of the following beyond a reasonable doubt: (A) that the defendant is guilty of a crime -- in most cases, that's quite obvious -- (B) that the defendant was suffering from mental disease or defect but not -- and here's the part that I think is the most significant -- but not to such an extent that he lacks substantial capacity to know or appreciate either the nature and consequences of his conduct or that his conduct was wrong at the time of the commission of the crime.

Now, let me add to that by saying you know and I know that when you have a trial and you have dueling psychiatrists -- the defense brings in a psychiatrist that says one thing, the prosecutor brings in a psychiatrist that says something else -- and there that jury's sitting there, and either psychiatrist or lawyers, perhaps, trying to make a judgment. By putting this in law, I think we make their responsibility easier to discharge as well as improve upon the entire system.

So if I understand your question, yes, if the person knowingly knows the

consequences of his act, we would hope -- we would hope that he'd just be found guilty. But at the same time, I think compassion and common sense leads us to also accept the fact that there is some level of impairment with regard to that person, and diminished capacity -- a term of art and a legal term that's used quite frequently -- is in effect, is there.

Diminished capacity, mental impairment. But, as the bill says, not to the extent that it totally eliminates the defendant's knowledge that what he was doing was going to be harmful to the other person.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

So then therefore, Senator, if we've now cleared up what we're going to do about the defendant that is guilty in the sense that, as you now put it, as a state of mind they knew the difference between right and wrong, and we are now going to add this compassion that you talk about, what do we do

with the defendant now that we determine was not able to distinguish between right and wrong at the time that the crime was committed?

SENATOR PADAVAN: We do nothing in terms of the current law. Any individual who has committed an act, violent or otherwise, and a determination has been made that that individual did not know the consequences of his or her act, then the current law remains.

Obviously, we deal with those individuals in the current system. They frequently are sent to psychiatric centers throughout our state, usually in secure wards, until such time as a determination has been made that they are able to return to society.

We have something now in effect, as you know, called Kendra's Law, which attempts to deal with part of that problem, and which I think was the right thing to do as well.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. This is my last question, unless,

of course -

ACTING PRESIDENT MEIER: Senator Padavan, do you continue to yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: Senator Padavan yields.

SENATOR PATERSON: I would ask an additional -- I will ask additional questions, but only if Senator Padavan would bring that photographer back here and let me be included in his album of pictures that he was having taken here.

The question is simply this. Now that you've set up, in a sense, three options rather than two -- we have a person who is guilty of the crime, they knew the difference between right and wrong; the person is guilty but mentally ill, in that they were guilty of the crime but their awareness was perhaps diminished, to some extent, by their mental disease or disability; or what we currently have, which is that the person is not responsible by reason of mental disease or disability, commonly known as the insanity defense.

Now that we have these three options, this comes to the crux of what is really my inability to vote for the legislation. Isn't it very possible that when presented with the fact that there is a guilty but mentally ill charge that can be given to a jury, that it in some respects prejudices the jury to believe that since the prosecution can establish that the defendant did cause the act of the victim, that it would be more likely that it's guilty but mentally ill than the fact that it could be not responsible by reason of mental disease or disability?

SENATOR PADAVAN: No, I wouldn't accept that at all, Senator.

In the first place, the defendant would have the responsibility -- or his attorney would have the responsibility to seek, as an attorney representing the defendant, the best possible outcome. Any trial attorney who would turn away from that would obviously not be doing his or her job. So I don't accept that thought on your part.

And a determination of guilty but mentally ill may not even be the plea. It can

be, if that is what the defendant determines, or his attorney determines.

So your notion that this is going to provide a vehicle by which more people will not be acquitted by reason of insanity when they should be is totally wrong, in my view.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, I would just like to ask Senator Padavan a couple of questions.

ACTING PRESIDENT MEIER: Senator Padavan, do you yield for a question by Senator Montgomery?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR MONTGOMERY: Senator Padavan, I'm not able to follow the intricacies and the technical discussion, but I would just like to ask one question.

I'm looking at the memo in support that is attached to the bill, and it says that once the defendant is convicted of a crime, assuming that the person pleads guilty with

mental illness -

SENATOR PADAVAN: Guilty but mentally ill, pleads that?

SENATOR MONTGOMERY: Yes, under your -- in your bill -- under your bill, that the person serves the sentence or is sentenced as per any person charged under that particular crime?

SENATOR PADAVAN: No, that's not quite true, Senator. Because if you read the bill itself -

SENATOR MONTGOMERY: They receive a psychiatric examination.

SENATOR PADAVAN: Yes, you must be given -- and it's in the bill, it's on page 2, beginning line 3, "Court shall impose any sentence which could be imposed pursuant to law upon a defendant that is convicted of the same crime. If the defendant is committed to the custody of the Department of Correctional Services, he shall undergo further evaluation and be given such treatment as is psychiatrically indicated for his mental illness or retardation." And then it goes on and on and on in that vein.

SENATOR MONTGOMERY: All right. Now, my -

SENATOR PADAVAN: So they're guaranteed, which is not the case now, that that person will receive psychiatric care.

SENATOR MONTGOMERY: Yes. But then does that mean that the Department of Corrections would be mandated, under your legislation -

SENATOR PADAVAN: Absolutely.

SENATOR MONTGOMERY: -- to provide mental health services to mentally ill inmates?

SENATOR PADAVAN: Exactly. That's right. And we do have -

SENATOR MONTGOMERY: Each one that comes in.

SENATOR PADAVAN: And we do have some of our correctional facilities that have a greater resource in that regard than some others, that already exist, because we do have people in state prisons who become mentally unbalanced after they're there, for whatever reason.

SENATOR MONTGOMERY: Mr.

President, if I may pursue just a little bit with Senator Padavan -

ACTING PRESIDENT MEIER: Senator Padavan, do you continue to yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: Yes, he does.

SENATOR MONTGOMERY: So, Senator Padavan, given the fact that there is such a large percentage, over a quarter of the inmates that are currently in the Department of Corrections who are essentially determined to be mentally ill who are not receiving treatment, so your bill in fact would require that the Department of Corrections provide mental health services -

SENATOR PADAVAN: Correct.

SENATOR MONTGOMERY: -- to any inmate that pleads under your bill?

SENATOR PADAVAN: And I might add they can do so also in cooperation with the Office of Mental Health.

SENATOR MONTGOMERY: Okay. Just one last question.

You also indicate that the bill

would require, if -- assuming that they improve their condition while incarcerated and they come out of prison -

SENATOR PADAVAN: Parole or whatever.

SENATOR MONTGOMERY: -- on parole, they then are responsible for pursuing their -

SENATOR PADAVAN: Treatment regimen, whatever it may be, yes.

SENATOR MONTGOMERY: Yeah, their treatment, based on -- as a condition of parole?

SENATOR PADAVAN: Correct.

SENATOR MONTGOMERY: So we now don't have a system which -

SENATOR PADAVAN: No.

SENATOR MONTGOMERY: -- which provides for a continuum of services from inside to outside?

SENATOR PADAVAN: We have it now in the Office of Mental Health, in psychiatric facilities, as a result of Kendra's Law. But we don't have it for people who leave prisons, no.

SENATOR MONTGOMERY: Right. So that means, then, that they are much more likely to return because they will not be able to -- under the current status of our mental health system, with that kind of break, they can't easily access a continuum of care after -- outside on parole.

SENATOR PADAVAN: No, I wouldn't say -- that's not true, because in your county or mine there are a number of facilities, clinics and psychiatric facilities, to which a person can be required to visit periodically, continue their drug medication, if that's the treatment that they're under, or follow-up psychiatric care. That's certainly available. And they would be required to take advantage of it.

If for some reason they stop by their own determination, then obviously they'd be subject to being brought back in. Very similar to what Kendra's Law requires outside the criminal justice system.

SENATOR MONTGOMERY: Okay. All right. Thank you, Senator Padavan.

Just briefly on the bill, Mr.

President.

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I have in the past voted in opposition of Senator Padavan's bill. I really find this bill a very interesting area for us to consider.

Certainly I would like to see much more mental health services provided for inmates who are mentally ill, and I think a very large number -- in fact, the Corrections Department is probably providing a very large percentage of our -- providing not care, but they have a large percentage of people who are mentally ill.

So I would like to see something done about that. However, I am concerned that when people currently come out of any institution, including the corrections, there really is no way for them to access care or any other support. And so it's very likely that this population is certainly going to fall right back into recidivism.

So we're not really helping to resolve that issue. And they will probably

come back into the system after having committed some infraction, some other crime, because they will be destabilized, because there won't be any support for them.

So I'm going to continue to oppose the bill, although I certainly appreciate, Senator, your attempt to make sure that we provide services to people who are criminally mentally ill.

SENATOR PADAVAN: Mr. President, if I may.

ACTING PRESIDENT MEIER: Senator Padavan.

SENATOR PADAVAN: Senator, I respect your view. But just to relieve some of your discomfort, if you would read page 2, the middle of the bill, there is specific reference to that person we're talking about being assigned to an outpatient facility to which he would be directed. So we are marrying up that individual with a specific facility in his community to ensure treatment.

Now, that may not be the broad scope that you were talking about. But as it relates to this individual who would be

covered by this law, should it become so, there is a very specific tie-in between release and treatment.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT MEIER: Senator Onorato.

SENATOR ONORATO: Mr. President, will Senator Padavan yield to a question?

ACTING PRESIDENT MEIER: Senator Padavan, do you yield?

SENATOR PADAVAN: Yes.

SENATOR ONORATO: Senator Padavan, under your bill, someone who is convicted like that and is sentenced, and who goes into the treatment program and is now declared cured, or certainly in much better condition, how does that affect his sentence?

Must he continue serving it, depending -- what does he get, a two-to-five-year sentence with the ability of getting parole? Does it affect his time release when he goes into the program and is assisted to the degree that they think he's - he or she is fit for society again?

SENATOR PADAVAN: The sentence is

whatever the sentence is.

However, when the person comes up, as you know they do, for parole at various points in the sentence, obviously his state of mental health is a prime factor for the Parole Board to consider when they determine whether early release, work release, or parole is appropriate.

And then the other things that Senator Montgomery and I were talking about kick into place.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: I vote no, for the following reasons.

First of all, the line between not guilty and guilty is the defendant was suffering from a mental disease or defect and

was guilty of a crime. Now, that makes, to me, literally no sense. You are either guilty of a crime or you're not guilty of a crime. If you have the capacity to commit the crime of murder, you're guilty of murder. If you don't have the capacity to commit a crime, you're not guilty.

That's what criminal justice is all about, setting a standard of liability. And we set a standard of what a mental disease or defect is to determine whether that person is capable of committing a crime.

There's no chance of a middle ground, because it's -- if you're capable of committing the murder, you should be guilty. If you're not capable, by the law, you should be not guilty. I think that's much the same as what Senator Paterson was saying.

Secondly, I disagree strenuously with my learned colleague. Having tried many cases, criminal and civil, there is literally no doubt in my mind that if a jury hears a defendant saying the man is mentally ill but he's not guilty at all, and you see the evidence of a crime that's clear and you see

the defendant conceding that the man is mentally ill, there is literally no chance that a person will be found not guilty, because there's that middle ground that will satisfy the common sense of most people, not the legal-justification defense of mentally ill.

So for those reasons, I am going to vote no. And I would request that Senator Padavan look at those 19 states -- maybe I will -- to see who is right, he or Senator Paterson and me, as far as the results of crimes, the conviction rate, and the middle-ground conviction rate as to what really happens in these cases, what juries really do.

ACTING PRESIDENT MEIER: Senator DeFrancisco will be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 175 are Senators Connor, DeFrancisco, Dollinger, Lachman, Marchi, Markowitz, Meier, Mendez, Montgomery, Onorato, Paterson, Sampson, Schneiderman, Smith, and Stavisky. Ayes, 39.

Nays, 15.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 83, by Senator McGee, Senate Print 4314A, an act to amend the Town Law, in relation to the settlement of claims by certain towns.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator McGee, an explanation has been requested by Senator Dollinger.

SENATOR McGEE: Thank you, Mr. President. Certainly.

This legislation was developed by the Legislative Commission on Rural Resources. The present and current law calls -- provides that towns having a population of less than 200,000 -- and there are only six towns in the state that have a population greater than 200,000 -- may settle a lawsuit or a claim which exceeds $300 only with the approval of the Supreme Court.

This bill would eliminate the population and dollar restrictions, and it would allow all towns to settle all lawsuits

and claims against them without judicial approval. The requirement for judicial approval is old and really very outdated, and all the towns should have the flexibility to settle claims and lawsuits without restrictions.

Enactment of this legislation will save towns the legal costs associated with many applications to the court for approval and remove these actions from crowded court caseloads.

As you well know, that in some cases, accidents with a vehicle owned by a municipality, et cetera, et cetera, may very well cost over $300 to replace a bumper or replace a fender on a vehicle.

In this case, if we can go to -- if the towns can go to -- just to take care of it regularly rather than have to apply to the Supreme Court, this clears the court docket and is less expensive to the town. It's a cost-effective measure for the towns.

There it is.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, just to explain my vote. Or on the bill.

ACTING PRESIDENT MEIER: You want to speak on the bill?

SENATOR DOLLINGER: Just on the bill, Mr. President. I'll be real brief.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I voted against this last year. I still think there are instances in which some towns in New York State need the requirement of applying to a Supreme Court justice. We do this in a number of instances to provide an additional check on the resolution of some of these claims.

I think especially in small communities, there's a danger that these claims could be adjudicated in a way that would be either favorable or unfavorable to the town in exchange for other considerations. In the small-town world of New York, I think having a state Supreme Court judge in some cases review these may have some value.

So rather than adopt a carte

blanche for all towns, I would favor that some certain small towns which may not have the assistance of a full-time counsel still be required to engage in some review by the court process. I think it will only give another way to try to prevent what could be the temptation for misuse of public money.

And so I'll vote against it again, and wish the sponsor well with the other 57 votes on her side.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 350, by Senator Kuhl, Senate Print 6681, an act to amend the Education Law and the Penal

Law, in relation to violent and disruptive incidents on school grounds.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Kuhl, an explanation has been requested by Senator Paterson.

SENATOR KUHL: Thank you, Mr. President.

This is a bill that is aimed at stilling the violence in our schools and also protecting the people that are employed there.

There are two specific provisions of the bill, one which would create what we call a uniform violent incident reporting system, which would call for the Commissioner of Education to set up a system whereby all of the school boards and schools across the state report incidents of violence, and that there's an annual report.

The second portion of the bill would call for setting a penalty for assaults on employees of school districts, to become Class D felonies.

That, in essence, is the nature of what the bill is all about.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Would the sponsor yield to one question, please?

ACTING PRESIDENT MEIER: Senator Kuhl, do you yield for a question?

SENATOR KUHL: I'd be happy to.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: I note, Senator, in reading this bill that it refers to the types of violent and disruptive incidents by level of offense occurring in the schools. Is there some other provision in the Education Law that describes what you mean by disruptive events, disruptive incidents, and what the level of offense is?

I'm referring specifically, Senator Kuhl, to lines 11 through 14 on the -- in Section 2 on the first page of the bill.

SENATOR KUHL: I don't believe there's anything in the Education Law right now, Senator.

But our intent here is to have the Commissioner kind of set up classifications of

incidents so that he can categorize the types of incidents that are occurring in schools so we'll have a report so that we know whether or not next year a student in, say, Brighton High School was spitting on a teacher or sassing a teacher back or actually throwing spitballs at a teacher or swearing at a teacher or assaulting a teacher or hitting a teacher over the head with an umbrella or whatever other activity it might be.

And I think the report would kind of be broken down by the Commissioner into that type of reporting system that would allow us to get a better handle on all of the various types of incidences that are occurring in the schools.

SENATOR DOLLINGER: Okay. And again, through you, Mr. President, if Senator Kuhl would continue to yield.

ACTING PRESIDENT MEIER: Senator Kuhl, do you continue to yield?

SENATOR KUHL: I'd be happy to.

ACTING PRESIDENT MEIER: Senator Kuhl yields.

SENATOR DOLLINGER: I understand

this bill is intended to have a broad sweep. My question is with respect to lines 15 through 17, is it the actions -- all other forms of discipline administered and the grounds for such discipline? That would include, as they did in my Jesuit high school, sending you off to jug for the afternoon if you were, you know, wrestling with someone out in the schoolyard? Is that what that means?

SENATOR KUHL: I'm just reading the language, Senator.

SENATOR DOLLINGER: My only concern here, Senator, the reason why I've asked both the question about level of offense and the question about the type of discipline, is I understand -- and I'm going to support this bill, because I think that the need to broaden the information basis about what's going on in our schools about the degree of disruptive or violent behavior, I think as we've talked about a lot here -- but I agree with you, and I'm not so sure we've got a good handle on how much is going on out there.

My question is, in your attempt to be so broad, are you so broad as to require an

enormous amount of recordkeeping on every student who's put in detention in the public schools in this state or gets after-class suspension or is tossed out of class and sent to the principal's office for a little discussion with the guidance counselor?

SENATOR KUHL: Well, Senator, let me be more specific to you. While I appreciate your attention to the first page of the bill, perhaps the second page of the bill is the major emphasis of what we're doing here.

Just so that you know, during the last decade, 1990 through the year 1999, 14,000 teachers and school staff members were assaulted in the schools in this state. And many of them were victims that it caused them to be hospitalized and loss from their jobs.

And the unfortunate thing is that this trend of violence in our schools is increasing, and to the point that there was a recent editorial in the New York Post reporting on the situation in the New York City school systems, where it appears as though now we have an attack a day on a

teacher.

And let me just kind of briefly talk about that, just so that you know the types of things that are happening. Okay, on February 14th, Valentine's Day, love day, okay, a male head-butted a female teacher. She had to go be personally looked at. The next day, a parent punched a teacher, and she was treated by a physician. Go to the next day. A student slammed a teacher into the wall. Go to the next day, February 15th, okay, another teacher -- this is at the elementary level, repeatedly kicked and punched a teacher. And it goes on and on and on and on.

The point is, is that there are two parts of this bill. One part is that there are assaults, potentially deadly assaults being put upon the employees in the school district which have to come to an immediate halt. Have to come to an immediate halt. There's no room in our schools today for disruptive students to be assaulting, physically, teachers or other employees of the schools.

But as a follow-up, we also need to know the other kinds of instances that are occurring so that we can treat the issue. We know that we can start to create a bigger deterrent by increasing the penalty for an assault on a school employee from a Class A misdemeanor to a Class D felony, which is currently, right now, the kind of protection that we provide to policemen and firemen in the line of duty. Why should a teacher be any more susceptible to attacks, for lack of a deterrent, than a fireman or a policeman? I don't think so.

But our point is, in response - and I know it's a long response to your question -- is that to get the broad scope of where we are, we need to know not only the assaults that are reported in papers that we see that really are unacceptable, we need to know everything that's going on. So that when we get to -- eventually, if the Assembly will come to the table and talk about a comprehensive school violence bill, we will be able to address the code of conduct situation and the appropriate penalties that should be

handed out in relation to that.

So that is why you'll see the language in our bill that will call for those incidents, so we know, we have a paper trail. And it will start, and I would assume that within the first year we'll have a good idea as to how we deal with that disruptive conduct.

SENATOR DOLLINGER: Thank you, Mr. President. On the bill.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Senator Kuhl, like the good lawyer that he is, does what a good lawyer does when someone sits at a trial and says, I want to focus on the little tiny language in one portion of this bill because I think it may be too broad.

I think when we're looking for disruptive behaviors and the definition of that, we may sweep a whole bunch of student offenses that don't rise to the level which I think Senator Kuhl wants to get at, which is, in essence, criminal activity that happens in our schools.

And Senator Kuhl, I think rightfully so -- I guess I sort of threw him what I thought was a curve ball, but he has tagged it and sent it out of the park when he talks about the head-butting of teachers, the assault by parents of teachers. All of these are criminal activity in our schools that I agree with Senator Kuhl, one, we should make it a greater penalty to emphasize our disapproval and distaste for it, and, secondly, we should go about gathering the data to figure out the nature of this problem.

Senator Kuhl, I'm going to vote in favor of this bill. I would suggest you look at that language both with respect to the definition of offenses and what constitutes disruptive behavior and look at the requirement that you're going to put on these schools to report the actions that they take. My fear is that this bill may be so broad as to include all the detentions, all the minor penalties for student misconduct in the schools.

And that relates to the final question. While I'm going to support this

bill, Senator, I think it is a tad misleading, just a little, tiny bit, to say that the fiscal implication of this bill is undetermined. The fiscal implication of this bill is that someone is going to spend an enormous amount of time in our public schools filling out the reports necessary to comply with the statute.

And while I agree with you we've got to be able to get our hands on that data to figure out what's going on in our schools and figure out whether we in this chamber need to do something to either change the penalties or provide additional resources for metal detectors or other devices in our schools in order to be able to convey a clear message that school violence is unacceptable, I do think that this bill will have a very significant administrative cost -- not only for the Commissioner of Education, who's got to come up with the rules and regs, which I think will be an enormously complicated task, but for every school district in this state that's going to have to sit down and figure out how are we going to provide all that

information for all the student infractions.

Senator Kuhl, I think this is a good idea. I agree with both parts of it. I think it needs a little work on the drafting to tighten it up. And I think, for the purposes of having a fair and honest debate about this bill if it someday comes back to us, we ought to at least come up with an estimate of what the fiscal implication would be -- not necessarily just to the State of New York, but the cost to every school district in this state. It will be sizable, I believe.

But in my judgment -- and this is where I agree with you, Senator Kuhl -- it will be worth it, because it will give us the data to figure out how to send an even stronger message that this type of behavior is not permitted in our public schools.

ACTING PRESIDENT MEIER: Senator Mont -- Senator Pat -- oh, I'm sorry. Senator Paterson is down.

Senator Montgomery.

SENATOR MONTGOMERY: Oh, yes, Mr. President, I would like to ask the sponsor a couple of questions.

ACTING PRESIDENT MEIER: Senator Kuhl, do you yield to a question from Senator Montgomery?

SENATOR KUHL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Senator Kuhl, I was trying to determine what is the difference in your legislation, essentially, and the bill that we did last week that was sponsored by Senator Bruno, which seemed to have the same intent. Or is yours different?

SENATOR KUHL: Thank you for indulging me, Senator.

SENATOR MONTGOMERY: Sure. No problem.

SENATOR KUHL: I just needed to refresh my memory as to what the bill that Senator Bruno passed last week was.

His bill related to essentially, if you will, elevating the severity of a felony. This bill deals with elevating the severity of a misdemeanor. Different categories of crimes.

SENATOR MONTGOMERY: Okay. So -

SENATOR KUHL: Essentially, they dealt with crimes committed on school grounds, which is Senator Bruno's bill.

Ours deals with assaults on school employees that are Class A misdemeanors.

SENATOR MONTGOMERY: Okay. So Senator Bruno's bill would raise the penalty for any crime committed, and yours deals specifically with -

SENATOR KUHL: No. No. No, Senator. Not for any crime. It only dealt with felonies.

If it was a Class D felony, it would elevate it to a Class C felony. If it was a Class E felony, it would elevate it to a Class D felony. If it was a Class B felony, it would elevate it to a Class A felony, because it happened on school grounds.

Ours deals specifically with protecting school employees -- teachers, custodians, administrators -- who were assaulted, and the crime is a Class A misdemeanor. It elevates that penalty from a Class A misdemeanor -- which, as you know, is a crime for which one can be sentenced to up

to a year in a local place of incarceration, whether it's a county jail or whatever -- to a Class D felony, which would be a maximum penalty of up to seven years in prison.

SENATOR MONTGOMERY: Okay. Class D felony, up to seven years in prison.

Senator Kuhl, can I just ask you -

ACTING PRESIDENT MEIER: Wait a minute. Do you want Senator Kuhl to continue to yield?

SENATOR MONTGOMERY: Yes, please.

ACTING PRESIDENT MEIER: Senator Kuhl, do you continue to yield?

SENATOR KUHL: I'd be happy to.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Senator Kuhl, I would just like to know, what do we do with someone who is, say, 10, 11, 12, a fifth-grader, a sixth-grader, a fourth-grader, that is charged with -- under your legislation, with throwing spitballs at the teacher?

SENATOR KUHL: Well, spitballs

wouldn't come under the form of an assault, I don't believe.

SENATOR MONTGOMERY: I thought I heard you refer to spitballs.

SENATOR KUHL: Well, I did refer to spitballs, but I referred to spitballs as part of the initial part of the bill, which calls for reporting incidents of violence or disruptive behavior.

That certainly would be disruptive behavior. I think you and I could probably agree to that, that throwing spitballs at a teacher or another student would be disruptive behavior.

SENATOR MONTGOMERY: Sure, yes. I'm sure a lot of us in here have done that.

SENATOR KUHL: Senator Smith is nodding that she was disruptive at one time during her high school -- no, I -- anyway, the -- that's not -- that would not be here.

But I can't speak to that, and the bill doesn't speak to that. Because there are several different procedures that a young person could be handled as. It could be as a juvenile delinquent, in which case the

severity of the crime in this particular case wouldn't make any difference, because the ultimate penalty would be some sort of reform school. It could mean that if the person was treated as an adult, under some circumstances that might mean a difference in severity of the crime.

So it's impossible at this point, without some sort of a factual scenario, and knowing what the prosecutor in that particular case would do, as to how this would impact. All this simply does is raise the severity of the crime or assault, which is a Class A misdemeanor now, to be typed as a Class D felony.

SENATOR MONTGOMERY: Now, a couple of sessions back we had -- we considered, in this legislative chamber, a bill that essentially, under certain circumstances -- I'm not sure if it was actually a Class D felony, but it was under certain circumstances a juvenile as young as 12 would be tried as an adult.

And so my question to you is that based on this legislation, and based on the

bill that we passed last week that was sponsored by Senator Bruno where automatically any infraction on school grounds would be increased to the next degree -

SENATOR KUHL: Again, that's only as it relates to felonies.

SENATOR MONTGOMERY: So in other words -- exactly. Well, his relates to felonies.

So under his bill and under yours, if it essentially becomes a felony, even though it's a misdemeanor, is it your -- do you maintain the philosophical position that those 12-year-olds should be tried as adults?

SENATOR KUHL: I don't think, Senator -

SENATOR MONTGOMERY: Vis-a-vis the legislation that we considered, the Juvenile Reform Act legislation that we considered in this house that did pass.

SENATOR KUHL: I don't think that has anything to do with what we're doing here, Senator. I think -

SENATOR MONTGOMERY: So in other words, this doesn't become part of the

Juvenile Reform Act legislation?

SENATOR KUHL: I don't see how. I don't see how.

SENATOR MONTGOMERY: Okay. All right.

Just one last question, Mr. President.

ACTING PRESIDENT MEIER: Senator Kuhl, do you continue to yield?

SENATOR KUHL: I'll be happy to.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR MONTGOMERY: Okay. Senator Kuhl, we've talked about unfunded mandates. And your memo, where it says "fiscal implications," says that's undetermined. So my assumption is that none of the school districts have yet either been asked or thought about what this might cost, and so we don't know at this point.

But does this not become one additional report that has to be kept at the level of the school, sent up to the, I'm assuming, the district, and from there to the Education Commissioner and then the Education

Commissioner has to give us one more ream of paper to read?

SENATOR KUHL: Senator, there's no question that this bill, if passed -- and I believe it will pass today -- would require a new report that's not currently being filed.

It's like last year, you may recall, as part of the budget process, we also required school districts to file another new report that previously wasn't required, and that related to transportation costs relative to summer schools.

Well, as you know, there is currently an implementation of a higher Regents standard for quality education being implemented by our Regents. What that is requiring is many students to spend time, after their normal school curriculum, to concentrate on issues that they haven't been successfully meeting.

Also part of that is a concentration by students now spending -- and I think we've heard it, I don't remember if - I think it was just a couple of days ago on the floor here, or in a committee meeting, it

may have been, where there are going to be as many as 300,000 students attending summer school in the city of New York this year.

Well, that's a huge number of students. But if this state is going to be able to provide a service which is going to be beneficial to those districts in the form of dollars to support the transportation to and from those summer schools, then we need to know the statistics.

The same is true here, that we have violence in the schools. I just cited that there have been articles in the New York Post in the last week as to the outrageousness of the violence in the schools. Well, to deal with that, we have to know the completeness of that. We have to know whether there are assaults on teachers and that sort of thing.

So while at this time there may be the requirement of an additional report, that is information we need so that we can say, Okay, fine, we need to provide metal detectors for those schools. Which we've tried to do in this conference. We passed a bill here that provided that kind of support. We need to

know what is out there so that we can meet the need.

Any kind of additional fiscal responsibility that this bill creates is so minimal in the form of just requiring additional reports, or reports that they're already required to keep. It's insignificant to the cost that is really undermining the quality of education, if you want to think about it in these terms, Senator.

In fact, if in fact these disruptions, these assaults are undermining the quality of education so these students aren't meeting the standards, well, that perhaps is a cost that is not necessary. Those people have to spend additional time to educate the students. Where if the classes were under control and there was no disruption, that's maybe a savings.

And so that's why we said the cost is undetermined. Because if we had no violence in our schools, there would be not the cost of trying to remediate the students who are not getting a proper education because of the disruptiveness. So one little form

could really save the school districts thousands of dollars or millions of dollars in this state.

So you can look at it a number of ways. But it's in one of those issues that it's really undetermined.

SENATOR MONTGOMERY: Okay. Thank you, Senator Kuhl, for that explanation.

Briefly, on the bill.

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Mr. President, I'm certainly, obviously, going to vote against this legislation.

And I just want to remind my colleagues that while I don't agree with this aspect of the Governor's budget, he has said in his own budget, he has proposed that we pass a budget which includes language that restricts the Board of Regents from making any regulations that would be considered a new mandate unless they fund it.

Now, if the Governor is going to require that the Regents fund any mandate - and the Regents is the highest policy-making

body for the education of all children in our state -- then it seems to me that we, as the Legislature, should at least, since we are the ones who actually do the budget, it seems to me that that law or that rule should pertain to us, certainly more so than the Board of Regents.

But it seems to me that every week we do another bill that puts a mandate on the local -- the localities, the local school districts, for them to spend more money, and we don't attach any money to it.

Now, some years ago, Mr. President, I had a bill, which did pass both houses and was signed into law, which would mandate that the Office of Mental Health do a study of children, the mental health needs of young people in our state, both in and out of school, both in and out of the OMH itself. Which would have included schools and school districts throughout the state. But my bill was only to go into effect if there was funding attached to it.

It's still a viable situation, a viable proposition. I think it's still

needed. But certainly until the Legislature funds it, OMH is not required to do it.

I have been a strong advocate for school-based health-clinic programs for schools throughout our state, and I have also been an advocate for mental health services to be a part of those school-based health clinics. I am a very strong advocate of providing crisis-intervention services, support services, guidance counseling, all of the possible additional resources that help schools identify and work with difficult young people. I think that's appropriate, I think we should be doing that, and I hope that someday we will get to that.

But it seems to me that what we have been doing in the last few months and weeks, as we convene each week in this Legislature, is that we look for ways of arresting children, sentencing them, figuring out ways to get them into the criminal justice system.

Now, I have to ask myself and my colleagues, why are we taking this approach and what are we really aiming to do? It's

certainly not, not to help create an environment of safety and learning in the schools and on the school grounds. So I'm going to oppose this.

And, lastly, I just want to reiterate my position. And that is whatever we intend this to be, whatever we say about whether or not it's going to make teachers safer or school grounds safer or children more able to learn, or whatever we talk about, ultimately it is going to -- the results of this legislation is going to fall most heavily, as every punitive measure that we have that already exists, will fall the most heavily on the children in my district and other districts like mine.

So I cannot possibly support this. And I just must remind my colleagues that we already have a situation where the largest percent of young people who are suspended from schools with very long suspension sentences, and those young people who are in special ed classes without any particular physiological designation, are young people of color; specifically, young African-American males.

So I cannot vote for this, because I see this as one more attempt to get into the net of the criminal justice system young people of color. So I'm voting no on this, Mr. President.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

I rise once again to bring to the attention of my colleagues the problems that we face in recruiting staff to our school systems. I hear Senator Montgomery's concerns, and we've heard them before. She's said them on many bills and many issues similar to this. She's said them previously, the same complaints and the same responses.

But I see no alternatives. The methodology she talks about, about teaching and taking kids who have problems and giving them counseling, that's been done. It's being done. It was done when I was teaching in the school system in the city of New York. We had counselors, we had guidance counselors, we had program after program after program, federally

funded, state funded, city funded -- you name it, it was funded. Guidance counselor after guidance counselor, psychiatrist after psychiatrist dealing with youngsters. We had all kinds of programs.

There were many high schools in the city where the guidance counselors had to walk through the metal detectors that the kids were involved with, and these schools had more guidance staff than anybody else in the city, yet metal detectors had to be put in high schools. And elementary schools. And middle schools. And junior high schools.

How can you possibly teach, how can you possibly educate anyone when you have to walk through a metal detector to get in there, into a school? How can you attract staff to teach when they are threatened, when parents will punch them in the face, when students will head-butt them -- in an elementary school -- throw them down stairs, disrupt classrooms?

What does that teacher do? Send them out of the classroom to a guidance counselor to talk to them for the day? Then

they get them back the next day. What do you do with a kid? What do you do with a child that is absolutely disruptive?

When I was the dean of students in my high school, 2 percent of the kids -- we did an analysis of that school, and it was a mixed school. The percentage of minority - Hispanic, black, African-American, Italian, Irish, you name it -- was about 50 percent when I was teaching there, minority to nonminority, if you will. Two percent of the students could disrupt that school on any given day if they chose to. That was the population that we were trying to address.

We spent more time dealing with that 2 percent than we did with the other 98 percent who were there to get an education but whose classrooms were routinely being disrupted by 2 percent, in many, many ways.

A teacher has 40 minutes in which to a make a lesson work or not work. One child, one child who got up on the wrong side of the bed, or just for the hell of it, can destroy that lesson and set that classroom back weeks when they decide to misbehave.

I'm not saying that one child on that one day gets sent to Alcatraz and never comes off the rock. That's not what we're looking for. But you have to be able to take some control of your schools.

In the city of New York, you have thousands, tens of thousands of uncertified teachers teaching. Why? Because you can't get certified teachers. Because you can't attract them to the schools. They won't go there. Why? Because of the reputation, in many cases, of the disruptive school districts where teachers are not given support, where staff is not given support.

Now, that's not nice to say, but it's reality. And until that's addressed, you'll never get it. Pay is a factor, there's no doubt about it. Nobody goes into education to make a million dollars. We all know that. You're not going to get, you know, somebody going into schools because they want to make a million or become a millionaire. That's not what they're there for. There's a motivation. But you're going to drive them out if they can't do what they go there for.

If they go there to teach, with all the best of intentions, and they're assaulted or their classes are disrupted or they can't get to the kids they want to get to, if they can't teach what they want to teach because of violence in the schools or disruption in the schools or breakdowns in the schools or fire alarm bells being rung daily, hourly, period by period -- if that's continuously happening, no education will happen. That teacher will leave the system and never return and bad-mouth it forever amber. And that ends it.

And you've got to take it. You can't have it both ways. Yes, we should do as much prevention programs as possible. Yes, we should fund as many outreach programs as possible. And to address the factor of the unfairness in the way some rules are applied to certain members of our society, I agree with you, that should be addressed.

I think Senator Kuhl's bill addresses that by taking count. By getting the statistics, you prove your point. And someone might be able to address it in reality when you in fact see it, no pun intended, in

black and white, when the numbers don't lie. But you have to have the records and you have to have the statistics and you have to have the numbers. You can't hold schools to standards unless you know what you're doing.

Here we're saying disruption we're not going to address because, well, we don't want to hurt anybody's feelings. But we don't worry about the teacher. That teacher can get head-butted, that teacher can get punched, that custodian could get hit, can be assaulted, the aide can be tossed down a flight of stairs.

And you can't have that. You can't have it both ways. We have to address violence. Violent people, regardless of who they are, must be stopped.

And if we don't, we delegate those schools and we relegate the students involved with those schools to no education whatsoever. And then all the good standards and all the good comments that we make here will be for nothing if we do not address the day-to-day living conditions of teachers, staff members in schools.

If we don't protect them and if we don't keep them safe and if we don't give them what they need to work, then we lose them. We lose them. They'll go to other states where it's safer, or they'll go to those districts where it is easier to do. And no amount of incentives, no amount of programs is going to get them back.

And no amount of pay will get them back. You can just pay someone so much, but no one's going to go anywhere where they feel threatened. If they feel their life is threatened, it's not going to happen. If I can't park my car in a radius near the school and not have it vandalized, it's not going to happen. I'm not going to go there.

And that's typical. And that's why many districts in the city, some districts on Long Island, and districts in other areas of the state are having problems. Because you can't teach when there's chaos in the system. And in some systems, I'm sorry to say, there is chaos. And until we address that, until we recognize it honestly, we're going nowhere.

I don't disagree with you, Senator.

We must do the programs you suggest. We must have more of those outreach. I'm not suggesting in any way, shape, or form by comments I'm making that they are not worthwhile and should not be tried. They should and they must be funded. But we've got to deal with that youngster who, even after the outreach is made and even after the programs are tried, still will not function. That has to be addressed.

So I say to you we must support this bill. I voted for Senator Bruno's bill for the same reason. I'm going to support this bill gladly, because it's time we took a hard stand. You can't say you want education and then not be willing to do what has to be done to give people a safe place to provide that service for us.

I'll vote aye on this bill when it comes up.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: If Senator Kuhl would just yield for one final question.

ACTING PRESIDENT MEIER: Senator

Kuhl, do you yield for a question?

SENATOR KUHL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Thank you.

Senator, I was talking a little earlier with Senator Duane, and we were wondering together, so I thought I would ask you, in this research that's going to be compiled would the issue of hate crimes, even though it would be a standard that might differ in interpretation from one area to another, do you think that would be important to include that as a category, since it's probably something that would probably begin at young ages, or at least the notion to manifest one's bias toward other people in the area of violence?

Did you consider that, and -

SENATOR KUHL: Senator, there - that is a possibility.

But feeling that the Commissioner of Education probably knows what goes on in the schools better than you or I do, or even Senator Marcellino, we wrote the language such

that the Commissioner would prescribe a form and that he would set out the following information: the number of and types of violent and disruptive incidents, by level of offense, occurring in the schools. That's really kind of the only designation as to what is there.

So if it was perceived by the Commissioner that he thought that that was important, fine, he would include it. But we haven't specified that that be included.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Senator.

On the bill.

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: If one of the contingents was that, as Senator Bruno said that last week right here in this chamber, that he would pass the hate crimes if we didn't specify the categories, I couldn't be more strongly opposed to that.

However, for the purpose of

conducting research, I would strongly urge that the Commissioner, who will perhaps be given this opportunity now through Senator Kuhl's bill, take that opportunity. Because in that sense, the Commissioner can study it any way he wants to.

And I think it would actually provide some very interesting information which could influence some legislation that we need to pass on the hate crimes bill itself. And we need to do that as soon as possible.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. If the sponsor would yield for a question.

ACTING PRESIDENT MEIER: Senator Kuhl, do you yield for a question?

SENATOR KUHL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President.

Would the violent incident as

defined in this bill, or for the purpose of this bill, would that include possession of a firearm? That's not a violent incident per se, but it's something that certainly, I think, should be reported on in a system like this if a kid brings a gun to school.

Is that something that could be included within this legislation?

SENATOR KUHL: Very definitely, Senator. It does talk about disruptive incidences too, so I think that it would be included in that, certainly.

SENATOR SCHNEIDERMAN: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I appreciate the thoughtfulness and the good intent behind this. I appreciate the comments of my colleagues on both sides of the aisle.

And I do sense that we have - there is a strong bipartisan desire to do something about the problems that Senator Marcellino spoke of, that Senator Montgomery and others have spoken of.

We have to do something about the public schools in this state. It's our life. It's our future. The best investment you can make in preventing crime is fixing the schools. The best investment you can make in our economic development is fixing the schools.

However, I think that in one area when we're talking about violence we really do have to take responsibility in this house for the fact that every year in the Assembly, they pass bills to keep guns out of the hands of children -- child access prevention bills and trigger lock bills -- and we don't.

And I think if we're really going to be serious about this effort, especially in light of recent incidents in the last year of kids bringing guns to school, this year, in addition to this bill, we really do have to pass some serious laws to get guns out of children's hands.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Thank you very

much, Mr. President. I'd like to speak on the bill, if I may.

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: Thank you very much.

I believe that the reporting, which is a very -- the majority segment of this legislation, is very important. I'm a staunch advocate of reporting. I think we need it for criminal acts and violent acts in the schools, and I think we need to have it for bias and hate crimes and have a way to report them on a statewide basis.

Soon you will all be able to see the "Dignity for All Students Act" which I'm planning on introducing into this body, which also will have reporting. But it's also combined with an action plan to make our schools safer. And I think that that is what is missing here.

Reporting, as I say, is all well and good, but I don't think that we should only focus on how it is that we can punish students. I think we also have to work on the

prevention side of the issue as well.

I also, though I respect Senator Marcellino's comments and his comment about, well, you know, what do we expect, that they'll go to a guidance counselor -- well, I might be willing to accept that. But in New York City schools, there aren't even enough guidance counselors to go around. Many of the students in New York City schools are unable to get an appointment with a guidance counselor because they just are -- there are not enough guidance counselors in the schools for the demand that students have.

And also it's well and good to say, well, we can only pay so much for teachers to keep them here. But in New York City, we don't pay them so much. We pay them much less than so much. And I do think that that's something else we have to look at when we talk about how it is that we not only attract teachers but keep them in the schools.

So I think we have to look at this in a much broader way. Yes, reporting. Yes, seeing what students are the most disruptive and potentially violent. But also looking

towards the prevention of acts which endanger teachers and students in the school.

I'm looking forward to a time when we can see more comprehensive legislation. But until that time, I'm going to have to vote no on this legislation.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This act shall take effect July 1.

ACTING PRESIDENT MEIER: Senator Kuhl, to explain his vote.

SENATOR KUHL: To explain my vote.

ACTING PRESIDENT MEIER: Senator Kuhl.

SENATOR KUHL: Yes, Mr. Speaker.

Senator Montgomery raised the issue about civility in our schools, I think, and that sort of thing. And I just wanted to let the members know that those people who really are on the front line are the teachers. And that one of their major organizations of representatives, the New York State United

Teachers, totally support this bill.

And I just would like to read from a portion of their statement of support. It says: "The New York State United Teachers strongly supports Senate 6681" -- which is this bill -- "which would establish a statewide uniform violent incident reporting system and raises the penalty for assaults on school employees while on school grounds.

"For years, NYSUT has proposed and lobbied for comprehensive safe school legislation. Ideally, such legislation would include the enforcement of school codes of conduct, authority for educators to remove disruptive students from the classroom, and protection of teachers from harassment and assaults.

"Unfortunately, we'll all agree that though such legislation is critical to restoring civility and order to our schools, nothing has been accomplished. In the meantime, discipline, civility, and order continue to disintegrate in our schools, and the danger to our teachers is at an all-time high.

"During the last school year, there has been a 20 percent increase in assaults on teachers in New York City. Nine teachers have been attacked in the first six weeks of this year. These are intolerable numbers. There can no longer be a question that it is time to put aside party differences and pass Senate 6681, which could go a long way toward protecting teachers as they perform their jobs.

"NYSUT urges all of you to pass Senate 6681 and make this the first step toward restoring an atmosphere of respect and civility in our schools by passage of a comprehensive school safety legislation."

I vote aye, Mr. Speaker.

ACTING PRESIDENT MEIER: Senator Kuhl, you will be recorded in the affirmative.

SENATOR MONTGOMERY: Mr. President, I would like to explain my vote. Is that possible?

ACTING PRESIDENT MEIER: Just to -- we're going to let you do that, but we haven't called the roll yet. So we'll do that in proper order, and then we'll -- it's the

chair's mistake.

SENATOR MONTGOMERY: I'm sorry.

ACTING PRESIDENT MEIER: No, not necessary to apologize. My mistake.

Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, to explain my vote.

I certainly understand the position that NYSUT is taking, and it won't be the first time that I'm voting in opposition to or taking a position opposite to NYSUT.

But I want to reiterate, Mr. President, very quickly, I am not opposed to the safety of teachers. I certainly support any measure that would improve the environment within schools. But I also understand that we have to be proactive, especially as it relates to what we do for young people in our state.

And this bill, in my estimation - I'm not opposed to the reporting, but I do think that if we're going to require this level of recordkeeping, we should pay for it.

That's number one.

And, number two, when we are talking about going onto school grounds, going into schools and making arrests, charging 10-, 11-, and 12-year-olds with felonies because of some infraction or other, we have to be very careful, I believe, because we are going down the slippery slope of having these young children being incarcerated, building up criminal records, before they are even able to build some level of self-esteem and to understand essentially, in some instances, what is the appropriate behavior.

And we have not put into our schools people who are there specifically to be crisis-intervention agents for young people who are in trouble. And we have not put in our schools supports for teachers to be able to reach out to when they have a problem with young people.

So the only -- for us to come up with the only answer is to arrest them and criminalize them and put them in prison I think is wrong. So I'm voting no. And it's not -- I'm not opposed to safety for teachers,

but I am opposed to criminalizing children. I vote no.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 350 are Senators Duane, Mendez, Montgomery, and Smith. Ayes, 51. Nays, 4.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Duane.

SENATOR DUANE: Thank you, Mr. President. I was hoping that I could have unanimous consent to be recorded in the negative on Calendar Number 135 and Calendar Number 175.

ACTING PRESIDENT MEIER: Without objection, Senator Duane will be recorded in the negative on Calendar 135 and 175.

Senator Morahan.

SENATOR MORAHAN: Thank you, Mr. President.

I ask that on Resolution 3298, that we passed a little while ago, that the

sponsorship for that be opened. I've been asked by several Senators to be included, specifically Senator Lachman and Senator Connor. If those two could be added as cosponsors, I'd appreciate it.

ACTING PRESIDENT MEIER: Those Senators wishing to cosponsor should see the desk, please.

Senator Marcellino. I'm sorry, Senator Velella.

SENATOR VELELLA: Mr. President, is there any housekeeping now?

ACTING PRESIDENT MEIER: Yes, there is.

SENATOR VELELLA: Senator Marcellino wishes to be recognized.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on page Number 5 I offer the following amendments to Calendar Number 12, Senate Print Number 2543, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MEIER: The

amendments are received, and the bill will retain its place on the Third Reading Calendar.

SENATOR MARCELLINO: Likewise, Mr. President, on page Number 18, I offer the following amendments to Calendar Number 240, Senate Print 3987, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendments are received, and the bill will stay on the Third Reading Calendar.

SENATOR MARCELLINO: Mr. President, I wish to call up Senator Marchi's bill, Print Number 1639B, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 345, by Senator Marchi, Senate Print 1639B, an act to amend the Education Law and the Vehicle and Traffic Law.

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

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

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

ACTING PRESIDENT MEIER: The amendments are received.

SENATOR MARCELLINO: Thank you.

ACTING PRESIDENT MEIER: Senator Velella, the desk is clean at this point.

SENATOR VELELLA: Mr. President, there being no further business to come before the Senate, I move we adjourn until Wednesday, March 8, at 11:00 a.m.

ACTING PRESIDENT MEIER: On motion, Senate stands adjourned until Wednesday, March 8th, at 11:00 a.m.

(Whereupon, at 5:18 p.m., the Senate adjourned.)