NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 13, 2000

3:14 p.m.

REGULAR SESSION

SENATOR NANCY LARRAINE HOFFMANN, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT HOFFMANN: The Senate will come to order.

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

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

ACTING PRESIDENT HOFFMANN: The invocation today will be delivered by the Reverend Peter G. Young, Blessed Sacrament Church in Bolton Landing.

REVEREND YOUNG: Let us pray.

For our citizens of New York State and all of the members and staffs of our Senate body, that they will work in a most dedicated manner for their constituents.

We pray for the sick and those financially suffering or emotionally disturbed and developmentally disabled who turn to their Senators for answers to their trials and tribulations.

We know that the disenfranchised call with their many exhausting requests for jobs, housing, health, and endless other concerns. As Senators, may we be open to the

call of help that we need to respond to.

Amen.

ACTING PRESIDENT HOFFMANN: May we have the reading of the Journal.

THE SECRETARY: In Senate, Friday, March 10th, the Senate met pursuant to adjournment. The Journal of Thursday, March 9th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT HOFFMANN: Without objection, the Journal stands approved as read.

May we have the presentation of petitions.

Do we have messages from the Assembly?

SENATOR SKELOS: Madam President.

ACTING PRESIDENT HOFFMANN: Senator Skelos.

SENATOR SKELOS: Have we received the resolution from the Assembly establishing a time for the election of members of the Board of Regents?

ACTING PRESIDENT HOFFMANN: Yes, we have received the resolution from the

Assembly establishing a time for the election of the members of the Board of Regents.

SENATOR SKELOS: Thank you.

ACTING PRESIDENT HOFFMANN: Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Bonacic, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause. That's Senate Print 1733 and Senate 4937.

And, Madam President, on page 25 I offer the following amendments to Calendar Number 360, Senate Print 2729, and I ask that that bill retain its place on the Third Reading Calendar. That's on behalf of Senator Kuhl.

ACTING PRESIDENT HOFFMANN: The amendments are received. The bill will retain its reading on the Third Calendar.

SENATOR SKELOS: Madam President, are there any substitutions to be made at the desk?

ACTING PRESIDENT HOFFMANN: Yes, there are.

SENATOR SKELOS: Please make them at this time.

ACTING PRESIDENT HOFFMANN: Yes. The Secretary will read.

THE SECRETARY: Senator Farley moves to discharge, from the Committee on Labor, Assembly Bill Number 3947 and substitute it for the identical Senate Bill Number 2214, Third Reading Calendar 51.

ACTING PRESIDENT HOFFMANN: The substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

ACTING PRESIDENT HOFFMANN: There

will be an immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room, Room 332.

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

ACTING PRESIDENT HOFFMANN: May we take up the reading of the noncontroversial calendar.

THE SECRETARY: Calendar Number 18, by Senator Rath, Senate Print 2948A, an act to amend the Vehicle and Traffic Law, in relation to mandatory suspension.

ACTING PRESIDENT HOFFMANN: Read the last section.

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

ACTING PRESIDENT HOFFMANN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT HOFFMANN: The bill is passed.

THE SECRETARY: Calendar Number 78, by Senator Marcellino, Senate Print 1323A, an act to amend the Vehicle and Traffic Law, in relation to the enforcement of the offense of operating a motor vehicle with a suspended license.

ACTING PRESIDENT HOFFMANN: Read the last section.

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

ACTING PRESIDENT HOFFMANN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT HOFFMANN: The bill is passed.

THE SECRETARY: Calendar Number 134, by Senator Trunzo, Senate Print 4250A, an act to amend the Highway Law and the Public Authorities Law, in relation to transportation facility emergency work.

ACTING PRESIDENT HOFFMANN: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT HOFFMANN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT HOFFMANN: The bill is passed.

THE SECRETARY: Calendar Number 235, by Senator Trunzo, Senate Print 2994A, an act to amend the Vehicle and Traffic Law and the Public Authorities Law, in relation to authorizing cities.

ACTING PRESIDENT HOFFMANN: Read the last section.

THE SECRETARY: Section 4. This act shall take effect in 30 days.

ACTING PRESIDENT HOFFMANN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT HOFFMANN: The bill is passed.

THE SECRETARY: Calendar Number 272, by Senator Goodman, Senate Print 1102, an

act to amend the Transportation Law, in relation to mandating that the Commissioner of Transportation or the City of New York refer violations.

ACTING PRESIDENT HOFFMANN: Read the last section.

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

ACTING PRESIDENT HOFFMANN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT HOFFMANN: The bill is passed.

THE SECRETARY: Calendar Number 274, by Senator Marcellino, Senate Print 3616, an act to amend the Vehicle and Traffic Law, in relation to increasing penalties.

ACTING PRESIDENT HOFFMANN: Read the last section.

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

ACTING PRESIDENT HOFFMANN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT HOFFMANN: The bill is passed.

THE SECRETARY: Calendar Number 296, by Senator Stafford, Senate Print -

SENATOR PATERSON: Lay it aside.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT HOFFMANN: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 299, by Senator Skelos, Senate Print 907, an act to amend the General Obligations Law, in relation to exoneration of certain crime victims.

ACTING PRESIDENT HOFFMANN: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT HOFFMANN: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 348, by Senator Saland, Senate Print 3268, an act to authorize the apportionment of state building aid to the city school district of

the City of Beacon.

ACTING PRESIDENT HOFFMANN: There is a local fiscal impact statement at the desk.

Read the last section.

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

ACTING PRESIDENT HOFFMANN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT HOFFMANN: The bill is passed.

THE SECRETARY: Calendar Number 351, by Senator DeFrancisco, Senate Print 4385, an act to amend Chapter 912 of the Laws of 1920.

ACTING PRESIDENT HOFFMANN: Read the last section.

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

ACTING PRESIDENT HOFFMANN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT HOFFMANN: The bill is passed.

THE SECRETARY: Calendar Number 372, by Senator Libous, Senate Print 3588, an act to amend the Highway Law, in relation to increasing the limitation on the amount raised by taxes.

ACTING PRESIDENT HOFFMANN: There is a home rule message at the desk.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of January.

ACTING PRESIDENT HOFFMANN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT HOFFMANN: The bill is passed.

THE SECRETARY: Calendar Number 374, by Senator Bonacic, Senate Print 6673, an act to amend the Highway Law, in relation to designating a portion of the state highway system.

ACTING PRESIDENT HOFFMANN: Read

the last section.

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

ACTING PRESIDENT HOFFMANN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT HOFFMANN: The bill is passed.

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

SENATOR SKELOS: Madam President, before we go to the controversial calendar, just for the members' planning, we have one bill on the controversial calendar. Then, when the Civil Service Committee completes its mission, we will take up the one bill that's on their agenda. And there will also be a meeting of the Energy Committee once the Civil Service Committee is over with.

So if we could go to the controversial calendar now.

ACTING PRESIDENT HOFFMANN: The Secretary will read.

THE SECRETARY: Calendar Number

299, by Senator Skelos, Senate Print 907, an act to amend the General Obligations Law, in relation to exoneration of certain crime victims.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT HOFFMANN: An explanation has been requested.

SENATOR SKELOS: Madam President, I look forward to giving Senator Paterson this explanation on a yearly basis.

This bill amends the General Obligation Law by bringing back the "assumption of risk" doctrine in certain civil lawsuits.

If the defendant shows that the injuries sustained by the plaintiff arose during the commission or attempted commission by the plaintiff of certain enumerated crimes, and that the actions of the defendant were justified pursuant to Article 35 of the Penal Law -- and that defines what acts are justifiable -- then the plaintiff is deemed to assume all risks of injury coming from the encounter with the victim, and the proof shall constitute a complete defense to the action.

The defendant must furnish proof by a preponderance of the evidence by showing, one, that the plaintiff committed the crime, and, two, that the defendant's actions were justified.

Senator Paterson.

ACTING PRESIDENT HOFFMANN: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. Madam President, would Senator Skelos -- I guess he's already yielded for a question.

ACTING PRESIDENT HOFFMANN: Would Senator Skelos yield for a question?

SENATOR SKELOS: Yes.

ACTING PRESIDENT HOFFMANN: Senator Skelos yields.

SENATOR PATERSON: Senator, assuming that you have a situation where a good Samaritan enters a situation to try to avert a crime from being committed but then goes beyond what may have been necessary to subdue the defendant, in spite of the fact that those of us who are here would probably have absolutely no sympathy for the defendant,

are we not turning the comparative negligence statute that was pretty much formulated in 1975 on its ear by creating a situation where the defendant has no recourse at all, other than the fact that they were committing a crime and were now injured by a good Samaritan who may have, in reality, been acting beyond their authority or with excessive force?

ACTING PRESIDENT HOFFMANN: Senator Skelos.

SENATOR SKELOS: First of all, you could bring a federal civil rights action if you so desired.

But also, you know, just to point out that the crimes that we're dealing with are serious crimes -- murder, robbery, burglary, arson, forcible rape, sodomy, kidnapping -- and the force that was used is defined in the Penal Law.

So both elements would have to be found by a preponderance of evidence for you to be barred from bringing the -- well, not barred from bringing a civil lawsuit, but being able to prevail.

SENATOR PATERSON: So in other

words, in Section 35 you're saying that you've established what are the grounds for justification, and if those grounds are actually met, then you can bar the suit?

SENATOR SKELOS: By a preponderance of the evidence.

SENATOR PATERSON: Right.

Senator, if you would just yield for one other question.

SENATOR SKELOS: Sure.

SENATOR PATERSON: Just to specify this for everybody here, because it's clear that you're talking about very serious crimes. And quite frankly, I don't think there's anyone in this chamber that's going to disagree with you that we have seen, from time to time, some court cases where individuals were acting to try to stop a crime and then got sued by the perpetrator of a crime, which is astonishing, where an individual is, in pursuit of some crime, harming others, perhaps threatening their lives, and then they're the first one to court with a lawsuit, when being if -- that they had acted responsibly or civilly themselves, we wouldn't be in this

situation, there's a very compelling nature to offering up a piece of legislation like this. And I congratulate you for thinking it.

But what we're concerned about, and what I'm raising to you is going beyond that actual standard. So I give you the scenario that with any one of the classifications that you describe -- murder, rape, kidnapping - the individual is now stopped. They've now been tied up, let's say, by the good Samaritan. And now, because it takes, let's say, law enforcement a while to get there, the good Samaritan, in a rage, takes it upon themself and severely injures this person while they were tied up.

You're saying, in a sense, that other than a federal civil rights action, you're not going to give the defendant any rights in the court after that?

SENATOR SKELOS: I believe at that point it wouldn't be justifiable, the force that they used.

SENATOR PATERSON: Thank you, Senator.

ACTING PRESIDENT HOFFMANN: Read

the last section.

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

ACTING PRESIDENT HOFFMANN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT HOFFMANN: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Thank you, Madam President. Just briefly, to explain my vote.

ACTING PRESIDENT HOFFMANN: Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: I've voted against this bill in the past.

But as I understand it, the inclusion of an affirmative defense on behalf of the defendant that you were justified under the Penal Law would mean that the only time that a defendant would have that defense available is if he was using force that was consistent with the force brought against him by the plaintiff.

A defendant, under the laws of this

state, is not justified in using deadly physical force, a gun or a knife, unless he's threatened with that force. And so under those circumstances, at least as I understand this, we are taking a civil standard of justification -- prove it by preponderance of the evidence -- and if you are threatened with deadly physical force, you may then respond with deadly physical force and you cannot be held liable.

This is different from the situation in McCrimmons and other cases which have come down from the Court of Appeals, in which it was held that a defendant, you could be sued civilly if you used deadly physical force against someone who is fleeing a crime. Someone who is fleeing a crime is not threatening the defendant with deadly physical force.

But as I read this, it says if you're threatened with deadly physical force and you respond, you cannot be held liable because your conduct, under the Penal Law, would be justified.

As I see it, that inclusion cures

the problem that I saw in the bill and have seen in the bill in the past, and I'm going to vote in favor, Madam President.

ACTING PRESIDENT HOFFMANN: How did you wish to be recorded, Senator Dollinger?

SENATOR DOLLINGER: In the affirmative. I'm changing it.

ACTING PRESIDENT HOFFMANN: Senator Dollinger will be recorded in the affirmative.

Senator Paterson, to explain his vote.

SENATOR PATERSON: Thank you, Madam President.

Senator Balboni seems stunned by Senator Dollinger's change of heart, and so is Senator Stachowski. And I'm also quite impressed with Senator Dollinger's analysis of this case.

But with Senator Skelos' indulgence -- in fact, if he didn't have me here to debate with over this bill every year, I don't even think he would come here. So, so as not to let him down, I'm going to vote no.

Only for the reason that to establish what would be a criminal burden of proof in a civil trial in my opinion would be to create a trial within a trial.

So what I would be willing to do is to take a look at this, because Senator Skelos certainly has put something into the legislation that is quite persuasive. And perhaps next year I can come back and see it a different way.

ACTING PRESIDENT HOFFMANN: Senator Paterson will be recorded in the negative.

Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 299 are Senators Connor, Duane, Montgomery, Padavan, and Schneiderman. Ayes, 49. Nays, 5.

ACTING PRESIDENT HOFFMANN: The bill is passed.

THE SECRETARY: In relation to Calendar Number 299, Senator Paterson is recorded in the negative, Senator Padavan in the affirmative.

ACTING PRESIDENT HOFFMANN: The

bill is passed.

The chair recognizes Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing committees, I believe there's a report of the Civil Service Committee at the desk. I ask that it be read.

ACTING PRESIDENT HOFFMANN: We have completed the controversial calendar. Are there any other communications at the desk?

The Secretary will read reports of standing committees.

THE SECRETARY: Senator Leibell, from the Committee on Civil Service and Pensions, reports:

Senate Print 6009A, by Senator Balboni, an act to amend the Retirement and Social Security Law;

And Senate Print 6846, by Senator Leibell, an act to amend the Retirement and Social Security Law.

Both bills ordered direct to third reading.

ACTING PRESIDENT HOFFMANN: Senator Skelos, what's your preference?

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Energy Committee in the Majority Conference Room.

ACTING PRESIDENT HOFFMANN: There will be an immediate meeting of the Energy Committee in Room 332.

SENATOR SKELOS: Madam President, if we could please take up Calendar Number 392, Senate 6846, which was just reported from the Civil Service and Pensions Committee.

ACTING PRESIDENT HOFFMANN: The Secretary will read.

THE SECRETARY: Calendar Number 392, by Senator Leibell, Senate Print 6846, an act to amend the Retirement and Social Security Law, in relation to the participation in and member contributions to the 25-year and age 55 retirement program.

ACTING PRESIDENT HOFFMANN: Read the last section.

THE SECRETARY: Section 9. This act shall take effect immediately.

ACTING PRESIDENT HOFFMANN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT HOFFMANN: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, I believe we have to wait for the Energy Committee to meet, so we'll stand at ease.

ACTING PRESIDENT HOFFMANN: The Senate will stand at ease, awaiting the report from the Energy Committee.

(Whereupon, the Senate stood at ease at 3:34 p.m.)

(Whereupon, the Senate reconvened at 3:39 p.m.)

SENATOR SKELOS: Madam President.

ACTING PRESIDENT HOFFMANN: Senator Skelos.

SENATOR SKELOS: If we could return to reports of standing committees, I believe there's a report of the Energy Committee at the desk. I ask that it be read.

ACTING PRESIDENT HOFFMANN:

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Wright, from the Committee on Energy and Telecommunications, reports:

Senate Print 6481, by Senator Wright, an act to amend the Public Authorities Law.

Said bill ordered direct to third reading.

ACTING PRESIDENT HOFFMANN: Without objection, the bill will be reported directly to third reading.

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

ACTING PRESIDENT HOFFMANN: Yes, there is some housekeeping at the desk.

The chair recognizes Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

I wish to call up Senator Rath's bill, Senate Print Number 6173A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT HOFFMANN: The

Secretary will read.

THE SECRETARY: Calendar Number 179, by Senator Rath, Senate Print 6173A, an act to amend the Criminal Procedure Law and others.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT HOFFMANN: Senator Marcellino.

SENATOR MARCELLINO: Madam President, I offer the following amendments to the bill.

ACTING PRESIDENT HOFFMANN: The amendments are received.

SENATOR MARCELLINO: Thank you.

ACTING PRESIDENT HOFFMANN: Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business to come before

the Senate, I move we adjourn until Tuesday, March 14th, at 3:00 p.m.

ACTING PRESIDENT HOFFMANN: The Senate stands adjourned until Tuesday, March 14th, at 3:00 p.m.

(Whereupon, at 3:41 p.m., the Senate adjourned.)