NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 18, 2000

3:15 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, April 17th, the Senate met pursuant to adjournment. The Journal of Sunday, April 16th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Balboni, from the Committee on Water Resources, reports:

Senate Print 4626, by Senator Balboni, an act to amend the Environmental Conservation Law.

Senator Padavan, from the Committee on Cities, reports:

Senate Print 3473A, by Senator Paterson, an act to authorize the United Pentecostal Church to file an application;

5742B, by Senator Maltese, an act to amend Chapter 164 of the Laws of 1907;

And 7148, by Senator Goodman, an act to amend the Local Finance Law.

Senator Hannon, from the Committee on Health, reports:

Senate Print 2302, by Senator Hannon, an act to amend the Public Health Law;

5415A, by Senator Spano, an act to amend the Public Health Law;

7287, by Senator Skelos, an act to

amend the Public Health Law;

7300, by Senator Spano, an act to amend the Public Health Law;

7301, by Senator Hannon, an act to amend Chapter 483 of the Laws of 1978;

7367, by Senator Hannon, an act to amend Chapter 505 of the Laws of 1995;

7368, by Senator Hannon, an act to amend Chapter 884 of the Laws of 1990;

7373, by Senator Hannon, an act to amend Chapter 904 of the Laws of 1984;

And 7374, by Senator Hannon, an act to amend Chapter 314 of the Laws of 1984.

Senator Rath, from the Committee on Local Government, reports:

Senate Print 24, by Senator Larkin, an act to amend the Real Property Tax Law;

124, by Senator Rath, an act to amend the General Municipal Law;

4841, by Senator Rath, an act to amend the General Municipal Law;

5821A, by Senator Skelos, an act authorizing the assessor of the County of Nassau;

6356, by Senator Volker, an act to

amend the Local Finance Law;

6546, by Senator Hannon, an act authorizing the assessor of the County of Nassau;

6835, by Senator Padavan, an act to amend the General Municipal Law;

6850, by Senator Balboni, an act in relation to authorizing the Ban Suk Korean United Methodist Church;

6852, by Senator Balboni, an act authorizing the assessor of the County of Nassau;

6853, by Senator Balboni, an act to authorize the assessor of the County of Nassau;

6854, by Senator Balboni, an act authorizing the assessor of the County of Nassau;

6855, by Senator Balboni, an act to authorize the St. Gregorios Malankara Orthodox Church;

6869, by Senator Trunzo, an act to authorize Glory Zone Ministries International;

7053, by Senator Velella, an act authorizing the City of New Rochelle;

7139, by Senator Libous, an act to authorize the City of Norwich;

7215, by Senator Skelos, an act authorizing the assessor of the County of Nassau;

7331, by Senator Rath, an act to amend the Local Finance Law;

7332, by Senator Rath, an act to amend the Village Law;

And 7336, by Senator Hannon, an act to authorize the Miracle Christian Center.

Senator Marchi, from the Committee on Corporations, Authorities and Commissions, reports:

Senate Print 5909B, by Senator Morahan, an act to amend the Not-for-Profit Corporation Law;

6829, by Senator DeFrancisco, an act to amend the Public Authorities Law;

6894, by Senator Marchi, an act to amend the Public Authorities Law;

And 7023A, by Senator Wright, an act to amend the Public Authorities Law.

Senator Saland, from the Committee on Children and Families, reports:

Senate Print 965A, by Senator Skelos, an act to amend the Domestic Relations Law;

1257, by Senator Spano, an act to amend the Social Services Law;

1828, by Senator Saland, an act to amend the Social Services Law;

And 2976, by Senator Saland, an act to amend the Social Services Law.

Senator Goodman, from the Committee on Investigations, Taxation and Government Operations, reports:

Senate Print 782A, by Senator Goodman, an act to amend the Executive Law;

4036A, by Senator Goodman, an act to amend the Public Officers Law;

4239, by Senator DeFrancisco, an act to amend Chapter 679 of the Laws of 1992;

6368, by Senator Stachowski, an act to authorize the Commissioner of General Services;

7147, by Senator Bruno, an act to authorize the Office of General Services;

7181, by Senator Trunzo, an act to amend Chapter 719 of the Laws of 1982;

7285, by Senator Libous, an act to amend the Public Officers Law;

And 7286, by Senator Goodman, an act to amend the Tax Law.

All bills ordered direct to third reading.

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos, we have some substitutions.

SENATOR SKELOS: Madam President, if we can make the substitutions, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 14, Senator Spano moves to discharge, from the Committee on Local Government, Assembly Bill Number 1939 and substitute it for the identical Senate Bill Number 2013, Third Reading Calendar 316.

On page 15, Senator Morahan moves to discharge, from the Committee on Veterans and Military Affairs, Assembly Bill Number 2995 and substitute it for the identical Senate Bill Number 5885, Third Reading Calendar 380.

On page 20, Senator Fuschillo moves to discharge, from the Committee on Consumer Protection, Assembly Bill Number 7248 and substitute it for the identical Senate Bill Number 4744, Third Reading Calendar 468.

And on page 26, Senator Farley moves to discharge, from the Committee on Higher Education, Assembly Bill Number 4885 and substitute it for the identical Senate Bill Number 2756, Third Reading Calendar 569.

THE PRESIDENT: The substitutions are ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could please adopt the Resolution Calendar.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, with Resolution 3780, which concerns Brain Tumor Awareness Week, and 3797, Organ Donor Awareness Week, with the consent of the Minority, I'd like to open up those resolutions for sponsorship by the entire Senate.

If anybody wishes not to sponsor them, if they could let the desk know.

THE PRESIDENT: Thank you, Senator.

Any member who does not wish to be included on these resolutions please notify the desk.

Senator Skelos.

SENATOR SKELOS: Madam President, if I could just interrupt the proceedings of the house, we have a very distinguished guest with us today, Mr. John Anderson, a former

Congressman, President of the World Federalist Association, and former candidate for President of the United States.

On behalf of Senator Bruno and the Majority and the Minority, we welcome you.

And if you could extend your usual cordial welcome to this most distinguished guest.

THE PRESIDENT: Senator Goodman.

SENATOR GOODMAN: Madam President, there are a number of us who over the years have had enormous admiration for our guest today, and I'd just like to add a word of warm congratulations and welcome to a great American whose sense of values has long been an inspiration to many of those of us of independent thought, which I think includes everyone in the chamber.

John Anderson is now the President of the World Federalists, indicating his concern for world peace and comity, and we're very delighted and honored indeed to have him in the State Capitol today.

THE PRESIDENT: Thank you, Senators.

And as President of the Senate, on behalf of the members of the Senate, I wish to extend to you our warm welcome. It is an honor and a privilege to have someone of your caliber and your achievements join us here in the chamber this afternoon. Welcome.

MR. JOHN ANDERSON: Thank you very much.

(Applause.)

THE PRESIDENT: Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Stafford, Legislative Resolution Number 3859, honoring Douglas Weaver upon the occasion of his designation as the recipient of the New York State 4-H Lifetime Achievement Award.

THE PRESIDENT: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 237, by Senator Rath, Senate Print 674A, an act to amend the Family Court Act, in relation to the definition of a "person in need of supervision."

SENATOR DUANE: Lay it aside.

SENATOR DOLLINGER: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 408, by Senator Padavan -

SENATOR PADAVAN: Lay the bill aside, please.

THE PRESIDENT: The bill is laid aside.

SENATOR PADAVAN: For the day.

THE PRESIDENT: For the day.

THE SECRETARY: Calendar Number 448, by Senator Marcellino, Senate Print 6387, an act to amend the Environmental Conservation Law, in relation to preserving lands.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 496, by Senator Seward, Senate Print 6643B, an act to amend the Insurance Law, in relation to qualifications for an insurance broker's license.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 8. This

act shall take effect 180 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 585, by Senator Stafford, Senate Print 735, an act in relation to the lease or rental of certain land in Warren County.

THE PRESIDENT: I'm going to ask that the members take their conversations outside the chamber, please.

There is a home rule message at the desk.

Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 589, by Senator LaValle, Senate Print 1624, an

act to amend the General Municipal Law, in relation to creating the Town of Southampton Community Development Agency.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 597, by Senator Kuhl, Senate Print 7061, an act authorizing the County of Steuben to expand.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 607, by Senator Velella, Senate Print 6691, an act to amend Chapter 383 of the Laws of 1991 relating to the incorporation of the New York Zoological Society.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 644, by Senator Skelos, Senate Print 966 -

SENATOR CONNOR: Lay it aside, please.

THE PRESIDENT: The bill is laid aside, Senator Connor.

THE SECRETARY: Calendar Number 646, by Senator Balboni, Senate Print -

SENATOR CONNOR: Lay it aside.

THE PRESIDENT: The bill is laid

aside.

THE SECRETARY: Calendar Number 670, by Senator Volker, Senate Print 6093A, an act authorizing the Village of Lancaster, Erie County, to convey certain parklands.

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

Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 678, by Senator Marcellino, Senate Print 6929, an act in relation to authorizing the town boards of the Towns of Oyster Bay and North Hempstead.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 12. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 679, by Senator Johnson, Senate Print 7138, an act to authorize the Trinity Evangelical Lutheran Church to file an application.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 689, by the Senate Committee on Rules -

SENATOR DOLLINGER: Lay it aside.

SENATOR SKELOS: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 690, by Senator Maltese, Senate Print 7418, an act to amend the Election Law, in relation to presidential primaries.

SENATOR CONNOR: Lay it aside.

THE PRESIDENT: The bill is laid aside.

Senator Skelos.

SENATOR SKELOS: Madam President, on Calendar Number 690, is there a message of necessity at the desk?

THE PRESIDENT: Yes, Senator, there is.

SENATOR SKELOS: Move to accept the message.

THE PRESIDENT: The motion is to accept the message of necessity. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The message of necessity is accepted. The bill is laid aside.

Senator Skelos, that completes the

noncontroversial reading of the calendar.

SENATOR SKELOS: Madam President, if we could go to the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 237, by Senator Rath, Senate Print 674A, an act to amend the Family Court Act, in relation to the definition of "person in need of supervision."

SENATOR DUANE: Explanation.

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

SENATOR RATH: Thank you, Madam President.

The PINS bill, as this one has of course been called through the years, is one that we have seen I believe every year for the last six years. And the bill has wide support as this Legislature every year looks at it.

It's one of course that no one argues with the basic premise of the bill, raising the age to 18 for both men and women, in that -

THE PRESIDENT: Excuse me,

Senator.

I'm going to again ask that the members take their conversations outside the chamber.

Go ahead, Senator Rath.

SENATOR RATH: -- in that we are presently in an unconstitutional position, where -- as we have different ages for men and for women.

The bill has wide support, except let me give you the group that is opposed to it. And of course the phrase "unfunded mandate" will come up, I assume, as some of you would ask me the question, How are you going to be able to pay for the costs that will be incurred if this bill goes through?

And of course unfunded mandates are anathema to me and to many of us in this Legislature. And the idea here, and the reason that the urgency of this bill has come forward, is that in this year's budget there is a provision for what has been called the PINS study bill to go forward.

That will give us an idea, through the study, of what we can expect to see

demographically by way of additional people in the PINS programs and in the jurisdiction of the courts and the agencies. We will get some sort of an idea about how many people that will affect.

One of the greater issues here has been that the idea of moving this up to age 18 will be a diversionary issue and keep a number of young people out of the system in the first place. Which is the idea behind all of this, to give the system and the parents, in this case, some jurisdiction and responsibility over these young people age 16 to 18.

And as someone said to me today, a lot of young people are going to get an awful lot smarter between ages 16 and 18 than they did before, because it's just a matter of course. As they grow up, they realize that some of the very disruptive behavior that they've engaged in and some of the things they think they can do at 16 they realize, by the time they're 18, it's just not going to quite work out that well for them if they go out to the streets and try to make their own way.

So the bill has had wide, wide

support by the police agencies, by parents. I have a whole stack of memorandums if anyone wants me to recite those.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you. Would the sponsor yield, please?

THE PRESIDENT: Will the sponsor yield?

SENATOR RATH: Surely.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Thank you.

THE PRESIDENT: With questions, I assume.

SENATOR DUANE: Yes, Madam President.

It is true that during this year's conference committees some of the TANIFF funds are going to go for a study of the feasibility on this concept of raising the age. Why did you make the decision not to wait until we find out the results of the study?

SENATOR RATH: The point goes to the implementation of the bill, assuming that we pass it, the Assembly passes it, and that

the Governor signs it. Because then we get to the point of, number one, needing to know the costs.

And if we can move forward with this TANIFF carve-out, as you point out, and get the demographic information in quickly, then we can get into implementation the November after the bill is put in place, which is what it provides for now.

And so there's no way, first of all, that we will have the information immediately, nor is there a PINS bill to get information for until we pass the bill. So it's almost the issue of the cart and the horse. I mean, to get the PINS implementation and study bill underway when there is no PINS bill passed, it's, Well, then, why are you studying a bill that you haven't passed yet and trying to find out how much it's going to cost?

So it's just a matter of moving this along.

SENATOR DUANE: Through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: You have the floor, Senator Duane. Go ahead.

SENATOR DUANE: I agree that this is putting the horse before the cart.

But I think by not having the results of this study before passing the legislation, we're putting the cart before the horse, not the other way around. For instance, nothing in the legislation addresses that we're doing a study or that implementation of the legislation will start after we get the results of the study.

And I also, though -- Senator, you raise the issue of this being an unfunded mandate. Either this will be an unfunded mandate to the counties, or it will be done by the state reimbursing the county for expenses. The bill is silent on that.

I'm wondering what the sponsor's position is on whether or not the county will have to pay for this itself or whether she believes the state will pay for this.

SENATOR RATH: My colleague Senator Morahan, who has been very active on this bill the last several months, has just

said to me that maybe what we're trying to do here is get the horse next to the cart, because of the urgency. And I have to agree with him.

There's an urgency here that parents every year come to Albany, and I have received countless letters on this particular bill -- the urgency to have any more young people falling into the criminal justice system because this legislation isn't there, it just seems irresponsible and unacceptable not to move this forward.

And, frankly, without the bill that we're going to implement it, the urgency to get to the bottom line of the study doesn't have quite the bang. And if there's anyone in this Legislature who is death on unfunded mandates, Senator, it is me. It is one of the things that I have been involved with and caught up with forever.

And I don't know exactly how we're going to pay for it, but we'll find a way to pay for it.

SENATOR DUANE: Through you, Madam President, if the sponsor will continue

to yield.

THE PRESIDENT: Does the sponsor continue to yield?

SENATOR RATH: Certainly.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: I support raising the age of persons in need of supervision to 18. I very much support that. And I do think that's the responsible thing to do.

But what I think is irresponsible is to not -- is for us as a body to not have a position on whether or not the county or the state will pay for this.

So I just want to ask my question again: What is the sponsor's position or what is her anticipation of how this will be paid for? Because I don't think we should pass legislation in the hopes that somehow we'll find a way to pay for it. I think we should know how we're paying for something as we're passing the legislation.

So is it going to be by the counties paying themselves, or will it be the state reimbursing the counties?

SENATOR RATH: Senator, at the risk of sounding like a bleeding heart, I would tell you that parents will tell you that there is no cost that could be attached to the loss of one of those children who falls into the criminal justice system as a result of us not providing the correct pieces of legislation for the police and the criminal justice system to use to save those children.

There are few pieces of assistance that we can give to those agencies that would mean as much as this. And frankly, as I said in my opening remarks, I believe that it has been well overblown in response to what the thoughts of the costs are going to be.

And you may respond to me, Well, even if it's $100,000 to large counties and only $50,000 to small counties, we still need to let them know how much it is going to be.

And I would suggest to you, Senator, that we need to prioritize what's important, then. If in next year's budget we find that, yeah, it's costing the counties some money and we need to help them out with their costs, there isn't anything better that

we could put our dollars into.

SENATOR DUANE: Through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: You have the floor, Senator Duane.

SENATOR DUANE: Thank you.

No one's heart bleeds more than mine does. Mine is the bleedingest heart in this body, I believe. That said, my personal opinion is that the state should reimburse the counties for these expenses. But I still believe that we would be better off knowing exactly how we're going to pay for this.

A PINS process allows the court complete discretion to place the child outside the home. That means that even more children will be under the jurisdiction of the Family Courts. And as it is, most Social Service districts throughout the state are already in crisis due to limited resources to provide services for children and young adults. In fact, they're already under incredibly powerful restraints -- fiscal constraints, I should say, by the child welfare block grant.

And that means that a lot of services are competing with each other for limited funding.

I'm wondering how the bill -- how this bill will necessitate reexamination of the block grant system of funding child welfare, and where would I see that in the bill.

SENATOR RATH: I think, Senator, we will see that as the PINS study bill comes forward and we get the information from the study.

If you'd like to give us some input by way of a memorandum as to what you think it's important that's looked at in relation to the costing out of the additional responsibilities to the counties, I'd be certainly happy to entertain that.

SENATOR DUANE: Through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Does the sponsor yield?

SENATOR RATH: Surely.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: I assume that the sponsor is familiar with Senator Saland's bill, 5553. It was Calendar Number 938, which passed the house earlier this year -- I'm sorry, which passed this house in May of 1999. That also increased the jurisdictional age of PINS to 18 regardless of gender.

I'm wondering why this legislation that we have on the floor today ignores that legislation.

SENATOR RATH: Well, Senator, it doesn't ignore it, but it stands alone and gives us an opportunity to stand up for these young people who need someone representing them, at the request not only of the parents' groups but of the police agencies.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Does the sponsor yield?

SENATOR RATH: Certainly.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: Right now, under

the State Education Law, children are required to be in school only up to the age of 16 years old. What is the sponsor's vision of what the Education Law should say if we raise the age of PINS-eligible to 18?

SENATOR RATH: At this point, this of course -- that of course that you bring up, Senator, is not a part of this bill. But I would hope that the Education Law would be changed to reflect this.

SENATOR DUANE: Thank you.

Thank you, Madam President.

THE PRESIDENT: Read the last section.

Senator Volker.

SENATOR VOLKER: Madam President, I will speak fairly short on this.

I've been involved with this issue for about -- I'm trying to remember -- about 25 years. I was a police officer back in western New York when the court made the decision that caused this issue to be before us.

It's always been fascinating to me that one of the ways in which the -- some of

these Social Services agencies have tried to avoid this issue was to say this is going to cost millions and millions of dollars. They've never been able to really verify that.

And, by the way, I passed this bill when I was in the Assembly, a bill almost identical to this, in 19 -- I think it was 1973. And I believe, in fact, we had it within one vote, I think in the Senate.

Unfortunately, a Family Court judge lost his nerve, and the Family Court judges who were supporting it backed away. And as a result, it didn't pass both houses. Because we had the Governor poised to sign the bill.

Well, then a new Governor came in. I believe we passed it through both houses when I moved over to the Senate, and I believe it was vetoed, if I'm not mistaken.

This has always been an argument between agencies and parents, it is my belief. And it's admittedly an urban/suburb/rural issue. The prime people who support this are in suburban and urban areas, because they're parents who are trying to keep control of their kids. In the urban areas, many of the

agencies have had a tendency to feel as if they know how to handle kids better than many of the parents, and they're concerned, admittedly, with some of the problems that occur with abuse and other things. But those kind of cases, by the way, can be taken care of in other ways by the law.

I think this is an issue that really needs to be dealt with. Senator Rath, my personal feeling is that at a time now, when we are poised with the change in the welfare system, the Medicaid system, with TANIFF and all the rest of the things that we're ready to deal with.

I strongly suspect, however, if this bill became law there wouldn't be a major impact on the Family Court system, but I think there would be a major impact on other parts of the criminal justice system, partly. And it's something I think that we're poised to deliver, to deal with. Because with the rate of violent crime declining and the rate of crime in general, I think we'd be able to handle it better.

I think this bill is a bill whose

time has really come. I think its time probably came about twenty years ago, but I think it's come even more. And I think it's a symbol, in my opinion, of the problems that we have had in dealing with family problems over the last twenty years because some judge decided way back then that he didn't like the way the constitutional provisions sat and the result was that we developed a process that I think has not been in the best interests of children and certainly not in the best interests of families.

I think this bill represents a move in that direction, of improving the relationship between parents and their children, and it's something that long since should have been done.

THE PRESIDENT: Senator Morahan.

SENATOR MORAHAN: Thank you, Madam President.

I rise in support of this bill. Senator Volker and Senator Rath have spoken so eloquently on the merits of the bill, but I wanted just to add a little bit to that.

We talk about the cost and what it

may cost, may not cost. And this year what's different is we're putting in a cost resolution and a cost bill. What's different this year is we have put in a resolution and a carve-out of TANIFF to provide funds for that study. What's different this year is we've had good negotiations going on with the Assembly, the other house, who has moved somewhat towards our position, and hopefully we can bring that to closure.

I think what's important here is that there's children at stake and there's families at stake. And the assumption that this is going to cost a great deal is merely that, an assumption. And arguments can be made for both sides.

It seems to me, however, that what this bill really does is it strengthens the ability of the parents to have some control and continued authority over their children. I think more children will stay home, they won't leave home. I think more will not try to get away and confront their parents in a manner that is demeaning to the parents, destructive to the family.

So I rise in support of this bill, and I'm gladly going to support it with my yes vote.

Thank you, Madam President.

THE PRESIDENT: Senator Larkin.

SENATOR LARKIN: Thank you, Madam President.

When we talk about parental responsibility, we also talk about children. And too frequently we're looking to blame the parents or hold parents responsible for actions of our children.

If we're going to do that, this piece of legislation, as Senator Volker had said before, went on for many, many years. Senator Rath has held hearings across the state. Senator Morahan, Senator Bonacic and I have met with many, many groups within our district and outside of our district. And every group that we've met with has said to us, When you look at the family, you look at the school, you look at all the surrounding issues, there's only one way to resolve this now, is to raise the age.

And what we need to do here is to

send a clear message that when we're going to charge parents with certain responsibilities, we also want them to have some responsibility over their own children.

We met with some families, and parents were telling us stories of "My daughter was going out the door at 10:30 at night, she's a sophomore in high school. And what was I doing?" The father said, "I said, 'You're not going. That's the rules of our house.' She said, 'I'm of the age that I can walk out anytime I want to. You have no control.'"

He grabbed her, she went into her room and called the police, and the police showed up at his door. And he was brought into court.

But yet if that child went out, caused damage or destruction, they would be coming back to the parents saying, You owe so much money for the damage your child did.

What we're doing here today is turning some control back to parents. We can't always say the parent's responsible but the child can do what they please.

Thank you.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Duane, to explain your vote.

SENATOR DUANE: Yes, Madam President. Thank you.

My issue isn't particularly unfunded mandates, though I'm opposed to unfunded mandates. I prefer funded mandates. And I think I actually made that clear during my questioning. I think the state should pay the cost of increasing the age for persons in need of supervision.

What I'm concerned about -- because we're not here today deciding how that's going to get paid for -- is I'm actually afraid that the horses might get run over by the cart. I think that -- I mean, far be it from me to lecture the body on responsible budgeting

because I'm, you know, not exactly Mr. Tax Cuts and let's-not-spend-on-programs. That's not really my point of view.

But I do think it's fiscally responsible for us to tell people how we're going to pay for programs that we put into place. For instance, increasing the age of persons in need of supervision.

I think we're going to be cleaning up this bill in the out years. So before we overcongratulate ourselves on this, I think that we should see how it's going to fiscally impact the state. And if it's not going to fiscally impact the state, it's certainly going to be fiscally impacting the counties of our state.

As it is, our court system, our Family Court system is overburdened. We hear that when we vote on nominations to the Family Court, I know, from counties around the state. I know it's a terrible problem in the City of New York. Also, our Social Services are overburdened. The people I talk to from the counties say that there are already terrible fiscal constraints imposed by the child

welfare block grant, and certainly this legislation is going to impact on that as well.

So if you were to tell me that this was a mandate which the state was going to fund, I would have a lot more -- I would be voting for it with more happiness. But that's not the case here. So I one thousand percent and always have supported increasing the age from 16 to 18 for persons in need of supervision. However, I think that we have to put our money where our congratulations and our mouths are and say how exactly it is we're going to pay for it.

Thank you, Madam President.

THE PRESIDENT: You're welcome, Senator Duane.

SENATOR DUANE: I'm voting yes.

THE PRESIDENT: How are you voting, Senator?

SENATOR DUANE: Yes.

THE PRESIDENT: You will be recorded as voting in the affirmative on this bill.

The Secretary will announce the

results.

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 644, by Senator Skelos, Senate Print 966, an act to amend the Penal Law, in relation to sentencing.

SENATOR MONTGOMERY: Explanation.

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

SENATOR SKELOS: Yes, Madam President.

This legislation, which passed the Senate in 1998 and 1999, will eliminate discretionary parole for violent felony offenders who have been convicted and sentenced for three or more violent felonies.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I note that I did not vote on this legislation last session; I was excused.

But I would like to ask Senator Skelos if he would just yield for one

question.

THE PRESIDENT: Do you yield, Senator?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you.

Senator Skelos, as I read the legislation, it seems to me that this is essentially a three-strikes-and-you're-out. In other words, three strikes and you are -

SENATOR SKELOS: Excellent definition.

SENATOR MONTGOMERY: Okay. All right. Thank you.

SENATOR SKELOS: Well, three strikes and you're in, actually.

SENATOR MONTGOMERY: And you're in for life, yes. Thank you. Thank you.

THE PRESIDENT: Read the last section.

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

November.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: I'm sorry. If we could withdraw the roll call, with the permission of Senator Skelos, I had a question.

THE PRESIDENT: The roll call is withdrawn.

Senator Skelos, do you yield?

SENATOR SKELOS: Yes, I do, Madam President.

THE PRESIDENT: All right. Go ahead, Senator Paterson.

SENATOR PATERSON: Senator Skelos, what are some of the felony offenses that would qualify someone to receive a life without parole after three violations?

SENATOR SKELOS: Kidnapping, first degree rape or sodomy, burglary, assault or aggravated sexual abuse.

SENATOR PATERSON: Let's take burglary, breaking and entering.

SENATOR SKELOS: I said kidnapping, first degree rape or sodomy, first or second degree robbery and burglary, assault

or aggravated sexual abuse.

SENATOR PATERSON: Certainly most of them I don't think you'll find anyone that does not appreciate the fact that there are individuals who, it would seem, after committing such heinous crimes that one time would be enough to convict them. So the fact that it would happen three times shows a real pattern and practice on the part of the perpetrator.

But, Senator, burglary, that is the type of a charge I don't know if it really fits in the category that three offenses, which could sometimes be committed by someone before they're 21 or 22 years of age, would at that point trigger a life without parole sentence.

In other words, I'm just afraid that we have a wider range of offenses in this legislation than I'd prefer.

SENATOR SKELOS: Madam President, if I could respond, that with these individuals, they would have been convicted on at least two previous and separate occasions of the violent felony offenses, and the three

violent felonies must have been committed within ten years.

So I think basically you're dealing with individuals who haven't gotten the message and deserve nothing better than going to jail for life without parole. And these are probably our most dangerous criminals.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: If the Senator would continue to yield.

THE PRESIDENT: Does the sponsor continue to yield?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR PATERSON: Senator, I don't want to confuse the issue. I don't want you to be disabled from passing a legislation along these lines, because I think that you have a very good idea and I think we'll all feel a lot safer if the type of persistent, violent felons you describe are taken off the

streets. I think we have agreement on that point.

I'm just asking you about some of the offenses that you've included in the legislation. For instance, when you said that when the person is convicted the third time, they've been convicted two previous times, could it be three burglaries, like a cat burglar?

SENATOR SKELOS: These are persistent, violent felony offenses.

SENATOR PATERSON: Madam President, if the Senator will continue to yield.

THE PRESIDENT: You have the floor, Senator Paterson. Go ahead.

SENATOR PATERSON: Oh. Oh, thank you.

THE PRESIDENT: You're welcome.

SENATOR PATERSON: Then my question to Senator Skelos is, where is there necessarily violence in a burglary charge? You see, what I'm afraid of is that on the third conviction that the sitting judge has no discretion at this point.

And I am just very concerned that the meaning of your legislation -- what you're actually describing, I have absolutely no problem with it. But I just want to make sure that we're not creating lesser included type of offenses.

In other words, where the person might not have been violent but, because of the delineation of the laws we put into legislation today, that we might wind up handcuffing the judge. In other words, everybody will know that this person wasn't really violent but they've been sent away for the rest of their life.

That's all I'm trying to avoid, and I just wanted some explanation on that point.

SENATOR SKELOS: These crimes that we're talking about have been defined in the Penal Law as violent felony offenses. That means the Legislature at some point and the Governor have agreed that they are to be defined as violent felony offenses.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Mr. President -- Madam President, I'm sorry.

THE PRESIDENT: I'll accept that, the latter reference.

SENATOR PATERSON: Any punishment due upon me now, Madam President, I gladly accept. And if I do it three times, I'll leave here and I'll never come back for the rest of my life.

(Laughter.)

SENATOR PATERSON: But if the Senator would yield for one last question.

SENATOR SKELOS: Yes, Madam President.

SENATOR PATERSON: On the same line of questioning that I've been seeking, Senator, what about an individual who is convicted three times of assault because this person goes into bars and has a few too many and gets into fights with people? And although they have not endangered their lives per se, they're just the kind of person that gets provoked.

And I think there are a lot of younger people around the state who, you know, don't learn their lessons and within ten years can get into three types of altercations. And

yet I don't know if I'm ready to send them away the way I would want to send away a first-degree robber, a rapist, a murderer.

You know, you've got -- you've really put some very positive legislation forward. And I just want to make sure that some of the charges that you've put here at the end are not confusing us with the type of felon, the predicate felon which you, along with the rest of us, would like to stop.

SENATOR SKELOS: Remember, they've been convicted on two previous occasions. And if they're going around in bars, with the example you've used, beating up people, I would say that if they haven't learned their lesson, I'm not going to wait until they murder someone.

SENATOR PATERSON: Thank you, Madam President. On the bill.

Senator Skelos has, in my opinion, an idea that, if executed properly, could certainly increase the value of public safety in the state and therefore increase the quality of life in this state. And it is that when you have violent felonies, when you have

predicate felons, individuals who it wouldn't matter how many times you try to rehabilitate them, when they get out, they're going to harm someone, it appears that incarceration has absolutely no effect on their conduct, and we give them a life without parole sentence, I think we might all agree that this is -- that they have left society no choice, as a matter of public policy.

At the same time, we do not want to start institutionalizing criminal justice to the point that we don't need judges in the courtroom, we just have a computer that spits out data based on their prior convictions or prior encounters with the law.

And because of that, I think that we have to be scrupulously fair and take extra care of those counts of the law that we include in a battery of three consecutive convictions within a ten-year period triggering the life without parole statute.

And if we're going to do that, we have to remember that in doing so, we don't want to create an impression that we cannot rehabilitate some people who at a time when

they were younger and a little out of control and did not understand the full meaning of their actions, and none of the victims of their crimes were so severely hurt, that we want to have the kind of retribution that life without parole brings. I think that we have to limit the number of charges that we put in this legislation.

And for that reason, I would urge a no vote on this bill, with the proviso that if Senator Skelos would take a second look at it and just abridge some of the charges that he's put in the legislation, I don't think this problem -- this bill will have any problem passing through the Senate and our accompanying house, in the Assembly.

THE PRESIDENT: I'm going to again ask the members and the staff to please take their conversations out of the chamber.

Senator Markowitz -- Senator Marcellino, excuse me.

SENATOR MARCELLINO: Thank you, Madam President. It's an easy mistake. I've often been mistaken for Senator Markowitz. He spends a lot of time in restaurants in my

district.

THE PRESIDENT: I must have been to some of them.

SENATOR MARCELLINO: Undoubtedly.

On this particular bill, I've heard the comments of Senator Paterson, a gentleman I respect greatly.

However, let's remember, when we talk about three violent convictions, statistics have shown us that these individuals who have been arrested and caught three times probably have not been arrested dozens of other times in between.

These are not people who have just erred once or twice and gotten up and made a mistake and -- these are people who have developed a way of life. They have developed a way of life of criminality. They violate people's homes, they violate people's persons. They injure, they maim, and they destroy.

Anyone who has had their home broken into knows what it feels like, that you don't feel safe ever again in that home. I've had neighbors whose houses have been broken into, and they tell me going home, going back

to that home, has never been the same. They feel violated. They don't feel safe. They've put in burglar alarms and all kinds of other mechanical devices to protect themselves, and they still don't feel safe in their own home.

This is not something that we should be tolerating. This is not something that we can allow. We have to reach out, we have to protect our citizenry, and we must take these people who continuously and continually repeat and repeat and repeat these kinds of offenses.

This is some -- these are the people we want off the streets. These are the people who damage and hurt. And these are the people who obviously, it's been proven, do not learn. They simply do not learn. If they could learn, there are so many programs out there. We've talked about them many times. There's program after program to rehabilitate, to counsel, to encourage people onto the right directions. They simply don't take advantage of them. They don't want to, because they have entered a life of crime and they like it. And there's no other way to describe it.

So I'm going to vote aye for this, and I would encourage everyone in this chamber to vote aye on this particular piece of legislation. It's time we as a chamber, we as a state stood up very, very strongly and said this kind of behavior is intolerable, we will not accept it, we will not allow it, and we're going to put people away who continuously enter into and continuously perform this kind of behavior.

I vote aye, Madam President.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes, Madam President. Briefly, on the bill.

Notwithstanding Senator Marcellino's admonition that we should all vote yes on this, I'm going to vote no. And I

think there are obviously a number of reasons.

But first and foremost is that every criminal justice professional group, organization in the nation -- in the world - knows that our criminal justice system is an abomination, especially as it relates to the way that we have attempted, total failure, to deal with the problem of drugs in our country.

We know that the largest percentage of people who are incarcerated in this nation are there because of drug-related activities. I interviewed a person who said that the State of New York spent well over a million dollars to incarcerate him, and essentially he was not able to rehabilitate himself until he received drug treatment.

Once he received drug treatment, he was on a path to recovery. And he's changed his life, he's reorganized his family, he is employed, and he is a productive citizen. But it was not until after he received drug treatment.

So we know that that's number one in terms of the need to rehabilitate people. A lot of this kind of crime that we're talking

about that would be covered by this legislation is crime related to drugs. And if we treat drugs, then we're certainly going to treat further or we're going to eliminate further the problem that we have with crime.

We also know that we have taken away incrementally, one by one, step-by-step, any discretion of the judiciary. And to the extent that we do that, we undermine the basis of our Constitution and our government.

So I don't know why we're rushing to now do something in New York State that has already been proven to be totally unsuccessful as it relates to reducing and addressing crime at both the federal level -- and certainly we have the example of California. It does not work. Their penal system is exploding, and larger and larger amounts of money are going into that penal system. And it does not address the issue that we claim to be addressing.

So I'm voting no. I hope that my colleagues will also vote no. Because this is not in any way an answer to the crime problem. We need to leave it more up to judges to have

more discretion. I wish that we would go back to that. We would strengthen our judicial system as it relates to addressing this issue.

And let's try to figure out as a legislative body how we can address the problem of crime that is related to drugs in this state.

I vote no.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President, to explain my vote.

THE PRESIDENT: You're welcome.

SENATOR PATERSON: I think that Senator Montgomery covered most of the points that I would like to address. But I just want to restate my objection to the vagueness of some of the charges that are included in this legislation.

For instance, I won't even get into the multiple types of counts for rape and sodomy that exist in this legislation. But one that I think would be easier for everyone to understand would be the charge of burglary.

There are three different counts of burglary that we have in our Penal Law. They

draw the distinction between burglary committed at a residence, burglary committed at a business. They also draw the distinction between violence that is committed during a burglary and situations where maybe someone breaks into an abandoned building or something like that and there's no one even there.

But the legislation just says burglary. It doesn't say which count it is. Now, I don't think that my constituents will mind if I vote against this legislation until we have further clarification of those elements that are in and those that are out, particularly at a time when someone's life is at stake.

So on the birthday of a great freedom fighter, Senator Ada Smith, in her honor I'm going to vote no on this legislation and urge all my colleagues to do so.

THE PRESIDENT: Senator Paterson and Senator Montgomery, you will both be recorded as voting in the negative on this bill.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 644 are Senators Duane, Montgomery, Paterson, Sampson, Schneiderman, A. Smith, and M. Smith. Ayes, 50. Nays, 7.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 646, by Senator Balboni, Senate Print 1481B, an act to amend the Civil Practice Law and Rules, in relation to prohibiting.

SENATOR DOLLINGER: Explanation, please.

THE PRESIDENT: Senator Balboni, Senator Dollinger has requested an explanation.

SENATOR BALBONI: Thank you very much, Madam President.

It is indeed an honor to follow the brilliant debate by Senator Skelos. And I hope to do at least as well as he did.

This is a bill that has now been through this chamber for its third time, Madam President. And of course hope springs eternal that this is the year that the State Assembly

will pick this up and make this a part of the laws of the State of New York. Because I know that the Governor would sign this.

This bill would add a new section, 1411a, to the Civil Procedures Law, and - actually, the Civil Procedure Law and Rules. And essentially what it would say is if it is found that a plaintiff's culpable conduct results in a felony conviction, then that plaintiff's culpable conduct is suitable for the basis of a motion for summary judgment and they would be barred from suing and receiving monetary compensation in state court in New York.

A more succinct statement I don't have.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, will the sponsor yield to a question?

THE PRESIDENT: Does the sponsor yield?

SENATOR BALBONI: With delight.

THE PRESIDENT: You may proceed,

Senator Dollinger.

SENATOR DOLLINGER: I'll ask with delight as well, Madam President.

Senator Balboni, you and I debated the merits of this bill last year. I want to focus on just one procedural aspect of it. In your proposal you amend the CPLR to create an award of attorney's fees in the benefit of the defendant and against the claimant. Is that correct?

SENATOR BALBONI: That is correct. That is on line 13 of Section 2.

SENATOR DOLLINGER: Through you, Madam President, if Senator Balboni would continue to yield.

THE PRESIDENT: Does the Senator yield? Senator Balboni, do you continue to yield?

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President.

Senator Balboni, if this proposal

does become law as you wish, that will in fact be the only instance in the CPLR where we award attorney's fees against someone who files a claim; is that correct?

SENATOR BALBONI: I do not know that answer.

SENATOR DOLLINGER: Okay. Through you, Madam President, if Senator Balboni will continue to yield.

THE PRESIDENT: You have the floor, Senator Dollinger.

SENATOR DOLLINGER: Are you familiar with any other provision in the CPLR which awards attorney's fees to the party who -- or punishes a party for commencing an action by awarding attorney's fees if they lose?

SENATOR BALBONI: Attorney's fees, no.

But I would draw your attention, as I'm sure you're well aware, to the frivolous lawsuit provisions of the CPLR, the citation of which I do not have in my hands.

SENATOR DOLLINGER: Okay. Through you, Madam President, that's a perfect

segue. If Senator Balboni will continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR BALBONI: Yes, I do.

THE PRESIDENT: Go ahead, Senator.

SENATOR DOLLINGER: Isn't it a fact, Senator Balboni, that the only time we've awarded attorney's fees as a matter of course under the CPLR is when claims are deemed to be frivolous under current law; is that correct?

SENATOR BALBONI: Is that correct? You know, this sounds so much like cross-examination. We've been over this before, Senator. This is not a courtroom, and I don't have the citation. So I've answered it before. Asked and answered. I do not know.

(Laughter.)

SENATOR DOLLINGER: All right. And I guess my final question, Madam President, through you, is -- if Senator Balboni will continue to yield.

THE PRESIDENT: You have the floor, Senator.

SENATOR DOLLINGER: Doesn't this stand the notion of awarding attorney's fees on its head? Isn't the rule both in federal practice -- mostly in federal practice -- that if a party substantially prevails, they are entitled to attorney's fees?

This would be only instance I've ever seen in which someone would say if you don't prevail, you're punished with attorney's fees. Are you familiar with any other corollary for this in any other statute, either on the state or federal level?

SENATOR BALBONI: Actually, I'm not familiar with any corollary or any other statute that would permit a convicted rapist from suing the homeowner because he tripped and fell over the skylight while trying to enter the premises.

I'm not aware of any other state statute that is so much of an outrage that would allow someone who is trying to commit a burglary to bring a lawsuit against the homeowner. I'm not aware of any other

statutes that would address the situation.

But I'll tell you this. This situation is meant to provide a deterrent, not only in terms of the result of the civil action, and do it expeditiously, in the form of a motion for summary judgment, but also as a deterrent -- not only a deterrent in terms of the lack of recovery, but a deterrent against the individual who would seek to bring the action in the first instance.

SENATOR DOLLINGER: Thank you, Madam President. I have no further questions of Senator Balboni. I'd like to be heard on the bill.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: I appreciate Senator Balboni's candor. I'm going to assume that the last answer is translated most succinctly as no, you're not familiar with any other statute in which we turn the law of prevailing parties on its head.

I debated the merits of this bill with Senator Balboni last year. Nothing in this bill has changed my mind about this being a bad policy judgment.

Senator Balboni, when he wrote this bill, I'm sure had in mind convicted rapists. I have in mind the innocent trespasser who happens to trespass on a particular piece of property for which they end up with a felony trespass and all of a sudden they're entitled to -

SENATOR BALBONI: Would the gentleman yield for a question, please?

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Would the gentleman yield to a question, please?

THE PRESIDENT: Senator Dollinger, do you yield?

SENATOR DOLLINGER: I would be glad to, Madam President.

SENATOR BALBONI: Are you familiar with the concept of mens rea?

SENATOR DOLLINGER: Yes, I am, Madam President.

SENATOR BALBONI: What is mens rea?

SENATOR DOLLINGER: Is that a question through the chair, Madam President?

SENATOR BALBONI: It's through

the chair.

THE PRESIDENT: He was looking at me.

(Laughter.)

SENATOR DOLLINGER: Would Senator Balboni like me to yield to another question, Madam President?

SENATOR BALBONI: Would you yield to another question?

SENATOR DOLLINGER: Yes, I will, Madam President.

SENATOR BALBONI: Are you familiar with the concept of mens rea?

SENATOR DOLLINGER: Yes, I am, Madam President. The answer is yes.

SENATOR BALBONI: Madam President, through you, would you like to tell the body what mens rea means?

SENATOR DOLLINGER: Mens rea means that there is a state of mind or the mental condition, the mental predicate necessary for it to support criminal activity.

SENATOR BALBONI: Madam President, through you, would the gentleman yield to another question?

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

SENATOR DOLLINGER: Yes, Madam President, provided this isn't the bar exam.

(Laughter.)

THE PRESIDENT: You may proceed, Senator Balboni.

SENATOR BALBONI: Not yet it isn't.

In your illustration you referred to the crime of trespass. Is there a mens rea element, to your knowledge, in that particular crime?

SENATOR DOLLINGER: Through you, Madam President, I'll go back to the Barberi [ph] course in 1980, and I think the answer is yes. But I stand to be corrected if I'm wrong.

SENATOR BALBONI: Madam President, one final question for the gentleman.

THE PRESIDENT: Senator Dollinger, do you yield for a final question?

SENATOR DOLLINGER: Yes, I will, Madam President.

THE PRESIDENT: You may proceed, Senator Balboni.

SENATOR BALBONI: So then your statement to us that there is an innocent trespasser, is that a possibility, to be convicted of a felony?

SENATOR DOLLINGER: Yes, Madam President, it actually is. Because the crime doesn't necessarily involved mens rea. That's a crime where if you're on the property, whether you intended to be on it or not, if you are in fact on the property, you can be convicted of a trespass. That's my understanding of the criminal law.

And frankly, given the fact that we've substantially increased the penalties for most crimes in this state -- including, I think, trespassing, in the time that I've been here in the last seven years -- I have little doubt that there are types of trespass where mens rea is not a factor, it's simply that you are on someone's else's property unlawfully. And I don't believe there's a defense that "I didn't intend to be there."

SENATOR BALBONI: Madam

President, one last question, please.

THE PRESIDENT: Senator Dollinger, do you yield for an additional question?

SENATOR DOLLINGER: I would be glad to, Madam President.

THE PRESIDENT: Go ahead, Senator Balboni.

SENATOR BALBONI: Would you care to tell me which criminal trespass is a felony under the New York State Penal Law?

SENATOR DOLLINGER: Madam President, through you, I don't know. I don't have my Penal Law right here in front of me.

SENATOR BALBONI: Madam President, I might just suggest to this gentleman, by the way of the question, that he might want to check the Penal Law. Because to my knowledge, there is no such thing as a felony trespass.

Thank you, Madam President.

SENATOR DOLLINGER: Thank you, Madam President. I assume that was a question to me as well, because I had the floor. I agreed to yield to a question.

THE PRESIDENT: Senator Dollinger, you still have the floor.

SENATOR DOLLINGER: Thank you, Madam President.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: I just -- I want to go back. And we did discuss the substance of this bill last year. And I thought it was a bad idea then. I don't think anything has appeared in this text which convinces me it's a better idea this year.

But I want to just focus on the attorney's fees provision. The law in this nation is pretty clear. You are entitled, under the attorney's fees statute -- and we have statutes that grant attorney's fees provided that you can prove that you are a prevailing party. You only get them if you can prove that you've substantially prevailed. That's the general rule in the United States, even in attorney's fees statutes under the federal Civil Rights Law and others.

What this bill does, not only does it appear to adopt the English rule -- the English rule. Remember, we have the American

rule, and we gave -- we adopted our own rules because we didn't like the English rules. I would point out to Senator Balboni that's what the Revolution had to do with, was throwing out English rules and substituting American rules.

But we have an American rule that says you can go to court and you don't have to pay the other side's attorney fees unless - unless -- one of the parties can show they substantially prevailed.

This proposal stands that idea on its head, because it says that the defendant must prove -- that if the defendant does not prove that he substantially prevailed, then he has to pay attorney's fees. It completely flips not only the notion of the substantive award of attorney's fees, but it changes the whole idea of what a prevailing party is and when you're entitled to them.

I would submit that what this does is this takes what is a bad policy judgment - that is, stripping someone of their ability to bring a civil action because they have engaged in certain conduct, not only -- and there are

plenty of ways that we protect against those kinds of actions, through -- and Senator Balboni is correct, through our sanctions for frivolous cases.

This says that even if you have a nonfrivolous case, and even if under Basso against Miller, which is the trespass statute or the trespass case in the Court of Appeals that set up the reasonableness test of the conduct of plaintiffs and defendants -- but this says you can have a nonfrivolous case in which you happen to engage in a felony, a felony trespass, and if you lose, you have to pay attorney's fees.

It seems to me that this jumbles again the law of this state. This would only create greater confusion, not only as a substantive matter but as a procedural matter, and sets a dangerous precedent for the punitive use of an attorney's fee award against someone who may be trying to change the law of this state in a reasonable and cogent way.

I suggest that this is not only bad policy, this is bad procedure as well.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. I'd like to speak on the bill, knowing that Senator Balboni will interrupt to ask questions if it's necessary.

(Cell phone ringing.)

SENATOR SCHNEIDERMAN: Sorry. It's Norman Adler.

(Laughter.)

THE PRESIDENT: That's not Senator Balboni.

SENATOR SCHNEIDERMAN: It's not Senator Balboni.

On the bill, I must say I appreciate the -- some of the concerns about people appearing to recover from their own misconduct. However, I really do find this particular piece of legislation to be offensive in a very fundamental way, because it is so hostile to our civil justice system, which in my mind is really one of the great jewels of our constitutional structure.

We already have a common law doctrine that if you go to trial, all the

criminals you're talking about in your ludicrous and grotesque and horrendous examples would lose. They'll lose under the law of the State of New York now. They're going to lose. That's the problem.

It's not a bad thing for people to be able to seek redress for their injuries in court. And the combination of the substantive provisions and this attorney's fees provision, this is a just a very -- a bill that's very hostile to the civil litigation system.

And I have to tell you, having spent time in other countries that have other systems, we pay a price for the civil litigation system. We pay a price for having people go to court. People are outraged about trial lawyers. I suppose that's a word that resonates the way that "welfare cheats" did once. It's just something that's a hot button.

But civil litigation is a very good thing in this country, people having their day in court to prove their case. And, you know, there are examples, outrageous examples on both sides presented in the memos to this

bill. Obviously of some concern to some of us in New York City is recent police misconduct, is that if someone is apprehended for, you know, stealing a coat and the police cause serious injury to that person, then this would immunize the police from any sort of civil liability.

I don't think that's good as a matter of public policy. I think the law as it stands now already prevents criminals from recovering under the circumstances that we're most concerned about. And I don't really see the reason for this sort of hostility to the ability to have your day in court.

So I vote no, and I encourage everyone else to vote no.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

I had some notes about some issues I wanted to cover in this legislation, and now I see why Senator Schneiderman was over here at the desk a little while ago. He took my notes and said everything that I was going to say.

But I will just add that in the federal system the only place that I notice that attorney's fees are awarded were the attempts to get lawyers to take civil rights cases. So the attorney fees were granted to encourage lawyers to take those cases because there was a presumption by the federal court that there would not be the interest in taking those types of cases.

In the present case, the attorney's fees are being used as almost a penalty for bringing this type of a charge. And although it would seem egregious for the perpetrator of a crime, someone who has committed a felony, to then be suing when in fact they are the one who raised the specter of danger by engaging in this type of activity, to then go to civil court and sue the victim or the police or anybody who injured them seems preposterous.

But you know whose jurisdiction it is to tell us that it's preposterous? The court. And in that one case, the McCummings case, the court didn't. They awarded $4.2 million in damages to the victim -- sorry, to the felon who committed a crime against a

victim, who was then shot and received this award.

I don't think we need to legislate the exception, Madam President. I encourage a no vote on this bill.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Madam President, if I might, just to respond.

And let me just take a minute and tell you how gratifying it is to be able to stand on the floor of a chamber and at least talk about this issue. In the other house I had introduced this bill for many, many years and never even got it to the floor. Could never have a discussion on any aspect of it - not amendments, not motions to discharge. You think our rules are tough, you should see their rules. They make us seem like an open and free society.

So this is the first time we can stand here and we can talk about the concepts that accompany this bill. And what always becomes so frustrating to me is that this is not rocket science, this is common sense. And it's not common sense because of my

constituents who are Republicans who want this; it is common sense for all of your constituents too. It's for your seniors that we're doing this, perhaps the ones who live in not-so-good neighborhoods. They're nervous about people coming to their house at night and worried about the ability to have justice.

We hear that all the time, justice. You know what justice is predicated on? An understanding that the law as applied to each and every individual is fair. That's all this bill seeks to do. And every time we try to attack the provisions of this bill, all we're doing is trying to make up examples that don't fit. But in doing that, we gloss over the big picture.

Senator Schneiderman, you said that the felon loses his day in court and that offends you because that's offensive to our civil justice system. Are you aware of the fact that under Section 79 of the Civil Rights Law, the individual loses their right to vote? It's called civil death. And under the provisions of the Penal Law -- this is a rhetorical question.

SENATOR SCHNEIDERMAN: Oh, I couldn't distinguish it from the earlier question.

SENATOR BALBONI: -- under the Penal Law, that the convicted felony forfeits their property?

The convicted felon, ladies and gentlemen, that's who we're talking about. We're not talking about a litigant here.

My whole attempt here is to single out the convicted felon and strip them of their ability to come back in and laugh at all of us. They're laughing at us, ladies and gentlemen. They're laughing. They're saying, Your civil system stinks, because I'm going to go out there and I'm going to commit a felony and be convicted of it and then I'm going to come back and use your courts and then stick your nose inside of it.

That's what's happening. And that's how the public understands it. But yet what we always do here, we come back and we say, No, no, no, that's not the point. The point is we're going to find some technical exclusion that doesn't fit the process. Well,

ladies and gentlemen, all we do, every year we try to do this, is we ignore the fact that the Court of Appeals has already ruled on this, guys. We've never overturned it.

Barker versus Kallash. The Court of Appeals has already enunciated what the law of the state is, but yet the courts won't apply it, because they don't have a statute. I know that from personal experience. The trial courts need guidance. That's our only reason to be here.

And you don't lose your day in court. That's a bunch of baloney. Because in the real world -- because the thing that wasn't mentioned today is police brutality. That's always been the issue that people have talked about. But in reality, police brutality is effectively handled through the initiation of a civil rights 1983 action in federal court, and through a conviction of a felony of the police officer. That's done with brutality. That's the most effective deterrent, not a civil lawsuit in state court. That's ridiculous.

And I'll say this again. Any civil

rights plaintiff's attorney who brings a police brutality case in civil State Supreme Court is not worth their salt. Because any practitioner knows that the federal case -- in federal court you have a board of discovery, it's more expeditious, and you get attorney's fees. So you're doing your client a disservice.

So all this bunk about how we're taking away the civil ability in this state is wrong. It's just plain wrong. And you know what, I will say this also. There is too much litigation in this state. And there is too much in this nation. You compare our country with other countries -- and I'm a trial attorney -- there's too much litigation.

And what I dislike is -- yes, our right is sue is very precious and it's a part of our Constitution. But don't ever say that when we go and we start a case that you're not setting something in motion that costs money, costs people's time in hours. Just go ask the juries that sit in Supreme-Nassau, Supreme-Manhattan, Supreme-Ulster. Go ask about their time.

And now you're going to bring a case where a convicted felon, because of their culpable actions, are now going to try and sue and seek damages? That's what they're going to sit there and listen to? It's an outrage. It's been an outrage since we introduced this bill, since the appellate division affirmed in the McCummings case.

And what we never do -- and this is my last point -- is we never talk about the victim. We never talk about the victim in this chamber. Do you know what happened to Sean Dunphy? His head was bounced off the IRT subway platform ten times. Suffered a cranial contusion. He was hospitalized. And what was his crime? He was standing on the IRT subway platform. That was it, nothing else. We never talk about him, because he's not sexy.

Well, we'll talk about Bernard McCummings, that punk, that punk who goes and gets this guy with his friends, throws him down, victimizes him, and then has the unmitigated gall to use our civil justice system to bring a suit, and then our court system sustains it and affirms it and gives

him $4.3 million.

Ladies and gentlemen, that's wrong. I don't care what district you live in, I don't care what constituency you represent, that is wrong.

We should pass this bill today, and we should send this to the Assembly and say, You got objections? Fine, let's work them out. Let's make this the law.

Thank you, Madam President.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President and my colleagues.

As chairman of the Crime Victims, Crime and Corrections Committee for a number of years, I carried this legislation. For a number of years this house, virtually unanimously, passed it and sent the message clearly to the criminals of this state that they, stepping beyond the bounds of our criminal justice system, must bear the consequences and can't use that system for their own exploitation.

Senator Balboni, upon coming to this chamber, is very, very passionate, as you

can see and hear, on this issue. It's an issue that he believes so strongly in and should be congratulated for going above and beyond in researching, in looking into the legal nuances of this issue.

But it all boils down to the simple statement that those who step outside the bounds of our criminal justice system, who use it to exploit, to steal, to rob, to hurt, should not be allowed to come back into that system to utilize it against the very victim that they have victimized in the first place.

It's a measure of common sense. It's a measure that's laughable outside this chamber to think that we as a state do not forbid this type of heinous behavior.

Senator Balboni, you are to be congratulated and thanked for the passion you bring to this issue, for the detail of which you have undergone research. And I think it's certainly something that we need to have as our -- in our criminal code, in our civil code. Thank you very much, Senator Balboni, for your efforts on this issue.

And, Madam President, I certainly

urge our colleagues to support it.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Dollinger, to explain your vote.

SENATOR DOLLINGER: Madam President, may I just explain my vote?

I have three quick points of disagreement with Senator Balboni. One, you got this bill to the floor of the Senate, Senator Balboni. I congratulate you. It's too bad that ideas in both houses of the Legislature don't make it to the floor on their merits, they make it almost exclusively on the basis of your political party. I would like to see that changed. I think that would be a good change.

Secondly, Senator Balboni, I couldn't disagree with you more that there's too much litigation. I'm sick and tired of hearing these people with 1950 views of the

world that suggest we all live in this wonderful world where we buy safe products, where everything that's produced is fine, where we make contracts with our friends with handshakes.

That isn't the world in which we live, Senator Balboni. It's a world in which there are disputes, people don't -- people are making contracts with people in other nations. That's what litigation is all about. I'm proud to stand here and say that more and more people are asserting their rights. That can only be a good thing.

And last, let me conclude with there's one piece of litigation, Senator Balboni, that should have been brought that would have addressed this problem. There's one piece of litigation that you left out - why Sean Dunphy's lawyer didn't sue McCummings for beating his head against the Long Island Railroad track. And when McCummings got the judgment against the City of New York, Dunphy's lawyer could have attached it, and then he would have been paid in full.

That's the kind of good lawyering

that we need. That's the kind of litigation we ought to bring so that justice is done. I would just suggest that rather than too much litigation, in Sean Dunphy's case there wasn't enough. If he'd had the right lawyer, he would have been paid instead of McCummings.

THE PRESIDENT: Senator Dollinger -

SENATOR DOLLINGER: I vote no.

THE PRESIDENT: How do you vote, Senator?

SENATOR DOLLINGER: I vote no.

Thank you, Madam President.

THE PRESIDENT: You will be so recorded as voting in the negative.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President, to explain my vote.

I join Senator Nozzolio in respecting Senator Balboni's passion and commitment to this issue. I think that his passion is misplaced in this case, but I respect it nonetheless.

I would like to make two brief points. One is to say that I don't -- you

know, I think it's nice that we're debating this bill and it's to the floor in this house. I'm sorry for his negative experiences in that other jurisdiction. You talk sometimes like a refugee from Cuba, but I appreciate the traumatic effect it had on you.

However, in this house, sir - through you, Madam President, I guess -- there are bills we should be bringing to the floor this year. And if our concern is for victims, well, let's deal with the concern for victims.

I've been just handed a press report today, two tenants in a senior citizens apartment were shot to death by a fellow resident after they criticized his inappropriate language.

The bills that don't come to the floor in this house are bills to get guns off the streets and out of the hands of the wrong people. And I urge Senator Balboni to put his considerable energies, talents, and intellectual ability to bring those to the floor before this session ends.

I vote no.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I vote no.

THE PRESIDENT: You will be so recorded, Senator Paterson.

Senator Balboni.

SENATOR BALBONI: I apologize if I got a little too passionate. This is something I really believe in.

And the last point I'd just like to make in response to Senator Dollinger -- this is not debate, but we can sit here in these hollow chambers and we can talk about what should have been done. The reality was Bernard McCummings was judgment proof on the day that he committed this crime. He was judgment proof a year later when the statute of limitations ran for a civil lawsuit. So, so much for the big talk about attaching anything.

This is the real world, ladies and gentlemen. We should prevent these suits from happening.

Thank you.

THE PRESIDENT: You will be so recorded as voting in the affirmative, Senator

Balboni.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 646 are Senators Connor, Dollinger, Duane, Markowitz, Mendez, Montgomery, Paterson, Rosado, Sampson, Schneiderman, A. Smith, M. Smith, and Senator Stavisky. Ayes, 46. Nays, 13.

THE PRESIDENT: The bill is passed.

Senator Mendez.

SENATOR MENDEZ: Madam President, I'm requesting unanimous consent to be recorded in the negative on Calendar Number 644.

THE PRESIDENT: Senator Mendez, you will be so recorded as voting in the negative, without objection, on Calendar 644.

SENATOR MENDEZ: Thank you.

THE PRESIDENT: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 689, by the Senate Committee on Rules, Senate

Print 6178, an act to amend the -

SENATOR SKELOS: Lay it aside for the day.

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 690, by Senator Maltese, Senate Print 7418, an act to amend the Election Law, in relation to presidential primaries.

SENATOR CONNOR: Explanation.

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

SENATOR MALTESE: Madam President, this bill is an act to amend the Election Law in relation to presidential primaries.

Briefly, the bill would reform the process by which the Republican Party conducts its presidential primary in New York State by opening the ballot to all presidential candidates who qualify by three alternative methods. The first, those who qualify for federal matching funds; second, those who are nationally recognized; and third, those who are able to gather petitions with at least

5,000 signatures from registered party members throughout the entire state.

This act also provides for the casting of votes directly for the presidential candidates rather than the delegates, and that has previously been the case with the Republican Party.

Next, the act calls for the adoption of a winner-take-all for the awarding of convention delegates.

And, lastly, the act provides for the opening of polling places throughout the state for presidential primaries from 6:00 a.m. to 9:00 p.m.

The bill adds new sections calling for the selection of delegates from New York State. They shall be -- it shall be -- well, let's do it this way.

SENATOR CONNOR: Explanation satisfactory.

(Laughter.)

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

I have an amendment that I'll offer

in a minute. But let me say what -- the position I'm taking on this is incumbent upon me as the Democratic leader by the national rules of the Democratic Party.

What we've had on the books for many, many years is a permanent law dealing with the selection of national convention delegates. Some twenty-some years ago, because of Democratic national rules, the Democrats in this Legislature and the then-Governor obtained -- and what we've done every four years is adopted a law applying to that year. There's one in effect for the year 2000 for the Democratic Party on delegate selection and ballot access and so on.

By and large, over the years the Republicans in this state relied upon the permanent law with some changes. In fact, there were some changes, good changes to the permanent law adopted last year at the behest of the Republican Party, making the number of signatures less, for example, making it easier to get on the ballot. Although regrettably, as we saw, not easy enough to get on the ballot.

I certainly applaud the Governor for this proposal and for his message necessitating an immediate vote so we can be ready for year 2004 as soon as possible.

The problem is what Senator Maltese's bill is doing is it's substituting this bill for the permanent law. And this bill, in a couple of respects, is offensive to Democratic Party national rules. And in fact, were we to elect our delegates under this law as proposed by Senator Maltese, our delegation could be challenged and not seated at the convention in 2004.

Now, the answer, Madam President, may be, Oh, well, we can do legislation in 2003. Well, the way things work around here is we've generally done legislation for the Republicans and for the Democrats at the same time. It's a deal. It's an understanding. It would ill-behoove Democrats in this Capitol to adopt into law this provision, apparently -- I don't think it solves all your problems, but apparently solving all the problems of the Republican Party, and leave our needs go for a couple of years and come

begging and saying we need legislation just for us.

That wouldn't be fair. I don't know why we would want to do that. I don't know the Democrats in this Legislature in both houses would want to pay any price then, you know, exchange bills, whatever understanding, whatever deals, to get what we need. We ought to be getting what we need now, even as the Republican Party is getting what it needs.

Now, what's particularly offensive to Democratic Party rules in this bill is the at-large system -

THE PRESIDENT: Excuse me.

Senator Maltese, why do you rise?

SENATOR MALTESE: Would Senator Connor yield for a question?

SENATOR CONNOR: Yes. Certainly, Madam President.

THE PRESIDENT: You may proceed, Senator Maltese.

SENATOR MALTESE: Madam President, through you.

Senator Connor, did the ranking Democrat on the Elections Committee and your

other staff advise you that this bill was on the committee agenda yesterday?

SENATOR CONNOR: Yes, they did.

SENATOR MALTESE: Did the ranking member, Senator Hevesi, advise you that at that time when he made some similar objections, although not the same one, that I advised him that that was a matter that should be taken up with you and with the Democratic leadership in the Assembly and that we would consider it and that Senator Bruno had indicated that he would consider it at this time?

SENATOR CONNOR: No, Madam President. What we want is a commitment. Not that it will be considered, we need a commitment that the Republicans in this house will accord us the same courtesy we give them. That's not the same as saying, Oh, present your things and we'll consider it.

SENATOR MALTESE: Madam President.

SENATOR CONNOR: Madam President, if Senator Maltese, on behalf of Senator Bruno, will make a commitment -- because, by

the way, my amendment does not substitute for yours. My amendment doesn't touch your provisions. It just adds our provisions as another alternative. Because fair is fair.

SENATOR MALTESE: Madam President.

THE PRESIDENT: Senator Maltese, why do you rise?

SENATOR MALTESE: Would Senator Connor yield for a question?

THE PRESIDENT: Senator Connor, do you yield?

SENATOR CONNOR: Certainly, Madam President.

THE PRESIDENT: You may proceed, Senator Maltese.

SENATOR MALTESE: Senator Connor, have you had the opportunity to discuss your proposal with Speaker Silver?

SENATOR CONNOR: I have discussed the matter with the Speaker. But my conversations with the Speaker, as you may appreciate, I'll be happy to share you with in another forum.

SENATOR MALTESE: Well, Madam

President, did you get the approval of the Speaker and the members of your house to afford this proposal as far as to -- and the chairman of the State Democratic Party for this proposal?

SENATOR CONNOR: Madam President, my proposal is in conformance with Democratic national rules, and that's why I'm offering it.

The fact is, you see, there's a provision in the national rules that obligates Democrats in an elected office to either implement the national rules or resist any legislation that might bind the Democratic Party and be offensive to the rules.

So bringing this out in its present form obligates us to a party vote in the negative, because in theory it binds us and it is an affront to our national rules. And the only way we preserve our good standing is even if we lose and this becomes law, we have to use all of our power to implement it.

Now, we won't lose, because I don't think the Speaker, who is a Democrat, is going to go against national party rules either and

adopt something that could bind us that's offensive to our rules.

What I suggest, Madam President - and by the way, this amendment was okayed by the executive director of the Democratic State Committee. I've spoken to the Speaker earlier about it. Besides being the Minority Leader, people often talk to me about election law in my party.

I assure Senator Maltese, Madam President, that the amendment I'm proposing, which only binds our party, is in addition to Senator Maltese's provisions for the Republican Party, will not be -- it's what we want. And it matches our rules.

I would say that the one -- the legislation itself, whether it covers us or not, is in for some real rough sledding at the Justice Department. The at-large provision - the at-large provision, winner-take-all, the winner-take-all provision, is retrogressive as it applies to Congressional districts in the counties of Kings, New York, and the Bronx which are covered by the Voting Rights Act, and this legislation would have to be

precleared before it would take effect. No one has any doubt that winner-take-all will dilute the influence of minority voters in those three counties.

I would only point out that while Governor Bush seems to have done well in most districts, that Senator McCain won all the delegates in a number of those Congressional districts in those three covered counties. He clearly was the choice in the minority Congressional districts of the minority voters, yet under this system that choice would have been wiped out and Governor Bush would have won all the delegates.

So, look, it's the Republican Party's business, Madam President. I think if you adopt this, you may solve some of your problems, certainly about ballot access, but you're going to not get cleared by the Justice Department to implement the winner-take-all. But that's your problem.

Our problem is we cannot acquiesce in passing this to the extent that it purports and will be the only statute on the books upon which Democrats -- to which Democrats can look

unless we get future legislation. And so as it stands now, we have no choice.

I offer my amendment not for a vote, but really as a friendly amendment to Senator Maltese. This is what we need. We need a commitment to do this so that both parties are on equal footing.

So, Madam President, at this time I call up my amendment, waive its reading, and I think I've explained it. I'd just like to put it to a vote so that, in conformance with our national rules, Democrats can be on the record here as upholding what binds us.

THE PRESIDENT: On the amendment, all in favor signify by saying aye.

SENATOR CONNOR: Party vote in the affirmative.

SENATOR FUSCHILLO: Party vote in the negative.

THE PRESIDENT: Senator Goodman.

SENATOR GOODMAN: I'm going to speak to the bill, Madam President, so I'll wait just a moment.

THE PRESIDENT: The Secretary will announce the party vote.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 23. Nays, 36. Party vote.

THE PRESIDENT: The amendment is defeated.

Senator Goodman, you wish to be heard on the bill?

SENATOR GOODMAN: On the bill, Madam President.

Madam President, when this presidential issue arose in Manhattan, we considered very carefully its implications. And may I say to you that I'd like the record to clearly show that in Manhattan, as the Republican county chairman, working with my executive committee, we did issue an order to the effect that no candidate should be excluded from the ballot on the basis of any technical grounds, and we refused to go along with the concept of the elimination of Senator McCain from the ballot. That, in the fullness of time, was subsumed in the decision of the court to put him on the ballot.

But merely as a matter of historic record, I think it's interesting to note that

in this area, in which I happen to have some direct interest as county chairman, we refused to undertake an arrangement whereby there would be an arbitrary exclusion.

May I say that I think for the most part this bill carries with it excellent reform particulars. There's no question that the arrangements to determine -- to prevent ballot exclusion in the fashion in which it was done recently are first-rate. I compliment Senator Maltese to that effect.

And as to the matter which Senator Connor has raised, it's quite evident that this would be a one-house bill and that in the fullness of time there will be a conference between the two houses to iron out the problem to which you referred.

But I think it's very important that we go on record in full support of this significant step being taken by the Republican Party through the Majority's offering of this bill to indicate that there are difficulties in the recent past which need to be clearly remedied, and in this case will be if this portion of the bill eventually becomes law.

So let it be said that anytime that a candidate has the backing that Senator McCain demonstrated, it's entirely appropriate that a decision to include that candidate on the basis of his capacity to qualify for matching funds is very desirable. And also in the event that that alone does not do it, a decision by a majority of the commissioners of election would also serve this purpose. So that I think we do eliminate some of the more noxious aspects of the situation which we recently experienced.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Just on the bill, Madam President.

This is an issue that attained nationwide attention. This is an issue that the Governor took note of, and this is a Governor's program bill. This is an issue that has been a source of discussion since four years ago, where changes were made to the petitions and changes were made that were, I think, salutary changes.

As a matter of historical record, echoing my good colleague Senator Goodman, I

have been involved in petitions and election law since 1962, with the formation of the Conservative Party. And in those 38 years, I never first challenged another candidate's petitions. So I think as far as ballot access and as far as fairness, I can say that I will not yield to any person.

This bill is in answer to a great deal of comment, a great deal of criticism, a great deal of concern. The Majority Leader has indicated his support a hundred percent.

Senator Connor has indicated that he feels that this would apply equally to the Democratic Party and the Republican Party, and he speaks with many, many years of election law and senatorial experience.

At the same time, relying on that experience, he well knows that the eventual finished version of this bill, this good government bill, this warm and fuzzy bill, will achieve the purposes of both the Democratic Party and the Republican Party.

We in the Republican Party are not presuming to dictate to the Democratic Party. We're following decades of precedent and

submitting a bill that (A) binds the Republican Party and then, because this is a multiparty state, enables other parties to opt in if they wish. So the Democratic Party, if it so chooses, could opt in.

We all know as a matter of practical experience that this is not going to happen. At this time and in this place, Senator Connor indicates and I fully take his representation that he has consulted with Speaker Silver and that he has consulted with the state chairperson of the Democratic Party. At the same time, sometimes there's many a slip 'twixt the cup and the lip. We've all heard of the negotiations and consultations between the Majority Leader and the Speaker and the Governor and the Speaker where the final result is somewhat different as represented from the parties during the course of the negotiations.

At this time we have a bill before this house. It's a great bill. It's a bill that has ballot access, it's a bill that is fair, it's a bill that has taken into consideration, as I say, not only criticisms

but concerns of all parties, including the New York Times and other newspapers all across the state.

Madam President, I urge all in this house not to defer judgment, not to hide behind a position that something would have to be done. We all know that something can be done in negotiation between the parties and between the houses, and we all know that this is a vast improvement on the prior situation. And we should all vote aye.

THE PRESIDENT: Read the last section.

SENATOR CONNOR: Madam President.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: To close for the Minority.

You know, I certainly have no quarrel with this bill, and it certainly is a vast improvement. Our position simply is constrained. I'll be delighted to vote for these provisions when they come back with an alternative that's conforming to the Democratic national rules. But until that time, since it does -- while Senator Maltese

points out the Democrats could opt in, if this bill became law the way it is, either the Democrats could opt in or have no national convention process whatsoever. See?

So to pass this as a permanent law and say it's for the Republicans but any party can opt in, well, we need another option. We need our option that conforms to our rules.

That said, we must as a party vote against this. As I say, we'll all be delighted to vote for it when it comes back and the second half of it is the Democratic Party's option.

THE PRESIDENT: Read the last section.

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

SENATOR CONNOR: Party vote in the negative.

SENATOR FUSCHILLO: Party vote in the affirmative.

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 36. Nays,

23. Party vote.

THE PRESIDENT: The bill is passed.

Senator Fuschillo.

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

THE PRESIDENT: Senator, that completes the reading of the controversial calendar.

And yes, we have substitutions at the desk.

SENATOR FUSCHILLO: Please read the substitutions.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 13, Senator Padavan moves to discharge, from the Committee on Cities, Assembly Bill Number 9489 and substitute it for the identical Senate Bill Number 6479, Third Reading Calendar 312.

THE PRESIDENT: The substitution is ordered.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam

President, there will be an immediate meeting of the Majority in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Majority in the Majority Conference Room.

Senator Fuschillo.

SENATOR FUSCHILLO: Will you please recognize Senator Paterson, please.

THE PRESIDENT: I will be happy to.

Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

There will be an immediate meeting of the Minority in the Ada L. Smith Room, also known as the Minority Conference Room, Room 314, 314. Or 31415925, which we've renamed our room in honor of pi.

THE PRESIDENT: There will be an immediate meeting of the Minority in the room, the Minority Conference Room.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, there being no further business to

come before the Senate, I move we adjourn subject to the call of the Majority Leader, with intervening days being legislative days.

THE PRESIDENT: On motion, the Senate stands adjourned until the call of the Majority Leader, intervening days being legislative days.

(Whereupon, at 5:05 p.m., the Senate adjourned.)