THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 29, 2001

3:08 p.m.

REGULAR SESSION

SENATOR JOHN J. BONACIC, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT BONACIC: The Senate will come to order.

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

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

ACTING PRESIDENT BONACIC: We have no clergy today, so I would ask you to bow your heads in a moment of silence and think of your loved ones.

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

ACTING PRESIDENT BONACIC: Reading of the Journal.

THE SECRETARY: In Senate, Friday, January 26th, the Senate met pursuant to adjournment. The Journal of Thursday, January 25, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Mr. President, may we please have the noncontroversial reading of the calendar.

ACTING PRESIDENT BONACIC: The Secretary will read.

THE SECRETARY: Calendar Number 16, by Senator Volker, Senate Print 209, an act to amend the Penal Law, in relation to consecutive terms of imprisonment.

SENATOR MONTGOMERY: Lay it aside.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT BONACIC: The bill is laid aside.

THE SECRETARY: Calendar Number 23, by Senator Skelos, Senate Print 403, an act to amend the Penal Law, in relation to

sentencing of persistent violent felony offenders.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT BONACIC: The bill is laid aside.

THE SECRETARY: Calendar Number 25, by Senator DeFrancisco, Senate Print 435, an act to amend the Criminal Procedure Law, in relation to applications for recognizance or bail.

ACTING PRESIDENT BONACIC: Read the last section.

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

ACTING PRESIDENT BONACIC: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42. Nays, 1. Senator Sampson recorded in the negative.

ACTING PRESIDENT BONACIC: The bill is passed.

THE SECRETARY: Calendar Number 31, by Senator Goodman, Senate Print 685, an act to amend the Penal Law, in relation to concurrent and consecutive terms of

imprisonment.

ACTING PRESIDENT BONACIC: Read the last section.

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

ACTING PRESIDENT BONACIC: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT BONACIC: The bill is passed.

THE SECRETARY: Calendar Number 42, by Senator Marcellino, Senate Print 806, an act to amend the Environmental Conservation Law, in relation to management of wildlife resources.

ACTING PRESIDENT BONACIC: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the first day of January.

ACTING PRESIDENT BONACIC: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT BONACIC: The bill is passed.

THE SECRETARY: Calendar Number 43, by Senator Balboni, Senate Print -

SENATOR SKELOS: Lay it aside for the day.

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

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

SENATOR SKELOS: Mr. President, may we go to the controversial calendar, please.

ACTING PRESIDENT BONACIC: The Secretary will read.

THE SECRETARY: Calendar Number 16, by Senator Volker, Senate Print 209, an act to amend the Penal Law, in relation to consecutive terms of imprisonment.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT BONACIC: Senator Volker, an explanation, please.

SENATOR VOLKER: Mr. President, this is a bill that has passed this house in the past that would allow for consecutive

sentencing where a person committed an offense that involved a series of charges that resulted from a single act.

If I remember right, this bill was initially Senator Joe Galiber's bill, the late Senator Galiber who served in this chamber. And it came about, if I'm correct, as a result of the Happylands dance studio fire where something like 80-some people died. And the person that set the fire was only able to be charged -- well, he was charged with a series of crimes -- of murder, manslaughter, I guess -- but could only be charged under the statute concurrently.

And this bill would allow for consecutive sentencing. It is not mandatory. You could be charged under concurrent sentencing as it is now, but this bill would allow for consecutive sentencing.

SENATOR MONTGOMERY: Mr. President, would -

ACTING PRESIDENT BONACIC: Senator Montgomery, why do you stand?

SENATOR MONTGOMERY: Would Senator Volker answer a question, an inquiry.

ACTING PRESIDENT BONACIC:

Senator Volker, do you yield?

SENATOR VOLKER: Certainly.

SENATOR MONTGOMERY: I would like to ask Senator Volker to what extent the bill applies broadly. I mean, are there any limitations on the nature of offenses that would be committed under this that would require consecutive terms of imprisonment?

I'm just trying to find out to what extent do we include or would be included under this statute some of the minor offenses -

SENATOR VOLKER: No.

SENATOR MONTGOMERY: -- that may occur together but that we may not want to have consecutive terms.

SENATOR VOLKER: The only offenses that -- I neglected to say this, is that we're only talking about the violation of the Penal Law Article 120, which is assault; Article 125, which is homicide; and the present section, which is ironic, which is Section 27020, which is unlawfully wearing a body vest. I have no idea where that law came

from.

That is the law now, that allows for the consecutive sentencing if you violate the law while unlawfully wearing a body vest. That happened, I believe, prior to my -- maybe not my being in the Senate, but it was certainly prior to my being Chairman of Codes.

So those are the only three instances where these multiple crimes would be involved -- assault, homicide, while unlawfully wearing a body vest.

SENATOR MONTGOMERY: Thank you.

Thank you, Mr. President, I appreciate that explanation.

I have voted no on this bill, and one of the reasons that I'm voting no and I'm going to continue my vote is because I'm just concerned about the way that we sort of piecemeal our criminal code. And in many instances, these have a disparate impact on certain areas, certain communities, certain groups in our state.

And I just want to be sure that this is -- that we're not really sort of making a decision in one area that -- where we

have not really analyzed and can't necessarily predict but may be exaggerating another part of our criminal code as it relates to consecutive sentencing.

So I'm going to vote no. I understand Senator Volker's intent; I probably don't object to it. But I would like to have more time to look at just what the impact of this kind of legislation would be.

Thank you. I'm voting no.

ACTING PRESIDENT BONACIC: Thank you, Senator.

Senator Volker.

SENATOR VOLKER: I just want to say quickly -- and I understand your concern -- that I think initially when we first did this bill, I think we had it mandatory for consecutive sentencing. Keeping in mind, thinking about that, we changed this to what is in effect right now, the -- you can only have concurrent sentencing.

What we're saying here is we're not saying you have to have consecutive sentencing. All we're saying is that consecutive sentencing could be allowed in

certain conditions, so that the option is there to do it under these very serious conditions.

And I tend to agree with you. In fact, I wish we could make, you know, changes in many cases as, well, we did in sexual assault reform.

And, by the way, we're still working on that. I think one of the things that people really didn't realize is that in that bill last year, the sexual assault reform, we said -- near the end, there's a clause in there that says we ran out of time. And we're going to finish up part of the revision of the sexual assault reform section we hope this year. And we're discussing it right now. Because I happen to agree with you entirely, that I think it's better to do these whole areas when you can and put everything together.

The reason for this is -- and this was a specific reason, because of a horrendous situation. And it pointed up that -- and I think particularly this is true in homicide - that you ought to have some alternative where

there are multiple deaths and where a whole batch of people were killed, as in the case of Happylands, which is years ago. And that's why this is here.

ACTING PRESIDENT BONACIC: Read the last section.

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

ACTING PRESIDENT BONACIC: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT BONACIC: The bill is passed.

Senator Duane, why do you rise?

SENATOR DUANE: Thank you, Mr. President. I was hoping that with unanimous consent I could be recorded in the negative on Number 685.

And I was out of the chamber when it came up, and I did just want to say that while I think that this is an excellent bill,

I think that we shouldn't do sexual assault issues on a piecemeal basis. I understand SARA is going to be revisited, and I think that we should look at revisions as a package and not this individually.

But thank you for the opportunity to vote no.

ACTING PRESIDENT BONACIC: Without objection, Senator Duane will be voted in the negative on Bill 685.

The Secretary will read.

THE SECRETARY: Calendar Number 23, by Senator Skelos, Senate Print 403, an act to amend the Penal Law, in relation to sentencing of persistent violent felony offenders.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT BONACIC: Senator Skelos, an explanation has been requested.

SENATOR SKELOS: Yes, Mr. President.

This legislation, which passed the Senate in 1998, '99, and 2000, will eliminate discretionary parole for violent felony

offenders who have been convicted and sentenced for three or more violent felonies within a ten-year period.

ACTING PRESIDENT BONACIC: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I'd just like to ask would the sponsor yield to a question.

ACTING PRESIDENT BONACIC: Senator Skelos, do you yield?

SENATOR SKELOS: Yes.

SENATOR MONTGOMERY: Senator Skelos, thanks.

I want to ask Senator Skelos, in a similar vein to the question I asked Senator Volker, what are the charges, the convictions included in your bill?

SENATOR SKELOS: They're listed in the Penal Law as class -- as violent felony offenses. For example, aggravated sexual abuse in the first degree, kidnapping in the second degree. It goes on and on; I can give you the section of the law. But it's how the Penal Law defines them as violent felony offenses.

SENATOR MONTGOMERY: If you would continue to yield.

The charges of robbery and burglary, is that first and second degree or just first degree or -

SENATOR SKELOS: Yeah, I believe so. If they are defined in here as violent felony offenses, then they would be covered.

SENATOR MONTGOMERY: All right.

Mr. President, on the bill.

ACTING PRESIDENT BONACIC: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: The point that I made to Senator Volker, similarly, in this case, where I believe that Senator Skelos's bill would cover anyone who has committed these -- any of these felonies within ten years.

So in other words, if you have served your sentence, you've served a sentence and you are now out, and within ten years you make another mistake or you, you know, commit another one of these issues here, what does this mean in terms of the length of time?

I believe that Senator Skelos is

proposing that there be -- that your time is doubled, based on the last convictions that you've had. Can I ask -- would Senator Skelos yield to a question to answer that? I would like to know.

ACTING PRESIDENT BONACIC: Senator Skelos.

SENATOR SKELOS: I think basically if you commit any one of these enumerated violent felony offenses, if you commit it three times within a ten-year period, then those would be the predicates of getting life in prison without parole.

ACTING PRESIDENT BONACIC: Senator Montgomery, do you want to continue on the bill?

SENATOR MONTGOMERY: I do want to continue on the bill, just to say that this is a three-strikes-and-you're-out legislation?

SENATOR SKELOS: (Nodding.)

SENATOR MONTGOMERY: Okay. I think that that explains it very well.

Thank you very much, Mr. President.

ACTING PRESIDENT BONACIC: Read the last section.

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

ACTING PRESIDENT BONACIC: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BONACIC: Senator Montgomery, to explain your vote?

SENATOR MONTGOMERY: Yes, Mr. President, to explain my vote.

I would just like to remind my colleagues that this legislation that Senator Skelos has presented to us is exactly what has happened in California. And one of the things that people who supported this kind of program to address crime in California have found is that a person conceivably could spend life in prison without parole for stealing a bicycle, or some other kind of what would be considered to be a violent felony under his bill, a burglary or a robbery.

So I would like to just emphasize that this is quite extreme, and I really don't think that we in the State of New York are prepared to pay for what it would cost for us

to incarcerate people for life under this legislation for such minor offenses.

Thank you.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 23 are Senators Duane, Espada, Mendez, Montgomery, Santiago, Schneiderman, A. Smith, and M. Smith. Ayes, 50; nays, 8. Also Senator Sampson. Ayes, 49. Nays, 9.

ACTING PRESIDENT BONACIC: The bill is passed.

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

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

ACTING PRESIDENT BONACIC: No, there is not.

SENATOR SKELOS: If we could return to motions and resolutions.

ACTING PRESIDENT BONACIC: Motions and resolutions.

Senator Paterson, for purposes of handing up any resolutions to amend the rules. Is there any?

Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Bruno, I hereby give written notice, as required by Rule 11, that he will move to amend the following Senate rules.

ACTING PRESIDENT BONACIC: The notice is received and will be recorded in the Journal.

Thank you, Senator Skelos.

SENATOR DOLLINGER: Mr. President.

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

SENATOR DOLLINGER: Mr. President, pursuant to Rule 11, on behalf of Senator Connor I also give notice of an intention to amend the rules, consistent with Rule 11.

I believe it's been handed up, Mr. President.

ACTING PRESIDENT BONACIC: The

notice is received and will be recorded in the Journal.

Thank you, Senator.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT BONACIC: Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business, I move we adjourn until Tuesday, January 30th, at 11:00 a.m.

ACTING PRESIDENT BONACIC: On motion, the Senate stands adjourned until Tuesday, January 30th, at 11:00 a.m.

(Whereupon, at 3:29 p.m., the Senate adjourned.)